Comments of National Consumer Law Center
on behalf of its low income clients
to
Consumer Financial Protection Bureau
Docket No. CFPB–2013–0003
Request for Information Regarding Financial Products Marketed to
Students Enrolled in Institutions of Higher Education

Submitted March 18, 2013

Thank you for the opportunity to submit these comments regarding financial products marketed to students enrolled in institutions of higher education. These comments are submitted on behalf of the low income clients of the National Consumer Law Center®.[1]

These comments focus on bank accounts, and prepaid card bank account substitutes, offered to students through their schools.[2] We write to make two overarching points.

First, students must be encouraged to choose the bank account that is right for them and they should not be steered into an account with a vendor that shares revenue with the school. The education that a student receives in college is more than what takes place in the classroom. For many, college is the first time that students have lived on their own and handled their own financial affairs. Others are balancing reduced income and school. Encouraging students to make wise financial choices and to learn how to manage a financial account is essential.

Schools should not skew the choices that a student can make – or, worse, make bad choices for them – by choosing the institution that provides the most revenue to the school. Financial services that are provided through a contract selected by the school can provide convenience and other benefits to students. But schools face a conflict of interest if the vendor shares any revenue with the school. That conflict of interest affects who the school chooses to contract with, the terms of the contract, and the way in which the choice is presented to students.

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[1] Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other vulnerable people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises, including Consumer Banking and Payments Law and Student Loan Law. These comments were written by Lauren Saunders.

[2] These comments are addressed to general purpose reloadable prepaid cards that operate as a bank account substitute, not closed-loop cards that hold funds restricted to a particular use, such as a meal plan, laundry or books.

In order to enable students to freely choose their financial services and to prevent inappropriate steering:

- Schools should not be permitted to receive revenue sharing or other compensation from vendors whose accounts are used to disburse financial aid, scholarships or other school-related funds.

- Direct deposit to an account of the student's own choosing should always be the first choice for disbursing funds, with a check as an option, and students must be able to exercise that choice easily and without impediments or delay in receiving funds.

- Students must be clearly and conspicuously informed that they can decline a bank or prepaid account arranged by the school, and can transfer any money into their own account easily and without charge.

Second, when a school does enter into a contract with a vendor for accounts offered to students, the school has a heavy burden to offer the best possible account that is appropriate for the students. Any bank or prepaid card account arranged by the school must:

  - Have sufficient free ATM access;

  - Not carry any overdraft fees or any other credit features;

  - Provide ample free access to account information, including customer service, balances, statements and transaction histories;

  - Not carry any unnecessary or excessive fees, including fees to access student aid money;

  - Comply fully with Regulation E;

  - Carry FDIC or NCUSIF insurance on a pass-through basis to the student;

  - Have terms that are clearly and conspicuously disclosed to the student in all solicitations, mailers and other communications before the student decides to accept the account.

I. Students Should Be Able to Choose Where to Bank

College students, like other adults, have the right to choose how to handle their financial affairs. Learning to do so is just as much a part of their education as the material taught in classrooms. Indeed, financial management may be one of the subjects taught by the school.

An increasing number of schools are steering students into using cards selected by the school to hold their financial aid money and other funds that cover expenses while in school. There are a variety of models, some involving a prepaid card, some a checking account, and some that fall somewhere in between.

In some cases, the school encourages students to link their student ID card to a prepaid card account that has the same limitations of many prepaid cards: no checks, limited access to a full service financial institution, and fees for a variety of everyday services such as depositing checks, getting cash and checking one's balance at an ATM.[3]

While prepaid cards can be useful for individuals who are unable to get bank accounts or have had difficulty managing them, most students do not fall into those categories. Banks are typically eager to sign up students, and students starting college do not usually have a checkered history that would prevent them from getting a bank account. Older students (and many younger students) likely have existing accounts. Though students are a diverse group and many are lower income, there is no evidence that schools are turning to prepaid cards due to student difficulties in receiving funds.

Some accounts offered to students purport to be checking accounts but are really hybrids that in many ways are more like prepaid cards and can have many hidden fees. The Higher One "OneAccount," for example, does not come with a bank branch network or a significant network of free ATMs. Off campus, most ATM withdrawals will cost $2.50 plus any surcharge from the ATM owner. Students will incur a 3.5% fee (i.e., $17.50 for a $500 withdrawal) to withdraw cash from a bank teller (if, for example, the student needs more than an ATM will dispense). Students cannot use ATMs or bank branches to deposit checks and may have to pay a $4.95 fee just to make a deposit.[4] That fee is not even disclosed on the fee schedule because it is a fee charged by a separate company for purchasing the MoneyPak that must be used.[5] The limitations on the account are not readily apparent from the company's website.

Some schools have contracts to provide a bank account, not a prepaid card, to students. But even then, students should be encouraged to choose the bank that is right for them. The same goes for prepaid cards: even if the student prefers a prepaid card over a bank account for some reason, there are many prepaid cards on the market and the student might prefer a different one.

Whether a student chooses to have a bank account or a prepaid card, the right choice may not be the one that has the school contract. The student may prefer an account that:

- Has a broader free ATM network, not only around the school but also in the student's home or target career city.
- Has lower fees, as smaller banks typically do.

[3] American Express, for example, does not have a free ATM network.

[4] The $4.95 fee is the cost of purchasing a MoneyPak used to reload the card. It is not clear if any fee is charged if the student uses a smartphone to take a picture of a check and deposit it remotely. But not all students have smartphones or are aware of or comfortable with remote deposit capture.

[5] The fee can only be seen under the "new features" icon at http://www.higherone.com/index.php?option=com_content&view=article&id=44&Itemid=82. Higher One will reimburse the fee for the first purchase. The fee schedule lists: "Add Money to the OneAccount: No additional fee." But clicking on that item reveals that the reference is only to transfers from a third party bank account, and even then the sender may incur a fee from their own bank.

- Has branches in the student's home state, or is where parents bank.
- Does not encourage overdraft fees or overspending.
- Has more sophisticated mobile apps and internet banking functions.
- Offers text alerts or other tools for responsible financial management.
- Is not offered by an institution that the student finds objectionable.
- Is a smaller, community based institution with more personal service.

Overdraft fees, in particular, are a real problem for young adults, and some banks are better than others. For years, many banks silently added a hidden line of credit on their debit cards so that ATM withdrawals or purchases would be approved when the account had insufficient funds. A miscalculation as low as a few dollars could trigger a $35 overdraft fee on a purchase that the student would prefer be denied.

Young adults, often students, paid $1.3 billion in overdraft fees in 2008.[6] Because they are more likely to use a debit card for small transactions than older adults, they were paying $3 in fees for every $1 borrowed on a debit card when the national average was $2 in fees for every $1 borrowed.[7] An FDIC Survey found that young adults were the most likely to overdraw their accounts, with 46 percent of all young adults overdrawing their accounts in the previous year.[8]

Though new federal rules have curbed some overdraft fee abuses, the fees are still a significant problem. A recent study found that 17 percent of consumers ages 18 to 24 incurred overdraft fees, a rate nearly twice as high as consumers 44 and over.[9] Some banks engage in aggressive and sometimes misleading marketing to induce consumers to opt in to overdraft "protection" on ATM and debit card transactions, when in reality they are just opting in to overdraft fees.[10] One survey found that sixty percent (60%) of consumers who opted in to overdraft coverage did so to avoid a fee if their debit card

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6 Leslie Parrish and Peter Smith, *Billion Dollar Deal: Banks swipe fees as young adults swipe debit cards, colleges play along*, Center for Responsible Lending, at 1 (Sept. 24, 2007) [hereinafter *Billion Dollar Deal*], *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/billion-dollar-deal.pdf.

7 According to a 2006 survey, seven out of ten young adults would use a debit card for purchases costing less than $2. *Billion Dollar Deal* at 3.

8 FDIC Overdraft Study, 2008, at v.

9 Pew Center on the States, "Overdraft America: Confusion and Concerns about Bank Practices" (May 2012), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Fact_Sheets/Safe_Checking/Overdraft_America_Final.pdf.

10 For further discussion and examples of this targeting strategy, see Leslie Parrish, Banks Target, Mislead Consumers As Overdraft Deadline Nears, Center for Responsible Lending (August 5, 2010), available at http://www.responsiblelending.org/overdraft-loans/research-analysis/Banks-Target-And-Mislead-Consumers-As-Overdraft-Dateline-Nears.pdf. *See also* Center for Responsible Lending Research Brief, Banks Collect Opt-Ins Through Misleading Marketing, April 2011, available at http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html .

was declined – when opting in had the exact opposite effect.[11] Some banks also manipulate the order in which transactions are posted in order to increase the number of overdraft fees that are triggered.

Banks differ considerably in whether they still engage in methods to induce consumers into incurring overdraft fees or help consumers avoid spending more than they have. Citibank, for example, has never charged overdraft fees on ATM or debit card transactions, HSBC now does not, and Bank of America does not for debit card transactions. For check and electronic payments, some banks encourage consumers to use better options for overdraft protection, such as transfers from linked savings or credit cards or reasonably priced, amortizing overdraft lines of credit.

On the other hand, Wells Fargo and U.S. Bank – two banks with large numbers of contracts with schools – offer opt-in overdrafts on ATM and debit card transactions. Many other banks do as well. Though most prepaid cards do not have overdraft fees, some do, typically following the Regulation E opt-in rules.

Beyond overdraft fees, Wells Fargo and U.S. Bank are also among a very small number of banks that offer extremely expensive, triple-digit "account advance" payday loans as a means of covering shortfalls. The banks will advance funds before a consumer's regular direct deposit arrives for a fee that can be comparable to 274% to 365% APR or higher.[12] Just like regular payday loans, bank payday loans can lead to a cycle of debt and repeat borrowing.[13] It is unclear if the banks are making these payday loans available on student accounts, but we have no indication that they are not.

Most students would be better off at a bank that did not provide tools that encouraged overspending and the accumulation of fees. Students should be able to make that choice without being steered to the bank that has a revenue sharing contract with the school.

II. Schools Should Not Manipulate the Students' Choice and May Be Skirting Federal Law if They Do So

As described in greater length in the comments of U.S. PIRG and its recent report on college card programs, schools and the financial institutions with which they partner have sometimes gone to great lengths to push students into using the institution that has a revenue-sharing contract with the school. They may require the student to use a particular account to receive financial aid funds, may obscure the student's choice or make it difficult to exercise that choice.

Schools that require students to have an account at a particular bank or prepaid card provider may be violating federal law, both in letter and in spirit. The Electronic Funds Transfer Act, and its implementing Regulation E, provide:

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[11] *Id.* Pew Center on the States, "Overdraft America: Confusion and Concerns about Bank Practices" (May 2012), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Fact_Sheets/Safe_Checking/Overdraft_America_Final.pdf.

[12] *See* National Consumer Law Center, "300% Bank Payday Loans Spreading" (April 2011), available at http://www.nclc.org/images/pdf/banking_and_payment_systems/ib_bank_payday_spreading.pdf.

[13] *See* Center for Responsible Lending, "High-interest loans through checking accounts keep customers in long-term debt," http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.html.

No person may … require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.[14]

Financial aid from the federal, state or local government, including a public school, is a government benefit.

This EFTA rule is violated if the student is defaulted into a particular account, even if the student can disenroll.[15] Similarly, even if students are able to transfer their money out of the account, they are still required to have the account in the first place, and must suffer a delay in receiving their funds to make the transfer.

Another EFTA provision also bolsters the importance of consumer choice. A financial institution is not permitted to send the consumer an unsolicited access device, such as a debit or prepaid card, except under limited circumstances. The card cannot be sent validated, and may be validated only later "in response to a request or application from the consumer."[16] The card must also be "accompanied by a clear explanation ... that such card ... is not validated and how the consumer may dispose of such [card] if validation is not desired."[17]

Department of Education rules similarly mandate that students must have the choice of how to receive their funds. If an educational institution opens a bank or prepaid card account on behalf of a student or parent, it must, among other requirements, "obtain in writing affirmative consent from the student or parent to open that account."[18] All information required for an authorization "must be conspicuous."[19] The Department has made clear that "a school may not require or coerce the student or parent to provide an authorization …."[20]

The rules are clear, but the Department of Education's sample form for authorizing consent is not and should be revised. Although the form indicates that the student can withhold agreement, it does not explain the student's other choices, encourage the student to exercise them, or promise that choosing another option will not result in delay. Instead of being styled as an authorization, just one in a stack of paperwork that the student must sign, the form should be reworked into an election form, asking the student to choose how to disburse funds, with direct deposit to the consumer's own account as the clear first option.

A student can give affirmative consent only if it is clear that the student has a choice and can freely choose another method of receiving funds without being disadvantaged. However, some school-selected providers are apparently manipulating that choice. Some programs send unsolicited cards to

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[14] 15 U.S.C. § 1693k(2); *see* Regulation E, 12 C.F.R. § 205.10(e).
[15] *Cf.* Pinkett v. First Citizens Bank, 2010 WL 1910520 (N.D. Ill. May 10, 2010) (interpreting related ban on credit conditioned on preauthorized electronic fund transfer).
[16] 15 U.S.C. § 1693i(b)(4); *see* Regulation E, 12 C.F.R. § 205.5(b).
[17] 15 U.S.C. § 1693i(b)(3); *see* Regulation E, 12 C.F.R. § 205.5(b)(2).
[18] 34 C.F.R. § 668.14(c)(3)(i).
[19] FSA Handbook at 4-27.
[20] FSA Handbook at 4-6.

students and lead them into believing that they *must* activate the card. Providers may also push students into choosing their account by emphasizing faster access to their money.

These pressure tactics should not be tolerated. The school can determine the student's choice ahead of time and can easily arrange for payment by alternative methods without delay. Students should not be pushed into choosing an account that they may have for years to come based solely on getting their first check two or three days earlier.

The CFPB must ensure compliance with both the letter and the spirit of the EFTA requirements for unsolicited cards. The CFPB should issue new model forms and rules to ensure that any unsolicited access devices come with large, conspicuous and unbiased information about the student's options when receiving the card.

The CFPB should also work with the Department of Education, schools and the states to ensure that students are not pushed into selecting school-sponsored accounts. Students must be told of the option to receive funds by direct deposit early in the process, in a conspicuous fashion, and in a form that students can easily exercise their choice.

III. Rules for Accounts that Schools Open on Behalf of Students

When a student does choose to use a bank or prepaid card account provided under a contract with the school, the school has a special obligation to ensure that the account is safe and appropriate for the student. Students will logically assume that the school has endorsed the program. Many students will use the bank or prepaid card program without careful study or comparing other options. Whenever a school lends its imprimatur to a program, and gives that program access to its students, it has a special obligation to ensure that the account is safe and appropriate for students --especially if the school is getting revenue and has a conflict of interest.

A. Accounts Must Be Safe: Insured, Regulation E Compliant, No Overdraft Fees or Credit Features

At the most basic level, bank or prepaid card accounts provided under school contracts must be safe.

1. Deposit Insurance

First, the funds must be protected in the case of insolvency of the bank or any other party involved with the program. Insurance from the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF) should be required.[21] Indeed, under Treasury Department rules, federal payments may not be made to a prepaid card account that does not carry

[21] A beneficial side effect of compliance with the FDIC's pass-through insurance rules for prepaid card accounts is that it creates a custodial relationship with the bank, which should protect the student's access to the funds even if another party involved with the card, other than the bank, should become insolvent.

FDIC or NCSIF insurance.[22] Department of Education rules also require deposit insurance for any prepaid card account used to make direct payments to students such as credit balances and work study funds.[23]

However, it is not clear that all schools are following this requirement. One provider of prepaid card services to schools, American Express, does not store its funds in a bank and is not eligible for FDIC or NCSIF insurance. The fine print of the terms and conditions on the American Express Prepaid Card for Student IDs acknowledge: "Funds on the Card are not FDIC-insured …."[24] It is not clear what types of funds are eligible to be deposited onto the prepaid card or whether Treasury or Department of Education rules apply.

When prepaid cards hold consumer funds outside of accounts that provide deposit insurance to the consumer, the consumers receive some protection from state money transmitter laws. However, those laws do not provide consumers the same full, uniform, timely and seamless protection as deposit insurance. In some states, consumers are not protected at all, and in most of the others, consumers would have to navigate the legal process to receive funds from an insolvent provider.[25]

Bank or credit union accounts always carry deposit insurance. Prepaid cards are eligible for deposit insurance if the funds are held in a bank or credit union and follow FDIC or NCUSIF rules for deposit insurance. Most do, but there is no guarantee and the student has no way of knowing.

The CFPB should require that all general purpose reloadable prepaid card accounts that hold more than $500 carry deposit insurance. This should be a mandate; mere disclosure of the lack of deposit insurance is insufficient to protect consumers.[26]

2. Protection Against Loss, Theft, Unauthorized Transfers and Errors

Accounts used for student funds should comply with the EFTA and Regulation E, which provide protections against loss, theft, unauthorized transfers and errors. Regulation E already applies to bank accounts and to certain prepaid cards, and others typically comply voluntarily. Nonetheless, the student has no way of knowing and Regulation E compliance should be required.

Treasury rules require Regulation E compliance on prepaid card accounts that receive federal payments.[27] It does not appear that Department of Education rules address Regulation E, but they

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[22] *See* 31 C.F.R. § 210.5(b)(5)(i).

[23] 34 C.F.R. § 668.164(c)(2); U.S. Dep't of Education, Federal Student Aid Handbook, 2012-13, at 4-24, available at http://ifap.ed.gov/ifap/byAwardYear.jsp?type=fsahandbook.

[24] *See* https://www212.americanexpress.com/dsmlive/dsm/dom/us/en/personal/cardmember/additionalproductsandservices/giftcardsandtravelerscheques/studentid_cardmember.do?vgnextoid=51185ee79e061310VgnVCM40000037b3ad94RCRD&vgnextchannel=95ddb81e8482a110VgnVCM100000defaad94RCRD&appInstanceName=default&vgnextnoice=1&name=studentid_cardmember&type=intbenefitdetail.

[25] *See* Pew Charitable Trust, "Imperfect Protection: Using Money Transmitter Laws to Insure Prepaid Cards" (Mar. 5, 2013).

[26] For more information, see Comments of NCLC et al. on General Use Reloadable Prepaid Cards at 76-77 (July 24, 2012) ("NCLC Prepaid Card Comments"), available at http://www.nclc.org/images/pdf/rulemaking/cm-prepaid-card-july2012.pdf.

should. The CFPB should also extend Regulation E more fully to all prepaid cards to avoid any uncertainty.

3. No Overdraft Fees or Credit Features

Third, bank accounts and prepaid cards offered to students should be free of overdraft fees and credit features. Students who are just learning how to manage their finances, or struggling with reduced income, should not be subject to dangerous pitfalls. As discussed above, overdraft fees have been very problematic for many students.

Here again, Treasury rules prohibit federal payments to a prepaid card that has a line of credit or loan agreement that is repaid automatically upon deposit of the federal payments.[28] Overdraft fee programs are a form of loan that is repaid automatically upon deposit and are prohibited on prepaid cards used for receipt of federal payments. But it is not clear that all cards comply. Overdraft fees should also be banned on prepaid card accounts that receive student funds other than federal payments.

Department of Education rules are consistent with the Treasury rules. If a school opens a bank or prepaid card account for a student, it cannot "subsequently convert the account, card, or device to a credit card or credit instrument."[29]

Debit cards that trigger overdraft fees or can access an account advance line of credit are a "credit instrument."[30] Such features permit the student to borrow funds, use the debit card for purchases, and repay the funds later. The CFPB and the Department of Education should make clear to schools that overdraft fees and credit features are prohibited on school-selected accounts.

Congress has also expressed its view that prepaid cards should not have overdraft fees. Overdraft fees are banned on prepaid cards as a condition of their exemption from a cap on interchange fees charged to merchants.[31] However, that ban only applies to cards issued by banks over $10 billion, as smaller banks are not subject to the interchange fee cap.

While school prepaid card programs do not typically have any credit features, bank accounts may. Students may be able to opt in to overdraft "coverage" that will convert the debit card into a credit instrument and permit purchases and ATM withdraw even if the account has insufficient funds, triggering a hefty overdraft fee. Studies have shown that most consumers would prefer that the

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[27] *See* 31 C.F.R. § 210.5(b)(5)(i).
[28] *See* 31 C.F.R. § 210.5(b)(5)(i). The Treasury direct deposit rules do not apply to individual bank accounts.
[29] 34 C.F.R. § 668.164(c)(3)(vii).
[30] The Truth in Lending Act defines "credit" as "the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment." 15 U.S.C. § 1602(e). Joint guidance by several federal banking regulators acknowledged that "[w]hen overdrafts are paid, credit is extended" and "[o]verdraft balances should be reported on regulatory reports as loans." 70 Fed. Reg. 9127, 9129 (Feb. 24, 2005). For a longer discussion of why overdraft is credit, see National Consumer Law Center, Truth in Lending § 2.5.7.2 (7th ed. 2010 and Supp.).
[31] 15 U.S.C. § 1693o-2(a)(7)(B) (effective July 21, 2012).

purchase be denied instead,[32] but banks often manipulate consumers into opting into overdraft fees unwittingly.[33] Even consumers who knowingly opt in do not necessarily want every overdrawn purchase paid for a fee. Overdraft "coverage" is a crude form of credit that induces consumers into using exorbitantly priced credit when they would prefer not to.

If a school is picking an account for its students, it should ensure that it does not have credit features that can get a student in trouble. The CFPB and the Department of Education should clarify that overdraft fees triggered by ATM or debit card transactions, and account advance payday loans, are prohibited on any school-selected bank or prepaid card account. For accounts that offer checks and electronic payments, which cannot be so easily denied at point-of-sale as a debit card transaction, schools should use a vendor who encourages links to safer and more affordable options for covering overdrafts (such as links to a savings account).

B. Accounts Must Offer Ample Free ATM Access and Free Transfers to Other Accounts

The Department of Education already has a rule that emphasizes that students may not be charged for receiving federal student aid funds. In order to make that rule a reality for students who select the school-sponsored account, the vendor should be required to provide a certain number of free ATMs near the school. Any school-provided account should also offer at least one free transfer per deposit to the consumer's own account.

C. Students Must Have Ample Free Access to Account Information: Balances, Statements, Transaction Information, Customer Service

Students need ample, free and convenient access to account information and customer service. They should have multiple free methods of determining their balances, getting statements and transaction information, asking questions and resolving issues with their accounts. That information is essential to sound financial management.

Accessing account information is normally not an issue with a traditional bank account, but it can be more expensive and restricted on prepaid cards. Consumers are not encouraged to view the cards as "accounts" and do not receive paper statements. They are expected to remember to monitor their accounts online, may not even receive emails when electronic statements are available, and may be charged high fees if they prefer paper statements.[34] Most prepaid cards are not provided through

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[32] Pew Center on the States, "Overdraft America: Confusion and Concerns about Bank Practices" (May 2012), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Fact_Sheets/Safe_Checking/Overdraft_America_Final.pdf; Center for Responsible Lending Research Brief, Banks Collect Opt-Ins Through Misleading Marketing, April 2011, available at http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html .

[33] *Id.*

[34] Many students will prefer electronic statements, but students should be encouraged to use whatever method works for them to monitor their accounts. Some will find that they are more likely to remember to look at their statement when it comes in the mail, when they can open it without remembering an account number or password and without needing to spend time on the computer. Monitoring accounts for unauthorized charges and unwanted fees is just too important to limit student options for doing so.

brick-and-mortar locations that offer access to a human being. Fees may be charged for telephone customer service, and the consumer must enter long strings of numbers and navigate multiple menus to get to a live agent. Fees may even be charged for simple balance inquiries at ATMs or accessing an automated customer service line.

Prepaid cards should not be a black box in the students' wallet. They are accounts, and consumers should be able, and encouraged, to monitor their accounts for fees, errors and unauthorized charges. Students unfamiliar with prepaid cards may have questions about how the cards work. Like any consumer, they need the ability to resolve the problems that can arise. Students should not be nickeled and dimed for seeking the information they need, or worse, be inhibited from doing so.

Detailed recommendations on the information that prepaid card providers and banks should be required to provide for free or minimal cost, and rules to prevent consumers from being coerced into electronic options that do not work for everyone, are in our earlier comments on general use reloadable prepaid cards.[35]

D. Accounts Must Be Free of Problematic or Excessive Fees

If a school is picking an account for the student, it has a special obligation to make sure that the account is free of problematic or excessive fees. Problematic fees fall into different categories.

- *Overdraft fees.* Any account chosen for a student should not permit overdrafts or overdraft fees, for the reasons discussed above.
- *Usage fees.* Fees for ATM withdrawals, depositing checks, and other everyday activities can add up on prepaid cards for services that are normally free with bank accounts. Schools must consider the multiple ways in which students are expected to use a financial account and select accounts that minimize extra charges.
- *Information fees.* Students should not be charged fees for checking their balances, calling customer service, or accessing account information. Paper statements should be free with a bank account and available for no more than $1 per month for prepaid cards. Information is critical to managing an account.
- *Fees for exercising legal rights*. Consumers have the right to stop payment on checks and preauthorized electronic transfers, to dispute unauthorized charges, and to exercise other protections. Exercising those rights can come with hefty fees that should not be permitted.
- *Inactivity fees, account closure and check issuance fees.* Some student accounts start incurring inactivity fees after less than a year of inactivity, and the fees can as high as $12 per month. The account may even charge the student for refunding the balance and closing the account. If an account is inactive, the student should be notified that the account will be closed if it is unwanted and then all money should be refunded without charge.

[35] *See* NCLC Prepaid Card Comments, *supra,* at 63-72.

The Department of Education and the CFPB should issue rules or guidance to schools on what types of fees are permitted on accounts selected by a school. For example, the Department of Labor issued guidance to states in connection with prepaid card programs used to pay unemployment compensation.[36] It is important that rules be clear. A report we issued shows that not all states are following the Department of Labor's guidance and that many cards charge inappropriate fees.[37] That report also includes a longer discussion about the issues surrounding particular fees.

E. Fees, Account Terms and ATM Access Must be Clearly and Conspicuously Disclosed

It is axiomatic that students need clear information about the terms of an account if they are to make an informed choice about whether to use it. That information is often sorely lacking. Fee schedules may be provided, but they may be buried in complicated terms and conditions and packed with misleading representations about what is free and what is not.

The size of the free ATM network is a significant factor in how much an account will cost a student, and how convenient it will be, yet that information is not readily available. Accounts that are offered through schools should be required to provide maps showing the location of free ATMs near the school and a list of the free ATMs available state-by-state.

Students also need more clear and conspicuous information about other important factors, such as limitations on how and whether other funds can be deposited into the account (i.e., cash and checks) and the various ways in which students can get statements or transaction information.

Students who are simply trying to access their financial aid money, not shopping for a new account, may be pressured into clicking into a new account without fully considering the costs and features of the account. Students should be advised *ahead of time* about their options for how to receive their aid money and the full costs, terms and features of any account offered by the school. It should not be a rushed decision the moment the money arrives.

III. Recommendations

1. *Encourage direct deposit to an account the student chooses.* The CFPB should enforce and provided more detailed rules implementing the EFTA provisions governing unsolicited debit cards and accounts used for payment of government benefits. Those rules should ensure that students are given the clear and easy choice of direct deposit to an account of their own choosing, or a paper check, early in the process, before they are given a school-selected account. Those rules should require the information to be present in a *clear, unbiased* manner, *early*, before financial aid money arrives, and permit the student to exercise their choice *easily*, through electronic methods and not merely by faxing

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[36] *See* Employment and Training Admin'n Advisory System, U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 34-09 on Best Practices for Payment of Unemployment Compensation by Debit Cards, at 3 (Aug. 21, 2009), available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2795.

[37] *See* NCLC, Unemployment Compensation Prepaid Cards: States Can Deal Workers a Winning Hand by Discarding Junk Fees (May 2011) and NCLC, 2013 Survey of Unemployment Compensation Prepaid Cards (January 2013), both available at http://www.nclc.org/issues/unemployment-compensation-prepaid-cards.html.

a cumbersome paper form. The CFPB and the Department of Education should work together to revise and develop new forms to facilitate this process (just as it is simple to select direct deposit of a tax refund) and to ensure that exercising choice does not delay receipt of funds.

2. *Ban revenue sharing.* Schools have too much of a conflict of interest in selecting a provider and setting the terms when they receive revenue when students use a particular account. Schools' revenue considerations should not skew the student's financial management. Students are likely to fall prey to unfair, deceptive and abusive practices if an account comes with the school's logo and implied endorsement when the school has a monetary incentive that conflicts with the student's well being.

3. *Ensure sufficient free access to cash.* The CFPB and the Department of Education should develop more detailed guidelines for accounts that schools offer to students to ensure that students can access their funds without charge. The rule requiring that students have "convenient access"[38] to ATMs should specify a certain number of ATMs based on the size of the student body and of the campus. One free transfer per deposit to another account should be required so that students who accept the school account out of inertia or misunderstanding can easily transfer their money.

4. *Limit the fees that may be charged on school-selected accounts.* The school has a strong influence on what account students will select. The CFPB and the Department of Education should issue rules that clearly ban overdraft and information fees and limit other types of fees that may be charged.

5. *Improve information.* The CFPB and the Department of Education should require schools to provide students clearer information about the fees, ATM networks (with a map of local locations), features and limitations of the accounts they sponsor. That information should be provided well ahead of time, so that students can consider it and decide if they want to use that account or a different one.

IV. Conclusion

Schools have a special obligation when inserting themselves into the students' choice of how to manage their financial affairs. Schools have undue influence, and the account that a student may choose affects the student not only while in school but may stay with the student for years to come. Students need to learn how to choose a financial account that minimizes expenses and facilitates budgeting and financial management. Revenue considerations should not drive schools to interfere with this important part of the student's education.

Thank you for the opportunity to submit these comments and for the CFPB's work to promote positive financial decisions, money management skills and free choices by students.

[38] 34 C.F.R. § 668.164(c)(3).