



# Human Rights Defense Center

*DEDICATED TO PROTECTING HUMAN RIGHTS*

March 23, 2015

**Submitted Online Only**

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P.O. Box 4503  
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**RE: Comment on Regulation of Prepaid Debit Cards Issued to Prisoners and Detainees Upon Release from Custody (Docket ID: CFPB-2014-0031)**

The Human Rights Defense Center (HRDC) and the undersigned organizations herein submit their comment regarding timely regulation of prepaid cards which are forced on prisoners, pre-trial detainees and immigration detainees (hereinafter “prisoners”) upon their release from jails, prisons and other detention facilities.

HRDC requests that the Consumer Financial Protection Bureau (CFPB) exercise its authority under the Electronic Fund Transfer Act (EFTA)<sup>1</sup> to include language in the proposed rule regarding regulation of prepaid accounts under EFTA (Regulation E) and the Truth in Lending Act (Regulation Z) that extends the ban on compulsory use to prepaid cards given to released prisoners, bans all fees associated with such cards and provides other protections as needed.

## **Background**

Congress passed the EFTA in 1978 to protect consumers who pay or receive money through electronic channels.<sup>2</sup> The Act is implemented by detailed regulations that are currently overseen by the CFPB. These regulations have grown to encompass debit cards, and special protections have been added concerning prepaid debit cards. Presently, many of the most important protections of the Act do not apply to ways in which prisons and jails use prepaid cards as a method of returning the personal funds of prisoners upon their release, and such cards have become revenue sources for detention facilities and private companies that financially exploit people enmeshed in the criminal justice system.

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<sup>1</sup> 15 U.S.C. § 1693, *et seq.*

<sup>2</sup> 15 U.S.C. § 1693(b).

As a result, we now see extensive financial abuse of prisoners, who are often poor and have their limited funds taken from them in ways over which they have no control. This illustrates the need for regulation by the CFPB to protect this vulnerable, marginalized population from exploitation and victimization by the financial industry and government agencies. Over 650,000 prisoners are released from state and federal prisons annually.<sup>3</sup> Local jails nationwide process an estimated 11.6 million people each year, and the vast majority of these people are released from custody shortly after booking.<sup>4</sup>

Given the increasing trend of issuing prepaid debit cards when prisoners are released from custody, as documented below, these numbers represent an increasingly significant and growing market. More importantly, it is an involuntary market where consumers have no choice or say in whether they have to use prepaid debit cards to access their own money.

On December 23, 2014, the Consumer Financial Protection Bureau issued a proposed rule regarding the regulation of prepaid accounts under the Electronic Fund Transfer Act (Regulation E) and Truth in Lending Act (Regulation Z).<sup>5</sup>

According to the Federal Register, “[T]he Bureau seeks comment on whether other interventions are appropriate with respect to prepaid products distributed by employers, government entities, educational institutions, and other third parties in connection with the payment of funds to particular groups.”<sup>6</sup>

### **HRDC’s Position on Release Debit Cards**

The Human Rights Defense Center takes the position that the CFPB should extend the ban on compulsory use beyond payroll and government benefit cards, present in the Prepaid Accounts Rule, Docket ID: CFPB-2014-0031, to include prepaid debit cards used for reimbursement of personal funds to prisoners upon their release. Moreover, the rule should at a minimum ban all fees associated with the use of such cards, or as an alternative require financial institutions to allow released prisoners to opt out from using the cards without incurring any fees.

This would be only consistent, as it is currently illegal to compel someone to use a particular prepaid card if, for example, it is used to receive payroll benefits.<sup>7</sup>

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<sup>3</sup> U.S. Dept. of Justice, [http://www.justice.gov/archive/fbci/progmenu\\_reentry.html](http://www.justice.gov/archive/fbci/progmenu_reentry.html) (last visited March 14, 2015).

<sup>4</sup> Local jails admitted an estimated 11.6 million persons during the 12-month period ending June 30, 2012, which was similar to 2011 (11.8 million) and down from 13.6 million in 2008. *See* <http://www.bjs.gov/content/pub/pdf/jim12st.pdf> (last visited March 14, 2015).

<sup>5</sup> 79 Fed. Reg. 77102, *et seq.* (Dec. 23, 2014).

<sup>6</sup> *Id.* at 77136 (under Section 1005.10, regarding the terms of Compulsory Use and Employment or Government Benefit, 10(e)(2)).

<sup>7</sup> <http://www.federalreserve.gov/boarddocs/supmanual/cch/efta.pdf> (last visited March 14, 2015) (defined as: Payroll card account, established through an employer (directly or indirectly), to which EFTs of the consumer’s wages, salary or other employee compensation (such as commissions) are made on a recurring basis. The payroll card account can be operated or managed by the employer, a third-party processor, a depository institution or any other person. All transactions involving the transfer of funds to or from a payroll card account are covered by the regulation (12 CFR 1005.2 (b)(2) and Comment 2(b)-2)); *see also* [http://files.consumerfinance.gov/f/201309\\_cfpb\\_payroll-card-bulletin.pdf](http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf) (last visited March 14, 2015); 12 CFR 1005.10(e)(2) and Comment 10(e)(2)-1. As the Federal Reserve Board explained in 2006, Regulation E’s

Under the proposed rule, prisoners who receive release debit cards would not enjoy the same protections afforded users of certain other cards, such as government benefit debit cards and child support debit cards. This is all the more unjust and outrageous when one considers the fact that prisoners are a vulnerable population who, upon release, are often given no choice as to how they receive their money, are not advised of the terms of the release debit cards and are rarely if ever provided any option to opt out of release cards. Even more troubling is the practice of financial institutions to give a commission or kickback to detention facilities in exchange for forcing prisoners to accept the release cards, with no alternatives.

Release debit cards are problematic because they often carry high fees, including maintenance fees. Released prisoners have no choice but to use the card—there is typically no paper check or direct deposit option such as with unemployment benefit cards, for example.<sup>8</sup> There is also a lack of transparency concerning the fees charged and, more importantly, there is typically no option for released prisoners except to use a release card and incur fees to access their own money.

Release cards may contain prisoners' accrued wages, but because the wages are deposited in the prisoners' prison or jail trust accounts first, the cards are not considered payroll cards—even though the final payment of prison wages often is loaded onto the card after the prisoner is released. Such a distinction is illusory and underscores the necessity of extending the ban on compulsory use to include prepaid debit cards issued to prisoners upon their release.

Some release cards also charge maintenance fees, which is problematic because prisoners are often instructed to retain the card for 30-90 days in case there is an additional deposit, such as a final paycheck from a prison job. For jail prisoners, release cards are problematic because many cards have minimum withdrawal amounts. Thus, a person arrested with \$19 or less in cash in their possession who is released hours later with a prepaid debit card will often have no way of retrieving their money because nearly all ATMs have a \$20 cash withdrawal minimum. Further, in some cases prisoners are required to pay fees to close out a debit card account and receive a check for the remaining balance, which, again, is their own money.

Accordingly, we urge the inclusion of clear language in the proposed rule that bans all fees associated with the use of compulsory release debit cards by detention facilities. For facilities that issue release debit cards, the rule should require a voluntary option regarding the use of such cards, with prisoners being fully informed of the terms of same when they are released. By banning fees and providing alternatives, facilities can help prisoners prepare themselves to re-enter society with a greater level of control over the often-meager financial resources to which they have access.

The proposed rule should specify that prisoners can only have their funds placed on a release debit card if they choose that option (opt in), that such cards have no fees, that all rules and

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compulsory use provisions “apply to payroll card accounts because they are established as accounts for the receipt of EFTs of salary.” 71 FR 1473, 1476 (Jan. 10, 2006).

<sup>8</sup> See <http://www.nclc.org/images/pdf/pr-reports/report-prepaid-card-2013.pdf> (last visited March 14, 2015) (showing that people tend to choose direct deposit if given the choice and if there are no needless barriers to selecting that option).

restrictions for the cards be explained to prisoners in their native language if they choose to receive a debit card, and that a cost-free option be made available such as receiving cash or a check from the detention facility. This is the most reasonable, fair and just way to handle prisoners' release funds.<sup>9</sup>

By eliminating the excessive and unnecessary fees associated with the growing trend of compulsory release debit cards, this addition to the rule will substantially improve the lives of the millions of people who leave prisons and jails in hopes of regaining a foothold to establish meaningful participation in their family life and communities. It will also reduce their financial exploitation by the banking institutions and detention facilities that have grown accustomed to seeing the poor people imprisoned in our criminal justice system as a means of profit, to be exploited and gouged, rather than as consumers and citizens whose financial well-being should be protected and encouraged as a means of ensuring safer, stronger communities.

Securing financial stability in the initial days following a prisoner's release from a detention facility increases the likelihood of their post-release success.<sup>10</sup> HRDC and the undersigned organizations strongly believe, based on centuries of collective experience in criminal justice reform issues, that by including relevant language in the proposed rule, the CFPB will assist in reducing recidivism rates and improving the quality of life for both former prisoners and the communities they are reentering.

HRDC and the undersigned organizations oppose any further delay in revising these regulations. Requests for additional time to comment should be denied, as any additional delay only serves to continue the problematic practices associated with the compulsory use of release debit cards for prisoners and perpetuates their ongoing financial exploitation.

The following information provides a sampling of nationwide data and research to take into consideration with respect to the proposed rule and release debit cards.

### **The ASCA Survey**

The New Jersey Department of Corrections recently requested a survey to collect information about other state agencies' use of prepaid debit cards for prisoner release funds. The Association of State Correctional Administrators (ASCA) conducted the survey and published the results, in which 33 agencies responded.<sup>11</sup>

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<sup>9</sup> Oregon goes a step further and provides a fee-free debit card – the Oregon Trail/Offender Debit Card – that prisoners also can use to access food assistance and other benefits upon their release. *See* [http://www.oregon.gov/doc/GECO/pages/oam\\_reentry.aspx](http://www.oregon.gov/doc/GECO/pages/oam_reentry.aspx) (last visited March 14, 2015).

<sup>10</sup> The Congressional Research Service (CRS) Report on Offender Reentry, by Nathan James, published January 12, 2015, lists “the status of the local economy” among the most important factors for successful reentry. *See*, at pg. 12, <http://fas.org/sgp/crs/misc/RL34287.pdf> (last visited March 20, 2015).

<sup>11</sup> Survey results from the ASCA report can be found at: <http://www.asca.net/system/assets/attachments/7555/Use%20of%20Debit%20Cardsformatted%20Sheet1.pdf?1412189576> (last visited March 14, 2015). Additionally, an assessment of the ASCA survey can be found at: <http://www.asca.net/system/assets/attachments/7553/Use%20of%20Debit%20Card%20for%20Inmate%20Release%20Funds%20Survey.pdf?1412189540> (last visited March 14, 2015).

The survey, released in June 2014, indicates that government agencies across the U.S. that deal with prisoner funds are increasingly using prepaid debit cards as a method of reimbursing former prisoners for their personal funds which have been held by the agencies.<sup>12</sup>

A majority of these agencies reported that a fee is charged when using the debit card to get cash from a bank. Several of the agencies indicated that they have already been using some sort of release debit card for more than five years. This is occurring without the presence of clear regulatory protections for those engaged in such financial transactions.

The ASCA survey confirms that the trend toward the use of release debit cards is occurring in prisons and jails across the U.S., and that this practice is growing.

### **Other States, Federal Facilities and Card Providers**

At the time of the ASCA survey, there were at least 15 states in which prisoners received their account balance on a prepaid debit card upon their release. These cards were provided by third party companies such as JPay, Access/Keefe, Rapid Financial Solutions, Skylight Financial, US Bank and EZ Exit/MFunds (Continental Prison Systems).<sup>13</sup>

The cards typically include a variety of fees that eat away at the small amount of money most former prisoners are left with to restart their lives. In most cases, the fees exceed what consumers would pay for similar prepaid debit card services.

Along with these companies, larger entities such as JP Morgan/Chase and Bank of America are introducing prepaid release cards in county, state and federal facilities across the country.

Preliminary research has been conducted in several states, confirming HRDC's position on the need for clear regulatory language regarding release debit cards. The following summaries are from states where the use of such cards has been investigated by various government agencies, non-profit organizations and news media outlets.

#### *Arizona*

Prisoners in Arizona are issued a debit card through Bank of America upon their release. Bank of America charges a \$1.50 monthly maintenance fee, a \$1.50 withdrawal fee if a person uses a non-Bank of America ATM and a \$.25 point-of-sale fee for each transaction. If a person chooses to withdraw the entire amount from the debit card they are charged a \$5 fee. If the card is lost, no replacement is issued.<sup>14</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> See ASCA survey, *supra*, fn.12.

<sup>14</sup> "Public Prisons Private Profits," by Victoria Law, <http://truth-out.org/news/item/27138-public-prisons-private-profits#> (last visited March 14, 2015).

### *Iowa*

As of April 2014, more than 5,000 prisoners were reported to leave Iowa prisons each year without being able to receive any remaining money from their accounts in cash or on a paper check, only on a prepaid release debit card. According to a 2010 contract between U.S. Bank and the Iowa Department of Corrections, the card fees include \$.30 for any purchase, regardless of whether it's processed as "debit" or "credit"; \$15 to receive a check to remove money from the card; \$2 to speak to a live agent if there are questions about the account; \$3 for an ATM withdrawal (in addition to other ATM surcharges) and \$15 to replace a lost or stolen card.

A former Iowa prisoner can receive cash back with a purchase at "participating providers," but those providers are not identified. Purchases made with the card are supposedly free, but the contract specifies only those "made with a signature transaction." The contract states that U.S. Bank "reserves the right to change the fees charged to cardholders in its sole discretion." If it does so, it only needs to notify the corrections department; it does not need approval from the state to make changes, or from affected consumers.<sup>15</sup>

### *Michigan*

Upon their release from Michigan facilities, JPay charges prisoners \$.50 to check the balance of their release card at an ATM, \$2 to withdraw cash, \$.70 to make a purchase and \$.50 a month in maintenance fees. Even not using the card costs money; doing nothing draws a \$2.99 fee after 60 days. To cancel the card, a fee of \$9.95 is charged.<sup>16</sup>

### *Oklahoma*

In 2010, the Sequoyah County sheriff's office in Oklahoma was one of the first in the nation to switch to a release debit card system, then provided by Swanson Services Corp. More recently, prisoners released from Oklahoma county jails were reportedly given debit cards issued through the vendor EZ Exit/MFunds, which charged \$4.95 a month plus a \$.99 per-purchase fee, a \$.99 fee for balance inquiries, a \$2.99 charge to withdraw funds from an ATM, a \$2 charge to change a personal identification number and \$15 to replace a lost or damaged card.<sup>17</sup>

### *Federal Facilities*

JPMorgan issues debit cards to prisoners in federal detention facilities across the country when they are released that contain the balance remaining in their prison trust accounts. JPMorgan's

<sup>15</sup> "Inmates Face Egregious Debit Fees," *The Des Moines Register* Editorial Board, <http://www.desmoinesregister.com/story/opinion/editorials/2014/03/30/inmates-face-egregious-debit-fees/7059491> (last visited March 14, 2015).

<sup>16</sup> "Debit Cards Slam Released Prisoners with Sky-High Fees, Few Protections," by Amirah Al Idrus, <http://www.publicintegrity.org/2014/09/30/15768/debit-cards-slam-released-prisoners-sky-high-fees-few-protections> (last visited March 14, 2015).

<sup>17</sup> "Prison Bankers Exact Fees, Profits from Families," by M. Scott Carter, <http://oklahomawatch.org/2015/02/17/prison-bankers-exact-fees-profits-from-families> (last visited March 14, 2015).

original contract was awarded in 1998 and amended at least 14 times.<sup>18</sup> It was renewed in 2008 and amended at least four times since then.<sup>19</sup> HRDC is concerned that these contracts are being negotiated and re-negotiated without clear regulatory language to protect the consumers – released federal prisoners – who are currently forced to use release debit cards.

It is unclear how much money JPMorgan has made from the release cards because the bank's compensation comes from fees charged directly to former prisoners. A Treasury document<sup>20</sup> dated September 18, 2014 indicated that 92,343 released prisoners had been issued release debit cards and listed fees including \$2 for withdrawing money from an ATM and \$1.50 for leaving an account inactive for three months, among other charges.<sup>21</sup>

In addition, an investigation by the Center for Public Integrity<sup>22</sup> found that the contract with JPMorgan was not subject to an open, competitive bidding process. The Treasury Department's Inspector General is now investigating this issue.<sup>23</sup>

Expert economist Steve Tadelis, a UC Berkeley associate professor of business and public policy who has studied these federal government contracts, commented on the lack of competitive bidding processes for release debit cards.

“When it comes to products or services that are somewhat standard, easy to describe, where the deliverables are clear and reasonably measurable, then competitive bidding is by far the most efficient method of procurement...,” he stated. “If you're a government agency and you want to procure pencils, well there are [many] producers of pencils.... From what I've read and heard about these issues with the bank accounts and debit cards, I think it's pretty clear this looks a lot more like a pencil than a fighter jet or a complex IT system.”<sup>24</sup>

### *County Jails*

It must also be noted that the use of compulsory release debit cards has grown exponentially among county jails nationwide in recent years. While there is not yet comprehensive data on the

<sup>18</sup> A reference to an original agreement with JPMorgan, signed June 3, 1998, can be found online. Treasury says it is unable to locate a copy of this original contract. <https://www.documentcloud.org/documents/1227199-jpmc-usdc-faa-10-2008-redacted.html#document/p15/a182243> (last visited March 14, 2015).

<sup>19</sup> This contract can be found at: <https://www.documentcloud.org/documents/1227199-jpmc-usdc-faa-10-2008-redacted.html> (last visited March 14, 2015).

<sup>20</sup> Bureau of the Fiscal Service report on debit cards for 23<sup>rd</sup> Annual Govt. Financial Management Conference, <http://fmsq.treas.gov/tas/conf-presenations/41-US-Debit-Card-Wed.pdf> (last visited March 14, 2015).

<sup>21</sup> See <http://www.fiscal.treasury.gov/fstraining/events/Debit2014.pdf> (last visited March 14, 2015); see also “Treasury to Investigate Contracts with the Megabanks Awarded Without Competition,” by Daniel Wagner, <http://www.publicintegrity.org/2014/10/15/15939/center-report-spurs-investigation-bank-america-jpmorgan-prison-deals> (last visited March 14, 2015).

<sup>22</sup> “Megabanks have prison financial services markets locked up,” by Daniel Wagner, <http://www.publicintegrity.org/2014/10/02/15812/megabanks-have-prison-financial-services-market-locked> (last visited March 15, 2015).

<sup>23</sup> Center for Public Integrity report, <http://www.publicintegrity.org/2014/10/15/15939/center-report-spurs-investigation-bank-america-jpmorgan-prison-deals> (last visited March 14, 2015).

<sup>24</sup> The source of Tadelis' quote is the article, “How Big Banks Turn Prisons into Profit Centers,” by Stan Alcorn, <http://www.marketplace.org/topics/wealth-poverty/how-big-banks-turned-prisons-profit-centers> (last visited March 14, 2015).

pace or extent of this growth, it is clear that the practice of using release debit cards deserves the same regulatory treatment as other prepaid cards. As noted above, release cards represent a fertile area for consumer abuse due to the sheer number of people being released from prisons and jails who are compelled to use such cards to access their own money.

The county jail in Dallas, Texas was one of the first large jails to use prepaid release debit cards. The County Commission and county judges have reportedly tried to remedy problems related to the compulsory use of the cards and their associated fees at a local level, in the absence of clear federal regulatory language.<sup>25</sup>

Release cards for prisoners in county jails have drawn criticism from consumer attorneys who have filed litigation in multiple states, including Minnesota<sup>26</sup> and Arkansas.<sup>27</sup> The federal class-action suit filed in Arkansas alleges that fees associated with compulsory release debit cards amount to kickbacks to the sheriff in Benton County.

The Arkansas lawsuit claims that the defendants have an agreement whereby money seized from arrestees is to be involuntarily placed into a designated account by the sheriff's office, and card providers are authorized to withdraw and convert funds to prepaid debit cards when prisoners are released, to the injury of the class members. The agreement between the defendants is alleged to be part of a *quid pro quo* for the kickback that the sheriff receives from the card providers under the agreement. The lawsuit states that "[t]his agreement includes a schedule of fees that are involuntarily charged to inmates for the use (and failure to use) the prepaid debit card."<sup>28</sup>

## Conclusion

The most recent Bureau of Justice Statistics study on recidivism found that within five years of release over three-quarters of ex-offenders are arrested (76.6%), including more than half (55.1%) who return to prison after either being convicted for a new crime or violating the conditions of their parole.<sup>29</sup>

In recognizing this trend, and the significant financial burden it places on federal, state and local governments, policy makers have increased efforts to reduce future criminal activity and parole violations by decreasing recidivism rates.

Former prisoners' financial stability and ability to effectively access and manage their often-limited funds play a crucial role in determining whether, upon release, prisoners successfully return to society or become another recidivism statistic.

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<sup>25</sup> "Jail Debit Card Hits Inmate with Fees," by BJ Austin, <http://keranews.org/post/jail-debit-card-hits-inmate-fees> (last visited March 14, 2015).

<sup>26</sup> "Jail is Sued Over Debit Card Fees," by Alejandra Matos, <http://www.startribune.com/local/230359321.html> (last visited March 14, 2015); *see also* "Jails Face Backlash, Class-action Lawsuits Over Debit Card Fees," by Matt Clarke, [www.prisonlegalnews.org/news/2014/jun/5/jails-face-backlash-class-action-lawsuits-over-debit-card-fees](http://www.prisonlegalnews.org/news/2014/jun/5/jails-face-backlash-class-action-lawsuits-over-debit-card-fees) (last visited March 20, 2015).

<sup>27</sup> "Sheriff Took Kickbacks for Card Fees, Class Says," by Erik de la Garza, <http://www.courthousenews.com/2013/04/12/56647.htm> (last visited March 14, 2015).

<sup>28</sup> *Id.*

<sup>29</sup> *Supra*, fn.11.

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The American Bar Association (ABA) has addressed this matter in their “Standards on the Treatment of Prisoners.” ABA Standard 23-8.8, Fees and financial obligations, provides:

(a) Unless a court orders otherwise in a situation in which a prisoner possesses substantial assets, correctional authorities should not charge prisoners fees for any non-commissary services provided them during the period of imprisonment, including their food or housing or incarceration itself, except that correctional authorities should be permitted to assess prisoners employed at or above minimum wage a reasonable portion of their wages in applicable fees.

In a recent public comment to the Federal Communications Commission in January 2014 (also related to levying excessive and unnecessary fees on prisoners), the ABA further expounded on the dangers of these practices:

“A prisoner’s release from incarceration is a critical transition in his life, during which it is imperative that he or she stay away from substance abuse, find employment, refrain from further criminal behavior, and maintain a positive attitude. Immediate connections with family, friends, and community-based organizations upon release help recently released prisoners achieve these goals. Moreover, these connections alleviate some of the fear, loneliness, and confusion many prisoners feel when they first re-enter society from the confines and structure of incarceration.”

This observation is consistent with HRDC’s regular communication with thousands of prisoners across the United States and their families, where we find that prisoners’ post-release access to finances has a significant impact on relationships with their families and their ability to reenter their communities. Financial stability and personal relationships are among the most significant factors in determining whether a released prisoner will re-offend or violate parole; strained finances lead to strained relationships and, often, recidivism.

Regulations that empower consumers to choose lower-cost financial services and avoid the burden of unnecessary fees, which in turn lead to more successful re-entry for prisoners and reduced recidivism, fall squarely in line with the need to regulate release debit cards.

Regulating prepaid release debit cards will benefit society as a whole, whereas reaching into the wallets of already-indigent prisoners upon their release runs counter to basic principles of human rights and may well be a significant factor in high recidivism rates.

HRDC and the undersigned organizations understand that fees aren’t unique to debit cards issued to released prisoners. Prepaid cards provided by companies like Green Dot, Visa and American Express also charge users for a range of services. But the major difference is *choice*. Consumers who choose to use a prepaid card, often instead of a bank account, can shop around for the least costly option that best suits their needs. Released prisoners have no choice.

The companies that provide release debit cards literally have a captive market, and prisoners who complain about the fees they must pay to access their own money do not have regulatory tools to protect themselves.

For the above-stated reasons, HRDC and the undersigned organizations reiterate our request that the CFPB exercise its authority under the EFTA to add language to the proposed rule regarding the regulation of prepaid accounts that extends the ban on compulsory use to release debit cards; bans all fees associated with such cards; ensures that all terms, conditions and alternatives related to such cards are explained fully to prisoners in a language they can understand; and provides additional protections to this vulnerable class of consumers as the CFPB deems necessary.

### **Addendum**

In addition, we submit that the CFPB should also address larger issues beyond release debit cards. There is a growing industry of financial service providers that specialize in correctional facility trust account management and are operating outside of proper regulations that provide consumer protection. In 2011, the Multi-State Corrections Procurement Alliance issued a request for proposals (“MCPA RFP”)<sup>30</sup> seeking bids from companies for management of prison trust accounts. Contracts were awarded to Keefe Group and JPay. The contents of the MCPA RFP and the proposals received by the successful bidders indicate that there are many questionable practices in the correctional facility financial services industry. HRDC and the undersigned organizations believe that robust oversight by the CFPB is warranted in this matter as well. A few of the most prominent concerns regarding troublesome practices in the correctional facility financial services industry that we have identified include:

- Correctional facilities claim to be reducing their costs by outsourcing management of trust accounts. Yet both Keefe Group and JPay agree to provide contracting facilities with a “commission” (kickback) for deposits received into a prisoner’s trust account. These fees, paid by families and friends who send money to incarcerated loved ones, provide a revenue stream to the same correctional facilities that claim to be cutting expenses through outsourcing, and provide an incentive to maximize such revenue to the detriment of consumers.
- Even though vendors that provide correctional facility trust account services appear to be engaging in money transmission, one has suggested that “few” companies in this niche industry comply with money transmitter regulations.<sup>31</sup>
- Vendors boast that they can provide automated electronic processing of credit and debit transactions to and from prison trust accounts, but do not mention compliance with the EFTA and Regulation E.
- Vendors may not be complying with unclaimed property laws with respect to funds left in prisoners’ accounts or accounts maintained by their family members.

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<sup>30</sup> Available at <http://www.webcitation.org/6WUcrjHwy>.

<sup>31</sup> See (at pg. 24), [http://static.prisonpolicy.org/scans/cards/RFP\\_1901\\_JPay\\_Technical\\_Proposal.pdf](http://static.prisonpolicy.org/scans/cards/RFP_1901_JPay_Technical_Proposal.pdf) (last visited March 20, 2015).

The growth in outsourcing correctional facility financial services means that end-user customers of these services (i.e., prisoners, their friends and their families) are forced to do business with third-party companies that are incentivized to charge non-cost-based fees in order to maximize their revenue at the expense of consumers.

Even worse, these companies frequently extract revenue through fees, and then split the fee revenue with the correctional facilities that award them exclusive contracts to provide financial services. This situation will never result in fair treatment of consumers without regulation and oversight by the CFPB.

HRDC and the undersigned organizations believe that robust oversight by the CFPB is warranted in these matters as well. Therefore, in addition to modifying the amendments to the proposed rule, we urge the CFPB to conduct a further rulemaking proceeding to address the widespread problems that exist in the correctional facility financial services industry.

Thank you for your time and attention in this matter. If you have further questions or require any additional information, please do not hesitate to contact us.

Sincerely,



Paul Wright  
Executive Director, HRDC

**The following 68 organizations represent or advocate for constituencies affected by release debit cards and agree with the proposals made in this comment:**

All of Us or None

All of Us or None, Texas

Center for Community Change Action (Washington DC)

Center for Media Justice (Oakland, CA)

Civil Rights Clinic, Michigan State University College of Law

Columbia Legal Services (Seattle, WA)

International CURE (Citizens United for Rehabilitation of Errants)

Arkansas CURE

CURE Illinois

Colorado CURE

Minnesota CURE

Oregon CURE

Texas CURE

Virginia CURE

Dignity and Power Now (Los Angeles, CA)

Families for Justice as Healing (Boston MA)

Florida Immigrant Coalition

Florida Justice Institute

Florida New Majority

Friends of Broward Detainees (Ft. Lauderdale, FL)

Grassroots Leadership (Austin, TX)

Greenlining Institute (Berkeley, CA)

Highlander Center (New Market, TN)

Illinois Campaign for Prison Phone Justice

Immigrant Legal Resource Center (San Francisco, CA)

Incarcerated Nation Corp. (Bronx, NY)

Jewish Alliance for Law and Social Action (Boston, MA)

Just Schools Project (Brattleboro, VT)

Legal Aid Justice Center of Charlottesville (VA)

Legal Services for Prisoners with Children

Martinez Street Women's Center (San Antonio, TX)

May First/People Link (Brooklyn, NY)

Media Alliance (Oakland, CA)

Media Literacy Project (Albuquerque, NM)

Media Action Grassroots Network

Million Hoodies

Nation Inside

National Lawyers Guild

National Police Accountability Project, Inc.

National Death Row Assistance Network of CURE

National Immigrant Justice Center (Heartland Alliance Program)

New York Criminal Bar Association

Palm Beach Meeting, Religious Society of (Quakers) Friends (Lake Worth, FL)

Prison Activist Resource Center (Oakland, CA)

Prison Law Office (San Quentin, CA)

Programa de Defensa e Indencia Binacional / Binational Defense and Advocacy Program  
(Ciudad Juárez, Chihuahua)

Punch & Jurists Ltd. (NYC)

R.I.H.D., Inc. (Richmond, VA)

The Real Cost of Prisons Project

Reformed Church of Highland Park (NJ)

Sin Fronteras (MD)

Social Action Committee of Congregation L'Dor Va-Dor (Boca Raton, FL)

South Florida Prison Book Project

Southern Center for Human Rights (Atlanta, GA)

Southern Poverty Law Center

Spring4Ward Inc. (Miami, FL)

Texas Criminal Justice Coalition

Texas Jail Project

The Prison Books Collective (Chapel Hill, NC)

Travis County X Offender Council (TX)

UC Davis Civil Rights Clinic (CA)

UC Davis School of Law Immigration Law Clinic (CA)

United Families (N. Miami Beach, FL)

Urbana-Champaign Independent Media Center

V.O.T.E. (New Orleans, LA)

Voices for Racial Justice (Minneapolis, MN)

WA Association of Criminal Defense Lawyers (Seattle, WA)

Women on the Rise (East Point, GA)