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To: Federal Deposit Insurance Corporation
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From: Calvert Asset Management, Inc.
Consumer Action
Consumer Federation of America
Consumers Union
National Consumer Law Center® (on behalf of its low-income clients)
Sergeant Shriver National Center on Poverty Law

Re: Safe Transaction Account Template for Prepaid Cards

Date: November 24, 2010

Calvert Asset Management, Inc., Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center® (on behalf of its low-income clients), and Sergeant Shriver National Center on Poverty Law applaud the FDIC's recent decision to approve Safe Transaction and Savings Account templates for the benefit of low- and moderate-income consumers on August 10, 2010. These templates are a good first step toward creating safer products. We also appreciate that the FDIC included prepaid cards as a type of product that could be offered through the Safe Transaction program. However, prepaid cards present unique issues that should be addressed with a specific template.

We now urge the FDIC to build upon its Safe Transaction Account template to create a "safe prepaid card" template. This template can be driven by the same principles that the FDIC used to develop templates for basic transaction and savings accounts: low (or no) fees, transparency, FDIC insurance, federal consumer protections, simplicity and ease of use, and sustainability for both financial institutions and their customers.

Prepaid cards continue to skyrocket in popularity. According to Mercator Advisory Group, \$124.6 billion was loaded onto all types of prepaid cards in

2009, up 61 percent from 2008.¹ Prepaid cards are marketed as safe and convenient alternatives to cash or a traditional bank account, and marketed as less costly than check cashing and payday loans. However, prepaid cards can come with high and multiple fees, and often lack the essential consumer protections that come with a traditional, bank account-linked debit card.²

A safe prepaid card template should include the following features:

- Provide the same consumer protections that apply to traditional, bank account-linked debit cards, including protections for when funds are stolen through an unauthorized transaction.
- Limit the number and types of fees, so that consumers can comparison shop before they buy.
- Limit ordinary usage fees to a small monthly fee.
- Limit any other fees to nominal fees for unexpected events, such as needing a second replacement card.
- Provide free direct deposit.
- Prohibit overdraft or NSF fees.
- Require that fee schedules be disclosed up front in an easy-to-read format (like the Schumer box for credit cards) so that consumers can compare the fees for different prepaid cards before they buy.
- Provide consumers with a wallet-sized card listing fees, so consumers can remember which activities will trigger fees.
- Require monthly statements to be offered for no more than \$1 per month, after two free statements per year.
- Prohibit lines of credit associated with a prepaid card.
- In addition, we believe all forms of payment should come with chargeback rights so that consumers can reverse charges when they have a good faith dispute with a merchant about the delivery, quality or acceptability of the goods and services paid for with the card.

The FDIC Safe Transaction Account template already includes these key features:

Low Monthly Fee. We agree that consumers should only be charged a modest monthly fee to maintain their accounts.

Free Direct Deposit. We agree that direct deposit should be encouraged and not required. Free direct deposit is essential for ensuring that low- and moderate-income consumers have a safe, low-cost transaction account. Access to direct deposit is increasing in importance as more government agencies and

¹ Michelle Crouch, "Prepaid Cards A New Way to Bank?," CreditCards.com, Sep. 16, 2010, <http://www.creditcards.com/credit-card-news/prepaid-card-growth-unbanked-regulations-1271.php>.

² See CONSUMERS UNION, PREPAID CARDS: SECOND-TIER BANK ACCOUNT SUBSTITUTES (2010), available at <http://www.defendyourdollars.org/pdf/2010PrepaidWP.pdf>.

employers are moving to paperless systems that require consumers to have direct deposit or receive benefits on a prepaid card or payroll card.

No Overdraft or NSF Fees. Overdraft and NSF fees should be prohibited altogether on prepaid cards. Consumers living paycheck-to-paycheck can't afford to make a mistake that will trigger \$34 overdraft or NSF fees.³ Those fees are entirely out of proportion to the out of pocket cost to the bank, which currently ranges from \$0.29 to \$1.66 for NSF returns.⁴ Although Regulation E was recently amended to require that consumers "opt in" to an overdraft program before they can be charged a fee, this protection only applies to cards that are linked to qualifying "accounts" as defined in Regulation E. The definition does not yet include pooled-account, private prepaid cards. By prohibiting overdraft and NSF fees on all types of transactions, consumers will be able to avoid the problems that have kept them out of bank accounts, be able to keep their hard-earned money, and be better able to manage financial transactions without any unwelcome surprises.

A Safe Transaction Account template for prepaid cards should also include these features:

Provide the same consumer protections that apply to traditional, bank account-linked debit cards. Consumers who use private, self-arranged prepaid cards do not currently receive Regulation E protections, because prepaid card funds sit in pooled accounts that appear to be exempt from Regulation E. As a result, consumers who use prepaid cards may not have protections against unauthorized transactions. Unlike bank account-linked debit cards, prepaid card users may not have the right to dispute unauthorized charges and keep their money while the dispute is investigated. If a prepaid card is lost or stolen, the consumer may only receive voluntary protections that can be revised or eliminated at any time and that have loopholes. By contrast, a consumer with a bank account-linked debit card has Regulation E protections – once the consumer reports an unauthorized transaction, the bank must resolve the dispute or provisionally recredit the missing funds within 10 business days. This problem must be resolved with an amendment to Regulation E. In the meantime, the safe prepaid card template should require the issuing bank to provide prepaid cards the same level of protections that bank account-linked debit cards receive, by contract, until Regulation E is clarified to cover prepaid cards.

Limit other fees to no more than nominal fees for unexpected events.

Consumers should not be nickel-and-dimed to perform everyday tasks with their

³ According to the Center for Responsible Lending, overdraft or NSF fees still average around \$34 per incident. See CTR. FOR RESPONSIBLE LENDING, BANKS TARGET, MISLEAD CONSUMERS AS OVERDRAFT DEADLINE NEARS 1 (2010), <http://www.responsiblelending.org/overdraft-loans/research-analysis/Banks-Target-And-Mislead-Consumers-As-Overdraft-Dateline-Nears.pdf>.

⁴ See Federal Reserve Bank Services, Check Services, <http://www.frb services.org/check/index.html> (updated July 2010) (to see fee schedules for returned checks, click on link to "FedReturn Services").

prepaid cards. Fees vary widely by card, but there can be fees for almost every type of activity - from activation, usage and POS transactions to cash withdrawal, reload, bill pay, customer service, account inactivity and account closure fees. Some cards also allow overdraft and charge a "shortage" fee. These fees are inappropriate and should be prohibited altogether. Consumers should not have to pay more than one flat monthly fee for ordinary use of their card. By limiting any other fees to nominal fees for unexpected events, such as ordering a second replacement card, consumers will be able to use their prepaid cards without incurring multiple fees that significantly increase the true price of using the card.

Require simple, easy-to-read and accessible fee disclosures. Prepaid cards still come with a long list of fees that are often confusing and nearly impossible to find out about before buying the card due to inadequate disclosures on packaging and websites. Complete fee schedules should be disclosed up front in an easy-to-read format (like the Schumer box for credit cards) on the outside of the package so that consumers can compare the fees for different prepaid cards before they sign up for one. Consumers should also receive a wallet-size card listing the fees so that they have convenient access to the fee schedule, which should also be available on a clear and conspicuous location on the issuer's website.

Offer statements for no more than \$1 per month. Prepaid cards are marketed as bank account alternatives, yet prepaid cards often do not come with monthly statements, which are commonplace for bank accounts. Most do not even offer the opportunity to sign up for monthly paper statements. Paper statements are important for some consumers to prevent identity theft and find unauthorized charges, billing errors, and unwanted fees, as well for recordkeeping. All prepaid cards should come with the option of signing up for paper statements at a modest charge of \$1 per month after receiving two free statements per year, with ad hoc statements and an annual summary available for those who do not sign up. The Direct Express Card used for Social Security benefits offers paper statements for only \$0.75, an option that has not been problematic for the card issuer.

Prohibit lines of credit. Some prepaid cards offer expensive lines of credit that function a lot like payday loans, with triple-digit APRs and short repayment periods. Furthermore, banks have access to prepaid cards funds that are direct deposited onto the card, which means they can repay lines of credit and fees by extracting the funds from the consumer's next paycheck or even funds on the card that are exempt under federal or state law. Prohibiting lines of credit on prepaid cards is essential to prevent making the cards an invitation to expensive loans that are a debt treadmill for consumers.

Provide chargeback rights. Unlike credit cards, both prepaid cards and traditional bank account-linked debit cards lack legally-guaranteed chargeback rights. This means that consumers who pay by prepaid card or bank account-

linked debit card do not have the right to reverse a charge if they have a good faith dispute with a merchant about the delivery, quality or acceptability of goods and services. Consumers should have chargeback rights, regardless of the method they choose to pay for goods and services.

Prepaid cards are used by the same unbanked and underbanked populations that the FDIC sought to benefit with the Safe Transaction and Savings Account templates. We urge the FDIC to issue a safe template specifically for prepaid cards, which can provide a stepping stone toward the mainstream banking system for these consumers.

Respectfully submitted,

Consumers Union

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