

Hon. Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

March 23, 2015

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

Dear Director Cordray,

The undersigned student, consumer, civil rights, and labor groups write in support of the Consumer Financial Protection Bureau's proposed rule on prepaid cards. In conjunction with a strong new Department of Education rule on campus banking products, the Bureau's prepaid card rule would provide full protections for students using prepaid cards on campus and off.

College students are a key segment of prepaid market, but prepaid cards lack essential consumer protections

Students and young people are a key market for prepaid cards.¹ Prepaid use rates are highest among the youngest adults.² College students in particular present an attractive opportunity for prepaid marketers, who see the campus as the "perfect environment for prepaid cards."³ But prepaid accounts lack the full regulatory oversight necessary to make them safe for students, such as fraud protections and error resolution rights, information disclosure, and protection from abusive fees like overdraft.

Exclusive revenue-sharing and other marketing agreements between colleges and prepaid card issuers exacerbate the lack of consumer protections

College students are also particularly vulnerable to the lack of prepaid card protections because of the unfair and deceptive marketing tactics that limit their choice on the market. As many reports have detailed, agreements between colleges and financial institutions steer students into college-sponsored prepaid and checking accounts that may not be in the students' best interests.⁴

¹ Susan Herbst-Murphy and Greg Weed, *Millennials with Money: A New Look at Who Uses GPR Prepaid Cards*, Payment Cards Center, Federal Reserve Bank of Philadelphia (Sept. 2014), available at <http://www.phil.frb.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2014/D-2014-Millennials.pdf>.

² *Id.* at 2.

³ MasterCard Worldwide, *Engage Students with Reloadable Prepaid Cards* (Jul. 2010), at https://www.partnersinprepaid.com/pdf/engage_students_with_reloadable_prepaid_cards.pdf.

⁴ See, e.g., Government Accountability Office, *College debit cards: Actions needed to address ATM access, student choice, and transparency* (2014), available at <http://www.gao.gov/assets/670/660919.pdf>; Department of Education, Office of Inspector General, *Third-party servicer use of debit cards to deliver Title IV funds* (2014), available at <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf>; Consumer Financial Protection Bureau, *Perspectives on Financial Products Marketed to College Students*, Presentation to the Department of Education

The Bureau's pending Safe Student Account initiative also reflects the challenges inherent to campus financial product marketing partnerships.⁵ These accounts have been found to use deceptive tactics, such as designing websites and mailings that lead students to believe that their financial aid will be delayed if they do not choose the sponsored account, or even deliberately delaying disbursement to other, non-sponsored accounts.⁶ Co-branding the cards with the school's logo and integrating it with student ID functionality also may push the student to select the account over other options.

Rather than having to freely compete for student business, the sponsored account issuers get priority access. The agreements between prepaid card issuers and colleges often allow the issuer exclusive marketing access to the student body at key moments in a student's financial life – like choosing how to receive their student loan money when they first enroll, or getting their first student ID card that can double as a prepaid account. The schools assist the issuer by providing them with personal information and marketing the card. This transforms campus life into a lucrative marketing channel for financial institutions, and the resulting lack of competition may hurt students. As Director Cordray has noted, “Without consumer choice, a key element of market discipline is lacking. The result is to permit or even facilitate a distinct indifference to the interests of individual consumers.”⁷

In return for providing exclusive access to the student body and student personal information, schools receive discounted services or a share of the prepaid issuer's revenue. But revenue sharing could lead to students being steered unknowingly into more expensive accounts. Students, who trust their college as a steward of their financial aid dollars, may also reasonably believe that the school is presenting them with the best deal on the market for the student – never realizing that the school's actual financial incentives align with increasing the account issuer's revenue. This dynamic is very similar to other harmful revenue-sharing arrangements that Congress and regulators have taken steps to end: private student loan kickbacks and on-campus credit card marketing revenue sharing arrangements; and mortgage broker compensation

Negotiated Rulemaking Session 14 (Mar. 26, 2014) available at http://files.consumerfinance.gov/f/201403_cfpb_presentation-to-department-education-rulemaking-committee.pdf; Suzanne Martindale, Consumer Reports, *Campus banking products: College students face hurdles to accessing clear information and accounts that meet their needs* (2014), available at http://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf; Richard Williams and Ed Mierzwinski, U.S. PIRG, *The campus debit card trap: Are bank partnerships fair to students?* (2012), available at http://www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf.

⁵ 80 Fed. Reg. 4255 (Jan. 27, 2015).

⁶ Government Accountability Office, *College debit cards: Actions needed to address ATM access, student choice, and transparency* (2014) at 27-28, available at <http://www.gao.gov/assets/670/660919.pdf>; ; Department of Education, Office of Inspector General, *Third-party servicer use of debit cards to deliver Title IV funds* (2014) at 9-10, available at <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf>.

⁷ Prepared Remarks by Richard Cordray, Director of the Consumer Financial Protection Bureau, Consumer Advisory Board Meeting, Feb. 20, 2013, at <http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-at-a-consumer-advisory-board-meeting/>.

arrangements that steered consumers into more expensive loans than they could have found on a level playing field.⁸

Overdraft fees on prepaid cards would pose a particular harm to students and should be banned

So-called overdraft protection on prepaid cards is of particular concern to students. Prepaid cards should be required to be, in fact, prepaid. Overdraft programs in the checking account market have a history of using predatory practices aimed at maximizing fee revenue from those least able to avoid these fees, and younger Americans are more likely to be charged overdraft fees than other age groups.⁹ Overdraft is a wholly unique form of credit, often accessed unconsciously when a consumer has not intended to access credit at all. The overdraft-related provisions the Bureau has proposed are not sufficient to prevent efforts by some issuers to maximize these fees and the consequent serious financial harm to students.

The Bureau should enact strong prepaid protections

Given the rise of prepaid card use among students and young consumers, and the perils that they face from campus prepaid marketing agreements, we enthusiastically support the Bureau's proposal to improve prepaid card consumer protections. We urge the CFPB's to enact reforms requiring that:

- Prepaid cards be protected from loss, theft, unauthorized charges, and unfair fees.
- Issuers provide clear disclosures, including how fees will change after the student leaves school, and easy, low-cost access to account information.
- Overdraft fees be prohibited.
- All accounts be covered by FDIC insurance.
- Students receive clear, neutral presentation of their options for receiving their money, with time to choose and the right to select direct deposit to an existing account as their first option for receiving funds, with no delays created for deposits to existing accounts.
- Campus accounts that are designed and serviced by nonbanks, and functionally resemble prepaid accounts, should be covered as prepaid cards.

The Bureau's rules should harmonize with the Department of Education's rules to provide full protection to students

⁸ Congress banned revenue sharing and other harmful practices between private student loan companies and colleges in the Higher Education Opportunity Act of 2008 and the Truth in Lending Act. 20 U.S.C. § 1094(e) and (a)(25); 20 U.S.C. § 1019a; 15 U.S.C. § 1650(b) and (c). The CARD Act limited the harmful impact of revenue sharing between colleges and credit card companies by imposing heightened underwriting standards and marketing restrictions. 15 U.S.C. §§ 1637(c)(8) and 1650(f). The Federal Reserve, and later the Bureau as directed by Congress, limited harmful mortgage broker compensation practices. Consumer Financial Protection Bureau, Final Rule, *Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z)*, 78 Fed. Reg. 11280, 11280 (Feb. 15, 2013).

⁹ Consumer Financial Protection Bureau, *Data Point: Checking Account Overdraft at 5* (with 11 percent of account holders aged 18-25 incurring more than 10 overdraft/non-sufficient funds fees in a year) (July 2014), available at http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf; Rebecca Borné and Peter Smith, Center for Responsible Lending, *The State of Lending: High-Cost Overdraft Fees* (2013), available at <http://www.responsiblelending.org/state-of-lending/overdrafts/>.

We agree in general with the Bureau's proposal that credit offered to prepaid cardholders should comply with credit card rules. However, we note that the Department of Education has already exercised its clear authority over campus prepaid cards in the current Cash Management Rule, which prohibits campus prepaid cards from being converted to credit cards or other credit instruments, including overdraft.¹⁰ Thus, the existing Cash Management Rule provides additional protections that exceed the CFPB proposal, since the CFPB proposal allows prepaid cards to be converted to credit cards. At present, the Department of Education is considering updates to the Cash Management Rule to ensure choice, minimum account standards, and transparency of contracts between schools and financial institutions for the marketing of campus banking products. We urge the CFPB and the Department of Education to harmonize their existing and new rules as both agencies continue to oversee prepaid cards and campus banking products. Working together, the two agencies can provide a full spectrum of uniform protection and oversight.

Thank you for considering our comments.

Sincerely,

American Federation of Teachers
Americans for Financial Reform
Center for Responsible Lending
Consumer Action
Consumers Union
NAACP
New Jersey Citizen Action
One Wisconsin Now
Student Debt Crisis
Student Labor Action Project
Tennessee Citizen Action
U.S. Public Interest Research Group
United States Student Association
Woodstock Institute
Young Invincibles

¹⁰ 34 C.F.R § 668.164(c)(3)(vii).