

COMMENTS
to the
Consumer Financial Protection Bureau
regarding
Information Collection for Report of Terms of Credit Card Plans

Docket No. CFPB–2012– 0001
77 Fed. Reg. 2685 (January 19, 2012)

by the
Center for Economic Justice¹
National Consumer Law Center (on behalf of its low-income clients)²
Consumer Federation of America³

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The Center for Economic Justice, the National Consumer Law Center (on behalf of its low-income clients) and the Consumer Federation of America submit the following comments in response to the Bureau's request for comments on data collection for the Report of Terms of Credit Card Plans. To accomplish the Bureau's goals of collection of information with practical utility to ensure the proper performance of the Bureau and to enhance the quality, usefulness and clarity of information collected, we recommend the addition of data collection for payment protection plan products sold with credit cards.

Payment protection plans are products that cancel or suspend credit card balances or monthly payments and consist of debt cancellation contract, debt suspension agreement and payment holiday products. The payment protection plans are typically a group of debt cancellation and debt suspension benefits associated with specific life events, including death, disability, involuntary unemployment, hospitalization, family leave and others.

The cost of credit card payment protection can be significant, typically in the range of \$0.79 to \$0.99 or more per \$100 of outstanding balance. Though the benefits provided are significantly different, the Lowes GE Capital Retail Bank Card Security and the GAP GE Capital Retail Bank Card Security products cost \$1.66 per \$100 of outstanding balance. The Macys Store Card Credit Protection Program costs \$1.89 per \$100 of outstanding balance. Plan fees of \$0.99, \$1.66 and \$1.89 per \$100 of outstanding balance per month effectively add 12%, 20% and 23%, respectively, to the credit card interest rate.

¹ The Center for Economic Justice is a nonprofit Texas corporation advocating on behalf of low-income and minority consumers on credit, insurance and utility matters. www.cej-online.org

² The National Consumer Law Center, Inc. (NCLC) is a nonprofit Massachusetts corporation, founded in 1969, specializing in low income consumer issues, with an emphasis on consumer credit.

³ The Consumer Federation of America is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 300 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors.

There is a great need for improved consumer information regarding payment protection plans sold in connection with credit cards to address the lack of meaningful competition and absence of consumer power in the market for these products. Payment protection plan markets are not competitive for several reasons. First, currently a consumer seeking a particular credit card cannot shop around for a credit protection plan other than the one offered by the card issuer. Second, the payment protection plans cover a number of events, some of which are not applicable for many consumers. Consumer choice is limited to acceptance or rejection of the plan offered with little or limited choice of individual plan components. Third, since the product is ancillary to the main purchase – obtaining a line of credit with a credit card – there is opportunity to exploit consumer biases. Fourth, unlike information about basic credit features and third-party benefits (such as, airline miles or travel points), there is no source of information comparing key features of payment protection plans.

Problems with payment protection product markets have been well documented in the United States and the United Kingdom. The New York State Department of Insurance credit insurance regulation 27A describes the problem:

Section 185.0

(b) In the marketing of credit insurance, the inferior bargaining position of the debtor creates a captive market in which, without appropriate regulation of such insurance, the creditor can dictate the choice of coverages, premium rates, insurer, agent and broker, with such undesirable consequences as: excessive coverage (both as to amount and duration); excessive charges (including payment for nonessential items concealed as unidentifiable extra charges under the heading of insurance); failure to inform debtors of the existence and character of their credit insurance and the charges therefore, and consequent avoidance of the protection provided the debtor by such coverage.

(c) In the absence of regulation, premium rates and compensation for credit insurance tend to be set at levels determined by the rate of return desired by the creditor in the form of dividends or retrospective rate refunds, commissions, fees, or other allowances, instead of on the basis of reasonable cost. Such reverse competition, unless properly controlled, results in insurance charges to debtors that are unreasonably high in relation to the benefits provided to them.

The United Kingdom Competition Commission conducted a multi-year study of the markets for payment protection products in the UK. After extensive study⁴, the Competition Commission concluded:

⁴ See <http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/ppi-market-investigation-and-remittal> for the 2009 final study report with recommendations to address lack of competition and 2011 order detailing measures to introduce competition into the payment protection market.

1. We found that each distributor and intermediary faces little competition for the sale of Payment Protection Insurance (PPI) when it is sold in combination with the credit it insures. We found that there were features of relevant markets which led to an adverse effect on competition (AEC) in these markets and in turn resulted in consumers facing higher prices and less choice than they would if there was effective competition between PPI providers. As a result of this lack of competition we found that it is highly profitable for distributors to sell PPI, though we found that some of the resultant profit is used to subsidize credit prices. We concluded that there were serious deficiencies in the competitive process for selling PPI policies, and, in order to remedy the adverse effects identified, a package of remedies would be required which includes some significant restrictions on what parties selling both PPI and credit can do (and also impose some burden on parties that offer only PPI to consumers). We concluded that such an intervention in these markets would enhance overall consumer welfare, and that the scale of the problem identified warranted a significant intervention.

Current card payment protection disclosures are inadequate to empower consumers for several reasons. First, current disclosures are nearly devoid of information necessary to empower a consumer to make an informed purchase. Disclosures for payment protection plans typically consist of a small box on the credit card application and a summary disclosure on an insert sent with the card offer. Terms of coverage, including key eligibility requirements and exclusions, are typically not provided to the consumer unless and until the consumer purchases the product and receives the debt cancellation / debt suspension contract addendum to the credit card terms and conditions. In some instances, a basic description of the product itself is not provided until purchase. We provide example of the poor disclosures below.

Second, consumers exert little market pressure on price due to the structure of payment protection markets and the lack of relevant information. Payment protection plans are secondary purchases to the main event of obtaining a credit card. Payment protection products sold in connection with credit cards are marketed as a way for borrowers to protect their credit ratings, but the consumer has no information to evaluate the benefits of the product and, consequently, measure costs against benefits.

The recent GAO report⁵ on payment protection products stated that card issuers self-reported a benefit ratio (benefits provided to fees collected) of around 21%.⁶ Such low benefit ratios are powerful evidence of consumers' inability to wring out excess profit from the fees charged. Data collection of information to allow consumers to evaluate the actual benefits provided from the products is needed to empower consumers and create more a more competitive market for payment protection plans. Collection and publication of premiums charged and claims paid have

⁵ *Credit Cards: Consumer Costs for Debt Protection Can Be Substantial Relative to Benefits but Are Not a Focus of Regulatory Oversight*, GO Report 11-311, March 2011 at <http://www.gao.gov/new.items/d11311.pdf>

⁶ CEJ's analysis indicates that benefit ratios are 10% or less. See page 28, *Debt Cancellation Contracts and State Insurance Regulation* at <http://www.cej-online.org/cej%20first%20dcc%20report%20no%20app.pdf>

been standard practice for consumer credit insurance, which is the insurance analog to debt cancellation contracts and debt suspension agreements, for decades.⁷

Third, despite representing a significant cost to the consumer – as much as the base interest rate charge on some credit cards – consumers have no ready source of information to compare payment protection products across card issuers or to evaluate the actual historical benefits of the product to other consumers. In contrast to third-parties providing information on credit card interest rates, annual fees and co-branding benefits, we are not aware of any third-party source comparing credit card payment protection plans.

Recommendation for Data Collection

We recommend data collection sufficient to allow consumers to compare the costs and benefits of payment protection plans. The attached table is a suggested form for reporting the recommended data, with a few illustrative entries. These data can be used to provide a comparative shopping tool for consumers showing, for example:

- Types of benefits available
- Benefit differences and limitations of benefits across plans
- Price differences across plans
- Historical likelihood of borrowers seeking and obtaining benefits
- Value of benefits relative to cost of the product

The top of the form provides identifying information – name of credit card issuer and name of payment protection plan.

Name of Payment Protection Plan: The entry here would be the name of plan and institution sponsoring the credit card. For example, “GAP Card Security” or “PaymentAid.”

Name of Card Issuer: The entry here is the lender issuing the card and payment protection plan.

States in Which Plan is Offered: The entry here would be All, All except [list of states not offered] or [list of states offered].

Number Sold: The entry is the number of full-year equivalent sold in the most recent three calendar years, calculated by dividing the total number of monthly payments received by plan provider during the most recent three calendar years by 12. The reporting period should be limited to the time frame in which the benefits were the comparable. If plan benefits were changed significantly two years prior, the reporting period should be limited to two years. A significant change is one in which expected plan benefits per enrollee change by 15% or more.

⁷ Credit insurers report experience by product by state in the Credit Insurance Experience Exhibit to the Statutory Annual Statement required by state insurance regulators.

There are options for the historical period for which to report actual fees collected and benefits paid – from program inception through most recent calendar year or a shorter period of one, three or five years. A longer period would avoid single year anomalies in experience and cover periods of different economic conditions, which could impact use of certain benefits. We suggest reporting of three years of experience.

Total Net Fees Collected: The entry here is the dollar amount of fees billed for the plan less any refunds credited for the plan in the most recent calendar year.

The remainder of the form is a table for reporting benefits provided under the plan. The table includes two parts: Benefits included in the plan and actual historical benefits provided.

To describe the benefits included, at least four pieces of information are needed – the events covered, the type of benefit for the covered event, the maximum amount of the benefit for the covered event and card use restrictions with benefit activation.

Event means the type of life event which triggers a benefit – death, disability, involuntary unemployment and others.

Type of benefit means debt cancellation, debt suspension, debt holiday or other.

Maximum amount of benefit means the dollar amount of debt cancellation and the maximum number of months or times the benefit can be used.

Card use restrictions with benefit activation means any agreement provisions which limit card use if a plan benefit is activated. This is a critical piece of information for consumers considering the purchase of the payment protection plan at the very time there is need to use credit because of missing income due to unemployment or other events.

The pre-printed list of events should include those found in major card plans. There will be a difference in plans across general purpose card issuers and more significant differences between plans from general purpose cards and co-branded retail cards.

The historical benefits provided consists of four data elements – the number of benefit activation requests, the number of benefit activations denied, the number of benefit activations and the dollar value of benefits provided.

The number of benefit activation requests means the number requests by plan participants for initial plan benefits. A benefit request that results in, say, 6 monthly debt cancellation benefits, is reported as one benefit request.

The number of benefit activations denied means the number of times a plan participant requested a plan benefit and was denied any benefit.

The number of benefit activations means the number of initial plan benefits honored with at least one benefit. A benefit request that results in, say, 6 monthly debt cancellation benefits, is reported as one benefit.

The dollar amount is the dollar value of the benefits provided and is calculated as follows;

Debt cancellation – the total amounts canceled;

Debt suspension, Payment Holiday – the total amount of interest charges (debt suspension) or penalty fees (payment holiday) avoided;

Examples of Initial Payment Protection Disclosures

Below, we reproduce the disclosures from two major card issuers – Discover and Citi – to illustrate the very limited nature of payment protection disclosures available to the consumer, which are typically found in credit card offers. The Citi disclosure is particularly poor; it completely fails to describe the product and provide sufficient information for a consumer to make an informed purchase or comparison shop for payment protection products.

Citi PaymentAid Disclosures

[Box on application in very small type size]

Yes, I would like to protect my account by enrolling in PaymentAid. By providing my initials, I have received the Payment Aid Program Summary on the enclosed insert and I want to purchase this OPTIONAL program. Bill my account \$0.87 per \$100 of my New Balance until I cancel. If you cancel this within the first 30 days, you will not be billed. PRINT INITIALS

[Additional Disclosure in Insert]

PAYMENTAID® PROGRAM SUMMARY

Your purchase of PaymentAid is optional and will not impact the terms of any existing credit agreement you have with Citibank or any application for credit. There are eligibility requirements, conditions and exclusions that could prevent you from receiving benefits; a complete explanation can be found in section 7 of the Terms and Conditions. The cost each billing period for PaymentAid is \$0.87 per \$100 of the previous billing period's New Balance. You can cancel by phone at anytime. If you cancel within 30 days of receiving your Terms and Conditions, you will not be billed. If we cancel your enrollment for any reason, we will provide you with at least 30 days written notice (except for cancellations based on account status). Should you have any questions, please contact us at 1-877-588-3495. PaymentAid is not available in MS and AL. PaymentAid is a registered service mark of Citigroup Inc. or its subsidiaries.

Discover Payment Protection Disclosure

[Box on application in very small type size]

Please enroll me in optional Discover Payment Protection, and bill my account the fee of 89 cents per \$100 or a fraction thereof of my monthly statement balance at the end of each billing period. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe.

I have read and agree to the Discover Payment Protection Important Information on the reverse.
Initial Here.

[Disclosure on reverse page of application]

DISCOVER® PAYMENT PROTECTION -IMPORTANT INFORMATION

Discover Payment Protection is provided by Discover Bank and includes both debt suspension and debt cancellation benefits. Discover Payment Protection is not insurance, Debt Cancellation is not offered or available to residents of AK, IA, MT, NV, OR, RI, TN, WI, PR, GU, VI, or any other state or territory where it is regulated as insurance.

THIS PRODUCT IS OPTIONAL. Your purchase of Payment Protection is optional. Whether or not you purchase Discover Payment Protection will not affect your application for credit or the other terms of any existing credit agreement you have with us.

AMOUNT OF FEE. You will be charged 89 cents per 100 dollars or a fraction thereof of your monthly statement balance at the end of each billing period. The Fee will be shown on your Account billing statement and will be included in the balance due on your Account for each billing period.

TERMINATION OF DISCOVER PAYMENT PROTECTION, Enrollment will continue until you or we cancel or your Discover Card Account ("Account") is closed. You have the right to cancel Payment Protection at any time. If you cancel within 90 days of your enrollment you'll receive a full refund of your Payment Protection fees upon your request. We may cancel Payment Protection at any time, but will not reduce benefits you are already receiving.

CHANGE IN TERMS, We may change the Payment Protection terms and fees at any time. If we make a change that is unfavorable to you or involves an additional charge, we will give you advance written notice and a reasonable opportunity to cancel without penalty.

EXPLANATION OF DEBT SUSPENSION AGREEMENT. If Payment Protection is activated, your duty to pay the loan principal and interest charges to us is only suspended. You must fully repay the loan after the period of *suspension has expired*. Depending on the event, the protection may only temporarily suspend your duty to make minimum payments, not reduce the balance you owe.

USE OF CARD OR CREDIT LINE RESTRICTED. You may continue to use your card while on Celebration Benefit according to the terms in your Cardmember Agreement. If your Account is past due at the time you activate benefits, you may not use your Account while receiving benefits for Involuntary Unemployment, Disability, Leave of Absence, Hospitalization, Federal or State Disaster or Death of a Child, Spouse or Domestic Partner ("Hardship Benefits"). If your Account is current at the time you activate Hardship Benefits, you may qualify to use up to \$1,500 of your Account's available credit for purchases (but not balance transfers or cash advances) while receiving Hardship Benefits.

DEBT CANCELLATION. If you or a joint card member pass away while enrolled, the balance on your Discover Card Account, as of the date of your death, will be cancelled, up to \$25,000. The account balance is determined by the date you or a joint card member passes away and the estate or surviving cardmember is responsible for the remaining balance and charges after the date of death.

ELIGIBILITY REQUIREMENTS, CONDITIONS AND EXCLUSIONS. There are eligibility requirements, conditions and exclusions that could prevent you from receiving benefits under Payment Protection. You can never receive benefits for a Covered Event that begins before your enrollment (or reinstatement) in Payment Protection. You must be enrolled in Payment Protection at the time you request a Deferral. A complete explanation is in the following paragraphs of the Payment Protection Terms and Conditions: paragraph 2 "Important Limitations on Benefits and Use of Your Account During Benefit Period," paragraph 6 "Application for Benefits" and the subparagraphs listing exclusions under paragraphs 3(A), 3(B), 3(C), 3(O), 3(E), and 3(F) and 5. We will send you an enrollment confirmation including the Terms and Conditions before you have to pay. Please read them carefully.