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March 23, 2015

VIA EMAIL

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

Re: Docket No. CFPB-2014-0031, RIN 3170-AA22: Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson,

I am writing to you on behalf of Woodstock Institute in response to the Consumer Financial Protection Bureau’s (CFPB) notice of proposed rulemaking regarding prepaid cards which was published in the Federal Register on December 23, 2014 at 79 Fed. Reg. 77101 -77335. Woodstock Institute also supports the comments submitted separately by Americans for Financial Reform. Woodstock Institute commends the Bureau for its efforts to regulate the growing prepaid market and ensure that consumers who use prepaid cards, including general purpose reloadable (GPR) cards, are protected. We believe that the CFPB rules are generally strong and include key consumer protections, such as the extension of the Electronic Funds Transfer Act (EFTA) and Regulation E, and advanced disclosure of product terms and fees. However, we urge the CFPB to strengthen its proposed rule by: requiring FDIC insurance for all prepaid cards; banning all overdraft fees; ensuring all credit products linked or attached to prepaid cards are covered by Regulations Z and the Credit Card Act; and increasing protections to prevent abusive use of payroll, student, released prisoner, and public benefit prepaid cards.

About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. We conduct research on financial products and practices, promote effective state and federal policies, convene a coalition of community investment stakeholders working to improve access to credit, and help people use our work to understand the issues and develop and implement solutions.

Background

Prepaid cards are one of the fastest growing payment types in the U.S. In 2012, approximately \$65 billion dollars was loaded onto prepaid cards, more than double the 2009 amount.¹ Over 10 million households use prepaid cards and their use has increased faster than other forms of noncash payment such as checks, credit cards, and debit cards. The number of transactions rose from 5.9 billion in 2009 to 9.2 billion in 2012.² Despite the fact that consumers are loading more money on cards, and using them more frequently, the industry remains largely unregulated. Depending on the product, current consumers can be hit with a variety of fees for things such as reloading funds, declined transactions, balance inquiries, inactivity, ATM withdrawals, and customer service calls. Fees vary in size and differ by product and there is no requirement for advanced disclosure of terms and fees to enable comparison shopping by consumers. While prepaid cards are frequently marketed as safe alternatives to using cash or a checking account, issuers are not required to have FDIC or NCUA insurance and often do not include fraud protection if the card is stolen and used. Various forms of credit, including overdraft, can be added to prepaid cards – despite being marketed as “prepaid” – potentially leading to additional fees for consumers without any of the protections that come with the use of traditional credit cards. The industry has expanded to include not only general use cards, but also cards specifically designated to receive payroll, government benefits, and student loans, as well as prepaid cards for health and flexible spending accounts.

Many prepaid cards (GPR, payroll, student cards etc.) offer a consumer transaction experience that is very similar to a basic checking account. These cards provide low-cost access to payment networks, the ability to see a record of transactions, and a secure cash alternative. The similarity to checking accounts is similar on both sides of the financial relationship. Consumers choose prepaid cards because they value the features of a checking account but choose not to, or are unable to, open a checking account. Financial institutions offer prepaid cards because they recognize the value of establishing new consumer relationships, even if a consumer’s risk profile means the consumer is not eligible for a checking account. Despite the many similarities prepaid cards have to bank account debit cards, current regulations provide inconsistent levels of disclosure and consumer protections.

Under the Dodd-Frank Act, the CFPB has authority to regulate and oversee the prepaid card market. In 2012, the Bureau released an Advanced Notice of Proposed Rulemaking (ANPR) for General Use Reloadable Prepaid Cards. Woodstock submitted comments to the Bureau in July of 2012, including our recommendations for how the CFPB should define prepaid, require strong disclosure requirements, ban overdraft and credit, and require FDIC insurance. Woodstock staff testified at a CFPB field hearing in Durham, NC, on May 23, 2012, and, along with three other organizations, submitted a letter to Director Cordray urging the Bureau to ban the use of credit on prepaid cards in July of 2013.

The following comments include our specific recommendations to strengthen the CFPB proposed rules for prepaid cards.

Disclosure of Terms and Fees

Woodstock Institute supports the efforts of the Bureau to increase transparency and provide consumers with clarity about the types and amounts of fees included with the purchase and use of different prepaid cards. We agree that a standard short-form and long-form will increase a consumer’s ability to comparison shop and will more easily enable users to understand the differences between products.

¹ “Why Americans Use Prepaid Cards.” February 2014. The PEW Charitable Trusts.

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pca_assets/2014/PrepaidCardsSurveyReportpdf.pdf

² Report to Congress on Government-Administered General-Use Prepaid Cards. July 2013. Board of Governors of the Federal Reserve System. <http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201307.pdf>

However, the CFPB should ensure that the long-form, with all the fees listed, is more easily accessible to consumers before they purchase the card. We have included more specific recommendations for each form below.

Short-Form Recommendations:

We support the proposed standard layout for the short-form and appreciate the Bureau's efforts to highlight four of the most relevant fees at the top with additional important fees listed below. We agree that the highest possible fees should be listed if there is a range of fees, to prevent any evasion or abuse of the disclosure rules. The layout of the short-form provides clear information while also being easy to read and is unlikely to overwhelm consumers attempting to comparison shop or assess how much it will cost to use a card. We encourage the Bureau to distinguish between cards that offer free transactions before charging a fee and those that do not. While some cards might have a lower per purchase fee, there are others that might offer a significant number of free purchases before instituting a higher fee. This sort of information is valuable to a consumer and should be made clear on the short form. In addition, we believe the short-form should indicate whether or not a card is affiliated with an ATM network. While the proposed short-form distinguishes between ATM withdrawal fees for in-network and out-of-network, it should be made clear to the consumer when a card is not affiliated with any ATM network and may thus be subject to more out-of-network fees.

We support the clear disclosure on the short form for Government Benefit Cards and payroll cards indicating that consumers are not required to receive their funds on the prepaid card. This important notice serves as a reminder that an individual cannot be legally forced to accept benefits or wages on a prepaid card. We strongly urge the Bureau to require similar disclosures for student prepaid cards, prison cards, and any benefit or insurance card. This notice should be published in large letters at the top of both the short-form and long-form disclosures.

Long-Form Recommendations:

As previously stated, we support the Bureau's requirement that all cards include a long-form fee disclosure in addition to the short-form. The long-form enables consumers to get all the information in a way that is much clearer than most fees and terms documents that exist today. We agree that these long-forms should be made available by phone and online, as well as by the financial institution, employer, college, and other non-retail settings. We do, however, urge the CFPB to require the long-form to be made available at retail in some form beyond using a smartphone or listening to a laundry list of fees by telephone. We believe it is possible, even in a retail setting with limited space, to provide a full list of fees. PEW Charitable trusts has a model disclosure box that could be adopted for use in retail settings.³

The CFPB should include additional information on the long-form disclosure about the issuer's fund availability policies for cash or checks deposited by ATM, teller, or remote deposit capture. The amount of money that becomes available immediately can differ by prepaid card, and consumers should have this information for comparison shopping. If these features are not available, then the form should indicate that by including "n/a."

FDIC Insurance

The CFPB proposed rules do not require that prepaid cards have FDIC or NCUA insurance. Instead, the Bureau would require that the short form disclosure include a notice if the card does not have FDIC or NCUA insurance. Woodstock Institute believes that FDIC or NCUA insurance should be required for all

³ "The Need for Improved Disclosures for General Purpose Reloadable Prepaid Cards." The PEW Charitable Trusts. February 2014. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/02/26/the-need-for-improved-disclosures-for-general-purpose-reloadable-prepaid-cards>

prepaid cards, making it unnecessary to include that information on the short form (thus leaving room for another fee disclosure).

Requiring issuers to provide government-backed insurance would guarantee that a consumer's money is protected if the financial institution fails and would require that the money be held in a depository institution that is subject to oversight and regular examinations by regulators for safety and soundness compliance and adherence to consumer protection rules. While the majority of prepaid cards currently have deposit insurance, certain American Express cards do not. Additionally, entities such as Google, Amazon, PayPal, and Apple are creating virtual payment systems that offer the same features as tangible prepaid cards. These entities might attempt to avoid the costs of insurance and the oversight of regulators by storing funds someplace other than in a depository institution.

The CFPB noted in its proposal that consumers surveyed were often confused about what FDIC insurance is and why it is beneficial. Given this fact, requiring disclosure for cards without depository insurance is not likely to impact a consumer's decision. This lack of understanding is precisely why insurance should be mandatory and not voluntary for prepaid cards. Consumers believe they are purchasing a product that offers them the same safety as a checking account debit card. As cards are increasingly used and marketed as desirable alternatives to checking accounts, and as more consumers begin to regularly deposit significant portions of money or their wages on prepaid cards, it is absolutely essential that the funds be protected by government-backed insurance.

Protection from Fraud and Theft

Woodstock supports the Bureau's extension of Regulation E (Reg. E) protection to the majority of prepaid cards as long as they are registered. We believe this strikes the balance of ensuring consumers are protected from fraud and theft while also preventing abuse from anonymous users. We agree that cards issued to specific individuals, such as payroll, student, or government benefit cards should not need to be registered to receive Reg. E protections. Woodstock encourages the CFPB to extend Reg. E protections to gift cards as long as they are registered by the consumer. This will avoid efforts to circumvent the rules by issuers who may market a GPR card as a gift card.

In addition, we urge the Bureau to expand its coverage of Reg. E to include: prepaid cards used for needs-tested benefits (except electronic benefits transfer (EBT) cards, which are safer than regular prepaid cards); and health savings and flexible spending accounts, which can hold significant sums of money, sometimes up to several thousand dollars, and ought to have protection from fraud and theft as well as free access to account information and transaction history.

Limited Fees and Access to Account Information

We strongly support the proposal's requirement that consumers have free and convenient access to their account information and transaction history. The proposed rules allow consumers to access balances online or by phone for free, free access to account history online, and occasional free paper statements by request (up to one per month).

In addition to requiring free access, we encourage the Bureau to limit or prohibit other prepaid card fees. The CFPB should ban fees to check account balance information at an ATM and require issuers to enable free text messages to receive account balance information, and low balance and deposit alerts. The cost of an ATM balance inquiry can be bundled with the cost of an ATM withdrawal. These are the kinds of functions that help consumers keep track of their money and avoid overspending. We also encourage the Bureau to ban declined transaction fees, as they impose little or no cost on the issuer and gouge the consumer.

The Bureau should require foreign language support for customer service calls for balance information, account transactions, dispute rights, and other customer service information. Customer service should be available in any languages that the issuers use to market prepaid or during the acquisition process.

Credit and Overdraft

Woodstock Institute has long encouraged the CFPB to prohibit credit products on prepaid cards. Our response to the ANPR, testimony at a CFPB hearing, and a separate letter to the Bureau all pushed for a ban on credit products. We continue to believe that credit features, including overdraft products or services, undermine the value proposition of the prepaid card and can lead to abusive or predatory practices. These products change the intent of prepaid cards – loading money in advance and only spending the amount on the card – and are likely to lead to high fees that trap consumers in debt.

Most prepaid cards are marketed to and used by consumers who are attempting to gain control over their finances. According to PEW research on prepaid card usage, three of the top four reasons for use include: avoiding credit card debt, avoiding spending more money than they have, and avoiding overdrafts.⁴ Inclusion of credit products and features on prepaid cards negates the reasons so many consumers use the product. For those consumers who want access to credit, the full swath of credit products that exist today are available for their use.

For these reasons, Woodstock strongly urges a ban on credit products on prepaid cards. We strongly support the Bureau’s decision not to extend the Reg. E opt-in method for “overdraft services” used for checking accounts to prepaid products. This method has proved extremely confusing for consumers and continues to lead to unwanted and high-cost fees. Woodstock Institute and our partners at California Reinvestment Coalition, New Economy Project, and Reinvestment Partners, conducted mystery shopping research to see how banks explained “overdraft services,” overdraft lines of credit, and how to opt-in. Shoppers reported significant confusion on the differences between the products and how they interacted, and often found that the written materials differed from the oral explanation from bank staff. Our findings mirror the overdraft issues and concerns that have been raised nationally. Overdraft protection and overdraft services should be prohibited on prepaid cards.

In the alternative, to the extent that any form of overdraft is included on a prepaid card, it must be considered a form of credit and be subject to all credit card rules.

If the Bureau decides to allow any form of credit on, or linked-to prepaid cards, then it must be subject to all credit card protections, including Regulation Z and the Truth in Lending Act (TILA).

Key protections under Regulations Z and TILA include:

- Determination of ability to repay before credit is offered;
- Fee harvester rules, including limiting fees to 25 percent of the line of credit in the first year
- Payments due once a month with a 21-day payment timeline after a statement is sent;
- A ban on mandatory electronic repayment and mandatory offset, ensuring that lenders do not have priority access to consumers’ funds in their prepaid accounts;
- Limits on late fees, over-the-limit fees, and penalty fees; and
- Annual Percentage Rate (APR) disclosures to allow for consumer comparison shopping.

⁴ “Why Americans Use Prepaid Cards.” February 2014. The PEW Charitable Trusts.
http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsSurveyReportpdf.pdf

We support the Bureau's inclusion of a waiting period between when a consumer purchases a prepaid card and when the issuer may offer a connected credit product, though we believe the time should be extended from 30 days to 90 days. A consumer will have had very little time to get used to the product during the first month and that period of time is too short to have built up a significant transaction history for assessing ability to repay. The waiting period applied to credit products that would be on the prepaid card or directly linked to the prepaid card would not prevent an issuer from offering a credit product that is completely separate and independent from the prepaid card at any time. We urge the Bureau to extend the fee harvester protections beyond the first year and limit pre-account opening fees. If the Bureau protects only the first year of use, advocates fear that predatory lenders might offer small, low-cost lines of credit for the first year and then substantially increase the fees and credit lines after the limits expire.

To reiterate, Woodstock strongly urges the Bureau to prohibit any form of overdraft service or credit product on, or linked to, prepaid cards. If the Bureau chooses to allow any form of credit, whether it is linked to or directly offered on a prepaid card, then full protections under TILA and Reg. Z must apply.

Additional Protections for Payroll and Student Prepaid Cards

While we support the Bureau's efforts to provide certain additional protections for specific types of prepaid cards, such as the usage disclosure for payroll and government benefits cards, we believe the Bureau should do more to ensure that consumers are not coerced into using these cards. The proposed protections should be expanded to include prepaid cards used for student loans, insurance payments, prisons, tax payments, and all government payments or benefits.

Disclosure should also include the alternative ways in which a consumer can collect wages, benefits, loans, or specific payments (i.e., for payroll cards the alternatives could include direct deposit to an account or a paper check).

Consumers do not have the option of comparison shopping for such cards. The employer, school, or governmental entity has chosen a card that reduces its costs or provides administrative benefits, but such cards are not always a good deal for consumers. As previously noted, we support the Bureau's disclosure requirement for payroll and government benefit cards, and believe it should be expanded to this wider array of cards. In addition, we urge the Bureau to expand its ban on compulsory use for wages and public benefits cards to ban compulsory prepaid card use for funds connected with higher education and cards used by prisoners receiving money that is owed to them.

The final rule must clearly state that it does not preempt stronger state rules. In Illinois, for example, Woodstock staff worked closely with the Illinois Attorney General's Office to enact strong protections for workers with regard to the use of payroll cards by employers. The law not only requires employees to actively opt-in to payroll card use, but also requires disclosure of all fees before an employee agrees to use a payroll card; prevents fees for point of sale transactions, accessing transaction history, and checking account balances; limits fees for declined transaction or inactivity; ensures an employee has access to all wages for free; and prohibits linking the payroll card to any form of credit, including overdraft fees or services. We urge the CFPB to adopt these protections for all payroll cards. At a minimum, the Bureau must make clear that its rules do not preempt stronger state statutes for payroll cards, student cards, prison cards, and government benefit cards.

Public Disclosure of Prepaid Card Fee Schedules and Account Agreements

Woodstock Institute supports the Bureau's proposal to require prepaid card issuers to post their terms and conditions, and short-form and long-form fee disclosures, on a central CFPB website in addition to their own websites. The text should be machine readable, and the fee schedules should be searchable by both the issuer name and the program manager, employer, school, or other branding entity.

Prepaid Cards and Savings Accounts

We realize the Bureau chose not to address the issue of whether and how to connect prepaid cards to savings accounts or savings features, but we encourage the Bureau to address this issue going forward. We hope the Bureau will encourage issuers to offer savings accounts or savings features, because even modest savings can eliminate the need for overdraft products. Additionally, the CFPB could consider working with the Federal Reserve Board to permit linked savings accounts on prepaid cards issued by banks with over \$10 billion in assets.

Conclusion

Woodstock strongly supports the CFPB's efforts to protect consumers and create a fair and just financial marketplace. We believe the proposed prepaid rules make significant progress towards regulating the fast-growing and quickly-changing prepaid market. We believe adoption of our suggestions will further strengthen the rules for consumers and encourages market competition and transparency. We are grateful for the opportunity to comment.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dory Rand".

Dory Rand, President
Woodstock Institute