



POLICY & ACTION FROM CONSUMER REPORTS

July 23, 2012

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

RE: Docket No. CFPB-20120019; RIN 3170-AA22
Electronic Fund Transfers (Regulation E) and General Purpose Reloadable Cards

Dear Director Cordray, Ms. Jackson and staff:

Consumers Union, the policy and advocacy arm of Consumer Reports, appreciates this opportunity to submit comments to the Consumer Financial Protection Bureau's proposal to amend 12 CFR Part 1005 to provide strong consumer protections for prepaid cardholders. In addition to signing onto comments submitted by Americans for Financial Reform (AFR), we respectfully submit these additional comments to the Bureau's questions regarding general purpose reloadable cards (GPRs), also known as prepaid cards.

SUMMARY

We strongly urge the Bureau to ensure that all consumers who use prepaid card products and services receive strong consumer protections that:

- **Protect against fraud and loss**, whether losses are a result of a lost or stolen card, unauthorized charges, or a depository institution's insolvency and to return missing funds promptly;
- **Provide access to account information** so consumers can easily access transaction activity and information, with dispute rights beginning when a consumer actually receives information showing the error;
- **Require transparent, simple and straightforward fee schedules and disclosures** *prior* to purchase so consumers may make a better informed decision when choosing the best product;
- **Prohibit extensions of credit** by prohibiting overdraft fees and credit products on any prepaid card; and
- **Require regulators to conduct regular reviews** of other prepaid card programs and features to ensure these products provide actual benefit to consumers.

Broadly, the Bureau should also ensure there is consistency in the way all GPRs, or prepaid cards, disclose information, provide affiliated products and services and how they are marketed to consumers. This role will become increasingly important as the marketplace becomes more crowded with the different types of companies who issue prepaid cards. For example, large banks have recently entered the prepaid card market which has been dominated by nonbank companies.

The numbers of consumers who have chosen to rely on prepaid cards alone or adopt prepaid cards in conjunction with existing checking accounts continues to swell. The largest prepaid card companies, GreenDot and NetSpend have millions of cardholders. GreenDot reported having 4.69 million active cards in March 2012 (as compared to its 4.28 million cards in March 2011) and \$62.4 million in card revenues for the first quarter 2012.¹ NetSpend, another large prepaid card provider reported having 2.35 million active cards at the end of March 2012.²

These nonbank companies are no longer companies issuing prepaid cards.³ Big banks have also entered the prepaid card market. These growing numbers of prepaid cardholders is only expected to swell as consumers either choose to or are forced to use prepaid cards in lieu of traditional bank products and services. Consumers can now obtain prepaid cards from large commercial banks, such as Comerica, U.S. Bank and Chase who directly distribute prepaid cards alongside their traditional banking products and services.⁴

A. REGULATORY COVERAGE: ALL REGULATION E PROTECTIONS SHOULD BE EXTENDED TO GPRS

1. All GPRs Should Have The Same Regulation E Protections As Traditional Debit Cards

We urge the Bureau to extend all Regulation E's consumer protections, with only slight modifications to general purpose reloadable cards. Consumers have increasingly come to rely on prepaid cards to manage their personal and household funds since prepaid cards function and operate much like debit cards tied to bank accounts. From a consumer usage perspective, the line between a prepaid card and a traditional debit card is becoming increasingly blurred. As with a traditional debit card, a consumer using a prepaid card can withdraw funds from ATMs, make purchases online and at the point of sale, arrange direct deposit of pay and benefits, and pay bills. Prepaid cards are increasingly marketed to consumers as flexible products that can be used in nearly every way as a bank issued debit card, yet many consumers are unaware that prepaid cards do not have the same guaranteed consumer protections as more mainstream debit and credit cards.

Extending Regulation E protections to GPRs is in line with the extension to government issued benefit cards, which are very similar in operation and in function, as well as employer-arranged payroll cards, both of which are explicitly protected by EFTA and Regulation E. Based on how GPRs function and operate, on trends in consumer usage and on how providers market GPRs, all Regulation E protections should be extended to GPRs to ensure that consumers are adequately protected.

¹ Green Dot Corp Investor Relations, *SEC Filing 10-Q*, May 5, 2012; available at <http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irolSECText&TEXT=aHR0cDovL2lyLmludC53ZXN0bGF3YnVzaW5lc3MuY29tL2RvY3VtZW50L3YxLzAwMDEzODYyNzgtMTItMDAwMDUyL3htbC9zdWJkb2N1bWVudC8xL3BhZ2UyMjE%3d>.

² NetSpend Corp Quarterly Report, Form 10-Q, May 8, 2012, available at <http://investor.netspend.com/releasedetail.cfm?ReleaseID=620891>.

³ We should note that GreenDot is no longer a nonbank. After a decade as a nonbank company, GreenDot acquired Bonneville Bank in late 2011. Deborah Crowe, *GreenDot Completes Bank Acquisition*, LA Business Journal, Dec. 9, 2011.

⁴ Large banks are steadily entering the prepaid market, including Comerica Bank, Chase and BB&T. Jackie Stewart, *Comerica to Launch Prepaid Card*, Am. Banker, July 10, 2012, available at http://www.americanbanker.com/issues/177_132/comerica-to-launch-prepaid-card-1050809-1.html. There had been much speculation that larger banks would offer prepaid cards to avoid Durbin amendment requirements. Victoria Finkle, *U.S. Bancorp Enters Prepaid Area*, Am. Banker, Nov. 3, 2011.

These protections include the following:

- Limit losses for lost or stolen cards and for unauthorized charges;
- Require prompt recredit of missing funds of no later than 10 business days;
- Provide clear and conspicuous disclosures of all fees, especially *before* signing up;
- Provide consumer choice on how to receive free and accessible information, including periodic statements, and other transaction history; and,
- Begin running the time to dispute an error or unauthorized charge when the statement has been received, or in the case of accessing information electronically, when that portion of the electronic information showing the error or charge has been accessed.⁵

The GPR Definition Should Include Prepaid Cards Used to Manage Important Personal Funds

The definition of GPR should also include specialized prepaid cards such as health savings accounts, university cards, and all network branded open loop reloadable gift cards with \$500 or more. Consumers depend on these cards to manage important personal funds, which can often have significant amounts loaded onto them. These cards should likewise have full Regulation E protections just as traditional debit cards.

The GPR Definition Should Include All Means and Methods Used to Access Prepaid Card Account Funds

The Bureau must also ensure that the definition of GPR is inclusive of other methods and means which may be developed for future use in which consumers can use to access the funds “on” their prepaid cards. Thus, we suggest the Bureau include the term “account” in its definition to include these other methods and means by which prepaid card funds can be accessed and used by consumers. For instance, consumers can already access prepaid card account funds using a mobile device⁶ and it is likely that other access methods will be developed and more broadly adopted in the future.

Cover All Entities Who Handle Prepaid Card Funds

Finally, it is important that all of the entities who handle and hold prepaid card funds are considered to ensure that consumers are fully and equally protected. Consumers use GPRs to access funds that are placed in subaccounts held by depository institutions, or alternatively, funds that are held directly by non-depository institutions. The Bureau should consider who holds the prepaid card funds, as these funds are often managed by issuing depository institutions, but in some cases may sit with a non-depository entity. For example, if a consumer purchases a GPR at a retail location, the prepaid card company is relying upon the retailer to handle the funds until they are transferred to the prepaid card issuer.

2. The Bureau Must Ensure Consumers Are Able to Access Their Transaction Information Through Various Methods At No Cost

Consumers need to be able to easily access accurate prepaid card transaction activity, periodic statements and transaction history without incurring fees or experiencing delay. This is particularly important because Regulation E fraud and protections depend on the timeliness of a consumer’s report of unauthorized activity. The Bureau should ensure consumers are provided various methods to access their prepaid card transaction activity, including periodic statements and transaction histories any time they want or need to reference them without having to pay a fee.

⁵ This would provide additional protections to consumers beyond what is currently provided. The period of notice should begin not when transaction information is made “available” electronically but rather when the consumer has actually accessed the portion of the electronic account which shows the transaction or charge in dispute.

⁶ Plastyc offers a variety of services via their mobile application. Plastyc Mobile Money Services, *available at* http://www.plastyc.com/mobile_banking.htm, last visited July 17, 2012.

If a Regulation E modification for statements is adopted for GPRs, consumers must be able to access accurate, complete prepaid card transaction statements and histories in a readable, printable format at no cost. Consumers should also be able to access their balance histories via ATM, phone, online or by other electronic means at no cost. In addition, consumers should be able to have alerts sent by email or text message without extra cost to access their prepaid card account balances.

Consumers who cannot easily access their statements electronically should not be required to pay high fees in order to obtain their periodic statements or transaction histories by mail. Ad hoc request for statements should be free. Some consumers may prefer or require regular monthly paper statements, particularly if they do not have internet access or they do not have ready access to a computer with a printer. Other consumers may be wary of checking their prepaid card accounts on public or shared computers. For these consumers, the fee for regular statements should be nominal, or no more than necessary to cover the cost to print and mail the statement.

B. PRODUCT FEES AND DISCLOSURES: PREPAID CARDS SHOULD OFFER REASONABLE FEES, SIMPLE AND USEFUL DISCLOSURES AND FEDERALLY INSURED FUNDS TO BEST PROTECT CONSUMERS

3. Prepaid Cards Should Offer Reasonable Fees

Prepaid cards can come with high, multiple and often confusing fees that are difficult to find before purchasing a card. Fees can vary widely from card to card, by amount and by type. There can be fees for many ordinary uses of the card, such as loading funds onto the card, withdrawing cash at an ATM, and making purchases at the point of sale. Consumers should not be nickel-and-dimed to perform everyday tasks with their prepaid cards. Prepaid cards also should never have unnecessary fees, such as overdraft fees.

4. Prepaid Cards Should Provide Simple and Useful Disclosures

Complex fee schedules also make it difficult for consumers to compare prepaid cards to determine which card will be most suitable or cost effective for them based on how they use the card. Simplifying prepaid card fee disclosures may enable consumers to make more informed choices when selecting a prepaid card, and may also help consumers to avoid incurring multiple, recurring unnecessary fees when using the card. Consumers should be provided with information for the average actual cost for using a prepaid card, taking into consideration consumer usage and the range and types of fees assessed.

A number of suggestions have been proposed regarding the proper method to provide fee disclosures for GPRs. We recommend that when the Bureau consider the various types of consumers who use GPRs when determining which disclosures are most useful when making a decision to obtain a prepaid card. We suggest the Bureau consider conducting a study or survey to assess which disclosure format would be most beneficial for all types of consumers. These disclosures include physical disclosures on the card packaging which can be thoroughly reviewed prior to purchase, online disclosures, disclosures accessed by smartphone and other mobile devices.

5. Prepaid Cards Must Provide Federal Insurance of Funds to Best Protect Consumers

Consumers who place their funds in traditional bank accounts have peace of mind that their money will not be lost if the depository institution goes into receivership, up to a sizable dollar cap. They know that as long as their money has been deposited into Federal Deposit Insurance Corporation (FDIC) member banks, their funds (typically in checking or savings accounts) are insured up to the FDIC limit.⁷ Consumers are highly likely to assume that the FDIC logo on a prepaid card website or on a card's packaging means that the consumers' funds are fully protected by the federal government. Prepaid card companies should not display the FDIC logo unless a consumer's prepaid card funds are fully protected to them individually.

Apart from the disclosure of FDIC insurance, it is essential that all prepaid card funds are FDIC or NCUA insured to the individual consumer. As previously noted, consumers rely on their prepaid card funds to pay for daily household and personal needs. The FDIC provides coverage for monies in pooled accounts so long as the funds are held in accounts that satisfy "pass through" requirements established with the FDIC's General Council Letter No. 8.⁸ Pass through insurance provides each prepaid cardholder insurance to the allowable cap, which is currently at \$250,000, even though funds are held in pooled accounts. As a result, they should also have peace of mind that their funds are fully backed in the event of a bank or other depository institution failure.

FDIC Insurance Important to Protect Prepaid Cardholders Who Include the Most Financially Vulnerable

This is particularly important for many of the consumers who depend on every penny in their prepaid card accounts. As prepaid cards are often targeted and marketed to lower income communities, communities of color, and young consumers, we must ensure that all consumers' funds are equally protected in a prepaid card account as funds held in a traditional bank or credit union are. Without a mandatory requirement for all GPRs to provide FDIC or NCUA insurance to the prepaid cardholder, prepaid cards will always be viewed as a subpar product in comparison to traditional debit cards.

Federal Insurance is Superior to State Money Transmitter Laws in Guaranteeing Consumers' Prepaid Card Account Funds

Simply put, state money transmitter laws do not provide the same 100% guarantee that consumers' funds will be returned to consumers quickly in the event of a failure down to the penny. State money transmitter laws do not have the same guarantee backed by the full faith and credit of the U.S. government. State money transmitter laws vary state to state, and even the strongest state money transmitter laws do not fully guarantee consumers' prepaid card funds. These laws do not guarantee that a consumer will be able to obtain their necessary funds in time to pay for necessities, such as food, medicine, and rent.

State money transmitter laws do not guarantee consumer funds

Although state money transmitter laws (at least those with stronger consumer protections) require monies to be placed in trusts or bonds that meet high levels of soundness, the "soundness" of these monies is as sound as the markets. This is not a guarantee and may be a significant risk, particularly when the market goes south rapidly such as what occurred in the

⁷ 12 U.S.C. § 1813(l); 12 C.F.R. § 330.1(n).

⁸ Stored Value Cards and Other Electronic Payment Systems, 61 Fed. Reg. 150 (Aug. 2, 1996). The FDIC's "pass-through" requirements are: 1) the account records at the insured depository institution must disclose the existence of a custodial relationship; 2) the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners of the funds and the amount owned by each such owner; and 3) the funds are owned by the cardholders. A card issuer's choices will determine whether these requirements are met.

financial crisis of 2007.⁹ Additionally, it may take months for funds to be transferred to better investments, time that consumers who depend on these prepaid card funds do not have. This also assumes that the state regulator is able to catch any failing investments in time.

Consumers Are Left Vulnerable When Providers Go Bankrupt

If a prepaid card company goes bankrupt, and there are enough funds in the trust, the trust becomes subject to bankruptcy proceedings, which doesn't guarantee that consumers will obtain all their funds or obtain their funds in a timely fashion. Even a delay of a few days is a hardship for many consumers, especially consumers who live paycheck to paycheck and count on the funds in their prepaid card accounts to pay for rent or buy groceries.

There is the possibility that consumers' prepaid funds would be subject to bankruptcy proceedings. A trust would then be imposed by the bankruptcy court (once the company files for bankruptcy) on eligible securities. Although the consumers' funds would have priority, it is possible that the value of the funds may be severely depleted. The outcome can be very unclear if such matters went to bankruptcy court.

Furthermore, consumers are loading increasing amounts onto prepaid cards at an alarming rate, increasing their exposure to risk of loss of their funds. We reiterate again the projections by the Mercator Advisory Group of "the total dollar value of amounts loaded onto GPR cards is expected to reach \$167 billion in 2014, far in excess of the amount for 2007 of \$12 billion."¹⁰ Without adequate protections, consumers are increasingly at risk of losing these monies they rely upon for meeting day-to-day needs. This enormous growth underscores the urgent need to guarantee these funds. The Bureau should ensure that prepaid card companies are properly arranging their funds so that they are federally guaranteed to the prepaid cardholders and protected in the event of a potential bank or other depository institution failure.

C. PRODUCT FEATURES REQUIRE GREATER SCRUTINY

6. Overdraft or Credit Features Should Be Prohibited

Prepaid cards should never assess a fee when a transaction has been processed despite the lack of funds in a prepaid card account. The consumer should certainly pay and be required to pay any negative amount but there should never be a fee assessed for having incurred a negative balance. Credit features are also inappropriate on prepaid cards, as many consumers use prepaid cards to avoid accruing debt. Allowing credit features on prepaid cards will also be the undermining of state payday and usury laws.

7. Savings Account Features Must Be Fair and Transparent

Some prepaid card companies offer savings plans or programs which are directly affiliated with the card. We hope that these programs will encourage consumers to save so that they may establish their finances as well as decrease the need to turn to alternative short term lending products. On the other hand, savings features should not be unfair, deceptive or abusive. For example, inactivity fees should never be permitted on savings accounts which would undermine the purpose of providing a means to save money for when it is necessary.

8. Credit Building Claims Must Not Mislead and Require Full Investigation

Many prepaid card issuers are marketing their cards by telling consumers that using one of their cards is a way to build their credit history or files. This is a misleading marketing ploy because currently, prepaid or debit transactions are not factored into a consumer's credit report and

⁹ The 2007 subprime meltdown nearly caused MoneyGram to shut its doors. Chris Serres, *Oct 19. MoneyGram is unlikely mortgage casualty*, Star Tribune, Oct. 26, 2007, available at <http://www.startribune.com/business/11223376.html> (last visited July 18, 2012).

¹⁰ See 77 Fed. Reg. 30923 (May 24, 2012).

thereby do not provide sufficient information to build the type of credit report that consumers get with credit products. This so-called credit building feature can seem attractive to unbanked and underbanked consumers trying to establish credit files or consumers with bad credit trying to rebuild credit. However, it remains to be seen whether these nontraditional reporting mechanisms will help consumers establish good credit files and credit scores.

There have been different attempts to help build or supplement consumers' credit files using prepaid card information.¹¹ Prepaid card companies have partnered with nontraditional credit reporting agencies as well as with the major credit bureaus, reporting monthly prepaid card fee payments. One such alternative credit reporting agency was Payment Reporting Builds Credit (PRBC), which allowed consumers to sign up to self report their bill payments. PBRC has since been acquired by Microbilt.¹²

In early 2012, the Approved Card launched The Credit Project. The 18 to 24 month project will anonymously share transaction data from Approved Cardholders to determine whether this data can help consumers build credit files using transaction data from prepaid cards.¹³ Many in the prepaid card industry continue to seek ways to make prepaid relevant to traditional credit reporting and scoring.

Until it is firmly established that prepaid card activity can truly build a consumer's credit files, the Bureau should strictly scrutinize any implications that a prepaid card product can build credit. Even if research shows that credit can be established under some circumstances, for other consumers, the impact may be very negative. The Bureau should require that prepaid card companies to be very clear about the limitations of prepaid cards in building consumer credit files and credit scores. Moreover, the consumer should not be automatically enrolled in credit reporting. This feature should be activated only after the consumer affirmatively chooses this option.

D. OTHER INFORMATION ON GPR CARDS: EXTEND CHARGEBACK RIGHTS TO PREPAID CARDS

The Bureau should also extend chargeback rights to GPRs and other electronic payments. Chargeback is an important consumer protection which allows a cardholder to dispute a charge when goods or services are not accepted by the cardholder or not delivered as agreed.¹⁴ While chargeback rights are currently extended only to credit cards, prepaid and debit card holders should have chargeback rights, as all of these payment methods are used to purchase similar goods online. Consumers should have this important ability to withhold payment of unauthorized transactions or charges without adverse consequence regardless of whether the consumer used a prepaid, debit or credit card.

¹¹ One prepaid card, the Eufora prepaid card (no longer available), had a Credit Builder program. The Preferred program required a \$59.95 annual fee and a \$6.65 monthly fee for the first year, and the Elite program required a \$99.95 annual fee, and a \$6.65 monthly fee for the first year. See Michelle Jun, Consumers Union, Prepaid Cards: Second-Tier Bank Substitutes (2010) at 24-25 (Appendix A).

¹² Microbilt provides information on consumers with thin or no credit files with PBRC's information, which includes "Traditional and bill payment Trade Lines." See Microbilt, <http://www.microbilt.com/nontraditional-credit-report.aspx> (last visited July 18, 2012).

¹³ The Approved Card, The Credit Project, <http://theapprovedcard.com/whychoosetac/thecreditproject/> (last visited July 18, 2012).

¹⁴ 12 C.F.R. 1026.13 (2012). For further discussion, please see *Before the Grand Re-thinking: Five Things to Do Today With Payments Law and Ten Principles to Guide New Payments Products and New Payments Law*, 83 CHI.-KENT L. REV. 780, 806-807 (2008).

CONCLUSION

The numbers of consumers who use general purpose reloadable cards, or prepaid cards, to manage their personal and household funds continue to grow at a rapid pace. Consumers are often drawn to the similar functionality and usage as traditional bank accounts. In order to truly ensure that prepaid cards become a reputable and reliable consumer financial product, they must provide full Regulation E protections, offer reasonable fees, simple and useful disclosures and FDIC/NCUA insurance. Prepaid cards also should never provide extensions of credit and should never provide misleading products and services to consumers.

Consumers Union appreciates this opportunity to share our comments with the Bureau to its Advance Notice of Proposed Rulemaking, and in other future proceedings regarding prepaid cards.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Jun", with a long, sweeping horizontal line extending to the right.

Michelle Jun
Senior Attorney
West Coast Office
Consumers Union