



January 5, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Attention: Docket No. R-1393 and RIN No. 7100-AD55

Re: Comments on Regulation Z Proposed Rule

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System (“Board”) on behalf of the Online Lenders Alliance in response to the proposed rule published in the *Federal Register* on November 2, 2010 at 75 *Fed. Reg.* 67458-67509 (“Proposed Rule”) relating to open-end (not home-secured) credit plans, in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”), and the corresponding Official Staff Commentary.

The proposed rule seeks to revise the definition of “credit card account under an open-end (not home-secured) consumer credit plan” in Section 226.2(a)(15) of Regulation Z, as added by the CARD Act, and the Board’s Official Staff Interpretations. These proposed revisions, particularly those in the Official Staff Interpretations, would, among other things, add examples of access devices that would be deemed “credit cards.” Specifically, the proposal would add that if a line of credit can also be accessed by a card (such as a debit card or prepaid card), then that card is a credit card for purposes of Section 226.2(a)(15).

The Online Lenders Alliance is an association representing a diverse group of nonbank lenders who offer short term consumer loans via the internet. Members are nationwide and include vendors who offer support services to lenders in the online short term loan space.

Since 2005, OLA has worked on behalf of the online lending industry, representing top online businesses. Our members compete in a global marketplace serving online demands for access to credit including short term loans, micro lines of credit and installment loans. The online lending industry is consistently striving for innovation in technology to drive competition and access to credit.

We endorse the comments submitted by the National Branded Prepaid Credit Card Association.

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We are concerned that if the Proposed Rule is adopted with its current language, including the proposed revision to the Official Staff Interpretations, options for the delivery of consumer financial services products will be limited or curtailed.

American consumers use general purpose reloadable prepaid cards as a substitute or in addition to traditional bank accounts (e.g. checking accounts), either because they are unable to obtain a traditional bank account, they do not desire a traditional bank account or they prefer the convenience offered by a reloadable prepaid card. General purpose reloadable prepaid card accounts function in a manner similar to traditional checking accounts that have debit card access, except there are no paper checks.

The Proposed Rule discriminates against general purpose reloadable prepaid cards in two very important ways. First, the Board has determined that in some scenarios, a prepaid card can become a “credit card.” However, the functionality of the general purpose reloadable prepaid card account is not analogous to a credit card; it is analogous to a checking account. Why does the Board seek to regulate these instruments as opposed to all possible spending devices – paper or plastic? Second, general purpose reloadable prepaid cardholders should have access to the same features and products available to checking account customers. We are concerned that the current language of the Proposed Rule creates a confusing and complex regulatory burden that undoubtedly will limit credit options for general purpose reloadable card users and prevent them from accessing credit products otherwise available, without similar burdens, to traditional bank account holders.

If the goal of the proposed revisions is to prevent intentional circumvention of the CARD Act, we suggest that the Board and all of the bank regulatory agencies already have the authority to prohibit such practices under the Federal Trade Commission (“FTC”) Act barring unfair or deceptive acts or practices (“UDAP”). In fact, we believe it would be more effective for the Board to exercise its UDAP authority rather than to add language to the Official Staff Interpretations under Regulation Z.

However, if the Board believes it is necessary to add language to the Official Staff Interpretations of Regulation Z to address such activity, we are concerned about the current language in the proposed revisions and the practical application of these requirements. We do not believe that it was the Board’s intention to subject certain debit and prepaid card products to the regulatory framework of the Truth-In-Lending Act, however it is at least arguably the case that the current language of the proposed revisions does just that.

Current Language of Proposed Revisions to the Official Staff Interpretations Relating to Section 226.2(a)(15).

A. Including debit or prepaid cards in the definition of “credit cards” will create significant confusion for consumers.

Prepaid cards are relatively new payment instruments and comprise a diverse group of products that are popular with traditionally overlooked and under banked consumers. These cards are analogous to debit cards. However, with prepaid cards, the funds are pre-loaded to the card accounts, thus preventing in most circumstances, the ability of prepaid cardholders to spend more than the value loaded to the card. These cards are not and never have been “credit cards” as defined in Section 226.2.

Indeed, precisely because the cards are not credit cards, prepaid cards have enjoyed tremendous growth in recent years as consumers attempt to curtail their debt load and avoid high interest rates and overdraft charges.

Because prepaid cards are more like a form of debit card, entirely different legal, regulatory, and payment card association rules apply to the cards as opposed to credit cards, and there are different transaction capabilities and fundamentally different fee structures associated with them. The only similarity of these cards to credit cards is that they are both tangible plastic cards that have the network branch imprinted on them.

We are concerned that additional consumer confusion will occur if debit or prepaid cards are included in the definition of “credit card,” and that the resulting confusion will: (a) create unnecessary financial and compliance burdens; (b) remove a critical access point to the financial mainstream by discouraging financially overlooked and under banked consumers from obtaining and using prepaid cards, or even worse (c) mislead consumers into purchasing prepaid cards because they believe that they are credit cards. This would be a disservice, particularly to underserved consumers, as the anti-fraud protections afforded certain network-branded prepaid cards under Regulation E and the card association rules give these consumers protections over carrying cash and allow them to make purchases that are not available to cash only users.

B. Debit and prepaid cards should only be considered access devices (and thus, “credit cards”) if the sole functionality of the device is to receive and spend loan proceeds.

As previously noted, in its proposed additions to the Official Staff Interpretations, the Board staff has proposed to include the following clarification: “[I]f the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of § 226.2(a)(15)(i).” It is unclear what products the Board intended to capture by adding this statement. The fact that a consumer opens a line of credit, makes a conscious decision to take an advance, and has the loan proceeds from that advance transferred to their prepaid card or checking account should not transform that prepaid card or debit card into a “credit card.” Indeed, these transactions should not be treated any differently than those made by a customer who obtains an advance from a line of credit, receives cash, and either loads the cash onto a prepaid card or deposits it to a checking account.

C. Any time there is a transfer of loan funds into an asset account (such as a checking account or a general purpose reloadable prepaid card account), neither the account number nor any associated debit or prepaid card should be considered a “credit card.”

The proposed additions to the Official Staff Interpretations of the definition of “credit card,” also include the following:

For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of §226.2(a)(15)(i).

First, we believe this language should be clarified to provide that a general purpose reloadable prepaid card account that allows consumers to load and spend their own funds (and not solely loan proceeds) is an asset account, just like a checking account or any other asset account. The Proposed Rule states that a prepaid card can become a “credit card” in cases where loan funds from a line of credit are accessible by a prepaid card. Yet, if loan funds from a line of credit are accessible by an account number and transferred to a traditional bank account, the account number used to access such funds is not a credit card. Presumably this would also be the case if the loan funds could be accessed by paper check. Whether it’s a general purpose reloadable prepaid card account or a checking account, in both of these cases, funds from the line of credit are being transferred from a loan account to an asset account. Yet, the general purpose reloadable prepaid card account in this case is being treated differently from the checking account.

Second, the above language seems to make clear that where there is a transfer of funds between accounts with the same creditor, the account number is not a credit card. However, we believe that whenever there is a transfer of loan funds into an asset account, the account number or debit or prepaid card should not be a credit card, regardless of whether the loan account and asset account are with the same or different creditors. Consider the following example:

Bank A opens a line of credit for a consumer. The Consumer takes an advance and has the advance transferred via ACH to a prepaid card account or checking account at Bank B. Under the current language of the Board’s proposed rule, Bank B’s prepaid card or debit card could be reclassified as a “credit card” (a product which Bank B neither disclosed for, nor intended to offer).

If a customer transfers loan proceeds to a checking account at the same or a different financial institution and that checking account is accessible with a debit card, the debit card should not be transformed into a “credit card.” Similarly, if a consumer transfers loan proceeds into a general purpose reloadable prepaid card account and the prepaid card account is at a different financial institution, that prepaid card should not become a “credit card.”

However, the current language of the proposed addition to the Official Staff Interpretations would arguably make debit cards and prepaid cards “credit cards” in these instances. To avoid a situation in which a consumer can obtain a financial product from one institution and then use it in a manner which causes another financial institution’s product to become something it never intended, we urge the Board to clarify that any time there is a transfer of funds to a general purpose reloadable prepaid card account, checking account, or other asset account, the account number is not a “credit card.”

D. A transfer of loan funds from a line of credit to a debit card or prepaid card to the account underlying the debit card or prepaid card should not transform that debit card or prepaid card into a “credit card.”

Many checking accountholders and, increasingly, prepaid card accountholders, obtain lines of credit in which funds either are automatically transferred, or can be affirmatively transferred, into an account holders' checking account or prepaid card account in the event transactions presented against the account would otherwise create a negative balance. These lines of credit are typically designed to transfer funds from the line of credit to the accountholder's account in preset amounts, such as \$20-200 increments, or to transfer an amount sufficient to cover the negative balance.

The last line of the Official Staff Interpretations provides, "Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of § 226.2(a)(15)(i)." This calls into question whether a transaction that either triggers an automatic transfer of funds to the accountholder's asset account, or where the consumer affirmatively requests such a transfer of funds, would change the debit card or prepaid card into a "credit card." For the type of advances where the transfers are triggered by the use of a debit card or prepaid card, however, and the amount of the advances: (1) are not *always* equal to the amount of a purchase, and (2) are transferred to the accountholder's checking account, prepaid card or other asset account, the Official Staff Interpretations should be clarified to make it clear that the use of such a line of credit would not cause the debit card or prepaid card to be classified as a credit card for purposes of the CARD Act.

E. It is unclear what disclosures would apply if a prepaid card is reclassified as a "credit card."

As indicated above, we believe that the proposed additions to the Official Staff Interpretations create confusion as to when a prepaid card could fall within the definition of a "credit card." Moreover, if prepaid cards are included within the definition of "credit card," several additional, areas of confusion arise:

1. Which disclosures should be provided (the prepaid card disclosures, the credit card disclosures, or both)?
2. What is the triggering point when the credit card disclosures must be provided (when the consumer purchases the prepaid card, even if no loan account exists, or at some later time)? Is it possible that a prepaid card is not a "credit card" at the time of purchase, but later becomes one?
3. How should the periodic statements distinguish credit balances from the consumer's own funds? Is it possible for the billing cycles and due dates to change based upon whether or not there is a credit balance?
4. Will consumers receive the disclosures twice – from both the entity extending credit and the issuer of the card (if different)? If the originator of the loan and the issuer of the card are the same entity, can the disclosures be combined without confusing customers?

The Regulation Z credit card rules and model forms associated therewith are not suited for application to prepaid card products and will undoubtedly result in increased consumer confusion. If the Board intends to make such rules applicable to prepaid cards, additional rules and clarification as to how to apply the Truth-In-Lending Act and its implementing regulations to prepaid card products must be proposed and comment sought prior to any mandatory compliance date.

We appreciate the opportunity to comment on these proposals and respectfully ask that the Board consider our comments and suggestions. We would be pleased to provide additional information or to discuss any of the matters outlined above in further detail

Sincerely,

Lisa S. McGreevy

President & CEO