Public Benefits and Wages on Prepaid Cards: Protecting Against Hidden Fees and Identity Theft

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What is a Prepaid Card

• Types of prepaid cards: self-arranged, employer arranged, government arranged, EBT open loop (≠EBT).

• Who arranges impacts: choice, fees, features, and protections

• Bank accounts, prepaid cards merging
Public Benefits Paid on Prepaid Cards

• Federal: Social Security, SSI, Veterans Benefits (Direct Express Card or self-arranged cards), Indian Trust Fund

• State: Unemployment, child support collected by state, other

• Some EBT (needs-tested) programs moving to open-loop
Employers Using Payroll Cards

- WalMart
- YMCA of Greater Atlanta
- Navy (on ships)
- DC Youth Services
- Vermont ski resorts
- Federal Government (soon)
- State of Texas (soon)
Prepaid Debit and Payroll Cards in United States (Gross Dollar Volume Loaded in US$ Billions)
(Source: Aite Group)
Commonly Touted Benefits of Prepaid Cards

**Employer/Agency Benefits:**
- No checks to deliver
- No checks to reissue
- Final pay delivery
- Reduced check fraud

**Cardholder Benefits:**
- No check cashing fees
- Faster payment
- Less need to carry cash
- Access to Visa/MasterCard networks
- No ChexSystems screen

Whether prepaid cards are good for recipients depends on fees and features.
Federal Law Governing Prepaid Cards

• EFTA
  – Payroll cards (Reg E)
  – Government benefit cards?
  – NOT needs-tested (EBT)
  – NOT other prepaid cards YET

• Food Stamp Act

• FTC Act, Consumer Financial Protection Act
  (unfair, deceptive or abusive practices)
EFTA Covers Some Government Benefits Cards

• “Government benefits,” other than EBT (“needs-tested benefits”), from an “account,” including an account established by the agency

• Exemption for EBT “does not include employment-related payments, including … unemployment”

• What are “benefits”? Child support?
EFTA & Reg E Govern:

- Disclosures
- Disputes over billing errors, unauthorized transactions
- Statement/transaction information
- Overdraft fees
- Stop payment rights
- Conditioning credit on electronic payment
Types of Fees on Public Benefit and Payroll Cards

• No monthly/participation/load fees
• ATM fees (in or out of network)
• Teller withdrawals
  • Denied transactions
• Overdraft
• Balance inquiries (in or out of network)
• Customer service (automated or live)
• Transfer to another account
• Purchase with PIN
• Bill payment
• Inactivity

RED=especially problematic
Some High Fees

- **US Bank**: $10 to $20 overdraft fees
  - AR, HI, MN, OH, OR, SD, WY
- **ATM fees**
  - $1.25 in-network (0 free) (GA child support)
  - $2.25 out-network +surcharges (FL, NC)
- **Balance inquiries**: $1 (1 free) (MI)
- **Denied transactions**: $1.50 (MI, NC)
- **Customer svc**: $3 (1 free) (MI, MN)
- **Transfers**: $15 (MI, NM)
- **Inactivity**: $2 (4-6 mo) (US Bank)
First Defense: Choice

- Some states don’t offer direct deposit, or require opt out of prepaid card.

- Should offer direct deposit before a prepaid card, with option for check in case of hardship.

- DOL Guidance: Offer DD, early in application. If no DD, transfer to bank account.
EFTA Limits on Overdraft Fees

• EFTA: effective Aug. 2010, must “opt in” to overdraft fees

• Only covers ATM and one-time debits, not ACHs, recurring transfers

• Fees prohibited even if overdrafts normally denied (shortage, NSF). Reg. E OSC 17(b)-1.iv
Department of Labor Guidance

• FUTA prohibits use of UI other than for "compensation," exclusive of admin
• Five areas states should “negotiate”:
  – > 1 free ATM withdrawal per check
  – Unlimited free POS transactions
  – Unlimited in-network ATM balance inquiries
  – Eliminate overdraft and denial fees
  – Unlimited free customer service
DOL on Overdraft, NSF & Denial Fees

- These fees are “inconsistent with federal law.” Fees cannot be deducted from future UI payment “to satisfy any private or public debt”

- But similar arguments lost in Social Security context (Lopez, 9th Cir).
  - Involuntary nature of benefits prepaid cards may distinguish.
Declined Transaction Fees May Be “Unfair”

Declined transaction fees “could raise significant fairness issues under the FTC Act, because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction.”


Apply to other fees??
States Can Limit Fees

• State can limit fees when negotiates contract.
• No UI prepaid yet: CA, CT, DE, DC, GA, HI, ID, KY, ME, MT, NH, NJ, TN, VT, WA, WI
• As EBT moves to “open-loop,” look at restrictions on fees in state’s UI card contract.
• State employee payroll card may be model
UI Cards Vary, Even at Same Bank
NY v. Texas Chase Cards

- Teller withdrawals: NY unlimited, TX $5 (1 free)
- Out-network ATM withdrawal per deposit: TX (1), NY (2), then $1.50 each
- Denied transaction: NY .50¢, TX $1.00
- Expedited card delivery: NY $10, TX $17
Statutes Limiting EBT Fees May apply

- Which benefits do they apply to?
- Apply if the issuer, not state, charges the fee?
- Hidden restrictions you’ve forgotten?
  - MN 256.9862: 4 free ATM withdrawals/mo
  - Max of $10 in transaction fees per month
  - No fee if card used to purchase goods or services on point of sale basis (so no cash back fee?)
Factors Affecting Cost to the Consumer

• Which bank?
• How widespread is the ATM network?
• # free ATM withdrawals in/out network?
• Where can cardholders go for in-person withdrawal, how often, and at what cost?
• What types of miscellaneous fees?
CU Asks for CA UI Card Contract

- Opt-in
- Good network of free ATMs
- No dormancy fees
- No overdraft fees
- Free teller withdrawal
- No declined transaction fees
- No customer services fees
- No other fees – clear contract limit
- No balance inquiry fees
- Schumer box for fees
States Can Go Farther than EFTA

• EFTA has “inconsistency” preemption

• Dodd-Frank Act cuts back on National Bank Act preemption
State Payroll Card Laws (and Regulations)

• 22 state laws
• 18 require one free withdrawal per pay period
• 9 states require employers to provide a written disclosure for all fees
• Some specific state consent laws
CU Model Payroll Card State Law: Fee Limits

- 1 free withdrawal per week
- Prohibits fees for:
  - Activation/load/participation/POS, other fees to receive wages or use card for ordinary purposes;
  - Overdraft, shortage, low balance or declined transactions;
  - Advances (no lines of credit)
  - Customer service;
  - Online or automated balance inquiries or other transaction information; and
  - Closing an account or issuing payment of the remaining balance.
Combating Identity Theft

…and fees and billing errors

• Transaction information the consumer actually sees is essential.
  – Statements
  – Text messages, alerts
  – Electronic statements only if use them

• Most prepaid cards don’t offer statements

• May be able to opt in for a fee
Regular EFTA Dispute Rights

- Lost or stolen card (note contrast w/ EBT):
  - Max $50 for charges within 2 days of learning
  - Max $500 for charges after 2 days if report within 60 days of learning
  - Unlimited after 60 days
- If card not lost or stolen:
  - Not liable for charges in first 60 days
  - If don’t report, responsible for preventable charges incurred 60 days after transmittal of first statement on which a charge appears
  - 60 days to report billing errors
If no Statement, Never Access Online, When Does Time to Dispute Run?

- Payroll card rule: 120 days from transaction
- Government benefit cards:
  - Clock starts with “transmittal” of statement or “other information [mere balance?]… provided to the consumer”
  - For billing errors, must be info “in which the error is first reflected”
CU Model Payroll Card Law: Beyond Fees

• Option of receiving statements ($1/mo), other convenient forms of transaction information.
• 2 free statements in each 12 month period
• Require written disclosures in the employee’s primary language.
• Written, voluntary employee consent
• Pass-through FDIC insurance
For more information

- Conference website (lots of stuff)
- NCLC Consumer Banking & Payments Manual
- NCLC website (Issues/Banking and Payment Systems/Prepaid Debit Cards)
- Consumers Union: http://www.defendyourdollars.org/topic/payments/