

ConsumersUnion[®]

POLICY & ACTION FROM CONSUMER REPORTS



Consumer Federation of America

U.S. PIRG
Federation of
State PIRGs

NATIONAL
CONSUMER LAW
CENTER

CENTER FOR
**RESPONSIBLE
LENDING**



November 17, 2011

Raj Date

Special Advisor to the Treasury Secretary for the Consumer Financial Protection Bureau
Consumer Financial Protection Bureau
1500 Pennsylvania Ave. NW
(Attn: 1801 L St.)
Washington DC 20220

Re: Request for clarification that Regulation E defines “account” to include pooled accounts which would provide important consumer protections to general use reloadable prepaid cards and other devices

Dear Mr. Date:

Consumers Union, the advocacy arm of Consumer Reports, U.S. PIRG, Center for Public Policy Priorities, SC Appleseed Legal Justice Center, National Consumer Law Center *on behalf of its low-income clients*, Coalition of Religious Communities, Center for Responsible Lending and Consumer Federation of America, respectfully request the Consumer Financial Protection Bureau (CFPB) to clarify that the definition of account in Regulation E includes pooled accounts into which funds accessed by prepaid cards are placed. This change is essential to fully apply consumer protections in the Electronic Fund Transfer Act (EFTA) to all prepaid cards and other similar devices which function as bank account substitutes.

The CFPB must finally provide EFTA’s consumer protections to general use reloadable prepaid cards that operate and are used like debit cards tied to bank accounts. Consumers have come to rely on prepaid cards to manage their personal and household funds; many have chosen to have their pay and benefits directly deposited. And, the prepaid card industry continues to grow rapidly. However, consumers still do not have guaranteed consumer protections against the loss of these important funds due to fraud, theft, or mistake. Consumers also do not have protections in other areas that are covered in Regulation E, including consent before overdraft credit is extended on debit cards or credit that is conditioned on mandatory electronic repayment.

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More consumers are switching to general purpose reloadable cards to maintain and manage their finances in light of growing frustration with mainstream banks and their products and services. GreenDot, one of the largest prepaid card providers, reported to have 4.15 million active cards (as compared to its 3.1 million activated cards in July 2009) and \$50 million in card revenues for the third quarter in 2011.¹ NetSpend, another large prepaid card provider reported 2.1 million active cards at the end of September 2011.² The already large number of prepaid cardholders is only expected to swell as consumers either choose to or are forced to use prepaid cards in lieu of traditional bank products and services.³

General use reloadable prepaid cardholders should have the same protections that debit cardholders enjoy, which include the following:

- Cap losses when cards are lost or stolen or when unauthorized charges are made;
- Assure that missing money will promptly be recredited not later than 10 business days;
- Provide clear and conspicuous disclosures of all fees before signing up;
- Have the right to choose to receive statements or other forms of transaction information; and,
- Begin running the time to dispute an error or unauthorized charge when the statement has been received, or in the case of accessing information electronically, when that portion of the electronic information showing the error or charge has been accessed.⁴

Finally, while we believe that overdraft fees should be completely eliminated from prepaid cards and that credit should not be tied to a deposit account, at a minimum the protections of Regulation E should apply.

We ask the CFPB to clarify that the definition of account includes pooled accounts. The CFPB should also closely examine newer payment forms to ensure that the definition captures them whatever the form. This will have the effect of including general use reloadable prepaid cards and other like devices under Regulation E's important protections, which will provide greater peace of mind to a growing number of consumers who rely on these cards and new payment systems to manage their household funds. These individuals and households need these protections and should not be subject to lesser standards.

We have asked the Federal Reserve Board since 2004 to extend Regulation E's consumer protections to all types of stored value cards. While the Board extended most of Regulation E's protections to payroll cards in 2007, these protections had not yet been extended to other stored value cards. The Board's most recent response in 2010 stated they would "review the applicability of the EFTA and Regulation E to prepaid cards."⁵ We are now calling upon the CFPB to ensure that consumers who use prepaid cards will be protected.

Consumers are loading sizable sums of money through direct deposit, setting up bill payments and utilizing other banking features. However, consumers who rely on these general use reloadable prepaid cards are still subject to shaky voluntary protections which resemble Regulation E protections, but contain loopholes and lack a legal guarantee. These terms and conditions can be revised and rescinded at any

¹ UPDATE 2-Green Dot sees FY oper rev at lower end of forecast, Reuters, Oct. 27, 2011, available at <http://www.reuters.com/article/2011/10/27/greendotcorp-idUSL3E7LR3RN20111027> and *Fast Growing Green Dot Plans an IPO and Buy a Bank*, Digital Transactions, Mar. 2, 2010, available at <http://www.digitaltransactions.net/news/story/2463>.

² *NetSpend Holdings, Inc. Reports Third Quarter 2011 Results*, NetSpend Corporation Press Releases, Nov. 3, 2011, available at <http://investor.netspend.com/releasedetail.cfm?ReleaseID=620891>.

³ The NY Times has reported a large jump in the number of consumers switching to alternative banking products and services, such as those provided at one big-box retailer. Andrew Martin and Stephanie Clifford, *High Bank Fees Give WalMart a Money Aisle*, NY Times, Nov. 7, 2011, available at <http://www.nytimes.com/2011/11/08/business/wal-mart-benefits-from-anger-over-banking-fees.html>. Consumers can now obtain prepaid cards from a large commercial bank, U.S. Bank, who is now directly distributing prepaid cards alongside their more traditional products and services. There has been much speculation that larger banks would offer prepaid cards to avoid Durbin amendment requirements. Victoria Finkle, *U.S. Bancorp Enters Prepaid Area*, Am. Banker, Nov. 3, 2011.

⁴ This would provide additional protections to consumers beyond what is currently provided. The period of notice should begin not when transaction information is made "available" electronically but rather when the consumer has actually accessed the portion of the electronic account which shows the transaction or charge in dispute.

⁵ Letter from Sandra F. Braunstein, Director of Division of Consumer and Community Affairs to Michelle Jun (February 25, 2010), available at http://www.defendyourdollars.org/pdf/FRB_PrepaidResponse2.25.10.pdf.

time, unlike regulatory and statutory guarantees provided for debit cards under the Electronic Funds Transfer Act and Regulation E.⁶ General use reloadable prepaid cardholders also are subject to the whims of customer service representatives' and their knowledge of the cards' policies.

While coverage under the EFTA will not solve all of the issues that consumers face with prepaid cards, and other protections are needed as well, it is the essential first step.

Until the important consumer protections of the EFTA are extended to general use reloadable prepaid cards, these cards will remain second-tier substitutes for bank accounts which do not provide cardholders with the same stability or protections that all consumers expect and deserve. For these reasons, we ask the CFPB to clarify that the definition of account in Regulation E includes pooled accounts which will have the effect of including general use reloadable prepaid cards and other like devices that act as bank account substitutes.

Sincerely,

Michelle Jun
Consumers Union

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U.S. PIRG

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⁶ Regulation E protections were extended to one type of prepaid card, employer-arranged payroll cards. *See* Electronic Fund Transfers, 71 Fed. Reg. 51,437, 51,440-41 (Aug. 3, 2006) (codified at 12 C.F.R. § 205).