

October 26, 2015

Janet Yellen, Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington DC 20551

Richard Cordray, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: Protect RushCard and other prepaid cardholders

Dear Chair Yellen, Director Cordray and Comptroller Curry:

The National Consumer Law Center (on behalf of its low income clients), Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, National Consumers League, Public Citizen, Reinvestment Partners and U.S. PIRG are writing regarding the situation with the RushCard and the vulnerabilities it has revealed in the protection of consumers who use prepaid cards.

For the past two weeks, thousands of low-income consumers whose funds are held on RushCard prepaid cards have been unable to access their money.¹ While we understand that the immediate problem has been largely corrected, the occurrence raises important questions about the extent to which prepaid cardholders are adequately protected.

We appreciate the Consumer Financial Protection Bureau's (CFPB) push for action to address the harm to consumers and the cascading financial effects, and the Bureau's pledge to use all of the tools at its disposal to see that consumers obtain the relief they deserve.² We also welcome the CFPB's discussions

¹ See, e.g., Kevin Dugan & Richard Morgan, "RushCard users have been waiting for their money for 10 days," New York Post (Oct. 21, 2015), <http://nypost.com/2015/10/21/angry-rushcard-customers-turn-up-the-heat-on-russell-simmons/>.

² See Statement by CFPB Director Richard Cordray on RushCard Prepaid Card Incident (Oct. 23, 2015), <http://www.consumerfinance.gov/newsroom/statement-by-cfpb-director-richard-cordray-on-rushcard-prepaid-card-incident/>.

with the Office of the Comptroller of the Currency (OCC) and the Federal Trade Commission (FTC) to ensure a comprehensive response to address the situation quickly.

In addition to addressing the immediate situation for RushCard holders, three areas of broader importance to all prepaid cardholders warrant attention:

- We are renewing earlier requests by several of our groups for the CFPB and Federal Reserve Board (FRB) to make clear under Regulation CC and Regulation E that prepaid cardholders have the same rights as bank account holders to prompt access to deposited funds and to demand that mistakes be fixed.
- We call on the CFPB and bank regulators to adopt more regular and rigorous supervision of prepaid card companies, payment processors, and the banks that issue prepaid cards.
- We urge the CFPB to finalize the important proposal to prohibit forced arbitration clauses that deny courts the ability to order companies to reimburse all of the victims they harm.

These steps among others will hopefully ensure that a similar situation never occurs again and that consumers are protected if it does.

Right to Access Your Own Money

This incident highlights uncertainties about an obvious question: What, if any, laws are violated if a consumer cannot get access to his or her money? Certainly, any failure to let consumers spend their own money could be an unfair, deceptive or abusive practice. But more specifically, if this problem had happened to bank account holders, we believe that the failure to make deposited funds available for withdrawal could have been a violation of Regulation CC under the Expedited Funds Availability Act.³

While it is our position that the Regulation CC covers prepaid cards, some in the banking industry take the position that it does not.⁴ In order to eliminate any uncertainty, the Consumer Financial Protection Bureau (CFPB) and Federal Reserve Board (FRB) should amend Regulation CC or take other measures to eliminate any doubt. Prepaid cardholders, who tend to be low income, especially need prompt access to the funds they deposit on prepaid cards. It should also be made clear that Regulation CC gives consumers a right to have access to their funds on an ongoing basis and not only to have initial availability after a deposit clears.

In 2013, several of our groups asked the OCC and CFPB to complete the Regulation CC rulemaking begun in 2011 and to update it to protect prepaid cards.⁵ We renewed our call in 2014, when the FRB

³ See Regulation CC, 12 C.F.R. § 229.10 et seq.; National Consumer Law Center, Consumer Banking and Payments Law § 4.5 (5th ed. 2013 and online Supp.). Regulation CC provides timelines under which financial institutions must provide access to funds deposited in cash, electronically or by check.

⁴ See <https://www.bankersonline.com/forum/ubbthreads.php?ubb=showflat&Number=582715>.

⁵ See Letter from NCLC et al. to CFPB & FRB (Sept. 18, 2013), http://www.nclc.org/images/pdf/rulemaking/comments-regulation_cc_rcc_efaa_9-18-2013.pdf.

embarked on the regulatory review process under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA), which is ongoing.⁶ As we and other groups have said at EGRPRA hearings and in comments, the regulatory review process must be about updating regulations to better protect consumers and not just about eliminating outdated regulations.

In addition to including prepaid cards, Regulation CC also must be updated to ensure prompt access to funds deposited on mobile devices through remote deposit capture; to extend warranties on and ultimately ban remotely created checks and remotely created payment orders for consumer transactions; and to help prevent check scams by giving consumers a clear point in time when they have unfettered access to the entire amount of a check.⁷

The failure to process a transaction (because an account is frozen) is also an error under Regulation E. However, most prepaid cards are not directly covered by Regulation E today, although most are indirectly, either through Treasury rules or through the account agreement. We appreciate the CFPB's current proposed rulemaking to extend Regulation E to all prepaid cards and urge the Bureau to finalize the rule. To the extent that there is any uncertainty about whether Regulation E covers the failure to process a consumer's attempted cash withdraw or electronic transaction, the CFPB should make clear that it does.

Supervision of Prepaid Card Companies, Payment Processors and Issuing Banks

Apparently the problem happened when UniRush and MetaBank, which issues the RushCard, were in the process of changing payment processors. All steps must be taken to ensure that such a problem does not happen again. It could be devastating for any family to be unable to access expected funds. But the families who rely on prepaid cards tend to have far fewer resources than other consumers.

Prepaid cardholders need as much or more robust protection as the holders of bank accounts. But in our current system, they have less. No federal agency regularly examines prepaid card companies or payment processors for either consumer protection or safety and soundness issues. These companies are supervised only indirectly through the regulator of the card issuing bank. Yet the issuing bank often plays a minor role in the management of a prepaid card program.

The CFPB should commence a rulemaking to identify the larger prepaid card companies and payment processors and to begin regular examinations of those companies.⁸ In addition, the OCC and the other bank regulators should work to thoroughly understand the cause of the RushCard problem, adopt examination procedures to ensure that all parties involved with a prepaid card program are adequately

⁶ See Comments of NCLC et al. re Regulatory Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Docket ID OP-1491 (Sept. 2, 2014), <http://www.nclc.org/images/pdf/rulemaking/fed-10-year-review-comments-consumer-groups09022014.pdf>.

⁷ See *id.*

⁸ Regulation examination of payment processors would have the added benefit of ensuring that they are not involved in helping scammers to debit consumer accounts.

supervised, and take any steps necessary to ensure that this situation cannot happen again to any prepaid card or bank account holders.

Forced Arbitration

Finally, we thank the CFPB for proposing to regulate forced arbitration clauses by ensuring that consumers have the ability to band together in class actions brought in court. To the extent that any laws were violated in this incident, courts should be able to address any violations and order relief for all impacted consumers. However, we understand that the RushCard, like other prepaid cards, credit cards, bank accounts and many other financial products, bans class actions and instead forces consumers to bring any claims individually through arbitration before a private arbitrator in a secretive, lawless and biased process. If the rights of hundreds of thousands of consumers were violated, they should not have to file hundreds of thousands of individual claims before private arbitrators in a process that is closed to the public. Our public courts must be open to all and public judges must have the power to hold lawbreaking companies accountable for the full extent of the harm they cause.

We look forward to action by your agencies to protect consumers like those impacted by the RushCard incident. Please let us know if you have any questions.

Yours very truly,

National Consumer Law Center, on behalf of its low income clients
Americans for Financial Reform
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
National Consumers League
Public Citizen
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