



VIA INTERNET: www.regulations.gov

March 23, 2015

Ms. 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:

New Economy Project appreciates the opportunity to comment on the Consumer Financial Protection Bureau's proposed prepaid card rules. We support the CFPB's proposal to ensure that the growing prepaid card market is more closely regulated. We urge you to close loopholes that would permit overdraft fees and other abusive credit features and to make other improvements to strengthen the rule, particularly to protect workers receiving wages on payroll cards.

New Economy Project works with community groups to fight for economic justice, and to build a new economy based on principles of cooperation, democracy, equity, social and racial justice, and ecological sustainability. Founded in 1995, the organization has long led efforts in New York City to challenge discriminatory economic practices that harm communities of color and perpetuate inequality and poverty. We facilitate the statewide New Yorkers for Responsible Lending coalition, and are also members of a working group of community, labor, and other non-profit groups concerned about the impact of payroll cards on low wage workers in New York City and State.

BAN OVERDRAFT ON PREPAID CARDS

New Economy Project agrees with the CFPB's decision to treat overdraft as credit, instead of taking the Federal Reserve's Regulation E "opt-in" approach to overdraft. However, further protections are needed. We believe overdraft features and fees should be banned altogether on prepaid cards. If a person does not have enough money in their prepaid account, a transaction should be declined without charge.

Overdraft products are extremely high-cost, short term loans that banks make to customers who have insufficient funds in their account to cover a transaction. Overdraft loans can be a debt trap that causes great financial hardship for lower income customers, and pushes many out of the banking system.

Overdraft fees on checking accounts are a huge profit center for banks—banks drain more than \$30 billion annually from their lower income customers through such fees. Banks derive the vast majority of overdraft

revenue from a relatively small percentage of struggling customers who repeatedly overdraft, and who are disproportionately lower income or people of color. In a recent study, Pew Charitable Trusts found that nonwhites are 83% more likely to pay an overdraft fee than whites.

In 2014, New Economy Project, along with colleagues at Woodstock Institution, California Reinvestment Coalition, and Reinvestment Partners, conducted mystery shopping to see how banks explain overdraft products to potential customers.¹ Our groups found that instead of helping people avoid expensive and unwanted overdraft fees, some banks misled customers into opting into this expensive product by presenting courtesy overdraft as a standard account feature.

Two of the most common reasons people choose prepaid cards, according to a recent Pew report, are to avoid overdrafts and “spending more money than they have.”² The CFPB’s request for comment highlights this same finding. A regulatory scheme based on confusing disclosures around products people specifically are seeking to avoid does not create meaningful protections in this area.

Overdraft products negate the “prepaid” element of prepaid cards. The CFPB should not permit prepaid card issuers to grow their revenue streams using fundamentally unfair overdraft fees that drain much-needed money from low-income cardholders. Overdraft, along with all fees for declined transactions and insufficient funds, should be banned.

DO NOT ALLOW CREDIT TO BE OFFERED ON PREPAID CARDS

New Economy Project strongly urges the CFPB to prohibit all credit products on prepaid cards. We believe that credit features undermine the purpose of the prepaid card, and open the door to exploitation by providing another way for predatory lenders to access the accounts of low-income people.

If the CFPB decides to permit the offering of credit in connection with prepaid cards, all such credit (including credit that is not solely accessible by prepaid card) should, at a minimum, be subject to the full protections of Regulation Z and the Truth in Lending Act.

STRENGTHEN PAYROLL CARD PROTECTIONS

As increasing numbers of workers receive their pay on prepaid cards, it is vital that the CFPB implement strong protections to ensure that workers have fair and unobstructed access to their wages. This is particularly important as these cards are most often used to pay lower-wage workers. In a recent survey conducted by New Economy Project and the payroll card working group, ninety percent of the workers receiving payroll cards were paid less than 12 dollars per hour. Such workers can ill afford to see their wages drained by credit products and unfair fees.

We support the CFPB’s proposals to extend existing protections under Regulations E and Z to payroll cards, but believe further action is necessary to address the many other issues workers face when using payroll cards. The payroll card survey we conducted found several common problems that the CFPB could address in this rulemaking. Based on the findings from that survey, we recommend that the CFPB take the following additional steps to protect workers:

¹ New Economy Project, et. al., *How Banks Sell Overdraft Results of Overdraft Mystery Shopping in Four Key States* (July 2014), available at http://www.neweconominyc.org/wp-content/uploads/2014/12/Final_Report.pdf.

² The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders’ Motivations and Views*, at 7 (Feb. 2014).

- **Bar payroll card issuers from offering overdraft products on payroll cards.** Overdraft loans should not be used to strip worker wages when an employee does not have sufficient funds in their payroll card account to complete a transaction.
- **Prohibit the offering of all credit products on payroll cards.** New Economy Project strongly believes that prepaid cards should be prepaid, and that no credit products should be offered in connection with cards distributed for the purpose of paying worker wages. Opening the door to credit on payroll cards could enable predatory lenders to use direct access to a worker's pay as a tool to facilitate potentially exploitative practices. Workers desiring access to credit products can access them separately from cards on which their wages are distributed.
- **The CFPB should act under their authority from the Dodd Frank Act to limit unfair, deceptive, and abusive acts and practices to limit all fees imposed on workers simply to access their wages.** The CFPB should take the following additional actions with respect to payroll card fees:
 - **Ban balance inquiry fees.** Workers we surveyed complained that they could not verify how much money remained in their account without paying a fee, which made it impossible for them to know when their wages had hit their account, and whether they had sufficient funds to make transfers to other accounts or necessary payments and purchases.
 - **Bar fees for contacting customer service.** Where unauthorized charges and fraud occur, workers should not be charged a fee to exercise their rights under Regulation E. Where questions regarding account status and balances arise, workers need to be able to contact their payroll card issuer free of charge to clearly understand the status of their account, make disputes regarding fees, and verify the receipt of their wages.
 - **Allow a minimum number of free card replacements annually.** Workers we surveyed complained that when their cards were lost, damaged, or stolen, they had to pay a hefty fee simply to regain access to their wages.
 - **Ban monthly fees and setup fees.** These fees amount to a charge to access wages. Payroll card issuers should not be permitted to siphon workers' wages in this way.
 - **Categorically bar prepaid cards used for the purpose of paying wages from charging fees necessary for the use of the card that would reduce a worker's wages below the applicable local, state, or federal minimum wage.**
 - **Require a short link on the payroll card disclosure form to a website where workers can learn about the surcharge-free ATMs closest to them.** In our survey, the most common fee workers experienced was an ATM fee. It is unfair to deprive workers of basic information about how to avoid costly ATM fees before deciding to accept a card.
- **Strengthen protections against fraud and unauthorized charges by requiring that employees be identified on their cards.** We agree wholeheartedly with the CFPB's proposal that holders of cards issued to a specific person should be eligible to exercise dispute rights without being registered. Some respondents to our survey explained that their card was insecure from fraud and theft for a related, notable reason: workers' names are not always printed on their payroll cards. CFPB should require all payroll cards (and other similar cards, such as public benefits cards, prison cards, and student cards) to be pre-registered and issued with the name of the cardholder printed on the card.
- **Ensure that workers have a real choice of whether to receive their wages on a payroll card.** The proposed rule rightly clarifies that employers may not require employees to access their wages on a payroll card. However, despite already existing New York State and federal protections requiring employers to offer a choice of payment methods, 48% of workers paid by payroll card who we surveyed said their employers did not offer them a choice of how to receive their paycheck. They

told us “I...was basically handed the card as if I had no choice;” “I was given the card before I was told I was being paid with a paycard;” and “it was made almost impossible to opt out.”

The short disclosure form and a notice of rights provided at the time the worker is given their card does not give workers sufficient information to make this important decision. We recommend that the CFPB require the notice alerting workers to their right to receive pay by other methods, along with the short and long disclosure forms, before the employee is required to make a choice and is issued a card. CFPB should also implement a minimum waiting period to allow employees time to weigh their options and make an independent decision about how they prefer to receive their wages. We recommend a waiting period of seven days, with the requirement that employers may not delay the payment of wages during this period.

In addition to the above recommendations, we encourage the CFPB to implement the following additional, essential protections:

- Prepaid cards used to pay needs-tested public benefits should receive the same protection as other prepaid cards. Low-income individuals are among those who most need the protections extended by these proposed rules.
- Funds should be FDIC-insured and protected from the prepaid card company’s creditors.
- Prepaid card holders should have the option of free or low cost regular paper statements.
- People should be able to see the full list of prepaid account fees easily before buying a card.
- Lawbreakers should not be able to use forced arbitration clauses to deprive people of their day in court or to prohibit courts from ordering refunds to all victims.
- Ensure that all prepaid card regulations act as a floor to create minimum protections, and not limit any stronger state laws or rules.

In general, we support the CFPB’s plan to extend Regulation E protections to most prepaid cards, but believe there are several areas the CFPB should strengthen the proposed rules in order to ensure that low-income people and communities of color are not subject to predatory and unfair practices as prepaid cards increase in popularity.

Thank you for considering our comments.

Sincerely,

Josh Zinner
Co-Director

New Economy Project

Alexis Iwanisziw
Deputy Director

Liz Fusco
Equal Justice Works Fellow