



February 17, 2010

Chairman Ben Bernanke
Federal Reserve Board
20th & C Streets, NW
Washington, DC 20551-0001

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

Dear Chairman Bernanke:

Consumers Union, the nonprofit publisher of *Consumer Reports*®, Consumer Federation of America, National Consumer Law Center (on behalf of its low income clients), U.S. PIRG, Center for Responsible Lending, Consumer Action and the undersigned consumer and community organizations, respectfully request the Federal Reserve Board to clarify that the definition of account in Regulation E includes pooled accounts into which funds accessed by prepaid cards are placed. This change is essential to fully apply consumer protections in the Electronic Fund Transfer Act (EFTA) to all prepaid cards and other similar devices which function as bank account substitutes.

It is time the Board provides the EFTA's consumer protections to general use reloadable prepaid cards that operate like and are used like debit cards tied to bank accounts. This includes prepaid cards which many Americans use to set up direct deposits of their pay, benefits or other important funds to manage their household needs. Consumers use these cards as substitutes for bank accounts.

General use reloadable prepaid cardholders should have the same protections that debit cardholders enjoy. They should be assured that losses will be capped when cards are lost or stolen or when unauthorized charges are made. Prepaid cardholders should be assured that missing money will promptly be recredited not later than 10 business days. Cardholders should be given clear and conspicuous disclosures of all fees before signing up. They should have the right to statements. And in the case of electronically accessing an account, their time to dispute an error or unauthorized charge should not begin running until they have accessed the portion of the electronic account information showing the error or the charge.¹ We ask the Board to

¹ This would provide additional protections to consumers beyond what is currently provided. The period of notice should begin not when transaction information is made "available" electronically but rather when the consumer has actually accessed the portion of the electronic account which shows the transaction or charge in dispute."

clarify that the definition of account includes pooled accounts. This will have the effect of including general use reloadable prepaid cards and other like devices tied to pooled accounts under Regulation E's important protections, which will provide greater peace of mind to a growing number of consumers who rely on these cards to manage their household funds.²

We asked the Federal Reserve Board in June 2004 to extend Regulation E's consumer protections to all types of stored value cards.³ At that time, the Board limited its action to payroll cards. The Board gave this reason for declining to act outside the payroll card context: "consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds."⁴

The premise for the Board's 2004 decision not to act on Regulation E protections to prepaid cards is not true today. Today, prepaid cards are not used on a limited, short-term basis, but rather are used by consumers for extended periods of time and hold important personal and household funds. In fact, the prepaid card industry touts their products are better than bank accounts, and the cards are expressly marketed as such.⁵ Consumers are loading sizable sums of money onto general use reloadable prepaid cards and prepaid card companies encourage consumers to have funds directly deposited. Green Dot, one of the major prepaid card players, reported that in 2008 more than \$4 billion in transactions were made using its cards that year.⁶ UniRush Financial Services reported that \$2 billion had been deposited on its RushCards since the 2003 launch until the end of 2008.⁷

Consumers who rely on these general use reloadable prepaid cards are subject to shaky voluntary protections which resemble Regulation E protections, but contain loopholes and lack a legal guarantee.⁸ These terms and conditions can be revised and rescinded at any time, unlike regulatory and statutory guarantees provided for debit cards under the Electronic Funds Transfer Act and Regulation E.⁹ General use reloadable prepaid cardholders also are subject to the whims of customer service representatives' and their knowledge of the cards' policies.

² Estimates vary from \$13.3 billion loaded onto prepaid cards in 2006 by the Federal Reserve to \$38.7 billion in 2007 by Mercator Advisory Group. RACHEL SCHNEIDER, CTR. FOR FINANCIAL SERVS. INNOVATION, *The Industry Forecast for Prepaid Cards, 2009 4* (2009), available at http://cfsinnovation.com/system/files/imported/managed_documents/cfsi_prepaid_2009.pdf.

³ Letter from Consumers Union to Chairman Alan Greenspan (June 23, 2004), available at http://www.consumersunion.org/pub/core_financial_services/001205.html.

⁴ Electronic Fund Transfers, 71 Fed. Reg. 1473, 1475 (Jan. 10, 2006) (interim final rule) (codified at 12 C.F.R. § 205).

⁵ NetSpend's homepage states, "A better way to bank;" and GreenDot's homepage states, "Free Direct Deposit and Online Bill Pay—Like a Checking Account!" See NetSpend Homepage, <http://www.NetSpend.com>; Green Dot Homepage, <http://www.GreenDot.com>.

⁶ James Flanagan, *As Credit Cards Falter, The Cash Variety Gains Popularity*, N.Y. TIMES, Mar. 18, 2009 (statement of Mark Troughton, Green Dot president), available at http://www.nytimes.com/2009/03/19/business/smallbusiness/19edge.html?_r=1&scp=1&sq=as%20credit%20cards%20falter&st=cse.

⁷ *The Prepaid Visa RushCard Reaches Milestone of \$2 Billion in Cardholder Deposits*, REUTERS, Dec.16, 2008, available at <http://www.reuters.com/article/pressRelease/idUS218838+16-Dec-2008+BW20081216>.

⁸ The Bank Freedom Prepaid Debit Card is an example of a prepaid card that offers all of these features. See Bank Freedom, Homepage, <http://www.bankfreedom.com/prepaid-debit-card.html>. However, the Definitions in the Terms and Conditions state that the card is a prepaid card and that "[t]he card allows you to access funds you place on the Card. The Card does not constitute a checking, savings or other bank account and is not connected in any way to any other account you may have. The Card is not a credit card. You will not receive any interest on your funds on the Card." Bank Freedom, Terms and Conditions, <http://www.bankfreedom.com/terms-conditions.html> (emphasis added).

⁹ Regulation E protections were extended to one type of prepaid card, employer-arranged payroll cards. See Electronic Fund Transfers, 71 Fed. Reg. 51,437, 51,440-41 (Aug. 3, 2006) (codified at 12 C.F.R. § 205).

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

Sincerely,

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