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July 19, 2012

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

VIA ONLINE SUBMISSION

Re: CFPB Docket No. CFPB-20120019
RIN 3170-AA22
Extending Regulation E Protections to GPR Cards

Dear Consumer Financial Protection Bureau:

MFY Legal Services submits the following comments to the Consumer Financial Protection Bureau (CFPB) regarding its request for comments, data, and information from the public about general purpose reloadable (GPR) prepaid cards in order to help the Bureau better understand and evaluate any potential consumer protection issues raised by the current design, marketing, and use of this product in connection with the CFPB's intention of issuing a proposal to extend Regulation E protections to GPR cards.

GPR cards may be a sensible option for certain consumers who have limited or no access to traditional bank accounts or credit cards, however, they may in fact be an inferior option because they lack the same legal protections as debit and credit cards, they often have high and/or confusing fees, they are not a tool to build credit, they lack protections against fraud, theft or mistakes, and they do not include federal deposit account insurance. MFY urges the CFPB to apply Regulation E to all GPR cards, to require easy-to-read fee disclosures, to prohibit overdraft fees and credit features, to prohibit deceptive claims about building credit, and to eliminate pre-dispute arbitration clauses.

MFY Legal Services provides free legal civil services to more than 7,000 low-income, elderly, disable, immigrant, poor and working poor New Yorkers every year. We are the largest legal services provider for people with mental disabilities in New York City and we have several other projects that assist vulnerable New Yorkers, including our Adult Home Advocacy Project, Foreclosure Prevention Project, Legal Aid for Seniors Project, Lower Manhattan Justice Project, Workplace Justice Project and Consumer Rights Projects. MFY launched its Consumer Rights Project seven years ago in response to our clients' growing demand for legal representation and information about debt collection and other consumer issues. MFY has seen first-hand the effect on their clients' lives of abusive financial services and lending practices that target New York consumers

and strip wealth from communities. It is from this perspective that we offer comments to the CFPB.

A. Regulatory Coverage of Products

1. How should the CFPB define GPR cards in the context of Regulation E? Should certain prepaid products not be included in this definition, such as cards that may serve a limited purpose (e.g., university cards or health spending cards)? Why or why not?

The Bureau should include all prepaid cards in its definition of GPR cards in the context of Regulation E. Among other things, full disclosure of information regarding the costs and risks of a GPR card and rights such as access to statements, having a process for resolving errors and protection in the event the card is lost or stolen should not depend upon who issues the card. We see no reason why certain classes should be exempt, particularly if the consumer is required to use a card to obtain certain benefits or make certain purchases.

2. Should only certain aspects of Regulation E be applied to GPR cards? For example, as Regulation E is currently applied to payroll cards, consumers are not guaranteed a periodic paper statement. If possible, please explain why a GPR card's use or structure makes any such modification appropriate. If the Bureau were to propose modifications to the Regulation E protections, what alternative protections or requirements, if any, should the Bureau propose?

The Bureau should extend all practicable aspects of Regulation E to GPR cards. Regulation E guarantees many protections to consumers which can easily be extended to prepaid cards. For example, Regulation E requires financial institutions to give consumers notice before changing terms related to increased fees or liability to consumers, restricting the types of electronic fund transfers available, or limiting the frequency or amounts of transfers. Extending this notice would allow GPR users to avoid unwittingly incurring additional fees or assuming greater liability.

As another example, Regulation E establishes procedures for resolving errors which allow the consumer to dispute incorrect account information. Failure to extend that protection to GPR cards would mean that GPR users are without recourse if the issuing institution makes mistakes, causing the already vulnerable GPR user even more financial strain.

B. Product Fees and Disclosures

3. What steps could the Bureau take to most effectively regulate these products to provide the consumer with transparent, useful, and timely fee disclosures? Should market participants be required to provide disclosure pre-sale, post-sale, or both?

Fee disclosures should be displayed prominently on the outside of any physical packaging for GPR cards and separate from any other information. This would ensure disclosure both pre-sale and post-sale. GPR cards that are purchased online should be prominently displayed so that purchasing consumers are automatically provided with that information without having to hunt through the website to learn what fees purchasing the card will entail.

4. How can the Bureau best enable a consumer to compare various GPR cards, or other payment products, that may have different fee structures or be offered through various distribution channels? Many GPR cards offer limited space to disclose contract terms. How should market participants convey the most important contractual terms to consumers to enable them to make educated purchase decisions?

The CFPB should develop a standard fee disclosure form for use with all GPR cards. Like the “Schumer box” for credit card terms and fees or the “Nutrition Facts” label on the side of food containers, a uniform chart would allow consumers to quickly compare different fee structures among different GPR card providers. While GPR card packaging may only offer limited space, packages of gum or candy bars are similarly sized and have sufficient room for the disclosure information they are required to provide.

5. Many, but not all, GPR card accounts are insured by Federal Deposit Insurance Corporation (FDIC) pass-through insurance (coverage that "passes through" the agent to the holders of the accounts). Other GPR cards may provide alternative security mechanisms, but do not offer FDIC pass-through insurance. Should the existence, or lack thereof, of FDIC pass-through insurance associated with a GPR card be disclosed to the consumer? If so, how and when should the existence of FDIC pass-through insurance be disclosed?

All consumers, including users of GPR cards, should be able to rest assured that their funds are safe in the event of a bank’s insolvency. The CFPB should require pass-through FDIC insurance for all GPR cards that fully protects individual cardholders up to the \$250,000 deposit insurance cap that applies to non-GPR card holders.

C. Product Features

6. Currently, most GPR cards do not offer credit features, such as an “overdraft” feature that may be offered with a debit card that is linked to a traditional checking account. While an overdraft can occur in unusual circumstances, as when a small-item transaction is submitted for settlement without prior authorization or when a submitted transaction exceeds the authorized amount, generally speaking most GPR cardholders may not be able to withdraw or spend more than the funds loaded on the card. Nonetheless, some GPR card programs do allow cardholders to opt in to an overdraft program in which the issuer may authorize overdrafts and charges an overdraft transaction fee. The Bureau seeks public input on the costs, benefits, and consumer protection issues related to any credit features that may be offered by GPR cards.

The CFPB should prohibit overdraft and shortage fees on GPR cards. Overdraft features on banking accounts and debit cards raise several consumer protection issues that are likely to be the same with GPR cards. First, even if they have to opt in for the protection, consumers are likely to be subjected to hard selling tactics to opt in because of the potential for huge fees for this service. If disclosures about the costs are not adequate, consumers may not fully understand that they have agreed to this feature or know how it works and how much it will actually cost them to use it. Second, one of the dangers of overdraft protection is that a consumer may not know that their account is running low or overdrawn, leading them to incur unexpected fees and interest, particularly if they use a signature instead of a PIN to withdraw money, which can take longer to process.

Allowing overdraft and other credit features would allow GPR providers to subvert state usury laws if the providers are national banking institutions. This would create an end-run around state prohibitions against payday lenders because the provider could charge exorbitant fees for the use of overdraft “service.” No amount of disclosure is likely to prevent GPR users from agreeing to unreasonable fees when the consumer presumes or hopes he or she will have no need of the overdraft service. Moreover, the idea of extending credit on behalf of “prepaid” cards fundamentally undermines the simple meaning of “prepaid.”

7. Currently, most GPR cards do not offer a savings account associated with the card. The Bureau seeks public input on the costs, and benefits, and consumer protection issues related to savings features offered with GPR cards.

Access to safe, dependable savings accounts is fundamentally a better way for consumers to prepare for difficult financial times than allowing for credit features. The Bureau should encourage GPR card providers to develop savings features or linked accounts for the benefit of GPR card users.

Of course, these savings accounts are only beneficial if the Bureau ensures that there are no unreasonable fees associated with the account, so that GPR card users can actually accrue savings rather than simply pay added fees for the sake of having a savings account.

8. Currently some GPR cards include a feature that claims to offer consumers the opportunity to improve or build credit. Consumers generally need to opt in to this feature, which involves the reporting of certain information to credit reporting agencies. The Bureau seeks public input and data concerning the efficacy of credit reporting features on GPR cards in enabling consumers to improve or build credit. The Bureau also seeks information on whether regulatory provisions should address how such services are marketed to consumers.

Marketing GPR cards as a way to improve or build credit has the potential to cause confusion and may induce consumers to use cards that have higher or unnecessary fees. Most GPR cards do not have a credit component, and the large credit reporting agencies are not currently using GPR card information for conventional credit reporting purposes. GPR cards that promote this so-called benefit should be required to make a full disclosure as to exactly how it works, including which credit reporting agencies have agreed to collect data and whether use of the card will be affect a consumer’s credit score.

D. Other Information on GPR Cards

9. Through what methods, and under what circumstances, do market participants communicate a change of contract terms, or other information, to cardholders? Are there inventory replacement cycles that drive the printing of cards to stock distribution outlets? Do market participants conduct periodic maintenance of systems during which updating compliance systems would impose less of a burden? If so, how often does this maintenance occur? Are there other issues with respect to the cost of regulatory compliance about which the CFPB should be aware?

We have no comment on this subject.

10. Is there any other information relevant to GPR cards that will help inform the Bureau as it considers how best to address these products or other issues the Bureau should consider in this regard?

We encourage the CFPB to eliminate the use of pre-dispute arbitration clauses in prepaid cards. Arbitration proceedings are generally unfair to consumers because they involve limited or no discovery, no guarantee that the arbitrator will follow the law, no right to an explanatory decision, and no judicial review or right to appeal. In the context of prepaid cards, pre-dispute arbitration clauses may be buried in the fine print of long contracts and most consumers don't notice them or understand that they are required to solve disputes with the card provider through arbitration. Additionally, these clauses limit consumers' ability to band together and assert their rights through class actions, an efficient method to resolve similar claims from multiple customers.

Conclusion

Because GPR cards currently are unregulated, they do not afford consumers the same protections that are found in traditional credit and debit card products that they deserve. We applaud the CFPB's recognition of the fact that GPR cards need more oversight and we applaud effort to ensure that prepaid cards are safe, fair and appropriate for consumers. We thank you for the opportunity to comment on this important issue.

Sincerely,



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Consumer Rights Project
MFY Legal Services, Inc.