

## **VIII. CFPB Final Rule on Prepaid Cards**

### **A. Introduction**

On October 3, 2016, the Consumer Financial Protection Bureau (CFPB) finalized a new rule to protect consumers and users of prepaid cards.<sup>1</sup> The rule expands consumer protections already implemented under the Electronic Fund Transfer Act and the Truth in Lending Act, which previously did not cover prepaid card products.<sup>2</sup> Despite being one of the fastest growing products offered to financial consumers in the United States, federal law offered limited protections to users of prepaid cards prior to the adoption of this new rule.<sup>3</sup> As regulations make traditional bank accounts increasingly expensive and difficult to acquire, many consumers are turning to prepaid cards.<sup>4</sup> Prepaid cards offer alternatives to consumers who do not have access to the traditional banking sector because of their geographic location, lack of proper documentation, or inability to pay fees and maintain balances.<sup>5</sup> Therefore, the need for streamlined federal protections is vital to protect these consumers.

The CFPB's new rule regarding prepaid cards seeks to provide protections to consumers whose cards have been lost or stolen,

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<sup>1</sup> See Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 83,934, 83,934 (Nov. 22, 2016).

<sup>2</sup> CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers, CONSUMER FIN. PROTECTION BUREAU (Oct. 5, 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-strong-federal-protections-prepaid-account-consumers/> [<https://perma.cc/TWQ4-JY7E>] (“The new rule applies specific federal consumer protections to broad swaths of the prepaid market for the first time . . . [and] gives prepaid account consumers important protections under the Electronic Fund Transfer Act . . .”).

<sup>3</sup> *Id.* (“Prepaid accounts are among the fastest growing consumer financial products . . . but until now they had only limited federal protections.”).

<sup>4</sup> Todd J. Zywicki, *The Economics of Network Branded Prepaid Cards*, 65 FLA. L. REV. 1477, 1498 (2013) (“The unintended consequences of recent regulatory interventions are particularly important in promoting adoption of prepaid cards by . . . low-income consumers who are driven out of the banking system by new fees and other cost . . .”).

<sup>5</sup> Ari M. Cohen, Note, *Protecting the Undeserved: Extending the Electronic Fund Transfer Act and Regulation E to Prepaid Debit Cards*, 5 BROOK. J. CORP. FIN. & COM. L. 215, 217 (2010) (asserting that immigrants and those with low income particularly face difficulties).

streamline processes of acquiring account information and rectifying errors, educate consumers about fees and details of their cards with upfront disclosures, and provide credit protections to consumers who are able to spend more than their prepaid balance would cover.<sup>6</sup> The rule defines “prepaid cards” as “accounts that are marketed or labeled as ‘prepaid’ that are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that are useable at [ATMs].”<sup>7</sup> The CFPB also drafted the rule to cover accounts already subject to Regulation E, such as payroll card accounts, government benefit accounts, and “digital wallets” that allow consumers to store money to pay other users.<sup>8</sup> The rule excludes gift cards and certificates, accounts set aside for health, dependent care, transit or parking expense reimbursements, and certain other accounts established by the U.S. government and determined excludable by the CFPB.<sup>9</sup>

This article discusses the CFPB’s new rule regarding prepaid card regulations and its expected impact on the prepaid card market. First, Section B gives an overview of the prepaid card market in the United States. Second, Section C introduces the evolving regulatory landscape of the prepaid card market. Third, Section D discusses each component to the new rule and how the new requirements may affect the prepaid card market and consumers. Finally, Section E discusses

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<sup>6</sup> *CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers*, *supra* note 2 (“The new rule requires financial institutions to limit consumers’ losses when funds are stolen or cards are lost, investigate and resolve errors, and give consumers free and easy access to account information . . . [and] finalized “Know Before You Owe” disclosures . . . . [P]repaid companies must now generally offer protections similar to those for credit cards if consumers are allowed to use credit on their accounts to pay for transactions that they lack the money to cover.”).

<sup>7</sup> Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. at 83,934.

<sup>8</sup> *Id.* (“The final rule’s definition of prepaid accounts specifically includes payroll card accounts and government benefit accounts that are currently subject to Regulation E.”); *see also* Gillian B. White, *The New Rules of Digital Cash*, THE ATLANTIC DAILY (Oct. 5, 2016), <https://www.theatlantic.com/business/archive/2016/10/cfpb-prepaid-venmo/503000/> [<https://perma.cc/PW2C-MADE>] (“Venmo and PayPal . . . allow users not only to pay each other directly, but to store money within the platform [and will] be required to follow stricter guidelines . . .”).

<sup>9</sup> Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. at 83,934 (listing the exclusions from the definition of prepaid accounts).

the objections many market participants have raised to the rule, how the CFPB is dealing with those objections, and how those objections may influence future application of the rule.

### B. The Prepaid Card Market

Originally, merchants created prepaid cards to replace “paper-based” and related payment devices, such as gift certificates and transit tokens.”<sup>10</sup> The prepaid card industry expanded in the 1980s and 1990s with prepaid telephone cards and Electronic Benefits Transfer (EBT) cards.<sup>11</sup> Although consumers have used them for many years, prepaid cards have become “among the fastest growing consumer financial products in the United States.”<sup>12</sup> The prepaid card market has grown from less than \$1 billion in 2003 to a projected \$112 billion by 2018.<sup>13</sup> The number of prepaid card users jumped significantly in the wake of the 2008 financial crisis as the number of unbanked and under-banked<sup>14</sup> households reached nearly 30 million.<sup>15</sup> Many of these consumers do not utilize the traditional banking sector because they cannot afford overdraft and maintenance fees, or do not make enough money to meet minimum balance requirements.<sup>16</sup> Additionally, many other unbanked consumers are immigrants and working poor who lack proper documentation, or do not have ready

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<sup>10</sup> Cohen, *supra* note 5, at 219.

<sup>11</sup> *Id.* at 220 (“In the 1980s, prepaid telephone cards emerged into the prepaid market. In the early-1990s, EBT cards became the first open-loop cards introduced to replace paper-based food stamps.”).

<sup>12</sup> CFPB *Finalizes Strong Federal Protections for Prepaid Account Consumers*, *supra* note 2.

<sup>13</sup> *Id.* (“[P]repaid cards grew from less than \$1 billion in 2003 . . . . The total dollar value loaded onto these prepaid cards is expected to nearly double to \$112 billion by 2018.”).

<sup>14</sup> “Unbanked” describes consumers that do not have a checking or savings account. “Under-banked” describes consumers that may have access to a checking or savings account, but primarily rely on “alternative financial services” such as non-bank check cashing services or payday loans; *see Glossary: Household Banking Status and Categories*, FDIC <https://www.economicinclusion.gov/glossary.html> [<https://perma.cc/YPX4-9WMU>] (last visited Nov. 13, 2017).

<sup>15</sup> Cohen, *supra* note 5, at 217 (“[O]ne recent study estimates that more than seven percent—or approximately nine million—of U.S. households are unbanked, and at least 21 million households are underbanked.”).

<sup>16</sup> *Id.*

access to banks in their neighborhoods.<sup>17</sup> Without access to the traditional banking market, these consumers turned to prepaid cards and continue to make up a substantial portion of prepaid card users.<sup>18</sup> Prepaid cards act as an alternative to traditional bank accounts for unbanked and under-banked consumers because they provide consumers with a way to participate in electronic retail markets.<sup>19</sup> Prepaid cards are also becoming more relevant to middle class households, who use them to provide children and caretakers with access to funds while avoiding the danger of misuse or incurring credit card debt.<sup>20</sup>

### C. History and Current Landscape

Congress enacted the Truth in Lending Act (TILA) in 1968 in an effort to educate consumers about the terms and fees of the credit they were using.<sup>21</sup> The act provides substantial protections for consumers, such as the ability to cancel certain transactions and the

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<sup>17</sup> *Id.*

<sup>18</sup> Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. at 83,938 (“[I]t is not surprising that consumers who lack access to more established financial products . . . consistently make up a sizeable segment of the consumer base that uses GPR cards on a regular basis.”).

<sup>19</sup> Zywicki, *supra* note 4, at 1479 (“As such, network branded prepaid cards offer many of the same benefits as debit and credit cards: nearly ubiquitous acceptance, convenience, and the ability to make electronic payments easily, including online payments.”).

<sup>20</sup> *Id.* at 1481–82 (“Prepaid cards are also becoming more mainstream for middle-class families . . . . [S]ome parents now provide their college-bound children with prepaid cards to access funds and make electronic payments without the danger of incurring credit card debt . . . . Prepaid cards also may prove useful for caregivers.”).

<sup>21</sup> *Regulation Z: Loan Originator Compensation and Steering*, BD. GOVERNORS FED. RES. SYS.: COMPLIANCE GUIDE TO SMALL ENTITIES (Dec. 28, 2016), <https://www.federalreserve.gov/bankinfo/regzcg.htm> [<https://perma.cc/XBV8-8EK7>] (“A principal purpose of TILA is to promote informed use of consumer credit . . . .”); *CFPB Laws and Regulations: Regulation Z*, CONSUMER FIN. PROTECTION BUREAU (Oct. 5, 2016), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_truth-in-lending-act.pdf](http://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf) [<https://perma.cc/HX5N-KRXP>] (stating the TILA “was enacted on May 29, 1968”).

right to mandatory upfront cost disclosures from the credit company.<sup>22</sup> However, the bulk of consumer protections under TILA and Regulation Z were aimed at protecting users of traditional credit cards only.<sup>23</sup>

Roughly ten years after TILA, President Carter enacted the Electronic Fund Transfer Act (EFTA) as Title IX to the Consumer Credit Protection Act.<sup>24</sup> The EFTA regulates transactions that “involve the use of electronic means to transfer value.”<sup>25</sup> After amending the EFTA to cover EBT programs in 1994, the Board of Governors of the Federal Reserve (the Board) “also first considered whether all prepaid cards should receive the protections of Regulation E.”<sup>26</sup> Many merchants argued that these regulations would “stifle product development.”<sup>27</sup> After a thorough study, the Board agreed that these regulations would be “premature.”<sup>28</sup> The Board postponed regulations concerning prepaid cards until Congress passed the Credit Card Accountability Responsibility and Disclosure Act (CARD Act) in 2009.<sup>29</sup> The CARD Act added a requirement that prepaid merchants disclose fees for general use prepaid cards and placed restrictions on

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<sup>22</sup> *Regulation Z: Loan Originator Compensation and Steering*, *supra* note 21 (“A principal purpose of TILA is to promote the informed use of consumer credit by requiring disclosures about its terms and costs.”).

<sup>23</sup> See Dennis Replansky, *The Scope of the Truth-in-Lending Act and Regulation Z*, 30 PRAC. LAW 39, 40 (1984) (“For a transaction to be subject to the Act, it must involve consumer credit and a creditor. If either element is absent, the transaction is not subject to the Act or Regulation Z.”).

<sup>24</sup> Peter D. Schellie, *Electronic Fund Transfer Act*, 34 BUS. LAW 1441, 1441 (1978–79) (“[P]resident Carter signed the Financial Institutions Regulatory and Interest Rate Control Act of 1978. One of the titles of this complex legislation added a new Title IX to the Consumer Credit Protection Act, the Electronic Fund Transfer Act.”).

<sup>25</sup> *Id.* at 1442.

<sup>26</sup> Cohen, *supra* note 5, at 230–31 (“In 1994, the Board amended the regulation to bring EBT programs within its coverage . . .”).

<sup>27</sup> *Id.* at 231 (“[T]he prepaid industry protested that these protections would stifle product development[.]”).

<sup>28</sup> Anita Ramasastry, *Confusion and Convergence in Consumer Payments: Is Coherence in Error Resolution Appropriate*, 83 CHI.-KENT L. REV. 813, 836 (2008) (“[T]he Board concluded that it was premature to regulate stored-value products, as such regulation might have an adverse impact on innovation in their development.”).

<sup>29</sup> Zywicki, *supra* note 4, at 1491 (“For example, the Credit Card Accountability and Responsibility Disclosure Act of 2009 (CARD Act) amended the EFTA in three ways with regard to prepaid cards.”).

the use of expiration dates.<sup>30</sup>

Effective October 1, 2011, the Durbin Amendment to the Dodd-Frank Act added the requirement that debit card interchange fees remain “reasonable and proportional” to the card issuer’s marginal cost.<sup>31</sup> The Durbin Amendment defines “debit cards” to include general-use prepaid cards that are issued by banks with more than \$10 billion in assets, unless the issuing bank does not provide funds by check, ACH, or wire transfer.<sup>32</sup> As a result, large banks offer prepaid cards that are devoid of key features such as online bill pay, recurring ACH debit, or ability to transfer funds among accounts. These problems have left prepaid cards with limited functionality.<sup>33</sup>

Many states also regulate the sale and administration of prepaid cards by “placing limits on expiration dates and fees, requiring certain disclosures, and mandating cash redemption of unused card balances.”<sup>34</sup> This fragmented regulatory system allowed consumer risk to build up to detrimental levels during the 2008 financial crisis.<sup>35</sup> The need for a remedial solution sparked the creation of the CFPB under the Dodd-Frank Act.<sup>36</sup> The CFPB is in charge of “supervision and enforcement; direct work with consumers through financial education, as well as through collecting and responding to consumer complaints; market monitoring and research activities; and issuing rules and guidance to implement federal consumer financial law.”<sup>37</sup>

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<sup>30</sup> *Id.* (“[T]he CARD Act added new disclosure requirements regarding fees for store gift cards and general-use prepaid cards . . . [and] limited the circumstances under which a card may feature an expiration date.”).

<sup>31</sup> *Id.* at 1493 (“Effective October 1, 2011, ‘reasonable and proportional’ fees are not to exceed the sum of twenty-one cents . . .”).

<sup>32</sup> *Id.* at 1495 (“‘[D]ebit card’ is defined to include general use prepaid cards . . . . Prepaid cards issued by banks with more than \$10 billion in assets, however, are exempt only if they do not provide access to funds by check, Automated Clearing House (ACH), or wire transfer.”).

<sup>33</sup> *Id.* (“[L]arge banks can only offer prepaid cards with reduced functionality. In particular, large banks cannot offer online bill pay, recurring ACH debit . . . or funds transfer among different accounts . . .”).

<sup>34</sup> *Id.* at 1491.

<sup>35</sup> See Kelly Thompson Cochran, *The CFPB at Five Years: Beyond the Numbers*, 21 N.C. BANKING INST. 55, 56 (2017) (“The momentum to create the Bureau grew out of a widespread recognition that regulatory fragmentation had made it substantially more difficult . . . to address the build up of high levels of consumer and systemic risk[.]”).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 58.

#### D. CFPB Rule of Prepaid Cards

The CFPB issued its new rule on prepaid cards after receiving over 5,000 complaints and researching how mobile payments affect low-income consumers.<sup>38</sup> The CFPB issued this rule pursuant to its legal authority under the EFTA, Dodd-Frank, and TILA.<sup>39</sup> The rule helps ensure that prepaid card users are able to make informed decisions about the products they are using. Prepaid card users also have a right to receive support from the service provider when they experience issues with their card or have a question about their account.<sup>40</sup>

##### 1. *Limits on Consumer Losses for Lost or Stolen Cards*

The first major component of the new rule limits the consumer's financial losses in the event a prepaid card is lost or stolen.<sup>41</sup> When a card is lost or stolen, the consumer should notify the financial institution of the loss within two business days.<sup>42</sup> If consumers provide timely notice, their financial liability is "the lesser of \$50 or the amount of unauthorized transfers made before giving notice."<sup>43</sup> If consumers do not provide timely notice of theft or loss,

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<sup>38</sup> Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. at 83,953–54 ("The Bureau has handled approximately 5,600 prepaid card complaints . . . [and] sought information on how mobile technologies are impacting economically vulnerable consumers . . . [T]he Bureau considered . . . information gathered during consumer testing . . . Further, the Bureau obtained information directly from consumers through focus groups and consumer testing.").

<sup>39</sup> *Id.* at 83958 ("The Bureau is issuing this final rule pursuant to its authority under EFTA, the Dodd-Frank Act, and TILA . . .").

<sup>40</sup> See generally CFPB, *supra* note 2 (discussing how the new rule requires merchants to present information in a way that allows consumers to easily understand and make informed decisions, while also requiring merchants be available to work with consumers to correct errors if they occur.).

<sup>41</sup> *Id.* ("The new rule protects consumers against withdrawals, purchases, or other unauthorized transactions if their prepaid cards are lost or stolen.").

<sup>42</sup> See Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. at 84,002.

<sup>43</sup> *Id.*

they may be held liable for losses up to \$500.<sup>44</sup> In addition to limiting consumer liability, financial institutions now have a duty to work with the consumer to get their money back in a timely manner.<sup>45</sup>

The prepaid card rule should help ensure economically vulnerable consumers do not face insurmountable losses when their cards are lost or stolen.<sup>46</sup> Although this rule further levels the playing field between protections offered to users of prepaid cards and those offered to traditional bank users, discrepancies certainly still exist.<sup>47</sup> This provision of the rule has been positively received, as the CFPB did not receive any objections or comments during the notice and comment period.<sup>48</sup>

## 2. *Investigate and Rectify Errors*

The second major component of the rule requires that the issuing institution make information about prepaid accounts “available for free by telephone, online, and in writing upon request, unless they provide periodic statements by mail.”<sup>49</sup> Institutions are excused from the rule’s requirements if they provide periodic account statements to

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<sup>44</sup> *Id.* (“If timely notice is not given, the consumer’s liability is the lesser of \$500 or the sum of (1) the lesser of \$50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft, and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution.”).

<sup>45</sup> CFPB, *supra* note 2 (“Financial institutions must cooperate with consumers who find unauthorized or fraudulent charges . . . to investigate and resolve these incidents in a timely way, and where appropriate, restore missing funds.”).

<sup>46</sup> *See* Cohen, *supra* note 5, at 216 (“As the popularity of prepaid debit cards increases among the underserved . . . it is important that cardholders are protected by the security of federal law.”).

<sup>47</sup> *Id.* at 227 (“[P]repaid debit cards lack some of the basic legislative and regulatory protections extended to other payment devices.”); *see Prepaid Card Rule, RULES AT RISK*, <http://rulesatrisk.org/prepaid-card-rule/> [<https://perma.cc/XR97-2KTP>] (last visited Oct. 15, 2017) (“The CFPB’s prepaid card rule closes the gap in protections between bank account debit cards and prepaid cards, which is especially important to low-income and younger consumers, groups that use prepaid cards in higher numbers.”).

<sup>48</sup> *See* Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. at 84002 (“The Bureau did not receive any comments on this portion of the proposal.”).

<sup>49</sup> CFPB, *supra* note 2.



their consumers.<sup>50</sup> Additionally, if a consumer discovers errors or fraudulent charges on their account while reviewing the disclosed information, the issuing institution must work with the consumer to resolve the error and efficiently restore any missing funds.<sup>51</sup>

Keeping consumers up-to-date on the status of their account will allow them to quickly find and fix problems before they experience substantial losses. This requirement is crucial for low-income users who do not have a wide margin for error on their accounts.<sup>52</sup> Additionally, some branded prepaid cards already offer protections resembling those proposed under the CFPB's rule, which indicates these error resolution procedures are feasible for the prepaid card industry.<sup>53</sup> However, to receive full fraud and error protection benefits, the current version of the rule requires consumers to register their accounts. Many merchants are concerned that registration would negatively affect consumers.<sup>54</sup> The rule may make merchants hesitant to extend error resolution protections to consumers making good-faith claims that have failed or forgotten to register their accounts out of fear of granting fraudulent claims.<sup>55</sup> This burden would fall heavily on low-

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<sup>50</sup> See *id.* ("Financial institutions must make certain account information available for free by telephone, online, and in writing upon request, unless they provide periodic statements by mail.").

<sup>51</sup> *Id.* ("Financial institutions must cooperate with consumers . . . to investigate and resolve these errors in a timely way.").

<sup>52</sup> See *id.* ("The rule ensures that consumers have access to their account balances, their transaction history, and the fees they've been charged."); Aimee Picchi, *Vast Number of Americans Live Paycheck to Paycheck*, CBS NEWS (Aug. 24, 2017), <https://www.cbsnews.com/news/americans-living-paycheck-to-paycheck/> [<https://perma.cc/2VQN-D4WS>] ("Almost 8 out of 10 American workers say they live paycheck to paycheck to make ends meet, according to a new survey from career builder. That can force people to take on debt or otherwise struggle when an unexpected bill arises.").

<sup>53</sup> Ramasastry, *supra* note 28, at 843 ("Even closed or mixed system cards, such as the Starbucks card, use processes that mimic Regulation E in terms of timelines for reporting errors. This shows that error resolution procedures are feasible for such types of products.").

<sup>54</sup> CFPB Seeks Comment on Proposed Changes to Prepaid Rule, CONSUMER FIN. PROTECTION BUREAU (June 15, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-comment-proposed-changes-prepaid-rule/> [<https://perma.cc/VE5C-WB2Y>].

<sup>55</sup> See *id.* ("[C]onsumers would need to register their accounts to receive full fraud and error protection benefits . . . . Some companies have claimed fraud concerns could lead them to changes that would have negative outcomes for consumers who do not register their accounts.").

income and undocumented workers, who may lack consistent access to the internet to register their account.<sup>56</sup>

### 3. Disclosures

The CFPB's new rule also implements mandatory disclosures that require financial institutions to provide clear and concise information that consumers can readily understand.<sup>57</sup> These "know before you owe" disclosures come in two parts: a short form and a long form.<sup>58</sup> The short form is a succinct overview of the prepaid account information, including relevant fees such as ATM withdrawal and balance inquiry fees.<sup>59</sup> Consumers have the option of accessing the more detailed long form for a comprehensive overview of the account's characteristics prior to purchase.<sup>60</sup>

Consumers are frequently not aware of (1) the fees associated with prepaid cards or (2) the lack of protections for prepaid cards that other credit and debit cards carry.<sup>61</sup> "Know before you owe" disclosures will make it easier for consumers to compare products and make the most educated decision about which product is right for them.<sup>62</sup> Additionally, the CFPB has modeled the disclosure requirements after those used with student loans and mortgages,

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<sup>56</sup> See *Digital Inequality in Low Income Households*, U.S. DEP'T OF HOUS. AND URBAN DEV.: EVIDENCE MATTERS 13 (Fall 2016), <https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html> [<https://perma.cc/42CV-HCLS>] (arguing that internet access is critical to taking "full advantage of opportunities in education, employment, health and social services . . . [y]et those most in need of social services are often least able to get online and access those services[.]").

<sup>57</sup> *CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers*, *supra* note 2.

<sup>58</sup> *Id.* ("The CFPB rule requires two forms, one short and one long . . .").

<sup>59</sup> *Id.* ("The short form concisely and clearly highlights key prepaid account information, including the fees the CFPB believes are most important to consumers . . . includ[ing] a periodic fee, a per purchase fee, ATM withdrawal and balance inquiry fees . . .").

<sup>60</sup> *Id.* ("Consumers will also get or be able to access the comprehensive long form disclosure containing a complete list of fees . . . before acquiring the account.").

<sup>61</sup> Cohen, *supra* note 5, at 224 ("[U]nderserved consumers are often uneducated about the array of features, fee structures, and lack of protections attributed to prepaid cards.").

<sup>62</sup> See *CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers*, *supra* note 2.

increasing the possibility consumers will understand them.<sup>63</sup>

#### 4. Credit Protections

Where prepaid cards allow consumers to make payments larger than their balance, financial institutions must offer protections like those offered to users of traditional credit cards.<sup>64</sup> These protections include considering consumers' ability to pay for the items when they do not have a sufficient prepaid balance to cover their purchases.<sup>65</sup> Financial institutions must also give consumers regular billing statements that detail how much they owe, and give consumers at least 21 days to pay their balance.<sup>66</sup>

Many consumers who use prepaid cards are unable to acquire a traditional credit card.<sup>67</sup> The CFPB's new rule gives consumers safe, regulated access to credit who would otherwise be shut out of the market altogether.<sup>68</sup> Additionally, the 21-day requirement eliminates surprise bills and helps ensure consumers have time to gather funds to pay their bills, which is crucial for consumers living paycheck to paycheck.<sup>69</sup> Such protections help consumers participate in various markets for goods and necessities and fuel a strong economy.<sup>70</sup>

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<sup>63</sup> *Id.* ("This follows the tradition of the Bureau's "Know Before You Owe" disclosure forms for mortgages and student financial aid offers.").

<sup>64</sup> *Id.* ("[P]repaid issuers must give consumers protections similar to those on credit cards if consumers are allowed to use certain linked credit products to pay transactions that their prepaid funds would not fully cover.").

<sup>65</sup> *Id.* ("Prepaid companies, like credit card issuers, must make sure consumers have the ability to repay the debt before offering credit.").

<sup>66</sup> *Id.* ("Prepaid companies have to give consumers regular statements . . . detail[ing] fees, and if applicable, the interest rate, what they have borrowed, how much they owe . . .").

<sup>67</sup> Zywicki, *supra* note 4, at 1502 ("Many consumers, however, are unable to obtain or maintain a bank account or to use a credit card responsibly.").

<sup>68</sup> See Cohen, *supra* note 5, at 215–28 (discussing both the risks and benefits of prepaid card products for unbanked and underbanked consumers).

<sup>69</sup> See Picchi, *supra* note 52 ("Almost 8 out of 10 American workers say they live paycheck to paycheck to make ends meet . . . [which] can force people to take on debt or otherwise struggle when an unexpected bill arises.").

<sup>70</sup> Governor Elizabeth A. Duke, The Systemic Importance of Consumer Protection (June 10, 2009) (transcript available at <https://www.federalreserve.gov/newsevents/speech/duke20090610a.htm> [<https://perma.cc/45HR-CM8N>]) (emphasizing "the importance of both the availability of credit and the ability of consumers to use such credit safely to increase their own well-being" and promoting the idea that "consumer protection is not just good for consumers;

### G. Objections and Future of the Rule

Prepaid card usage continues to grow among consumers of various income brackets, making protections vital to prevent losses and educate consumers.<sup>71</sup> Though some prepaid card providers offer various protections on their own, there remains no streamlined federal protection for users of prepaid cards besides the CFPB's new rule.<sup>72</sup> Creating a streamlined rule that covers all prepaid card providers clarifies expectations for consumers and establishes predictability, which allows new entities to compete in the market.<sup>73</sup> Additionally, many key players in the prepaid card industry approve of the new rule.<sup>74</sup> Steve Streit, Founder and CEO of prepaid card company Green Dot, has publicly supported the rule, praising it as "another milestone on [the] path to long term sustainability and critical mass."<sup>75</sup> The CFPB's new protections should make prepaid cards easier to use and

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it is also necessary to restore investor confidence and promote a strong and stable economy").

<sup>71</sup> Zywicki, *supra* note 4, at 1498 ("[A]s GPR prepaid cards are becoming more popular, they are also becoming more mainstream demographically and are prospering in certain middle-class niches."); *Consumer Financial Protection Bureau Has Released New Prepaid Card Rules*, BUS. INSIDER (Oct. 7, 2016, 12:30 AM), <http://www.businessinsider.com/consumer-financial-protection-bureau-has-released-new-prepaid-card-rules-2016-10> [<https://perma.cc/M3KR-89LW>] ("As the space continues to grow . . . protections that mimic those afforded to bank accounts will be key.").

<sup>72</sup> See *CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers* *supra* note 2 ("Prepaid accounts are among the fastest growing consumer financial products in the United States . . . but until now they had only limited federal protections.").

<sup>73</sup> See Ramasastry, *supra* note 28, at 844 ("Trying to craft uniform but less burdensome processes may provide for an efficiency and predictability that will help new entities compete and offer consumers a familiar type of error resolution process.").

<sup>74</sup> Editorial, *Prepaid Card Users Deserve Protection*, THE BISMARCK TRIB. (May 12, 2017), [http://bismarcktribune.com/news/opinion/editorial/prepaid-card-users-deserve-protection/article\\_1d7fa202-f279-50ce-8441-7205537ccb6a.html](http://bismarcktribune.com/news/opinion/editorial/prepaid-card-users-deserve-protection/article_1d7fa202-f279-50ce-8441-7205537ccb6a.html) [<https://perma.cc/YC2X-ZYHA>] ("Consumers Union reports that most industry leaders support the rules . . .").

<sup>75</sup> News Release, Green Dot Corporation, *Green Dot Supports CFPB's Proposed Rules for Prepaid Debit Cards* (Nov. 14, 2014) (available at <http://ir.greendot.com/phoenix.zhtml?c=235286&p=irol-newsArticle&ID=1989830> [<https://perma.cc/37N2-TE34>]).

reduce exorbitantly high fees. The rule will ideally make the cards more affordable for lower income consumers.<sup>76</sup>

Many market participants have raised objections to the rules claiming they will actually hurt low-income consumers.<sup>77</sup> One major concern is the elimination of fees may force prepaid card firms to charge their customers in other ways to still make a profit on the cards.<sup>78</sup> Another compelling concern is merchants will exit the prepaid market altogether if compliance with the rule proves particularly burdensome.<sup>79</sup> One of the largest objections is the rule's coverage of digital wallets, like PayPal and Venmo, which allows users to store money in the platform to pay other users.<sup>80</sup> Many opponents to the rule believe established companies can easily survive the change, but heavy regulation would inhibit growth in a young market like the mobile payments industry.<sup>81</sup> Many are concerned the restrictions on digital wallets will "stifle innovation" and discourage new businesses from joining the market.<sup>82</sup> To deal with these concerns, the CFPB delayed the effective date of the rule to April 1, 2018, and requested additional comments from industry participants.<sup>83</sup>

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<sup>76</sup> *Consumer Financial Protection Bureau Has Released New Prepaid Card Rules*, *supra* note 71 ("The regulations will make prepaid card products considerably more consumer friendly . . . . Increasing fee disclosure and limiting what companies can charge for make these products more accessible to their often low-income underserved users.").

<sup>77</sup> *Id.*; *Prepaid Card Users Deserve Protection*, *supra* note 74.

<sup>78</sup> *Consumer Financial Protection Bureau Has Released New Prepaid Card Rules*, *supra* note 71.

<sup>79</sup> Editorial, *Other Viewpoints: Keep Limits on Prepaid Debit Cards*, THE COLUMBUS DISPATCH (May 12, 2017), <http://www.dispatch.com/opinion/20170512/other-viewpoints-keep-limits-on-prepaid-debit-cards> [<https://perma.cc/9T62-XT5F>] (summarizing concerns that "regulation risks narrowing the availability of the cards, and that too many burdens would lead companies to retreat from the market").

<sup>80</sup> Gregory Roberts, *CFPB's Prepaid Rules Add Risk for Google, Paypal*, BLOOMBERG BNA (Nov. 2, 2016), <https://www.bna.com/cfpbs-prepaid-rules-n57982082123/> [<https://perma.cc/79CJ-6UE5>] ("Both Google and PayPal objected to the inclusion of mobile wallets in the CFPB rule.").

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* ("[I]t's going to, if not stifle innovation, make it more challenging.").

<sup>83</sup> *CFPB Seeks Comment on Proposed Changes to Prepaid Rule*, *supra* note 54 ("Today's proposal seeks public comment on several adjustments to the prepaid rule. This proposal addresses concerns raised by prepaid companies . . . ."); Gregory Roberts, *CFPB Proposes 6-Month Delay on Prepaid Card*

## H. Conclusion

The prepaid card industry satisfies a vital need for consumers who otherwise have no access to traditional banking systems.<sup>84</sup> Other consumers do not use a traditional bank account because of accompanying costs and complexity.<sup>85</sup> The CFPB's new rule attempts to provide a cost-effective, simple, and regulated alternative for these consumers to access credit and participate in online markets. Though the CFPB is still sorting out many details of the new rules, they are actively considering public comments and adjusting the rule as necessary.<sup>86</sup> However, the CFPB remains committed to enacting regulations designed to protect and empower consumers, particularly those most vulnerable, and ensure they have fair and educated information about their accounts.<sup>87</sup>

Sarah Reeves<sup>88</sup>

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*Rule*, BLOOMBERG BNA (Mar. 10, 2017), <https://www.bna.com/cfpb-proposes-6month-n57982085031/> [<https://perma.cc/WTG5-MQDZ>].

<sup>84</sup> Zywicki, *supra* note 4, at 1498 (“[U]nintended consequences of recent regulatory interventions are particularly important in promoting adoption of prepaid cards by . . . low-income consumers who are driven out of the banking system by new fees and other costs . . .”).

<sup>85</sup> *Id.* at 1503 (“Research reveals . . . why prepaid card customers may prefer prepaid cards over bank accounts and credit cards: costs, alienation and distrust of the banking system, imposing self-control on spending decisions . . .”).

<sup>86</sup> *CFPB Seeks Comment on Proposed Changes to Prepaid Rule*, *supra* note 54.

<sup>87</sup> See *Congress Should Not Block the Consumer Financial Protection Bureau's Prepaid Accounts Rule*, NAT'L CONSUMER L. CTR., <https://www.nclc.org/issues/congress-should-not-block-cfpb-prepaid-rule.html> [<https://perma.cc/K9F2-9BNQ>] (last visited Oct. 15, 2017) (“The CFPB has expressed its commitment to well-tailored and effective regulations, is continuing its outreach to industry stakeholders . . . .”); *The Bureau*, CONSUMER FIN. PROTECTION BUREAU, [www.consumerfinance.gov/about-us/the-bureau/](http://www.consumerfinance.gov/about-us/the-bureau/) [<https://perma.cc/VCK8-2JWN>] (last visited Oct. 15, 2017).

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