REINVESTMENT PARTNERS
"ADVOCATING FOR ECONOMIC JUSTICE AND OPPORTUNITY"

March 23rd, 2015

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1274 First Street NE
Washington, DC 20002

Docket No. CFPB 2014-0031 RIN 3170-AA22

Dear Ms. Jackson:

Please accept our comments on the recently proposed rule for prepaid debit cards.

Reinvestment Partners is a 501 (c) 3 non-profit consumer advocacy organization with a mission to help low-income and underserved consumers to access fair and sound financial products. We realize our goals by a combination of direct services, community economic development, and public policy. The views in this comment represent the preferences of Reinvestment Partners.

The Federal Reserve's 2006 comment that GPR cards are "designed to make one-time or a limited number of payments to consumers and are not intended to be used on a long-term basis" is no longer descriptive of this market. General-purpose reloadable prepaid cards are used as the main transaction account by millions of Americans. As recently as in 203, GPR loads were only $1 billion. In 2014, the figure may exceed $100 billion[1]. Save for the presence of uncleared checks, GPR accounts now match traditional checking accounts in their suite of services. The FDIC recently estimated that there are approximately 30 million consumers who transact their business without a checking and savings account. More than one-fourth of those households use a prepaid debit card to receive a direct deposit of their wages or benefits[2]. For these under-served individuals and families, the GPR card is the best option to access the benefits of electronic payments.

Definition of a Prepaid Card: (Regulation E proposed § 1005.2(b)(3)): In our opinion, all consumer-serving network-branded open-loop accounts that can receive, hold and spend US currency should be included within the definition of a prepaid card. This would include general purpose reloadable prepaid cards, payroll cards (already covered for Regulation E protection), student cards, re-entry cards, emergency cards, some military purses, and non-needs tested government benefits cards [1005.2(b)(3)(iv)]. The fact that a third-party has provided the funds that load on to a consumer's account should not mean that those accounts can be excluded from coverage. Our frame is that it is how the card is used. If it is used over a network by a consumer to make purchases on an open-loop system, then it should be covered. 1005.2 (b)(3)(i)(B).

[1] Mercator Advisory Group, Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014-2017at 13 (Nov. 2014)
[2] Federal Deposit Insurance Corporation. 2013 FDIC National Survey of Unbanked and Underbanked Households (Oct. 2014)

The definition should be extended both to physical magnetic stripe cards as well as for virtual (online) cards and those that are built to be used solely with mobile devices. We think that a virtual GPR card is appropriate for inclusion, even if it can only be spent in via an online or a "card-not-present" scenario. Moreover, protections should begin prior to the acquisition and registration of a card.

It would be sensible, in our opinion, to apply the definition to devices that hold funds in banks as well as in non-banks – if they are a) able to be used in open-loop transactions and b) are reloadable. Thus, we are generally supportive of the sentiment in proposed 1005.20(a)(3)(ii). On the other hand, pass-through wallets (i.e. Venmo) that are not able to make a transactional payment to an issuer should not be defined as prepaid cards. A significant difference in our opinion is that funds from these accounts will get protections once they have re-entered the banking system. Similarly, accounts that transfer money into stored value in a form that is not valid currency should not be classified as prepaid cards, even if the "spend" is only established from U.S. currency. Examples of this would be Lindens (Second Life) or credits for video games. The principle is the same as with pass-through wallets – those funds will return to a protected status once they are reconverted into dollar-denominated forms.

However, some wallets can be used to make transactions in certain environments: (online, P2P and P2B, to a specific store, or to another wallet) but not in all environments. These should be treated in a manner similar to traditional prepaid cards. Thus, we see a need to specify the definition of a prepaid card to be sensitive to the cases where a card is open-loop to a limited extent. A closed-loop transit account, for example, is clearly not a full-service transaction account. A full-service GPR card that can be used through a network at merchants, ATMs, online, and P2P is an account that deserves definition within prepaid cards. But the key question is the "in-between." What about accounts that can be used through some types of payment channels, albeit not all of them?

This would be a more expansive definition of prepaid cards than the Bureau contemplates in 1005.2(b)(3)(i)(B) because it does not require that an account have open-loop capabilities in all environments, both transactional and non-transactional. The question of how to treat P2P/P2B devices is particularly relevant here. These devices are relatively new and are often used in ways that are entirely different from a traditional GPR or checking account. Some of the most popular P2P devices are not yet open-loop, but it is likely that they will expand over time [as suggested by the Bureau in comments 2(b)(3)(i)-4 and 2(b)(3)(i)-5]. Even if the manifestations of wallets, virtual cards, and mobile banking products are not yet widespread, they will be in the very near future. They will have the functionality of being utilized on open-loops and will be reloadable. Venmo, for example, is currently utilized as an intermediary between bank accounts. However, it has been purchased by PayPal. It seems likely that the service will soon be connected to wallets that can buy things over the PayPal network. Given that, the P2P device should be defined as a prepaid card [as opposed to the proposed 1005.20(a)(3) and 1005.2(b)(3)(i)(B), even if it cannot access an ATM or provide cash-back at the point-of-sale.

We think that some types of s pecial-population pre-funded cards that should also be defined as prepaid cards. Examples include cards for students that can serve as a payments account (even if they are funded by a one-time contribution from a third-party), release cards for prisoners, and emergency payments accounts that are sourced from a third-party (i.e. accounts that received payments after Hurricane Katrina). The fact that a card is not reloadable, which could be the case for accounts that receive student loan disbursements, is not a valid reason to exempt an account. We would extend this inclusion to non-bank accounts if they are ones that can subsequently be used to make open-loop payments to multiple recipients.

Any device that can make a P2P transfer to another consumer's account should mean that it qualifies for coverage as a prepaid card. This is especially important because we think that P2P transfers should be able to benefit from charge-back rights.

Pass-Through FDIC Insurance:

We believe that funds deposited on to prepaid card accounts deserve to benefit from the same safety and security as have been given for those dollars that are resting in checking and savings accounts. From our viewpoint, the fact that most of the accounts – and virtually all of the most popular accounts – are currently offering this service is not a reason to ignore the issue. The underlying principle must be that like products are treated in like ways.

We think most consumers assume that their deposits are FDIC-insured. This has become the de facto standard for checking accounts.

FDIC insurance is important for a number of reasons. First and foremost, FDIC insurance can only be offered when consumer deposits are held at a bank. We want those dollars held in banks and not as accounts payable on the balance sheets of non-bank companies. While it is true that the largest non-FDIC insured account program is held by a large cap company, many of the non-bank participants in prepaid are very small. By having those funds in a bank, their soundness will be reliably reviewed by bank examiners. If there is a threat to the safety and soundness of the institution, a regulator will intervene. No such process is in place with non-banks. As well, Regulation E privileges are only accorded to funds held in bank accounts. As well, when funds are stored in an FDIC-insured account as opposed to an account on the balance sheet of a non-bank, those funds are protected from the non-banks creditors in the event of a bankruptcy.

We Oppose Overdraft. If It Is Approved, Then It Should Be Covered by Regulation Z and by Regulation E

The virtue of a prepaid card is that it is truly a prepaid account. It gives a consumer the ability to utilize card networks without vulnerability to overdrafts. Consumers are drawn to these products for this very reason (see Pew Survey). We understand that the CFPB has attempted to place safeguards and hurdles to the framework for overdraft. But nonetheless, this is an approach that accommodates an inferior credit product. We are also concerned that some consumers will apply for prepaid cards based on their intention to avoid overdraft but then end up with overdrafts. This could occur through marketing efforts around opt-in, by third-party ACH debits, by overages associated with credit extended beyond the sum of the purchase (gas stations, rental cars, restaurants), or through the inopportune arrival of a recurring fee.

There are multiple problems with overdraft on prepaid cards:

- An overdraft fee of $15 (the cost charged by the largest overdraft provider) is still very high under any measure. For a minimum wage worker, $15 is almost two hours of work. To the program manager and issue, $15 is a high return on the extension of less than $100 in credit for a period of between 1 and 30 days.
- Overdrafts are collected automatically.
- It is asset-based underwriting.
- It is repaid with a balloon payment.
- Interaction with payday loans. We worry that payday lenders may attempt to collect on prepaid cards with an overdraft service. If the amount of overdraft coverage is still too little to cover the outstanding obligation to the loan, then the consumer could pay a roll-over fee and an overdraft fee simultaneously. The second-largest prepaid card program manager reports that approximately one-third (and 36 percent in 2012) of its customer relationships are through its partnership with a national payday lending chain[i]. A loose estimate, based on their recently reported roster of account holders, suggests that this would mean more than 1 million accounts.
- Cascading fees: Some cards charge an additional fee when an account balance remains negative.

Overdraft is simultaneously expensive, inflexible, and improperly underwritten. The Kansas City Federal Reserve's recent study on prepaid accounts enabled with overdraft speaks to the high costs experienced by overdrafters. The study focused on the four percent of NetSpend consumers that signed up for overdraft. Of that group, the study divided cardholders into two groups: those that ended up using an overdraft (the "overdrafters") and those that had the service but never made an overage (the “non-overdrafters”). Because a consumer had to have direct deposit to enable overdraft, a study of this population provides a rare opportunity to study “full-time” users of prepaid cards.

The study found that “non-overdrafters” still spent an average of $19 per month on fees associated with their account[ii]. As a group, non-overdrafters profiled as fairly heavy users of cards. On average, they made spent an average of $1,215 per month while making 19 purchase transactions and 2.9 ATM transactions.

In a report[iii] we published as part of a four-group effort to study how some consumers were marketed to by banks, we found that there was still a great deal of confusion about the service. Our findings:

- Explanations offered by tellers of overdraft programs were inconsistent. The communications differed from teller to teller within the same bank.
- Tellers frequently failed to tell consumers that they would have to “opt-in” in order to get overdraft. They led consumers to believe that it was an automatic account feature.
- Consumers did not understand the terms of the service. In some cases, testers were not aware that they had opted-in to the overdraft service.

The Pew Center’s report on overdraft came to a similar conclusion. Pew said that only 51 percent of all households who purchased the product were actually aware that they had indicated such a preference.

In 2014, one bank (Wells Fargo) earned more than $5 billion on overdraft fees[3]. In total, banks earn about $30 billion in overdraft fees annually. Overdraft fees dwarf sums spent to service the debt on payday loans. According to research by the Pew Center, borrowers spend an average of about $7.4 billion per year on payday loans[4]. One prepaid card industry CEO estimates that NetSpend generates $50 million in overdraft fees per year. Even if it is the case that this is wildly inflated, the sum still means that the overall business is funded by fees from overdraft. In 2012, NetSpend after-tax net income was only $18.8 million[5].

If overdraft of any kind is allowed, then we support the plan to categorize overdraft as credit and to regulate it under both Regulation Z and CARD Act rules. 15 U.S.C. 1605 (a-f) As indicated, the Bureau’s proposal would regulate overdraft as credit in a manner akin to credit cards or open-ended lines of credit. We agree that an overdraft tied to a prepaid card meets the three criteria necessary to qualify as open-ended credit for the purposes of Regulation Z.

- *Repeat Use is possible*: Certainly, overdraft is intended for repeat use. At this moment, it is rare to find an example of an institution that makes a subjective judgment to approve or reject the payment of an overdraft. Rather, overdraft has become an automated process. This is the case with traditional checking accounts and given the low-margin, high-volume nature of a prepaid debit card model, it is reasonable to assume that automated processes will be the de facto norm here as well. Given its automated nature, it is more than reasonable to say that an overdraft is a service that contemplates repeat usage under an open-ended framework. Empirical evidence bears this out. The majority of overdrafts are utilized by a small fraction of accounts, but those that do overdraft are likely to do so on several occasions.

- *Issuers can charge additional interest or fees for outstanding debts:* Many institutions charge a fee when an overage is not satisfied. They do so at their own internal discretion, but as they do have that right, overdraft also meets the 2nd criterion for credit under Regulation Z.

- *Repayment will replenish the Line:* Unlike with a home mortgage or other closed-end credit line, an overdraft service allows a consumer to access a constant amount of credit. This is similar to the credit limit that is

[3] National Information Center Call Report
[4] http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf
[5] http://www.sec.gov/Archives/edgar/data/1496623/000104746913001507/a2212965z10-k.htm#di76701_item_6._selected_financial_data

common with a credit card account. At the moment, overdraft on prepaid cards generally provides a maximum coverage of $100.

These rules are in effect regardless of the construction of the device. A plastic card with a magnetic stripe (or EMV chip) is functionally the same in regard to an overdraft option as would be the case for a virtual account number.

The application of an ability-to-repay standard under the guidelines of the CARD Act should mean that issuers cannot condition the offering of an overdraft service on the use of a recurring direct deposit.

We support the decision to deny the exemption (currently honored by the Board) for overdraft from the compulsory use rule of EFTA 913(1). 208.

We support the decision to not extend an exception under Regulation Z to instances when an overdraft line costs the same as an NSF fee. (1026.4 (b) (2) (ii). That appears to be the case currently in Regulation Z, but it would not make sense here.

Overdrafts should be held to the standards in the CARD Act protecting consumers against fee harvester products. The basis for the denominator should be the maximum permissible overdraft amount. Thus, if a company has a $100 overdraft maximum, then no fees above $25 should be allowed to be charged during the first year. We believe that the calculation must include the cost of an application fee.

Even with an opt-in standard (Regulation E 1005.17), as currently governs checking accounts, consumer surveys reveal that many people remained confused about the product. Moreover, the idea that overdraft is an opt-in service is somewhat false, as a person can still be charged a fee for overages on checks and automatic ACH payments even if they have never opted-in for an overdraft service.

We believe that a 30-day waiting period, as proposed in 1005.18 (g) (1), from the moment of registration is too short. We would prefer to see a requirement under which a consumer would only be able to establish an overdraft after receiving his or her second statement. This gives the consumer more time to familiarize themselves with the costs of the card as well as more opportunity to see more about their spending patterns. It also means that issuers and program managers will have more time to ascertain if a consumer is a valid risk for overdraft. At the end of the waiting period, a company should have to include a short statement that indicates how many times an account holder would have triggered overdraft and also how much it would have cost them.

Overages triggers due to fees unrelated to transactions: Any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee. For example, a consumer should never be charged an overdraft fee because he or she called customer service or due to an inactivity fee. A general principle should be that companies should never be able to charge an overage fee of any kind if the company has not extended a payment to a third party.

The prepaid card sans-overdraft is a wonderful complement to other transactional accounts. It creates a safe place for people living at the margins who want to be able to use electronic payments but who are often excluded due to ChexSystems, because they lack the assets to avoid minimum balance fees, or who are afraid of overdrafts and NSF fees.

Provisional Credit (1005.18)

In its report on prepaid cards, the CFPB found that fraud associated with the extension of provisional credit amounts to more than 34 percent of all fraud-related losses. In our opinion, this is a stunning piece of evidence which suggests that well-intentioned consumers may be paying more for their services in order to cross-subsidize illegal activity. To some extent, we recognize that this is a problem that could decline in scope with the elimination of loading devices (MoneyPak), but it remains likely that it will still be a significant addition to the cost structure of the card.

We understand that the CFPB cannot set prices, but this is still a regulatory opportunity to lower some of the fixed fees associated with the cards.

We believe that consumers deserve the benefit of the doubt when it comes to charge-back rights. They should have the right to access over disputed funds during the process of investigation. These are the rights accorded to holders of traditional transaction accounts. Nonetheless, it is our understanding that cards that have been loaded but not "registered" do not confer resolution rights to their holders. In our opinion, this is a sensible scenario. The mechanics of providing charge-back protections to anonymously held cards seems very difficult. We are also willing to support the extension of the research period for a financial institution to 90 days when a transaction occurred within 30 days after the first deposit was made. (1005.11(c)(3)

There are some wrinkles to this opinion. We believe that "send money" transactions should have dispute rights. It seems highly likely that people will enter either wrong mobile number or email address. Currently, when someone believes that they sent a "send money" payment to the wrong person, their only remedy is to cancel the transaction before the funds are claimed.

We would support a rule that extended full resolution rights to cards that have received wages, a recurring direct deposit, or a load after formal activation. It is our assumption that most fraudulent error resolutions occur with cards purchased in stores prior to their full activation. As such, we believe that exempting resolution rights from un-registered cards (loaded but not activated) is a valid tradeoff for securing access for others.

We believe that it is proper for the Bureau to classify provisional credit (i.e. extensions of credit with no finance charge that fall under a low limit) as "credit incidental to the transaction." This is in accord with 1026.4 (c). To that point, we would hesitate to support a standard that imposed an ability-to-repay standard on the granting of provisional credit for a transaction. Extension of funds should not be treated as credit under either Regulation Z or the CARD Act when:

- It is incurred as the result of a fee.
- When an over-limit is extended because the total transaction sum is not known at the time of the request, such as at a restaurant or a gas station.

This type of credit plan is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. As well, the CFPB's decision to not require an "opt-in" statement, as otherwise in Regulation E 1005.17, from a consumer prior to receiving provisional credit is sensible.

Charge-Back Rights 1005.6 and 1026.12

We support that the Bureau's proposal to apply the same charge-back protections for credit cards that are also prepaid cards as are currently in place for credit cards.

(Regulation Z 1026.12 (a)(1)(v). In a related point, we believe that the Bureau should clarify how charge-back rights are allocated when a payment is made with two different prepaid debit card accounts.

One complication noted by the Bureau concerns how charge-back rights would be allocated by a split transaction that was paid with deposits held on a prepaid account as well as its associated credit account. In our opinion, it would be simpler if charge-back rights were not divided into separate pools. Would such an arrangement mean that a consumer would have to file separate requests? We think that it would be far simpler to put both under 1026.12(c) as a single transaction.

Auto offset: We expect that the option to auto-offset against a portion of a borrower's debt with the borrower's consent will become a de facto mode of business in this sector, given the nature of the credit-worthiness of many underbanked individuals. This is concerning to us, as the protections against auto-offset are important. Nonetheless, a greater concern would be if the issuer decided to offset the entirety of a debt against funds held on deposit. In either case, it creates a possibility where the ability-to-repay standard is in effect an ability-to-collect standard. The ability-to-repay standard should be the principle that under-girds the extension of credit.

Thus, we support the Bureau's proposal to provide Regulation Z/TILA Section 169 protections against partial offset, and would actually urge the Bureau to go one step further and prevent issuers from being able to gain consent from borrowers to take automatic repayments from a deposit account. We favor the Bureau's accommodation to limit permitted collections to once per month (1026.12(d)(3)(ii), as it may help to smooth the debt service demands placed upon borrowers with inconsistent cash flows. It seems plausible that there would be an interaction between offset frequency and credit utilization. The former may be predictive of the latter. To the extent that auto offset relates to overdraft services, protections that prevent more than one offset per month could help to save money for consumers.

The exception to our push back against any level of auto-offset would be a provision that allows a borrower to pre-authorize the minimum repayment at a rate capped to the CARD Act minimum repayment level. The minimum threshold for repayment on a standard credit card is 4 percent. Given that most credit card lines attached to prepaid cards are likely to be very small – perhaps between $300 and $500 – then such a draw would amount to less than $20. This could help a borrower to maintain their credit worthiness without presenting a significant threat to their financial stability. Acknowledging that a 4 percent offset might have value for both consumer and issuer, we still believe that it should only occur with the written consent of the borrower (and to the standards of comment 12(d)(2)-1.iii).

If the prepaid account does not have enough funds to satisfy a requested transfer or a pre-authorized payment, then issuers are likely to impose some kind of charge. It is hard to imagine that a lender could be prevented from charging for either situation. But as these are "back-end" fees, it seems that CARD Act 1026.52(b)(1) would protect

We would hope that some kind of cushion could be in place that would avoid a fee if the debt obligation falls below a certain threshold – i.e. less than $20 – and that no fee should be greater than the minimum 4 percent repayment amount and/or the overdraft service charge. The last point seems important in particular, as an issuer might incent a borrower to sign up for overdraft by offering to waive a late fee. This is a coercive marketing approach that might be very effective to a low-income borrower.

As is the case with other financial products, we believe that issuers should not be able to require consumers to submit to resolution through private arbitration. As well, they should not be able to add an arbitration agreement to a relationship through an update to the cardholder agreement (i.e. in the context contemplated in 1005.19(a)(2)). This should be included in the final rulemaking, even if there are not any current examples of cases where issuers have been employing this practice [comment 19(a)(1)-1]. Additionally, issuers should not be able to require consumers to waive their right to pursue claims through a class-action lawsuit.

Credit/Regulation Z: *1026*

We think that it makes sense to define credit offered on prepaid cards as an example of open-ended credit and thus to apply it within the framework of products regulated under Regulation Z. We understand that it is important to be careful about prohibiting credit unilaterally. A better approach is to require that such a product comes with the protections equivalent to open-ended credit. In general, we believe that all consumers should be able to access safe and affordable credit when they are suitably capable of repaying the debt. (1026.51) The relevant standard for open-ended credit is CARD Act coverage.

The Bureau has asked if push accounts with a third-party creditor should be covered. We emphatically believe that these relationships should fall under the scope of regulation. To the question of what models might have this arrangement, we think that credit accounts which cover a single payment should be included. To be specific, a single-transaction loan might be similar to the BillFloat model, where a 3rd-party satisfied a debt obligation to a consumer by making a payment directly to the vendor. As well, we believe that employee wage advance products (FlexWage) will increasingly play a role in the credit market for the underbanked. These deserve to be covered by the same regulatory approach.

Given that premise, our hope is that all aspects of credit will be treated as if it was a credit card and be accorded protections of the CARD Act. 1026.2(a)(15)(i) Certainly, the idea that this is a “like product” seems very defensible. It is likely that a consumer will assume that this is essentially a credit card. The product will be packaged in a card. It would be hard to imagine that many would possibly imagine it to be similar to an unsecured line of credit.

As the Bureau is certainly aware, treatment in accordance with the CARD Act confers a number of important protections upon consumers. We want to emphasize that this is the only acceptable way to allow credit on a prepaid card. Some of the relevant provisions include:

- We support the application of fee harvester protections [1026.52(a)(1)] in the CARD Act and commend the Bureau to extend those protections to apply to fees that the issuer charges for accessing the credit. We acknowledge that certain types of fees (over-the-limit and late payment fees) can be excluded (1026.52 a 2), but we encourage the Bureau to be careful with how issuers attempt to define excluded products. Moreover, we reject the idea that a prepaid card should have a returned payment fee.
- Repayment rights: The consumer must be given at least 21 days after receipt of a statement (in paper or via record of electronic access) to make a payment.
- No interest rate increases based upon deficiencies in unrelated credit accounts, along with other protections against penalty fees (1026.52 b)
- The right to repay from a different account
- A maximum APR.
- A ban on declined transaction fees where there is no cost to the issuer [1026.52(b)(2)]
- No automatic offsets (Regulation Z/TILA section 169)

The most important power created through the CARD Act is the inclusion of an ability-to-repay standard. If creditors have to prove that a standard is in place, then prudent underwriting policies will be the rule.

We believe that it should not be possible to charge inactivity fees on a credit account. If there are transfer fees to move money from credit to spend, then those should be included in Regulation Z and as finance charges for 1026.52 a 2.

We believe that fees as described in 1026.4 (c) that are not finance charges but that are application fees to apply for credit should be considered as finance charges for the sake of any fee harvester rule. Thus, we oppose the plans as stated for 1026.4 (c) (4) that would exclude fees charged for participation in a credit plan from the definition of finance charge. The application fee is a required cost for the borrower and it is assessed during first year of the relationship. Currently, three of the major credit cards marketed to subprime consumers come with application fees. The First Premier charges a one-time processing fee of $95 for a card with a credit limit of only $300. First Premier charges an annual fee of $75 – the maximum amount allowed under the CARD Act. Because the annual fee is paid up front, the initial line is only $225. There is also a $25 fee charged for those that want to raise their credit limit by another $100. The nominal rate of interest is 36 percent, but because it is charged at a rate of 3 percent per month, the effective rate is 42.7 percent. This protection should be incorporated under Regulation Z’s Section 1026.52 Limitation on Fees.

The next chart shows the basic fee structures for some of the leading subprime credit cards and an estimate for a typical payday loan. While the payday loan is clearly more expensive for those that rollover a payday loan product, these prices would suggest that a short-term usage of the subprime cards is more expensive. That is only true when comparing actual costs, though. If you exclude application fees, then the cards look better. For consumers, though, it is a difference without a distinction. A person who receives a $300 line of credit from First Premier will start with a total spend of just $130.

Table 1: Comparing Subprime Credit Cards to Payday Loans

	First Premier[6]	Merrick Bank[7]	Continental Finance[8]	Payday Loan
Credit Line	$300	$500	$500	$350 (average)
Application Fee	$95	$75	$0	$0
1st Month Fee	$75 for annual fee	$48 for annual fee	$125 annual fee	N/A
Interest rate	36%	Up to 29.7%	29.99%	No interest – essentially $50 fee per 18 days[9]
Roll Over Fee (miss a payment)	$38	$38	$38	$50
Fee Harvester Calculation	25%	24.6%	25%	
Initial Line	$130 of $300	$377 of $500	$375 of $500	$350 of $350

These cards are in some ways inferior and more costly than a payday loan.

If the carve-out in the CARD Act for application fees remains in the prepaid card rule, then it stands to reason that the number of cards that use this protection to evade the fee harvester rule will only expand. This would be a tragedy for consumers. Moreover, there are examples of required fees in the prepaid market place. The H&R Block Emerald Card applies a $40 account opening fee to its Emerald Advance. This is a fee for "participation in a credit plan." *See 1026.4.(c)(3) and (4). At that level, the Emerald Advance does not violate any fee harvester protection. The main critique with the Emerald Advance fee is that it cross-subsidizes lower-cost credit with an advance application fee, so that the product's cost can fall below state usury caps. Nonetheless, the application fee is a condition for getting credit. The overall cost of the credit is much higher. Even worse, the account is closed by Block annually in January. The product becomes available again after the end of the tax filing seasons. At that time, any consumer who wishes to re-open their account has to pay another $40 fee.

While the fees on cards listed in the previous table are not connected to a prepaid card, they are still relevant because the rules governing credit associated with prepaid cards are likely to be consistent with CARD Act standards.

We support the Bureau's proposal to not grant an exemption for Regulation Z coverage to issuers who cross-subsidize nominally free credit accounts with transaction. (Comment 4(a)-4) Pricing should be based on account activity, and if account activity is priced differently for accounts depending upon their access to credit, then this is a finance charge. Similarly, if there is a difference in non-sale fees – say for example if the monthly maintenance fee on an account facilitated with a form of credit differs – then the additional amount should be calculated as a finance charge [1026.4(b)(2)] and factored into the cost of credit for the purposes of any fee harvester calculations.

We support the idea that credit account statements be delivered in a combined statement with a prepaid card account. In fact, we think this is preferable than to have separate statements (1026.7). We would prefer that all related accounts be available in one place. This would extend to statements related to savings sub-accounts. In response to the Bureau's solicitation for input on how to display transactions that tapped some form of credit, we believe that the consumer needs to see this information.

[6] https://www.premiercardoffer.net/CardDetailsPage/D1JFXY1X1%200010OMI
[7] http://www.mbdot.com/docs-repository/merrick-bank/Merrick-Unsecured-Pricing-1113.pdf
[8] https://www.yourvervecard.com/Content/PDF/GetTermsAndConditions20150120.pdf
[9] http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf

In our opinion, offering 18 months of an account history is a reasonable expectation (1005.18). As the Bureau notes, one program manager estimated that it costs 19 per year per account to store transaction histories. With the ongoing reduction in the cost of storage, we believe that this cost will ultimately become de minimis, if it is not already so. In general, statement requests are very rare. In most cases, an immediate answer to a balance inquiry is preferable to a point-in-time statement.

Finance Charge 1026.4(b)(2)(query 365). We agree that when a prepaid account that is connected to a credit card comes with a higher monthly fee than does an otherwise identical account without a credit facility, then it should be considered a finance charge. But the more challenging question, in our opinion, is how to address a situation where an account with a credit feature (pull, push, or overdraft) costs less than one without an appended relationship. Given what we know about how the overdraft product subsidized the cost of checking accounts, it seems very possible that an issuer will make the strategic determination to offer a discount on the basis of an expectation that such a relationship will ultimately be more valuable. In the prime credit card space, it is not unusual to receive a $50 bonus to open an account. In some examples, issuers are offering more than $400 (Wells Fargo Amex, American Advantage Executive Card) to open a credit account. The concern in our mind is that a regulation might reduce the calculated cost of credit for APR estimation if such a discount occurred.

	Prepaid Card A	Prepaid Card B
Monthly Cost without Credit	$3	$5
Monthly Cost with Credit	$5	$3
Finance Charge	$2	???
Our Preferred Calculation	$2	$0

We think that the issuer should not be able to get credit for a reduced APR/reduced denominator in the fee harvester calculation if there is such a discount. As well, we speculate that an issuer might offer a temporary prepaid account fee discount for 12 months.

Similarly, we encourage the Bureau to abandon the Board’s decision to exclude annual fees from the definition in TILA of a finance charge[10]. See our discussion of subprime credit cards. Two of the three largest issuers of subprime credit cards charge annual fees. Moreover, their accounting seems to evoke the problems of the single-premium mortgage insurance product, where the entire annual fee is charged upfront.

In 1026.12(h), the Bureau proposes to add a 30-day waiting period for opening a credit account that can push deposits to a prepaid card. We believe that this is a wise choice and support its inclusion in the final rule.

Section 1026.57 Reporting and Marketing Rules for College Student Open-End Credit

We support the proposal [1026.57 (b)] that all schools must disclose the presence of an incentive paid to the institution by an issuer as part of the terms of the contract between the two entities. These disclosures should be present for credit accounts associated with prepaid cards. Additionally, they should be a part of literature that is provided by sales representatives of either schools or issuers. Moreover, these promotions should not offer incentives to students upon the condition that they add a credit account to their college disbursement account [(1026.57 (c)].

Even though these cards are loaded from third-party depositors, they should be considered prepaid cards and be appropriate for Regulation E coverage. 1005.2 (b)(3)(i) This should be the case even if an account is not re-loadable.

[10] [367]36 FR 16050 (Aug. 19, 1971)

If solicitations for a card are directed through a relationship with a school, an educational forum (publication, meeting, et al) or if they are offered by the issuer to consumers on the basis of research that targets those consumers as students, then those cards should be classified as student prepaid cards.

Many student accounts are more costly that alternatives available through traditional banks. For example, one of the largest providers of college cards (Higher One) charges 50 cents for each PIN transaction, a fee to transfer funds between accounts, and fees of about $2.50 for out-of-network ATM visits. Because students are likely to draw money out in small increments over a semester and because they are prone to traveling, out-of-network ATM costs can be sizable.

Schools should be required to demonstrate that they present students with "objective and neutral information" about their choices for how they elect to receive disbursements. The Bureau should develop some kind of standard for the definition of convenient ATM access[11]. A report by the U.S. Public Interest Research Group found that there were often long lines at campus ATMs and that many were only open for a portion of the day.

Because some students may have access to a separate payment device, cards should not be allowed to charge a fee for moving funds from the school's disbursement card to an independent account.

In 1026.57(b) and in response to comment 57(b)-3, we believe that it is not enough to require schools to offer a disclosure on marketing agreements with card issuers. In our belief, the Bureau should specifically require that these disclosures be made available on the school's web site. These disclosures would be available on the same screen as the application for the card. They would express the dollar amount received by the school and any terms associated with those fees. For instance, if the school and issuer agreed to increase an incentive based upon the number of applications received, then those terms should be listed on the site. The terms should be listed in English and Spanish.

I have heard from parents of a student at NC State that a Dean made a pitch to students to sign up for the school's card. The Wolf Pack One card is issued by US Bank. But the problem is not just in marketing, but also in fees that seem unfair. US Bank charges a $20 fee for replacement if the magnetic stripe on the card wears out[12]. When the card expires, it costs $10 to get a new one. These costs should not be borne by the student. Moreover, there is no disclosure on terms and fees for the card on the NC State website. The agreement can be found on US Bank's site. The only way to contest a charge is over the phone during a limited set of hours on Monday through Friday. ATM fees are an ongoing problem with college cards, but there is no indication on the Wolfpack One site if there is a surcharge-free ATM associated with the account.

Even if overdraft is allowed on prepaid cards, we believe that overdraft should be impossible on a student prepaid card. The Department of Education has issued a proposal to this effect[13]. If a credit feature is allowed on a student prepaid card, then we would be especially concerned if this included the option for a pull credit approach.

Savings Features

In surveys, prepaid card holders say that they want to have access to a savings account or to a savings sub-account[14]. We hope that the availability of a savings device will spread to more cards. We see several areas of potential concern:

Will there be transfer fees for funds that are moved to a savings device?

Will a separate device be devised that can have a relationship with multiple issuers and programs?

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[11] U.S. Gov't Accountability Office, GAO-14-91,College Debit Cards Actions Needed to Address ATM Access, Student Choice and Transparency, at 8 (Feb. 2014) (GAO 2014 College Card Report) http://www.gao.gov/assets/670/660919.pdf
[12] http://onecard.ncsu.edu/
[13] www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.htmlf
[14] http://www.urban.org/uploadedpdf/411994_help_family_cope.pdf

How should a Truth-in-Savings rule address situations where monthly maintenance fees for accounts with a savings feature which are otherwise identical to those without but are provided through the same program manager? This is a fairly common practice. For example, NetSpend cards increase the monthly fee of their cards when consumers add a saving account.

We accept the current practice of not applying Truth-in-Savings-Act disclosure requirements to savings sub-accounts, wallets, and pockets on the logic that such rules would probably reduce the supply of those accounts. Issuers generally see little benefit from holding the deposits on prepaid card savings account, as the sums involved are so low. To require additional statement documentation would make those accounts unprofitable and most likely an expense item. We want to encourage their presence. In our opinion, most consumers would be content to give up the benefit of a statement if they could otherwise not have access to a savings feature.

We do believe that a savings feature, be it an actual account or merely a sub-account, should be indicated on the short and long form disclosures.

Account Numbers

Could a prepaid card account number be perceived as pushing credit on to a prepaid account?

1026.2(a)(15)(vii)
In some ways, the arrival of virtual cards could realize a number of benefits to unbanked consumers. We know that the decision to open a bank account of any kind is an improvement over a cash-only lifestyle. One of the hurdles to that is timing. To put it candidly, some people are turned off at the prospect of having to wait to receive a card. They want to spend "now." While a virtual card will not enable a point-of-sale or an ATM transaction, it still can serve to work for online shopping and card-not-present purchases. Perhaps the best use of a virtual card is as a means to receive a payment. In doing that, a consumer has avoided a transaction cost to cash a check. Moreover, ownership of a virtual card is a logical gateway to subsequent ownership of a general-purpose reloadable prepaid card.

Nonetheless, there are concerns here. In contemplating this question, we have imagined a situation where a non-physical ("virtual") prepaid card account number could be used to receive a payday loan. The Bureau should take this possibility very seriously and we applaud their proposal to treat such credit products as credit cards for the purposes of coverage under Regulation Z.

Could Virtual Cards Be a Gateway for High-Cost Credit?

While such a practice does not exist now, that is only because virtual cards have not yet been deployed in any meaningful way. "Non-sale credit" [1026.2 (a) (15)(vii)] presents an attractive prospect for online payday lenders. Those models cannot function if a customer does not have a bank account. So, in our minds, this is a very real possibility. The accounts could likely work like this:

a) Payday lender transfers funds to an instant-issued virtual account.
b) The account could be used for immediate online spending or for card-not-present transactions. There would be finance charges associated with this account.
c) Or - the account could only be used as a way station for the transfer of funds to a new full-service GPR account. There would not necessarily be finance charges associated with this account, but there could be fees to make transfers.

We support the idea that both would be identified as credit under 1026.2 a (15) (i).

The inclusion of a prohibition on offering credit until 30 days after registration (1026.12 (h) (1) under the previous comment and through 1005.18 would protect these accounts from being utilized by payday lenders who wanted to distribute credit onto instant issue cards. Nonetheless, we ask that the Bureau consider a longer waiting period. Nevertheless, 30 days is still too short of a period of time for any issuer to estimate an "ability-to-repay" analysis.

Extending the waiting period will add a systematic requirement that puts teeth in such an underwriting standard. At the minimum, the waiting period should be 60 days. This would mean that the consumer had the benefit of two statements.

We are concerned that the provision of credit in connection with a prepaid card could have the effect of fostering a strategy to attract consumers to a credit feature by first offering a lower-cost prepaid account. The prepaid card could then become a type of lead generation device whose profitability is sacrificed for the purposes of moving consumers into credit accounts that would otherwise be non-competitive. We think that longer wait times will actually reduce this possibility.

What if an account can receive a credit disbursement but it does not have a number? We imagine that wallets will be the destination for the disbursement of loan proceeds. As is already the case with PayPal Credit, the disburser could easily link accounts. If the "spend" account was able to draw on a transaction-by-transaction basis from the credit account, then it would have created a credit account. Again, we feel that a formal linkage between the two, even if they are held in different financial institutions, would be the same as a linkage within accounts inside the same bank.

Other hypothetical examples of credit products that could be appended to a prepaid account:

a) A social-networked p2p overdraft service.
b) Advances on future student loan disbursements through a non-bank intermediary.
c) A reverse Christmas club program that provides credit immediately for in-store purchases based upon some kind of future lay-a-way payment plan.

We affirm the Bureau's proposal to prevent auto-offset provisions by a creditor (1026.12(d) against a future deposit. We would like to ask that it not be possible for a consumer to waive this protection through any kind of opt-in provision.

Push Accounts
We believe that "push" transactions, where a consumer requests a sum of credit be moved over to the spend account associated with a prepaid card, should be included in the classification of open-ended credit. This is credit not associated with the specific sale of a good or for the satisfaction of a fee. Again, such a transaction meets the three criteria for the definition of open-ended credit. To the Bureau's interest in whether such a definition would be extended to an event where a program manager alerts the consumer of the need to move credit to a deposit account at the moment of sale, this should be considered "push" because the decision is still made by the consumer rather than through an automated mechanism.

We also believe that push transactions should only be destined for the specific deposit account linked to the credit side.

In that system, then any fees associated with that transfer would be classified as finance charges. We support the Bureau's proposal to classify these as finance charges under an amended 1026.4. We would add that these charges should be considered finance charges even if the transfer is to a linked account that is not on the "spend" side. For example, when a large program manager allowed consumers to move dollars from its Advance Line of Credit over to a money market account, the fee levied to do so should have been considered a finance charge.

Because it is common for cards to come with fee-free "cushions" that allow a consumer to over-spend by a very low amount, we would be amenable to a plan that did not consider such actions as credit. This is increasingly a standard feature of prepaid cards and checking cards. In our opinion, it helps consumers. We fear that defining such a transaction as credit would have the effect of pushing these products out of the marketplace. Cushions are a plus and we want them to stay available to consumers. They should be treated under Regulation E (and not Z) as "credit transactions…incidental to the prepaid transaction." 1026.4 (c).

It is essentially a line of credit, as the debt is not associated with a particular transaction. This type of action can be more risky. Issuers currently run an analytic with every transaction on a credit or debit card spend. But in this case, the only analytic would be at the moment of the transfer. It would not be captured at the moment that the credit was used for a transaction. There is less “ability-to-repay” in place here as well. In the second, a transaction is not considered an extension of credit until it has occurred.

In a scenario where a card user is notified at the point-of-sale that a transaction will exceed spend side funds and thus create a pull from credit, this should be classified and protected under the definition of credit.

We strongly support an approach that includes third-party agents within the definition of issuer. [Comment 2 (a) (7)-1 in Regulation Z 1026.2]. It seems very likely that a non-bank could provide the funds which could then be moved over to a regular bank issuer of prepaid cards.

Naturally, we support a framework where credit extensions at are made at the time of authorization and at the time of payment – unless there is no fee associated with the transfer service as well as for the period of the overage.

With regard to excluding transaction-specific transfers from a virtual account to a "spend," we see no reason to support this approach. It seems entirely plausible that credit could be extended from one to the other, regardless of how the device exists physically.

Internet Posting of Prepaid Account Agreements 1005.19

We believe that this is an excellent way to foster competition in the market. We urge the Bureau to go forward with this plan. We would request that the Bureau provide a way for consumers to download an XLS or CSV file with this data. We believe that third-parties would make use of the data to re-publish it in a variety of venues. Ultimately, this would have a beneficial effect because it would marry the power of private marketing to the regulatory goal of consumer awareness.

We do not believe that it is necessary to require issuers to submit agreements on a quarterly basis. 1005.19 (b)(1) Instead, we believe that the standard should be to submit an agreement whenever an account feature or cost is changed. This could mean that account agreements are delivered more or less often than on a quarterly basis.

De Minimis Exception 1015.19 (b) (4): We concede that smaller programs may face a regulatory burden. But in our opinion, program managers with 3,000 accounts should be expected to file a disclosure with the Bureau. Moreover, this seems to be less concerning if the issuer is a “large” bank. We know of one large bank that only has 7,000 accounts. With almost $200 billion in assets and a sizable payments team, it would amount to very little work for this entity to submit a disclosure form. It would amount to very little in the way of work even if they dropped below 3,000 accounts. Moreover, this bank rarely changes the terms of its accounts. We suggest that the standard be based only upon the sum of “active accounts,” which generally means any account with a transaction in the prior quarter. All large banks (greater than $10 billion) should not be able to receive a waiver regardless of account size. We recommend that the waiver only be granted for companies with fewer than 500 accounts. In tandem with that, we would add that we prefer a standard that requires a re-submission only when an account feature or fee is changed. As well, we believe that a product testing exception 1015.19 (b) (5) is warranted, but should only be granted in response to the review of the Bureau.

Account History 1005.15 and 1015.18

We support the Bureau’s proposal to revise the existing rules governing the release of account history to holders of government benefits accounts in a way that is consistent with other forms of prepaid debit cards in 1005.15 (d) (1). In conversations with an executive at a large prepaid card program issuer, we understand that less than ½ of 1 percent of all account holders request a paper statement. This seems consistent with the nature of prepaid cards and of changes in preferences in the light of technology advances. We think that it is more important that cards provide access to balances through text messages, ATMs, telephone IVR, mobile, and online. As an expression of a point-in-time balance at some point in the past, the paper statement is a poor fit with the consumer’s interest in knowing their balance at the moment of a transaction. We see that current regulation does not require access to a balance at a terminal and consider this to be a gap in coverage. As such, we would urge the Bureau to include a requirement that there should be balance information available at terminals. 1015.18 (c)(1)(i). For the most part, this is already a standard met in the marketplace. This speaks to cost advantages provided by this alternative.

In addition to transactional lists, statements should list all assessed fees (for the previous month and then summed through year-to-date) as well as the beginning and end balances. 1005.9(b) The basis for a fee should be one that is charged to the consumer and not just those charged by the program manager and issuer. 1005.18(b)(2)(ii)(A). Finally, we would support the idea that a statement should indicate actions a consumer could take to lower their fees if such a method is possible. For example, if a card offers a discount on a monthly maintenance fee when a consumer puts cash loads of more than $1,000 on to an account, then the consumer would benefit from knowing this opportunity.

Compulsory Use under Regulation E (1005.10 e 2)

We support the proposal to extend bans on compulsory use of a particular prepaid card to non needs-tested government benefits cards and payroll cards 10 (e) (2) -2. We also support the proposal to include language on the short-form disclosure which will clearly state that a consumer has the choice of how he or she receives their direct deposit of a non-needs tested government benefit and/or payroll card 1005.18 (b) (2) (i) (a).

In response to the Bureau's request for comments on whether these protections should be extended to other types of cards: We believe that the compulsory use provision should apply to student accounts, service member accounts, and post-prison re-entry accounts.

The standard should turn on how the cards can be used. If the cards are truly open-loop, where they can be used at any merchant, then they should have a protection against their compulsory use. We are concerned that program managers of cards loaded by 3rd parties (employers, government, universities, correction facilities, et al) will design fee schedules that make it expensive for consumers to spend the funds on their cards.

We would extend this protection to cards that receive deposits from non-banks such as Higher One. Again, the key determinant should be how the funds are allowed to be spent and not how they are loaded.

Prepaid cards for recently-released prisoners

We agree with the Bureau's contention that prepaid products loaded by third parties "present some of the same consumer protections issues as GPR cards such as the lack of clear disclosures about fees and other important terms and conditions, and the lack of opportunity for consumers to compare and evaluate different products before acceptance.

We believe that the CFPB should address problems associated with the prepaid debit cards that are given to prisoners upon re-entry. These cards often have high fees, lack for clear disclosures, and offer little or no PIN security. Some have overdraft and some will not provide a free paper statement.

These are "compulsory use" products. Known as "release cards," these cards are being adopted by prisons and jails in places across the country. Some prisons will no longer issue a check. The size of the release card market is actually fairly large. The Bureau of the Fiscal Service reported that the Bureau of Prisons Prisoner Release Card (U.S. Debit card issued by JPMorgan Chase) was given to 92,343 prisoners in 2013[iv]. This would make that card one of the twenty largest card programs by account volume. Generally the funds come from two different sources. One source represents dollars owned by the exiting prisoner which are being transferred to their prepaid account from a commissary account. The other source is "gate money," which is generally provided by a facility as a matter of policy to help with re-entry.

We also know that account balances tend to be low. In a recent filing to the SEC in regard to its EZ Exit Release Card, General Payments Systems said that it processed $12.7 million in payments through 177,794 transactions during the last three months of 2014. This means that the average deposit to one of their cards during that period was $71.43[v].

Nonetheless, we believe it is important that prisoners still have a choice over which card receives the transfer. In 12 CFR 1005.10(e) (2), Regulation E says that a consumer cannot be required to accept an electronic funds transfer into a specified payroll card account. Currently, release cards fall outside of that qualification. This protection should be extended to these types of cards. We support the CFPB's proposal to label government benefit cards into the class defined as prepaid cards (1005.2(b) (3) (iii) and would ask the Bureau to include release cards in that group.

Perhaps because prisoners are a class of consumers with relatively little choice, costs associated with using a release card is high. The next table provides a comparison of fee schedules for five of the largest release cards.

Card	JPAY Release	The Release Pay Card*	EZ-Exit	U.S. Debit	Access Freedom*
Issuer	Sunrise Banks	Cache Valley	First California	JPMorgan Chase	Cache Valley
POS	$0.70	$ -	$0.99	$-	$ -
POS Decline	$0.70	$ -	$0.99	$0.25	$ -
ATM w/d	$2.00	$2.95	$2.99	$2.00	$2.95
ATM Bal. Inq.	$0.50	$1.50	$1.99	$0.45	$1.50
ATM decline	$0.50	$2.95	$1.99	not disclosed	$2.50
Replace	$5.00	$10.00	$ 15.00	$7.50	$10.00
Account Close	$9.95	$25.00	$-	not disclosed	$25.00
Monthly fee	$0.50	$10.00	$4.95	$-	$6.00
Overdraft	N/A	$25.00	n/a	n/a	$25.00
PIN Change	$ -	$ -	$2.00	not disclosed	$ -
Paper Statement	Not in disclosure		$4.00	not disclosed	Fee applies
Other		Inactivity Fee: $2		OTC w/d: $7	Inactivity Fee: $2

*Keefe Commissary

In a segment where initial disbursements are only $71, these fee schedules suggest that release card program managers and issuers are taking a large share of customer deposits.

In the proposed rule-making, the Bureau asks "Are there distinct issues associated with cards issued to this narrow consumer segment?"

In our opinion, the answer is yes. These problems must be understood in the context of how and when prisons make the disbursements, the low value of deposits commonly disbursed, and the life situation of those who are using them. While there is no common exit experience, it is often the case that a release occurs outside of regular banking hours (weekends and evenings) and that he or she has to leave the facility on foot. This adds some context to the vulnerability of a prisoner.

We think that inmates need to be able to have as much information as possible about their balances. This includes access to paper statements. As a practice, release cards do not offer free paper statements. The EZ Exit Card, for example, charges $4 for each statement. We believe that this is more of a problem than it might first appear to be. Is it a reasonable assumption that recently released prisoners have a cell phone or internet access? For the many that likely fall into the group that has access to neither, their only means of reviewing their account is through paper.

There is also the issue of the privacy protections in place for PINs. Release cards are distributed in ways that would seem to undermine the secrecy of Personal Identification Numbers (PINs). For example:

- Access Freedom (Cache Valley Bank): "Your temporary PIN is the last four digits of your card number."[vi]
- EZ-Exit (First California Bank): "The PIN for your card is the year you were born (all four digits)."[vii] Additionally, EZ charges $2 to change the PIN from the prisoner's birth year.
- Release Pay (Cache Valley): Your temporary PIN is 7+ the Security Key on the Back of Your Card."[viii]

PIN secrecy is possible. The JPay Release card issues a unique PIN for each account upon exit. It seems wrong to provide an easily-guessed PIN and then to charge a cardholder for the right to change it.

We believe that overdraft should be disallowed on the cards. If we assuming that often the original balance on these cards is low, then there is a high possibility that a person may incur an overage. This is especially the case given the fact that prisoners are less likely to have access to a mobile phone or a computer.

These special use prepaid cards are certainly unique, but they differ greatly from other “one-time use” cards that are usually only loaded once and by a third-party. We support the Bureau’s proposal to define them as a “stand-alone sub-definition of a prepaid account” in 1005.2(b)(3) and 1005.15(a)(2).

We believe that it is inappropriate for a release card to have an arbitration agreement. Even if these cards are protected from compulsory use, it stands to reason that many prisoners will have little in the way of an ability to make a choice between cards.

Disclosures: (1005.18)

In response to the Bureau’s request for feedback on how to time the distribution of short and long forms to consumers, we agree that both should occur prior to the completion of registration [1005.18(b)(1)(i)]. For online applications, both should be offered prior to application. Since this would be difficult in a retail context, we understand that a long form will probably be offered either after purchase or at registration. We read that commenters have discussed the extensive cost of supplying the long form on the outside of a j-hook package (b(1)(ii), but ultimately this information has to make it into the hands of the consumer. Certainly, the short form must be displayed on the exterior of any retail packaging [(1005.18(b)(2)(i)]. During an in-person application (a bank), both forms should be offered.

The Bureau should rebuild its disclosures with extensive use of infographics. The disclosures should look like the front page of USA Today. We live in a visual world and our modern disclosure regimes should adapt to that truth.

How can a design communicate functionalities without compromising cognition? Our opinion is that the best way to do that is to use icons. Were it to be the case that there were four to six icons at the bottom of the form, consumers would get more information. But as well, the visual nature of icons would not compete against the type for the attention of the reader. Most likely, our suggestion for the design of an icon will fall far short of the expressions that can be produced by a professional graphic designer. Nonetheless, the ability of color and graphics to overcome shortcomings in engagement is recognizable. In fact, we believe that color and graphics might enable the forms to create several points of entry by readers. If the research from Lacko & Pappalardo[15] is true and consumers do tend to weigh the value of seeking more information against the time needed to do so, then messages that engage multiple types of cognition might translate into better outcomes. This would also overcome the “No-Reading Problem.”[16]

The Bureau should also do more with color. Use color to express nominal characterizations of capacity. A card will offer a service or it will not offer a service. It is a yes-no question. If a “yes” was printed in color but a “no” was represented by black-and-white, the idea would be easily conveyed.

Some research of note underscores how problems of comprehension can be overcome with graphical representations:

[15] James Lacko & Janis Pappalardo, The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers, 100 Am. Econ. Rev. 516 (2010)

[16] Ian Ayres & Alan Schwartz, "The No-Reading Problem in Consumer Contract Law," 66 Stan. L. Rev. 545 (2014).

- “Companies that use graphics in financial reports are more likely to attract the attention of readers, as well as increase their memory retention. Normally, visual graphics are a better form of displaying information than using numerical information.”[17]

- “The use of graphics as a mode of demonstrating financial information can also facilitate the speed of the viewer’s ability to observe any discrepancies or other significant phenomena.”[18]

- “Using graphics can shorten the distance between languages and cultures.” [19]

Cost estimation is a viable technique that could help consumers. We remained convinced that consumers could benefit from some kind of cost estimation. This is underscored by the empirical cost of the cards. According to a report from the Federal Reserve, the average cardholder costs on a per month basis were between $7 and $11[20]. A survey by the Pew Research Center estimated that a typical user would spend between ten and thirty dollars per month[21]. These are relevant findings to this question, as they underscore how much the monthly cost can differ from the ultimate cost. Consumers say they prefer a prepaid card in part because they offer cost certainty. These findings, where cost was much higher than the monthly fee and where the range of costs varied greatly, show that certainty is far from common.

The challenge is to account for variations in usage styles. There are three problems: one, user types that vary by loading style (a la carte, cash load, and direct deposit); and two, great variation in transaction volume. We think that multiple-path estimation is far better than an “average monthly cost.” The latter is not sensitive to the variation in usage styles. It uses a mean price where a categorical approach fits better.

Average Cost: As the Bureau concedes in Section 425, “consumers may not be fully informed” and the provision of information is often limited at the moment of card selection. There is value in provided detailed and uniform information about a card, but there is a different and perhaps greater benefit when disclosures can provide a comparative context.

It has been our hope that an average cost figure could be utilized in the disclosure form. We understand why that it so difficult to do. There is a very finite amount of space on a j-hook package, and the challenges only begin with that complication. There is also the question of how to construct an estimate as well as the concern of possibly confusing a consumer.

We see a second alternative to a rote listing of costs. It would still be possible to move away from specific estimates and toward ranges of estimated costs within an x-y graph model. Such a graph could put cost on the x-axis and transactions on the y-axis. This is helpful because an x-y graph has the benefit of incorporating the volume of usage.

Moreover, a chart could incorporate different rays for consumers whose relationship differs by depositing basis. Cash loader and pay-as-you-go customers are likely to vary in the share of spends that use a PIN versus a signature. Card pricing schedules are often structured to charge for a PIN (lower interchange). Choosing PIN versus signature is rarely within someone’s control. More often than not, the choice is entirely up to the retailer. For the retailer, the incentive is to use PIN if possible.

The lack of control reinforces the logic that there is a place for estimation. An exact prediction is impossible. An X-Y graph does mitigate the noise that is driven by variation in frequency of usage, but it still needs to be drawn in a way that gives a clue to the consumer about the likely range in outcome. I believe that a likely design would have cone-shaped shadings that widen from left to right in the box. I can’t draw it in Excel or Illustrator, but my intuition is that an X-Y

[17] Leivian, G. M. 1980. "How to communicate financial data more efficiently." Management Accounting (USA), 31-4.
[18] Vessey, I. 1991. The paradigm of cognitive fit: An information processing analysis of the table versus graph controversy. Decision Sciences, 22(2), 219-240.
[19] Horton, W. 1993. The almost university language: Graphics for international documents. Technical Communication 40, 682-693
[20] Stephanie Wilshusen et al., Fed. Reserve Bank of Philadelphia, "Consumers' Use of Prepaid Cards: A Transaction-Based Analysis,” at 39 (2012)
[21] The Pew Charitable Trusts, "Consumers Continue to Load Up on Prepaid Cards," at 39 (Feb. 2014)

graph would have shaded cones with solid lines inside each cone. The solid line represents the output of a formula that sums up a predicted share of PIN and signature purchases. The cone's width increases from left to right, given that variance will grow as the number of transactions increases.

Our hope would be that the long form could be the place where an accommodation between space constraints and consumer cognition is reached. When published online or inserted into a package, there is plenty of space.

Reflections on Questions of Content

Temporary Fees 1005.19 (a) (3). We believe that the Bureau's publicly-available data base should publish the permanent fees associated with credit and prepaid terms. It is likely that product advertising will sufficiently describe promotional teaser offers.

Asterisks are a mistake: Asterisks may undermine the trust that consumers place in a disclosure. Currently, the asterisk leads to the statement "fees can be less depending upon usage," but that is also problematic. A good disclosure provides consumers with full and perfect information. Theoretically, full and perfect information should drive down pricing by making suppliers more open about costs. In this system, that kind of virtuous cycle never happens.

The long form disclosure must do more to address how it communicates card functionality. To that end, the forms should move beyond merely listing prices. They should give consumers a sense of the distinctions in card capabilities. Some relevant services:

- Remote deposit
- Pre-cleared checks
- Savings accounts or savings sub-accounts
- Register reload

Each of these functions can reduce costs while also increasing value. Distinctions in functionality are a very important messaging point. A consumer who is able to remotely deposit a check will be able to save money because it will substitute for the purchase of cash loads. The same is true for at-the-register reloads. Pre-cleared checks also present an opportunity to expand utility and also to reduce costs. An alternative to a pre-cleared check is to purchase a money order.

Those principles are aligned with the Bureau's intention to be brief and with their priority to recognize that consumer's consumer information in ways that are not necessarily logical or linear.

We think there are multiple ways to tap the power of graphic symbols. For one, the Bureau could use a symbol of a check paired with a smart phone to describe a remote deposit. Pre-cleared paper checks only need to have a picture of a check. A card with a savings account might have a picture of a piggy bank. A "register reload" could draw on a symbol of a cash register.

In countries where literacy levels are lower, the use of graphics is more common. We think this is very relevant to this product segment, as the ranks of the underbanked are over-represented by immigrants.

In considering the choice of graphical designs, it is important to acknowledge that poor design can actually impair comprehension.

The inclusion of a fee for customer service is valuable. We also believe the form should indicate if this is the fee for an in-person call or for an IVR service. 1005.18(b)(2)(i)(B)(*6*) Given that the short form cannot list all of the fees, it is helpful that it would include a reference to the total number of fees that are charged [1005.18(b)(2)(i)(B)(10)]

We believe that the name of the ATM network should be listed in the short form. The presence of a free ATM network makes a great difference in the overall cost of a card. Save for cards with overdraft, it is generally the highest element of user cost. This form is not sensitive to the possibility that a card might not have a relationship with any ATM network. With regard to the ATM balance inquiry fee, the use of “or” as opposed to a “/” seems to create uncertainty. As a reader, I am not sure if the “or” is supposed to mean that the first and second fees ($0 or $1.00*) are associated with in-network or out-of-network or if it is related to a different factor.

The form should indicate if the card has FDIC or NCUSIF insurance.

If there is a credit feature available with the card, then those costs should be added. If an issuer is going to offer credit, then it seems that they should have a reasonable expectation for additional disclosure. (1005.18 (g) 1).This expectation should certainly permit more information to be located on the exterior of the package. In such a scenario, the following fees seem relevant: interest rate, a monthly privilege fee, application or underwriting fee, late payment fee, over-the-limit fee (if legal), transfer fees to move funds from credit to spend, and any kind of inactivity fee.

Indicate the presence of a savings sub-account. Savings sub-accounts often become an incentive to help consumers save money. Some companies (NetSpend, H&R Block Emerald) pay interest on savings.

Thanks for your concern for these important questions.

Sincerely,

Adam Rust
Director of Research
Reinvestment Partners
adam@reinvestmentpartners.org

[i] http://www.sec.gov/Archives/edgar/data/721683/000119312515063177/d835889dex131.htm

[ii] Hayashi, Fumiko and E. Cuddy. “Recurrent Overdrafts: A Deliberate Decision by Some Prepaid Cardholders?” Federal Reserve Bank of Kansas City. October 1, 2014.

[iii] California Reinvestment Coalition, New Economy Project, Reinvestment Partners and Woodstock Institute: “How Banks Sell Overdraft: Results of Overdraft Mystery Shopping in Four Key States.” July 2014. http://www.woodstockinst.org/sites/default/files/attachments/overdraft.pdf

[iv] http://www.fms.treas.gov/fsac/Debit2014.pdf

[v] General Payment Systems Reports Another Increase in Quarter over Quarter Transactional Volume. January 16th, 2014. http://globenewswire.com/news-release/2014/01/16/602874/10064450/en/General-Payment-Systems-Reports-Another-Increase-in-Quarter-Over-Quarter-Transactional-Volume.html?f=22&fvtc=6&fvtv=GPSI

[vi] http://www.accessfreedomcard.com/terms.html

[vii] http://www.ezcardandkiosk.com/EZ_Exit_Card_-_Prepaid_Non-Reloadable_STAR_Card_Terms_and_Conditions.pdf

[viii] http://www.releasepay.com/docs/003%20T&Cs%20E-S.pdf