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July 17, 2012

Via E-mail

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

Attention: CFPB Docket No. CFPB-2012-0019

Re: Comment Letter on Advance Notice of Proposed Rulemaking Seeking Comment, Data and Information on General Purpose Reloadable Prepaid Cards (RIN 3170-AA22)

Dear Madam:

This letter is submitted to the Consumer Financial Protection Bureau ("CFPB" or "Bureau") on behalf of the Network Branded Prepaid Card Association ("NBPCA") in response to the advance notice of proposed rulemaking ("ANPR") regarding general purpose reloadable ("GPR") prepaid cards ("GPR Card(s)"),which was published in the *Federal Register* on May 24, 2012, at 77 Fed. Reg. 30923-30925. We appreciate the opportunity to provide our input, data and commentary on this important issue.

The NBPCA is a non-profit trade association representing a diverse group of organizations that take part in delivering GPR Cards and other forms of prepaid access used by consumers, businesses and governments. The NBPCA's members include prepaid access providers and sellers, in addition to depository institutions, card organizations, processors, program managers, marketing and incentive companies, card distributors, and law and media firms. The NBPCA works on behalf of and through its members to inform and educate government officials, the media and consumers about these important payment products that provide critical access to financial services as well as convenience, security and efficiency to a wide range of users. In its role as a leader in the prepaid industry, the NBPCA works with its members to establish and encourage best practices designed not only to benefit cardholders and industry participants but also to protect our financial system from misuse and abuse.[1] We welcome the opportunity to respond to the ANPR.

The ANPR seeks input on GPR Cards, which are defined as general-use prepaid cards "issued for a set amount in exchange for payment made by a consumer" and reloadable by the GPR cardholder, "meaning the consumer can add funds to the card." Specifically excluded from the ANPR are "closed loop cards, debit cards linked to a traditional checking account, non-reloadable cards, payroll cards, electronic benefit transfers (EBTs), or gift cards." While the ANPR specifically discusses "cards," other GPR mechanisms that access a consumer asset account are also covered, including key fobs and applications loaded to mobile devices.

Consumer Satisfaction and Survey Data

GPR Cards provide users with convenient, safe access to funds and pricing that is often less than functionally similar financial tools. These benefits have been key drivers of the popularity of GPR Cards. GPR Cards are available in more than 200,000 retail locations, bank branches and other locations convenient to consumers in all neighborhoods, including areas not serviced by traditional bank branches or ATMs. The wide availability of GPR Cards is particularly appealing to the 60 million Americans who are unbanked or underbanked, who have limited or no access to bank branches or ATMs in their neighborhoods, cannot meet the eligibility or minimum balance thresholds required to qualify for traditional bank accounts (e.g., checking and savings accounts) or simply do not want a traditional bank account. The convenience, pricing and security of GPR Cards is also attractive to many members of Generation Y (persons born in the 1980s and early 1990s), who see little use for the infrastructure of traditional bank branches and paper checks.

We commend the factual, data-driven approach that the Bureau has taken to implementation of regulations to date, and we wish to direct the Bureau to some reliable information sources regarding consumer experiences with prepaid cards. Study after study confirms that consumers are satisfied with the value and utility provided by prepaid cards and that GPR Card fees are affordable; the terms, conditions and valuable proposition are easily understood by consumers; and fees are transparent. A summary of research samples[2] supporting these conclusions is included under **Appendix A** to this letter.

General Thoughts about Regulation of GPR Cards

Throughout the Prepaid Field Hearing hosted by the Bureau in Durham, North Carolina, on May 23, 2012, two key consumer protections were raised--safety and transparency. Our members place high priority on both. In particular, the NBPCA supports transparency in the disclosure of

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[1] This letter does not necessarily represent the position of every NBPCA member. While we share our general views in this letter, given the wide diversity of our membership, we understand that many individual members will also submit specific comments to address how the issues presented in the ANPR impact their respective organizations.

[2] In most cases, the full research reports referred to in this letter can be obtained at the NBPCA web site: www.nbpca.org, under the Research and Publications tab.

fees and key terms prior to purchase[3] in a format that is easy for the consumer to understand and to compare with other GPR Card products. The GPR Card industry is focused on providing a safe payments alternative for the unbanked, underbanked and debanked consumers, enabling them to avoid the risks of dealing in cash, including protection against loss or theft.

It is our understanding that one of the goals of the Bureau in supervising non-banks, such as payday lenders and private student loan lenders, is to “level the playing field” so banks and non-banks are subject to similar regulation.[4] We ask, as the Bureau levels the playing field, that it does so in a manner that does not make regulations for GPR Cards more restrictive than those that apply to traditional bank accounts. We also ask that the Bureau take into account the unique attributes of GPR Card products and recognize the need to foster innovation to deliver the best possible products to meet consumers’ needs. As the Bureau considers extending Regulation E to GPR Cards, please keep in mind the burdens that additional regulation will place on the industry. This industry is still relatively young and demand for GPR Card products is high among unbanked, underbanked and debanked consumers. Overly burdensome regulations may have the effect of stifling development and impairing consumer access to these products.

We believe that the GPR Card industry has successfully self-regulated itself by utilizing components of Regulation E with appropriate modifications to suit the unique aspects of specific GPR Card products. For example, in response to your request for data, one NBPCA member conducted a survey of 9,000 GPR cardholders in May 2012 (the “2012 NBPCA Member Cardholder Survey”), which demonstrated that 74 to 80 percent of the GPR cardholders surveyed were satisfied with the particular card and that 66 to 73 percent would recommend the card to a friend. Such high satisfaction levels are rare in any industry and strongly suggest that the GPR Card industry has done a good job of promoting consumers’ interests.

CFPB Question 1: How should the CFPB define GPR Cards in the context of Regulation E? Should certain prepaid products not be included in this definition, such as cards that may serve a limited purpose (e.g., university cards or health spending cards)? Why or why not?

We believe the definition of “general-use reloadable prepaid card” should be limited to cards that are being used as substitutes for debit cards linked to a traditional bank account. Such an approach seems consistent with the Bureau’s intent and with the history of regulation of consumer asset accounts, including the historical regulation of payroll cards. This approach would cover a GPR Card that can be reloaded by the consumer, can be used broadly at the point of sale and at ATMs, and is capable of providing other services routinely available to traditional debit cardholders, such as access to bill payment services, convenience checking and appropriate credit and savings products.

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[3] Please note that not all GPR Card products charge a fee to obtain a card, so there may not be a “purchase” of a GPR Card in all cases. As an alternative, the initial load of funds or initial activation of a GPR Card could be used to describe the timing of delivery of any disclosures required prior to a consumer obtaining a GPR Card.

[4] See Prepared remarks by Richard Cordray at Prepaid Cards Field Hearing, Prepaid Cards Field Hearing, Durham, NC (May 23, 2012), available at http://www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-at-prepaid-cards-field-hearing.

In addition to focusing on when a GPR Card truly serves as a traditional bank account substitute, we recommend implementing certain exclusions. We suggest using Title IV of the CARD Act[5] as a starting point for the definition of "general-use reloadable prepaid card" with certain modifications (such as in sections "a" and "c" below) clarifying that Regulation E will be extended only to:

A card, code, or other device that is:

a. Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer, and only if it is reloadable by the consumer;[6]

b. Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines;[7] and

c. Established by the cardholder as a substitute for a traditional bank account.

A number of additional categorical exclusions are necessary. We recommend that the Bureau add exemptions to the definition of "general-use reloadable prepaid card" for:

a. Gift cards;

b. Loyalty, award or promotional cards;

c. Prepaid products "not marketed to the general public"

d. limited purpose cards that serve a limited purpose, such as health benefit and university cards, and that do not have the same functionality as a GPR Card; and

e. Corporate-funded cards (e.g., cards reloadable solely by a business, corporation or other third party). This includes a wide range of prepaid cards, including those issued for health benefits, as well as cards used to pay for corporate expenses or to distribute insurance claims.

These cards typically serve a limited audience for a limited use. Such cards typically have their own set of requirements; adding new regulations to these products will not serve the purpose behind the ANPR. Also, adding Regulation E requirements to some of these products will raise the costs in a manner causing issuers to discontinue them and stifle new and innovative products from entering the market to benefit consumers.

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5 See 12 CFR 1005.20. Title IV of the Card Act was codified at 15 USC 1693l-1).

6 For purposes of extending Regulation E to GPR Cards, such regulations should only apply to general use prepaid cards that are reloadable.

7 12 CFR 1005.20(a)(3) sets forth a similar definition for prepaid products, but includes products "*whether or not that amount may be increased or reloaded, in exchange for payment.*" We believe that limited use, non-reloadable cards should not be included in the scope of Regulation E.

CFPB Question 2: Should only certain aspects of Regulation E be applied to GPR Cards? For example, as Regulation E is currently applied to payroll cards, consumers are not guaranteed a periodic paper statement. If possible, please explain why a GPR Card's use or structure makes any such modification appropriate. If the Bureau were to propose modifications to the Regulation E protections, what alternative protections or requirements, if any, should the Bureau propose?

GPR Cards come in a wide range of different formats and cost structures that often rely on modern technologies, such as websites and mobile devices. Consumers who use GPR Cards as a substitute for traditional bank accounts pointedly tell us that they like the freedom and convenience offered by such GPR Cards and do not want to incur the costs associated with a traditional bank account. To ensure that such GPR Card products continue to offer innovation and convenience, at a reasonably affordable price, we ask the Bureau to apply only certain aspects of Regulation E to GPR Cards and to also make modifications to certain existing provisions given the nature of GPR Cards. We do not believe that any of the requested accommodations diminish consumer protections.

Many NBPCA members' GPR Cards already comply with Regulation E (as it applies to payroll cards) and are prepared to continue to comply, even if the CFPB determines not to extend Regulation E to GPR Cards.[8] A number of other GPR Card programs comply with all provisions of Regulation E (as it applies to payroll cards) except for its provisional credit provisions in light of cardholder fraud concerns, which are discussed in detail below.

For the most part, we believe that, if the Bureau determines that GPR Cards should be subject to Regulation E, the rules implemented with respect to payroll cards should be extended to GPR Cards that serve as a substitute for traditional bank accounts.

(i) Periodic Statement Requirement

Consistent with the rules for payroll cards, the Bureau should permit GPR Card issuers to provide to consumers an alternative to the periodic statement generally required under Regulation E for other electronic funds transfers. The cost of generating and sending paper statements is high and burdensome. More important, consumers who use GPR Cards have made it clear that they do not want such statements. Requiring paper statements can stifle innovation in a relatively young and nascent industry, as well as waste valuable environmental resources. Further, considering that GPR Card balances are often low, the cardholder base is fairly mobile and a large percentage of outstanding cards may be dormant, it is difficult to justify the costs of implementing a paper statement requirement.

Use of the language as in 12 C.F.R §1005.18 (which applies to payroll cards) would relieve GPR Card issuers from the requirement for periodic statements. Under Section 1005.18, issuers do not need to send a periodic statement if (1) consumers can receive their account balance through a readily available phone line; (2) the consumer can receive an electronic history of their account

[8] Please note that GPR Cards that receive federal payments already are required to comply with the Regulation E rules applicable to payroll cards. See 31 CFR § 210.5(b)(5)(i)(D).

transactions for at least the 60 days preceding the date the consumer electronically accesses the account (such as through a website); and (3) if a consumer makes an oral or written request, he/she is provided a written history of the account transaction that covers at least 60 days preceding the date the financial institution receives the consumer's request. In the current technological environment, consumers are accessing their transaction histories online or on mobile devices. Consumers have come to expect electronic access to their account information and transaction histories, and the Bureau can modify the periodic statement requirement without harming the typical GPR Card customer.

(ii) Change of Terms and Error Resolution Notice Requirements

The Bureau should permit GPR Card issuers to provide change-in-terms notices electronically rather than by mail, similar to the Regulation E provisions that permit payroll card issuers to provide error resolution notices in connection with electronic periodic statements.[9] We strongly encourage the Bureau to allow GPR Card issuers to provide electronic notice without E-Sign consent via e-mail, a mobile application or via a post to the GPR cardholder's account when they log in. In this regard, satisfying consent and disclosure requirements is particularly burdensome to meet with GPR Cards that are routinely accessed via mobile devices and not computers, so we ask that the Bureau consider ways to facilitate disclosures through such media. It is important to consider that each change the Bureau implements regarding the change-in-terms notice and error-resolution notice will impact the technology and cost structure throughout the GPR Card production, fulfillment and distribution value chain.

We also recommend that change-in-terms and error-resolution notice requirements be limited to GPR Cards that have not been placed on inactive status by the issuer. Many GPR cardholders stop using a GPR Card after only a few months; however, the abandoned account linked to that GPR Card may never be closed. In light of the ease with which consumers can stop using a GPR Card account, we strongly encourage the Bureau to limit requirements for change-in-terms notices and error-resolution notices to those cards that remain on active status.

(iii) Error Resolution and Provisional Credit Provisions

The Bureau should make changes to existing error resolution and provisional credit requirements that are tailored for GPR Cards. Currently, Regulation E requires issuers to provide provisional credit if the financial institution is unable to complete its investigation within 10 business days. To give the GPR Card issuer a reasonable opportunity to investigate the alleged error, we recommend extending the provisional credit timeframe to 30 calendar days for GPR Cards in general and to 60 calendar days for GPR Card accounts opened within 90 days prior to the alleged error.

The nature of GPR Cards allows consumers to open and close accounts much more easily than traditional bank accounts with associated debit cards. In addition, GPR Cards can be obtained without undertaking credit checks. As such, the provisional credit requirements provide significant risks to GPR Card issuers. For example, a consumer could purchase a GPR Card at a

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[9] See 12 CFR § 1005.18(c)(2).

retail location, incur a negative balance[10] and then decide to stop using the GPR Card. On the same day, the cardholder could purchase a different GPR Card from another provider rather than reloading his/her original GPR Card with the negative balance. Because of the transitory nature of many GPR cardholders and the fact that the negative balances are often too small to justify collection costs, such negative balances are often written off as fraud losses. The experience of our members indicates that the aggregate amount of such losses increases as the time period shortens within which an issuer must provide provisional credits.

In light of the steps to complete an investigation, especially with respect to disputed transactions that occur at an ATM or other terminal that is not owned or controlled by the GPR Card issuer, it can be extremely difficult, and often impossible, to complete an investigation within 10 business days. If the existing 10-day provisional crediting timeframe under Regulation E were applied to GPR Cards and the issuer were unable to complete the investigation in this time period, the issuer would be required to provisionally recredit the GPR Card for the amount in dispute. The consumer then would have full access to these funds until the investigation is completed. This leaves GPR Card issuers exposed to extensive potential fraud losses caused by the cardholders themselves.

In addition, if a GPR cardholder has a GPR Card that has been previously closed, providing a provisional credit becomes an even greater problem for the issuer. Because the GPR Card is closed, the issuer would need to send a check to comply with the Regulation E provisional credit requirements. This exposes the GPR Card issuer to substantial fraud risks and burdensome costs. We propose that if the GPR Card already has been closed, then no "provisional recrediting" should be required. Instead, if the investigation indicates an error has been made, then a final, permanent credit, payable via check, would be issued at the end of the reasonable investigation timeframe.

CFPB Question 3: What steps could the Bureau take to most effectively regulate these products to provide the consumer with transparent, useful, and timely fee disclosures? Should market participants be required to provide disclosure pre-sale, post-sale, or both?

The NBPCA believes that the terms and conditions that accompany a GPR Card should disclose all fees in a clear and conspicuous manner. We also agree that it would be beneficial for consumers if there were consistent disclosure across the industry, both pre-sale and post-sale, to make it easier for consumers to compare costs. However, determining the appropriate location and placement of these disclosures may be difficult given the variety of GPR Cards, the range of possible form factors other than plastic cards (such as mobile devices and other virtual forms) and different distribution channels used to purchase and/or deliver such cards. In many instances, it would be more beneficial to have these disclosures made available via websites than on the cards or card packaging.

To ensure transparency with regard to fees prior to sale, the NBPCA has endorsed the concept of a "fee chart," and some of our members are implementing, on a trial basis, the proposed fee box

[10] For example, a consumer could incur a negative balance through a forced post transaction or the re-presentment of a transaction following an earlier provisional credit on the same transaction.

developed by the Center for Financial Services Innovation ("CFSI"). These members are compiling data to recommend improvements and modifications to the CFSI template based on the ongoing industry pilot.[11] Our members intend to collaborate with the Bureau based on the results of this testing in order to identify key fees to be included in a fee chart. In addition, our members wish to emphasize the importance of having flexibility with regard to the nomenclature used to describe fees in a fee chart so they will have the ability to match those used in issuers' terms and conditions. The CFSI fee template is discussed in more depth in our response to Question 4 below.

CFPB Question 4: How can the Bureau best enable a consumer to compare various GPR Cards, or other payment products, that may have different fee structures or be offered through various distribution channels? Many GPR Cards offer limited space to disclose contract terms. How should market participants convey the most important contractual terms to consumers to enable them to make educated purchase decisions?

We noted at the Prepaid Field Hearing that the ability to compare GPR Card pricing is an important concern to consumers. We agree that reasonable disclosure uniformity—which recognizes the space considerations and legitimate challenges of standardizing fees that reflect different features, functionality and business models—will benefit the consumer's ability to compare and evaluate various GPR Card products.

Recognizing the difficulties inherent adopting a "one-size-fits-all" approach to fee disclosures, many NBPCA members note that this might indeed be an opportunity for the industry, consumer groups and the CFPB to consider establishing some innovative and new approaches to consumer fee disclosures. The concept of payment cards tied to "terms and conditions" has been with us since the 1950s. In light of widespread Internet access via laptops, smart phones and computer tablets, many consumers are more likely to prefer electronic disclosures over print formats. Such disclosures should be flexible to enable innovation of new features that are added to GPR products based on consumer input and feedback. We welcome the chance to work with the Bureau in designing new and innovative approaches to meet a goal we all share: providing consumers with clear and consistent fee disclosures, both before and after purchase of a GPR Card.

For example, GPR Cards could provide consumers with short, simple disclosures about the terms and conditions underlying a transaction, in a format that is clear and conspicuous, with a link to an electronic form accessible to users on a computer or mobile device to provide greater details and usage tools. These usage tools may include a website interface that allows consumers to customize the disclosure information they are receiving and mobile applications that provide condensed but useful disclosure information to the consumer to allow the consumer to determine the costs associated with usage of the product. In these circumstances, disclosure rules should contemplate that some consumers will only decide to use certain features associated with a product and that, therefore, disclosures should be tailored so as not to overwhelm consumers with irrelevant information.

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[11] Information about the CFSI fee template can be viewed by visiting: http://cfsinnovation.com/content/cfsi-proposes-model-fee-disclosure-box-prepaid-cards.

Another approach endorsed by certain NBPCA members is the CFSI template. The use of a table/chart – such as that developed by the CFSI – could allow consumers to compare a GPR Card not only to other GPR Cards but also to other payment alternatives. As noted above, however, the CFSI fee template may need to be modified based on information and feedback from our members' piloting of the template.

Any rules governing the establishment of such a chart/table should take into account the different costs associated with the various distribution channels utilized by GPR Card product issuers. GPR Cards are delivered on "j-hooks" in retail stores and also can be ordered online, over the phone or via a mobile application. Issuers incur a variety of costs depending on the channel selected by the consumer and therefore different fees may be necessary to offset the applicable costs of the selected channel. For example, in a retail store, any required changes to signage and pamphlet materials, as well as any swapping of products, will create higher costs, retailer resistance and logistical timing issues.

As noted above, different GPR Card products are designed to fulfill different consumer needs. To this end, different GPR Card products include different features and functionality. Required fee disclosures must take into account the variety of uses of GPR Cards across the market and the costs associated with providing the various features needed to enable those uses. Accordingly, we do not believe that a rating system based on potential GPR Card fees or a requirement to disclose an average monthly cost for a "typical" consumer would be appropriate. GPR Card fees are used to cover the cost of providing functionality like bill pay, access to cash at ATMs, person-to-person payments and fraud protection, as well as fixed costs that are necessary for the operation of the cards (e.g., card production and packaging, mailing of an embossed card, 24/7 customer service staffing, website hosting, compliance programs, and the associated fees that must be paid by GPR Card issuers to marketers, distributors, processors and networks). Unlike when a consumer compares the relatively standard costs of annual operation of an appliance or mileage ranges for a vehicle, fees incurred for using a GPR Card will vary by issuer, by card functionality, by geographic location in which the card is used and, most importantly, by how the consumer chooses to use the card.

Finally, fee disclosures must be flexible enough to allow for differences that may occur when functionality or services are provided by a third party that is not under the control of the issuer. When this happens, many fees that consumers may incur are unknowable to the GPR Card issuer when terms and conditions and packaging are printed, or even at the time of purchase. For example, it is impossible to inform a consumer what actual fee amount (if any) he/she may incur from an ATM operator when using a GPR Card to obtain cash from an ATM because different ATM operators charge different fees for dispensing cash. Similarly, issuers are unable to determine the amount of foreign transaction fees that another financial institution may charge or what text messaging fees a telecommunications provider may apply. Another example is reload fees that are charged by third-party reload networks. These fees can change over time both when an existing third-party reload network revises its fees and when the GPR Card provider adds new reload networks that were not in place when the GPR Card was originally issued. We believe that it is most important that the consumer is alerted to the fact that he/she will be charged for certain third-party services and that any fees associated with such services will be disclosed prior to the third-party transaction/service. This is the approach taken by the CFSI template, which calls for the disclosure of many common GPR Card fees but does not require the disclosure of all potential fees.

CFPB Question 5: Many, but not all, GPR Card accounts are insured by Federal Deposit Insurance Corporation (FDIC) pass-through insurance (coverage that ''passes through'' the agent to the holders of the accounts). Other GPR Cards may provide alternative security mechanisms, but do not offer FDIC pass-through insurance. Should the existence, or lack thereof, of FDIC pass-through insurance associated with a GPR Card be disclosed to the consumer? If so, how and when should the existence of FDIC pass-through insurance be disclosed?

As an initial comment, we note that Question 5 does not suggest that pass-through FDIC insurance be made "mandatory." We agree that FDIC pass-through insurance should not be required as long as there is clear disclosure. We note that some non-bank issued products offer similar protections without being "FDIC insured." For example, under many state money transmitter licensing laws, licensees must hold funds "in trust" for consumers.

Nevertheless, we note that there are divergent views on when and how the FDIC insurance status should be disclosed. Some NBPCA members have asserted that disclosing whether or not a GPR Card is or is not insured by FDIC pass-through insurance should be required and disclosed prior to purchase. Other members have indicated, however, that consumer feedback shows that this is not such a significant issue for GPR cardholders. Given limited space for disclosures on packaging, some have argued that this is not the kind of disclosure that should be disclosed on packaging prior to purchase, given the ease that consumers have in replacing a GPR Card with another GPR Card. We suggest that this issue be researched directly with consumers[12] and that collaboration with the FDIC on this matter should be considered.

One noteworthy difficulty in disclosing the status of FDIC insurance coverage arises from the fact that it is not entirely clear when FDIC insurance attaches to funds associated with a GPR Card that is purchased or loaded through non-bank third parties. There may be a one- or two-day delay between the time when the non-bank third party receives the funds from the cardholder and credits the value to the GPR Card and the time that the funds are deposited in the GPR Card issuer's bank account. Some regulators have proposed that no FDIC insurance would attach until the funds are deposited at the issuing bank; others have suggested that the FDIC insurance should attach as soon as the amounts are credited to the card, even if the funds are in transit. Due to uncertainty on this issue, it may be difficult to state definitively whether or not a particular GPR Card has the benefit of FDIC pass through insurance, and if so, when that FDIC insurance applies.

Finally, temporary cards used in conjunction with some GPR Card programs present an additional complication. Under such arrangements, issuers initially provide consumers with temporary cards that are later replaced by permanent cards. Typically, the issuer does not obtain

[12] Based on comments made by consumers during the prepaid field hearing in Durham, North Carolina, it appears that some consumers may not understand what protections FDIC insurance coverage does and does not provide. Consumer education by the CFPB (or FDIC) on this issue may be appropriate.

the consumer's personal identifying information until a permanent card is requested. For these temporary cards, the funds underlying the temporary card would not be eligible for FDIC pass-through insurance until the consumer provides the issuer with personal identifying information necessary to issue the permanent card, at which time the account would qualify for FDIC pass-through insurance.

Again, we suggest that the Bureau work closely with the FDIC to ensure that any disclosure regarding the availability of FDIC insurance will be meaningful for consumers.

CFPB Question 6: Currently, most GPR Cards do not offer credit features, such as an "overdraft" feature that may be offered with a debit card that is linked to a traditional checking account. While an overdraft can occur in unusual circumstances, as when a small-item transaction is submitted for settlement without prior authorization or when a submitted transaction exceeds the authorized amount, generally speaking most GPR cardholders may not be able to withdraw or spend more than the funds loaded on the card. Nonetheless, some GPR Card programs do allow cardholders to opt in to an overdraft program in which the issuer may authorize overdrafts and charges an overdraft transaction fee. The Bureau seeks public input on the costs, benefits, and consumer protection issues related to any credit features that may be offered by GPR Cards.

Many consumers, including GPR cardholders, need short-term credit products to help them with funds to cover unexpected expenses. Some of these consumers may not have ready or easy access to financial products, including short-term credit. GPR Card issuers can fill this void by providing qualified GPR cardholders with access to overdraft protection and other credit features on an "opt-in" basis, much like financial institutions already do for checking account customers. To the extent financial institutions provide GPR cardholders the same protections as traditional bank accountholders, we believe GPR cardholders should have access to the same products and features that are available to checking account customers. Placing restrictions on a financial institution's ability to offer its GPR cardholders the same products and features that are available to checking account customers will not solve the needs of these consumers. Rather, a restriction would only serve to force these consumers to obtain financial products and services from multiple providers, some of whom may be unregulated or more expensive. We also do not believe it would be fair for the CFPB to restrict the availability of overdraft and other credit features offered in connection with GPR Cards where such features are available to checking accountholders without similar restrictions.

As we previously stated in our comment letter[13] to the OCC in response to its Proposed Guidance[14] issued on June 8, 2011, regarding Deposit-Related Consumer Credit Products, the NBPCA supports the supervisory principles outlined in this guidance concerning overdraft and deposit advance credit features, including disclosures, legal compliance, affirmative request, program eligibility standards, prudent limitations on product costs and usage, repayment terms, monitoring and risk assessment, management oversight and account management and charge-

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[13] NBPCA Comment Letter to OCC Proposed Guidance on Deposit-Related Consumer Credit Products available at: http://www.nbpca.com/~/media/69CAF5986DBA4B29A5E006C25006E429.ashx.

[14] See 76 *Fed. Reg.* 33409 (June 8, 2011).

offs. To the extent that any proposed rule would pertain to linked credit products that would be subject to Regulation Z, we believe that an amendment to that regulation is the appropriate avenue for such proposals.

Finally, if the Bureau determines that additional regulation or supervisory guidance is required with respect to the offering of these types of features, we believe such features should be uniformly regulated regardless of whether they are attached to a checking account or GPR Card.

CFPB Question 7: Currently, most GPR Cards do not offer a savings account associated with the card. The Bureau seeks public input on the costs, and benefits, and consumer protection issues related to savings features offered with GPR Cards.

The NBPCA believes that savings account features offered in connection with GPR Cards are beneficial to GPR cardholders and should be encouraged by the CFPB and applicable laws/regulations. The NBPCA supports the development of new and innovative ways to encourage GPR cardholders to set aside money in savings for future needs.

Several financial institutions currently offer savings account features in connection with their GPR Card programs. These savings features offer several benefits to GPR cardholders, including the following:

- The ability to save for short and long-term needs;
- The ability to easily transfer funds to and from the linked savings account;
- The ability to establish automatic transfers to the linked savings account;
- The security of being able to set aside money in a secure, FDIC-insured account as opposed to cash; and
- The generation of interest income on funds in the linked savings account.

In general, our surveys have shown that GPR cardholders are interested in savings account features offered in connection with GPR Cards. In our 2012 NBPCA Member Cardholder Survey, we asked 9,000 GPR cardholders with and without direct deposit whether they were interested in a savings account feature. Of the cardholders who had established direct deposit, 61% responded that they were "Extremely or Very Interested" in a savings account feature. Of the non-direct deposit cardholders, 65% responded that they were "Extremely or Very Interested" in a savings account feature. Unfortunately, because GPR cardholders tend to be lower-income consumers, to the extent a GPR cardholder has extra money to set aside in a savings account (most do not), the average savings balance is generally low. We surveyed members of our trade association that currently offer a savings account feature linked to their GPR Cards or have offered a savings account feature in the past. These organizations reported that savings account balances maintained by GPR cardholders averaged between $300 and $400.

We believe the main reason most GPR Cards do not currently offer a linked savings feature is due to the costs associated with servicing such low balance accounts. A recent report by New America Foundation indicated that the costs of offering low-balance savings accounts ranged from $15 to $70 per year (not including customer service costs).[15] There are several significant costs associated with offering a savings account product, including the following:

- The cost of compliance with applicable federal regulations (e.g., Regulations D and DD, including providing written disclosures and periodic statements);
- The cost of establishing operational procedures and processes to move funds (e.g., establishing procedures and processes to allow for internet transfers and phone transfers to savings);
- The third-party costs of moving funds from one account to another:
  - Payments to processors for completing the transfer
  - ATM fees (for those providers without an extensive ATM network);
- The cost of marketing the savings account feature to consumers;
- The cost of providing customer service support for the savings account feature;
- The cost of calculating, reporting and paying interest on the funds in cardholder savings accounts and complying with 1099 interest reporting requirements; and
- The cost of contracting with a depository institution to establish the linked savings account feature (not all GPR Card issuers have a bank charter that would permit them to establish savings accounts for their GPR cardholders).

These costs have made it difficult for financial institutions to offer their GPR cardholders a savings feature without operating at a loss. To date most GPR Card issuers have determined the costs of offering a savings account linked to a GPR Card are simply too high to be profitable. As GPR Card products continue to mature and efficiencies develop in the marketplace, we hope consumer utilization will improve and more financial institutions will consider offering linked savings features in connection with their card programs.

While the NBPCA recognizes the benefits of having a savings account linked to a GPR Card and encourages financial institutions to offer savings accounts to their GPR cardholders, for the reasons described above, we believe savings account features should be optional for both GPR Card issuers and cardholders. We further believe it would be misguided for the Bureau to mandate the offering of a savings account feature in connection with GPR Cards, particularly since no similar mandate exists in connection with traditional bank accounts.

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[15] New American Foundation Asset Building Program Working Paper, *Beyond Barriers: Designing Attractive Savings Accounts for Lower-Income Consumers* (November 2011), available at http://www.ncdsv.org/images/NewAmerFndn_BeyondBarriersDesigningAttractiveSavingsAcctsLower-IncomeConsumers_11-11.pdf.

To the extent a GPR Card is offered in connection with a linked savings account and the savings account permits electronic funds transfers to and from the account, we support the extension of Regulation E protection to these accounts to the same extent as payroll cards (as described above). Although outside the scope of this ANPR, we believe one of the cost-prohibitive barriers to offering low-balance savings products in general pertains to the compliance costs associated with Regulation DD. We encourage the Bureau to revisit Regulation DD to determine if similar protections could be provided to consumers at a reduced cost to encourage financial institutions to offer low-balance savings accounts. If the Bureau believes more restrictive regulations are required with respect to the offering of savings accounts in connection with GPR Cards, we believe such regulations should be consistently applied across all savings products. We do not believe it would be appropriate for the Bureau to limit such restrictions to savings accounts linked to GPR Cards if similar restrictions are not mandated for traditional savings accounts.

CFPB Question 8: Currently some GPR Cards include a feature that claims to offer consumers the opportunity to improve or build credit. Consumers generally need to opt in to this feature, which involves the reporting of certain information to credit reporting agencies. The Bureau seeks public input and data concerning the efficacy of credit reporting features on GPR Cards in enabling consumers to improve or build credit. The Bureau also seeks information on whether regulatory provisions should address how such services are marketed to consumers.

It is the NBPCA's understanding that none of the three primary consumer reporting agencies (Equifax, Experian and TransUnion) currently factor payment histories on GPR Cards into their credit scoring models. This is primarily due to the fact that a GPR Card typically does not involve the extension of credit.

Nonetheless, the NBPCA supports the continued exploration of ways in which a GPR cardholder's transaction data (e.g., bill payments)[16] could be used to build a positive credit history to genuinely assist consumers when applying for credit. The NBPCA supports the offering of this feature to GPR cardholders on an opt-in basis. However, we acknowledge that the availability of credit-building features must be carefully and clearly disclosed. Not all credit reporting bureaus are the same, and consumers must not be misled into believing that their use of a GPR Card can improve their credit score, unless there is clear evidence that this can occur.

Generally speaking, other than reasonable guidance on accurate disclosures, we believe it is unnecessary for the Bureau to promulgate specific regulations with respect to credit building features. The Bureau already has broad authority to regulate consumer financial products or services that it determines are being offered or marketed in a manner that is harmful to

[16] Under Regulation II (Debit Card Interchange Fees and Routing), card issuers with assets of $10 billion or more who wish to avail themselves of the "general-use prepaid card" exemption to the interchange fee restrictions would not be able to offer a credit building feature that relies on ACH payment data (e.g. bill payments). To qualify for the general use prepaid card exemption, Section 235.5(c) of Regulation II states that the card must be "the only means of access to the underlying funds, except when all funds are provided to the GPR cardholder in a single transaction."

consumers under general UDAAP principles. If the Bureau believes additional regulation or supervisory guidance is required with respect to the offering of credit building features, we believe the terms and availability of these types of features should be uniformly regulated regardless of whether they are offered in connection with a GPR Card.

CFPB Question 9: Through what methods and under what circumstances do market participants communicate a change of contract terms, or other information to cardholders? Are there inventory replacement cycles that drive the printing of cards to stock distribution outlets? Do market participants conduct periodic maintenance of systems during which updating compliance systems would impose less of a burden? If so, how often does this maintenance occur? Are there other issues with respect to the cost of regulatory compliance about which the CFPB should be aware?

Each additional required change in terms and disclosures has a direct financial impact in providing services and messaging to GPR cardholders. The areas impacted include, but are not limited to, website, direct mail, postage, creative, legal, compliance, inventory, customer services, IVR and systems.

The ability to notify cardholders of contract changes via email, SMS text messaging, or posting online is of critical importance for the GPR Card industry. In our experience, GPR Card companies must often order their GPR Card inventory four to six months in advance of stocking such inventory in stores or making such products available via other channels. This cycle has a significant impact on the printing and distribution of cards to merchants and other sales outlets. If regulatory changes are made, it can be extraordinarily difficult (and, in some cases, virtually impossible) and very costly for GPR Card issuers to both pull out soon-to-be non-compliant GPR products and replace them with compliant products in a short period of time. There is also the potential for a significant environmental impact resulting from switching out products as a consequence of rules changing, as many cards will have to be destroyed or otherwise treated as waste. We note, for example, that with the ECO Card Act, Congress provided additional time for compliance with the CARD Act because of this concern.

Replacing inventory due to regulatory changes is often difficult and costly from a technical standpoint. Further, with every regulatory change, companies must upgrade software and hardware. The payment networks and processors "lock down" technological changes to their systems, usually between mid-November and the end of January each year. Further, the payment networks generally release changes to their system rules twice a year, once in the Spring and once in the Fall, and issuers and processors work for several months to implement systems changes. To impose regulatory changes "out-of-cycle" would prove to be very expensive to the industry participants.

In addition, any changes in card rules that effectively require many retailers to upgrade their point-of-sale hardware and software could cost hundreds of millions of dollars. Some retailers may decide it is simply not worth the time and effort to make such changes, which, in turn, could result in fewer products and services being available to consumers.

To help ensure an orderly implementation of any new rules applicable to GPR Cards, we recommend an 18-month period to ensure all participants in the GPR Card industry have sufficient time to bring all programs into compliance.

Another issue to be considered involves system maintenance. System maintenance is a critical process that occurs regularly to both processors' platform as well as to sellers' electronic infrastructure. Changes to GPR products also must be introduced in a manner that permits ongoing system maintenance work.

Finally, we note that live operator handling of calls is one of the most expensive costs for a GPR Card issuer. If regulatory changes are imposed that require extensive use of live customer service agents, the cost would be prohibitive for many GPR Card issuers. One of our members who is leading GPR Card service provider noted that live customer service fees are typically the largest single line item on cost invoices.

CFPB Question 10: Is there any other information relevant to GPR Cards that will help inform the Bureau as it considers how best to address these products or other issues the Bureau should consider in this regard?

There is an additional point which we believe should be considered by the Bureau in its deliberations on these important issues.

It is worth noting that the GPR Card industry has begun to expand rapidly into the mobile environment. More GPR Card products are now accessible via cellphones and smart phones, and we predict that such expansion will continue over the long term. Therefore, any new regulatory scheme must avoid tying disclosure to a plastic card or other physical instrument.

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Thank you, once again, for this opportunity to provide input and guidance regarding potential new GPR Card regulations. The NBPCA supports the innovation, growth and success of GPR Cards in the economy in a manner which meets the Bureau's goals of safety and transparency. Our members not only seek to meet consumer product demand, but they also strive to achieve the highest level of consumer confidence and satisfaction.

The NBPCA supports the goals of the CFPB, and we respectfully urge the CFPB to consider our response set forth herein. We hope we have answered your questions. Should you require any further assistance, please do not hesitate to contact us at (201) 746-0725.

Very truly yours,

The Network Branded Prepaid Card Association
Kirsten Trusko
President and Executive Director

Appendix A

Research Samples[17]

Although not all of the research summarized below may distinguish between GPR Cards and other forms of prepaid cards, the research results generally reflect the experiences reported to the NBPCA from consumers who use GPR Cards.

- **2012 Consumer Financial Literacy Survey prepared for the National Foundation for Credit Counseling and the NBPCA by Harris Interactive Research.** For the first time, the 2012 survey evaluated consumer responses related specifically to prepaid cards and discovered that thirteen percent of adults, or about 30.5 million Americans, typically use prepaid cards to pay for everyday transactions, such as groceries, gas, dining out, paying bills and shopping online. Of those adults who use prepaid cards for everyday transactions: (1) Seventy-eight percent of adults said they use them because they are convenient; (2) Seventy-three percent said they use prepaid cards because they feel the cards are safer than carrying cash; (3) Seventy-two percent said they utilize prepaid cards because they allow them not to overspend or spend money they don't have; and (4) Fifty-six percent found that the cards enable them to better manage their money.

- **2012 Analysis of General Purpose Reloadable Cards.** According to the third annual study released by Bretton Woods, Inc., consumers who utilize a GPR Card to manage their finances were able to do so at a relatively low cost - as little as $8 per month - often paying less than the costs associated with low-balance checking accounts. GPR Card users' costs ranged from $8 to $20 per month if they used direct deposit. Consumers with low-balance checking accounts paid in the range of $15-$38 per month. Consumers who relied on a cash-based lifestyle paid in the range of $9-$48 per month to cover the costs of check-cashing fees and money orders to pay bills.

- **2011 Consumer Survey by Aite.** This consumer survey found that prepaid cards are quickly becoming mainstream and growing well beyond the early adoption by the underbanked. Forty-three percent of prepaid cardholders surveyed were members of Generation Y. One-third of prepaid cardholders earned more than $45,000 per year. Many cardholders surveyed were well-educated: 34 percent have a college degree or higher.

- **2011 Study by National Urban League and the NBPCA.** The study, which included focused research on African American use of reloadable prepaid cards, surveyed nearly 1,000 African Americans with an average income of $40,900. Some 18 percent said they did not have a checking account. Fifty-six percent of these individuals said that they had either tried to get a checking account and were refused, that they had bad banking experiences in the past or that there is no bank in their neighborhood. This suggests that prepaid cards are a particularly important financial tool for those who do not have

[17] In most cases, the full research reports referred to in this Appendix can be obtained at the NBPCA web site, www.nbpca.org, under the Research and Publications tab.

checking accounts. Seventy-three percent of cardholders cited the ability to prevent overdrafts and overspending as a primary benefit of prepaid cards. On average, cards were used two times a month for bill payment and everyday purchases. Overall, the prepaid card ownership experience was generally positive. About 67 percent of prepaid cardholders reported that they felt positive or very positive about the product.

- **2010 LaRaza Study on Prepaid Card Use.** Focusing on Hispanic consumers, this study found that most users were attracted to a prepaid card because it seemed convenient, with 63 percent citing the ability to not overspend as a top attribute of using a prepaid card. Nearly three-quarters of Hispanic cardholders also had checking accounts. A majority (71 percent) noted a "positive" or "very positive" prepaid card experience.

- **2009 CFSI Study: Tool for Getting by or Getting Ahead? Consumers' Views on Prepaid Cards.** Interviewees viewed prepaid cards as a useful tool and a way to escape the high fees imposed by banks and check-cashing companies. The study showed that 75 percent of underbanked consumers who frequently use network branded reloadable prepaid cards to participate in the card-based economy understood the fees associated with their card. Additionally, 84 percent thought the price of the card was fair and 72 percent believed that the fees associated with the cards were fair. All interviewees said they use their cards regularly to pay bills online and over the phone and to make point-of-sale purchases such as groceries and gas. They gave several reasons for preferring the cards, such as convenience, accessibility, value, simplicity and transparency, immediate liquidity, immediate availability of funds and built-in discipline.

- **2009 Kupersmit Research.** The study found that more than 80 percent of consumers were satisfied with their network branded prepaid card experience and 90 percent had not been charged any fees whatsoever. This study also showed that 84 percent of consumers stated they clearly understood the terms and conditions for use of the card.

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