Congress Poised to Block Fraud Protections to Preserve Prepaid Card Overdraft Fees

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Bill filed in Senate Would Block New CFPB Rule through Fast-Tracked Obscure Law

(WASHINGTON) A resolution filed in the U.S. Senate late on Wednesday by two senators from Georgia, the home state of prepaid card firm NetSpend's parent company TSYS, would use an obscure law known as the Congressional Review Act to force a vote to block the Consumer Financial Protection Bureau's (CFPB) prepaid card protection rule. Repeal of the rule would allow prepaid card company NetSpend to keep charging customers $80 million a year in overdraft fees while blocking basic fraud protections and fee disclosures set to go into effect for all prepaid cards, 98% of which don't have overdraft fees.

"It is outrageous that Congress may block basic fraud protections on prepaid cards so that NetSpend can keep gouging struggling families with overdraft fees that have no place on prepaid cards," said Lauren Saunders, associate director of the National Consumer Law Center (NCLC). "Members of Congress that support Wall Street and predatory lenders over working families may also use this vote to continue their attacks on the CFPB, our consumer watchdog, which has returned nearly $12 billion to 29 million consumers across the nation."

Consumers shut out of the banking system or trying to avoid bank account overdraft fees use prepaid cards to get direct deposits and manage their money. Prepaid cards are a rapidly growing market, used by 9.8 percent of households in 2015 according to the FDIC. Payday lender prepaid cards, which are sold at major payday loan stores in partnership with NetSpend and a few other companies, have other unusual features that allow payday lenders to repay themselves from the card, potentially triggering an overdraft fee.

Only 2% of prepaid cards have overdraft fees, according to a survey by the CFPB. NetSpend, the only major prepaid card provider with overdraft fees, primarily sells its cards at payday loan and check cashing stores and through payroll cards used by fast food chains, retail stores and other employers of low-wage workers. The biggest prepaid card company, Green Dot, does not charge overdraft fees and supports the CFPB prepaid rule.

NetSpend's cards offer opt-in overdraft "protection" that allows the card to be used when it is empty, with the overdraft and a $15 to $25 fee taken out of the next deposit to the card. A few other payday lender prepaid cards also have overdraft fees. NetSpend was also recently sued by the FTC for telling consumers they can access deposits to the card "today" but then blocking immediate access to the funds.

Last fall, the CFPB issued a rule that extends to prepaid cards the basic protections against fraud, unauthorized charges, and errors that consumers have with bank account debit cards. The rule, which is effective October 1, 2017, also gives consumers a simple chart of fees to help them shop for a prepaid card. The CFPB rule does not prohibit overdraft fees but adopts a number of protections for hybrid prepaid-credit cards. Companies must wait 30-days before adding overdraft credit features and must comply with the rules for credit cards, including limits on fees in the first year, consideration of ability to pay, payments only once a month, and a ban on requiring automatic repayment from incoming deposits.

"With the daily news of data breaches accelerating, working families that use prepaid cards have been waiting for years for basic fraud protections that bank account holders take for granted. Congress must reject this slash and burn effort that harms people that use prepaid cards in order to line prepaid companies pockets with overdraft fees," Saunders added.

The prepaid card resolution was filed under the Congressional Review Act (CRA), an obscure law that gives Congress, with the President's signature, a window to veto a rule from going into effect. The CRA has special provisions to expedite a vote and prevent a filibuster. If a rule is blocked by a CRA vote, the agency is forever barred from doing a substantially similar rule unless Congress authorizes it.