



November 14, 2011

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Re: Proposed Agency Information Collection Activities; Comment Request: Proposed Regulation II Debit Card Issuer Survey (FR 3064a), Payment Card Network Survey (FR 3064b) and Government-Issued, General-Use Prepaid Card Issuer Survey (FR 3063a)

Dear Ms. Johnson:

The Board of Governors of the Federal Reserve System (the “Board”) is continuing the process of implementing the debit card interchange fee provisions of Section 920(a) of the Electronic Fund Transfer Act (“Section 920(a”).<sup>1</sup> As a part of that process, the Board recently issued for public comment proposed debit card issuer and payment card network surveys that the Board proposes to use to facilitate its ongoing implementation and reporting obligations under Section 920(a) and related Federal Reserve Board Regulation II (“Regulation II”).<sup>2</sup> The American Bankers Association, The Clearing House Association L.L.C., the Consumer Bankers Association, the Credit Union National Association, The Financial Services Roundtable, the Independent Community Bankers of America, the Mid-Size Bank Coalition of America, and the National Association of Federal Credit Unions (collectively, the “Associations”) respectfully submit to the Board this comment letter in response to the Board’s request for comment on the proposed

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<sup>1</sup> 15 U.S.C. § 1693o-2(a).

<sup>2</sup> Debit Card Interchange Fees and Routing, 76 Fed. Reg. 43,394 (July 20, 2011) (to be codified at 12 C.F.R. pt. 235).

Regulation II surveys, including the Debit Card Issuer Survey, FR 3064a (the “Interchange Issuer Survey”), the Payment Card Network Survey, FR 3064b (the “Interchange Network Survey”) and the Government-Issued, General-Use Prepaid Card Issuer Survey, FR 3063a (the “Government Issuer Survey”, and collectively, the “Surveys”),<sup>3</sup> published in the Federal Register on September 15, 2011.<sup>4</sup> The Associations appreciate the opportunity to comment on the Surveys.

The Associations are providing comments on behalf of their debit-card issuing members to address concerns regarding (1) the lack of defining detail in the specific categories of data proposed to be collected, which will result in inconsistent and incomplete responses; (2) the insufficiency of the scope of data proposed to be collected to fully portray issuer costs associated with electronic debit transactions; (3) the likelihood that certain information requested by the Board may be of limited practical utility and lead to inaccurate conclusions due to the nature of the information requested (e.g., incentive payments); and (4) ensuring that the burden of information reporting rests with the proper party, particularly with respect to the use of general-use prepaid cards in government-administered payment programs. Although the Associations principally represent issuers of debit cards, the relationship between payment card networks and issuers in connection with debit card issuance positions the Associations to comment on both the issuer-specific surveys and certain aspects of the Interchange Network Survey insofar as the Interchange Network Survey is likely to impact debit card issuers.<sup>5</sup>

### **EXECUTIVE SUMMARY**

The Associations understand that the Surveys, once finalized, will be an essential tool for the Board in its ongoing implementation of Section 920(a) and updating of Regulation II. Given the impact Regulation II already has had in the four months since its final release at the end of June, the data gathered from the Surveys and the Board’s use of that data, including for ongoing reporting, will inevitably have significant impacts on the debit card marketplace. As such, the Associations have a vested interest in ensuring that the Surveys collect complete, accurate and useful data to ensure that the Board is positioned to make well-informed decisions that are firmly rooted in the prevailing conditions of the debit card marketplace, including facilitating the Board’s ability to identify and respond to emerging debit card market trends.

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<sup>3</sup> We note that the Board’s request for comment also solicited responses regarding FR 3063b to be completed by governments on a voluntary basis. The Associations will not be providing comments on FR 3063b.

<sup>4</sup> Proposed Agency Information Collection Activities; Comment Request, 76 Fed. Reg. 57,037 (Sept. 15, 2011).

<sup>5</sup> Although the Associations overwhelmingly represent debit card issuers, the Interchange Network Survey and the information collected pursuant thereto potentially has a significant impact on issuers. Accordingly, the Associations comment on certain aspects of the Interchange Network Survey as part of this letter.

The Board's objective should be to develop final Surveys that completely and accurately capture issuer cost data related to electronic debit transactions without unnecessary burden on those required to complete the Surveys. To achieve this objective, the Associations strongly encourage the Board to:

- Ensure that the Surveys are drafted with sufficient specificity and direction to elicit complete and accurate information reporting, while simultaneously allowing for cost accounting differences across issuers.
- Establish a formal, individualized approach to answering respondent questions about the Surveys and to conducting follow-up interviews with respondents to reconcile rather than discard any concerning responses.
- Ensure that the Surveys collect sufficient data to reflect *all* costs associated with debit card programs and debit card transactions, including costs that the Board currently deems not to be recoverable by issuers through interchange fees.
- Ensure that the Surveys do not collect data (e.g., incentive payment information) that only may be evaluated properly when considered in the context of the unique facts and circumstances of a particular issuer's debit card program or network relationships, and that is, therefore, of dubious value and likely to be misleading individually and when aggregated with data from other Survey respondents.
- Ensure that the reporting burden falls on the proper party, particularly with respect to government-administered, general-use prepaid cards.

We urge the Board to revise each of the Surveys to address the concerns raised in this comment letter and discussed in detail below. While we continue to believe that these Surveys can be a powerful tool for the Board in fulfilling its ongoing obligations under Section 920(a), we also believe that there would be substantial benefit to the Board, debit card issuers, payment card networks, and the debit card marketplace if the Surveys were revised.

## **DETAILED COMMENTARY**

### **I. The Board's Data Collection Function under Section 920(a)**

Section 920(a) provides that the Board shall, at least every two years, disclose aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with debit card transactions.<sup>6</sup> Section 920(a) provides the Board with the authority to require

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<sup>6</sup> 15 U.S.C. § 1693o-2(a)(3)(B).

issuers and payment card networks to provide information to enable the Board to carry out the cost and interchange fee data collection task.<sup>7</sup> When the Board adopted Regulation II setting debit card interchange fee standards, the Board indicated that data and associated information regarding interchange fees received by covered and exempt issuers would be gathered from payment card networks annually to facilitate monitoring of the effectiveness of the interchange fee limitation exemption for small issuers.<sup>8</sup>

In furtherance of the Section 920(a) data collection mandate, the Board has issued drafts of four surveys related to its obligations under Regulation II, the final rule implementing Section 920(a).<sup>9</sup> Two surveys, one for debit card issuers (the Interchange Issuer Survey) and one for payment card networks (the Interchange Network Survey), will collect information on costs, debit card usage, and interchange fees. Each of these surveys is mandatory for issuers and payment networks, as applicable, that the Board has determined are within the scope of Section 920(a). The other two surveys request information about the prevalence of the use of general-use prepaid cards in federal, state, and local government-administered payment programs<sup>10</sup> and the interchange and cardholder fees charged with respect to such use. Issuers are required to complete the government-issued, general-use prepaid card survey (the Government Issuer Survey). Completion of the government-issued, general-use prepaid card survey for governments is optional.<sup>11</sup>

## **II. Description of the Surveys**

### **A. Interchange Issuer Survey (FR 3064a).**

The Interchange Issuer Survey would collect data from issuers of debit cards (including general-use prepaid cards) that, together with affiliates, have assets of \$10 billion or more. The Interchange Issuer Survey would collect information on both signature and PIN transactions, and would seek information relating to all debit card transactions (including general-use prepaid card transactions) on both an aggregate basis (Section II)

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<sup>7</sup> *Id.*

<sup>8</sup> Debit Card Interchange Fees and Routing, 76 Fed. Reg. at 43,404.

<sup>9</sup> On September 13, 2010, the Board distributed three surveys to industry participants (an issuer survey, a network survey, and a merchant acquirer survey) designed to gather information to assist the Board in developing Regulation II. Industry participants, including payment card networks, trade groups, and individual firms from both the banking industry and merchant community, commented on preliminary versions of the 2010 surveys. The Surveys reflect the Board's reaction to those comments. The proposed Interchange Issuer Survey and Interchange Network Survey would replace the 2010 issuer and network surveys.

<sup>10</sup> The government programs covered by the survey include any "federal, state, or local government-administered program, in which the [cardholder] may only use the card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program." Supporting Statement for the Government-administered, General-use Prepaid Card Surveys, at 1 n.1.

<sup>11</sup> As indicated above, given the scope and nature of the optional survey for government entities, the Associations will not be commenting on that survey. See *supra* n.9.

and also broken out by authentication method (i.e., PIN (Section III) and signature (Section IV)). The Interchange Issuer Survey would request information on accounts and cards associated with accounts domiciled in the United States, the District of Columbia, and U.S. territories.<sup>12</sup>

The Interchange Issuer Survey solicits information in four categories:

**Respondent Information:** Includes the name of the debit card issuer covered in the response and relevant contact information. Also includes whether the issuer issues general-use prepaid cards.

**All Debit Card Transactions:** Includes summary information for debit card (including general-use prepaid card) transaction volume and value; chargebacks to acquirers; costs of authorization, clearance, and settlement; payments and incentives paid by networks to issuers; costs for fraud prevention and data security; interchange fee revenue; fraudulent transactions; and fraud losses.

**PIN Debit Card Transactions:** Requests data for the same set of questions asked in the aggregate section above, but specifically about PIN debit card programs, including general-use prepaid cards.

**Signature Debit Card Transactions:** Requests data for the same set of questions asked in the aggregate section above, but specifically about signature debit card programs, including general-use prepaid cards.

The first Interchange Issuer Survey reporting period would cover the calendar year 2011, with data collected as of December 31, 2011.<sup>13</sup> The Board proposes that each chartered financial institution that issues debit cards and has, together with its affiliates, at least \$10 billion in consolidated worldwide assets, will complete a separate survey, which would result in approximately 580 responses.<sup>14</sup> The Board would use data from the Interchange Issuer Survey to prepare for public-disclosure aggregate or summary information concerning the costs incurred for, and interchange transaction fees received by, issuers with respect to debit card transactions. Importantly, the Board

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<sup>12</sup> In the Supporting Statements released together with the Surveys, the Board asserts that U.S. territories include American Samoa, Federal States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and U.S. Virgin Islands. *See, e.g.*, Supporting Statement for the Government-administered, General-use Prepaid Card Surveys, at 1 n.1. This list is over inclusive as the Federal States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands no longer are U.S. territories and should not be included in the scope of the Surveys.

<sup>13</sup> The Interchange Issuer Survey would be made available by mid-February 2012 and would require that the survey be completed and submitted to the Board within sixty (60) calendar days from release. Thereafter, subject issuers would be required to complete the Interchange Issuer Survey every other calendar year.

<sup>14</sup> *See* 76 Fed. Reg. at 57,040. As discussed in Section IV.E below, the Associations believe that far fewer than 580 chartered financial institutions in the United States issue debit cards.

would also consider the data from the Interchange Issuer Survey to determine whether to revise the interchange fee standards in Regulation II.

B. Interchange Network Survey.

The Interchange Network Survey would collect information from payment card networks. Importantly, payment card networks that operate both PIN and signature networks would be required to complete surveys and report data separately for each type of network.

The Interchange Network Survey would collect information in two areas:

**Respondent Information:** Includes the name of the network covered in the response and relevant contact information. Also includes whether the payment card network is a PIN or signature network, and whether the payment card network offers a tiered interchange fee rate schedule that differentiates between exempt issuers and non-exempt issuers, and the number of merchant locations at which debit cards issued on the network are accepted for payment.

**Debit Card Transactions:** Includes the volume and value of settled purchase transactions; as well as information across a variety of card and transaction types, including card-present and card-not-present transactions; general-use prepaid card transactions; and small issuer and pre- and post-effective date transactions. Also requests information on chargebacks and returns to merchants; the value of interchange fees; the value of network fees; and payments and incentives paid by networks to acquirers, merchants, and issuers.

The first reporting period of the Interchange Network Survey would cover calendar year 2011, with data collected as of December 31, 2011.<sup>15</sup> The Board expects approximately 17 payment card networks to respond to the 2011 Interchange Network Survey.

The Board would use data from the Interchange Network Survey to prepare for public-disclosure aggregate or summary information concerning the costs incurred for, and interchange transaction fees received by, issuers with respect to debit card transactions. The Board would also consider the data from the Interchange Network Survey to determine whether to revise the interchange fee standards in Regulation II and to determine which networks have established separate interchange fee schedules for exempt and non-exempt issuers.<sup>16</sup>

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<sup>15</sup> The Interchange Network Survey would be made available online by mid-January 2012, and the Board would require that the survey be completed and submitted within thirty (30) calendar days from its release. Thereafter, networks would be required to complete an Interchange Network Survey annually.

<sup>16</sup> With respect to networks that have established separate interchange fee schedules, the Board would note any variance between interchange fees received by exempt issuers before Regulation II became effective and those received after Regulation II became effective.

C. Government-Issued, General-Use Prepaid Card Issuer Survey.

The Government Issuer Survey would be required for approximately 20 depository institutions that issue general-use prepaid cards for federal, state, or local government-administered payment programs.<sup>17</sup> On an annual basis, these issuers would provide information regarding government-administered payment programs. The Government Issuer Survey would collect information separately for each government administered program operated by an issuer, as well as aggregate data for all programs. The Government Issuer Survey would collect information on card programs using both signature and PIN transactions. The first reporting period would cover the calendar year 2011, collected as of December 31, 2011.<sup>18</sup> The survey would comprise ten reporting sections:

**Respondent Information:** Includes the name of the card issuer covered in the response and relevant contact information.

**Card Program Information:** Requests summary and detailed information on card programs covered in the response.

**Government-Administered Prepaid Cards:** Requests summary information on the number of cards outstanding, and the allocation of cards outstanding between cards that can be used on both signature and PIN networks, cards that can be used on signature networks, and cards that can be used on PIN networks.

**Funding:** Includes value of funds loaded into prepaid card accounts, funds outstanding on prepaid card accounts, and all funds paid by all payment methods.

**ATM Transactions:** Requests information on the number of cards outstanding at year-end that can be used to make ATM cash withdrawals, the volume and value of ATM cash withdrawals, and the ATM fees charged for withdrawals by ATM operators at nonproprietary ATMs.

**Purchase Transactions:** Requests information on the volume and value of settled purchase transactions and the volume and value of settled purchase transactions by authentication method.

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<sup>17</sup> According to the Board, the estimate is based on “issuers known to issue government-administered, general-use prepaid cards, and who responded to the 2010 survey.” Supporting Statement for the Government-administered, General-use Prepaid Card Surveys, at 2 n.4.

<sup>18</sup> The Government Issuer Survey would be made available online by mid-February 2012, with a response due to the Board within thirty (30) calendar days.

**Interchange Fees:** Includes interchange fee revenues received on settled purchase transactions and the allocation of the interchange fee revenues received on settled purchase transactions for signature transactions and PIN transactions.

**Fees Paid by Issuers:** Includes fees paid on ATM cash withdrawals and fees paid on over-the-counter at-bank (teller) cash withdrawals.

**Revenues from Cardholder Fees:** Includes total revenues received on all fees charged to cardholders and the allocation of all fees charged to cardholders between routine purchase transaction fees, monthly fees, balance inquiry fees, ATM fees, over-the-counter at-bank (teller) fees, account servicing fees, penalty fees, and all other fees.

**Fees Assessed to Cardholders:** Requests information on fees assessed to cardholders, including routine purchase transaction fees, monthly fees, balance inquiry fees, ATM fees charged to cardholders, over-the-counter at-bank (teller) fees, account servicing fees, penalty fees, and all other fees.

The Board would use the data from the Government Issuer Survey to support an annual report to Congress on the prevalence of the use of general-use prepaid cards in federal, state, and local government-administered payment programs and the interchange and cardholder fees charged with respect to such use.

### **III. Comments on the Surveys Generally**

Given the divergent nature and purpose of the information and data sought in the Surveys, the Associations have specific comments on each of the Interchange Issuer Survey, Interchange Network Survey, and Government Issuer Survey. In reviewing the Surveys as a whole, however, there are a number of recurring themes that encompass the Associations' principal comments and concerns regarding the Surveys. These themes, discussed below in this Section III, may be manifested somewhat differently in each of the Surveys, but they create the same general concerns and challenges with respect to the information requested in the Surveys, including the precision with which the requested information is elicited, the scope of the information requested, and the potential that the context-specific nature of certain information collected may cause that information to be of limited utility for the Board's analysis, aggregation and reporting purposes under Section 920(a) and may lead to inaccurate conclusions.

#### **A. The Surveys Lack the Requisite Precision Required to Elicit Complete, Consistent and Accurate Responses from Issuers.**

To be effective, a data collection survey must have three elements: (1) a statistically significant sample set of respondents, (2) consistently determined and complete data

that is representative of all members of the target group of respondents, and (3) responses that facilitate meaningful comparison of collected data. Indeed, in a 2006 publication setting forth federal agency survey standards, the Office of Management and Budget noted that “[a]gencies must design [a] survey to achieve the highest practical rates of response, commensurate with the importance of survey uses [and] . . . to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions.”<sup>19</sup> While the mandatory nature of the Surveys makes establishment of a sample set of responses straightforward, the general nature of the questions and lack of detailed instructions regarding requested data makes it highly likely that the data collected will be less than “representative of the target population” and will not support the type of meaningful analysis that “can be used with confidence to inform decisions.”

As the Surveys currently are drafted, issuers and networks are unlikely to complete the Surveys consistently.<sup>20</sup> For example, notwithstanding broadly applicable accounting principles (e.g., GAAP), cost accounting approaches may vary widely among respondents. As a result, each respondent will have a different perspective on cost inclusion (e.g., treatment/allocation of bundled costs). To be effective, the Surveys must facilitate the conversion of a respondent’s subjective approach to cost accounting into an objective data set that provides enough consistency in responses to make aggregation and comparison meaningful. The Surveys currently do not do so. Continuing the example above, the questions and associated instructions do not allow for reconciliation of the variance in accepted approaches (whether under GAAP or IFRS) for accounting for card program costs. And without reconciliation of these cost accounting differences, the collected data from the Surveys will be a suboptimal, and even misleading and skewed, guide for Board decision-making.

Indeed, the results of the Board’s data collection effort in connection with its Regulation II rulemaking effort bore out these risks. Of the 131 financial institutions that received Board surveys in September 2010 prior to the Board’s issuance of proposed rules to implement Section 920(a), 26 recipients did not respond, only 66 recipients reported sufficient information to support the critical data elements the Board evaluated in defining the interchange fee standards, and only between one-third and two-thirds of respondents provided usable information for a given cost calculation determined by the

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<sup>19</sup> Office of Management and Budget, Standards and Guidelines for Statistical Surveys, Standard 1.3 (2006).

<sup>20</sup> The Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) are working on nearly a dozen joint projects designed to improve both U.S. Generally Accepted Accounting Principles (US GAAP) and International Financial Reporting Standards (IFRS), and ultimately to make the standards fully compatible. Further, the U.S. Securities and Exchange Commission is requiring a migration of U.S. listed companies to IFRS. Under the latest guidance, IFRS filings would begin for certain filers as early as 2015 and then continue in a staged fashion through 2017. Accordingly, as the transition is underway, respondents may be reporting costs or other transactions based on differing accounting conventions until full IFRS migration is complete.

Board as support for the interchange fee standards.<sup>21</sup> The Board noted in its June 2011 report on the survey responses received in connection with the original Regulation II rulemaking that “[a]lthough the response rates for the surveys were high, most respondents did not provide information on every data element requested in the surveys.”<sup>22</sup> In the context of the 2010 Government-administered, General-use Prepaid Card Survey (the “2010 Government Issuer Survey”), the Board acknowledged that inadequate and unusable issuer responses were, in part, attributable to limitations of its approach to the surveys. In its July 2011 report to Congress on the 2010 Government Issuer Survey, the Board explicitly acknowledged the need for refinements to its surveys to obtain better information reporting, indicating that the Board “is evaluating and refining its survey instruments in an effort to increase the overall response rate and quality of data reported in future surveys.”<sup>23</sup> Beyond the general need for refinement, the Board specifically highlighted the inability of the 2010 Government Issuer Survey to elicit meaningful responses from issuers:

Among the depository institution responses received, some respondents did not provide information on all data elements requested in the survey. For example, most issuers provided total interchange fees and cardholder fees charged for all the general-use prepaid government card programs for which they serve as the issuer, but only a subset of the issuers provided the data at the individual card program level as requested in the survey.<sup>24</sup>

Because of the divergent nature of the issuer responses, the 2010 Government Issuer Survey data did not facilitate the Board’s ability to provide meaningful feedback to Congress, with the Board warning that it was “not able to report on an individual transaction basis the range of cardholder fees for federally administered programs because of limited data provided by depository institutions” (i.e., issuers).<sup>25</sup> Further, the data that was collected did not necessarily allow for the statistical analysis typically desired for the Board (or Congress) to make fully informed decisions, with the Board noting that “estimates generally cannot be combined or compared . . . due to differences in the composition of respondents.”<sup>26</sup>

The Board will continue to face limiting constraints in implementing Section 920(a) via the Surveys unless the Board ensures consistency among the Survey responses and

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<sup>21</sup> 2009 Interchange Revenue, Covered Issuer Cost, and Covered Issuer and Merchant Fraud Loss Related to Debit Card Transactions, Board of Governors of the Federal Reserve System, at 3-5 (June 2011).

<sup>22</sup> *Id.* at 5.

<sup>23</sup> Board of Governors of the Federal Reserve System, Report to the Congress on Government-Administered, General-Use Prepaid Cards, at 2 (July 2011).

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 7 n.23.

<sup>26</sup> *Id.* at 4-5.

minimizes the number of responses that are not utilized for analysis and reporting. In addition to revising the Surveys to improve the consistency and completeness of the responses elicited, the Board should implement a formal, individualized approach to answering respondent questions about the Surveys and to conducting follow-up interviews once the initial Survey responses have been reviewed. This follow up process should rely on individual discussions with respondents rather than group meetings or multilateral forums wherever possible. One-on-one interviews and correspondence with respondents, particularly those that the Board considers to have provided concerning responses (e.g., statistical outliers), will facilitate more consistent and complete Survey responses and data collection. Moreover, this approach will ensure a more meaningful sample set of responses as it allows the Board to avoid discarding a significant number of responses.

While the Board attempted to be responsive to the concerns raised over the content of the 2010 Government Issuer Survey, the Surveys reflect limited improvement from their predecessors. Accordingly, we would expect the limitations that affected the original Regulation II surveys, including the 2010 Government Issuer Survey, to continue to limit the utility of the Surveys in 2011. Better guidance in the Surveys will result in more useful data,<sup>27</sup> and a dedicated follow up process will enhance the usability of responses.

B. The Surveys Should Ensure that Comprehensive Cost Data Is Collected with Respect to Debit Transactions.

As a corollary to the need for improved precision and clarity in the data collection effort, as discussed in Section A above, the Surveys also must ensure that the information queries facilitate collection of all meaningful cost data points so that the Board is presented with a complete assessment of the true costs of debit transactions. To that end, the Surveys should be drafted to ensure that the specific items of data collected balance the need for all respondents to understand what information should be included in a response without limiting respondents from providing appropriate data that may fall outside one of the enumerated response components. The need for this inclusive flexibility is particularly acute where an issuer concludes that other data elements recorded by its cost accounting system are properly included within the definition of allowable costs, or where an issuer accrues costs in different categories than those specified by the Board. In the ideal survey, the Board would be as explicit (and inclusive) as possible in the responsive examples given as part of the survey instructions, but not so limiting as to exclude other categories of information that may rightfully be included. Further, taking this approach is entirely consistent with the Office of Management and Budget survey guidance, particularly “ensur[ing] that survey results

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<sup>27</sup> The Associations’ specific recommendations for each of the Surveys is discussed in detail in Sections IV, V and VI below.

are representative of the target population so that they can be used with confidence to inform decisions.”<sup>28</sup>

In addition to ensuring collection of comprehensive information that fits within the categories of allowable costs the Board determined under Regulation II may be recovered through interchange fees, the Board also should continue to capture, through the Surveys, those costs associated with debit card-related activities that the Board has, at present, determined are not allowable costs recoverable through interchange fees. In this regard, we urge the Board to be mindful of the evolving electronic payments marketplace, which is likely to result in changing cost structures and cost allocations over time.<sup>29</sup> Collecting comprehensive debit program cost information, even if certain of such costs presently may not be eligible for cost recovery through interchange fees, will help the Board appreciate the broader debit transaction cost landscape and its future changes (including cost trends). While reporting on cost elements currently deemed by the Board to be ineligible for recovery through interchange fees will impose an incremental burden on issuers, the Associations believe that the benefits of providing such information to facilitate a broader understanding by the Board of debit program cost elements will exceed the additional reporting burden. Only with full cost data may the Board properly evaluate whether the interchange fee standards established under Regulation II reflect the costs to issuers incurred in the course of effecting debit transactions. Further, this inclusive cost survey approach will assist in the development of the record to support a revised interpretation of allowable costs in the future to reflect the evolving debit transaction market, should the Board be so inclined.

The Associations also contend that, to provide comprehensive and accurate data, respondents will need a reasonable amount of time to complete the Surveys and that the timing of data collection should coincide with the availability of finalized year-end information. Accordingly, respondents should be given not less than sixty (60) days to complete the Surveys to ensure that complete information may be gathered. Further, the Associations recommend that the Surveys not be issued until February 15<sup>th</sup> or later each year to allow time for year-end closing and preliminary audit and review of debit card program data for the previous calendar year. The Associations also recommend releasing all of the Surveys simultaneously rather than in the staggered manner currently contemplated (e.g., the Interchange Issuer Survey released in mid-February and the Interchange Network Survey released in mid-January) to avoid industry confusion.

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<sup>28</sup> Office of Management and Budget, Standards and Guidelines for Statistical Surveys, Standard 1.3.

<sup>29</sup> Further, as the Board noted in the Surveys, debit card technology is rapidly evolving, with likely expansion of authentication types, networks and associated cost categories. This new technology potentially causes historic terms to lose precision or meaning. As such, the Board periodically should evaluate the Surveys for clarity and precision on account of technological advancements, beginning with the Surveys to be issued after 2012.

C. The Board Should Avoid Requesting Information that cannot be Meaningfully Evaluated and/or Aggregated without Substantial Risk of Being Misleading, Particularly Regarding Incentive Payments.

The objectives of consistency and comprehensiveness that necessitate more precise survey questions and collection of broader cost data should also be applied to avoid requests for information that is so unique or particular to individual payment card networks or issuers that the data from a survey response cannot be meaningfully used. While we encourage the Board to make the revisions recommended herein to ensure better respondent participation and quality data collection, the Board should also be mindful to avoid inquiries where the responses will depend so greatly on the unique facts and circumstances of the respondent that collection of the data via the Surveys would be of limited comparative utility, likely would lead to inaccurate conclusions when evaluated individually or on an aggregate basis, and may require disclosure of proprietary information (e.g., information regarding incentive structures).

The primary purpose of the Surveys is articulated in 920(a)(3)(B): to carry out the Board’s mandate “to establish standards for assessing whether the amount of any interchange transaction fee described in [Section 920(a)(2)] is reasonable and proportional to the cost incurred by the issuer with respect to the transaction”<sup>30</sup> and to report on cost information of, and interchange fees received by, “issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions.”<sup>31</sup> In evaluating the types of information the Surveys should seek, the Board must be vigilant in ensuring that the data collected drives meaningful decision-making and is useful to the Board, its constituencies – especially Congress – and the debit card marketplace as a whole. The Associations submit that collecting information that cannot properly be evaluated out of context and that is not easily aggregated or compared will not yield meaningful results. As described in Sections IV and V below, this issue is particularly apparent with respect to the Board’s proposed collection of data related to incentive payments from networks to issuers.<sup>32</sup>

To the extent that the Board concludes that it is necessary to collect this type of information via the Surveys, the Associations urge the Board to make additional clarifications to the request for information consistent with the discussion in Section III.A above. The need for clarity in the Survey is particularly acute for incentive payments from networks to issuers because of the individualized nature of these

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<sup>30</sup> 15 U.S.C. § 1693o–2(a)(3)(A).

<sup>31</sup> 15 U.S.C. § 1693o–2(a)(3)(B).

<sup>32</sup> Incentives paid from networks to issuers are highly individualized, often heavily negotiated, may be offset by a variety of customized payment arrangements from issuers to networks, and are difficult to evaluate consistently across issuers. Indeed, the Board recognized the individualized nature of incentive payment in its follow up Frequently Asked Questions on Regulation II issued in September 2011, indicating that a signing bonus, for example, may be allocated by an issuer in any reasonable and consistently applied manner. Board of Governors of the Federal Reserve System, Frequently Asked Questions About Regulation II (Debit Card Interchange Fees and Routing) § 235.6 Q1.

payments, which adds to the subjective nature of the information and the related complexity in disclosing payment data. Specific recommendations for the Interchange Issuer Survey are discussed in Section IV.D below.

#### **IV. Comments on the Interchange Issuer Survey**

- A. The Interchange Issuer Survey Does Not Provide Sufficient Guidance to Issuers to Elicit Complete and Accurate Cost Information that Will Facilitate Consistent and Meaningful Cost Analysis.
  1. The Interchange Issuer Survey Contains Insufficient and/or Inappropriate Guidance Related to Authorization, Clearing and Settlement Costs to Generate Meaningful, Comparable Data.

The Interchange Issuer Survey essentially defines “cost of authorization, clearing and settlement” in the negative, dedicating the majority of its limited instructions to describing what is excluded from these costs,<sup>33</sup> as opposed to what is included in “transactions monitoring costs, network processing fees, and third-party processing fees.” Other than an admonishment to “[i]nclude transactions monitoring costs, network processing fees, and third-party processing fees,” the Interchange Issuer Survey provides no additional useful guidance on what costs should be included in reported data on authorization, clearing and settlement of electronic debit transactions. For example, the Interchange Issuer Survey should identify fixed and variable costs of equipment, hardware, software and labor as costs that should be included in reported data.

Failure to provide additional clarity around costs eligible for consideration as authorization, clearing and settlement costs will be problematic for both issuers and the Board. The challenges will arise because issuers will, once again, be uncertain how to respond to the survey questions and, consequently, the data collected will vary from issuer to issuer and may not be reflective of all relevant issuer costs. Indeed, the Board acknowledged this issue in addressing responses to the 2010 cost surveys.<sup>34</sup>

2. The Interchange Issuer Survey Contains Insufficient and/or Inappropriate Guidance on Approach to Allocation of Costs Across Issuing Programs and Accounting Periods.

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<sup>33</sup> In the definition of costs of authorization, clearing and settlement, the Interchange Issuer Survey indicates “[t]hese costs do not include, for example, costs related to corporate overhead, account relationships, rewards programs, non-sufficient funds handling, non-sufficient funds losses, cardholder inquiries, card production and delivery, fraud-prevention costs that are not incurred as part of authorization, and fraud losses. These costs do not include costs associated with funds loads (or deposits) or account set-up and maintenance.”

<sup>34</sup> See, e.g., 76 Fed. Reg. at 43,433 n.132.

In a number of instances, the Interchange Issuer Survey seeks to allocate costs across issuer programs and accounting periods. While the principle of allocation is both necessary and appropriate, the Interchange Issuer Survey arguably takes an unclear or, in some instances, flawed approach to allocation, particularly with respect to allocation among various issuing programs and costs incurred across multiple accounting periods (e.g., in different fiscal years).

With respect to “costs shared with other card programs or activities,” the Board is proposing an allocation based on number of transactions. Given the variance among service provider pricing and issuer cost accounting approaches, a “per transaction” cost allocation may not always be as meaningful or accurate as an allocation based on other reasonable criteria. Rather, as the Board noted with respect to an issuer’s allocation of incentive payments for purposes of determining whether the issuer has received net compensation from a payment card network, issuers should be permitted to allocate shared program costs using any reasonable and consistently applied approach.<sup>35</sup> For example, while third party processing costs typically are priced on a per transaction basis, other costs, such as initial or supplemental development work directly related to authorization, clearing and settlement, may be allocated more appropriately based on a volume or revenue metric.

The Interchange Issuer Survey also should provide additional clarity regarding how to account for in-year capital expenditures that may benefit multiple accounting periods. The guidance suggests reporting “costs that are depreciated or amortized during 2011.” Presumably the Board desires to capture the actual depreciation or amortization expense for 2011 on a GAAP basis, but the desired approach is unclear. Similarly, there is no mechanism in the Interchange Issuer Survey to account for or otherwise reconcile the timing differences between an original sales transaction and an associated chargeback, which may vary by 270 days or more. As a result, measurement of chargebacks in 2011, in fact, may have additional costs that would have been accrued in 2010 and not reflected in the 2011 data. For example, dispute resolution procedures instituted prior to finalization of the chargeback. Further, there will be transactions in 2011 that have associated chargebacks in 2012. The Interchange Issuer Survey, however, does not address these types of timing differences, which may have a meaningful impact on an issuer’s electronic debit transaction costs.

- B. The Scope of Cost Information Requested by the Interchange Issuer Survey Is Too Narrow and Does Not Elicit Adequate Debit Program Cost Information from Issuers.
  - 1. The Interchange Issuer Survey Should Be Revised to Capture Full Debit Program Costs.

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<sup>35</sup> Board of Governors of the Federal Reserve System, Frequently Asked Questions About Regulation II (Debit Card Interchange Fees and Routing) § 235.6 Q1.

As discussed in Section III above, the Associations believe that it is critical that the Surveys be used to capture all debit program costs. With respect to the Interchange Issuer Survey, we urge the Board to adopt a more inclusive approach to capturing debit card program cost data. In compiling the Interchange Issuer Survey, the Board included only those categories of cost information that the Board has currently defined as allowable costs that are recoverable through interchange fees. However, other cost categories are relevant to the Board's understanding of the full range of debit card transaction and program costs. For example, costs of establishing and maintaining debit account relationships, resolving customer inquiries with respect to debit transactions, debit card program compliance costs and other cost elements specific to debit card transactions and programs that the Board elected not to define as allowable costs under Regulation II nevertheless have bearing to ensure that the Board comprehends the full landscape of debit card program costs and to facilitate adjustments to the definition of allowable costs in the future.

To facilitate the above, we believe that the cost categories in the Interchange Issuer Survey should be enhanced to more accurately reflect issuer costs associated with debit card transactions and programs. As a general principle, we believe that aggregate lump sum data requests, while helpful, are not as useful to the Board as collecting total cost data that is broken down in the Interchange Issuer Survey into various specific cost categories (not dissimilar to the approach used in the 2010 surveys, but with more accurate categories). Further, we believe that detailed cost breakdowns place the Board in a better position to analyze debit-related costs and to provide relevant information to Congress, particularly with respect to interchange policy. This detailed congressional reporting, in turn, allows Congress (and the Board) to consider fully the practical ramifications of Section 920(a) and Regulation II. For example, instead of lumping all potentially allowable costs into general "costs of authorization, clearing and settlement" in the Issuer Interchange Survey with minimal breakdown and no opportunity for issuers to explain their cost allocations, we encourage the Board to define individual subcategories of data that constitute allowable costs with additional open-ended opportunities for issuers to provide reporting according to their own cost categories, including narrative explanation of the makeup of and justification for such categories.

In revising the Issuer Interchange Survey, we recommend that the Board follow a similar approach to the 2010 issuer survey and include the following categories of cost data in Question 3 on "costs of authorization, clearing and settlement" (which would appear in Sections II, III and IV), expanded to include all non-fraud debit program costs, irrespective of whether currently defined by the Board as allowable costs under Regulation II:

- In-house Costs
  - Processing Costs (including fixed and variable costs of equipment, hardware, software and labor)

- Authorizations
  - Clearing and Settlement
  - Chargeback and other Billing Error Processing
  - Transaction Posting and Statement Production
  - Card Production and Deployment (including costs to replace fraudulent cards)
  - Cardholder Interface and Customer Service
  - Rewards and Incentive Programs, including program administration, rewards and affinity partner revenue sharing
  - Research and Development Costs associated with debit card programs
- Third-Party Fees
    - Authorizations
    - Clearing and Settlement
    - Chargeback and other Billing Error Processing
    - Transaction Posting and Statement Production
    - Card Production and Deployment (including costs to replace fraudulent cards)
    - Cardholder Interface and Customer Service
- Network Fees
    - Transaction Processing, including cost of authorization
    - Non-Transaction Processing Fees (membership, licensing, etc.)
- Other Costs

As noted above, we also strongly recommend including an “Other Costs” category to give issuers the discretion to disclose additional debit program costs not contemplated by the fixed survey categories, which is critical to the success of the Interchange Issuer Survey as a tool for collecting complete cost information. Such a category allows issuers to disclose relevant costs to the Board and simultaneously affords the Board the ability to review potential emerging (and, at a minimum, potentially not contemplated) issuance costs. As part of the “Other Costs” category, the Board should ensure that the Interchange Issuer Survey allows for explanation from issuers for each included cost, which explanation should include both a description of the cost and the rationale for inclusion.

2. The Interchange Issuer Survey Should be Revised to Breakout General Debit Card Program Costs and General-use Prepaid Card Program Costs.

The Board requested comment as to whether issuers should report general-use prepaid card data combined with other transaction data or should report general-use prepaid

card activity separately. We agree that there is significant utility in segregating general-use prepaid card information (which should include information for both exempt and non-exempt general-use prepaid cards) and separately recording and measuring that data. Despite apparent processing similarities for authorization, clearing and settlement, standard debit card programs have significantly different cost considerations and structures from general-use prepaid cards.

The costs of standard debit and general-use prepaid programs differ for at least two reasons. First, general-use prepaid debit programs for many large issuers (i.e., issuers with \$10 billion or more in assets) are significantly smaller in scale than their standard debit programs, and thus do not have the requisite economies of scale to generate lower costs per transaction. Second, general-use prepaid cards usually operate on different processing systems (typically outsourced to third party processors) due to the significantly different underlying account structures of general-use prepaid cards when compared to standard debit cards. As a result, aggregating the two types of debit cards conceals the true costs to issuers associated with general-use prepaid cards.

3. To Facilitate Collection of a Broad Sample of Debit Card Program Cost Structures, the Board Should Allow for, but not Mandate, the Interchange Issuer Survey to be Completed by Exempt Issuers.

Given the Board's desire to collect information that will allow it to make well-informed decisions based on a robust understanding of the debit card marketplace, we recommend that the Board expand the Interchange Issuer Survey to allow exempt issuers (for example, those with assets below \$10 billion) to participate voluntarily in the Interchange Issuer Survey. Importantly, exempt issuer participation should not be mandatory; rather, participation should be at the exempt issuer's option. Offering exempt issuers the opportunity to complete the Interchange Issuer Survey on a voluntary basis allows the Board to observe debit card transaction and program cost information with respect to financial institutions not subject to the interchange fee standards. Collecting data on the costs incurred to provide debit programs and transactions by a broader range of issuers will allow the Board (and Congress, if such information is reported) to obtain a holistic perspective of the highly competitive debit card marketplace when evaluating Regulation II and adjusting the interchange fee standards.

- C. The Interchange Issuer Survey Oversimplifies the Mechanics and Typical Issuer Approach to Accounting for Fraudulent Transactions and Associated Fraud Losses.

Fraud associated with debit cards is a significant concern for all issuers, and the Associations strongly support the Board's continued emphasis on fraud and issuer recovery of its associated costs, including in the Interchange Issuer Survey. The approach of the Interchange Issuer Survey in accounting for and addressing fraud losses,

however, should be improved. As an initial matter, given the diverse nature of issuer debit card programs, we question whether there is utility in providing a fraud prevention checklist that dictates issuer responses (although we encourage inclusion of a non-exclusive list of the types of fraud prevention activities that issuers should account for in reported cost data). The items currently included in the proposed checklist (“transaction monitoring, merchant blocking, data security, and PIN customization”) are useful guides or examples but it is unlikely that these categories, as currently conceived, are applied uniformly in issuer cost accounting or other reporting structures. If the intent is for the Board to gather information regarding evolving fraud detection and prevention techniques, then the Interchange Issuer Survey should request such information explicitly. This is not to say, however, that the Board should not give helpful examples of fraud prevention costs that should be reported in the Interchange Issuer Survey. As indicated above, the Board should provide such specific examples of the types of information that should be reported, but the examples should not be limiting or issuers are likely to underreport relevant data.

In addition, the Interchange Issuer Survey fundamentally underestimates the complexity and costs associated with debit card transaction fraud monitoring, particularly in terms of loss allocation among varying methods of fraud. In proposing rigid categories of fraud, including “card-not-present, counterfeit, lost and stolen, account takeover and other,” the Board appears to ignore the perpetually evolving nature of fraud and fraud prevention techniques. Further the Interchange Issuer Survey erroneously assumes that these categories are mutually exclusive (i.e., the sum of all categories equals total fraud transactions and fraud losses), with no guidance or ability to address overlapping fraud categories (e.g., a card-not-present transaction conducted with a counterfeit or lost and stolen card). The Board also should ensure that the Interchange Issuer Survey captures all costs associated with fraud. For example, the Interchange Issuer Survey should be revised to include the customer service costs associated with potentially fraudulent account activity, which may be both time and resource intensive. Given the importance of fraud monitoring and fraud costs to issuers, the Interchange Issuer Survey should be revised to acknowledge and allow for the reporting of costs associated with the full variety of present and future fraud prevention methodologies and associated costs.

D. The Interchange Issuer Survey Request for Data Related to Network Incentive Payments Does Not Facilitate Meaningful Data Analysis Due to the Issuer-Specific Nature of These Types of Payments.

Incentives paid from networks to issuers are generally incomparable across issuers without significant individualized reconciliation. The payments vary greatly from issuer to issuer and network to network, often are painstakingly negotiated between networks and issuers, and depend heavily on the nature, scope and duration of the relationship between the issuer and the network and the reciprocal payments to be made by the issuer to the network over the life of their agreement. This individualized nature makes incentive payments difficult to evaluate across issuers, and makes this type of

information unsuitable for collection in a general survey format or reporting on an aggregate basis. For example, some networks charge assessments that can be offset against network-to-issuer incentives, some do not. Some issuers use networks for processing services, some do not. Indeed, the Board recognized the individualized nature of incentive payments in its follow up Frequently Asked Questions on Regulation II issued in September, indicating that a signing bonus, for example, may be allocated by an issuer in any reasonable and consistently applied manner.<sup>36</sup> Given that incentive payments are unique to each issuer's relationship with its network and can only be accurately evaluated under Section 920(a) and Regulation II through an individualized examination, the value in collecting this information through the Surveys and of aggregating the resulting data is dubious.

To the extent that the Board is concerned about circumvention or evasion of Regulation II, we note that enforcement of those provisions, including any information gathering related thereto, is the proper purview of the applicable regulatory agency vested with enforcement authority over the applicable parties to the incentive arrangement. To that end, it is both more productive and more appropriate for the Board and other applicable regulators with supervisory authority over issuers to consider these types of payments in the context of an individual bank examination rather than as part of a generally applicable survey – information that may be highly useful in the examination context may not be useful (or worse may be misleading) as part of a multilateral information gathering process. Whether a particular incentive arrangement between a debit card issuer and a payment card network constitutes circumvention or evasion (either as net compensation or applying the more general facts and circumstances test) will depend, to a great degree, on unique and specific characteristics of the relationship between the issuer and the network. Accordingly, we recommend that the Board not request this information as part of the Interchange Issuer Survey.

If the Board maintains the Interchange Issuer Survey's requests for incentive payment information, clarity in the information request is paramount, and the Associations recommend two clarifications to the instructions. First, the Board should revise the instructions to Question 4 to state the following: "Payments and incentives paid by network to issuer and included in net compensation calculations pursuant to Regulation II, Section 235.6(b)." Second, the Board should clarify that the instructions included in the header of "Section II: All Debit Card Transactions," which were "Please enter totals only for transactions and associated costs related to debit cards linked to U.S.-domiciled accounts involving a merchant located in the United States during the calendar year (CY) 2011," also apply to "Question 4: Payments and incentives paid by network to issuer."

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<sup>36</sup> Board of Governors of the Federal Reserve System, Frequently Asked Questions About Regulation II (Debit Card Interchange Fees and Routing) § 235.6 Q1.

E. The Interchange Issuer Survey Should Be Completed at the Issuer Holding Company Level and Not by Individual Financial Institutions that Are Part of Holding Company Structures.

By the Board's own account, it anticipates approximately 580 respondents to the Interchange Issuer Survey.<sup>37</sup> We contend, however, that the pool of potential respondents with actual debit transaction data will be much lower. While there may be 580 financial institutions that meet the participation criteria (i.e., are part of an affiliated group that has at least \$10 billion in assets), many of them are individual affiliates of a larger group, but do not issue debit cards. Accordingly, we anticipate that many of the 580 potential respondents will provide "zero" answers individually. Further, most affiliated institutions will share debit program cost structures, and to the extent they do not, holding company respondents can provide blended cost data without adversely impacting the collection results.

On this basis, the Associations request that the Board allow for completion of the Surveys on a consolidated basis at the holding company level rather than at the individual affiliate level. Requiring individual issuer responses, as opposed to holding company-level responses, will be burdensome with little apparent benefit. The Board took this holding company reporting approach in the 2010 interchange issuer survey, and we recommend the same approach for the Issuer Interchange Survey to avoid the burden on issuers of having to complete a number of surveys for their affiliate financial institutions that do not issue or otherwise incur costs associated with debit cards.

V. Comments on the Interchange Network Survey

A. The Interchange Network Survey Should Only Contain Two 2011 Measurement Periods: Before October 1 and October 1 Through Year End.

Within the Interchange Network Survey, the Board proposes three distinct measurement periods for the 2011 reporting year: before July 1, July 1 through September 30, and October 1 and after. While we recognize the utility in the Board's emphasis on pre- and post- Regulation II effective date financial metrics, we submit that the better approach is a two period dichotomy that examines only data before October 1 and from October 1 through year end. Presumably the Board desires to test the impact of the Regulation II on the practices of the networks in paying/assessing fees. If that is the Board's goal, then the better measurement periods are before and after the new interchange fee standards took effect (i.e., October 1).

In that regard, many of the preparatory steps and contractual adjustments required to comply with Regulation II became effective on October 1, and not during the July 1 to September 30 "implementation" period. For example, during this implementation

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<sup>37</sup> Supporting Statement for the Interchange Transaction Fees Surveys, at 6.

period, regulated issuers and networks modified their agreements to eliminate continued payment of incentives that would violate the interchange fee standards as of October 1. Further, annual incentive payments earned during the first nine months of the year, prior to the October 1 effectiveness of the interchange fee standards, may have been paid during this period as part of the parties' fulfillment of preexisting contractual obligations. Similarly, issuers may have returned to networks unearned incentives paid for future performance that is now proscribed by Regulation II during this period.

To the extent that the Board is interested in observing network and issuer behavior leading up to the October 1 effective date during the "implementation" period, that information likely is of limited value to the Board. As indicated above, although there were intense periods of negotiation between networks and issuers during the implementation period, such negotiations and resulting arrangements (1) would have had no impact on transaction volumes prior to October 1, (2) often involved unwinding existing arrangements proscribed by Regulation II, and (3) addressed new commercial terms that generally were not fully in force until October 1. Further, as discussed below, to the extent that the Board desires to gather this information to test for circumvention or evasion by identifying any "channel stuffing" or similar "under the wire" payments, we submit that testing for circumvention or evasion should be performed by the applicable regulatory agency with enforcement authority over a party.

B. The Interchange Network Survey Emphasis on Network Incentive Payments Does Not Facilitate Meaningful Data Reporting Due to the Issuer-Specific Nature of These Types of Payments.

As with the Interchange Issuer Survey, we maintain the position that the highly individualized nature of incentive arrangements between issuers and networks in effect (or entered into) after October 1 make them poor candidates for meaningful evaluation or aggregation for reporting through the Surveys. For all of the reasons highlighted in Section IV.D above, we submit that the Board should refrain from seeking information on incentive or similar payments from networks to issuers, leaving that evaluation to issuer and network regulators who are positioned to evaluate such information in context.

VI. Comments on the Government-Administered, General-Use Prepaid Card Issuer Survey

A. Certain of the Government Issuer Survey Reporting Requirements Are Unduly Burdensome on Issuers Because of the Role Issuers Play in These Programs.

Consistent with the views expressed regarding the Interchange Issuer Survey and the Interchange Network Survey, the Associations believe that the Government Issuer

Survey should seek robust information with respect to costs associated with government programs. We also believe that issuers likely are in the best position to provide certain financial information to the Board regarding prepaid cards associated with government-administered payment programs.<sup>38</sup> Nevertheless, the issuance of government-administered, general-use prepaid cards is fundamentally different than the issuance of other types of debit cards. The difference arises because the role of the issuer in these government-administered programs is unique.

The Government Issuer Survey should be revised to enhance the precision of the categories of information requested in a manner that is tailored to the unique characteristics of government-administered payment programs. For example, there are a number of general “catchall” fee concepts in the current draft Government Issuer Survey that require better definition and clarity of scope (e.g., “account servicing fees” and “penalty fees”). Failure to provide clarity regarding these types of categories will result in the same data comparison (or survey response) challenges the Board encountered in 2010. In addition, certain categories of information are treated differently depending on the nature of the government program (e.g., number of benefit recipients, which may be households, dependents or individuals depending on the program), so when the Survey asks for recipient information (e.g., in Section II, Questions 6-7) without providing for additional opportunity to specify how the particular government program categorizes recipients, the resulting numerical data cannot be meaningfully compared. Further, issuers often are not in the best position to provide data to the Board on how benefits under a particular government-administered payment program are determined or allocated; rather, this information is best obtained from the government entity administering the program.

B. The Government Issuer Survey Reporting Requirements Should be Drafted to Reflect the Unique Nature of Government Programs and the Associated Costs.

In a number of instances, the Government Issuer Survey should be revised to clarify the information the Board is requesting to ensure that appropriate government program information, including with respect to costs, is collected. For example, Section X of the Government Issuer Survey requests minimum and maximum amounts for each program fee. As currently written, we submit that requesting “minimum transaction fee” and “maximum transaction fee” in dollars creates ambiguity as to how issuers should respond. First, it is unclear whether these minimum/maximum amounts should be reported at the program-level or at the transaction-level. In addition, many government

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<sup>38</sup> While some of the data requested in the Surveys is publically available at the state-level via a Freedom of Information Act request, it is standard practice for issuers to mark competitively-sensitive data as “trade secret,” “confidential” or “proprietary.” Specifically, Government Issuer Survey questions requesting the details of contract terms and government agency compensation structures request issuers to disclose sensitive commercial or financial information. We submit that all program-specific information is proprietary and that the Board should not release any information that would individually identify specific programs or issuers.

programs are not structured to include a standard minimum or maximum rate, but may calculate fees based on transaction amount or may allow for fee waivers in certain circumstances (e.g., a \$2 flat fee for a certain transaction may be waived for the first two occurrences of the transaction, but then apply for any subsequent occurrences). As a result, reporting a single dollar value in the case of a minimum percentage would not be feasible or accurate. We submit that the Board should provide clarity and further guidance for how to respond to the minimum and maximum transaction fee questions when a government program's fee structure may differ from what is contemplated by the Government Issuer Survey.

Similarly, the Government Issuer Survey should account for other unique cost structures of government programs. For example, many government agencies mandate that their benefit programs include at least one free over-the-counter transaction at an issuer's proprietary branches per payment period – allowing cardholders over-the-counter access to funds. In-person interactions are the most expensive customer-servicing channels that an issuer provides. The expense increases even further, however, when including fees issuers incur when prepaid card recipients access funds by over-the-counter or ATM transactions at non-proprietary locations. The Government Issuer Survey should, to the extent not already covered, collect issuer unreimbursed cost information associated with customer service via the teller channel and at nonproprietary ATMs. Considering these costs will greatly assist the Board in evaluating the unique cost structure involved in providing cardholder services to recipients of government programs, including how the costs associated with the requirement for cardholder access to funds should be reflected in interchange levels.

Government programs also are unique for the high concentration of cards that may be loaded with multiple sources of funds. In that regard, the Government Issuer Survey often is unclear whether it is asking for information by card or by program, which creates unique challenges for these “stacked” (i.e., multi-purse) cards where a single card may include balances for multiple government programs. For example, Section III, Question 1a asks for “cards on which multiple benefit or payment types are received,” which makes sense in the context of an aggregate/all program response, but less so with respect to a particular program. The same is true for all of Section IV, which asks for information regarding “Funding” without making it clear (1) whether the survey seeks only government funding information, (2) whether the survey seeks information on a per-program basis, or (3) whether the information should be recorded on a per-card basis. A stacked card with \$100 in social security and \$50 in Medicaid funding could yield a response of \$100, \$50 or \$150 to each of the Section IV questions, each of which theoretically could be a correct response. The Government Issuer Survey should allow for explanations for these categories to ensure meaningful comparison of data. As with the Interchange Issuer Survey and Interchange Network Survey discussed above, precision is critical to generating meaningful information on which the Board (and in the case of this Survey, Congress) may rely.



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/s/  
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## **APPENDIX A**

### **The American Bankers Association**

The American Bankers Association (“ABA”) represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its 2 million employees. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities. Learn more at [www.aba.com](http://www.aba.com).

### **The Clearing House**

Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world’s largest commercial banks, which employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. The Clearing House Payments Company L.L.C. provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated clearing-house, funds-transfer, and check image payments made in the U.S. See The Clearing House’s web page at [www.theclearinghouse.org](http://www.theclearinghouse.org).

### **The Consumer Bankers Association**

The Consumer Bankers Association (“CBA”) is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include most of the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry’s total assets.

### **The Credit Union National Association**

The Credit Union National Association (“CUNA”) is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation’s nearly 7,300 state and federal credit unions, which serve about 92 million members. CUNA benefits its members by partnering with state credit union leagues to provide proactive legislative, regulatory, and legal representation, the latest information on credit union issues, economic reports, regulatory analyses and advocacy, compliance assistance, grassroots and political advocacy efforts, and education. Visit [www.cuna.org](http://www.cuna.org) for more information about CUNA.

### **The Financial Services Roundtable**

The Financial Services Roundtable (“Roundtable”) represents 100 of the largest integrated

financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$74.6 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs.

### **The Independent Community Bankers of America**

The Independent Community Bankers of America ("ICBA"), the nation's voice for community banks, represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold over \$1 trillion in assets, \$900 billion in deposits and \$750 billion in loans to consumers, small businesses and the agricultural community. Visit ICBA at [www.icba.org](http://www.icba.org).

### **Midsize Bank Coalition of America**

The Midsize Bank Coalition of America ("MBCA") is a group of 22 US banks formed for the purpose of providing the perspectives of midsize banks on financial regulatory reform to regulators and legislators. The 22 institutions that comprise the MBCA operate more than 3,300 branches in 41 states, Washington, D.C., and three U.S. territories. Our combined assets exceed \$322 billion (ranging in size from \$7 to \$25 billion) and, together, we employ approximately 60,000 people. Member institutions hold nearly \$241 billion in deposits and total loans of more than \$195 billion.

### **The National Association of Federal Credit Unions**

Founded in 1967, the National Association of Federal Credit Unions ("NAFCU") exclusively represents the interests of federal credit unions before the federal government. Membership in NAFCU is direct; no state or local leagues, chapters or affiliations stand between NAFCU members and its headquarters in Arlington, VA. NAFCU provides its members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU represents nearly 800 federal credit unions, accounting for 63.9 percent of total FCU assets and 58 percent of all FCU member owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs. Learn more at [www.nafcu.org](http://www.nafcu.org).