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August 15, 2011

Via Email

Non-depository Supervision
Consumer Financial Protection Bureau
1801 L. Street, NW, Room 513-H
Washington, DC 20036

Attention: CFPB Docket No. CFPB-HQ-2011-2

Re: Comments on Defining Larger Participants in Certain Consumer Financial Products and Services Markets

To Whom It May Concern:

This letter is submitted to the Consumer Financial Protection Bureau (“CFPB”) on behalf of the Network Branded Prepaid Card Association (“NBPCA”) in response to the notice and request for comment issued in connection with defining “larger participants” which was published in the *Federal Register* on June 29, 2011 at 76 Fed. Reg. 38059-38062 (“Request for Comment”).

Specifically, the Request for Comment seeks input on the development of a rule to define covered persons that will be subject to the CFPB’s supervision program as a “larger participant” of a market for consumer financial products or services.

Our comments are focused on the determination of “larger participants” with respect to network branded prepaid cards, sometimes referred to as “open loop” or “general use” prepaid cards. Network branded prepaid cards are important and useful products. Small businesses and governments rely on prepaid cards to increase efficiencies and save money. Millions of US consumers use network branded prepaid cards for the choice and protection they provide. These include unbanked or underbanked individuals who would not otherwise have a way to participate in our card-based economy, parents of college-aged students who want a safe and secure way to provide money to their children without the risk of running up debt, and recipients of government benefits who need an efficient way to receive their child support payments, food stamps, unemployment payments or other federal or state disbursements.

The NBPCA is a non-profit trade association that represents a diverse group of organizations that take part in delivering such network branded prepaid cards to consumers, businesses and

governments. Members include banks, financial institutions, card organizations, processors, program managers, marketing and incentive companies, and card distributors.

As an industry trade group, our goal is to ensure that the consumers, businesses and governments who use and rely on prepaid cards, can continue to have access to secure, cost-effective, prepaid card products. While we share our general views in this letter, given the wide diversity of our membership, we understand that many of our individual members will also submit specific comments to address how the issues presented in the Request for Comment impacts their respective organizations. We are in any event grateful for the opportunity to provide our comments.

1. Caution Regarding Duplicative Regulation.

The following products were listed in the Request for Comment as products possibly subject to initial oversight by the CFPB:

Markets identified in this Notice for possible inclusion in an initial rule are:
debt collection; consumer reporting; consumer credit and related activities; money transmitting, check cashing and related activities; prepaid cards; and debt relief services.

Of all the above listed products, network branded prepaid cards are unique in that they are *the only products listed that are almost always issued by banks*. Therefore, such products are all already subject to examination by state and federal bank regulators. Moreover, issuing banks routinely require in their contracts that program managers and processors make data available to bank examiners and submit to examination from the bank regulators on request. To the extent any bank does not include such a requirement in their contracts with program managers and processors; we would certainly support CFPB requiring banks to do so. But given this existing framework of oversight and supervision, our members have expressed concerns over the costs and burdens associated with an additional layer of oversight and supervision, additional onsite examinations, and the inevitable impact these burdens will have on the marketplace.

In addition to bank issuance, some network branded prepaid card programs also often involve a non-bank licensed money transmitter either as the card's processor or program manager. As you know, such licensed money transmitters are similarly subject to an array of regulation and examination from multiple state banking departments as well as federal anti-money laundering regulation. This is one more reason why we are concerned that bringing prepaid card programs under CFPB supervision would likely result in unnecessary and duplicative supervision.

Finally, the Request for Comment acknowledges that the rule would exclude the sale or reloading of prepaid cards by persons that do not exercise "substantial control" over the terms or conditions of the stored value provided to the consumer. For the most part, the players exercising the most control over the terms and conditions of network branded prepaid cards are the banks that issue such cards, which is yet another reason to approach this issue with caution.

Over the past few years, the development of these laws and regulations has shaped our industry into the mature marketplace it is today. Network branded prepaid card participants, and our members in particular, have taken the legislative response to the industry's growth in stride. However, we fear that duplicative regulation will not only increase regulatory costs unnecessarily, but could also interfere with the efficient nature of the prepaid market and limit our members' ability to meet the growing needs of the public. We appeal to the CFPB to take the existing legal framework and the risk of duplicative supervision into account prior to subjecting network branded prepaid card participants to an additional level of supervision, reporting and examinations. By weighing these concerns carefully, the CFPB can better maintain an efficient marketplace and still meet consumer needs.

2. General Comments on Larger Participant criteria

As noted above, the NBPCA urges caution before making any determination to further supervise an industry that is already subject to oversight and examination from state and federal banking regulators. However, should the CFPB nevertheless consider extending some supervision in this area, we have some general responses to a few of the questions raised. First, we would wish to confirm that CFPB supervision would be limited only to those products which are subject to CFPB guidance. In addition, many of our members hold a range of views regarding "Larger Participant" criteria and will be submitting their own comments to you; however there appears to be some consensus on a few key issues:

- Larger participants should be defined based on **relative** size of market participants rather than an arbitrary threshold. Should supervision be deemed necessary, then only the largest programs should come under CFPB supervision.
- Given the ease of offering products in all 50 states via the internet, we do not think a threshold based on number of states would be appropriate.
- Certainly the same criteria would not apply across all industries. We believe criteria should be tailored for each product category and market. We would also urge that the criteria be based on publicly available data.
- Given market fluctuations and product changes, in evaluating a market participant's size, we believe the relevant criteria should be based on the participant's most recent activity during the preceding 12 months.
- A larger participant should remain subject to supervision only for so long as it meets the measurements or criteria of a larger participant, and for a period of no more than 6 months thereafter.

Conclusion

The NBPCA supports the innovation, growth and success of network branded prepaid cards in the economy. Our members not only seek to meet consumer product demand, but they also strive to achieve the highest level of consumer satisfaction.

The NBPCA supports the goals of the CFPB and we respectfully urge the CFPB to consider our concerns and comments as set forth herein. We welcome the opportunity to discuss any of the matters outlined above. Should you have any questions, please do not hesitate to contact us at (201) 746-0725.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Trusko", written in a cursive style.

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