

consumer action

Education and advocacy since 1971

Director Richard Cordray
Consumer Financial Protection Bureau
1275 First St. N.E.
Washington, DC 20002

March 23, 2015

Re: Prepaid card comments - Docket No. CFPB-2014-0031

Dear Mr. Cordray:

Thank you for the opportunity to comment on the prepaid rules proposed by the Consumer Financial Protection Bureau (CFPB).

Consumer Action¹ strongly supports the CFPB proposal that would require new consumer protections for prepaid cards, including free access to account information, clear disclosures and well-defined distinctions between prepaid and credit options.

Consumer Action firmly supports the broad definition of “prepaid” payment mechanisms proposed by the Bureau, which includes mobile payment accounts and other emerging payment systems (i.e. Paypal, peer to peer etc.) and encompasses all types of prepaid products such as payroll cards, government benefit cards and student cards.

We do suggest some additional elements to further strengthen the rules.

We believe that it’s important to clarify that all prepaid, stored-value cards fall under CFPB prepaid rules. This would include college cards issued by non-banks and healthcare flexible spending accounts.

Consumer protections

We suggest the prepaid rules should apply to all mobile payment systems where the consumer is not making a credit or debit purchase, automatically affording them Regulation Z or E protections. Additionally, consumers need basic fee disclosures and error protections when their funds are held in accounts not currently covered by Regulation E.

Dispute rights

¹ Consumer Action has been a champion of underrepresented consumers since 1971. A national,

The proposed rule would give consumers 60 days from the time they access their account electronically (or are sent a written statement) to report an unauthorized charge or error. However, many prepaid cardholders do not receive written statements or access their accounts electronically, so they may never see a fraudulent charge so they would not be able to exercise their rights.

We recommend amending the rule to provide prepaid cardholders 120 days from the time a charge is credited or debited to the consumer's account. A 120-day rule is easy for all parties to understand and comply with and is quietly offered by some card issuers already.

We also suggest synchronizing liability limits for lost or stolen cards at \$50 (instead of the current \$500 limit after two business days and unlimited liability after 60 days) to harmonize Regulation E with Regulation Z.

Funds availability

Consumers should not be asked to sacrifice access to large amounts of their funds for long periods of time while transactions clear. Account holds can defeat the money management benefits that prepaid accounts can provide. Account holds for hotel charges, gas station transactions etc. can be a particular hardship for consumers who rely on prepaid account balances as a virtual bank account. Card issuers should be prohibited from blocking access to prepaid funds after a transaction has cleared. We also recommend strictly limiting the amount of funds that can be placed on hold while waiting for a transaction to clear.

Prepaid vs. credit

We support the Bureau's creative proposal to consider any form of overdraft a line of credit, requiring the issuer to evaluate a consumer's ability to pay. We would expect that in all cases issuers would be required to comply with all protections under Regulation Z. Ideally, consumers who qualify for a line of credit should receive the extension on a separate card, if cards are issued. Automatic or "priority access" to funds from a credit line is a bad idea. Please extend the delay in offering credit to qualifying prepaid cardholders from the proposed 30 days to a full 90 days. We also recommend limits on penalty fees, limits on account opening fees to *at most* 25% of the credit line and extending fee limitations beyond the first year.

FDIC Insurance

Federal Deposit Insurance Corporation (FDIC) insurance should be required for all prepaid accounts, whether registered or not. Mere disclosure that the funds are not insured is inadequate to protect consumers. Funds should be held on behalf of individuals and fully protected by FDIC insurance in the event that the card issuer's business fails. Regulators also would examine the institution storing the funds, which we believe ensures a level of security and consumer protection for all prepaid depositors.

FDIC insurance should be required of all prepaid accounts—including current and prospective mobile payment accounts like Google, Paypal, Apple Pay, Amazon, Facebook, etc.

Consumers are unaware of the protection they have with FDIC insurance, which is all the more reason why they need the protection. Funds safety should not be able to be traded away in return for another account feature (like lower fees). Funds protection is paramount when consumers direct deposit their income onto prepaid cards.

Fees

We recommend that overdraft fees be prohibited outright on prepaid cards and accounts, as these products often are used as an effective way to control debt and overspending and successfully manage one's finances. The option to overdraft, with expensive related fees, defeats the purpose of paying with a prepaid card. Consumers consistently report that they would prefer to have a purchase declined when there are insufficient funds to cover a purchase, rather than be hit with a high-priced overdraft fee.

Consumer Action would like to see a complete ban on declined transaction fees on prepaid cards. Declined transaction fees are just an excuse to pad fees at consumers' expense.

Account disclosures

It is essential that consumers have free access to balance and other account information, and customer service online, by phone and at ATMs.

We support the CFPB proposal to disclose key fees on card packaging. These include monthly maintenance, per-purchase, ATM withdrawal, and cash reload fees as well as balance inquiry, customer service and inactivity fees, if allowed. We agree that the three most common fees should be posted along with a notice that “9” (or whatever number) other fees are charged that not listed here. While the following fees should be banned, if allowed, any overdraft-related fee, transfer fee, negative balance fee, etc. should also be noted on the package. Although we strongly encourage the CFPB to require FDIC insurance, if you do not require this, issuers should disclose in bold font on the package that **“This product does not contain FDIC insurance.”**

We support a long disclosure form for all other account information but basic account details should be easily accessible prior to sale. We support the proposal for posting all fees, terms and conditions on the CFPB website. This may lead to better pre-purchase comparison-shopping and will encourage card issuer competition.

We believe that employees and government benefits recipients should receive notice that they are *not* compelled to use a prepaid card to receive wages or

government benefits. We would support extending a ban on requiring payment by prepaid card on all other uses of prepaid, including student cards (beyond government financial aid, work-study and employment payments), other government payments, taxes, insurance payments etc.

The CPFEB should ban mandatory arbitration and class action bans on prepaid accounts.

We understand the need to require consumers to register cards to be eligible for dispute rights to prevent criminals from using prepaid accounts for payment fraud. It is essential that consumers with proof of purchase maintain the right to dispute transactions that occur prior to registration and that no time limit be imposed for registering the account.

Thank you for proposing strong prepaid rules that add key protections for consumers, and for considering Consumer Action's additional suggestions to bolster these protections.

Ruth Susswein

A handwritten signature in cursive script that reads "Ruth Susswein".

Deputy Director, National Priorities