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March 30, 2015

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

Re: Bureau of Consumer Financial Protection
Request for Information Regarding an Initiative on Safe Student Banking
[Docket No. CFPB–2015–0001]

Dear Ms. Jackson:

This letter is submitted on behalf of the Network Branded Prepaid Card Association ("NBPCA")[1] in response to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") Request for Information Regarding an Initiative on Safe Student Banking (the "RFI").[2] The RFI proposes a Safe Student Account Scorecard ("Model Scorecard") for colleges and universities to use when soliciting agreements from financial institutions to market accounts to their student bodies. The NBPCA appreciates the opportunity to share its comments on the RFI and Model Scorecard with the CFPB and looks forward to continuing to work with the CFPB to ensure students maintain access to innovative, safe, and secure financial products and services.

Recognizing college students need to get the most out of every dollar to pay for their educational costs, the NBPCA supports regulations that protect students by requiring complete transparency of all terms and conditions as well as a fee-free means of accessing student financial aid. The NBPCA's members have found, however, that students highly value innovative and unique features in the financial products and services they utilize. The NBPCA is concerned that the Model Scorecard proposed by the CFPB may inhibit the ability of financial institutions to offer innovative and unique products and features to students, including network-branded prepaid cards offered to students during their tenure at a college or university ("Campus Cards").

[1] The NBPCA is a nonprofit, inter-industry trade association that supports the growth and success of network branded prepaid cards and represents the common interests of the many participants in this new and rapidly growing payments category. The NBPCA's members include banks and financial institutions, the major card networks, processors, program managers, marketing and incentive companies, card distributors, payment industry consultants and law firms. The comments made in this letter do not necessarily represent the position of all members of the NBPCA.

[2] Consumerfinance.gov, Request for Information Regarding an Initiative on Safe Student Banking, available at http://www.consumerfinance.gov/students/request-for-information-regarding-an-initiative-on-safe-student-banking/ (last visited, February 16, 2015).

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While true, as the CFPB notes, use of the Model Scorecard by colleges and universities would be voluntary, the NBPCA believes that, in practice, use of the Model Scorecard by colleges and universities would likely become standard practice. The NBPCA is concerned that such a one-size-fits-all approach may result in cookie cutter financial service products for students, with little or no variation offered to address custom needs and requirements or to reflect ongoing innovation that may be attractive and useful to this group of consumers. The Model Scorecard, as written, could limit the many benefits students receive from the use of the wide variety of Campus Card products available in the market today. For these reasons, the NBPCA suggests that the CFPB reconsider publishing a Model Scorecard, or, in the alternative, revise the Model Scorecard as described in detail below. Since our concern is that such a Model Scorecard could hinder the use or adoption of Campus Cards, the NBPCA thinks it could be helpful for us to first highlight the specific benefits provided by Campus Cards as well as the regulations and industry practices that already ensure full transparency and protection for students.

DISCUSSION

The adaptability and flexibility of Campus Cards offer significant benefits to students.

Campus Cards often serve as a means to disburse student financial aid provided under Title IV of the Higher Education Act ("Title IV Funds") to students who receive aid in excess of tuition.[3] In practice, however, Campus Cards provide much more to students and therefore any actions that could curb their use should be carefully evaluated. Specifically, Campus Cards often serve as turnkey payment solutions for nearly all aspects of student life on campus, and thus provide convenience and flexibility that students cannot find elsewhere.

Under many programs, the Campus Card on which student Title IV Funds are disbursed is the same as the ID card that students use to access dorm rooms or campus buildings, utilize campus transportation, buy books and other school supplies, and eat in campus cafeterias. With regard to Title IV Funds, rather than receiving such funds by check and having to deposit or cash the check before utilizing the funds, Title IV Funds can be disbursed directly to a Campus Card and made immediately available to the student. Additionally, any work-study disbursements or wages that a student earns at an on-campus job can also be directly deposited into the account associated with the Campus Card. The student has the convenience of having one account for all earnings and disbursements and one convenient way to access those funds. A Campus Card program thus provides students the flexibility to pay for virtually anything they need on campus with one convenient device.

[3] It should be noted that the student may elect to have their Title IV Funds deposited into a different account if the student so chooses.

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Moreover, Campus Cards do not merely provide students with convenience and financial benefits. Campus Cards are also an effective financial management teaching tool for college aged students, many of whom have no experience with checking accounts or financial management in general prior to entering a college or university. The convenience and flexibility of Campus Cards enables students to better monitor and track their spending and finances. Specifically, when a Campus Card is issued as a student ID card and also serves as the card on which student aid is disbursed and wages and other earnings are deposited, students have fewer accounts to monitor and reconcile and thus are more likely to balance their account and understand what they are spending and where. One account can also eliminate the confusion and expense of maintaining multiple accounts with different monthly cycles or ways of doing things and can help students avoid overspending by allowing them to more easily obtain their account balances. Finally, one account is more convenient for students who can pay for bigger expenses such as rent without having to make partial payments from multiple accounts.

Additionally, many Campus Cards offer the ability for parents to load weekly or monthly support for students onto the student's prepaid card, and then the student or the parent (with the student's consent) may monitor card activity through online features associated with the student's card. Overall, as a result of these features and benefits, Campus Cards promote financial literacy and serve as a stepping stone for responsible students to graduate to other financial products, such as credit cards, automobile loans and mortgages.

Most importantly, the myriad benefits and flexibility offered by Campus Cards allows colleges and universities to tailor financial service programs to the specific needs and wants of their individual student bodies. The potential variations of features and services provided by differing Campus Card programs are nearly limitless and the NBPCA strongly believes that maintaining the ability to innovate and structure programs in unique fashions is in the best interests of students, who reap the benefits of greater choice and access to new and innovative products and services. Thus, the NBPCA urges the CFPB to revise the Model Scorecard as suggested below so as to not focus solely on basic banking functions at the expense of allowing providers to differentiate their products with innovative features that benefit students, thereby inhibiting the ability of schools and financial institutions to provide programs structured to fit the individualized needs of the particular student bodies. The NBPCA believes such a result would harm students by limiting their choices to standardized one-size-fits-all financial products and services.

Current federal law and standard industry practices applicable to Campus Cards already ensure such products are transparent and safe.

In the RFI, the CFPB states that its goal in promulgating a Model Scorecard is to assist colleges and universities in analyzing whether financial services marketed to their students are

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safe, affordable, and transparent in their presentation of terms and conditions and marketing. The NBPCA supports these efforts and points out that current federal law already ensures that Campus Cards offer affordable, safe, and transparent financial services for college students.

Specifically, the NBPCA points out that the following federal protections apply to any Campus Card account opened for a student[4]:

- Before opening the account, the student or parent's written affirmative consent must be obtained;
- Before opening the account, the student or parent must be informed of all of the terms and conditions associated with accepting and using the account, including all fees and other costs associated with the account;
- No claims can be made against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;
- The student or parent must not incur any cost in opening the account or initially receiving any type of Campus Card, stored-value card, and other type of automated teller machine (ATM) card, or similar transaction device that is used to access the funds in that account;
- The student must have convenient access to a branch office of the bank or an ATM of the bank in which the account was opened (or an ATM of another bank), so that the student does not incur any cost in making cash withdrawals from that branch office or the applicable ATMs. The branch office or ATMs must be located on the college or university's campus, in institutionally-owned or operated facilities, or immediately adjacent to and accessible from the campus;
- The student cannot be limited to using the Campus Card at particular vendors; and
- The Campus card cannot be marketed or portrayed as a credit card or credit instrument, or be subsequently converted to a credit card or credit instrument.

The NBPCA believes the above federally required protections ensure the safety, affordability, and transparency of Campus Cards. In particular, the requirements that no fee be charged for opening a Campus Card account, and for the provision of a free means of accessing the underlying funds on or adjacent to campus, make the Campus Card an affordable option for college students. Similarly, the prohibition on claims against the funds held in the Campus Card account, prohibition on limiting a student's use of the Campus Card, and the fact that the Campus Card funds are held at a financial institution in an FDIC insured account, make the Campus Card a safe product for college students. Finally, the requirements to obtain a student or parent's affirmative written consent prior to opening an account; that all the terms and conditions of a

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[4] 34 C.F.R. § 668.164 (2015).

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Campus Card account, including all fees, be disclosed to a student or parent prior to opening an account; and that the Campus Card not be marketable as or convertible into a credit card collectively ensure that the Campus Cards are presented to students in a fully transparent manner.

Moreover, the NBPCA points out that, in addition to the substantial federal regulations applicable to Campus Cards, the NBPCA has issued industry leading practices for Campus Card providers to follow in providing these products and services to students. The NBPCA's leading practices are designed to ensure that that Campus Cards provide a safe, affordable, and transparent financial product for students. For example, the NBPCA's leading practices for Campus Cards require Campus Card providers to (i) ensure their Campus Cards are provided in compliance with all federal law; (ii) ensure Campus Card programs are voluntary and offered only as part of a group of choices presented to a student in how they receive their Title IV Funds; (iii) ensure students or parents open Campus Card accounts at no cost; and (iv) ensure that student Campus Card accountholders have convenient and free access to ATMs or branch offices for.[5]

Further, the NBPCA's leading practices require transparency between Campus Card providers and the colleges or universities they partner with. Specifically, the NBPCA's leading practices require: (i) financial institutions to deliver complete Campus Card account terms and conditions to students and / or their parents before opening a Campus Card account; (ii) Campus Card providers to work with colleges or universities to ensure that Campus Cards are marketed to students in a non-deceptive, fair and non-aggressive manner and that such marketing includes any other disbursement methods offered in equal prominence; and (iii) schools to approve in advance any cross-selling of other banking services to students or the college or university.[6]

Thus, the NBPCA believes that protections and requirements of both existing federal law and industry leading practices ensure that Campus Cards offered to students are safe, affordable, and transparent.

The CFPB should avoid one-size-fits-all requirements that may stymie innovation and thereby deprive students of the full benefits offered by Campus Cards.

The NBPCA notes that colleges and universities, and in particular the student bodies they serve, differ greatly from one another. Specifically, a particular college or university may serve a student body that varies significantly from others based on geography, gender, race, income level, or a host of other factors. The NBPCA does not believe one financial service product with little to

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[5] NBPCA, Campus Payment Card Leading Practices, available at http://www.nbpca.com/~/media/D730BC6D00694AFD9F0C3AD3A6AD14D1.ashx (last visited, February 17, 2015).
[6] *Id.*

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no variation in features or flexibility can adequately serve such a diverse consumer base. Rather, the NBPCA believes it is of paramount importance to maintain the ability for colleges and universities and financial institutions to tailor programs to meet the individualized needs of their respective student bodies. For the reasons discussed below, the NBPCA is concerned that the Model Scorecard proposed by the CFPB will result in more standardized and less innovative products and features offered to students, particularly through Campus Cards. For this reason, the NBPCA urges the CFPB to revise its Model Scorecard as discussed below.

SECTION-BY-SECTION ANALYSIS

Sections 1 & 2: Safe Account Features / Additional Features and Non-Standard Fees

The first two sections of the Model Scorecard focus on services provided by a financial institution and the fees charged, or lack thereof, for these services. The NBPCA is concerned that these sections of the Model Scorecard could result in fewer choices in financial products and services offered to students. Specifically, the NBPCA is concerned that colleges and universities may view any services or features other than those listed in Question 1 under "[s]afe account features" as unsafe or risky in the eyes of the CFPB. The college or university may thus be suspicious of, or loath to consider, new or innovative features and services not included in the "safe account features" checklist. As a result, the CFPB's Model Scorecard would either quickly become stale, as the pace of innovation within the industry makes the features and services listed outdated, or the pace of innovation could slow as providers tailor products to meet the listed features of the Model Scorecard, ignoring the development of any new or innovative services.

Exacerbating this issue is the fact that the structure of the questions themselves do not only imply that what features and services a program should have, but also imply what fees can be charged for these services. In particular, the NBPCA notes that the questions posed by the CFPB set the baseline for all fees at zero. Listing all fees at zero creates an assumption that providing these services at no cost is the baseline standard for obtaining the CFPB's seal of approval. A college or university could reasonably conclude, therefore, that any fees for a listed service creates an unsafe program. Such a result will limit competition in the marketplace as programs would no longer differentiate on services and fees.

Additionally, the NBPCA believes that the Model Scorecard approach proposed by the CFPB utilizes a framework created to drive economic inclusion for unbanked and underbanked consumers. Specifically, the NBPCA feels the CFPB is using the FDIC's Safe Accounts model as a template for the Model Scorecard has put forward a framework originally meant to drive economic inclusion for unbanked / underbanked consumers and misapplied it to the student segment. As such, the framework does not account for some of the individualized characteristics of the student segment. In particular, the NBPCA believes it is worth noting that college students

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are more open to cutting-edge technology and technology services compared to the average consumer, according to Javelin Strategy & Research's study, *Prepaid Card Regulation for College Students*, 2014, and the Model Scorecard proposed by the CFPB does not appear to account for this openness. On the contrary, the Model Scorecard values cost over all else. Therefore, in the opinion of the NBPCA, the Model Scorecard does not allow providers of student financial products and services the ability to adequately highlight the kinds of cutting-edge features and functionalities that students' value.

Finally, the NBPCA points out that there are safe account features not included in the CFPB's Model Scorecard, such as fee-free ATM withdrawals, other free load capabilities, and free teller withdrawals. In addition, the NBPCA points out the Model Scorecard creates an un-level playing field for issuers by promoting "safe" account features that not all financial institutions will be able to offer to the extent their offerings will be constrained by limitations set by the general-use prepaid card exemption under the Durbin Amendment and the Federal Reserve Board's Regulation II.[7] The Model Scorecard should not further promote these regulatory imbalances.

The NBPCA would suggest, as an alternative, that the Model Scorecard could simply ask for a detailed listing of all account features offered by the financial institution with the associated fees. Colleges and universities could use such a response to analyze the various features and benefits offered by the financial service or product in relation to the individualized needs of the college or university's student bodies without the added baggage of ensuring that the program features the "approved" services and fees provided by the CFPB.

Section 3: Marketing Practices

The third section of the Model Scorecard provides several guidelines for colleges and universities to consider with regard to the marketing of a financial service or product to students. Examples of these guidelines include: (i) presenting materials in an objective and neutral manner; (ii) informing students of account terms and conditions prior to opening an account; and (iii) requiring students to provide written, affirmative consent before any access device is provided, including an unactivated device.

As noted above, the NBPCA supports full transparency in the marketing of financial products and services, particularly Campus Cards, to college students. Further, the NBPCA points out that financial institutions and schools already practice most of the guidelines proposed by the CFPB in the Model Scorecard either as a requirement of existing law or as an industry leading practice. As such, the NBPCA supports the inclusion of the majority of these guidelines.

[7] 12 CFR § 235.5 (2015).

Network Branded Prepaid Card Association
10332 Main Street, Suite 312
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The NBPCA is concerned however, with the proposed guideline that schools and financial institutions obtain written, affirmative consent prior to providing an unactivated access device to students. The NBPCA points out that it is often in the student's best interest to receive an unactivated card soon as possible. The student may rely on the unactivated card in order to receive payments as fast and conveniently as possible, to access campus facilities such as dormitories, cafeterias, and recreational centers, or to make important purchases before ever arriving on campus. For example, a student living further away from his or her school may need to purchase necessary books for class and that student may rely on his or her Campus Card to make that purchase online rather than having to wait until the student physically arrives on campus. The NBPCA thus believes putting an unnecessary extra burden in the way of a student receiving a Campus Card harms the student's best interests. Further, the NBPCA believes that current DOE regulations requiring full disclosure of all terms and conditions and the affirmative written consent on the part of a student before an account is opened provides sufficient protection that the student will not unknowingly be enrolled in an account. Requiring a separate written consent from the student puts unnecessary burdens on financial institutions and universities. The NBPCA thus asks that this guideline be removed from the Model Scorecard.

Section 4: Supplemental Information Regarding Student Accounts

The NBPCA generally has no comment on this portion of the Model Scorecard. The NBPCA, however, does wish to highlight one issue with Question 8, which asks financial service providers to how many surcharge free ATMs are in close proximity to campus, and for a list of current and expected ATM locations. With regard to this question, the NBPCA cautions that smaller providers of financial services may have trouble obtaining information on where every surcharge free ATM for a particular program is located.

Section 5: Contract Transparency Requirements

Requirement to Post Agreements between School and Financial Institution

The final section of the Model Scorecard asks financial institutions to publicly post any agreements between a college or university, along with a summary of such an agreement, on the financial institution's website. Notably, the Model Scorecard as written would not allow the financial institution or the school to redact any confidential or proprietary information from such an agreement. On the contrary, the Model Scorecard appears to require the school and financial institution to highlight any provisions regarding revenue sharing and royalties paid between the school and the financial institution. The NBPCA believes posting of such agreements in full, especially with revenue and royalty provisions included, is unnecessary and potentially harmful to consumers for several reasons.

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First, the NBPCA is concerned that including proprietary and confidential information in agreements publicly posted to a financial institution's website implicates significant antitrust concerns. Specifically, the Federal Trade Commission's ("FTC") restrictions on price fixing prohibit competitors from agreeing to take actions that have the effect of raising, lowering, or stabilizing the price of any product or service.[8] Schools and financial institutions heavily negotiate revenue sharing and royalty provisions and would never voluntarily share the details of these provisions with one another. The NBPCA has concerns that making such information available publicly where anyone could access it, could cause prices to rise, lower, or stabilize in violation of FTC rules.[9] Such a result is exactly what the FTC's prohibitions on anti-competitive pricing seeks to prevent as it results in a decrease in competition and robs students of the benefits of higher quality products and services, more choices, and greater innovation. Moreover, the NBPCA notes that, unlike other similar requirements to publicly post these types of agreements, there appears to be no statutory basis for the CFPB's proposed requirement under the Model Scorecard.

Second, the NBPCA does not believe that posting agreements between a college and university and a financial institution will have the effect the CFPB desires. In the experience of the NBPCA's members, it is highly unlikely that a consumer, including a student or his/her parent, would visit a financial institution's website to review a program agreement that neither the student nor his/her parent is a party to. As noted above, the persons most likely to view such agreements are industry competitors and the practice of publicly posting such agreements would thus provide little benefit to actual consumers. Further, it should be noted that agreements between a school and a financial institution contain numerous terms and conditions, many of which are not applicable to the student in any way. Thus, even if a student or his/her parents reviewed a posted agreement, they would be exposed to pages of complex legal provisions that are irrelevant to the student's tenure with the college or university and may be potentially misleading or confusing for the student or his/her parent. The NBPCA thus believes the requirement to publicly post the program agreements is unnecessary as it poses little potential benefit for students and their parents and may even result in confusion and harm.

Third, the NBPCA believes that current federal regulations, and the NBPCA's own Campus Card leading practices, already ensure that students have sufficient information on which to base a financial decision making the posting of these agreements unnecessary. In particular, the NBPCA points out that the NBPCA's Campus Card leading practices require transparency

[8] FTC.gov, Price Fixing, available at http://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing (last visited, March 1, 2015).
[9] *Id.*

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between schools and financial institutions regarding their relationships with one another.[10] Further, as noted above, current law requires disclosure of the full terms and conditions of a product or service prior to a student opening an account. The NBPCA believes that a student's knowledge of the relationship between the student's school and the financial institution along with all of the terms and conditions of the Campus Card account provides the student with sufficient information on which to base a financial decision and an additional requirement on financial institutions to post their agreements is thus unnecessary.

For all of the reasons outlined above, the NBPCA requests that the CFPB remove the requirement to post agreements between the school and financial institution on the financial institution's website. In the alternative, the NBPCA would suggest revising the Model Scorecard to require the school to post a summary of the agreement, without any royalty or revenue sharing information, on the school's own website. The NBPCA believes that such a revision would be more beneficial to students as it would place the agreements in a location the student is more likely to visit, the school's website, and would ensure that the document the student reviews removes extraneous information not relevant to the student that could cause confusion.

Requirement to Provide Annual Fee Summary to School

Finally, the Model Scorecard would require financial institutions to provide colleges or universities with an annual summary detailing fees charged to students under the agreement as well as the frequency of certain fees. The NBPCA points out that there are practical challenges to meeting this requirement. Specifically, financial institutions have no way of knowing if an account holder is still a current student at the applicable college or university. The accountholder could have dropped out or graduated but still maintained their account with the financial institution under the agreement. The annual fee information submitted to the college or university would thus include information for both students and non-students and be inaccurate or misleading regarding the fees charged to and products utilized by current students. The NBPCA thus urges the CFPB to eliminate this requirement from the Model Scorecard.

[10] Campus Payment Card Leading Practices, available at http://www.nbpca.com/~/media/D730BC6D00694AFD9F0C3AD3A6AD14D1.ashx.

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CONCLUSION

The NBPCA appreciates the opportunity to comment on the RFI and proposed Model Scorecard. While the NBPCA fully supports the CFPB's desire to ensure college students have access to safe, affordable, and transparent financial services and products, the NBPCA is concerned that the Model Scorecard as written may harm students by limiting their access to new and innovative products, particularly the myriad of benefits and flexibility offered by Campus Cards. The NBPCA thus asks the CFPB to revise its Model Scorecard as discussed above, in order to ensure that students maintain access to the innovative products and services they desire, while also ensuring that such products are offered in a safe, affordable, and transparent manner.

If you have any questions, please do not hesitate to contact us.

Sincerely,

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