



## POLICY & ACTION FROM CONSUMER REPORTS

March 19, 2015

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**RE: Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) [Docket No. CFPB—2014—0031]**

Dear Ms. Jackson:

Consumers Union, the policy and advocacy division of Consumer Reports,<sup>1</sup> appreciates this opportunity to comment on the Bureau's proposed rules for prepaid accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z). After more than a decade of advocating for prepaid account protections, we are pleased that the Bureau has put forth a strong proposed rule. We support the Bureau's proposal and offer some suggestions for further improvement.

### SUMMARY

We applaud the Bureau for proposing strong rules to protect prepaid users, and support:

- Extending Regulation E's protections against fraud and loss broadly to general-use prepaid accounts;
- No-fee access to account information, with dispute resolution periods triggered by when a consumer actually receives information showing an error;
- Straightforward and easily accessible disclosures that are provided to consumers before acquiring an account;
- Application of Truth in Lending to any credit offered in conjunction with prepaid products; and
- Posting of prepaid program agreements both on providers' and the Bureau's websites.

We also urge the Bureau to strengthen the proposed rules by adopting these modifications:

- Extending prepaid protections to healthcare spending accounts, gift cards with balances of or over \$500, and some virtual currency wallets;
- Banning all forms of overdraft and overdraft fees for prepaid products;
- Requiring that all accounts be structured to qualify for pass-through deposit insurance;
- Prohibiting abusive inactivity fees;
- Ensuring that all student accounts are covered by strong protections, in harmony with relevant Department of Education regulations;
- Adding additional safeguards to ensure consumer choice about whether or not to use government benefits or payroll cards; and
- Banning the use of arbitration agreements in consumer financial services contracts.

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<sup>1</sup> Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually.

## **A. THE DEFINITION OF PREPAID ACCOUNT SHOULD BE BROAD AND THE BUREAU SHOULD CONSIDER APPLYING REGULATION E PROTECTIONS TO VIRTUAL CURRENCY WALLETS**

Consumers Union has long advocated that consumers relying on prepaid accounts deserve the same protections that debit card users enjoy.<sup>2</sup> Millions of Americans have their wages, government benefits payments, tax refunds and other income regularly loaded into prepaid card accounts. Once considered a fringe product, prepaid cards are now mainstream financial products, widely used and relied upon by consumers for the same primary purpose: to manage ordinary household funds for purchases, bills and other necessities.<sup>3</sup> Millions of consumers are loading billions of dollars into prepaid accounts and spending that money to meet their daily needs. These consumers deserve the same protections as debit cardholders.

We applaud the Bureau's proposal to expand the Electronic Fund Transfer Act (EFTA) and Regulation E to protect general-use prepaid accounts and peer-to-peer payments. We further urge the Bureau to adopt a definition of "prepaid account" that includes specialized prepaid cards such as health savings accounts, and all network-branded, open-loop reloadable gift cards with \$500 or more.<sup>4</sup> Taking the step to expand the Electronic Funds Transfer Act and Regulation E to include all reloadable prepaid cards and reloadable "gift cards" with a balance of at least \$250 is not a giant leap, but rather comes full circle to provide consumer protection to consumers who use plastic payment cards which transfer funds using electronic systems. This is the overarching intent of the EFTA. Consumers depend on these cards to manage important personal funds, which can often have significant amounts loaded onto them. These cards should likewise have full Regulation E protections as with traditional debit cards.

We understand that the Bureau's review of virtual currencies is ongoing, and we urge the Bureau to investigate extending the definition of account to include virtual currency wallets. Proponents of virtual currencies often stress their utility for underserved consumers.<sup>5</sup> While current users are few and most appear to be well-heeled,<sup>6</sup> the fact that many virtual currency businesses appear to be targeting underserved consumers requires that strong consumer protections are in place *before* consumers begin to use them.

Virtual currencies' potential harms are many, but application of Regulation E can help mitigate some of them. The hallmark of transactions in most digital currencies is that they are irreversible, which poses the risk of loss in the event of fraud, hacking, unauthorized use or

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<sup>2</sup> See, e.g., Letter from Consumers Union et al. to Jennifer Johnson, Secretary, Bd. of Governors, Fed. Reserve Sys. (Oct. 28, 2004), available at <http://consumersunion.org/wp-content/uploads/2013/04/payroll1004.pdf>. Before Dodd-Frank, the Federal Reserve Board had jurisdiction over the Electronic Fund Transfer Act and its regulations.

<sup>3</sup> Research indicates that purchases at grocery stores, service stations and restaurants, along with telecommunications and utilities payments make up more than half of the purchases made with prepaid cards. Wilshusen et al. at 65.

<sup>4</sup> The \$500 balance amount is based on a minimum wage earner's biweekly income. Federal minimum wage is \$7.25; gross pay for a full time minimum wage earner is \$580. See U.S. Dep't of Labor, Wages, Minimum Wage, <http://www.dol.gov/dol/topic/wages/minimumwage.htm>.

<sup>5</sup> See e.g., Laura Shin, *Who Will Benefit From Digital Currency? Bitcoin Experiment Gives A Glimpse*, FORBES, Nov. 26, 2014, available at <http://www.forbes.com/sites/laurashin/2014/11/26/who-will-benefit-from-digital-currency-bitcoin-experiment-gives-a-glimpse/> (Quoting Stanford Business School professor and virtual currency company Ripple board member Susan Athey: "Where I see the greatest need are international payments and developing countries where people don't have bank accounts or the ability to create banks accounts, and so are completely cut out of international financial markets and participating in the global economy.").

<sup>6</sup> Tyler Durden, *The Demographics Of Bitcoin*, ZERO HEDGE, Mar. 10, 2013, <http://www.zerohedge.com/news/2013-03-10/demographics-bitcoin>.

mere processing error.<sup>7</sup> Bitcoin is the most widely used virtual currency. Its transactions are, by design, irreversible. If a bitcoin transaction goes wrong, if funds are stolen, if a computer bug wipes out value, or if any other misadventure occurs, the effects can be catastrophic, resulting in the immediate and permanent loss of value. If the onus is on the wallet provider to restore lost or stolen funds, these companies may be incentivized to provide ample security and insurance to protect their customers' value.

## **B. CONSUMERS SHOULD HAVE FULL AND FREE ACCESS TO ACCOUNT INFORMATION AND CUSTOMER SERVICE TO RESOLVE DISPUTES**

With the increased incidence of data breaches leading to tens of millions of consumers having their payment credentials stolen, it is essential that consumers have full and free access to their account information, and that they are able to report errors without incurring a fee for customer service. Regulation E fraud and error protections depend on the timeliness of a consumer's report of unauthorized activity, and consumers need to be able to view account balances, transactions and histories without charge and without delay. If a consumer spots an error, she must be able to report the error right away for free and to get information about a disputed item by contacting customer service at no fee.

Account statements and transaction histories should also be available to consumers at no fee not just online but also in hard copy. Account statements and transaction histories are essential tools for account management, and for alerting consumers to fees that may be depleting funds. Consumer Reports' 2014 review of prepaid products showed that all top-rated prepaid cards allow consumers to check their accounts online and from mobile devices without cost.<sup>8</sup> However, not all consumers have access to computers or mobile devices. For this reason, consumers should have the right to ad hoc paper statements at no fee, or to get monthly paper statements at no more than a nominal fee.

## **C. SIMPLE, UNIFORM DISCLOSURES SHOULD BE PROVIDED TO CONSUMERS BEFORE THEY ACQUIRE AN ACCOUNT**

Consumer Reports' research determined that prepaid account fee information is often hard to find and difficult to understand, and that the lack of common terms to describe fees and features can make it hard to comparison shop.<sup>9</sup> Prepaid providers may not post complete fee information in places a consumer is likely to look, while others may provide fee schedules that are hard to read, with asterisks and footnotes leading to incomplete or incomprehensible explanations of fees and features.

The proposed rules regarding short and long form disclosures would help remedy some of these problems, but more should be done. The Bureau should further strengthen the proposed rules to require that disclosures use uniform terms and phrases to describe fees, not just terms that are substantially similar to those proposed by the Bureau. The lack of consistency in fee names and descriptions across cards makes it difficult for consumers to compare fees and features across prepaid offerings. For example, in 2013, Consumer Reports found four different terms used to describe the initial fee to acquire a prepaid card: activation fee, issuance fee, purchase

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<sup>7</sup> THE CLEARING HOUSE & INDEP. CMTY. BANKERS OF AM., VIRTUAL CURRENCY RISKS AND REGULATION 5 (2014), available at <http://www.infobytesblog.com/wp-content/uploads/2014/06/ICBA-TCH-VirtualCurrencyWhitePaperJune2014.pdf>.

<sup>8</sup> CONSUMER REPORTS, PREPAID CARDS: HOW THEY RATE 2014 (2014), available at [https://consumersunion.org/wp-content/uploads/2014/11/Prepaid\\_Cards\\_How\\_They\\_Rate\\_2014.pdf](https://consumersunion.org/wp-content/uploads/2014/11/Prepaid_Cards_How_They_Rate_2014.pdf).

<sup>9</sup> CONSUMER REPORTS, PREPAID CARDS: HOW THEY RATE ON VALUE, CONVENIENCE, SAFETY AND FEE ACCESSIBILITY AND CLARITY (2013), available at [http://defendyourdollars.org/wordpress/wp-content/uploads/2013/07/Prepaid\\_Report\\_July\\_2013.pdf](http://defendyourdollars.org/wordpress/wp-content/uploads/2013/07/Prepaid_Report_July_2013.pdf).

fee and set up fee.<sup>10</sup> Uniform terminology will help end the confusion and enable better comparison shopping.

We further urge the Bureau to develop and mandate uniform terms and descriptions for prepaid account features. For example, some prepaid cards offer features, such as bill pay, that potentially benefit consumers. As Consumer Reports found this fall, bill pay is an area where consumers are likely to encounter confusion.<sup>11</sup> Bluebird, a prepaid card from American Express and Walmart, lists “bill pay” separately from the paper checks Bluebird customers can use.<sup>12</sup> By contrast, RushCard offers bill pay, which includes allowing consumers to have a paper check sent to a payee from a RushCard account.<sup>13</sup> The Univision MasterCard Prepaid Card website advertises that it is “Easy to Pay Bills” with its prepaid card, but upon clicking through to the “Easier Way to Pay Bills” page, consumers will find that there is no bill pay feature comparable to that of Bluebird or RushCard. Rather, to pay a bill consumers are told: “Simply contact your provider and present your card as the form of payment.”<sup>14</sup> There is also a disclaimer: “\*Not all merchant [sic] allow payments on a prepaid card. Check with your service provider for further details.”<sup>15</sup> This level of confusion can be eliminated if the Bureau proposes clear definitions for common features and requires uniform terms to describe them.

#### **D. THE BUREAU SHOULD BAN OVERDRAFT AND OVERDRAFT FEES; ANY OFFERS OF CREDIT TO PREPAID USERS SHOULD BE PROHIBITED UNTIL 90 DAYS AFTER ACCOUNT OPENING**

While we applaud the expansion of the Truth in Lending Act protections to any credit offered to prepaid card users, we urge the Bureau to do more. Credit features are inappropriate on prepaid cards, as many consumers use prepaid cards to avoid accruing debt. In particular, those with bank accounts and without use prepaid cards to get control of their financial lives, including limiting spending, avoiding bank and check cashing fees, and making electronic payments.<sup>16</sup> We therefore urge the Bureau to ban overdraft on prepaid accounts. Transactions that would require more than available funds should be denied. This may not always be possible, due to technological constraints. Therefore, to the extent that it is not technologically practicable to prevent a consumer from spending more funds than are available, prepaid providers should be banned from assessing a fee when a transaction has been processed despite the lack of funds in a prepaid card account. Prepaid card issuers should not profit from or grow their profits from assessing abusive overdraft fees.

Should the Bureau decide to permit providers to offer consumers well-designed, safe credit products to prepaid card customers, solicitations to sign up for or use credit should not occur until after the consumer has used the prepaid product for at least 90 days, not just 30 days as proposed. The delay would provide consumers a reasonable time to get acquainted with the prepaid account and with the prepaid provider. A delay would also allow the provider to better evaluate consumers for credit offers.

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<sup>10</sup> *Id.* at 11.

<sup>11</sup> PREPAID CARDS: HOW THEY RATE 2014, *supra* note 8, at 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See, e.g.*, SUSAN HERBST-MURPHY & GREG WEED, PHILADELPHIA FED. RESERVE BANK, MILLENNIALS WITH MONEY: A NEW LOOK AT WHO USES GPR PREPAID CARDS 2-3 (2014), *available at* <http://www.phil.frb.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2014/D-2014-Millennials.pdf>; and

THE PEW CHARITABLE TRUSTS, WHY PEOPLE USE PREPAID CARDS: A SURVEY OF CARDHOLDERS' MOTIVATIONS AND VIEWS 14 (2014), *available at* [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2014/PrepaidCardsSurveyReportpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsSurveyReportpdf.pdf)



While we support a complete ban on linked credit, if any credit is offered in conjunction with a prepaid card, it should, as the rules propose, come with the protections available to consumers under the Truth in Lending Act. In particular, we support strong underwriting, a ban on mandatory offset, limits on fees, and reasonable time for repayment.

#### **E. PROVIDERS SHOULD BE REQUIRED TO HOLD PREPAID ACCOUNT FUNDS IN A MANNER THAT ENSURES CONSUMER FUNDS ARE PROTECTED BY PASS-THROUGH DEPOSIT INSURANCE**

Consumers may not understand the nuances of deposit insurance, but they do know that it provides a measure of protection for their funds. It is not enough to require, as the Bureau proposes, the mere disclosure of a lack of deposit insurance. Consumers rely on their prepaid card funds to pay for daily household and personal needs. We urge the Bureau to require that prepaid card-issuing banks set up their prepaid programs to qualify for FDIC insurance for each prepaid account. This could be done by setting up individual card accounts or by complying with the FDIC General Council Opinion No. 8's "pass-through" requirements to provide pass through insurance to individual cardholders.<sup>17</sup> The National Credit Union Administration has similar requirements.<sup>18</sup> Without a mandatory requirement for all prepaid accounts to pass-through FDIC or NCUA insurance to the prepaid account funds, prepaid cards will always be viewed as a subpar product in comparison to traditional debit cards.

#### **F. INACTIVITY FEES SHOULD BE BANNED AS ABUSIVE; DORMANT CONSUMER ACCOUNTS SHOULD BE CLOSED AND FUNDS RETURNED TO CONSUMERS AT NO FEE**

We urge the Bureau to ban inactivity fees, often assessed after an account has been dormant for 90 days or more. Many prepaid cards charge inactivity fees, also known as dormancy fees or maintenance fees. Inactivity fees are assessed when a prepaid card goes unused for a certain period. These fees vary. For example, Rush Card charges \$1.95 when a card has not been used for 90 days, while NetSpend charges \$5.95. Once these fees kick in they can quickly eat up consumer funds, sometimes before consumers realize what is happening. These fees should not be assessed on accounts, and should be banned as abusive. If an account is dormant for over 60 days, consumers should be provided notice that if the account remains dormant for another 30 days, it will be closed. Any remaining balance once an account is closed for inactivity should be returned to the consumer promptly at no fee.

#### **G. ADDITIONAL SAFEGUARDS SHOULD BE ADDED TO ENSURE CONSUMER CHOICE AND CONTINUITY IN PAYROLL AND STUDENT ACCOUNTS**

Some workers may find payroll cards a convenient non-cash option for receiving wages, but consumers report feeling forced or steered into using the cards.<sup>19</sup> Some employees may be given payroll cards as the default option for receiving wages, instead of being presented with different choices for how to be paid.<sup>20</sup> Regulation E prohibits employers and financial institutions

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<sup>17</sup> Op. Gen. Counsel, Fed. Deposit Ins. Corp. 8 (2008), available at <http://www.gpo.gov/fdsys/pkg/FR-2008-11-13/pdf/E8-26867.pdf>.

<sup>18</sup> Op. Gen. Counsel, Nat'l Credit Union Admin. (2009), available at <http://www.ncua.gov/Legal/OpinionLetters/OL2009-1022.pdf>.

<sup>19</sup> Jessica Silver-Greenberg & Stephanie Clifford, *Paid via Card, Workers Feel Sting of Fees*, NEW YORK TIMES, June 30, 2013, at A1, [http://www.nytimes.com/2013/07/01/business/as-pay-cards-replace-paychecks-bank-fees-hurt-workers.html?\\_r=0](http://www.nytimes.com/2013/07/01/business/as-pay-cards-replace-paychecks-bank-fees-hurt-workers.html?_r=0) (quoting Ms. Deyanira Del Rio, associate director of the Neighborhood Economic Development Advocacy Project (now the New Economy Project): "We hear virtually every week from employees who never knew there were other options, and employers certainly don't disabuse workers of that idea.")

<sup>20</sup> Complaint at 4, *Gunshannon v. Albert/Carol Mueller T-A McDonald's et al.*, No. 7010-2013 (Pa. C.P. Luzerne County filed June 13, 2013).

from requiring employees to establish an account at a particular institution as a condition of employment. The Bureau has made an effort to ensure that employers know that employees cannot be compelled to use payroll cards.<sup>21</sup> While the proposed disclosure would require notice reminding employees of their right to select alternative ways to receive their pay, we urge the Bureau to go further to ensure consumer choice. Specifically, we urge the Bureau to require that employers first offer employees the options of direct deposit or a paper check before employees are enrolled in a payroll card program, and that employers must get affirmative written consent from employees before they can be issued payroll cards.<sup>22</sup> We are pleased that the Bureau's proposal will extend new protections to prepaid accounts offered to students for receiving their financial aid disbursements. Because financial aid disbursement more broadly falls under the purview of the Department of Education, we urge the Bureau to continue its ongoing coordination with the Department on this issue. It is crucial that both agencies' regulations work in concert to provide strong, uniform protections to all types of campus banking products.

Campus banking products have become an increasing presence on college campuses across the country. They can be structured in a number of ways, including: individual bank accounts that can be linked later on to a student ID card; individual bank accounts managed by a third-party servicer (with funds held at partnering banks); and prepaid accounts.

Although campus banking products may yield benefits to some students who do not have bank accounts before arriving on campus, many students may be steered into products that expose them to higher and more frequent than typical fees – such as point-of-sale transaction fees and ATM fees.<sup>23</sup> A report by the Government Accountability Office identified situations in which schools did not present disbursement options in a “clear and neutral” manner, and “appeared to encourage” students to select school-sponsored accounts.<sup>24</sup> In some cases, choosing a different option – such as the student's pre-existing bank account – required additional documentation that was time-consuming to locate, and in some cases was not readily available online.<sup>25</sup>

The largest participant in campus banking is Higher One, a third-party servicer with approximately half of the campus banking agreements in effect across the country. Higher One offers individual accounts to students by partnering with banks to hold and manage the funds. Students can access and manage funds through their online accounts, or at Higher One ATMs provided on campus. Although Higher One's product offerings are not structured as prepaid accounts, the company has come under fire on numerous occasions for steering students into their products,<sup>26</sup> as well as charging high or unusual fees.<sup>27</sup>

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<sup>21</sup> Consumer Fin. Protection Bureau, CFPB Bulletin 2013-10, Payroll Card Accounts (Regulation E) (Sept. 12, 2013), [http://files.consumerfinance.gov/f/201309\\_cfpb\\_payroll-card-bulletin.pdf](http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf)

<sup>22</sup> Three states require an employee's voluntary written consent before issuing wages on a payroll card, *see* MINN. STAT. § 177.255(6) (2013),

<https://www.revisor.mn.gov/statutes/?id=177.255>; ); N.J. ADMIN. CODE. § 12:55-2.4(i)(2) (2013),

[http://lwd.dol.state.nj.us/labor/wagehour/lawregs/selected\\_nj\\_state\\_labor\\_law.html#5524](http://lwd.dol.state.nj.us/labor/wagehour/lawregs/selected_nj_state_labor_law.html#5524); and VT. STAT. ANN. tit.

21, § 342(2)(C) (2013), <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=005&Section=00342>.

<sup>23</sup> For a more complete discussion of campus banking products, *see* CONSUMER REPORTS, CAMPUS BANKING PRODUCTS: COLLEGE STUDENTS FACE HURDLES TO ACCESSING CLEAR INFORMATION AND ACCOUNTS THAT MEET THEIR NEEDS (2014), *available at*

[https://consumersunion.org/wp-content/uploads/2014/08/Campus\\_banking\\_products\\_report.pdf](https://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf).

<sup>24</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, COLLEGE DEBIT CARDS: ACTIONS NEEDED TO ADDRESS ATM ACCESS, STUDENT CHOICE, AND TRANSPARENCY 27 (2014), *available at* <http://www.gao.gov/assets/670/660919.pdf>.

<sup>25</sup> *Id.* at 27-28.

<sup>26</sup> Consolidated Amended Complaint at 4, in re Higher One OneAccount Marketing and Sales Practices Litigation, No. 12-2407 (D. Ct. filed Apr. 2, 2013), *available at* <https://oneaccountsettlement.com/Portals/0/Documents/19%204-2-13%20Jury%20Trial%20Demand%20Consolidated%20Amended%20Class%20Action.pdf> (class action suit alleging aggressive steering practices).

In spring 2014, the Department of Education convened a negotiated rulemaking committee to address various “Program Integrity and Improvement” issues, including regulations for financial aid disbursement.<sup>28</sup> The negotiated rulemaking committee was charged with proposing updated regulations to address areas of concern about campus banking products, including aggressive marketing practices, restricted student choice, high or unusual fees, and transparency of campus banking agreements.<sup>29</sup> The committee did not reach consensus on the proposals, but the Department is in the process of reviewing the committee’s work as it prepares to publish proposed rules later this year.

As the Bureau moves forward with new protections on prepaid accounts marketed to students, it must also help ensure that student accounts like those offered by Higher One – already subject to existing Regulation E requirements – have no fewer protections. The Department’s regulations can and should fill gaps in protections for products like the Higher One accounts. However, as of the date of this writing, the Department has not yet issued any proposed rules. Therefore, we urge the Bureau to continue its important coordination with the Department to prevent any unintended gaps in protections for students being marketed these various types of accounts. All student accounts should have strong minimum standards regarding choice, fees, safety and transparency.

## **H. THE USE OF ARBITRATION CLAUSES IN FINANCIAL SERVICES CONTRACTS SHOULD BE PROHIBITED**

A fundamental protection for consumers, with financial services as elsewhere in their dealings with businesses, is the right to hold wrongdoers accountable under the law. This right is undermined when consumers are forced – often without their knowledge, in the fine print of the contracts they are required to sign to open an account or obtain a product or service – to give up their right to take their complaints to court, and instead must take them to arbitration. The arbitration process is often set up by the financial institutions. It lacks many of the fundamental protections of established legal process, and is often unfairly skewed against consumers and in favor of the financial institutions, who deal with the arbitrators repeatedly.

Forced arbitration clauses also often restrict consumers from joining with other consumers who have been mistreated in the same way by the same company – which often means that the cost of pursuing an individual claim is too high, and the wrongdoer is let off the hook.

We are pleased that the Bureau has recently reported the results of the extensive study it has been conducting, as directed by the Dodd-Frank Act, on the effects of forced arbitration clauses in credit card, checking account, and other consumer financial services contracts.<sup>30</sup> The findings in this report give the Bureau a solid basis for moving forward to end the unfair use of forced arbitration clauses in consumer financial service contracts. Consumers should retain the option to elect, after a dispute arises, whether to take that dispute to arbitration, or to avail themselves of their rights under the law to seek resolution in the courts.

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<sup>27</sup> Consent Order at 1, *In re Higher One, Inc., An Institution-Affiliated Party of Bancorp Bank*, FDIC-11-700b, FDIC-11-704k (Aug. 7, 2012), available at <http://www.fdic.gov/news/news/press/2012/pr12092.html> (click link to Higher One Consent Order near bottom of press release) (FDIC enforcement action alleging excessive overdraft fees).

<sup>28</sup> Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings-Title IV Federal Student Aid Programs, Program Integrity and Improvement, 78 Fed. Reg. 69612, 69613 (Nov. 20, 2013).

<sup>29</sup> *Id.*

<sup>30</sup> CONSUMER FIN. PROTECTION BUREAU, ARBITRATION STUDY: REPORT TO CONGRESS, PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) (2015), available at [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

This will better ensure that arbitration, when it is used, is truly fair and balanced, and is not used as a tool by lenders to avoid accountability.

## **CONCLUSION**

We applaud the Bureau for proposing important new protections for prepaid accounts. Prepaid cards can provide consumers lower-cost, more convenient ways to manage their money, and should come with the same protections afforded debit and credit card users. The numbers of consumers who use prepaid cards to manage their personal and household funds continue to grow at a rapid pace.

To finalize a strong rule, we urge the Bureau to augment its proposal with the changes suggested here, in particular with a ban on overdraft and a requirement that providers set up accounts to ensure that consumer funds are covered by deposit insurance.

We thank you for this opportunity to comment, and look forward to working with the Bureau in the future on these important issues.

Respectfully,



Christina Tetreault  
Staff Attorney