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Via E-mail

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

Attention: CFPB Docket No. CFPB-2012-0023

Re: Comment Letter on Notice of Proposed Policy Statement regarding Disclosure of Consumer Complaint Data

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 notice of proposed policy statement regarding Disclosure of Consumer Complaint Data, which was published in the *Federal Register* on June 22, 2012, at 77 *Fed. Reg.* 27616-617 (the “Proposal”). The Bureau concurrently finalized a related policy statement describing its plans to disclose consumer credit card complaint data, at 77 *Fed Reg.* 37558-37569 (June 22, 2012) (the “Policy Statement”).

The NBPCA is a non-profit trade association representing a diverse group of organizations that take part in delivering network branded (often referred to as “open loop”) prepaid 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 card users and industry participants but also to protect our financial system from misuse and abuse.¹ We welcome the opportunity to respond to the Proposal.

The Proposal seeks input on the Bureau's plans to disclose consumer complaint data, using the same practices as described in the Policy Statement regarding credit card complaints, for consumer complaints about other consumer financial products and services within the Bureau's jurisdiction.

Background Regarding CFPB Disclosure of Consumer Complaint Data

Section 1013(b)(3) of the Dodd-Frank Wall Street Reform and Consumer Protect Act directs the Bureau to establish a toll-free telephone number, website and database to "facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services."

In 2011, the Bureau's Office of Consumer Response developed a system to accept and process credit card complaints; that system has been expanded to cover consumer complaints regarding mortgages, certain bank products, check cashing services and remittance services. The Proposal states that the Bureau expects that this complaint system will accept and handle complaints about all consumer financial products and services within the Bureau's jurisdiction before the end of 2012.²

We understand that the Bureau will disclose data about credit cards complaints (and, eventually, complaints about other consumer financial products and services) in two ways: (1) by issuing its own periodic reports about complaint data and (2) by providing public access to an electronic database that contains certain fields for each unique complaint.³ The Bureau has indicated that together these two disclosure mechanisms are "intended to help provide consumers and others with timely and understandable information to make responsible decisions about financial transactions and to enhance [that financial product or service] market's ability to operate transparently and efficiently."⁴

CFPB Collection and Handling of Consumer Complaints

We support this opportunity for consumers to have access to information that will help them make better and more informed financial decisions. However, we have a number of concerns related to how the Bureau will handle consumer complaints related to network branded prepaid cards. These concerns are magnified by the Bureau's proposal to make public certain information

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 of our individual members also may submit specific comments to address how the issues presented in the Proposal impacts their respective organizations.

² 77 *Fed. Reg.* 37616.

³ *Id.*

⁴ *Id.*, internal quotations omitted.

regarding each such consumer complaint it receives. These concerns are discussed in detail below.

Publication of CFPB Reports on Consumer Complaints

The Proposal states that the Bureau intends to publish its own reports on consumer complaint data, without any adjustments, across all products and services.⁵ We have found the several summary reports on consumer complaints published by the Bureau to date to be useful and informative, particularly the explanations of specific issues that have generated larger numbers of complaints.⁶

Publication of Individual Complaint Data via a Public Database

The Bureau has made available a public database that contains certain information about each consumer credit card complaint it receives. We understand the Bureau intends to expand this database to cover complaints regarding all the financial products and services within its jurisdiction.⁷

We have a number of concerns regarding the Bureau's proposed publication of consumer complaint data with respect to network branded prepaid cards. As noted above, our concerns related to the Bureau's initial collection and handling of consumer complaints are magnified by the potential publication of individual consumer complaint data in this manner.

Multiple parties are involved in providing network branded prepaid cards. A network branded prepaid card program typically involves at a minimum a card-issuing bank, program manager, processor and, often, third-party distributors or sales/reload outlets. When a consumer files a complaint regarding a network branded prepaid card, which entity will the Bureau identify and refer the complaint to? We expect the most likely option is the bank that issued the card or the program manager. However, the bank or program manager may not always be the appropriate entity to handle the complaint; the most appropriate entity depends both on the nature of the complaint and how the particular card program is structured. What if, for example, the consumer's complaint is related to an unaffiliated retail location where the card was purchased?

We urge the Bureau to develop a standard methodology for determining which party should be contacted regarding complaints related to network branded prepaid cards and how such complaints will be listed in the public complaint database.

Potential for fraudulent complaints, even with CFPB "authentication" of consumer complaints. The Proposal indicates that the Bureau authenticates complaints before forwarding them to the company involved.⁸ The Policy Statement explains that for credit card complaints,

⁵ *Id.* at 37617.

⁶ *See, e.g.,* CFPB, *Consumer Response: A Snapshot of Complaints Received* (June 19, 2012), available at http://files.consumerfinance.gov/f/201206_cfpb_shapshot_complaints-received.pdf.

⁷ 77 *Fed. Reg.* 37617.

⁸ *Id.* at 37616.

this is generally done using the consumer's card number. However, "[i]f a card number is not available, the Bureau works directly with the consumer to identify the correct issuer from issuer correspondence such as statements or letters. If the correct issuer cannot be identified in this manner, no data is posted to the database."⁹

We are concerned about the potential for fraudulent complaints submitted to the Bureau. Consumers' credit cards are embossed with their names and are generally closely protected; cards that are expired or cancelled are typically shredded. While some network branded prepaid cards are similarly embossed with the cardholder's name, some are not. Information about the purchaser (or intended recipient) of prepaid cards issued for gift or incentive/reward/promotional purposes, for example, is often not collected by the card issuer or program manager. Likewise, purchaser information is typically not collected for "temporary cards" until the purchaser registers for a permanent card. Prepaid cards, especially those that are not tied to any personal information, are often discarded with less care than credit cards.

Even if the Bureau is able to "authenticate" a specific card number to an issuing bank/program manager, we are concerned that there may be no way to confirm the legitimacy of the consumer making the complaint. If a consumer calls the Bureau to complain that the balance on a network branded gift card was depleted, how would the Bureau be able to confirm that that caller didn't simply pull a spent gift card from the trash? Or that the caller didn't copy the card number he observed someone else using, or from a card hanging on a "j-hook" at retail without purchasing in the card?

There is potential for other forms of fraud as well. For example, the NBPCA occasionally receives complaints from consumers and relays those complaints to members for resolution. The NBPCA received one such complaint recently that seemed legitimate on its face. Upon investigation by the card issuer and program manager, however, it was discovered that the complainant had stolen someone's identity and filed a fraudulent tax return in that name. Her complaint was that the fraudulent tax refund deposited to her fraudulently obtained prepaid card account had been frozen and she wanted access to those funds restored.

While every legitimate consumer complaint is important and should be handled promptly and effectively, not every consumer complaint received is a valid or legitimate complaint. Unfortunately, our members are already faced with fraudulent complaints from consumers on a routine basis. We are concerned that the Bureau's widespread solicitation of consumer complaints (discussed in more detail below) may result in an increased number of fraudulent complaints. In addition, we are concerned about the unfairness of fraudulent complaints appearing on the issuer/program manager's (or other party's) record and marring that organization's reputation.

⁹ 77 *Fed. Reg.* 37567-68 and note 47.

Publication of complaint data may be misleading and deceptive. We appreciate the statement on the webpage leading to the public complaint database indicates that the Bureau does not verify the accuracy of complaints in the database.¹⁰ However, we are concerned that the Bureau’s publication of consumer complaint data in this manner may nonetheless itself be misleading and deceptive to consumers.

We agree with industry commenters who asserted, with respect to the Bureau’s initial proposal to disclose credit card complaint data, that the public database may “mislead consumers because its contents would be unverified, unrepresentative, lacking in context, and open to manipulation.”¹¹

The preamble to the Policy Statement confirms that the Bureau “specifically disclaim[s] the accuracy of complaints when the data are made available to consumers. Outside of its own affirmative data reporting, the Bureau will allow the marketplace of ideas to determine what the data show.”¹² We are concerned, however, that the Bureau is not providing enough information to enable the “marketplace of ideas” to accurately determine what the data shows.

In particular, the Bureau’s database gives no indication of scale. Consumers are able to compile statistics regarding raw numbers of credit card complaints involving specific issuers but have no information about how those complaints compare to the total number of cards issued by any of those companies. One hundred complaints for an issuer with a million outstanding cards is an incredibly small amount (1/100th of one percent) but is much more significant for an issuer with ten thousand outstanding cards (1 percent).

We suggest that the Bureau provide information, together with the database, regarding the card issuers and other parties listed to give consumers some sense of scale. For example, the Bureau might provide information regarding the approximate number of cards issued by each bank or managed by each program manager. We note that in the airline industry, customer complaint data is generally reported based on the number of complaints received per 100,000 passengers. Statistics regarding airlines’ on time arrival rates and lost baggage rates are similarly calculated. The Bureau might also provide a link to a separate webpage where more information regarding specific issuing banks, program managers and other parties is compiled.

Some complaints may stem from “consumer confusion.” We are concerned about disclosure of consumer “complaints” that stem from “consumer confusion” and the potential adverse impact that may have on the financial services companies about which complaints are submitted, particularly when that consumer confusion stems from specific regulatory requirements. In its

¹⁰ See <http://www.consumerfinance.gov/complaintdatabase/>, which states: “This contains data from the consumer credit card complaints received by the Consumer Financial Protection Bureau. We do not verify the accuracy of these complaints, but we do take steps to confirm a commercial relationship between the consumer and the identified company.”

¹¹ 77 *Fed. Reg.* 37561.

¹² *Id.*

Consumer Response: A Snapshot of Complaints Received,¹³ the Bureau itself states (in part) the following regarding credit card complaints:

Some **consumers are confused** and frustrated by the process and limits of challenging inaccuracies on their monthly credit card billing statements. For example, some consumers only realize that they needed to notify their credit card companies within 60 days of any billing errors after their claim has been denied. In other cases, **consumers are not aware** that companies typically do not stop a merchant charge once the cardholder has authorized it or do not override a merchant's "no-return policy." Other common types of credit card complaints are those about annual percentage rates or interest rates ...¹⁴

Regarding mortgage loans, the *Snapshot* states in part:

[C]onsumer confusion persists around the process and requirements for obtaining loan modifications and refinancing, especially regarding document submission timeframes, payment trial periods, allocation of payments, treatment of income in eligibility calculations, and credit bureau reporting during the evaluation period. The shelf life of documents provided as part of the loan modification process is of particular concern to consumers. Though consumers must provide documents within short time periods and income documentation generally remains valid for up to 60 days, lengthy evaluation periods can result in consumers having to resubmit documentation - sometimes more than once. This seems to contribute to **consumer fatigue and frustration** with these processes.¹⁵

One of our members noted a recent consumer complaint received related to the collection of personal information from cardholders. The consumer's complaint was that he thought this program manager's request for his Social Security number ("SSN") was "un-American." However, non-bank providers of prepaid access are required to collect certain identifying information from cardholders, including an identification number such as SSN, for specific types of prepaid card programs.¹⁶ The program manager explained that federal regulations now require its collection of SSN, and the consumer was satisfied with that explanation. It would be unfair, however, for the Bureau to include such a complaint in its public database.

We urge the Bureau to create a mechanism whereby financial services companies responding to consumer complaints referred by the Bureau may indicate whether certain complaints are due to this kind of confusion regarding legal or regulatory requirements. We also urge the Bureau to not

¹³ See CFPB, *Consumer Response: A Snapshot of Complaints Received* (June 19, 2012), available at http://files.consumerfinance.gov/f/201206_cfpb_snapshot_complaints-received.pdf.

¹⁴ *Id.* at 4-5, emphasis added.

¹⁵ *Id.* at 5, emphasis added.

¹⁶ See the Financial Crimes Enforcement Network's final rule regarding Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access, 76 *Fed. Reg.* 45403-45420 (July 29, 2011), *codified at* 31 CFR Parts 1010 and 1022.

include complaints in its public complaint database when the basis for the complaint is confusion regarding a legal or regulatory requirement.

The Bureau's wide solicitation of consumer complaints may lead to more fraudulent complaints. The Bureau is using social media sites, among other things, to solicit consumer complaints. To our knowledge, no other governmental agency has widely solicited consumer complaints in this manner. As discussed above, we are concerned about the increased potential for fraudulent complaints. Such wide solicitation of consumer complaints may lead to more fraudulent complaints than the Bureau (or industry) might otherwise receive. In addition, as noted above, we are concerned about the unfairness of fraudulent complaints appearing on the issuer/program manager's (or other party's) record and marring that organization's reputation.

Other agencies do not publish consumer complaints in this manner. We note that the Federal Trade Commission has never made such detailed consumer complaint information available in this manner. The federal banking regulators publish specific consumer complaint information only in the context of specific enforcement actions.

The Bureau should collect and publish additional information regarding complaints submitted and responses thereto. In part 4 of the Policy Statement, the Bureau discusses matters for further study. The Bureau states:

Going forward, the Bureau intends to study the effectiveness of its credit card complaint disclosure policy in realizing its stated purposes. In addition, the Bureau will analyze the narrative fields submitted by consumers and issuers. The analysis will assess whether there are practical ways to disclose narrative data in a manner that will improve consumer understanding without undermining privacy interests or the effectiveness of the credit card complaint process and without creating unwarranted reputational injury to issuers.¹⁷

If the Bureau cannot be swayed from publishing detailed information about individual consumer complaints, we urge the Bureau to publish more comprehensive information regarding consumer complaints and financial services companies' responses thereto.

We appreciate the Bureau's plans to analyze the complaint narrative fields submitted by both consumers and issuers and we urge the Bureau to develop an appropriate methodology as soon as possible for disclosing that narrative data without risk to consumer privacy.

As discussed above, we urge the Bureau to create a mechanism whereby financial services companies responding to consumer complaints referred by the Bureau may indicate when a complaint is due to consumer confusion, especially when that confusion stems from specific regulatory requirements. We also urge the Bureau to not include such complaints in its public complaint database when the basis for the complaint is confusion regarding a legal or regulatory requirement.

¹⁷ 77 Fed. Reg. 37568.

Given our concerns for potentially fraudulent claims made through the Bureau's consumer complaint process and published in the complaint database, we urge the Bureau to allow financial services companies to indicate whether they believe certain complaints to be fraudulent and to omit those complaints from the complaint database. Likewise, we urge the Bureau to allow financial services companies to indicate whether they believe certain complaints otherwise lack merit and to publish that information in the complaint database.

In addition, we urge the Bureau to track and disclose whether a consumer has previously contacted the financial services company in question with that specific complaint or whether the complaint is being made in the first instance through the CFPB. We suggest that the Bureau also ask the consumer to indicate when the complaint was first made and to whom.

We believe that collection and disclosure of the additional information discussed herein will help consumers and the Bureau better understand and make use of the consumer complaint data the Bureau receives and makes public.

Other general concerns regarding CFPB disclosure of consumer complaint data. The NBPCA did not submit a comment letter in response to the Bureau's initial request for comment on its proposed policy statement to disclose credit card complaint data, as the proposal explicitly did not address complaint data about any other types of consumer financial products or services.¹⁸ We wish to note that we agree with many of the concerns voiced by industry and trade group commenters about publication of consumer complaint data as outlined in the preamble to the final Policy Statement, although we have not gone into detail on each of those issues in this letter.

We urge the Bureau to disclose to consumers that the complaints contained in the public database may be duplicative of complaint data released by state attorneys general and the Better Business Bureau. Some of our members have noted that some cardholders will contact not only the card issuing bank and the program manager with a single complaint, but also the state attorney general's office and the Better Business Bureau at the same time. Those consumers may also now simultaneously submit their complaints through the Bureau as well. We appreciate the Bureau's efforts to assure that duplicate complaints from the same consumer are not included in its complaint system or listed in the public database. We are nonetheless concerned; however, a consumer's filing of a single complaint with multiple groups may make a single complaint appear to be a larger issue than it really is.

Finally, we urge the Bureau to set a limit for the length of time consumer complaints will remain in the public database. Inclusion of all consumer complaints indefinitely may cause the database to become unwieldy, and also could unfairly skew the data against longstanding participants in a particular financial services market over newer entrants into that market.

¹⁸ 76 Fed. Reg. 76628-76633 (Dec. 8, 2011).

Thank you, once again, for this opportunity to provide input and guidance regarding the CFPB's proposed disclosure of consumer complaint data. The NBPCA supports the innovation, growth and success of network branded prepaid cards in a manner which meets your 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,

A handwritten signature in black ink, appearing to read "K. Trusko".

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