



Network Branded Prepaid Card Association

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April 4, 2012

Via Email: CFPB_Supervision@cfpb.gov

Raj Date, Deputy Director
Consumer Financial Protection Bureau
1500 Pennsylvania Ave. NW
(Attn: 1801 L St.)
Washington DC 20220

Re: Examination Manual Feedback

Dear Deputy Director Date:

This letter is submitted to the Consumer Financial Protection Bureau (“Bureau”) on behalf of the Network Branded Prepaid Card Association (“NBPCA”) in response to the first edition of the CFPB Supervision and Examination Manual (the “Manual”), which was released by the Bureau on October 13, 2011. In conjunction with its release of the Manual, the Bureau indicated that it would welcome feedback and suggestions for improvements from the banking industry and nonbank financial services companies.

The NBPCA is a non-profit trade association representing a diverse group of organizations that take part in delivering network branded prepaid cards to consumers, businesses and governments. The NBPCA’s members include financial institutions, card organizations, processors, program managers, marketing and incentive companies, card distributors, law and media firms. The NBPCA is active on behalf of its members to enhance the environment for the success of network branded prepaid cards through education of government officials, the media and consumers. It also works with members to establish and encourage best practices to benefit card users and industry participants.¹

We believe that in crafting the Manual – and in developing the Examination Process Templates of Part III in particular – the Bureau has weighted certain factors in such a way as to indicate a predisposition to find inherent risk to consumers in prepaid card products, including network branded prepaid card products. This letter is intended to highlight some of our concerns with the Manual and to extend an invitation to

¹ This letter does not necessarily represent the position of each of the organizations that are members of the NBPCA.

the Bureau to discuss further ways in which to better address the needs of consumers who use and depend upon network branded prepaid card products for their day-to-day financial needs.

Consumers to whom Products are Marketed

Legislators and industry experts frequently extol the accessibility of network branded prepaid cards to unbanked and underbanked consumers. Whereas such consumers may not qualify to open a traditional checking account with a financial institution, many will qualify to hold a network branded prepaid card, which facilitates participation in the modern electronic payment system and helps consumers avoid costs and safety risks incurred in being forced to live a cash based lifestyle. In recognition of the utility of these products for such consumers, the U.S. Treasury Department launched in 2008 a prepaid card program for Social Security and SSI benefit recipients, and in 2011, Treasury commenced a pilot program to test use of prepaid cards in connection with tax refunds. Similar examples of prepaid card use abound among state governments, employers and nonprofit relief organizations.

Pages 3 – 4 of the Examination Template’s Risk Assessment states that examiners of regulated entities are to consider the extent to which the marketing of a product is targeted to particular populations, including students, elderly, minorities, immigrants, and consumers with limited education, among others. These are the populations most likely to benefit from prepaid card products and on behalf of whom Congress and other departments of the federal government have frequently embraced prepaid cards. Because marketing to these populations is deemed to increase the inherent risk of a financial product, issuers and distributors of prepaid cards over time could be forced to limit the availability and accessibility of these products to such consumers.

Marketing Methods & Compliance Management Challenges

Working with its members, NBPCA has developed “Leading Practices for Consumer Disclosures on General Purpose Reloadable Cards,” which go beyond the current legal requirements of clear and conspicuous disclosure of dormancy, inactivity and service fees on the card or on card packaging for gift cards and loyalty, award and promotional cards. However, to make the cards available when and when consumers want and need them, prepaid cards frequently are distributed at retail locations, as opposed to bank branches, where a branch employee may hand the consumer establishing a DDA with a set of disclosures running many pages in a folder, complicating the disclosure process.

Page 5 of the Examination Template’s Risk Assessment includes several provisions that reference the availability and understandability of financial product disclosures. The NBPCA strongly supports and encourages clear, simple and conspicuous disclosure of all terms and conditions that apply to network branded prepaid cards. However, in order to deliver all required disclosures in a retail environment, the terms and conditions of such products often must be included within the packaging for the product. We believe it is important that the Bureau recognize the importance of retail distribution channels, which may be the only channel an unbanked consumer may have to access financial services. In light of the import of this channel, the NBPCA believes the Bureau should endeavor to simplify disclosures that are required by law and to reasonably accommodate disclosure formats that are practicable for in-store distribution.

Compliance Management Challenges

Network-branded prepaid card programs typically lack the scale of certain other types of a card programs, such as debit card programs or credit card programs. As such, it is impractical for a single entity to try to develop and maintain all elements of a prepaid card program in-house. Instead, many of the functions necessary to implement a prepaid card program are outsourced to third-party vendors, such as program managers, processors, independent sales organizations and distributors. This has allowed the industry to develop a variety of competing products with features and pricing that suit individual consumer's varied needs.

Pages 7 – 8 of the Examination Template's Risk Assessment identifies as risk factors the usage of decentralized retail networks and the usage of subsidiaries, affiliates and third-parties in conjunction with delivery of products and services to consumers. The NBPCA recognizes the importance of appropriate oversight of the parties involved in the delivery of prepaid card products, and its members have a long track record of successful implementation of appropriate controls and procedures for monitoring such entities. However, the NBPCA believes that, for purposes of assessing the inherent risk of consumer financial products, such structures should not automatically be deemed to increase the inherent risk of a financial product, particularly where no other operating structure is economically or technologically practicable. If such structures are penalized on a systematic basis, the availability of prepaid card products would be affected adversely.

Nature and Structure of Products

Over time, to meet consumer demands, several models of prepaid card products have come to dominate the prepaid card marketplace. They range from products that have few (if any) per use fees but which do have recurring monthly fees, to products which have per use fees for certain prepaid card features but that do not have any recurring fees. The anticipated usage pattern of the consumer will determine which product best suits that consumer's need, which can be evaluated and determined by consumers through comparison of disclosures accompanying each prepaid card product.

Pages 2 – 3 of the Examination Template's Risk Assessment include as risk factors a number of items regarding fees, termination penalties and costs for access to call centers. The NBPCA has long believed that consumers should receive full disclosure of the costs of using a particular financial product and afforded the opportunity to choose one product over another based upon his or her anticipate card usage. Card issuers have legitimate reasons for imposing fees for access to specified services. For example, termination fees may be necessary to cover personnel and processing costs associated with issuing a check for the unused balance of a card's value. For other issuers, live call centers represent one of the largest overhead costs associated with a prepaid card program, and fees to access such service in lieu of online or interactive voice response (IVR) systems or program web sites may be necessary to make such services available at all.

The NBPCA believes that it is a testament to the highly competitive marketplace that a variety of prepaid card products have evolved over time. We believe that the inherent risk of a product should not hinge on its pricing or features. Rather, consumers should be presented with clear and conspicuous disclosures so that they may make informed decisions based on their anticipated needs.

Conclusion

We respectfully urge the Bureau to consider our feedback and suggestions. If you have any questions, or would like to discuss any of the matters outlined above in further detail, 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.

Kirsten Trusko,

President & Executive Director

Network Branded Prepaid Cards (NBPCA)