



**Statement in Opposition to
S.B. 201 – An Act Concerning Prepaid Cards**

**Joint Committee on Banks
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Visa opposes SB 201, which would repeal a 2012 supplement to the Connecticut General Statutes regarding “general-use prepaid cards,” and would replace it with a substitute. This substitute would provide that a general-use prepaid card may not include an expiration date for the underlying funds that are redeemable through the use of the card. As a result of these provisions, SB 201 would likely preclude banks from issuing general-use prepaid cards in Connecticut.

General-use prepaid cards are a type of payment card that is increasingly popular as a means of storing funds and making payments. These cards are most often issued by banks, although they may be offered to consumers by third parties on behalf of banks. A general-use prepaid card issued by a bank may carry the logo of a payment card network, such as Visa. As a result, a bank general-use prepaid card may be usable at any location that accepts payment cards from that network.

Notwithstanding recent changes to the procedures for making preemption determinations with respect to the National Bank Act that were enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”),¹ to the extent that SB 201 purports to apply to national banks and federal savings associations, we believe that SB 201 should be preempted and also that SB 201 should be superseded by other Connecticut law to the extent that it applies to state-chartered banks.

AUTHORITY OF FEDERALLY CHARTERED BANKS TO ISSUE GENERAL-USE PREPAID CARDS

Under federal banking law, federally chartered banks can issue general-use prepaid cards and can authorize third parties, such as merchants, to sell those general-use prepaid cards on their behalf. For example, the National Bank Act permits national banks to issue general-use prepaid cards.² The Office of the Comptroller of the Currency (“OCC”) has issued regulations that specifically provide that a national bank may “[offer] electronic stored value systems,” such as general-use prepaid cards.³ A national bank’s authority to offer electronic stored value systems also includes the authority to “charge its customers non-interest charges and fees, including deposit account service charges,”⁴ activities that would be precluded for vendors of general-use prepaid cards under SB 201.

Those authorities are coupled with guidance to ensure that consumers understand the terms of general-use prepaid cards that they receive from national banks. For example, OCC guidance states that national banks that offer prepaid access devices to consumers should have

¹ See Dodd-Frank Act Sections 1041-1048.

² See 12 U.S.C. § 24(Seventh).

³ 12 C.F.R. § 7.5002(a)(3).

⁴ 12 C.F.R. § 7.4002(a).

policies and procedures to ensure that all disclosures to consumers about pricing, fees, transaction limits and other program requirements and restrictions are clearly understood.⁵

APPLICABILITY OF STATE GENERAL-USE PREPAID CARD LAWS TO FEDERALLY CHARTERED BANKS

Because federal banking law provides federally chartered banks with the authority to issue general-use prepaid cards, state general-use prepaid card laws that significantly limit the terms or other aspects of the banks' offering of the general-use prepaid cards are preempted with respect to general-use prepaid card activities by federally chartered banks. Although the issue of preemption of state laws that purport to apply to federally chartered banks was hotly debated during the passage of the Dodd-Frank Act, the Dodd-Frank Act ultimately left intact over one hundred years of U.S. Supreme Court precedent providing for the preemption of state laws by the National Bank Act. The Dodd-Frank Act did make procedural changes in how determinations will be made as to whether individual state laws would be preempted in the future. Nonetheless, the Dodd-Frank Act retained the U.S. Supreme Court preemption standard and existing precedent in the form of case law and existing OCC preemption determinations. This standard and precedent would result in preemption of virtually all of SB 201 as it would apply to national banks.⁶

Further, to the extent that the National Bank Act and OCC regulations preempt SB 201, SB 201 would also be preempted for federal savings and loan associations. Section 1046 of the Dodd-Frank Act expressly provides that the preemption standards applicable to national banks also apply to federal savings associations.⁷

APPLICABILITY OF STATE GENERAL-USE PREPAID CARD LAWS TO STATE-CHARTERED BANKS

To the same extent that SB 201 would be preempted with respect to general-use prepaid issued by federally chartered banks, we believe SB 201 also would not apply to general-use prepaid cards issued by state-chartered banks. Connecticut has a "wild-card" banking or parity statute. Specifically, Connecticut banking law provides that Connecticut state-chartered banks may engage in any activity that a federal bank may be authorized to engage in under federal law, provided the Connecticut bank files with the Commissioner of the Connecticut Department of Banking prior written notice of its intention to engage in such activity.⁸ Then, the Connecticut

⁵ Risk Management Guidance and Sound Practices, OCC Bulletin 2011-27 at 2 (June 28, 2011). See also *FFIEC Information Technology Examination Handbook*, Retail Payment Systems Booklet, February 2010, and "Outsourcing Technology Services Booklet," June 2004; *FFIEC BSA/AML Examination Manual*, Electronic Banking, Electronic Cash, and Third-Party Payment Processors, April 2010; OCC Bulletin 2008-12, "Payment Processors: Risk Management Guidance," April 24, 2008; OCC Bulletin 2006-34, "Gift Card Disclosures," August 24, 2006; OCC Bulletin 2005-15, "Bank Secrecy Act/Anti-Money Laundering," April 25, 2005; OCC Bulletin 2004-20, "Risk Management of New, Expanded, or Modified Bank Products and Services: Risk Management Process," May 10, 2004; OCC Advisory Letter 2004-6, "Payroll Card Systems," May 6, 2004; OCC Advisory Letter 2002-3, "Guidance on Unfair or Deceptive Acts or Practices," March 22, 2002; OCC Bulletin 2001-47, "Third Party Relationships: Risk Management Principles," November 1, 2001; OCC Bulletin 96-48, "Stored Value Card Systems," September 10, 1996.

⁶ See 76 Fed. Reg. 43,549 - 43,569 (July 21, 2011).

⁷ See 12 C.F.R. § 1465(a); 12 C.F.R. § 7.4009.

⁸ Conn. Gen. Stat. § 36a-250(a)(41).

bank may engage in such activity unless the Commissioner disapproves such activity not later than 30 days after the notice is filed.⁹ Accordingly, to the extent that a national bank can issue, or engage in other activities with respect to, general-use prepaid cards without regard to the limitations in SB 201, a Connecticut state-chartered bank should also be able to issue, or engage in other activities with respect to, general-use prepaid cards without regard to those limitations as well, so long as it complies with the procedural requirements of the Connecticut wild-card banking statute.

Conclusion

For these reasons, Visa opposes SB 201 and believes it should be preempted to the extent that it purports to apply to national banks or federal savings and loan associations, and that because it is preempted for national banks, it should be superseded by Connecticut banking law with respect to Connecticut state-chartered banks as well, as described above.

⁹ *Id.* We note that the Commissioner is authorized to adopt regulations to ensure that any such activity is conducted in a safe and sound manner with adequate consumer protections. *Id.* Nonetheless, we are not aware of any such regulations.

