



**Americans for Financial Reform**  
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March 23, 2015

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

Re: Comments on proposed prepaid card amendments to Regulation E, Docket No. CFPB-2014-0031 or RIN 3170-AA22

Dear Ms. Jackson:

Thank you for the opportunity to comment on the rules proposed by the Consumer Financial Protection Bureau (CFPB) to protect prepaid cards. These comments are submitted by Americans for Financial Reform and the undersigned consumer, civil rights, labor and community groups.

Prepaid cards are an important and growing market, and we applaud the CFPB for proposing strong rules to protect consumers who use these cards. Despite their similarity to bank account debit cards, many prepaid cards currently fall into gaps in consumer protection rules.

We support the proposal to extend the Electronic Fund Transfer Act (EFTA) and Regulation E to prepaid cards and to enhance those protections. Consumers will benefit from rights in case of loss, theft and unauthorized charges; simple, clear disclosures of fees and other important information; convenient, free access to balances and account information; a ban on compulsory use for wages and public benefits; and rules to limit abusive overdraft fee and credit features. The rules appropriately cover a wide range of prepaid cards, including payroll, student and public benefit cards, as well as newer mobile and virtual prepaid payment systems such as PayPal and others.

The rules limiting overdraft and other credit features are especially important. Prepaid cards should be prepaid, so that they are true to their purpose and will be safe for the millions of sometimes vulnerable consumers who use the cards, as well as for others who turn to prepaid cards as a way to control spending and make payments safely. There should be no overdraft on prepaid cards. When credit is offered to prepaid cardholders, it must be offered separately, honestly, consistent with ability to pay, and in compliance with credit laws.

While the rules are generally strong, we offer several suggestions below for strengthening the rules and closing loopholes. In particular, the CFPB should ban all overdraft fees; apply credit card protections to all credit transferred to a linked prepaid card; and limit fees before account opening and beyond the first year. We also urge the CFPB to require prepaid card funds to be held in accounts protected by deposit insurance and to adopt stronger rules to prevent coercive use of payroll, public benefit, student, released prisoner and other prepaid cards.

### **1. We support rules to keep prepaid cards prepaid, and to keep credit separate, honest and affordable.**

The prepaid card market exists because of the problems caused by overdraft fees on checking accounts. The vast majority of prepaid cards are marketed to and heavily used by consumers who have had trouble with credit and overdraft fees, are living paycheck to paycheck, and may have been shut entirely out of the banking system. Prepaid cards should not be used as a vehicle for taking advantage of their situations and offering unaffordable credit features that lead to a cycle of debt. While consumers who have not had trouble using credit also use prepaid cards, they do when they are looking to control spending or make a payment safely, not for the purposes of obtaining credit.

Consequently, we applaud the CFPB's decision to decline to extend the flawed Regulation E opt-in regime for "overdraft services" to prepaid cards. That regime has not worked for bank accounts, pushing consumers into incurring unnecessary and excessive fees on debit and ATM card transactions. Overdraft "protection" is misnamed and unneeded on prepaid cards, which do not have checks. It is a crude, deceptively expensive and dangerous form of credit that can lead to a cycle of debt and be used by mistake. Overdraft features leave consumers with less ability to meet expenses at the end of the month, not more. We agree that overdrafts – to the extent they are permitted – are a form of credit that should be covered by credit laws including the protections of the Truth in Lending Act and Regulation Z.

Holding a prepaid card account, by itself, does not disqualify a consumer from being eligible for safe and responsible forms of credit. Credit should be offered separately, with an access device separate from the prepaid card. But if a line of credit is accessible through a prepaid card, credit card rules should apply, including these essential protections provided in the proposed rule:

- Credit only based on ability to pay. Determining ability to pay is especially essential before offering credit to prepaid cardholders.
- Fee harvester rules, limiting fees in the first year to 25% of the credit line. This fee limit is not a usury cap; it does not limit the interest rate or cost of the credit. The fee cap does, however, prevent lenders from charging fees that can look deceptively low but can snowball. Pricing through periodic interest rates rather than fees leads to lower and more reasonable costs that are proportional to the amount of credit used and the time that it is used.
- Payments due only once a month, 21 days after a statement. Consumers should have a reasonable time to use credit and to repay it.
- Ban on mandatory electronic repayment or mandatory offset. Lenders should not have priority access to the funds in a consumer's prepaid card account, before the consumer

pays for necessities. Consumers should be able to choose and control how they repay credit. This provision also provides incentives against improvident and predatory lending

- Limits on late fees, over-the-limit fees, and other penalty fees.
- APR disclosures, so consumers can compare credit options.
- A waiting period after acquiring a prepaid card before credit could be offered. (But it should be 90 days, not 30.)

However, we urge the CFPB to prohibit overdraft features and overdraft fees on prepaid cards altogether. If the card is empty, the transaction should simply be declined. The consumer can then decide whether to skip the purchase or pay cash or with credit, if available. Overdraft features force an “all or nothing” approach. Once opted in, every overdrawn transaction is approved up to the credit limit, even if a particular purchase is not important or could be paid in cash without an overdraft fee. Consumers should always use credit consciously, not by mistake. Consumers who know their card has insufficient funds can access credit deliberately and do not need overdraft “protection.”

With respect to credit more generally, we are extremely concerned that the proposal contains a gaping loophole for credit that is accessed through a prepaid card but can, at least in theory, be accessed another way. The proposed rules only apply to credit that can be direct deposited solely to a particular prepaid card dictated by the lender. But lenders may design lines of credit that can be linked to any prepaid card a consumer chooses, and skirt the rules. Or, a credit feature could be designed for and work best when accessed through a particular prepaid card, but the lender could provide a theoretical alternative access point in order to evade the rules, such as the “option” (meaningful or not) to transfer funds through the automated clearinghouse to any account, or even by a payment over the Visa or MasterCard network. The CFPB must close that loophole.

We are especially worried about evasions by payday lenders, which often sell prepaid cards. Payday lenders are moving to lines of credit that help them evade rate caps. The payday lender could offer the option of accessing a line of credit through cash at the payday store, ACH deposit to any account the consumer chooses, or transfers to the payday lender-branded prepaid card. If the prepaid card is the access device, the card would function in the same manner as the credit features that the CFPB has covered, but with none of the proposed protections. The payday lender could even link the credit feature the same day that the consumer acquires the card, without having to wait 30 days.

We urge the CFPB to extend the fee harvester limits beyond the first year and to limit pre-account opening fees. We fear that predatory lenders may offer consumers tiny, low cost credit lines in the first year and then hike up the credit limit and the fees after the fee harvester limits expire. This type of bait-and-switch would be unfair, deceptive and abusive and should be banned. The CFPB should also use its exception authority in Regulation Z, and the new authority added in 2010 to make “additional requirements,” to include pre-account opening fees in the 25% fee cap. While we believe that such fees are abusive on any fee harvester card, prepaid cardholders especially need protection from abusive fees that swamp the small amounts of credit provided and that deceive consumers about the cost of credit.

The 30-day waiting period is also too short. The cardholder will barely have begun to use the card and the issuer will not have significant transaction history to use for determining ability to pay. The waiting period should be 90 days. That waiting period would not prohibit a company from making a completely independent credit offer to the consumer as long as it was not linked to the prepaid card.

We support the proposal to prohibit declined transaction fees on transactions that would have accessed a credit feature. However, it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. Moreover, declined transaction fees are prohibited under Regulation Z and should be under Regulation E as well. They are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid card issuer of the declined transaction. To make the rule more clear for consumers and providers, we recommend that the CFPB simply ban declined transaction fees on all prepaid cards.

## **2. The CFPB should require funds in prepaid accounts to carry deposit insurance and protection from insolvency.**

The CFPB has proposed to require prepaid cards to carry a disclosure informing the consumer if the funds are not protected by FDIC or NCUSIF insurance. Disclosure is insufficient. Prepaid card funds should be required to be held in custodial accounts that carry deposit insurance.

Requiring funds to be held in an account that carries pass-through deposit insurance provides consumers with three important protections. First, the consumer is protected if the bank fails. Second, the funds will be in a depository institution that will be examined regularly by bank regulators for compliance with both safety and soundness and consumer protection rules. Third, the funds must be held in custody for an identified consumer – protecting the funds not only from bank insolvency but also from the creditors of an insolvent program manager. The latter two protections are even more important than the deposit insurance itself.

While most prepaid cards do carry deposit insurance, some cards issued by American Express do not. Other large nonbanks like Google, PayPal, Apple, Amazon and Facebook are developing virtual prepaid payment systems and stored value accounts and may wish to avoid the costs of deposit insurance premiums and the scrutiny of bank regulators.

The CFPB has expressed concerns that consumers misunderstand what protections FDIC insurance provides. That is precisely why it should be required and not be a matter of disclosure.

Consumers tend to expect that their funds are safe and to focus more on low fees than the remote prospect of catastrophe down the road. Safety should not be a matter of “buyer beware” or a trade-off for lower fees; it should be required. Prepaid cards are often bank account substitutes and carry essential wages and other income needed for necessities. Those funds must be held in accounts that are protected from the insolvency of the bank, the program manager or anyone else involved in the card program. To accept a consumer’s core income and hold it in an account that is not safe would be unfair, deceptive and abusive.

### **3. The CFPB needs to do more to prevent coercive use of payroll, government benefit, college cards and other types of prepaid cards.**

We support improved notice to employees and government benefit recipients that they are not required to use a prepaid card. But stronger rules are needed to implement the existing ban on compulsory use. In addition, that ban should be extended to cards used for students, insurance payments, prisons, tax payments and any government payment owed to a consumer.

A vague notice given along with the card is too late. Before being given a payroll, government benefits or student card, consumers should get notice of their other options for receiving funds. Direct deposit to an account of the consumer's choosing should be a required option, along with a paper check if required by state law.

If state law permits the consumer to be enrolled in a card without affirmative consent, the consumer should have 30 days to choose how to receive their funds before being enrolled in the prepaid card. When the card is provided, it should come with a clear, conspicuous notice explaining how to disenroll if the consumer prefers direct deposit to their own account or, if offered or required by state law, a paper check.

It is not an acceptable alternative to permit government agencies to require consumers to receive unemployment compensation or other benefits via a prepaid card with the option of setting up an automatic transfer from the prepaid card to the consumer's own account. The consumer is still required to have the prepaid card, in violation of the EFTA, has to go to the inconvenience of setting up the transfer, and suffers a delay in receiving funds due to the slowness of the ACH system. An opt-out system also results in more consumers using cards they would not choose. That system is not permitted for payroll cards and should not be for government benefit cards either.

While the compulsory use ban is currently limited to wages and public benefits, it should be extended to all cards used for funds in connection with higher education. College cards that are used for government-funded financial aid, work study or employment are already covered, and a clear rule extending to all college cards would protect students and make compliance easier. The abuses of colleges that put revenue sharing ahead of free choice by their students are well documented.

There have also been abuses by prisons that have forced released prisoners to receive money that is owed them on a prepaid card that is full of fees and difficult to use. Those funds may represent wages from a prison job or public benefits that were paid to the prisoner while in prison. Moreover, the money was taken from and is owed back to the releasee, and fees take his or her property without due process or just compensation. Releasees should have a choice of how their money is returned to them, and all choices should enable them to full reimbursement without fees.

We also believe that consumers who are due insurance payments, tax refunds, and any government payment (other than needs-tested benefits paid on an Electronic Benefit Transaction (EBT) card) should have a choice of how to receive their funds. Consumers who are forced to

accept prepaid cards for money owed to them do not have any say in the terms of a prepaid card and have no ability to choose a card that has low fees or is easy to use. As the prison example shows, those cards can come with fees such as high weekly fees that are virtually impossible to avoid.

Notably, for one time payments, it is actually more costly to produce and issue a prepaid card than it is to issue a paper check. That cost is covered by inactivity and other fees that profit the card issuer but bleed consumers. Payment vehicles should not be designed to skim consumers of money they are owed.

#### **4. Account information should be free and convenient.**

We support the efforts made in the proposed rule to ensure that consumers have free and convenient access to basic account information, including balances and transaction histories. We appreciate the admonition that no fees may be charged for access to balances by phone or online, for online access to account information, or for requesting paper statements on an ad hoc basis up to once a month.

However, we believe that more is needed to ensure that consumers can manage their accounts easily and without cost. All cards, and not just government benefit cards, should be required to provide balance information at a terminal (ATM) and should offer it for free. Obtaining balance information by telephone is cumbersome and requires inputting a long string of numbers correctly. The cost of ATM balance inquiries should be bundled with the cost of ATM withdrawals in order to encourage access to account balances and simplify fee schedules. Providing free balance information at ATMs will also help limited-English consumers who have difficulty navigating or understanding telephone customer service.

Cards should be required to offer free text messages to check balances as well as low balance and deposit alerts by text, phone and email.

All automated customer service calls should be free (to a toll-free number), not just calls to check the balance. Consumers should also have reasonable access to free live customer service calls in case they have questions or need to discuss a problem.

Account histories should be available online for 24 months, not 18. A consumer doing her taxes on October 15 may need to see transactions earlier than March 15 of the previous year.

Written account histories should be available on request back 7 years, not 18 months. Just like any bank account customer, a prepaid cardholder who uses the card as their primary transaction account could be audited by the IRS, need to show a longer history to apply for a mortgage, or have another reason to look up an older charge.

Consumers should have the option of signing up for monthly paper statements, or an automatic annual statement, rather than having to call each time, for a free or a minimal fee. While we agree that written statements do not need to be provided for all consumers, many consumers do not have computers or smart phones or will otherwise find it more convenient to review their

accounts for fees and unauthorized charges through paper statements rather than by remembering a password and logging in every month. The CFPB's own data shows that consumers do not access their accounts online.

We also urge the CFPB to require foreign language support for customer service calls for balance information, account transactions, dispute rights and other customer service information. As with the short and long form disclosures, customer service should be available in any languages that the card issuer uses in connection with the marketing of or acquisition of a card.

## **5. Fee disclosures: We support simple, clear uniform fee disclosures with both short- and long-form charts.**

We support the proposal to improve fee transparency by requiring all prepaid cards to disclose fees in both short- and long-form charts that are uniform and can be easily compared. We generally support the design of both forms and believe that they will improve competition and help consumers to understand the terms of their accounts. We have a few suggestions below to improve the disclosures.

### **A. Short form**

We support a required short form for all cards, on the outside of packages sold at retail and provided in a conspicuous manner in other settings. We support the basic design of the short form, with the most salient fees – monthly, per purchase, ATM withdrawal, and cash reload – in larger font on top; balance inquiry, customer service and inactivity fees listed below; followed by up to three other fees that are most commonly incurred. We agree that the highest fee possible should be disclosed if there are a range of fees, to warn consumers and prevent evasions and deception. We also applaud the requirement to include the statement: “We charge X more fees not listed here” if not all fees are listed on the short form.

In general, the overall proposed design strikes a good balance between providing as much information as possible without overwhelming consumers, enabling them to find the most critical information quickly and minimizing the potential for evasions. We do have a few suggestions for improving the short form.

Consumers should be able to distinguish between a card that provides a number of free transactions before charging a fee and one that does not. That can be a significant difference between cards, and we fear that omitting that information will weaken incentives to provide free transactions.

Incidence-based fees should be determined based on revenue, not number of incidences, to ensure that the most costly fees, rather than simply the most numerous fees, are included on the short form. It is more important that the form warn consumers about a large fee that impacts a smaller number of consumers (but enough to generate significant revenue) than a very small one that is charged more often.

Stronger information is needed on the short form about overdraft fees, if permitted. As discussed below, we urge the CFPB to ban all overdraft fees and overdraft features on prepaid cards. But if any overdraft features are permitted, the disclosure should be more prominent:

- Overdraft fees should be a required fee listed on the short form labeled as “Overdraft Fee (if enrolled),” whether it purports to be an overdraft fee, transfer fee, load fee, negative balance fee, or any other fee triggered by an overdraft.
- The warning about overdraft and credit features should be more prominent, in bold font.
- There should be two different disclosures, one for cards that permit overdrafts and one for cards that don’t:
  - “This card may charge credit-related fees.” (If no overdrafts are permitted.)
  - “This card may charge overdraft/credit-related fees.” (If overdrafts are permitted.)
- If overdraft fees can increase after the first year, the higher fee should be listed as, for example: “\$15 (\$1 for first year)”. However as discussed below, we urge the CFPB to extend the fee harvester limits beyond the first year to avoid bait-and-switch tactics.
- Overdraft fees are especially important to prepaid cardholders, and both the word “overdraft” and the amount of the fee should be used on the short form.

The overdraft/credit-related fee disclosure should not be required on cards that do not have those features. Most cards do not have overdraft or credit-related features, consumers assume prepaid cards do not, and the disclosure could be confusing. The disclosure will also stand out more starkly on the cards that do have those features when compared to one that does not. Omitting the disclosure will also free up space for a QR code or other information.

The warning about lack of deposit insurance, if deposit insurance is not required, needs to be more prominent and understandable. We urge the CFPB to require deposit insurance, not treat the topic as one for disclosure. But if deposit insurance is not required, we believe that a symbol such as the word FDIC in a circle with a slash through it would be more easily noticed and understood by consumers.

While we appreciate the difficulty of squeezing a lot of information into the short form, we urge the CFPB to experiment with ways to convey the following information on the short form. (We note that if the CFPB takes our suggestion to prohibit overdraft fees and to require deposit insurance, then those are two pieces of information that will not be necessary on the short form, freeing up space.)

- Average monthly cost of the card based on actual usage, enabling consumers to distinguish between cards that may have the same fees but make those fees harder or easier to incur (such as through a small free ATM network or alerts that help consumers avoid fees). While no average will be accurate for all consumers, consumers can see the specific fees they care about based on how they will use the card. Alternatively, the CFPB could rate cards as high, medium and low cost based on their actual fee revenue.
- The number of surcharge-free ATMs, which can differ significantly among cards and impact cost.
- Symbols to indicate cards that offer bill pay or remote deposit capture, key services for unbanked consumers.



Consumers should be able to see all of the fees at retail more easily. We support the proposal to provide a phone number and URL to enable consumers to access the long form. But we believe that the ability to send a text to obtain a link to the long form could be even easier, and also accessible by consumers who have basic phones. The text can be retained for future reference more easily. We also support providing a QR or bar code if it can be fit onto the form. While QR code usage is low today, we believe it will grow.

## **B. Long Form**

We support the proposal to require all cards to provide a long form fee disclosure in addition to the short form. The conditions under which prepaid cards fees can be incurred can be quite complex, and the long form enables consumers to get complete information. We agree that the full long form should always be provided by financial institutions, on websites, by employers, colleges and other non-retail settings.

However, we believe that the long form should also be accessible at retail without resort to a smartphone or long telephone message. We believe that it is possible to design a package – as the Pew Charitable Trusts has done – that can be opened to reveal the long form. At a minimum, cards that charge fees in addition to those disclosed in the short form should be required to provide an easy-to-open flap that lists those additional fees. For example, the statement about those fees could be edited to say: “We charge 7 other fees. Open here to see them. =>”

In addition, the long form should have a section disclosing whether the card carries overdraft fees (if not prohibited, as we urge) or other credit features. The long form should be a comprehensive place to get complete information about the card.

The long form should also disclose the institution’s funds availability policy for cash or checks deposited by ATM, by teller or by remote deposit capture. If one of those options is not available, the form should say “n/a.”

## **C. Foreign language disclosures**

We support the proposal to require both the short and long form disclosures (whether provided on a package, on a website or by telephone) to be provided in any foreign languages that the card issuer principally uses in connection with the acquisition of a card. The same is true if a card is marketed in another language. If an issuer is going to market in a foreign language or otherwise specifically reach out to non-English speakers, it must ensure that it conveys full fee information in that language.

## **6. Consumers need clear dispute rights.**

### **A. Deadlines should be simplified: at least 120 days**

The proposed rule follows the current payroll card deadlines governing when a consumer must submit a dispute about a charge on the account. Those rules are extremely confusing. Consumers are told that, once an unauthorized charge or error appears in their account history, they have 60

days from the time that they either access their account electronically or are sent a written statement. But most consumers probably misunderstand this rule and think that they have 60 days from the date of the transaction. Moreover, under the current rule, if the consumer never sees the charge – as is likely for most prepaid cardholders – their dispute rights still expire in 120 days if the card issuer follows a silent, undisclosed policy of investigating all disputes made within 120 days.

Instead, the CFPB should amend the rule to simply provide prepaid cardholders 120 days from the time the charge is credited or debited to the consumer's account. Most prepaid cardholders do not either receive written statements OR access their accounts electronically, as the CFPB's data reflects. The current rule results in deceptive disclosures and unclear rights. A simple 120 day rule would be easier to publicize, understand, and comply with. At a bare minimum, issuers that take advantage of the 120-day safe harbor should be required to disclose that policy in their agreements and disclosures, rather than the deceptive 60 day deadlines.

We also urge the CFPB to harmonize the Regulation E and Regulation Z dispute rights in the case of a lost or stolen card. Regulation E subjects consumers to up to \$500 in liability if they fail to report a lost or stolen card within two business days of realizing that it is missing, whereas credit cardholders have no deadline and a \$50 liability cap. Most prepaid cards are covered by network dispute rules that follow the credit card rules, and it would eliminate confusion and better protect consumers if Regulation E followed that industry practice.

#### **B. Registration is appropriate, with dispute rights for prior transactions.**

We support the proposal to require consumers to register their cards before they may exercise their dispute rights and to permit consumers, once registered, to dispute errors or unauthorized charges that occurred prior to registration. This proposal strikes a balance between protecting consumers and ensuring that fraudsters cannot act anonymously. We also agree that individuals who receive payroll, government benefit, student or other cards that are issued to specific individuals and not anonymously should not need to register their cards before exercising dispute rights.

#### **C. Registered, general purpose gift cards should carry protection from loss or theft.**

We urge the CFPB to extend dispute rights to general purpose prepaid cards, even if marketed or labeled as a gift card, that the consumer registers. We agree that there is the potential for evasion of dispute rights if those cards are not covered. Consumers would especially benefit from being able to replace a lost or stolen gift card.

#### **7. We support posting of fee schedules and account agreements on the CFPB's and issuers' websites.**

We support requiring prepaid card issuers to provide their terms and conditions and short- and long-form fee schedules to the CFPB for posting on a central CFPB website, and also to post them publicly on the issuers' websites. The fee schedules should be searchable separately from the longer terms and conditions. The text should be machine readable, and the fee schedules

should be searchable not only by issuer name but also by the name of the program manager, employer, school or other branding entity.

### **8. We support providing basic Regulation E protection to prepaid cards and prepaid payment systems, broadly defined, but also to cards for needs-tested benefits and health/flexible spending.**

We support the broad definition of “prepaid card,” which encompasses general use reloadable cards, payroll cards, student cards, public benefits cards and many other types of cards, stored value accounts, and mobile or online equivalents. As payment systems evolve, it is especially important not to have a narrow definition that permits evasions. We support the proposal to cover mobile prepaid accounts and other emerging payment systems when they hold consumer funds, such as PayPal and person-to-person accounts. While pass-through devices like Google Wallet need not be covered if they are not storing funds, consumers need basic fee disclosures and error protections when their funds are held in accounts with entities not currently covered by Regulation E. Virtual currencies should not be outside the rule’s protections if they are used for consumer purposes. We also support the proposal to prevent evasions by general-use reloadable cards that are marketed or labeled as gift cards.

Nonetheless, there remain gaps in the proposed scope. We urge the CFPB to extend the protections of Regulation E to:

- Prepaid cards used for needs-tested benefits. The CFPB can narrow the exemption in the EFTA for electronic benefits transactions to the intended target: EBT cards. Prepaid cards did not exist in 1996 when Congress passed the EBT exemption. While most states still pay needs-tested benefits such as Temporary Aid for Needy Families on EBT cards, some are moving cash-based benefits to prepaid cards (sometimes called Electronic Payment Cards or EPC). Prepaid cards are more vulnerable to fraud and unauthorized charges than are EBT cards, and the extremely low-income users of these cards especially would benefit from the proposed protections.
- Health and flexible spending cards. We oppose an exemption for cards used for health benefit accounts and flexible spending programs. These cards can carry significant amounts of funds, up to several thousand dollars. We are aware of no reason why the cards could not comply with or benefit from the proposed protections. Consumers who use these cards also need fraud protection, error resolution and dispute rights, free access to account information, and protection from predatory credit products (sometimes aimed at dental and other medical expenses), among other protections.
- College prepaid cards that purport to be bank accounts. The proposed rule appropriately includes prepaid cards used by colleges. However, some college card programs purport to be individual bank accounts, outside the proposed rule, but are run by nonbanks like Higher One, are card-based, and are prepaid cards in all but name. While these cards are covered by Regulation E, students using these cards should have the clear fee disclosures, protections governing overdraft and credit features, free access to account information, and other additional protections of the proposed prepaid card rules.

### **9. The CFPB should prohibit forced arbitration and class action bans.**

The CFPB's study found that forced arbitration clauses and class action bans are rampant in prepaid card agreements. Forced arbitration clauses deny consumers access to justice and force them to raise disputes in a secretive, biased and lawless forum. Arbitrators have an incentive to rule for the company that is in a position to bring them repeat business, not for the consumer. Arbitrators do not need to follow the facts or the law and their decisions are unreviewable. Forced arbitration clauses are not an alternative system of justice; they are a method of suppressing claims and denying access to justice altogether.

Arbitration clauses are increasingly paired with class action bans that prevent either the arbitrator or a court from ordering a company that engages in widespread violations to compensate all of its victims. Class action bans make it impossible to pursue small claims and keep millions of consumers in the dark about legal violations that injure them. The CFPB should ban forced arbitration clauses and class action bans in prepaid card contracts.

Thank you for the opportunity to submit these comments and for your work to protect consumers who use prepaid cards. For questions, please contact policy analyst Rebecca Thiess at [thiess@ourfinancialsecurity.org](mailto:thiess@ourfinancialsecurity.org) or 202-973-8005.

Sincerely,

Americans for Financial Reform  
Arizona Consumers Council  
Arkansans Against Abusive Payday Lending  
Arkansas Community Organizations  
California Reinvestment Coalition  
Center for Economic Integrity  
Center for Economic Integrity  
Center for Economic Integrity - New Mexico Office  
Center for Responsible Lending  
Chicago Consumers Coalition  
Chinese American Service League  
Consumer Action  
Consumer Action  
Consumer Assistance Council Inc. (Cape Cod, Mass)  
Consumer Federation of America  
Consumers Council of Missouri  
Consumers Union  
Corporation for Enterprise Development  
Florida Alliance for Consumer Protection  
Florida Alliance for Consumer Protection  
Georgia Watch  
Greater Southwest Development Corporation  
Heartland Alliance for Human Needs & Human Rights  
Illinois Asset Building Group  
Illinois Public Interest Research Group  
Kentucky Equal Justice Center

Kingdom Community Inc.  
Law Foundation of Silicon Valley  
Mark E. Budnitz, Professor of Law, Emeritus, Georgia State University College of Law  
Maryland Consumer Rights Coalition  
Massachusetts Consumers Council  
MassPIRG  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low income clients)  
National Council of La Raza  
New Economy Project  
New Jersey Citizen Action  
New Jersey Citizen Action  
Northwest Side Housing Center  
Project IRENE  
Public Citizen  
Public Justice Center  
Reinvestment Partners  
SC Appleseed Legal Justice Center  
SC Appleseed Legal Justice Center.  
The Leadership Conference on Civil and Human Rights  
US PIRG  
Virginia Citizens Consumer Council  
Virginia Poverty Law Center  
Washington Statewide Poverty Action Network  
Woodstock Institute

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development

- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*List of State and Local Partners*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)



- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network

- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

***Small Businesses***

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET

