

July 23, 2012

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW.
Washington, DC 20552

**Re: CFPB Advanced Notice of Proposed Rulemaking Regarding Electronic Fund Transfers (Regulation E)
—CFPB Docket No. CFPB–20120019**

Dear Madam:

The Center for Financial Services Innovation (CFSI) is submitting this letter in response to the request for comment by the Consumer Financial Protection Bureau on May 24, 2012. We appreciate the opportunity to respond to the CFPB's notice and request for comment on general purpose reloadable (GPR) prepaid cards including their costs, benefits, and risks to consumers.

CFSI is a nonprofit organization, in our ninth year of providing national leadership, research, and insights on the financial services needs of underserved consumers. We conduct consumer and industry research to develop a broad understanding of consumers in this segment and the products offered to them. We invest in nonprofits and for-profits serving underbanked consumers with sustainable, innovative financial products and services. And we advance federal financial services policy to spur product innovation and market competition and address impediments to accessing high-quality financial services. Our vision is to see a strong, robust, and competitive financial services marketplace, where the diversity of consumer transaction, savings, and credit needs are met by a range of providers offering clear and transparent products and services at reasonable prices.

CFSI has been studying the evolution of the prepaid card industry since 2004 and supported the development of high-quality and affordable GPR prepaid card accounts as a valuable and necessary tool for the financially underserved. Our work over the years has included research on industry practices and the development of these products, as well as detailed research on consumers use and views on GPR prepaid cards.¹ Recently, CFSI has also conducted research and analyzed the extension of consumer protections to GPR prepaid card accounts. This work has involved consultations with a wide variety of stakeholders, including policymakers, consumer advocates, and industry representatives. Last year we released our recommendations on extending consumer protections to GPR prepaid cards, which included requiring FDIC pass-through insurance, extending Regulation E as it is applied to payroll cards,

¹ For more information on CFSI's work on prepaid cards, please see www.cfsinnovation.com/prepaid

and improving fee disclosure for these products.² Earlier this year, we released detailed recommendations for improving fee disclosure in the form of a model fee disclosure box that we argue should be required for all prepaid card providers.³

In addition, CFSI has recently released the Compass Guide to Prepaid,⁴ which is a set of guidelines for the delivery of high quality prepaid card products that CFSI has developed with the input of leading industry stakeholders as part of the Compass Principles initiative. The Compass Principles are aspirational guidelines to assure quality innovation and execution in financial services—services that enable people to transact, borrow, save, and plan in ways that are beneficial to the consumer and profitable for industry. The Principles reflect the belief that the U.S. financial services marketplace can actively contribute to improving people’s lives, and deliver sustainable value to all consumers and providers. They are intended to be aspirational and encourage a competitive race to the top, building on a floor created by strong regulation.

We believe that taking steps to require consumer protections for all GPR prepaid cards will benefit consumers by allowing them safe, trustworthy access to asset-building financial services that can ultimately help them achieve greater financial stability and prosperity.

Below we address the major questions outlined in the request for comments by section and provide more detail on our research and consumer protection recommendations for GPR prepaid card accounts.

Regulatory Coverage of Products

Although many varieties of prepaid cards exist, the one that typically has the most utility and relevance to the underbanked is the general purpose reloadable, or GPR, prepaid card account. Like a bank account, a GPR prepaid card account can be used to make purchases, pay bills, access cash, monitor one’s finances, budget, save, and more. Unlike a bank account, however, a GPR prepaid card is typically easier and more convenient to open, and with the vast majority of cards, the consumer can spend only the money “loaded” or deposited into the account. For those living paycheck to paycheck, this feature helps with budgeting and provides underbanked consumers with a safe, convenient means to manage their finances.⁵

CFSI’s work over the years has mostly focused on GPR prepaid card accounts. We define GPR as prepaid cards that are both reloadable (money can be loaded or deposited on the card multiple times) and

² *Prepaid Cards and Consumer Protections*, David Neville and Melissa Koide, Center for Financial Services Innovation (2011)

³ *Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards*, David Neville, Center for Financial Services Innovation (March 2012).

⁴ *The Compass Guide to Prepaid*, The Center for Financial Services Innovation (June 2012).

⁵ *A Tool for Getting By or Getting Ahead? Consumers’ Views on Prepaid Cards*, Jennifer L. Romich, Sarah Gordon, and Eric Waithaka, Networks Financial Institute Working Paper 2009-09 (2009).

open-loop (can be used at any retailer that accepts cards from payments networks). These products closely resemble debit cards linked to bank accounts both in form and function. Because of this, we argue that they should have similar consumer protections applied to them, including Regulation E.

Regulation E provides important protections for consumers, particularly in regards to disclosures and error resolution for their accounts, however CFSI's research has found that compliance can be costly for prepaid providers. As a result, we believe that in cases where prepaid cards hold primary sources of funds or income for consumers and these products can be used broadly or in an open-loop manner, where both the applicability of the product and the chance for problems are greater, that the benefits outweigh the costs in applying Regulation E protections. However, if the prepaid card does not hold the majority of a consumer's income and it is intended for more limited or closed-loop use, the application of Regulation E provisions no longer make as much economic sense.

A slightly modified form of Regulation E was applied to payroll cards, which are even more similar to GPR cards, by the Federal Reserve in 2007. In 2010, The U.S. Treasury Department required all prepaid cards receiving federal nontax payments to comply with the version of Regulation E applied to payroll cards.

Because payroll cards are the type of payment card most similar to GPR prepaid card accounts, it is appropriate to use the payroll card model for applying Regulation E to GPR prepaid card accounts. They are both electronically based accounts with much shorter typical lifespans than bank accounts. The differences between the two versions of Regulation E are minor and largely revolve around paper statements, which are not as relevant to prepaid card customers and costly for prepaid providers to deliver. Extending Regulation E as it applies to payroll cards to GPR prepaid cards would ensure that the application of Regulation E requirements is tailored to the consumers who use them, and that compliance by prepaid card providers and depositories is feasible and realistic. This move would also be consistent with the application of those rules to prepaid card products created by the U.S. Treasury Department for the electronic delivery of Federal government benefits and payments, such as the Direct Express Debit MasterCard program and the MyAccountCard Visa Prepaid Debit Card pilot program.

Consumers are increasingly using computers and mobile phones to check their bank account and GPR prepaid card account transactions. Not only is this often more convenient, but it also allows consumers to detect errors or fraudulent transactions without having to wait for monthly paper statements. The electronic delivery of account information will only increase in importance and relevance as mobile phones and other access devices become more sophisticated and cheaper and Americans grow more comfortable and familiar with banking online. However, some consumers will always prefer paper statements, and this option should also be readily available at a reasonable cost when requested.

In addition to extending Regulation E as applied to payroll cards to GPR prepaid card accounts, CFSI also recommends further improvements in Regulation E for both payroll cards and GPR prepaid card accounts which are detailed below.

- **Expand the 60 days of transaction records to one year.**
It would be logical to extend the current minimum of 60 days of transaction records that financial institutions are required to make available to at least 120 days, giving consumers more opportunity to detect errors. In fact, given that consumers are increasingly turning to GPR prepaid card accounts as bank account substitutes, it would be prudent to make transaction records available for even longer, such as six months or one year. Given technological advances, the compliance cost to prepaid providers to store additional electronic records is also relatively small, and as long as the records are easily accessible for consumers, they could be stored in an active or archival format.
- **Allow consumers who opt in for paper statements to choose to receive a single statement or ongoing paper statements.**
Under Regulation E for payroll cards, account transaction information is made available electronically, and consumers who want a paper copy must request it. Some prepaid providers give consumers the option of either receiving a one-time paper statement or regular monthly paper statements when they make their request, while others require consumers who want ongoing monthly paper statements to call or write each month. Consumers should be able to request either of these options with only one phone call, letter, or email, and at a reasonable cost. Additionally, consumers who request regular monthly paper statements should continue to receive them for each month there is financial activity in the account, until the account is either closed or the consumer requests no more paper statements.

Product Fees and Disclosures

Another important area of consumer protection for GPR prepaid cards is fee disclosure. While most prepaid companies have taken at least some steps to make it easier for consumers to find and understand the fees associated with their products, CFSI research on current fee disclosure practices clearly shows a need for improvement in the industry overall. Because there are typically many fees and disclosure practices vary widely, it is difficult for consumers to compare products before purchasing one.

Fee Box

CFSI believes that the most effective way to improve fee disclosure is by requiring all GPR prepaid card account providers to list all the fees for their products in a standardized and easy-to-understand box. This is similar to the Schumer Box, a standardized summary of all the major costs of a credit card. A well-designed fee box would help consumers make more informed choices.

CFSI recently developed a model fee disclosure box based on research on current fee disclosure practices for GPR prepaid cards, best practices in disclosure for a variety of financial and nonfinancial products, and data on current prepaid card fees. Should the CFPB decide to require a standardized fee

box, we recommend that the CFPB first conduct research to inform its design in order to ensure that the information presented is understandable and leads to the best consumer choices. The key principles identified through CFSI's research and behind the design of our proposed model fee box are described below. The model fee disclosure box also below shows how these recommendations could work in practice.

- **Simple, Clear, and Straightforward Language**

Disclosures for financial products are typically written at a reading level well above what most Americans can comprehend. About half of the adult population in the United States reads at or below an eighth-grade education level. When disclosures use terms that consumers do not understand, they tend to ignore them. Language to describe fees should be free of industry jargon and acronyms, and neither overly technical nor vague. Because of the diverse ways that consumers can use prepaid cards, companies should have the flexibility to customize the names of individual fees (in simple, clear language), but categories of fees should be standardized to help consumers compare cards.
- **Format and Visual Design**

Thoughtful design and formatting can make it easier for consumers to understand disclosures and more likely to read them in the first place. Terms and conditions often go unread because of their dense legal language, long narrative format, and small font.

 - Organizing information into clearly defined lists or tables with categories and plenty of white space could improve comprehension.
 - The total number of categories should be manageable, and companies should limit the number of fees in each category to two or three at the most.
- **The Tradeoff between Simplicity and Comprehensiveness**

All fees should be disclosed, but trying to accomplish everything within the box can reduce effectiveness, distracting consumers from what's most important or resulting in information overload.

 - CFSI recommends limiting the total number of fees in the box but not the overall number of fees a company can charge.
 - The summary box should contain the most common fees consumers pay and should be the most prominent. It should also contain a disclaimer stating that other fees may apply and can be found in the terms and conditions.
 - All other less common fees should be clearly disclosed in a larger version of the fee box at the top of the terms and conditions for the card.
- **Pure Disclosure Versus Encouraging Financial Capability**

Promoting certain types of behaviors, such as financial capability, through choice architecture can have a positive impact on people's lives.

- To encourage lower-cost use of prepaid cards, the fee box should highlight free services as well as those with costs.
 - Alternatively, to encourage comparison by price, an additional column could list the average or median fee across the industry for each individual fee.
 - To give consumers a fuller picture of total costs, the fee box could show a “Typical Use” column indicating the median number of times a consumer incurs each fee in a month or year.
- **Clear and Consistent Placement**
 The most effective disclosure document is useless if consumers cannot find it before having to make a purchase decision.
 - Fee boxes for prepaid cards sold in a retail environment can be placed directly on the packaging.
 - Check cashers, small-dollar lenders, and banks should be required to present a copy of their fee box before customers purchase a card.
 - All prepaid companies should display their fee boxes prominently on their websites.

XYZ Prepaid Card Co.		
Prepaid Card Fee Summary		
Fee Category	Fee Type	Amount
Total Cost of Setup:	Monthly Fee	\$ X.00
	Activation	\$ X.00
Add Money:	Direct Deposit	Free
	Cash (at a Store)*	\$ X.00
Get Cash:	ATM*	\$ X.00
	Store Cash Back	Free
Spend Money:	Signature	Free
	PIN	\$ X.00
Information:	Call Customer Service	\$ X.00
	Online/Mobile Information*	Free
	ATM Balance Inquiry*	\$ X.00
Caution:	Replacement Card	\$ X.00
	Inactivity	\$ X.00
	ATM Decline	\$ X.00
Other fees may apply, see terms and conditions for details.		
*Third-party fees may apply.		
www.XYZPrepaidCard.com		(202) XXX-XXXX

FDIC Pass-Through Insurance

In the current GPR prepaid card account marketplace, the availability of pass-through insurance is inconsistent. Some prepaid card providers do not offer deposit insurance at all, others claim to offer FDIC insurance but do not offer full FDIC pass-through insurance. To avoid confusion and ensure that the

funds of all GPR prepaid card account holders have this basic consumer protection, CFSI believes that all GPR prepaid card accounts should be required to have full FDIC insurance.

For depositories and prepaid card providers who do not already provide it, pass-through insurance is relatively easy to offer. Its value to GPR prepaid card account holders, who tend to have lower incomes and be more risk averse concerning their finances, is much higher than the cost of compliance. Additionally, taking this step may well make the product more attractive to current users and draw in additional financially underserved consumers.

The disclosure of whether FDIC pass-through insurance is available through a GPR prepaid card account product is also very important. CFSI recommends requiring the disclosure of FDIC pass-through insurance, on websites, product packaging in retail outlets, and marketing and promotional materials, so consumers are clearly aware of this protection. GPR prepaid card accounts issued by credit unions should also be required to have full NCUA share insurance and display the NCUA logo in a similar manner.

Our research on current fee disclosure practices found that 17 out of 36 of the card programs that we examined clearly disclosed that they offered pass-through insurance (they explicitly stated that the cards were insured up to \$250,000 or the maximum amount provided by the FDIC). Another 15 stated that they were FDIC insured, but did not disclose for how much they were insured. Three cards stated only that the card issuer was an FDIC-insured institution, but said nothing about whether funds on the cards were insured. One program did not offer FDIC insurance.

Product Features

Overdraft and Credit Features

When offering credit or overdraft services with prepaid accounts, providers should exercise caution and offer only high-quality, safe, affordable options. CFSI's approach to overdraft and credit in its Compass Guide to Prepaid exemplifies what we mean by this idea. The Compass Guide to Prepaid identifies three types of practices that are necessary to provide a high quality GPR card:

- **Core Practices**
These are baseline standards for a high-quality prepaid account, including the application of Regulation E as modeled for payroll cards and FDIC insurance.
- **Stretch Practices**
These are additional best practice ideas for providers looking to stretch beyond the basic requirements, such as the use of text alerts to keep cardholders up to date about their account balance or a mobile app to aid in opening or managing their account.

- **Next Generation Practices**

These are practices that providers that have met the Core and Stretch standards for quality can consider in order to offer additional services for their prepaid account customers. These practices are called “next generation” to emphasize the need for new models that actively contribute to improving people’s lives and deliver sustainable value to all consumers and providers. They are also called “next generation” because current approaches are either not responsible or viable for the consumer or the provider, and we need customer-focused innovation, research, and testing for these new models to emerge.

CFSI views the offering of overdraft and credit services in this last category: as next generation practices. The small dollar credit business models that dominate the market today should not be added on to GPR offerings without modification. Instead, new models of small dollar credit that are high quality, safe and affordable should be developed. These models would need to align provider profitability with consumer success, and help borrowers to avoid a cycle of over-indebtedness. Two examples of how this could be achieved include:

- A small percentage of the loan disbursement is transferred automatically into a consumer’s savings account to reduce future dependence on credit.
- Consumers who chose overdraft services clearly and affirmatively opt-in and are provided with real-time messaging and reasonable grace periods when their account has been overdrawn.

GPR cards have the potential to become an onramp to the full range of financial services needed by low and moderate income consumers if they are connected to both credit and savings opportunities. However, because of the inherent dangers of becoming over-indebted – and because a significant benefit of GPR cards to consumers is their use for budgeting as a result of the fact that prepaid cards cannot be used to spend more than available funds – any addition of overdraft and credit features to the GPR product should be undertaken with great caution.

Savings

CFSI believes that incorporating features that help consumers to save and build an emergency fund or longer-term wealth is a positive development in the prepaid card industry. Currently, at least six prepaid card providers offer customers savings accounts linked to their cards, some of which offer interest at above market rates.⁶ Combining low-cost transaction services with opportunities for savings is a best-practice model for the financial services industry. The CFPB should encourage GPR cards to have saving accounts associated with cards, and should ensure that consumer protections are equivalent to those for savings accounts offered through other mechanisms.

⁶ These cards include Advance America Visa Prepaid Card, Plastyc UPSide Visa Card, NetSpend Prepaid Debit Card, Mango Money Prepaid Card, H&R Block’s Emerald Card and PreCash Vision Premier Visa Prepaid Card.

Credit Building

As of now, we cannot definitively say that GPR payment behavior directly corresponds to good credit behavior, as more research needs to be done to assess whether prepaid card data can be reliably used to evaluate creditworthiness. Nevertheless, CFSI believes the fact that more prepaid card companies are considering facilitating credit building efforts is potentially positive. Financially underserved consumers are less likely to use the types of credit products that make up the traditional credit scores.⁷ Without credit lines that are reported to the major bureaus, it is difficult for these consumers to establish and build credit.

The inclusion of prepaid card payment data could have an important role in driving increased financial inclusion. However, in developing and marketing this feature to consumers, service providers should:

- Carefully weigh the risks and benefits to consumers of sharing sensitive data, because it raises privacy as well as other concerns;
- Ensure that data will be used appropriately, including expanding the existing reporting infrastructure to include new forms of data and of course, being fully compliant with FCRA in order to protect consumers from unfair use of data; and
- Provide clear disclosure to consumers on what information is being used – and how it's being used – as well as a straightforward means of opting out.

Conclusion

Finally, we urge the CFPB to further study the best practices laid forth in this letter and encourage their use. We also suggest that any new regulations deemed appropriate by the CFPB be implemented with sufficient advance notice and lead time to allow providers to adequately prepare and adjust their practices without unnecessary cost, or a disruption in access for consumers of these products.

We appreciate the CFPB's request for comment and hope our suggestions are useful in illustrating best practices for ensuring GPR cards are accessible, responsibly designed, and properly regulated for the consumer.

Sincerely,



Rachel Schneider
Vice President, Innovation, Research, and Policy

⁷ From upcoming paper *Building Consumer Credit: A Winning Strategy for Financial Institutions and Consumers*, Kate Dole and Rob Levy. Center for Financial Services Innovation.