

**Federal Trade Commission Report on Activities Related to  
Section 1075 of the Dodd-Frank Act  
December 24, 2012**

**INTRODUCTION**

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>1</sup> which, among other things, amended the Electronic Fund Transfer Act (EFTA)<sup>2</sup> to restrict interchange fees and to prohibit exclusive networks for debit card transactions. The Federal Trade Commission has the authority to enforce these EFTA amendments and the regulations that the Federal Reserve Board has issued to implement them.<sup>3</sup> The Commission is pleased to have this opportunity to report to Congress on its law enforcement, outreach, and other activities to implement these new requirements, as well as on the FTC's other efforts to protect consumers who use payment cards.<sup>4</sup>

**I. Section 1075 of the Dodd-Frank Act**

The Dodd-Frank Act substantially restructured the financial services law enforcement and regulatory system.<sup>5</sup> In particular, Section 1075 added Section 920 to

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<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).

<sup>2</sup> 15 U.S.C. §1693 *et seq.*

<sup>3</sup> The FTC has the authority to enforce EFTA and its implementing regulations for most non-bank entities. 15 U.S.C. §1691c(c); *see* S. Rep. 112-79 at 77-78 (“Payment Card Networks. – The Committee notes the important role that FTC has been assigned in enforcing the provisions of section 1075 of the [Dodd-Frank Act] as they relate to payment card network companies. The FTC’s enforcement role is critical to ensuring that payment card network companies do not take steps to undermine the small issuer exemption or the pro-consumer benefits contained in section 1075.”).

<sup>4</sup> The FTC is required to submit this report pursuant to the FY2012 Omnibus Appropriations Legislation (Pub. L. No. 112-7); *see* S. Rep. 112-79 at 78 (“The Committee directs the FTC to provide a report 1 year after enactment of this act on steps that FTC has taken over the previous year to ensure compliance by payment card network companies with section 1075 of Dodd-Frank and regulations promulgated thereunder. This report should explain whether FTC has identified any evidence that payment card network companies have taken steps to diminish the ability of small banks and credit unions to compete with large financial institutions in the debit card issuance market, and if such steps have been taken by the card network companies in coordination or collusion with large financial institutions.”).

<sup>5</sup> Many of these changes took effect on July 21, 2011, the date on which the consumer financial protection functions of the federal banking agencies, as well as certain regulatory functions of the FTC, were transferred to the new Consumer Financial Protection Bureau (CFPB). The FTC continues to enforce the following laws and regulations as to entities for which Congress has not committed enforcement to some other government agency: the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B; EFTA and its implementing Regulation E; the Truth in Lending Act (TILA) and its implementing Regulation Z; and the Consumer Leasing Act (CLA) and its implementing Regulation M. *See, e.g.*, 15

EFTA. Violations of Section 920 of EFTA are treated as violations of the FTC Act.<sup>6</sup> The Commission may use its existing investigative and law enforcement powers to address these violations. The FTC shares authority to investigate and enforce these new requirements with other financial regulators. The FTC's responsibility is limited to the conduct of payment card networks and certain other non-bank entities, such as non-federally chartered credit unions.<sup>7</sup>

### **A. New Rules Regarding Electronic Payments: Regulation II**

Section 1075 introduced a number of changes in debit card regulation. First, the section required that certain non-exempt debit card interchange fees, which are set by payment card networks and ultimately paid by merchants to issuers for processing electronic debit payments, be reasonable and proportional to the cost of the transactions; the Federal Reserve Board was given rulemaking authority for capping those fees. Second, the section required the Federal Reserve Board to issue regulations to end network exclusivity for processing electronic debit transactions: issuing banks and payment card networks must now permit merchants to choose between two or more unaffiliated competing payment networks for such processing. Third, the section required Federal Reserve Board regulations prohibiting issuers and payment networks from adopting rules or fees that inhibit merchants' ability to select which network will process their transactions. These statutory requirements were intended to increase competition among networks that process electronic debit payments.

On July 20, 2011, the Federal Reserve Board issued its final rule on Debit Card Interchange Fees and Routing (Regulation II), which, among other things, provides that

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U.S.C. §1691c(c). In addition, the Dodd-Frank Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, and federal credit unions. *See, e.g.*, Dodd-Frank Act §1061(b)(5)(C)(ii); 12 U.S.C. §5581(b)(5)(C)(ii). To implement the Dodd-Frank Act, the Commission and the CFPB entered into a memorandum of understanding to set forth a framework for coordinating certain law enforcement, rulemaking, and other activities. *See* FTC Press Release, *Federal Trade Commission, Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers*, Jan. 23, 2012, available at <http://www.ftc.gov/opa/2012/01/ftccfpb.shtm>.

<sup>6</sup> Section 920 of EFTA is enforced under previously-existing Section 918 of EFTA, 15 U.S.C. §1693o. The Commission enforces EFTA for those entities not specifically assigned to another federal enforcement agency. *See* 15 U.S.C. §1693o(c).

<sup>7</sup> According to the Federal Reserve Board, the requirements of Regulation II will be enforced by the relevant Federal functional regulator. For example, the National Credit Union Administration is responsible for enforcing the rule with respect to federally insured credit unions; the Office of the Comptroller of the Currency is responsible with respect to national banks and federal thrifts; the Federal Reserve Board is responsible with respect to state member banks; and the Federal Deposit Insurance Corporation is responsible with respect to state nonmember banks and state chartered thrifts. The Federal Trade Commission is responsible for enforcement with respect to other entities not covered by the above regulators. *See Compliance Guide to Small Entities*, available at <http://www.federalreserve.gov/bankinforeg/regiicg.htm>.

an issuer subject to the interchange fee standard (a non-exempt issuer) may not receive an interchange fee that exceeds 21 cents plus 0.05 percent multiplied by the value of the transaction, plus one-cent for certified fraud-prevention programs.<sup>8</sup>

Generally, the interchange fee restriction does not apply to certain government-administered debit cards, certain prepaid cards, or debit cards from issuers with consolidated assets of less than \$10 billion (exempt issuers). The Federal Reserve Board maintains a list of financial institutions that are exempt from the rules regarding interchange fees.<sup>9</sup> According to data updated in June 2012, there are 14,311 exempt institutions. Exempt issuers are not subject to the cap on interchange fees, but they are subject to the new rules regarding exclusive networks and routing.

Although there are other fees associated with processing electronic payments, the largest portion of processing fees is the interchange fee. All processing fees, including the interchange fee, are deducted from the amount credited to the merchant and are charged as the “merchant’s discount.” Because the fees are blended together and combined over many transactions, Section 1075 and Regulation II contain provisions to ensure that other network fees are not used to directly or indirectly compensate an issuer, or to circumvent or evade the interchange fee caps.<sup>10</sup>

Section 1075 also made changes affecting other methods of payment. For instance, payment card networks are prohibited from inhibiting the ability of merchants to offer legal discounts or in-kind incentives to consumers for using a particular payment method, such as cash, checks, debit cards, or credit cards, in certain circumstances. Payment card networks also may not inhibit the ability of merchants to set a minimum dollar value for accepting credit cards as long as the minimum dollar value does not exceed \$10.<sup>11</sup>

To meet its new obligations, soon after the issuance of Regulation II, staff from the FTC’s Bureau of Competition, Bureau of Consumer Protection, and Office of General Counsel met directly with congressional staff and with attorneys and economists at the

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<sup>8</sup> See Debit Card Interchange Fees and Routing, Final Rule, 76 Fed. Reg. 43394 (July 20, 2011), and Interim Final Rule, 76 Fed. Reg. 43478 (July 20, 2011), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm>. Most of the requirements took effect on Oct. 1, 2011, and Apr. 1, 2012; some requirements have later effective dates. In 2012, the Federal Reserve Board amended these rules to permit certain adjustments to debit card interchange fees to allow for fraud-prevention costs incurred by issuers. See 77 Fed. Reg. 46258 (Aug. 3, 2012), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20120727a.htm>. These amendments took effect Oct. 1, 2012.

<sup>9</sup> See *Interchange Fee Standards: Small Issuer Exemption*, available at <http://www.federalreserve.gov/paymentsystems/regii-interchange-fee-standards.htm>.

<sup>10</sup> Section 1075(a)(8)(B); 15 U.S.C. §1693o-2(a)(8)(B).

<sup>11</sup> Section 1075(b)(2) and (3); 15 U.S.C. §1693o-2(b)(2) and (3).

Federal Reserve Board who were responsible for developing Regulation II. These conversations provided helpful background about potential areas of inquiry and clarification about terminology used in the final rule.

## **B. FTC Outreach to Merchants: Business Education about New Rules**

The FTC has undertaken significant efforts to make businesses aware of Section 1075 and its implementing Regulation II, as well as the FTC's role in enforcing these new requirements. On September 30, 2011, the FTC issued a publication explaining the new rules and informing merchants about new options available for processing debit and credit transactions.<sup>12</sup> That business alert, *New Rules on Electronic Payments Lower Costs for Retailers* (available in English, Spanish, Korean, Vietnamese, and Chinese), specifically targets small, independent businesses that might not otherwise be aware of the new rules. The business alert contains practical advice for merchants looking to make changes that might lower their processing costs for electronic payments, including suggesting that merchants work with their acquiring banks to understand the new rules and fees. To date, the business alert has been viewed online more than 9,300 times.

In conjunction with the publication of the business alert, the FTC also posted an article, *Businesses: New rules for electronic payments take effect October 1*,<sup>13</sup> on its Business Center Blog. The Commission sent this article by email to more than 8,500 subscribers. The FTC further mentioned the business alert in the October 2011 issue of the FTC's monthly newsletter, *Penn Corner*, which has more than 17,000 subscribers.

To make it easy for merchants and consumers to file complaints regarding potential violations of the new rules, the FTC opened and maintains an electronic mailbox at [paymentcard@ftc.gov](mailto:paymentcard@ftc.gov). To date, we have received approximately 20 inquiries from consumers and small businesses seeking clarification about various aspects of the new rules, such as the minimum purchase requirements and differences when processing debit and credit card payments. FTC staff also searches the Consumer Sentinel database, where consumers and merchants have filed additional complaints relating to fees and charges associated with electronic payments.<sup>14</sup> FTC will continue to encourage merchants and others to use these and other avenues to raise concerns about potential law violations.

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<sup>12</sup> "FTC Press Release, *FTC Unveils Educational Materials for Small Businesses Explaining New Electronic Payment Rules*, Sept. 30, 2011, available at <http://www.ftc.gov/opa/2011/09/electronicpymtrule.shtm>.

<sup>13</sup> FTC, *Businesses: New rules for electronic payments take effect October 1*, available at <http://business.ftc.gov/blog/2011/09/businesses-new-rules-electronic-payments-take-effect-october-1st>.

<sup>14</sup> The Consumer Sentinel is a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the United States and abroad. The FTC and other federal and state law enforcement authorities, as well as several private-sector organizations, enter complaints into Consumer Sentinel; enforcers search the database to research cases, track targets, and identify victims.

### C. Responding to Concerns from Merchants

Since Regulation II began to take effect last fall, FTC staff has met on numerous occasions with a wide variety of merchants to discuss their concerns about rules and fees of the payment card networks. These meetings were attended by retail executives as well as representatives from trade associations of small merchants including convenience stores, restaurants, and grocery stores. During these meetings, FTC staff learned about merchants' concerns regarding a number of new network rules and fees that were introduced in the fall of 2011 by the payment card networks.

To inform the FTC staff's analysis of these network rules and fees, staff spoke with attorneys and economists at the Federal Reserve Board regarding the scope of Regulation II. Staff also examined guidance issued by the Federal Reserve Board on the types of restrictions that could violate Regulation II by inhibiting merchant choice under Regulation II's provisions concerning routing. For instance, commentary on Section 235.7(b) of Regulation II contains a number of examples of prohibited network restrictions on merchants, including:

- i. Prohibiting a merchant from encouraging or discouraging a cardholder's use of a particular method of debit card authorization, such as network rules prohibiting merchants from favoring a cardholder's use of PIN debit over signature debit, or from discouraging the cardholder's use of signature debit.
- ii. Establishing network rules or designating issuer priorities directing the processing of an electronic debit transaction on a specified payment network or its affiliated networks, or directing the processing of the transaction away from a specified network or its affiliates, except as a default rule in the event the merchant, or its acquirer or processor, does not designate a routing preference, or if required by state law.
- iii. Requiring a specific payment card network based on the type of access device provided to the cardholder by the issuer.<sup>15</sup>

Moreover, the Federal Reserve Board Commentary on Regulation II further distinguishes lawful network rules and fees that provide incentives to encourage merchants to route electronic debit card transactions to a particular network from those rules or fees that operate as a penalty that inhibits the merchant's choice. Federal Reserve Board Commentary § 235.7(b)-3 provides that a payment card network "does not restrict a merchant's ability to route transactions over available payment card networks in violation of § 235.7(b) by offering payments or other incentives to encourage merchants to route electronic debit card transactions to the network for processing." On the other hand, Section 1075(b)(1)(B) and Regulation II § 235.7(b) prohibit rules or fees that act as a penalty for making a routing choice. "An issuer or payment card network shall not, . . . by contract, requirement, condition, penalty or otherwise, inhibit the ability

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<sup>15</sup> See Federal Reserve Board's Official Staff Commentary to Regulation II, 12 C.F.R. 235.7(b)-2, Supp. 1.

of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions over any payment card network that may process such transactions.”<sup>16</sup>

As part of its assessment of network rules and fees, FTC staff has collected information from public sources as well as industry participants, and has had discussions with staff from the Antitrust Division of the Department of Justice who have antitrust expertise in the business activities of financial institutions and payment card networks.<sup>17</sup>

Based on information collected to date, FTC staff has begun an initial investigation to determine whether certain payment card network rules may violate Section 1075 or Regulation II, including issuing a request for information to one payment card network. FTC staff continues to assess whether any payment card network rules and fees may operate as a penalty inhibiting merchants’ routing or otherwise violate Regulation II. Certain provisions of the law and regulations were not effective until April 1, 2012, and many of the fees potentially at issue are assessed or invoiced on a quarterly basis, so merchants may not yet be fully aware of their effects.

The FTC will vigorously investigate potential violations of Section 1075 or Regulation II against entities within its jurisdiction. The FTC will continue to collect and evaluate information from merchants and other interested parties about potential violations of these new laws in support of merchants’ ability to direct routing to their network of choice.

#### **D. Effects on Small Banks and Credit Unions**

As noted by the Senate Appropriations Committee, FTC oversight is needed to ensure that payment card networks do not undermine the small issuer exemption or the pro-consumer benefits of Section 1075. For instance, some have raised concerns that smaller community banks and credit unions, although exempted from caps on debit card interchange fees, will nonetheless also see a reduction in interchange revenue.<sup>18</sup>

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<sup>16</sup> 12 C.F.R. 235.7(b).

<sup>17</sup> The FTC shares antitrust enforcement responsibilities with the Antitrust Division of the Department of Justice, and historically, the DOJ has investigated allegations of anticompetitive conduct by the payment card networks. In May, Visa, Inc. revealed the existence of a DOJ antitrust investigation of one of its newly adopted fees, the Fixed Acquirer Network Fee. *See* “Visa Faces DOJ Probe Over New Debit Card Fees,” *Law 360* (May 2, 2012), *available at* <http://www.law360.com/competition/articles/336799/visa-faces-doj-probe-over-new-debit-card-fees>.

<sup>18</sup> *See* Letter from the American Bankers Association, the Credit Union National Association, Independent Community Bankers of America, and National Association of Federal Credit Unions to the Honorable Harry Reid, the Honorable Mitch McConnell, the Honorable John Boehner, and the Honorable Nancy Pelosi, dated September 21, 2012, *available at* [http://www.cuna.org/download/congress\\_letter\\_092112.pdf](http://www.cuna.org/download/congress_letter_092112.pdf).

According to data collected by the Federal Reserve Board and released in May 2012,<sup>19</sup> interchange fees paid to exempt issuers are higher than those paid to non-exempt issuers. A recent report by the General Accountability Office also concluded that “community banks and credit unions have not, on average, experienced a significant decline in their debit interchange fees as a result of the Federal Reserve’s implementation of section 1075 of the Dodd-Frank Act.”<sup>20</sup> This is consistent with early reports that the payment card networks had adopted a two-tier fee structure for exempt and non-exempt issuers.

Within each category of exempt and non-exempt issuers, there is variation in the interchange fees set by competing payment card networks. For instance, in the period October 1 through December 31, 2011, fees for non-exempt issuers ranged from 15 cents per transaction to the maximum of 24 cents, and fees for exempt issuers ranged from 15 cents to 54 cents per transaction.<sup>21</sup> Now that merchants have new choices for routing to lower cost processors, it appears that payment card networks and other processors have begun to compete for merchant business by offering a range of interchange rates.

The Senate Appropriations Committee asks whether the FTC has identified any evidence that payment card network companies have taken steps to diminish the ability of small banks and credit unions to successfully compete with large financial institutions in the debit card issuance market, and if any such steps have been taken by the card network companies in coordination or collusion with large financial institutions. To date, FTC staff has not uncovered evidence that this type of conduct is occurring, but we will continue to collect and evaluate information related to this concern.

## **II. Additional FTC Efforts to Protect Users of Payment Cards**

The FTC’s recent activities to effectuate Section 1075 of the Dodd-Frank Act and its implementing regulations are an important supplement to the Commission’s traditional, broader role in protecting consumers who use payment cards. The FTC has used law enforcement, consumer education, and research and policy development activities to protect these consumers. To provide a more complete picture of the Commission’s efforts concerning payment cards, a brief description of these activities, including the FTC’s response to new payment technologies and products, is set forth below.

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<sup>19</sup> Board of Governors of the Federal Reserve System Report, “Average Debit Card Interchange Fee by Payment Card Network,” dated May 1, 2012, *available at* <http://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm>.

<sup>20</sup> “Community Banks and Credit Unions: Impact of the Dodd-Frank Act Depends Largely on Future Rule Makings,” GAO-12-881 (September 2012), at 27.

<sup>21</sup> *See* Federal Reserve System Report, *supra* note 19.

## A. Law Enforcement

The FTC has a long-standing interest in protecting consumers from unfair or deceptive conduct when they pay for goods or services electronically. The FTC enforces Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, against a variety of financial service companies that offer electronic payments and services. The FTC also enforces EFTA and its implementing Regulation E with regard to most non-bank entities.<sup>22</sup> EFTA imposes disclosure and subsequent requirements to protect individual consumers engaging in electronic fund and remittance transfer systems transactions.<sup>23</sup>

The FTC has used its authority under Section 5 of the FTC Act, and EFTA and Regulation E, to take action against those who process payments made with credit, debit, and other payment cards and engage in unfair, deceptive, or otherwise unlawful conduct that results in harm to consumers or small businesses.

For example, the FTC filed a complaint against a massive enterprise involving scores of companies, including payment processors and others that allegedly violated Section 5 of the FTC Act and EFTA by luring consumers into deceptive “trial” memberships and bogus government-grant and money-making schemes through a far-reaching Internet scam.<sup>24</sup> According to the complaint, the operation used websites that misrepresented that government grants are available for personal expenses, that consumers are likely to obtain grants by using defendants’ program, that users of their products will earn substantial income, and that the offers are free or risk-free.<sup>25</sup> The scheme allegedly caused over 500,000 consumers to seek chargebacks and reversals to their credit cards or debits to their bank accounts. In 2011, shortly after the Commission filed its complaint in court, the court froze the assets of the enterprise and placed them

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<sup>22</sup> For years, the FTC has reported on an annual basis on its enforcement activities pertaining to EFTA and certain other financial statutes and implementing regulations, to the Federal Reserve Board (and more recently, the CFPB). *See, e.g.*, FTC, Commission Report to the Board of Governors of the Federal Reserve System (Jan. 2012), *available at* <http://www.ftc.gov/opa/2012/02/fedreport.shtm>.

<sup>23</sup> *See* 15 U.S.C. §1693 *et seq.* Generally, the Dodd-Frank Act transferred rule-making authority under the EFTA and its implementing Regulation E from the Federal Reserve Board to the CFPB. 15 U.S.C. §1693. The transfer of authority did not include section 920 of EFTA (Section 1075 of the Dodd-Frank Act), a section over which the FTC, and other agencies, have enforcement authority.

<sup>24</sup> *FTC v. Jeremy Johnson*, No. CV 10-2203 (D. Nev. filed Dec. 21, 2010), *available at* <http://www.ftc.gov/opa/2010/12/iworks.shtm>.

<sup>25</sup> The complaint also alleged that defendants failed to disclose that consumers who provided their credit or debit card numbers to pay a small shipping and handling fee would be enrolled in expensive plans with other fees; the company charged consumers a hefty fee of up to \$249.95 and monthly recurring fees of up to \$59.95 and other monthly fees.

under a court-supervised receiver, and thereafter issued a preliminary injunction against the defendants.<sup>26</sup> This matter continues in litigation.<sup>27</sup>

Similarly, last September, the FTC mailed refunds to 100 merchants throughout the country who were defrauded by an operation that provided debit and credit card processing services.<sup>28</sup> The FTC alleged that the processors, in violation of Section 5 of the FTC Act, falsely promised they would save small businesses hundreds to thousands of dollars a year in processing fees by offering lower rates than their current credit card processing service. The defendants also allegedly falsely promised that they would buy out merchants' equipment leases if they accepted the offer, failed to disclose fees, and concealed pages of fine print with important contract provisions until after merchants had signed contracts. Pursuant to a settlement that the Commission reached with the defendants, approximately \$345,000 was returned to merchants; the amount refunded varied from about \$100 to more than \$25,000, depending upon how much the merchant had paid.

Through such enforcement activities, the FTC remains vigilant to prevent deceptive, unfair, or otherwise unlawful conduct of those who process payments made with cards that may harm consumers or small businesses in violation of the FTC Act or other laws the FTC enforces.

## **B. Consumer Education**

Consumer education is an effective way to stop harm before it happens. The FTC has published numerous consumer education pieces on electronic payments issues to assist consumers using electronic payments to make better-informed decisions, and

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<sup>26</sup> *FTC v. Jeremy Johnson* (D. Nev. Jan. 13, 2011) (asset freeze and appointment of receiver); (preliminary injunction order entered Feb. 10, 2011), *supra* note 24.

<sup>27</sup> In a more recent example of enforcement against payment processors, the FTC obtained a court order banning a payment processor and two of its principals from using a new payment method called "remotely created payment orders" that gave merchants unauthorized access to consumer bank accounts, in alleged violation of the FTC Act. In a settlement with the FTC, Landmark Clearing, Inc., and its principals agreed to stop the practice, and be subject to a \$1.5 million judgment that was suspended on payment of \$126,000 and surrender of a parcel of land. *See FTC v. Landmark Clearing, Inc.*, No. 4:11-cv-00826 (E.D. Tex. filed Dec. 15, 2011) (stipulated permanent injunction and final order entered Dec. 29, 2011), *available at* <http://www.ftc.gov/os/caselist/1123117/index.htm>.

<sup>28</sup> *See* FTC Press Release, *FTC Returns Refunds to Small Businesses Defrauded in Debit/Credit Card Processing Scheme*, Sept. 30, 2011, *available at* <http://www.ftc.gov/opa/2011/09/merchantpro.shtm>. The FTC mailed these refunds through a redress fund that the FTC had established in connection with settlements in this litigation. *See, e.g., FTC v. Merchant Processing Inc.*, No. cv-07-0533 (D. Or. May 2, 2008), *available at* <http://www.ftc.gov/os/caselist/0523162/index.shtm>.

thereby avoid deceptive or unfair practices. The Commission's consumer education materials address many important aspects of using credit, debit, or prepaid cards.<sup>29</sup>

## **C. Research and Policy Development**

### **1. FTC Comment on Proposed General Purpose Reloadable Prepaid Cards**

In May 2012, the CFPB issued an advance notice of proposed rulemaking, seeking comments on its intent to issue a proposal to extend federal protections regarding costs and terms to general purpose reloadable (GPR) cards. The FTC staff submitted a comment that expressed support for protecting users of GPR cards and for the CFPB's proposal to solicit information about the costs and benefits of extending additional protections to these cards. The comment described the Commission's authority under EFTA (including the new provisions) as well as the agency's jurisdiction for enforcement of numerous financial statutes and regulations.<sup>30</sup>

### **2. FTC Workshop on Mobile Payments**

Since 2000, the FTC has actively examined consumer issues in mobile payment services. Among other things, the Commission has convened workshops on the applications and implications of Radio Frequency Identification ("RFID") technology,<sup>31</sup> the role of mobile technology in commerce,<sup>32</sup> the emergence of contactless payment systems,<sup>33</sup> and advertising and privacy disclosures in mobile environments.<sup>34</sup> Mobile payments frequently involve hardware manufacturers, operating system developers, application developers, data brokers, coupon and loyalty program administrators, payment card networks, advertising companies, and retail merchants. As discussed

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<sup>29</sup> See, e.g., FTC, *Facts for Consumers: Electronic Banking*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre14.shtm>. See also FTC, *Buying, Giving and Using Gift Cards*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt010.shtm>.

<sup>30</sup> See Comments of the Staff of the Bureau of Consumer Protection, Docket No. CFPB-2012-0019 (Jul. 23, 2012), available at <http://www.ftc.gov/os/2012/07/120730cfpbstaffcomment.pdf>.

<sup>31</sup> See FTC Workshop, *Radio Frequency Identification: Applications and Implications for Consumers* (June 21, 2004), available at <http://www.ftc.gov/bcp/workshops/rfid/index.shtm>; FTC Workshop, *Transatlantic RFID Workshop on Consumer Privacy and Data Security* (Sep. 23, 2008), available at <http://ftc.gov/bcp/workshops/transatlantic/index.shtml>.

<sup>32</sup> See FTC Workshop, *Protecting Consumers in the Next Tech-ade* (Nov. 6-7, 2006), available at <http://www.ftc.gov/bcp/workshops/techade/what.html>.

<sup>33</sup> See FTC Workshop, *Pay on the Go: Consumers & Contactless Payment* (July 24, 2008), available at <http://www.ftc.gov/bcp/workshops/payonthego/index.shtml>.

<sup>34</sup> See FTC Workshop, *In Short: Advertising and Privacy Disclosures in a Digital World* (May 30, 2012), available at <http://www.ftc.gov/bcp/workshops/inshort/index.shtml>.

above, the Commission has jurisdiction over most non-bank entities involved in mobile payments.

On April 26, 2012, the FTC's Bureau of Consumer Protection convened a workshop on the development of mobile payments and their impact on consumers.<sup>35</sup> The workshop examined the innovative products and services being developed and the potential changes coming for consumers and merchants. For consumers, mobile payments can be an easy and convenient way to pay for goods and services, get discounts through mobile coupons, and earn or use loyalty points. For merchants, new options for processing mobile payments may allow them to avoid using the traditional payment card networks and potentially lower their costs. The workshop also examined three primary areas where consumer concerns are likely to arise with the increasing use of mobile payments: dispute resolution, data security, and privacy. Given the potential concerns raised, and the ongoing growth in this area, the agency will continue to monitor mobile payment developments.

## CONCLUSION

As discussed above, the Commission has commenced significant law enforcement, outreach, and other efforts to implement Section 1075 of the Dodd-Frank Act and related regulations concerning debit card transactions. The FTC will continue to engage in these types of activities over the next year, including undertaking efforts to implement amendments to Regulation II that took effect in October 2012.<sup>36</sup>

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<sup>35</sup> See FTC Workshop, *Paper, Plastic . . . or Mobile? An FTC Workshop on Mobile Payments* (April 26, 2012), available at <http://www.ftc.gov/bcp/workshops/mobilepayments>. FTC staff is currently preparing a report based on the workshop's findings.

<sup>36</sup> See Debit Card Interchange Fees and Routing, Final Rule, 77 Fed. Reg. 46258 (Aug. 3, 2012), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20120727a.htm>.