

COMMENTS
to the
Consumer Financial Protection Bureau
regarding the
Proposed Prepaid Card Amendments to Regulation E
Docket No. CFPB-2014-0031
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submitted electronically
by the
National Council of La Raza

March 23, 2015

The National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—submits the following comments regarding the Consumer Financial Protection Bureau’s (CFPB or Bureau) proposed policy on prepaid card amendments to Regulation E.

NCLR commends the Bureau for its strong prepaid card rule. We appreciate the Bureau’s process in ensuring that products previously unchecked in the marketplace must now adhere to regulations that prioritize the safety of consumer financial health. We offer the following recommendations and look forward to further collaboration with the CFPB on the matter.

Background

With nearly ten million Latinos lacking a basic checking or savings account, prepaid cards have been proposed as an alternative to traditional transaction accounts and are considered more secure than carrying cash.¹ The growing popularity of prepaid cards raises many questions about their role in helping families become more financially secure and about whether consumers are adequately protected from scams and financial abuse.

Consumers need affordable financial tools and products that can maximize income, help them save, and provide a pathway to building credit. These basic tenets are essential for all families, but especially so for low- and moderate-income (LMI) communities who have no spare income to waste on baseless fees and inferior financial products. Costlier products and predatory practices have often been concentrated in LMI communities and communities of color. In fact, such products are often more prevalent than mainstream banks in their neighborhoods, draining precious funds from already struggling families.²

In 2010, NCLR conducted a prepaid card survey that sought to understand Latino families’ spend patterns. Of the nearly 300 individuals surveyed, most earned less than \$25,000 annually. The survey revealed how Latino families used prepaid cards, perceptions about the cards, and knowledge of the cards’ features.³ NCLR found that families surveyed used prepaid cards to serve as a saving mechanism. They would load the card and tuck it away in case of emergency, not knowing that they could be subjected to dormancy charges. The survey also indicated that they sought the convenience of a card and considered it safer than carrying cash. They stopped

using the card when they felt they were losing money to abusive or deceptive fees. The most popular reasons for using a prepaid card was to control one's spend, using only as much money as they had. As with cash, once the money ran out, it ran out. Respondents indicated that they stopped using prepaid cards because of unexpected fees. More than one-quarter of all respondents noted that they had been charged a fee unexpectedly, and 39% of Hispanics stated they did not have all the information they needed to avoid paying fees.⁴

In 2014, NCLR also co-authored a report, *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities*, with the National Urban League and the National Coalition for Asian Pacific American Community Development.⁵ We found that 23% of the Hispanic respondents used prepaid cards. However, among the more than 5,000 respondents surveyed from the Latino, African American, and Asian American Pacific Islander communities, we found that the unemployed and unbanked, those who are among the most vulnerable and most in need of healthy and safe financial products, had significantly higher rates of using prepaid cards. Unemployed respondents were more likely than the employed to use prepaid cards (34%). Similarly, unbanked respondents were more likely than the banked to report using a prepaid card (30%). As these findings indicate, families with a more precarious financial situation were more prone to use prepaid cards. For these and many other families, better consumer protections could be especially meaningful when living paycheck to paycheck.

Latino families use prepaid cards for savings, spend control, and as a means to gain access to online markets. Prepaid cards can provide an alternative for low-income families who dropped out of or chose to leave the mainstream banking system, particularly during the recession when wages and wealth in communities of color plummeted. But as is, prepaid accounts lack the full regulatory oversight necessary to make them safe for Latino families. When improving a financial product, one must not be tone deaf to the spirit of the product. That is, one should look deeply into how and why the consumer selects that product, not just how the industry views it. For the most vulnerable, low-income consumer—those who according to our research use prepaid cards at higher rates—prepaid cards should be prohibited from chipping away at families' limited income; high, unexpected fees should not be allowed simply because these financial products are not in the banking mainstream. In the CFPB's approach to improving the offerings, we recommend that it requires fees to be reasonable and transparent, including awareness of language needs; strengthens fraud protections; and delineates a clear enforcement path for violators.

Language Access

We support the proposal to require that both the short and long form disclosures be provided in any foreign languages* that the card issuer principally uses in connection with the acquisition of

* Providing materials in a language preferred by the consumer is essential for many reasons. Not only does it ensure that families have accurate information, it also creates an inclusive culture that consumers seek when making decisions on which financial products to use. Among those who spoke only their native language at home, 33% of Spanish speakers and 58% of Asian native language speakers reported that the ability to communicate verbally or in writing in their native language was a priority when choosing where to bank. Alliance for Stabilizing our Communities, *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (Washington, DC: National Council of La Raza, National CAPACD, and National Urban League, 2014), http://www.nclr.org/images/uploads/publications/bankingincolor_web.pdf (accessed March 23, 2015).

a card. The same is true if a card is marketed in another language. If an issuer markets in a foreign language or otherwise specifically reaches out to non-English speakers, it must ensure that it conveys all fee information in that language and can fully serve that consumer's needs.

We urge the CFPB to go further and require foreign language support for live customer service calls in any language that the issuer uses in connection with marketing or acquisition of the card. For example, in a 2014 report, the New York Attorney General found that none of the payroll card programs surveyed provided telephone services in any languages other than English and Spanish, regardless of the language typically used by the employer to communicate with workers.⁶ As with the short and long form disclosures, if a prepaid card issuer seeks customers who speak another language, customer service should be available in that language.

Further, the CFPB should require that interpreters be fluent in the spoken language and possess expertise in the field of prepaid products and features. As frequently happens in the financial services sector, servicers might provide a generalist interpreter to help clients, but that interpreter does not possess issue expertise. Deploying a generalist interpreter without product expertise amounts to lost resources and the dissemination of inaccurate information. There are better models. In court proceedings, for example, the Department of Justice requires that interpreters are fluent in the spoken language as well as the technical content. It deems this "effective communication." That is, "communication sufficient to provide the LEP individual with substantially the same level of access to services received by individuals who are not LEP. For example, staff must take reasonable steps to ensure communication with an LEP individual is as effective as communications with others when providing similar programs and services."⁷

Overdraft

Cards that permit overdrawn transactions are dangerous to low-income and non-White consumers who, research shows, have been found to have a higher rate of recurrent overdrafts.⁸ Indeed, consumers paid \$29.5 billion in overdraft fees in one year. Such fee assessments can be costly for families struggling to make ends meet.⁹ In NCLR's prepaid card survey, 70% of respondents said that they preferred prepaid cards as a way to control spend; they could only spend the amount of money they had.¹⁰ A card that allows overdraft with expensive fees is precisely the situation Latino consumers in our survey were trying to avoid. Some used prepaid cards because they were burned by overdraft charges in the banking mainstream and were deliberately looking to avoid overdraft. Some were banked and may have lost or have suspended accounts due to repeated overdraft fees, overdrawn accounts, or other banking issues.¹¹ For those who either had to or chose to leave mainstream banking, prepaid cards can and should provide a middle ground.

We urge you to close loopholes that would permit overdraft fees. Should the Bureau maintain overdraft features in the prepaid market, we urge the Bureau to mandate clear and deliberate opt-in processes (in language) so the consumer knows exactly the moment when they can begin incurring such charges.

FDIC Insurance

Most, but not all, prepaid cards are FDIC-insured. Without FDIC pass-through insurance, consumers' money is not protected in case of the provider's insolvency. Wages, public benefits, and other critical funds—to which the current Treasury rule does not apply—deposited onto prepaid cards can be frozen for months while bankruptcy proceedings progress and ultimately lost completely. Cards without FDIC protection are also exempt from examination by bank regulators. This creates a subgroup of cards that have an unfair advantage; they don't have to pay deposit insurance premiums and can avoid the scrutiny of bank regulators. This is a dangerous precedent that affects all prepaid card users, across race/ethnicity and income classes.

Further, one must consider the rapid evolution of virtual prepaid payment systems, in particular, those created by large nonbanks like Google, Apple, and Amazon who already offer or are developing prepaid cards and payment systems. These should be required to have deposit insurance. Examination by bank regulators may be especially important for technology companies that are relatively new to financial services and do not have robust consumer protection regimes.

Fees

No family, especially the most vulnerable, can afford to incur arbitrary fees, especially ones that don't result in better service. In their current state, prepaid cards can charge abusive fees with little recourse for families. For example, those with modest funds often load small amounts at a time. Wealthier users tend to bulk load money to pay bills. Adding small amounts costs consumers more money as they can be charged a fee each time they load any amount, big or small. Below is a noncomprehensive list of potential fees that card users can be charged:

- Activation or initiation fees
- Monthly fees
- Point-of-sale transaction fees
- Cash-withdrawal fees
- Balance-inquiry fees
- Fees to receive a paper statement
- Fees to call customer service
- Bill-payment fees
- Fees to add, or load, funds
- Dormancy fees for not using your card
- Fees to get your remaining funds back when closing the account
- Overdraft, or shortage, fees

This list makes clear that families can quickly lose their funds to unchecked fees. We urge the Bureau to minimize fees and tie them to the true cost of service. Further, we ask that the Bureau require fees to be clearly displayed in all means possible so consumers can easily understand when they might be charged. Below are recommendations on particularly wasteful fees that our research shows Latino consumers care about.

Dormancy Fees

A consumer should not be charged dormancy fees for not using his or her loaded funds. In its 2012 report of nearly 1,000 Latinos respondents,¹² NCLR found that many modest-income households saved for emergencies through a bank account, uncashed checks, prepaid cards, or funds held by a family member. More than 28% of respondents preferred prepaid cards on which to save their money. Many did not know that they could incur dormancy fees; instead they thought they were responsibly saving money for a rainy day. Dormancy fees should be banned.

Balance Inquiry Fees

Individuals should not be charged for accessing their balance at ATMs. Access to one's balance and spend activity should be free to encourage an informed consumer, which is one of the stated purposes of the Bureau's work. In the current prepaid market, users can be charged for ATM balance inquiries and elsewhere. Access by telephone and online is not enough given that many consumers do not have reliable, secure Internet access. Obtaining balance information by telephone can be inconvenient and does not work for everyone. The consumer needs to enter a long string of numbers and navigate an automated menu. Customer service lines are generally unavailable in languages other than English and Spanish. ATM balance inquiries should be free, and consumers should have the option of free or low-cost regular paper statements.

Card-Declined Fees

Consumers should not be penalized for making declined attempts on their card. As it stands, consumers are often unaware of their exact balances. We also know from anecdotal evidence from our community-based Affiliates that prepaid cards are not as seamless to use as other forms of payment. Due to inconsistencies in the market and lack of regulation, cards can be hit or miss when used at various businesses. If a struggling consumer already lacks funds on his or her card, or if the card is mistakenly declined, the consumer should not incur excessive fees on top of that. Fees for declined transactions are abusive and should be prohibited.

Disenrollment

Employers, universities, and government entities are seeking more and more to distribute funds to recipients on prepaid cards. For example, in 2009, Walmart began issuing prepaid payroll cards to its workers.¹³ Walmart is the largest employer of Latinos in the United States. About 12% of Walmart's 1.4 million U.S. workers are Latino.¹⁴ Individuals should not be required, however, to accept their funds via cards. The Bureau's rule warns employees that they are not required to accept their wages on a payroll card. More is needed to ensure that employees and students are not forced to use prepaid cards. Before and after being given a payroll card, employees should get clear notice of their options for receiving pay, time to choose, and information on ways to disenroll. Students need the same rights before their financial aid is put on a prepaid card.

Forced Arbitration

Lawbreakers should not be able to use forced arbitration clauses to deprive consumers of their day in court or to prohibit courts from ordering refunds to all victims. Forced arbitration clauses are prolific. Such clauses are increasingly written into terms of agreement and contracts, including those for prepaid cards. The CFPB's study found that forced arbitration clauses and class action bans are rampant in prepaid card agreements. Since 2007, NCLR has urged policymakers to ban mandatory arbitration clauses. In plain sight, Latino families' rights have already been disproportionately violated in the financial space. Forced arbitration clauses are systematic mechanisms for families to unknowingly forfeit their own rights in fine print the minute they sign a contract for a financial product. Arbitration hearings by their very nature are secret at their best and lawless at their worst. They are often conducted under the terms that proceedings will not be disclosed to the public. An arbitrator is often selected by the financial industry member against which a complaint is lodged. This is an overt conflict of interest and flies in the face of civil and consumer rights. This is unacceptable. Forced arbitration clauses should be banned from prepaid card agreements.

Thank you for your consideration in this critical work of ensuring consumer rights are protected. We look forward to seeing the CFPB's finalized rule on prepaid cards. With any inquiries, please contact Nancy Wilberg Ricks of the National Council of La Raza at (202) 776-1754 or nwilberg@nclr.org.

¹ Susan Burhouse, *2013 FDIC National Survey of Unbanked and Underbanked Households October 2014* (Washington, DC: Federal Deposit Insurance Corporation, 2013), <https://www.fdic.gov/householdsurvey/2013report.pdf> (accessed March 23, 2015).

² Alliance for Stabilizing our Communities, *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (Washington, DC: National Council of La Raza, National CAPACD, and National Urban League, 2014), http://www.nclr.org/images/uploads/publications/bankingincolor_web.pdf (accessed March 23, 2015).

³ National Council of La Raza, *Perspectives on Prepaid Cards from Low-Income Hispanic Tax Filers* (Washington, DC: National Council of La Raza, 2011), <http://bit.ly/199r1YU> (accessed March 23, 2015).

⁴ *Ibid.*

⁵ Alliance for Stabilizing our Communities, *Banking in Color*.

⁶ Office of the New York State Attorney General, *Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers* (New York City, NY: New York State Attorney General, 2014), <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf> (accessed March 23, 2015).

⁷ Department of Justice, Department of Justice Language Access Plan (Washington, DC: Department of Justice, 2012), <http://www.justice.gov/crt/about/cor/documents/crtlap.pdf> (accessed March 23, 2015).

⁸ Center for Responsible Lending et al., *Comments of National Consumer Law Center on behalf of its low income clients and Center for Responsible Lending, Consumer Federation of America, to the Consumer Financial Protection Bureau on Electronic Fund Transfers (Regulation E), 12 CFR Part 1005 General Use Reloadable Prepaid Cards Advance Notice of Proposed Rulemaking* (Boston, MA: Center for Responsible Lending, 2012) <http://bit.ly/1LOiNZD> (accessed March 23, 2015).

⁹ National Council of La Raza, *Latino Financial Access and Inclusion in California* (Washington, DC: NCLR, 2013) http://www.nclr.org/images/uploads/publications/CA_Latino_Financial_Access_ReportWeb.pdf (accessed March 23, 2015).

¹⁰ National Council of La Raza, *Perspectives on Prepaid Cards*.

¹¹ Alliance for Stabilizing our Communities, *Banking in Color*.

¹² National Council of La Raza, *Latino Financial Access and Inclusion in California*.

¹³ Joe Valenti, *The End of Cash: The Rise of Prepaid Cards, Their Potential, and Their Pitfalls* (Washington, DC: Center for American Progress, April 4, 2013), <https://cdn.americanprogress.org/wp-content/uploads/2013/04/EndofCashBrief-21.pdf> (accessed March 23, 2015).

¹⁴ Walmart, 2014 Diversity and Inclusion Report (Bentonville, AR: Walmart, 2014)
<http://cdn.corporate.walmart.com/04/50/c9c4367040029f6b2a4aca089d2c/diversity-inclusion.pdf> (accessed March 23, 2015).