

## Insight



# Congressional Disapproval of CFPB's Prepaid Card Rules: What You Should Know

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Last October the Consumer Financial Protection Bureau (CFPB) issued its [final rules on prepaid cards and accounts](#) set to take effect in October of this year. As a result of these rules, many unbanked and underbanked households would lose access to alternative financial services (AFS) like prepaid debit cards to carry out their day to day transactions. Many others would see their costs of using prepaid cards increased or their choices for AFS decreased. In February, [the House](#) and [the Senate](#) introduced joint resolutions disapproving of the CFPB's prepaid card rules under the Congressional Review Act (CRA). It's a rare procedural move, but when a rule as potentially harmful as this is at stake, it's likely to work – and it should.

As the American Action Forum (AAF) has previously highlighted, since the implementation of many Dodd-Frank-mandated regulations, fewer banks offer free checking accounts, and many more banks require [higher minimum balances](#) to keep free checking accounts open without fees. [JPMorgan Chase has estimated](#) that these increased minimum balances or fees for not keeping that minimum balance would result in as many as five percent of its banking customers getting pushed out of the banking system entirely.

In a [2011 consumer impact study](#), the Federal Reserve said, “We would expect that a significant portion of the customers that would abandon checking accounts would be lower-income households since those are the ones most likely not to be able to want to pay for the more expensive accounts. To get an understanding of the potential significance of these closures, we note that a one percent decline in checking accounts would result in the loss of checking access for roughly one million households; an increase in the number of households by one million would increase the percent of unbanked individuals by 12 percent.”

Consequently, these unbanked and underbanked households are turning to AFS to carry out their day to day transactions. According to a [2012 Federal Deposit Insurance Corporation \(FDIC\) study](#) on unbanked and underbanked households, nearly two-thirds (64.9 percent) have used at least one AFS in the last year and close to half (45.5 percent) have used AFS in the last 30 days. Most prevalent among those AFS products are prepaid cards, which the [Federal Reserve found](#) to be the fastest growing form of non-cash payment because of their ease of use and the users' ability to avoid fees and minimum balances that come with traditional bank accounts.

Unfortunately, the CFPB's prepaid card rule would negatively impact those households. The nearly 1700-page rule requires new disclosures on behalf of the card companies, new error resolution procedures, consumer liability limits for unauthorized transactions, fee limits, and added requirements for cards with overdraft features.

The rules cover “prepaid accounts,” which is defined as “a card, code, or any other device that is capable of being loaded with funds, is not otherwise an account under Regulation E (such as a deposit account), and is redeemable upon presentation at multiple unaffiliated merchants for goods or services or usable at either ATMs or for person-to-person transfers.” For those accounts, the rules would require a short-form and long-form fee disclosure along with other information at the time a consumer acquires a prepaid account. Issuers would also

be required to deliver statements and both electronic and paper account histories dating back at least 18 months. The rules also set standards for error resolution and limit consumer liability.

In more tangible terms, the [CFPB conservatively estimates](#) that the rules will result in 137,642.3 one-time burden hours for prepaid card companies that will be forced to comply with the rules, along with 19,494.7 ongoing burden hours. Using the [federal government's own pay scale](#) for compliance costs, at \$38.20 an hour, these rules will cost each of these prepaid card companies \$5,257,935.86 just to get into compliance and another \$744,697.54 just to stay in compliance each year. And that doesn't take into account the cost to taxpayers for the new staff or overtime pay for CFPB employees to process the millions of pages of documentation coming in from the prepaid card companies as they try to comply with the rules. It's not unreasonable to estimate that total costs for these rules could be anywhere from hundreds of millions of dollars up to \$1 billion or more. And like most other government-imposed compliance costs, these too will be passed on to consumers one way or another.

In addition to harming unbanked and underbanked households with increased costs, the rules will also harm prepaid card users by limiting how they are able to use their services. For example, the rule treats any overdraft on prepaid accounts as credit and regulates it as such. Keep in mind that the reason many consumers turn to prepaid cards in the first place is because they are unable to obtain traditional banking products like credit cards. So by CFPB differentiating between how a checking account is treated and how a prepaid account is treated, they are simply creating even further tiered products and continuing to leave out the unbanked and underbanked population.

Politically, this is the only CFPB regulation that falls within the window for which a CRA action would work for repeal. In other words, it's the one easy shot that Congressional Republicans will have in this Congress to curtail the power of an agency that so many have called "rogue" and said should be "[functionally terminated](#)". And since these prepaid card rules have little merit to begin with, it should be an easy voting decision for the anti-CFPB contingent in Congress.

Excessive government intervention has already made it impossible for millions of Americans to access traditional banking services. If the CFPB really wants to help consumers gain access to banking services or even to make prepaid card services more available and more useful to consumers, they would devote more time to fixing crippling regulations and less time writing 1700 pages of rules that will hurt exactly those households that they propose to help. At the end of the day, writing new regulations like these prepaid card rules will eventually roll back any innovation or expansion of services that traditional banks or other AFS would have been able to provide.