

May 27, 2015

Via Electronic Submission

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

RE: Notice of Proposed Rulemaking to Amend Regulation E to Cover Prepaid Accounts – Docket No. CFPB-2014-0031; RIN 3170-AA22

Dear Ms. Jackson:

JPay Inc. ("JPay") is pleased to submit this letter to the Consumer Financial Protection Bureau ("Bureau") in response to the notice of proposed rulemaking to amend 12 C.F.R. Part 1005 ("Regulation E") published in the Federal Register on December 23, 2014 at 79 Federal Register 77102–77335 ("NPRM" or "Proposed Rule").¹ The Proposed Rule would expressly bring prepaid financial products within the coverage of Regulation E as prepaid accounts and create new provisions specific to such accounts.

JPay provides a number of services to friends and family of inmates through a variety of corrections-related services offered to prisons and jails across the country. One of the services JPay offers is "release cards" whereby JPay is a distributor of an instant issue card provided to inmates released by correctional facilities. Release cards have become a popular method for providing funds to released inmates by correctional facilities in lieu of issuing checks or providing cash.

Although the comment period for the NPRM closed on March 23, 2015, JPay respectfully requests the Bureau to consider this submission. After the comment period closed, JPay became aware of comments that were submitted by Prison Policy Initiative ("PPI") and Human Rights Defense Center ("HRDC") that specifically addressed release cards, although the NPRM did not expressly request comments relating to release cards. In light of the foregoing, we would appreciate the opportunity to comment on the Proposed Rule.

While we generally support the Bureau's efforts to extend Regulation E protections to prepaid cards, including release cards, we do not believe that Regulation E's compulsory use provision should be extended to release cards for the reasons discussed herein. In addition, JPay would like to provide the Bureau with additional information regarding its release cards to address certain claims made by PPI and HRDC.

¹ 79 Fed. Reg. 77102–77335 (Dec. 23, 2014).

A. The Compulsory Use Provision Should Not Be Extended to Release Cards.

In the NPRM, the Bureau seeks comment on whether Regulation E's compulsory use provision should be extended to other types of prepaid accounts (other than payroll card accounts and government benefit accounts), such as cards used by post-secondary educational institutions for financial aid disbursements or insurance companies to payout claims.² Although the Bureau did not expressly request comment as to whether the compulsory use provision should be extended to release cards, PPI and HRDC advocated that release cards should be treated as government benefits cards subject to the compulsory use provision. Release cards should not be considered government benefits cards and should not be subject to the compulsory use provision.

Release cards hold money that a person earned, received as a gift, or possessed upon their incarceration and do not solely contain government benefits.³ The fact that a government agency employee loads the release card should not make it a government benefits card.

Furthermore, release cards should not be subject to the compulsory use provision because the other primary options for disbursing release funds – cash or check – have proven to be problematic for correctional agencies and released inmates. Checks are often issued days and sometimes months after inmates are released, which results in individuals never receiving their checks or obtaining them after significant delays. In addition, since these persons generally do not have bank accounts, they are forced to pay excessive check cashing fees, which can amount to over 10% of the face value of the check. The cash alternative has also proven to be problematic due to the risk of mismanagement by correctional staff. JPay and many correctional agencies believe that release cards facilitate the released inmate's reintegration into society since the cards may function like checking accounts. Cardholders may upgrade their card to a permanent general purpose reloadable card and also have their federal benefits and payroll checks deposited directly into their account.

Although JPay believes the alternatives are unfavorable, JPay recognizes the importance of having choices. Many release cards, including those distributed by JPay, are structured in a manner that allows inmates to continue using the card, or, immediately withdraw the balance and cancel the card at little or no cost. Accordingly, extending Regulation E's compulsory use provision to release cards would not provide significant, if any, additional protection for inmates. For these reasons, JPay believes that release cards should not be subject to Regulation E's compulsory use provision.

B. Comments to Claims Made By PPI

1. PPI's Claims Regarding JPay's Release Card Fees are Misleading.

PPI provides a misleading presentation of JPay's release card fees. The chart on page 4 of PPI's comment letter leads the reader to believe that all of the fees are applicable to a cardholder's account, when in fact only one or a few of those fees may apply, depending on the state in which the release card is offered. For example, in New Jersey, only the \$2.00 weekly fee is assessed, and there are no ATM, point of sale, monthly, inactivity or any other types of fees associated with activating or using the release card. Considering that an

² 79 Fed. Reg. at 77136.

³ In some states, release cards may also include "gate money" provided by the state.

ATM transaction generally costs any prepaid cardholder an average of \$2.00, the ability for the New Jersey release cardholder to conduct an unlimited number of ATM transactions, or any other type of transaction, at no additional cost is a benefit to the cardholder.

In some states, including Florida and Louisiana, no fees apply to activating or using JPay's release cards. In California and Missouri, very few fees may apply. In states where fees may apply, fees are competitive and may be avoided. Please see [Attachment 1](#) to this letter, which sets forth the fees associated with JPay's release cards in each state where they are distributed.

In states where fees may apply, almost all fees are avoidable. Cardholders who may be subject to a service charge are given a grace period of seven to sixty-two days before the first service fee is charged. This allows inmates adequate time to research alternative financial services, cancel the card, and avoid the service fee entirely. In 8 of the 13 states in which JPay distributes release cards, cardholders are given at least one free ATM⁴ withdrawal of up to \$500.00. The average balance on release cards at the time the inmate is released is \$200.00. Therefore, cardholders may withdraw funds and discontinue use of the card without incurring any fees. In the other 5 states, cardholders may make an ATM withdrawal for \$2.00. Alternatively, the cardholder may apply the entire balance to a purchase transaction, which is free in 7 of the 13 states, and costs \$0.70 in other states. In any given state in which JPay distributes release cards, the total cost of unavoidable fees is often \$0.00, but never greater than \$3.00.

2. JPay Educates Inmates Regarding the Use of Release Cards and Any Associated Fees.

PPI asserts that because released individuals are likely to need prompt access to their funds, they are “particularly susceptible to abusive provisions contained in adhesive contracts” (see page 8 of PPI's comment letter). To the contrary, JPay spends a significant amount of resources in educating releasing inmates on the release cards and the associated fees. Under its contracts with the various state departments of corrections, JPay is required to distribute educational materials regarding its release cards, and provide 24/7 live agent customer support for cardholders. Cardholders may call JPay's toll-free customer service number at any time of the day to inquire about their account activity and program information at no additional cost to them.

In addition, JPay's written release card terms and conditions are provided to the releasing inmates along with their release card, and all fees associated with the card are printed in large font. An electronic version of the fee schedule for each state is also available online to individuals who create an account linked to the release card. PPI asserts that requiring a user to create a web account linked to a particular card in order to see the fees provides for a “lack of transparency” and is another reason why Regulation E should apply to release cards (see footnote 19 on page 4 of PPI's comment letter). PPI's assertion is incorrect as recipients of release cards receive a paper copy of the terms and conditions, which includes all associated fees, along with their card upon release.

JPay's terms and conditions are also devoid of risky and potentially abusive product features, such as overdraft fees and overdraft lines of credit, which the Proposed Rule aims to address. If a releasing inmate objects to any term in the card agreement, he or she is free to withdraw the funds and cancel the card,

⁴ Although JPay does not charge for an ATM withdrawal in these states, the ATM provider may charge a fee.

as described above in Section B.1. JPay has not charged for customer service and account cancellation in any state for over one year.

3. JPay Incurs Significant Costs in Operating its Release Card Programs.

PPI asserts that because vendors may charge different cardholder fees under different contracts, vendor fees associated with operating a release card program are not cost based, but rather a “profit mechanism that is undisciplined by either regulatory oversight or an efficient marketplace” (see page 5 of PPI's comment letter). What PPI fails to understand is that JPay contracts with states pursuant to a public bidding process where fee schedules are mandated or where JPay must offer a low cost release card program in order to remain competitive.

In addition, PPI overlooks the fact that there are significant costs incurred to JPay in order to operate the release card program. Some of these fees include transaction costs, which JPay pays to the sponsor bank and processor for each type of transaction on the card (*i.e.*, authorizations, signature purchases, PIN purchases, purchase declines, international purchases, ATM withdrawals, ATM balance inquiries, ATM declines, and account maintenance fees). JPay also incurs significant costs to produce the cards, which include the cost of card materials, printing and embossing the cards, as well as shipping the cards to each correctional agency. Additional operational costs also include the cost of operating a call center where live agents are available 24 hours a day and 7 days a week to answer cardholder inquiries.

4. The Alternatives to Release Cards are Less Favorable. Release Cards Provide Various Benefits.

PPI also argues that the alternatives to release cards are better options for the releasing inmates (see pages 6 and 7 of PPI's comment letter). However, these alternatives – issuing checks or providing cash to the released individual – have proven to be problematic for correctional agencies and the releasing inmates as discussed above in Section A of our letter.

C. Comments to Claims Made By HRDC

1. Banning All Fees Associated with the Use of Release Cards Will Effectively End the Provision of These Cards to Releasing Inmates.

HRDC argues that all fees associated with the use of release cards should be banned. However, HRDC does not consider the fact that banning all such fees will effectively end the provision of a release card program. As discussed above in Section B.3 of our letter, JPay incurs significant costs in the operation of its release card program and any fees generated under the program are used to offset these costs.

2. Allowing Releasing Inmates to "Opt In" to Receiving Funds Via Release Cards Has Been Rejected by the Correctional Agencies for a Variety of Reasons.

HRDC claims that providing for an "opt in" option for release cards and providing for "cost free" options such as receiving cash or checks from the releasing agency is the better alternative. This argument is misguided as HRDC fails to address the issues with providing cash or checks as discussed above in Section A of our letter. Additionally, released inmates are free to immediately withdraw funds and cancel the card at little or no cost, as described in Section B.1 of our letter. Requiring cardholders to "opt in" would increase the regulatory burden and compliance costs for card issuers and correctional agencies, without providing significant, if any, countervailing benefit to releasing inmates.

3. Correctional Agencies Do Not Receive Commissions (or "Kickbacks") for Their Release Card Programs.

HRDC incorrectly states that correctional agencies receive commissions (or "kickbacks") from release card providers. Not one state agency collects a commission from JPay's release card program.

4. Cardholder Fees for JPay's Release Cards are Highly Competitive and Often More Favorable Than the Fees Associated with Prepaid Cards Available to the General Public.

HRDC argues that JPay's release card fees are excessive and exceed what consumers would pay for similar prepaid card services. However, JPay's cardholder fees are highly competitive when compared to most prepaid programs in the market today. For instance, it costs \$3.95 to \$9.95 for initial loads to a Rush Card, \$2.95 to activate a Walgreens card and up to \$3.95 and up to \$4.95 to activate American Express and Green Dot prepaid cards, respectively. For programs with free activations, the monthly fees range from \$1.00 to \$9.95.⁵ Nearly all major programs charge \$2.00 for non-network ATM withdrawals, and a majority of programs have an ATM balance inquiry fee at non-network ATMs ranging from \$0.50 to \$2.00.

In comparison, JPay's release cards are competitively priced. There is no cost to activate the cards in 11 of the 13 state correctional agencies that JPay services, and monthly fees range from \$0.00 to \$8.00. In states where JPay's monthly service fees exceed \$3.00, there are no fees for purchases, declined transactions, ATM withdrawals and balance inquiries. ATM withdrawals are \$2.00 in the programs where the monthly fee is \$0.50, and most programs offer either the first or all ATM withdrawals for free. Balance inquiry fees range between \$0.00 and \$1.50, and only apply when monthly service fees are \$2.00 or less, or, when ATM withdrawals and/or purchase transactions are free.

As stated above in Section B.1 of our letter, the cardholder never incurs fees in certain states. In Florida and Louisiana, the cards are free to use,⁶ so every released inmate in those states may use the card without incurring any fees. In Missouri and California, JPay's programs have very minimal fees. These four states comprise over 60% of all release cards issued by JPay. In states where fees may be assessed, a release cardholder may use the card in a manner so that he or she avoids fees, as discussed above in Section B.1 of our letter.

⁵ We note that there are restrictions on monthly fees in some states.

⁶ Only a nominal fee for a replacement card may apply.

D. Conclusion

For the reasons stated herein, among others, JPay believes that release cards should not be subject to Regulation E's compulsory use provision, and JPay disagrees with PPI's and HRDC's claims regarding release cards. PPI's and HRDC's statements illustrate that they have not thoroughly investigated the details of JPay's release card program and have a general lack of understanding regarding the facts and circumstances underlying the need for states to utilize release card programs such as those offered by JPay.

Respectfully submitted,



Errol Feldman
Chief Administrative Officer
JPay Inc.

Attachment 1

Fee Schedule for Each State

**California Department of Corrections & Rehabilitation
Cardholder Fee Table**

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Decline	\$1.00
ATM Withdrawal	FREE
ATM Decline	\$1.00
ATM Balance Inquiry	FREE
Monthly Service *	\$0.50
Inactivity	FREE
Account Closure **	\$9.95
Replacement Card	\$5.00

* Fee charged thirty (30) days after activation

** Cardholder receives balance via check in the mail

**Colorado Department of Corrections
Cardholder Fee Table**

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	\$0.70
Purchase (PIN & Signature) Int'l	\$3.00
Purchase (PIN & Signature) Decline	\$0.50
Purchase (PIN & Signature) Decline Int'l	\$1.50
ATM Withdrawal	\$2.00
ATM Withdrawal Int'l	\$4.00
ATM Decline	\$0.50
ATM Decline Int'l	\$1.50
ATM Balance Inquiry	\$0.50
ATM Balance Inquiry Int'l	\$1.50
Monthly Service *	\$0.50
Inactivity **	\$2.99
Account Closure ***	\$9.95
Replacement Card	\$5.00
Expedited Replacement Card	\$30.00

* Fee charged thirty (30) days after activation

** Fee charged monthly after sixty (60) days of inactivity

*** Cardholder receives balance via check

Florida Department of Corrections Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Decline	FREE
ATM Withdrawal	FREE
ATM Decline	FREE
ATM Balance Inquiry	FREE
Monthly Service	FREE
Inactivity	FREE
Account Closure*	FREE
Replace Card	\$5.00

*Cardholder receives balance via check

Georgia Department of Corrections Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	\$0.70
Purchase (PIN & Signature) Int'l	\$3.00
Purchase (PIN & Signature) Decline	\$0.50
Purchase (PIN & Signature) Decline Int'l	\$1.50
ATM Withdrawal *	\$2.00
ATM Withdrawal Int'l *	\$4.00
ATM Decline	\$0.50
ATM Decline Int'l	\$1.50
ATM Balance Inquiry	\$0.50
Monthly Service **	\$0.50
Inactivity ***	\$2.99
Account Closure ****	\$9.95
Print Statement	\$1.50
Replacement Card	\$5.00
Expedited Card Replacement	\$30.00

* Fee waived for first ATM withdrawal

** Fee charged thirty (30) days after activation

*** Fee charged after sixty (60) days of inactivity

**** Cardholder receives balance via check

Indiana Department of Correction Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	\$0.70
Purchase (PIN & Signature) Int'l	\$3.00
Purchase (PIN & Signature) Decline	\$0.50
Purchase (PIN & Signature) Decline Int'l	\$1.50
ATM Withdrawal	\$2.00
ATM Withdrawal Int'l	\$4.00
ATM Decline	\$0.50
ATM Decline Int'l	\$1.50
ATM Balance Inquiry	\$0.50
Monthly Service *	\$0.50
Inactivity **	\$2.99
Account Closure ***	\$9.95
Print Statement	\$1.50
Replacement Card	\$5.00
Expedited Card Replacement	\$30.00

* Fee charged thirty (30) days after activation

** Fee charged after sixty (60) days of inactivity

*** Cardholder receives balance via check

Louisiana Department of Public Safety & Corrections Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Decline	FREE
ATM Withdrawal	FREE
ATM Decline	FREE
ATM Balance Inquiry	FREE
Monthly Service	FREE
Inactivity	FREE
Account Closure *	FREE
Customer Service	FREE
Replacement Card **	\$5.00

* Cardholder receives balance via check

** First replacement card is free

Michigan Department of Corrections Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	\$0.70
Purchase (PIN & Signature) Int'l	\$3.00
Purchase (PIN & Signature) Decline	\$0.50
Purchase (PIN & Signature) Decline Int'l	\$1.50
ATM Withdrawal	\$2.00
ATM Withdrawal (Int'l)	\$4.00
ATM Decline	\$0.50
ATM Decline (Int'l)	\$1.50
ATM Balance Inquiry	\$0.50
ATM Balance Inquiry (Int'l)	\$1.50
Monthly Service *	\$0.50
Inactivity **	\$2.99
Account Closure ***	\$9.95
Print Statement	\$1.50
Replacement Card	\$5.00
Expedited Card Replacement	\$30.00

* Fee charged at end of the month following the month the card was loaded

** Fee charged after sixty (60) days of inactivity

*** Cardholder receives balance via check

Missouri Department of Corrections
Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Int'l	\$3.95
Purchase (PIN & Signature) Decline	\$1.95
ATM Withdrawal	FREE
ATM Decline	FREE
ATM Balance Inquiry	\$1.50
Monthly Service	FREE
Inactivity *	\$2.99
Account Closure **	\$9.95
Replacement Card	\$5.00

* Fee charged after sixty (60) days of inactivity

** Cardholder receives balance via check

New Jersey Department of Corrections Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Decline	FREE
ATM Withdrawal	FREE
ATM Decline	FREE
ATM Balance Inquiry	FREE
Account Closure *	FREE
Weekly Service **	\$2.00
Inactivity	FREE
Replacement Card	\$5.00

* Cardholder receives balance via check

** Fee charged seven (7) days after activation

North Carolina Department of Public Safety
Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	\$3.00
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Decline	FREE
ATM Withdrawal	FREE
ATM Decline	FREE
ATM Balance Inquiry	FREE
Account Closure *	FREE
Inactivity	FREE
Monthly Service **	\$6.00
Replacement Card	\$5.00
Expedited Card Replacement	\$30.00

* Cardholder receives balance via check

** Fee charged thirty (30) days after activation

Oklahoma Department of Corrections
Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	\$3.00
Purchase (PIN & Signature)	FREE
Purchase (PIN & Signature) Decline	FREE
ATM Withdrawal	FREE
ATM Decline	FREE
ATM Balance Inquiry	FREE
Account Closure *	FREE
Inactivity Fee	FREE
Monthly Service **	\$6.00
Replacement Card	\$5.00
Expedited Card Replacement	\$30.00

*Cardholder receives balance via check

**Fee charged thirty (30) days after activation

Tennessee Department of Corrections
Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	\$0.70
Purchase (PIN & Signature) Decline	\$0.50
ATM Withdrawal	\$2.00
ATM Withdrawal (Int'l)	\$4.00
ATM Decline	\$0.50
ATM Balance Inquiry	\$0.50
Monthly Service *	\$0.50
Inactivity **	\$2.99
Print Statement	\$1.50
Replacement Card	\$5.00

*Fee charged thirty (30) days after activation

** Fee charged after sixty (60) days of inactivity

*** Cardholder receives balance via check

Virginia Department of Corrections
Cardholder Fee Table

TRANSACTION TYPE	FEE
Card, Card Materials & Activation	FREE
Purchase (PIN & Signature)	\$0.70
Purchase (PIN & Signature) Int'l	\$3.00
Purchase (PIN & Signature) Decline	\$0.50
ATM Withdrawal	\$2.00
ATM Withdrawal Int'l	\$4.00
ATM Decline	\$0.50
ATM Decline Int'l	\$1.50
ATM Balance Inquiry	\$0.50
ATM Balance Inquiry Int'l	\$1.50
Monthly Service *	\$0.50
Inactivity **	\$2.99
Account Closure ***	\$9.95
Print Statement	\$1.50
Replacement Card	\$5.00

* Fee charged thirty (30) days after activation

** Fee charged monthly after sixty (60) days of inactivity

*** Cardholder receives balance via check