

July 23, 2012

Submitted electronically at www.regulations.gov

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington D.C 20552

Re: **Docket No. CFPB-20120019**
Advance Notice of Proposed Rulemaking
General Purpose Reloadable Prepaid Cards
77 FR 30923 May 24, 2012

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau) advanced notice of proposed rulemaking (ANPR) seeking information about general purpose reloadable prepaid cards (GPR cards). GPR cards are payment cards that may be used anywhere the card's network brand (Visa, MasterCard, American Express, or Discover) is accepted. Customers initially fund or "load" the card and then subsequently may add money to the card, for example, through direct deposit of their payroll or government benefits, by check, or through cash (depending on the card). The GPR cards allow people to obtain and use their money electronically and through cards but are simpler than traditional checking accounts, which offer more features and options. As the Bureau notes, the GPR card market is one of the fastest growing segments of the overall prepaid market. The Bureau is seeking information to determine what regulation is warranted.

As a practical matter, these products are, in fact, subject to a variety of regulations and consumer protections. For example, for GPR cards that may not technically be subject to Regulation E, GPR issuers and associated card payment networks have for some time voluntarily applied Regulation E protections, (with minor modifications). Other regulations, Regulation DD (Truth in Savings Act) and Regulation CC (Expedited Funds Availability Act), may also apply, depending on the card's specific design and features. Regulation P, (Privacy provisions of Gramm-Leach-Bliley Act) applies to all. Thus, as a practical matter, these cards are already part of federal regulatory scheme and do in fact carry the "the same protections given to checking accounts and electronic transactions involving checking accounts under federal law."

ABA agrees that the Bureau should consider application of Regulation E to GPR cards, with appropriate adjustments, as it considers and evaluates the market and consumer GPR card usage. In proceeding with applying Regulation E, we ask that the Bureau:

¹ ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

- Recognize that there are a variety of GPR card models and therefore provide flexibility, especially with regard to timing, content, and format of disclosures;
- Ensure disclosures and information are transparent and easy to understand;
- Consider adjustments related to delivery of periodic statement information and error resolution timeframes;
- Allow consumers and the marketplace to determine features, pricing, and terms and not impose artificial constraints that will distort the market, ultimately increasing consumer prices and limiting consumer choices;
- Coordinate the various consumer protection laws that might apply to GPR cards;
- Rely on existing rules where appropriate, for example, with regard to any overdraft feature, FDIC disclosures, savings accounts, etc. to avoid inconsistent notices and over-disclosure which leads to consumer confusion and inclination to overlook important information as well as unnecessary legal complexity; and
- Keep in mind payment system evolution and emerging payment channels such as mobile banking access.

Background.

GPR cards offer another option for consumers to receive, use, and manage their money. They offer customers the convenience of receiving their payroll and government benefits electronically, avoiding the costs and inconvenience of cashing paper checks. They allow people to convert their cash into a safer form that allows them to shop online where checks and cash are generally not an option. Because channels for payments, purchases, and withdrawals may be limited, (e.g. no check withdrawals) transactions and balances are easier to track and monitor, making them simpler to manage.

GPR cards are appealing to a variety of people. They are attractive to some people who may not qualify for a traditional checking account as well as those who prefer their simplicity and find them more manageable than a traditional checking account. They may also be appealing as a “first” account, particularly to people in certain age groups who prefer electronic interfaces, as an ancillary account to a traditional checking account, or as a shared or linked account, e.g., with a parent or child. How the GPR market evolves and develops will depend on the market, competition, and consumer response.

ABA, through its Business Solutions subsidiary, offers the Community Bank Prepaid Program, a turnkey product for community banks to issue a variety of prepaid MasterCard products, including GPR cards. ABA members choose features to tailor their card from a menu that includes online bill-pay and low-balance alerts. Overdraft fees are not permitted. To date, there are over sixty bank participants in

this recently launched ABA program that have collectively made GPR cards available at over 1,000 branches.

Discussion.

Regulations should recognize that there are a variety of GPR cards and that the market will continue to evolve. For example, one GPR card model relies on distribution of its product through a third party, for example, a store. Customers purchase and load a temporary card at the store. This temporary card may not be usable immediately or have limitations on its use, (e.g., no additional loads or limitations on reloading, restrictions on purchases or cash withdrawals) until the customer registers with the card issuer. Because registration at the store is impractical, time-consuming, potentially prone to errors, and inconvenient to customers, purchasers of the cards register online or by phone. At registration, the issuer obtains and verifies the customer's name, address, date of birth, identification number (e.g., Social Security number) to comply with the Customer Identification Program rule, if applicable, and collects contact details and other information. Once the customer is approved, a permanent, personalized card is issued and sent. That card is reloadable and the funds accessible through channels permitted under that product.

Under another model, issuers distribute the card directly to the customer rather than rely on a third party. Registration, customer identification, and card approval is contemporaneous or nearly contemporaneous with card issuance. The initial card may be partially or fully functional until the purchaser registers. Fully functional personalized cards are sent later to replace any temporary card.

The types of transactions offered on GPR cards may vary. Generally, customers may use the cards at ATMs and POS (including internet) where the network brand is accepted. Typically, customers may pay bills if the payment recipient accepts the card's network brand. Card issuers may or may not offer "online" bill-pay from their website, permitting payments to third parties through ACH, regardless of the recipient's participation in a card network. Payment by check is not an option. Cards usually may be loaded through direct deposit or cash. Some permit funding by credit and debit card and check.

In adopting regulations, the Bureau should recognize these variations and allow flexibility so that customers will continue to have access to the product that best fits their needs and preferences. In addition, developing choices among features and functionality is not free. The systems that support these payment technologies have costs for which the providers require compensation and generate benefits for which people are willing to pay. Any regulatory overlay must take account of the valid economics of innovation.

Account disclosures should ensure consumers will notice and understand the most important terms and fees and allow comparison with traditional checking accounts, and regulations should accommodate the various types of GPR cards and methods of distribution. Consistent with ABA's long-held position, ABA believes that disclosures should focus on highlighting the critical, core terms and conditions, be as simple as practical, and in a form customers will notice. We recommend that the Bureau conduct consumer testing to determine what information is most important to most consumers based on the variety of products and terms. In considering GPR disclosures, the Bureau should also take

into account that consumers will often be comparing GPR cards to traditional checking accounts. In addition, rules should be sufficiently flexible to accommodate the various features and terms of different products and the methods of distribution to encourage competition and consumer choice. Finally, the Bureau should consider and coordinate the various regulations that might apply to some GPR products, including Regulations E, P, DD, and CC to avoid redundancy, inconsistencies, and complexity in the disclosures consumers receive and in the regulations themselves.

Disclosures prior to card purchase. We suggest that the Bureau consider and test with consumers providing disclosures about core functions and fees prior to GPR purchase, e.g. on the outside of a package or on other documents provided before card purchase. Fees would include, for example:

- Purchase fees;
- Reload fees;
- Cash access fees (ATMs and cash-back at POS);
- Bill-pay fees;
- Monthly activity fees;
- Balance inquiry fees;
- Dormancy fees.

It should be clear the fees that will apply whether or not the customer registers the card to obtain access to all services. In addition, the disclosures provided prior to purchase could include general explanations about protections against unauthorized transactions and as well as potential liability for those transactions, if applicable. Issuers should have the option to include with this information other material information that is likely to be of interest to the customer, e.g., no overdraft fees, optional products for purchase such as money orders or cashier's checks, and free ATM network information.

Avoidable fees, such as expedited card delivery fees, would be disclosed elsewhere or at the time the customer requests the service, as similar fees are disclosed for credit cards under Regulation Z (Truth in Lending Act).

Disclosures prior to purchase or after purchase (e.g., as insert to a packaged card). We suggest that the Bureau test how to provide information not disclosed prior to purchase. It could test providing the information not required to be disclosed prior to purchase, at the issuer's option, at the time of purchase with the core function and fee information or after purchase if the customer may cancel the card unused and be reimbursed the purchase fee and the initial load amount. This approach ensures consumers get the information they need without having to be obligated or liable for any fee. It also gives issuers that distribute cards in packages sold at retailers a practical option that doesn't invite abuse and accommodates issuers distributing their GPR cards directly who wish to provide all the information in a single, integrated document.

GPR cards should indicate whether GPR cards are eligible for Federal Deposit Insurance Corporation (FDIC) insurance. The Bureau notes that many, but not all GPR cards, are eligible for FDIC

insurance and asks whether the existence or lack thereof of FDIC insurance associated with a GPR card be disclosed to the consumer. While perhaps not a key factor in the consumer's decision in purchasing a GPR card, whether the funds on the card are eligible for FDIC insurance or not should be disclosed. In addition, customers might assume that the GPR card is insured unless lack of insurance is specifically disclosed. The Bureau should work with the FDIC to determine how GPR cards disclose FDIC insurance information.

Beyond the phone number and website, disclosures should not be required to be on the card itself.

First, the access device might not be a card but, for example, a fob or mobile phone. Second, there is very limited space on a standard card, given its size and the objects and information competing for that limited space such as the magnetic stripe, bar code, embossed characters, signature box etc., so information on a card would be extremely limited and in very small print. This means customers might be inclined to overlook or neglect it as well as other important information found elsewhere.

The Board should allow an alternative to periodic statements for GPR cards similar to the one currently allowed for payroll cards. Section 1009(b) of Regulation E requires that, for accounts to or from which electronic fund transfers can be made, institutions must send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred and send it at least quarterly if no transfer has occurred. Section 1005.4 requires that the disclosures be in writing and in a form the consumer may keep. Disclosures may be provided in electronic form, subject to compliance with the consumer-consent and other applicable provision of the Electronic Signature in Global and National Commerce Act (E-SIGN Act). Section 1005.18 provides an alternative to this requirement for payroll card accounts. Specifically, the institution need not provide the periodic statement if the institution makes available to the consumer:

- (i) The consumer's account balance, through a readily available telephone line;
- (ii) An electronic history of the consumer's account transactions, such as through an Internet website, that covers at least 60 days preceding the date the consumer electronically accesses the account; and
- (iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution received the consumer's requests.

While the E-SIGN Act and Regulation E permit electronic delivery of statements, there are significant impediments in the current environment, particularly legal impediments. The E-SIGN Act requires that customers "consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." However, there is great uncertainty and lack of clarity with regard to the meaning of "reasonably demonstrate" that the consumer "can access information in electronic form" and other aspects of the requirement.

The legal morass is intensified by the increasing variety of electronic devices available and in use, and, for GPR cards, that they may be sold by third parties in stores where clerks, as a practical matter, are not in a position to verify the customer's ability to access the information electronically. In addition, some users of the GPR card lack e-mail addresses. The option then is to provide paper statements, not a viable alternative for GPR cards. First, many GPR card customers and potential customers are transient customers. Accordingly, paper statements are and would be returned. Second, providing paper statements is simply cost-prohibitive for GPR cards. The increased cost would be reflected in unattractive increased fees or cause some to exit the market and others to decline to join, reducing competition.

Because of the legal challenges in complying with the E-SIGN Act and the prohibitive costs of paper statements, GPR card issuers, who have voluntarily complied with Regulation E, have adopted the Regulation E periodic statement option available for payroll cards. This ensures that customers get the information they need, in particular, balance and transaction information, in a convenient and cost-efficient manner. We are not aware of any complaints from GPR card customers. Accordingly, the Bureau should make the periodic statement alternative for payroll cards an option for GPR cards.

The Bureau should apply the payroll card timing requirement for error notices to GPR cards.

Section 1018(c) of Regulation E provides that for payroll cards, the 60-day period for reporting unauthorized transactions begins on the earlier of:

- the date the consumer electronically accesses the account, provided the electronic history available to the consumer reflects the transfer; or
- the date the financial institution sends a written history of the account transaction requested by the consumer in which the unauthorized transfer is first reflected.

This option provides consumers a workable, practical timeframe for notifying issuers of errors, given the increasing use and ubiquity of electronic devices and increasing propensity for customers to access accounts electronically, particularly GPR cards. It would give customers sufficient time to learn about and report unauthorized transactions, but encourage them to monitor transactions and report errors quickly to minimize fraud and losses.

With the exception of the provisions related to prohibition against unsolicited issuance and any disclosure requirements, Regulation E should not apply to temporary cards associated with the GPR card program until after the customer registers. In models where the temporary card is purchased through a third party such as a store, the issuer has no name, address, or contact number for the purchaser prior to registration. Nor is it practical to obtain in this setting. Thus, issuers cannot send periodic statements as required under Regulation E. Nor, as a practical matter can they reasonably investigate unauthorized transaction claims or disputes with the merchants as Regulation E requires, as they do not know who the authorized user is. Even if they were able to conduct an investigation, they would have little ability to recover provisionally credited funds for denied claims if those funds have been spent.

Failure to exclude GPR cards prior to registration will lead to abuse and fraud as it becomes known that with little or no evidence, it is possible to make a successful albeit false claim. Even if the claim is denied, e.g. before provisional credit is required, there is a cost to the institution to investigate, respond, and review with examiners. Knowing that provisional credit may be provided before the claim can be investigated and denied and that that paying off a claim is less than the cost of investigation will invite false claims.

The risk of fraud may be greater for some GPR cards such as those sold through third parties, because they are sold in a relatively anonymous environment such, relatively more accessible than other bank products, and don't require face-to-face interaction for registration. The risk and fraud costs will both raise prices for legitimate consumers and/or eliminate choice if the risk causes issuers to exit the market or limit their options and features.

The Bureau should ensure that GPR card disclosures are clear, easy to access and understand, but not adopt rules that effectively regulate the terms and conditions of the products, either directly or indirectly. Rather, the Bureau should allow consumers and the marketplace to determine features, pricing, and terms and not put artificial constraints that will cause market distortions and inefficiencies that simply increase prices. Consumers and the market respond very quickly to fees. For example, the “Kardashian” GPR card lasted only a few weeks before it was withdrawn due to its fees, and recently, a modest debit card fee was quickly withdrawn based on public reaction.

In defining GPR cards, the Bureau should exclude GPR cards with limited use and include cards for which the card is not the only means of accessing the account. GPR cards with limited use, e.g., with regard to locations or types of purchases (Health Savings Accounts, “university” cards, “mall” cards, government-sponsored cards) should be excluded from the definition of GPR card. In many of these cases, the cardholder does not load the funds and/or funds may be used for a limited purpose. Thus, the cards, functions, unauthorized use claims, and their disclosures are not comparable. In addition, other protections may be provided through the administrator. The Bureau should address application of Regulation E to those types of cards separately, if appropriate and necessary.

We also recommend that the Bureau be more inclusive in its definition of GPR cards than Regulation II (Debit Card Interchange Fees and Routing, 12. CFR 235) is with respect to exclusions from that regulation of “certain reloadable prepaid cards.” Regulation II excludes from coverage of its debit card interchange fee cap reloadable prepaid cards for which the only means of access to the underlying funds is the card. Thus, if the card may be used for bill pay or other ACH transactions, the card is not exempt.

Regulation E should include in its GPR card definition cards that do not limit the means of access to the funds to a card, but allow consumers access through bill-pay and ACH. The reasons to apply the payroll periodic statement and error dispute timing rules to GPR cards as discussed above apply whether or not consumers have more than one means for accessing their funds. Moreover, cards with more choices for accessing funds will be compared to those that limit the means of access to the card. Thus, their disclosures should be comparable. In addition, failure to include in the GPR definition cards

that offer alternative means of accessing the underlying funds will discourage issuers from offering convenient options for access that GPR customers want and demand.

The Bureau should rely on existing rules where appropriate, for example, with regard to any overdraft feature, savings accounts, etc. to avoid inconsistent notices and over-disclosure which leads to consumer confusion and inclination to overlook important information as well as unnecessary legal complexity.

Overdrafts and credit features. The Bureau notes that most GPR cards do not offer credit options or overdraft features that might be offered with a debit card linked to a traditional checking account. ABA's turnkey prepaid program does not offer overdrafts as an option. The Bureau seeks comment on the costs, benefits, and consumer protection issues related to any credit features that GPR cards may offer.

Debit card overdraft programs are valued and used by customers who affirmatively choose the debit card overdraft option after receipt of required notices that explain its price and alert them to potentially less expensive options. They may opt out at any time. Thus, that customers affirmatively choose and use the service demonstrates that there is a demand and value for the service and for credit.

Indeed, policymakers, including government banking agencies, continue to focus on and encourage efforts to help meet the demand for small-dollar loans of those who may not be eligible for mainstream credit such as credit cards. While credit is not a prevalent feature of GPR cards, such cards may be an appropriate vehicle to provide help provide small-dollar loans. For this reason, the Bureau should not discourage GPR cards from offering credit options.

The Bureau should ensure that any overdrafts and credit features are clearly understood and ensure that they are consistent and uniform across products to avoid consumer confusion and to promote competition. Thus, any GPR card overdraft option should comply with Regulations E and DD and credit feature with Regulation Z.

Savings Accounts. The Bureau notes that most GPR cards do not offer a savings account linked to the card and seeks comment on the costs, benefits, and consumer protection issues related to savings features offered with GPR cards. While a savings account feature could be an attractive option, there are costs, including regulatory costs, associated with providing savings accounts. Those costs are less likely to be recovered on small dollar-balance accounts, because the return earned on the balance is small. If offered as an option, the costs might be covered through a separate savings account fee or through an increase in the overall price of the GPR card. Ultimately, consumer demand and competition will determine availability and price. The Bureau should ensure that if a GRR card issuer chooses to offer a saving account, that its terms and limitations are clear to consumers and disclosure requirements consistent and uniform across products to avoid consumer confusion and promote competition.

The Bureau should review GPR card options that offer to improve or build a credit history. We are aware of products that attempt to help build credit histories by reporting non-credit behavior. However, unless it is demonstrated that such non-credit information is predictive with regard to credit behavior,

creditors are not likely to use the information in credit decisions. Consumers should not be informed that reporting GPR card information will build or improve their credit history if in fact it does not or creditors are unlikely to use the information.

The rules should accommodate inventory management realities. We ask that the Bureau be sensitive to the challenges associated with “managing down” existing inventories when new rules are imposed or existing ones change. Inventory management is particularly challenging when GPR cards are distributed through third parties such as stores where removal of obsolete cards relies on store clerks with little connection to the product or incentive to ensure requested removal and replacement. Regulations should permit sufficient lead time to avoid confusion, shortage of cards, and waste. To help avoid consumer confusion about obsolete GPR card, the Bureau should consider allowing GPR card issuers the option to provide expiration dates on cards or a mechanism that allows the clerk at check-out to advise the customer that the card is obsolete.

Conclusion.

ABA appreciates the opportunity to comment on this issue. ABA notes that generally GPR issuers already voluntarily apply Regulation E to their GPR cards and agrees that the Bureau should consider its official application to these cards, with appropriate adjustments. Any regulations applied to GPR cards should be designed to accommodate and encourage variations in GPR card models and minimize expenses to help keep consumer prices as low as possible. We stress that the market and consumers should determine GPR card features, pricing, and terms and that the Bureau should not directly or indirectly regulate their prices and features. The Bureau should also coordinate other consumer protection laws that might apply to GPR cards and rely on existing rules where appropriate to promote consistent, uniform disclosures and rules. Finally, the Bureau should be conscious of the evolution of payment channels. We are happy to provide any additional information.

Regards,



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