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Office of the Executive Secretary
Bureau of Consumer Financial Protection
Washington, DC 20552

Re: Docket No. CFPB-20120019, RIN 3170-AA22
General Use Reloadable Prepaid Cards
July 23, 2012

Americans for Financial Reform and its undersigned members file these comments on the regulation of general purpose reloadable (GPR) prepaid cards by the Consumer Financial Protection Bureau (CFPB).

Overdraft and Credit Must Be Prohibited on Prepaid Cards

The single most important step the CFPB must do to protect the integrity of the prepaid cards, the industry, and the safety of the consumers who use the cards is to prohibit overdraft fees and any form of credit:

- “Prepaid” should mean prepaid. The prepaid nature of the cards is the essence of the product, the feature that is promoted and the factor that makes the cards useful for their purpose.
- Prepaid card users are vulnerable consumers. Prepaid cards are overwhelmingly marketed to and used by a variety of vulnerable groups, including low income consumers, consumers with blemished credit histories, unbanked and underbanked consumers with limited access to traditional accounts, young consumers and students, undereducated consumers, public benefit recipients, and consumers who are trying to control their spending.
- Permitting credit features on prepaid cards will eviscerate state payday and usury laws and military protections. Payday lenders can use the cards to make payday loans in states where the loans are illegal. Preemption issues and the complicated structure of hybrid debit-credit products make it extremely difficult for states to assert their laws, and the products are designed to exploit loopholes in the rate cap for military borrowers.
- Prepaid cards tout the lack of a credit check and do not do underwriting. Credit should never be offered without meaningful underwriting to ensure ability to repay without sacrificing income needed the next month.
- Credit on prepaid cards evades laws that protect income and benefits needed for necessities. The creditor gets the first cut of a wage or benefit check, before food, rent or medicine, ignoring laws that protect that income from being assigned to repay a debt or garnished by a creditor.

- The credit offered through overdraft and other immediate repayment products is deceptive and illusory. Protection is not needed on product that does not have checks that can overdraft, and the products create, rather than help with, shortfalls. Many consumers fall into a cycle of debt with no net increase in spending power and only added fees every month.
- Permitting credit on an opt-in basis does not protect vulnerable consumers from predatory lending. Creditors will manipulate opt-in just as they have with bank accounts, in ways that will be impossible for the CFPB to control.
- Consumers who can handle credit can access checking accounts, credit cards or other credit products. For those who cannot, prepaid cards must remain a safe product.
- Funding a prepaid card program even in part through overdraft fees will undercut honest, up front pricing and lead to an uneven playing field and race to the bottom, just as it has in the bank account world.

The CFPB will never be able to prevent the multiple pernicious effects of overdraft fees and prepaid card credit features if they are permitted on prepaid cards. Despite the wide variety of uses for GPR cards, the prepaid nature of the cards is essential to their purpose and the population that uses them. Credit should be offered, regulated and considered on its own merits, through separate accounts, and should not undermine the integrity of deposits held on prepaid cards.

Questions Posed by the Bureau

A. Regulatory Coverage of Prepaid Cards

1. All GPR Cards, Including University, Health, Needs-Tested, and Mobile Prepaid Cards, Should be Protected by Regulation E

Regulation E is Important. All general purpose reloadable (GPR) cards should be covered by the protections of the Electronic Funds Transfer Act (EFTA) and Regulation E.

Regulation E provides consumers with critical protections, including:

- Protection against liability due to loss, theft, and unauthorized charges;
- Dispute rights in case of errors;
- A right to account information, including transaction history and balances;
- Disclosure of terms and conditions and fees;
- Protection from overdraft programs imposed without consumer consent.

Specialized Cards Need Protection. Each of these is a critical protection and should apply to all GPR cards, including cards used for a specialized use, such as university and health spending cards. These cards are used over an extended period of time and can involve substantial sums of money. All of these cards are subject to fraud or error just like any other GPR card and consumers have the same need for protection.

Needs-Testing Benefits. Needs-tested benefits that are paid through prepaid cards rather than through electronic benefit transaction (EBT) cards should also be covered by Regulation E. Visa- or MasterCard-branded prepaid cards are subject to more widespread risk of unauthorized charges than EBT cards are, and low income recipients of needs-tested benefits particularly need the protections of Regulation E.

Mobile Payment Systems. Mobile payment systems that function as virtual prepaid cards should also be covered by Regulation E. Consumers need the same protection for electronic transactions made through a mobile payment system that is reloadable and usable for general purposes as they do for a physical prepaid card. Broad coverage of the entire market will prevent evasions.

2. Regulation E Modifications Must Ensure that Consumers Have Ample Free and Convenient Access to Statements and Account Information, Beyond the Payroll Card Rules

Regulation E requires that institutions provide statements for important reasons. Statements help consumers balance their accounts. They provide a permanent record of the consumer's income, transactions and fees. They enable the consumer to review the account for fees and unauthorized charges. Statements are important when preparing tax returns, contesting a tax audit, or when looking for a record of a payment. If the Regulation E statement requirement is modified for prepaid cards, several conditions should be imposed.

First, consumers must be able to obtain the account balance without fees through:

- ATM balance inquiries;
- Automated telephone menus;
- Text messages.

Second, consumers must have ample free access to account information, and the right to choose the form in which they want to receive that information, through:

- Free online access to transaction history for the previous 24 months;
- The right to request an occasional free statement or free annual statement;
- The right to sign up for monthly paper statements for a nominal fee covering the cost of the statement approximately \$1 per month.

Third, consumers should be able to contact customer service when necessary for free. Consumers who are not getting regular statements and may not be familiar with transaction accounts should not be impeded from getting information that they need to understand their account and resolve issues. At a minimum, there should be no charge for calls about disputes, automated calls, and a reasonable number of additional free calls.

Fourth, the time to file a dispute should begin running only when the consumer receives information that reveals the disputed item. Card issuers should have incentives to offer convenient forms of account access and to encourage consumers to review their accounts

for unauthorized charges and unwanted fees. Unless the consumer has received a statement, accessed the transaction history online or through a mobile app, or has received specific information about the disputed item in some other form, the consumer should have a full year to dispute the charge.

B. Product Fees and Disclosures

3. All Fees Should Be Disclosed, on the Outside of the Package When Sold at Retail, Both Pre- and Post-Sale.

The regulations should also give issuers an incentive to simplify fee structures. The regulations should give issuers an incentive to simplify fee structures and should ensure that consumers actually see and can compare fee disclosures. Fees should be displayed in a tabular (“Schumer”) box in a clear, conspicuous and prominent location visible *before* purchase.

On websites, the consumer should be required to click through the fee disclosures, without having to hunt for them.

In a retail setting, the fees should be displayed on the outside of the package. If the card has too many fees to fit on the outside of the package, the box should list, in large font, “additional fees listed inside,” with a flap that can be easily unfolded without opening the package.

All fees should be disclosed in the box, not merely the most common ones. Any card that has so many fees that they cannot be displayed on the outside of the package should not be sold in a retail environment or on a J-hook.

Providers should not be permitted to use multiple listing of “free” features to obscure the fees that are charged. All fees should be listed in a tabular box first, before any free features are described in material that follows that box.

4. The Bureau Should Develop a Single Price Tag Reflecting the Average Monthly Cost and a Standardized Fee Chart

The CFPB should also develop a single price tag, similar to the annual percentage rate (APR) for credit cards, that can be used as a supplement to the fee chart to compare cards with different structures. That price tag should reflect the actual average use of the card by that company’s customers.

The best price tag is one that is based on actual use of the particular card, by the types of consumers targeted for that card, taking into account the myriad of ways that a company may encourage or discourage consumers to incur fees. The combination of a price tag that reflects the average cost of the card and disclosure of the complete fee schedule will

give consumers both the ability to compare cards and to consider variations in their own expected usage.

Requiring disclosure of average monthly cost will also spur competition and give issuers an incentive to reduce that cost. Without setting any price caps, competition may encourage issuers to consider methods such as alerts about in network ATMs or active measures to reach out to consumers who are incurring a number of fees.

5. Funds Must Carry Deposit Insurance and Be Safe From Insolvency and Impediments to Access

All general use reloadable accounts, other than those that are limited to \$500 and function more like gift cards, should carry deposit insurance payable to the consumer on a pass-through basis. Low balance cards may not need this level of protection, but any account that holds a higher amount or is capable of receiving direct deposit of wages, public benefits, retirement or other income must be safe from the insolvency of anyone involved with the card.

There can be nothing more unfair, deceptive or abusive than asking a consumer to entrust a company with their income or significant funds without holding those funds in a safe manner. The CFPB should exercise whatever authority it has, whether under Regulation E or under its authority to prevent unfair, deceptive or abusive practices, to require deposit insurance.

Disclosure is completely inadequate to protect consumers from the risk of insolvency. Consumers tend to discount unlikely future events, and are more swayed by lower up-front prices than by abstract legal protection against unforeseen calamities. Consumers have no way of knowing whether a company is sound or risky and cannot evaluate the importance of deposit insurance.

C. Product Features

6. Prepaid Cards Should Not Carry Overdraft or Credit Features.

As discussed above, overdraft fees and credit features are antithetical to the nature and purpose of prepaid cards and should be prohibited.

7. The Bureau Should Encourage and Facilitate Savings on all GPR Cards, Including Those Offered by Large Banks.

The Bureau should encourage prepaid card issuers to offer savings accounts or savings features on prepaid cards. Building up savings is a much better way to protect consumers from unforeseen expenses than overdraft or credit features. The CFPB should also work with the Federal Reserve Board to permit linked savings accounts on prepaid cards issued by banks over \$10 billion.

The CFPB should watch out for deceptive or unfair features on savings accounts or savings buckets. For example, it should ensure that annual percentage yield (APY) figures are accurate, and should – in a separate rulemaking – prohibit fees on savings accounts, which distort APYs and are inconsistent with savings.

Some prepaid card issuers may choose to use rewards instead of interest to encourage savings. In the current interest rate environment, for low balance accounts, rewards might be more useful to consumers. However, the CFPB should ensure that reward rules are not manipulated to evade consumer protections or to deprive consumers of earned rewards.

8. The Bureau Should Be Vigilant Against Deceptive Claims About Building Credit

We support the Bureau’s inquiry into the efficacy of credit building features on prepaid cards and urge the Bureau to consider rules to prevent deceptive credit building claims. Credit building features often do not deliver in the manner that the consumer expects, whether because the data is reported to a little-used agency, the data does not impact credit scores, or the data has a negative rather than a positive impact.

As the credit reporting industry continues research of the use of transaction data, it is possible that, in the future, reporting of prepaid card data could be a positive feature that some consumers may wish to opt in to (but only on an opt-in basis). But we fear that, in the current environment, credit building claims are more often deceptive than accurate.

D. Other Issues on GPR Cards

9. Consumers Must Have the Choice Whether to Use a Prepaid Card

Consumers should never be required to use a particular prepaid card. Government agencies, employers and colleges and universities must always offer the choice of direct deposit to an account of the consumer’s own choosing before issuing the consumer a prepaid card.

10. The Bureau Should Eliminate Pre-dispute Binding Mandatory Arbitration Clauses in Prepaid Cards

We support the Bureau’s recently commencing its study of pre-dispute arbitration clauses and encourage the Bureau to eliminate-the use of these clauses in prepaid cards.

Pre-dispute arbitration clauses are used-in most prepaid card terms of service. This practice is particularly disadvantageous and unfair to low-income consumers, a major constituency of these products. Because most arbitrators’ decisions are final and judicial review is rarely available, companies are able to avoid scrutiny of their practices and determinations of whether they are in compliance with the law.

Pre-dispute arbitration clauses are particularly harmful to customers who use prepaid cards. These clauses are 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.

Virtual prepaid cards that function through mobile payment systems are even more ripe for abuse. Consumers have even less ability to read the fine print or know that they are giving up access to the courts.

Absent the ability to seek redress for small-dollar claims through a class action, many prepaid card customers are unable to assert their rights. For example, it is not worth paying a \$200 to \$300 arbitration fee to seek to obtain relief for a few hundred dollars. Even when arbitration is free, it is likely to be biased. The arbitrator has a powerful incentive to rule in favor of the party who may provide repeat business. Forced arbitration simply has no place on prepaid cards.

Conclusion

Prepaid cards right now are part of a shadowy alternative banking system that lacks full consumer protections. We applaud the CFPB's effort to ensure that prepaid cards are safe, fair and appropriate for the consumers who use them. Thank you again for the opportunity to submit these comments.

Sincerely,

Americans for Financial Reform
Arizona Consumers Council
California Reinvestment Coalition
Center for Digital Democracy
Center for Responsible Lending¹
Consumer Action
Consumer Federation of America
Consumers Union
Democratic Processes Center, Tucson, AZ
The Leadership Conference on Civil and Human Rights
Legal Services Advocacy Project, St. Paul, MN
MFY Legal Services, Inc.
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of our low income clients)
National Council of La Raza

¹ CRL joins these comments except for the Regulation E modifications. CRL supports the principles discussed in that section but reserves judgment on the specific suggestions.

National Employment Law Project
NEDAP
Policy Matters Ohio
Public Justice Center
Sargent Shriver National Center on Poverty Law
U.S. PIRG
Western Center on Law and Poverty
Woodstock Institute