

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

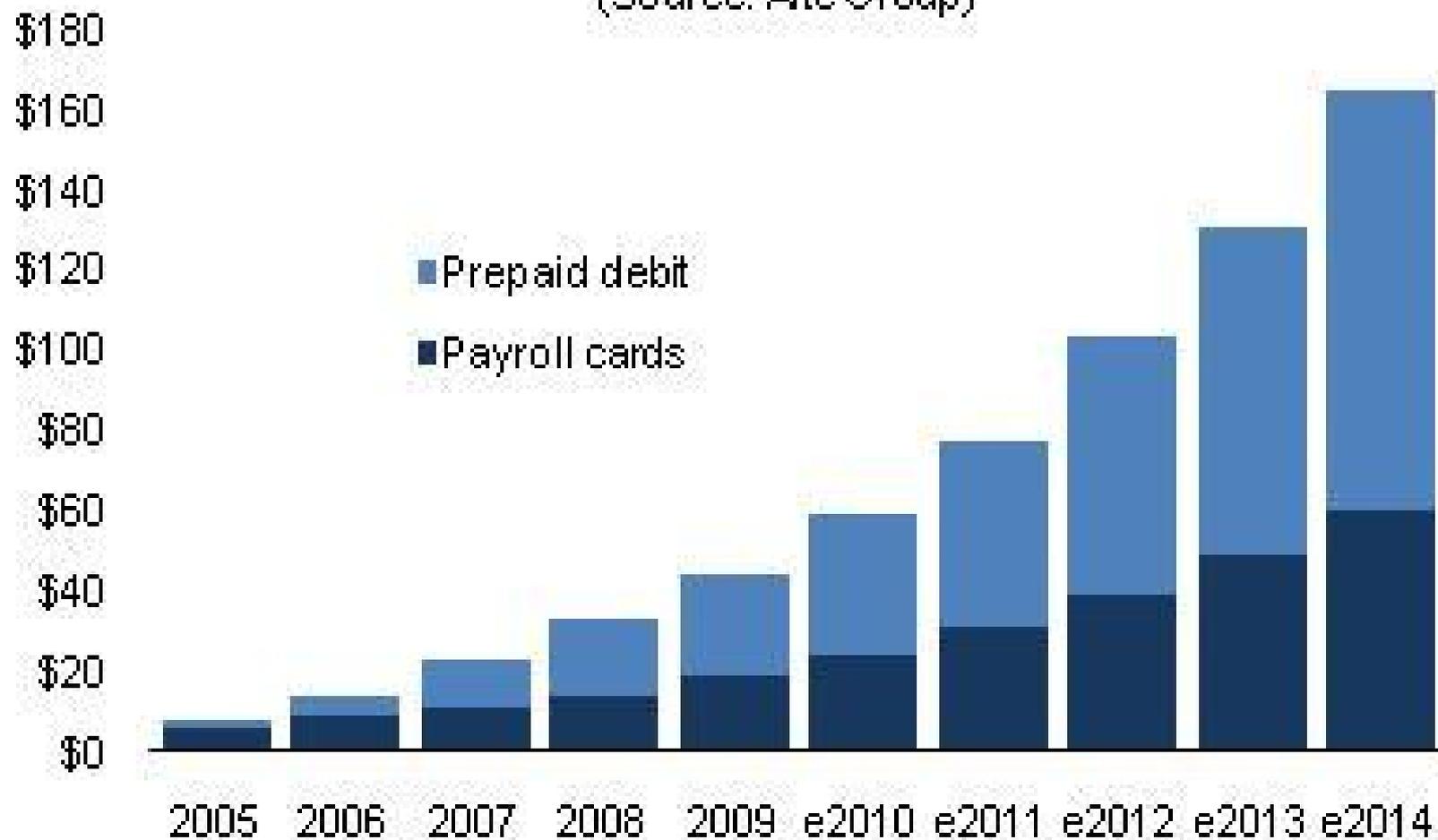
- Federal: Social Security, SSI, Veterans Benefits (Direct Express Card or self-arranged cards), Indian Trust Fund
- State: Unemployment, child support collected by state, other
- Some EBT (needs-tested) programs moving to open-loop

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.”

Overdraft rules, 74 Fed. Reg. 59,033 59,041 (Nov. 17, 2009)

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
- EBT programs, with contract expiration, tracked at http://www.fns.usda.gov/snap/ebt/ebt_status_report.htm
- 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 w/in 2 days of learning
 - Max \$500 for charges after 2 days if report w/in 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/>

G Hillebrand, *Before the Grand Re-thinking: Five Things to Do with Today with Payments Law and Ten Principles to Guide New Payments Products and New Payments Law.*

<http://www.consumersunion.org/pdf/WhereisMyMoney08.pdf>