

Congress Should Not Block The Consumer Financial Protection Bureau's Prepaid Accounts Rule

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The Consumer Financial Protection Bureau (CFPB) has issued a rule that gives prepaid accounts the same basic fraud protections that cover debit cards; improves fee transparency; and protects employees and vulnerable prepaid card users from unaffordable overdraft features on the few cards with overdraft fees. The rule adopts common sense protections that will benefit both the industry and consumers. But Congress may block the rule before it goes into effect using the obscure Congressional Review Act (CRA).

Who Uses Prepaid Cards?

Prepaid cards are similar to debit cards, but no bank account or credit check is required. Prepaid accounts are used as a bank account substitute by consumers who have lost their bank accounts due to overdrafts or who prefer to avoid overdraft fees. Employers use payroll cards to pay wages to workers without bank accounts; government agencies and colleges use cards to pay government benefits and financial aid, respectively. More than 42 percent of unbanked or underbanked households used prepaid cards in 2015. Use is higher among lower-income, less-educated, younger, black, and working-age disabled households.

What Does the Prepaid Card Rule Do?

Without the rule, most prepaid accounts are not protected by law that protects bank account holders. The rule closes the gap in protections between debit and prepaid cards and addresses hidden fees and other problems that have often plagued prepaid and payroll cards. The rule will help consumers compare cards more easily to find the most affordable option with the features they want and have peace of mind that their money will be safe if their card is lost or stolen.

The key elements of the rule:

- Protect prepaid card users against **fraud, unauthorized charges and errors**;
- Help consumers **avoid hidden fees** and comparison shop with simple, uniform charts of key fees and information about **FDIC insurance**;
- Give consumers convenient free access to **account transactions and balances**;
- **Inform employees** of the fees on payroll cards and their choices of how to receive wages;
- Limit **unaffordable overdraft fees** on hybrid credit-prepaid cards by applying credit card laws, including ability to repay and limits on fees (but not interest) in the first year, and by giving consumers 30 days to try out their cards before signing up for overdraft services.

Do Any Major Prepaid Card Companies Support the CFPB Rule?

Yes. *Green Dot*, the largest prepaid card company, supports the CFPB's rule:

"Green Dot embraces the new rule as recognition that the industry we started more than 15 years ago continues to serve an increasingly significant role in the everyday financial lives of a growing number of American families. We fully support the CFPB's mission to ensure fairness, integrity and consumer protections for all participants in the financial system. For many years, Green Dot has voluntarily provided full checking account style consumer protections for its customers and has

never charged overdraft or penalty fees on Green Dot Bank's prepaid and checking products. It's gratifying to know that prepaid can now move to a level playing field that can better serve consumers while allowing the entire industry to move past the period of regulatory uncertainty."

Other than NetSpend and the Electronic Transaction Association, none of the major prepaid card issuers or trade associations have asked Congress to block the rule, including the *Network Branded Prepaid Card Association*, *JP Morgan Chase (Liquid Card)*, *American Express (Bluebird Card)*, *American Bankers Association*, *Credit Union National Association* or *Independent Community Bankers Association*.

The *Center for Financial Services Innovation*, which works with industry leaders to shape the quality of prepaid product offerings and helps them innovate and build better consumer products and practices, supports the prepaid card rule.

Will the Rule Stifle Innovative Fintech Products?

No. The rule simply requires fee disclosures, fraud protection, and access to account information, which are important no matter what form a prepaid account takes. The CFPB wisely used a flexible definition of "prepaid account" that would not become immediately obsolete by only applying to physical plastic cards.

Press reports have inaccurately claimed that Google and PayPal are supporting the CRA to block the rule. Financial Innovation Now, an alliance of Amazon, Apple, Google, Intuit and PayPal, has raised some issues concerning mobile wallets but has not supported the CRA. FIN stated: "FIN is encouraged that the Bureau is offering more time for implementation of the prepaid rule, in particular its willingness to consider substantive changes. FIN supports the Bureau's mission to promote access to safe financial services, and we are hopeful the agency will work with us to empower technology to meet these goals."

How is the CFPB Responding to Issues that Arise as Companies Work to Implement the Rule?

The CFPB has expressed its commitment to well-tailored and effective regulations, is continuing its outreach to industry stakeholders, and is being responsive. Some prepaid card companies have told the CFPB that developments after the CFPB finalized the rule, including unanticipated backlogs and implementation challenges, have made the original effective date difficult. The CFPB has proposed to extend the implementation date by six months to April 1, 2018. The agency has also stated that it will do a separate rulemaking if it amends the rule are warranted.

Who Opposes the Rule?

NetSpend, the only major prepaid card company with overdraft fees, opposes the rule in order to be able to keep charging struggling consumers \$80-\$85 million annually in overdraft and other fees. The Electronic Transactions Association, whose President-Elect is NetSpend's president, also opposes the rule.

NetSpend is the only major prepaid card provider with overdraft fees. For customers with direct deposit income or government benefits of at least \$200 per month, NetSpend offers opt-in overdraft "protection" that can trigger a \$15 overdraft fee on its general use cards (up to \$45 per month) and \$25 on its payroll cards (up to \$125 per month).

NetSpend primarily sells cards through payday lenders. ACE Cash Express is its largest distributor. NetSpend provides payroll cards through its Skylight brand to fast food, retail and other employers. In addition to the overdraft fees, NetSpend prepaid cards are also unusual in permitting payday lenders to debit the card on payday (potentially triggering an overdraft fee), which most prepaid cards do not allow.

How Long is the Rule?

As published in the Federal Register, **the main rule is 13 pages**, with another 31 pages of model clauses, disclosure forms and explanatory comments. For the 2% of cards that have overdraft features, there are another 3 pages of rules and 15 pages of explanatory comments. In addition, the Federal Register contains 362 pages of discussion of comments submitted, cost-benefit analysis, analysis of the impact on small entities, differences between the proposed and final rule, and other analysis required by law.

For More Information and Related NCLC Materials

- National Consumer Law Center, Summary of the Consumer Financial Protection Bureau's Prepaid Card Rule (April 2017)
- National Consumer Law Center, Payday Lender Prepaid Cards (July 2015)

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