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Financial Crimes Enforcement Network (FinCEN)  
P.O. Box 39  
Vienna, VA 22183  
Attn: James H. Freis, Jr., Director

Re: Comments Regarding Stored Value in Response to the Notice of Proposed Rulemaking, RIN 1506-AA97

Dear Director Freis:

This letter is submitted by the Network Branded Prepaid Card Association (NBPCA or Association) in response to the request for comments regarding “stored value” as set forth in the Notice of Proposed Rulemaking (NPR), RIN 1506-AA97, issued by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, on May 12, 2009. The NBPCA wishes to thank FinCEN for providing us with the opportunity to review and comment on the questions raised regarding stored value. Our members take their compliance obligations under the BSA very seriously and welcome this chance to share our views with you.

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 NBPCA believes that the approach that FinCEN should take regarding “stored value” products should be similar to that taken for other financial products and services -- risk-based, with particular emphasis on high-risk products, services, customers, entities, and geographic locations.<sup>1</sup>

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<sup>1</sup> We only intend to address product risks in this letter. Customer risks and geographic risks for prepaid products are basically the same as for other financial products which are provided by banks and money service businesses.

In this letter, we wish to provide some brief background and insight on network branded prepaid cards, address some common myths regarding the cards, and then address the questions raised by FinCEN in the NPR.

### ***Overview of Network Branded Prepaid Cards***

Network branded prepaid cards comprise a diverse group of extraordinarily popular products that serve a vital public need. Network branded prepaid cards bear the logo of a payment network (American Express, Discover, MasterCard or Visa), and while they appear similar to credit and debit cards, there are important distinctions: (1) unlike credit cards, they are prepaid; no billing statement and subsequent payments are received and holders of prepaid cards may spend only as much as is pre-loaded on their cards; (2) unlike debit cards, no individual deposit account is established for each cardholder; instead the funds are usually held in a pooled account. From a transaction authorization/processing perspective, network branded prepaid cards “ride the rails” of the existing credit card or ATM/debit card payment systems and, at a minimum, enable cardholders to pay for purchases at a variety of merchants that accept the card brand.

Today’s economy largely runs on electronic payments through cards, rather than cash or checks, primarily for security and convenience reasons. Network branded prepaid cards open the door to our card-based financial system for large segments of our population who otherwise would not have access. They can also be used by cardholders to promote greater financial responsibility and control over-spending. Basic benefits of network branded prepaid cards include:

- **Opening the doors to economic participation.** An estimated 100 million Americans, are considered unbanked or underbanked. These are often individuals who have no bank account or who may have limited or no access to credit. Many of these Americans are forced to rely on a combination of cash, money orders, check cashing centers, and/or pay-day loans to meet their financial obligations and conduct day to day personal and business transactions. Network branded prepaid cards allow these Americans, many of whom are minorities, access to our increasingly card based economy.
- **Provides Cost Effective Convenience to Governments, Businesses and Consumers.** Many households across the United States have used network branded prepaid cards in one of its forms even if they do not realize it. Businesses use prepaid cards in lieu of rebate checks in order to give to their customers immediate access to their rebate funds and build brand loyalty; government agencies can reduce costs and fraud by using government benefits cards instead of checks to pay government benefits; and disaster relief organizations use these cards to enable immediate access to relief funds to disaster victims.
- **Promotes Financial Responsibility.** For many Americans, especially in these challenging economic times, network branded prepaid cards can be used as a tool to facilitate sticking to a budget. With most prepaid cards, there is no risk of over-

spending or over-drafts or racking up debt, which helps to provide a sense of security in today's uncertain economic times. For parents, prepaid cards can be an important mechanism to maintain control over their children's spending in high school or college.

One way that network branded prepaid cards may be classified is by the funding source:

- **Government-Funded Cards.** Federal and state governments recognize that cards reduce distribution costs, can help to decrease systemic fraud, and provide faster and more secure service to benefits recipients. Examples include: unemployment insurance, workers' compensation, retirement, child support, welfare benefits and temporary assistance for needy families (TANF). For government benefit cards, the agency establishes the parameters for eligibility and participation and funds the cards.
- **Business-Funded Cards.** Many businesses use network branded prepaid cards to improve the payments process for their employees and vendors, and to avoid the hassles and costs associated with paper-based checks. Examples include: employee payroll, rebate, insurance claims, disaster relief, and employee benefits, including health care, wellness and transit and incentive programs. For business-funded cards, the business establishes the parameters for eligibility and participation and funds the cards.
- **Consumer-Funded Cards.** Consumers purchase a card for their own use or to give to a friend or relative. Examples include: gift, travel, youth/teen/college, and general purpose reloadable cards. Personal information is generally not collected on gift card purchasers because gift cards carry only low dollar amounts and cannot be reloaded with additional funds. In contrast, personally identifiable information is usually collected for reloadable travel, youth/teen/college, and general purpose reloadable card products. Funding sources for consumer funded cards include credit cards, debit cards, checks, funds transfers from consumer accounts (ACH) and cash.

Government-funded card programs and business-funded card programs are generally classified as lower risk from a money laundering and terrorist financing perspective. The risk profile for consumer-funded cards vary from lower-risk to higher-risk, depending upon the controls put in place by the issuer of the prepaid card. As with any other financial product, the issuer of a prepaid card must assess the risks of the product and implement appropriate controls to mitigate the identified risks. In this respect, anti-money laundering ("AML") and Bank Secrecy Act ("BSA") obligations for prepaid cards should be based upon the risks posed, just as other financial products offered in the marketplace today. In support of this, the NBPCA has issued best practices in this area.

## *Common Myths*

**MYTH:** Prepaid cards are below the radar screen and are either unregulated or loosely regulated.

**Fact:** Open loop prepaid cards are issued by regulated banking institutions or by other highly regulated organizations, such as state-licensed and often FinCEN-registered MSBs. Issuers of prepaid cards are subject to examination, review and supervision by either state banking or other departmental regulators, federal banking regulators, the Internal Revenue Service or a combination of all of these agencies. Network branded prepaid cards issuers, sellers and redeemers are legally required by the USA PATRIOT Act and the BSA to have an effective AML compliance program that addresses customer due diligence, suspicious activity monitoring, CTR reporting and OFAC screening, as well as other BSA reporting and recordkeeping requirements. Additionally, program managers, processors and other third party service providers are subject to oversight and audit by the issuing bank and each of those entities agree to be subject to oversight and control of the bank's regulator.

**MYTH:** Prepaid cards are anonymous.

**Fact:** Most prepaid cards that are issued by banks or MSBs in the United States, with the exception of relatively low-value gift cards, are **not** anonymous. On the contrary, prepaid card issuers generally require cardholder identification and verification, as well as OFAC screening before they can be activated and used, or reloaded. Moreover, even though a cardholder may purchase a prepaid card in a retail location, an activation process is usually required before a cardholder can use the card to make purchases or to access cash. The typical activation process is as follows: the cardholder telephones or logs into the Website of the card issuing financial institution (or a specialized third party service provider with which the issuer has contracted to provide such services) and provides personal identification, including name, address, Social Security Number and/or date of birth. The financial institution then uses a third party authentication system, such as Experian, Lexis-Nexis, or Equifax, to verify the information provided. If the cardholder does not clear this process, the card is either not useable or not reloadable.

Network branded gift cards that are purchased in a retail site generally come in denominations under \$200 with certain programs offering cards up to \$750. Some larger denomination cards are sold through bank locations with values between \$500-\$3,000 and in most cases customer information is collected at the time of purchase or soon thereafter. Gift cards are non-reloadable, most do not allow cash access, and most restrict use to the United States. Certain cards allow point of sale (POS) purchases in international locations; however, such international transactions are recorded, authorized and tracked as are other POS transaction made using the card.

**MYTH:** Prepaid cards can be loaded with high values such as \$100,000 or even \$1 million.

**Fact:** While the industry has heard these claims in the past, they are not aware of any US-issued card having such high limits. For anonymous gift cards, the network card brands all have rules in place which limit card load values to under \$1,000 and the average value placed on a gift card is \$50. For other types of open loop prepaid cards, issuers have in place overall load limits, generally in the range of \$2,500 to \$10,000, as well as periodic (daily/weekly/monthly) load limits. Further, as with debit card products, issuers impose daily spending and cash access limits on the cards they issue. These limits are established based on the type of card, the limitations on its use, the risk profile, and expected load/spend profile. The typical general purpose reloadable card has less than \$250 loaded on it at any given time.

**MYTH:** Obligations to file suspicious activity reports (“SARs”) do not apply to prepaid cards.

**Fact: The vast majority of open loop prepaid cards are subject to mandatory SAR filing today.** Bank issuers of prepaid card products are required by the BSA today to file SARs on unusual or suspicious activity, just as the bank is required to do for its other bank products and services. Bank agents and other third parties are made subject to SAR reporting requirements (often by being required to report to the bank issuer any unusual or suspicious activity) as a consequence of their contractual agreements. Additionally, registered MSB that issue prepaid cards are also required to file SARs as required by Section 103.20 of the Bank Secrecy Act. This means that there are only a small group of prepaid cards – those issued by non-banks that are not otherwise registered as MSBs for other reasons – that are not subject to mandatory SAR filing. The reason that such cards have historically been exempted from SAR filing is that cards that only offer limited stored value services and that are not issued by banks simply do not pose the same risks as other financial services today that are subject to such filing. There has been little or no evidence that these prepaid cards that offer only stored value, and that are not otherwise subject to mandatory SAR filing today pose any significant risks of money laundering or terrorist activity – at least those that are issued in the United States. Moreover, although such cards are not subject to mandatory SAR obligations, many MSBs file SARs on a voluntary basis.

Members of the NBPCA filed over 1,600 SARs in 2008 related to suspicious activity involving prepaid cards.

**MYTH:** Prepaid cards should be recognized (or classified) as “monetary instruments.”

**Fact:** Prepaid cards should not be classified as monetary instruments for three distinct reasons.

First, funds on prepaid cards, unlike traditional monetary instruments such as checks, travelers checks, money orders, or cash, are NOT actually physically **on** the cards --- the emphasis for CMIR reporting purposes is on the physical nature and the immediacy of the transferability of the funds – with the focus on their being bearer instruments. In contrast, the mere possession of a prepaid card (as with debit or credit cards) does not provide control or possession over the underlying funds.

Second, monetary instruments are typically “cash in-cash out” products that can be used anonymously without identification or an audit trail. In contrast, network branded prepaid cards ride the rails of the credit card systems and are fully trackable and traceable -- if unusual activity is detected, the card can be suspended and the funds frozen.

Finally, any rule that would impose criminal penalties on persons carrying prepaid cards without declaring their value is inherently misleading and likely to cause unnecessary pain and embarrassment for the innocent, with little deterrent value for the criminals. In many cases, a consumer may not know the precise value of available funds on his or her prepaid card(s). Requiring a consumer to determine the available balance of any cards he or she may be carrying while in flight or upon debarkation from a plane is burdensome and unnecessary, as records of all loads, purchases and other transactions made using such cards can be obtained by law enforcement where appropriate.

### ***Responses to Request for Comments***

**Question:** Funds—Is there a need to define the term “funds” for purposes of the BSA? We use “funds” to refer to money held in bank accounts and “value of funds” to denote something different from money actually held in a bank account, such as the value reflected on a stored value card in a chip-based product.

**Response:** As for network branded prepaid cards, the underlying funds are held at a financial institution. Funds are not stored “on” the card. The card is merely an access device, similar to a debit card. There is no need to change the definition of “funds” to bring network branded prepaid cards into the BSA. They are already covered by the BSA.

**Question:** Aggregating MSB Services. Should transactions involving multiple MSB services be aggregated for purposes of determining whether definitional thresholds have been met?

**Response:** The NBPCA strongly opposes any requirement for an MSB (or its sales or redemption agents) to aggregate multiple MSB services for determining if the definitional thresholds are met. If this is adopted, it will cause a logistical challenge so tough to comply with, that these cards may no longer be offered at locations convenient to the consumers needing them. Where the sales do not occur at one time or in one place, and where the issuers of the products may be totally separate companies, it is neither reasonable nor viable to impose an aggregation obligation. Moreover, some of the services (check cashing and bill pay) may be offered by the retailer as licensed money transmitter or an authorized delegate of a money transmitter, but in others, such as the sale or loading of prepaid cards, the retailer is merely acting as an agent of a bank or licensed money transmitter. It is virtually impossible for an MSB to aggregate transactions when an agent is acting as an agent for multiple MSBs and any attempt to impose such a burden on retailers will likely result in their withdrawal of the products from the marketplace.

**Question:** Definition of stored value: We seek input on refining the current definition of “stored value” in 31 CFR 103.11(v). In doing so, we would like your comment on the appropriateness of a definition that would be based upon the following principles:

- Definition should be technologically neutral and consistent with actual use of stored value within the economy.
- Definition should be neutral in regards to the type of entity that provides/issues the stored value. For purposes of this request for comment, please provide your comments and suggestions on how to better define the term “stored value” given the following two existing legal definitions:
- Current definition in 31 CFR 103.11(vv). “Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.”
- Uniform Money Services Act definition of stored value as “monetary value that is evidenced by an electronic record” where “record” is “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form” and “monetary value” is “a medium of exchange, whether or not redeemable in “money” and “money” is “a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.”
- Alternatively, we seek comment on this potential definition: “electronic monetary value that is generally accepted as a medium of exchange, whether or not redeemable for currency or funds.”

**Response:** We believe that the definition should only include instruments that represent monetary value, as is the case under the existing definition. The other proposed definitions may pick up points-based systems and electronic coupons, which would significantly increase compliance costs, while these products have little risk for being used to accomplish money laundering or facilitate terrorist financing.

**Question:** Treatment of stored value as money transmission. Some states already have started to include stored value within their money transmission laws. We have recognized, moreover, that some stored value is a subset of our definition of money transmitter. For purposes of this request for comment, we would request input on the following:

- How would treating all forms of stored value as a form of money transmission impact the needs of industry, law enforcement, or regulators?

**Response:** State money transmitter licensing laws cover two areas generally, (i) “money transmission” and (ii) the “sale of checks or payment instruments.” We agree that some states have included “stored value” or “prepaid cards” within their money transmission licensing laws, and indeed many non-bank issuers and/or program managers are licensed as “money transmitters.” But the basis for including “stored value” in these laws is because many states consider an open system, network branded prepaid card to be similar to a money order, travelers check or other payment instruments, and they want to have regulatory oversight over any party who may hold a consumer’s funds, in order to make sure that they do not abscond with such funds or utilize the funds in a manner that may jeopardize the consumer’s funds. It is the sale of the payment instrument and the holding of consumer funds which drives the determination that licensing is required. The states have **not** determined that prepaid cards provide “money transmission” services similar to remittance companies, except perhaps in limited circumstances where the specific card at issue is literally marketed and positioned as a money remittance service. These state laws are primarily “safety and soundness” laws created to ensure that when a consumer decides to redeem a money order (or a prepaid card) the funds will be available to cover the transaction.

Given this context, we understand your question is whether an issuer of “stored value” should be treated as a “money transmitter” **as defined in section 31 CFR section 103.11(uu)(5)**. The answer is No. This would cause very serious issues for the industry, but would do little to assist law enforcement. If prepaid cards are treated as “money transmission,” then the zero dollar limit for coverage of an entity under the BSA as an MSB comes into play, as opposed to the \$1,000 per person per day limit that applies to other MSB activities. Further, to the extent the new regulations would apply to “sellers” and “redeemers” of stored value (a result which we would oppose; see below) imposition of licensing and registration requirements for money transmitters would have the effect of making it impossible for most retailers (including those that may be the only source for these in neighborhoods of the consumers who need them) to continue to sell and reload the products, due to the difficulties associated with obtaining licenses, and/or implementing compliance programs that apply to money transmission activities. In addition, in light of well known difficulties for MSBs to obtain and maintain banking relationships, due to bank’s perceptions that such accounts are simply not worth the risks or the burdens, retailers may be forced to choose to discontinue selling such products in order to maintain their banking relationships. Moreover, FinCEN historically has recognized that there are thresholds beneath which the burdens and costs of imposing BSA recordkeeping and reporting requirements are not justified – compliance by entities that never issue, sell or redeem MSB products for more than \$1,000 per person per day has long been deemed unnecessary. A retailer selling a prepaid card is no different than a retailer selling a money order – it is just another payment medium, and, for purposes of the regulatory thresholds, should be treated the same as the sale of money orders or travelers checks. The \$1,000 per person per day limit should apply to entities that issue, sell or redeem prepaid cards.

**Question:** Should open loop stored value be regulated differently from closed loop? If so, how?

**Response:** Yes - Open loop cards are issued by banks or other regulated financial institutions – closed loop cards are issued mainly by non-banks, have limited usage and no cash access and only may be used at a particular merchant or related group of merchants. Even within open loop cards, different card types (government-funded and business-funded) have lower risk profiles than other types of prepaid cards (anonymous consumer funded gift), and should be treated differently based on use and functionality. Anti-money laundering compliance programs are supposed to be risk-based, and open-loop and closed-loop products have different risks. FinCEN should adopt the approach which applies to all other financial products--the financial institution should establish controls based on the risk profile of the product.

**Question:** Should only certain uses or types of value transfers involving stored value be considered money transmission? If so, please describe or explain.

**Response:** As noted above, our view is that “stored value” should not be considered as money transmission, but is instead the issuance and sale of a unique kind of payment instrument. Any rule which would designate some stored value products as money transmission would cause unnecessary confusion without enhanced effectiveness.

**Question:** If stored value were excluded completely from being considered a form of money transmission, how would that affect the industry, law enforcement, or regulators?

**Response:** Stored value should continue to be its own category of a money service. As such, it is already subject to CTR reporting, appropriate AML programs, etc. Bank issuers and MSB issuers (and certain sellers and redeemers) are already subject to extensive BSA recordkeeping and reporting, which enables law enforcement and regulators to track and oversee such products. There is no need to change the categorization.

**Question:** Treatment of stored value players and products

- Should we regulate only issuers of stored value or also sellers and redeemers as well? Why? How should we define them? Should there be a threshold for determining whether an entity is an issuer, seller, or redeemer of stored value? What should the threshold be? Should the definitional threshold be consistent with the other categories of MSBs that are subject to thresholds?

**Response:** The regulations should only address **issuers** of prepaid card products, and the issuer should have responsibility for any third party agents that they elect to engage in the operation or management of their prepaid card programs. The FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual (2007), as well as the Bank Secrecy Act /Anti-Money Laundering Examination Manual for Money Service Businesses (2008), each address the responsibilities of the financial institution/MSB to oversee the actions of their agents. The obligations for stored value card issuers as to third parties should be consistent with the requirements that otherwise apply to MSBs. The threshold for triggering the application of the BSA requirements should be the same as used for other money service entities -- \$1,000 to or on behalf of a single person in a single day. As for

“redeemers” of stored value, we understand that it is the intention of FinCEN to define “redemption” only as those transactions when a card is redeemed for cash. Even with this limited definition, we question whether any obligation should run to redeemers of prepaid cards, as it seems nonsensical to effectively subject millions of merchants to the BSA solely because they are willing to provide “cash back” at the point of sale when a prepaid card is presented for payment. The references to “sellers’ and “redeemers” in this context provides no additional protections and only adds confusion.

**Question:** Should regulatory requirements vary depending on whether the stored value product is in bearer form or not? Should regulatory requirements vary depending on whether the stored value product is anonymous versus tied to an identifiable account holder?

**Response:** The term “bearer paper” generally refers to a financial instrument which can be “freely transferred by delivery and handing over of the document with or without the consent of the drawer of such document. The new owner or holder of the document can claim the amount payable on such document.”<sup>2</sup> As noted above, network branded prepaid cards do not constitute bearer paper – the funds are not held **on** the card and the card is only an access device. More importantly, the cards cannot be used by a cardholder without obtaining an electronic authorization from the issuer. Therefore, these products are never truly “bearer” in nature. The cardholder - even for an anonymous card - may not be able to claim the amounts loaded on the card if the usage violates the card terms, or if the card issuer elects to freeze or hold the funds. Whether a card is anonymous or not, is a factor that should be part of the normal risk assessment process and the regulated party should be required to institute appropriate controls.

**Question:** Should memory chip products be regulated differently from magnetic stripe products?

**Response:** If there is any distinction, it should be off-line vs. on-line products – the prepaid card (chip or magnetic stripe) in open loop is just an access device and runs in a real time environment. Currently, chip products provide wireless radio frequency authentication, and often require a PIN. These products may provide greater security from a fraud loss perspective, but they are structured in the same way as a magnetic stripe card- with the funds held separately by a bank. Network branded prepaid cards do not have the value “on” the card. (As you may recall, in the 1990’s there were “smart card” products, such as Mondex, which actually stored the “value” on the card; to our knowledge there are no such products in general use today.)

**Question:** Are the distinctions between open and closed loop stored value systems still meaningful? FinCEN recognizes that modern closed loop stored value systems operate internationally. As a result, these international closed-loop systems may pose additional money laundering risks when compared with the shopping mall-wide stored value systems that we have previously determined are not stored value for purposes of the BSA rules.

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<sup>2</sup> See <http://www.legal-explanations.com/definitions/bearer-paper.htm>

**Response:** We have no position on FinCEN decisions regarding international use of closed loop cards.

**Question:** What other issues or questions should be considered in developing the appropriate regulatory framework for stored value in light of the actual risks of money laundering and terrorist financing associated with these systems?

**Response:** The questions provided in the Notice of Proposed Rulemaking cover the significant issues raised in this area. We believe it would of course be appropriate to ask about the impact of any proposed changes regarding MSB registration and compliance in the stored value industry. For example, will requiring registration as an MSB result in stored value issuers, sellers or redeemers losing their bank relationships? Would the compliance obligations result in a reduction of the availability of these useful products for consumers? We believe that the answers to these questions are clear – such designations would result in increased costs and risks, and potentially the loss of bank relationships. Many issuers and sellers will simply choose to not offer prepaid products for sale or reload if such burdens are imposed.

**Question:** MSB Thresholds. For ease of compliance, should the regulatory threshold remain uniform for the categories of MSBs that have a threshold or should the threshold differ among the types of businesses to distinguish between the risks of certain types of activities? How would this affect the operations of businesses providing multiple MSB services?

**Response:** As noted above, we believe that stored value should be categorized as it is today, as a separate category and subject to the \$1,000 threshold. We believe the categories should remain uniform. The regulations already require financial institutions to implement a risk based approach so there is no need to further distinguish the activities.

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Again, the NBPCA would like to thank FinCEN for providing to those of us in the network branded prepaid card industry this opportunity to explain more fully the importance of prepaid card products, how they work, and the appropriate role of such products under our anti-money laundering laws. If you have any further questions, do not hesitate to contact us.

Sincerely,



Kirsten Trusko  
NBPCA President & Executive Director

