

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

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April 5, 2017

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Hon. Paul Ryan
Speaker of the House of Representatives
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Sen. Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
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Hon. Kevin McCarthy
House Majority Leader
2421 Rayburn House Office Building
Washington, DC 20515

Hon. Nancy Pelosi
House Minority Leader
233 Cannon House Office Building
Washington, DC 20515

Re: Preserving Protections for Consumers Who Use Prepaid Cards

Dear Congressional Leaders:

We write to urge you to oppose S.J. Res.19, H.J. Res. 62 and H.J. Res. 73, which would eradicate important protections that have been proposed for consumers who use prepaid cards (also called general purpose reloadable or GPR cards) to receive wages, make purchases, or pay their bills. Prepaid cards are a rapidly growing market and are often used by consumers who have limited or no access to a traditional bank account. Yet, consumers frequently report concerns about hidden and abusive fees as well as fraudulent transactions that unfairly deplete the funds loaded onto prepaid cards.¹

After reviewing tens of thousands of comments from industry participants and consumers, the CFPB issued a final rule entitled “Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)” (the “Final Rule”), that is intended to give prepaid card users some of the same protections that are given to users of traditional

¹ For instance, the CFPB handled approximately 5,600 prepaid card complaints as of August 1, 2016. (*See*, Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 83934-01, 83952 (November 22, 2016) (to be codified at 12 C.F.R. Parts 1005 and 1026)).

banking and credit products by, among other things, protecting prepaid card users against fraud and unauthorized charges, making the fees associated with prepaid cards more transparent, and limiting the abusive use of overdraft fees. The Final Rule was scheduled to go into effect on October 1, 2017, although the CFPB has now proposed that the effective date be delayed until April 1, 2018 to, among other things, “allow an opportunity for the [CFPB] to assess whether any additional adjustments to the [Final] Rule are appropriate” and allow “industry participants [to] address certain packaging-related logistical issues for prepaid accounts that are sold at retail locations.”² The CFPB’s careful approach to implementation demonstrates its dedication to crafting a rule that protects consumers and encourages a thriving, responsible industry.

For reasons more fully set forth below, as the chief consumer law enforcement agencies in our states, we urge you to oppose S.J. Res.19, H.J. Res. 62 and H.J. Res. 73, so that our citizens will be protected from unfair, deceptive, and abusive practices by some actors in the prepaid card industry.

The Prepaid Card Industry

Prepaid cards are among the fastest growing consumer financial products in the United States. According to the Federal Deposit Insurance Corporation (“FDIC”), nearly 10 percent of *all* households in 2015 used prepaid cards.³ And, in 2013, the FDIC reported that 27.1% of *unbanked* households - those without traditional bank accounts - used prepaid cards.⁴ Thus, a significant segment of the population uses prepaid cards. Such cards can be a lifeline for consumers shut out of the conventional banking system. Consumers use prepaid cards to receive direct deposits and manage their money. In that regard, a prepaid card can operate like a bank account debit card for consumers without an individual bank account. Funds from consumers who pay for prepaid cards are pooled in a joint account in a bank or non-bank entity. These cards are particularly attractive to consumers who have trouble with bank overdraft fees or have impaired credit, since prepaid cards are generally designed not to overdraft.

Prepaid card fees

Prepaid card users can incur significant fees. Unfortunately, these fees are not well disclosed and are often unknown to consumers. For example, a 2014 report by the non-partisan Pew Charitable Trusts estimated that the median consumer using one of the 66 major prepaid cards incurs fees of \$10 to \$30 each month.⁵ A nonprofit organization representing the interests of restaurant workers submitted information to the CFPB that it gathered from a survey of 200 people employed by a

² See Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date, 82 FR 13782, 13782 (March 15, 2017).

³ 2015 FDIC National Survey of Unbanked and Underbanked Households, (October 20, 2016), <https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf>.

⁴ 2013 FDIC National Survey of Unbanked and Underbanked Households, (October 2014), <https://www.fdic.gov/householdsurvey/2013/2013report.pdf>.

⁵ The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards*, at 39 (Feb. 2014), <http://www.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/consumers-continue-to-load-up-on-prepaid-cards> (2014 Pew Study).

company that compensates nearly half of its 140,000 hourly employees via prepaid cards. These restaurant workers incurred 10 different types of fees for transactions on their cards, including: accessing their money at an ATM (\$1.75), obtaining a replacement card (\$10.00), paying bills (\$0.99), and obtaining paper statements (\$1.50).⁶

It is not just the existence of these fees, but the lack of adequate disclosure of fees that causes problems for consumers. Many participants in the CFPB's pre-proposal consumer testing reported incurring fees that they did not become aware of until after they purchased their prepaid account.⁷ The restaurant worker's survey results showed that, among other problems, 63 percent of employees surveyed reported that they were not told about all of the fees associated with their prepaid cards before they were issued and 26 percent reported not being allowed to choose an alternative method of payment.⁸ There is no legitimate benefit to industry to hide these fees.

Payroll cards

The Final Rule notes increasing concerns about payroll cards. Payroll cards are especially prevalent in industries that have many low-wage, hourly workers. The number of consumers who receive their wages on payroll cards surpassed the number of consumers paid by paper checks for the first time in 2015, and an estimated 12.2 million workers are expected to receive their wages on payroll cards by 2019, compared to an estimated 2.2 million workers who are expected to get paper checks.⁹ The fact that some payroll card providers share program revenue with employers may create incentives to increase the fees on payroll card products at the expense of workers.¹⁰ Without protections like those proposed by the CFPB, these workers lose the ability to determine how they receive their wages or effectively budget the use of their funds.

Student Loans

Students are also increasingly using prepaid cards to receive their Federal financial aid. The total amount of funds loaded onto general use prepaid campus cards was \$2.72 billion in 2015, and is forecasted to reach \$3.98 billion by 2019.¹¹ A 2014 Government Accountability Office report noted concerns about the fees on student debit and prepaid cards, as well as the lack of ATM access and the lack of the schools' neutrality toward the card program.¹²

⁶ Restaurant Opportunities Centers United, *The High Cost of Getting Paid*, (May 2016), http://rocunited.org/wp2015b/wp-content/uploads/2016/05/HighCostGettingPaid_Report_Web-2.pdf.

⁷ 81 FR 83934-01 at 83954.

⁸ Restaurant Opportunities Centers United, at 7.

⁹ Aite Group LLC, *Checkmate: U.S. Payroll Cards Trump Paper Checks* (Apr. 2015).

¹⁰ 81 Fed. Reg. 83934-01, 83941.

¹¹ 81 Fed. Reg. 83934-01, 83941.

¹² Some of these problems were addressed in a U.S. Department of Education final rule in October 2015.

Retailers

Prepaid cards are also available for sale at many retailer locations. The CFPB has noted that consumers buying these cards may be unaware of their associated fees due to the small packaging for the cards, their location in stores behind registers, and the limited selection available in many outlets. These factors combine to make it difficult for consumers to make informed purchases of these cards.¹³

Payday Loans

Compounding the problems mentioned above, the most predatory use of prepaid cards arises in the payday loan context. Some prepaid cards can be paired with payday loans and are called “hybrid cards.” Most prepaid cards cannot be used to repay payday loans. This is because most of these cards have a feature that prevents third parties from initiating an ACH debit against the consumer’s account based on a prior preauthorization. However, the payday lending industry has recently started selling its own prepaid cards that permit payments toward payday loans.

These hybrid cards enable a payday lender to take consumers’ wages, which have been loaded onto a prepaid card, *before* consumers can even use them to cover their basic living expenses. In other words, consumers lose control of their own finances. Further, unlike the vast majority of prepaid cards, most of the payday lender prepaid cards have an overdraft feature that exposes consumers to overdraft fees. When consumers opt-in to the overdraft “protection,” the prepaid card company will approve a transaction even if the card has insufficient funds. The overdraft and overdraft fee are then taken from the next deposit of funds. Beyond its deceptive labeling as “protection,” this prepaid card feature is particularly noxious since many consumers have turned to prepaid cards in the first place in an attempt to try to avoid overdraft fees. Tellingly, one of the biggest providers of hybrid cards, NetSpend, explicitly advertises its card as a way to avoid overdraft fees, even though that company made over \$50 million in overdraft fees in 2014.¹⁴

These overdraft fees on hybrid cards, which average \$15 per overdraft, can add up quickly as the deficit in a consumer’s account triggers multiple overdraft fees. Consumers who have overdraft “protection” incur an average of 7 overdraft fees per year. A quarter of these consumers incur 12 or more overdraft fees per year.¹⁵ A recent survey confirmed that most prepaid card users do not want the option to overdraw their account. Consumers – especially the unbanked – use the cards to help control spending, stay out of debt, and avoid overdraft fees.¹⁶

¹³ 81 Fed. Reg. 83934-01, 83938.

¹⁴ Lisa Bertagnoli, *Payday lender prepaid cards: the worst plastic in the world?* (October 2015), <http://www.nasdaq.com/article/payday-lender-prepaid-cards-the-worst-plastic-in-the-world-cm531517#ixzz4ZKPwuzUW>.

¹⁵ National Consumer Law Center, *Payday Lender Prepaid Cards, Overdraft and Junk Fees Hit Cash-Strapped Families Coming and Going*, (July 2015), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/Report_PaydayLendersPrepaid71515.pdf.

¹⁶ The Pew Charitable Trusts, *Banking on Prepaid*, (June 2015), <http://www.pewtrusts.org/~media/assets/2015/06/bankingonprepaidreport.pdf?la=en>.

Overdraft fees are not the only fees linked to these prepaid payday loan cards. These cards also carry other fees not found on mainstream prepaid cards, including preauthorized electronic ACH decline fees of \$1-\$14.95; stop payment fees of \$10-\$25; and ACH debit fees of \$4.95 for *successful* ACH payments.¹⁷ These fees hit the most vulnerable of consumers: those who have to resort to payday loans, and do not even have a bank account from which the payday lender can withdraw funds.

In sum consumers who use prepaid cards frequently turn to them as a way of avoiding fees, yet these cards are burdened with poorly disclosed (or undisclosed) fees that are absent from similar products used by consumers who have access to mainstream products. Action is needed now to protect this growing, relatively unprotected segment of the population.

The CFPB's Prepaid Card Rule

The CFPB's Final Rule provides a common sense approach to regulating this important product, by providing protections that consumers have come to expect in similar financial products. Among its key provisions protecting consumers, the Final Rule will:

- Protect prepaid card users against fraud and unauthorized charges;¹⁸
- Help consumers avoid hidden fees and comparison shop with a simple chart of common fees;¹⁹
- Provide convenient, free access to account transaction information and account balances;²⁰
- Require employers to inform employees they do not have to receive wages on a payroll card; and
- Require prepaid-credit cards to comply with existing credit card laws intended to protect consumers from predatory lending practices (protections include a required ability to repay analysis, limits on overdraft fees in the first year, and safeguards on how funds are repaid).

¹⁷ National Consumer Law Center, *supra*, note 16, at 15.

¹⁸ The Final Rule extends Regulation E's limited liability and error resolution requirement to all prepaid accounts.

¹⁹ The Final Rule requires the financial institution to provide both a short form and a long form disclosure to consumers that includes, *inter alia*, that the institution disclose: periodic fees, per purchase fees, ATM withdrawal fees, cash reload fees, ATM balance inquiry fees, customer services fees and inactivity fees.

²⁰ The Final Rule requires a financial institution to provide periodic statements unless the institution provides specific information through enumerated alternatives, such as through the Internet or by phone.

Without these protections unscrupulous players in the prepaid card market will continue to gouge unsuspecting consumers with outrageous, undisclosed fees. Major players in the industry, such as Green Dot, support the Final Rule. In his testimony regarding the rule, Green Dot's CEO, Steve Streit, stated: "A football game with[out] rules and referees isn't a sport; it's a brawl. Like sports, to be successful, industry also needs rules and referees to ensure fairness, integrity and safety for all participants."²¹

Further, the Final Rule will not just protect the unbanked. It will also apply to mobile wallets; person-to-person payment products; student financial aid disbursement cards; tax refund cards; and certain federal, state, and local government benefit cards, such as those used to distribute unemployment insurance and child support. Providing these forms of payment with the same protections already afforded to debit and credit cards will protect consumers while, at the same time, promote the popularity of these forms of payment.

The Misplaced Effort to Undo the CFPB's Regulations

The resolutions to stop implementation of the CFPB's Final Rule were filed under the Congressional Review Act (CRA), a law giving Congress, with the President's signature, a window to veto a rule from going into effect. The CRA has special provisions to expedite a vote and prevent a filibuster. If a rule is blocked by a CRA vote, the agency is *forever* barred from enacting a substantially similar rule unless Congress authorizes it.

Critics of the Final Rule claim that it is unfriendly to consumers and would cripple the electronic payment marketplace. This criticism is unfounded. The CFPB issued a Notice of Proposed Rulemaking on prepaid cards on May 23, 2012. It then engaged in a series of hearings on the proposed rule, reviewed over 65,000 comments on the proposal from industry and consumers, conducted market research, and engaged in consumer focus groups and testing of the proposed disclosures. The Final Rule is not a hastily implemented rush to judgment, but a result of a thoughtful, careful process that was designed to consider the needs of consumers, as well as issuers of prepaid cards. The CFPB even changed its proposal in a variety of ways to accommodate industry's concerns, after receiving its first round of industry comments. Portions of the rule are largely supported by both industry and consumer groups, such as the requirement to provide consumers with disclosures before they purchase prepaid accounts, and the use of standardized disclosures.²²

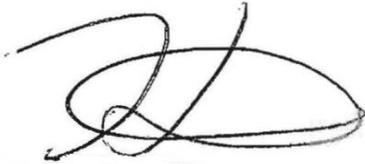
In sum, the Final Rule provides common-sense protections to some of the most vulnerable consumers – those who do not have access to bank accounts. These protections are increasingly important as the use of these cards expands in the marketplace. The Final Rule also combats abuses that arise when prepaid cards are used by outliers in the prepaid card marketplace, such as payday lenders. The overdraft limits are largely supported by the prepaid card industry with only one major opponent, NetSpend, which is seeking to preserve the roughly \$50 million in overdraft and other fees it charges to struggling families each year.

²¹ <http://www.bankrate.com/financing/banking/green-dot-endorses-new-prepaid-rules/>.

²² 81 Fed. Reg. 83934-01, 84010.

Thank you for considering this comment and the important issues addressed herein. We urge you to oppose S.J. Res.19, H.J. Res. 62 and H.J. Res. 73, as they would forestall needed consumer protections in this relatively new and expanding segment of the marketplace.

Sincerely



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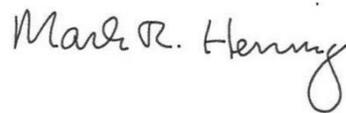
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