



December 31, 2010

Via Email

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

Attention: Docket No. R-1393 and RIN No. 7100-AD55

Re: Comments on Regulation Z Proposed Rule

Dear Ms. Johnson:

This letter is submitted by MetaBank d/b/a Meta Payment Systems (“MetaBank”) in response to the proposed rule published in the *Federal Register* on November 2, 2010 at 75 *Fed. Reg.* 67458-67509 (“Proposed Rule”) relating to open-end (not home-secured) credit plans, in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”). Among other things, the Proposed Rule seeks to revise the definition of “credit card account under an open-end (not home-secured) consumer credit plan” in Section 226.2(a)(15) of Regulation Z, as added by the CARD Act, and the Board’s Official Staff Interpretations relating thereto. These proposed revisions, particularly those in the Official Staff Interpretations, would, among other things, add examples of certain devices that would be deemed “credit cards.” Specifically, the proposal would add that if a line of credit can also be accessed by a card (such as a debit card or prepaid card), then that card is a credit card for purposes of Section 226.2(a)(15).

MetaBank is a nationwide issuer of prepaid cards, including general purpose reloadable prepaid cards (“GPR cards”). We provide a turnkey national branded prepaid card solution that includes GPR card products to financial institutions and other merchants who desire to offer a prepaid solution to their customers. We also partner with leading companies to deliver innovative prepaid card products intended to improve the lives of traditionally overlooked and underbanked consumers.

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MetaBank is a member of the Network Branded Prepaid Card Association (“NBPCA”), an association dedicated to the long-term success of network branded prepaid cards. Like the NBPCA, MetaBank has devoted significant resources to educating consumers, the media, and policymakers about prepaid card products. Clarifying the important differences between credit and prepaid cards has been among our highest educational priorities. We support and confer with the comments submitted by the NCPCA in connection with the Proposed Rule.

An adoption of the Proposed Rule with its current language would severely damage the enormous strides the prepaid industry has made in trying to educate the general public about the important differences between prepaid and credit card products.

Furthermore, millions of American consumers use GPR cards as a substitute for traditional bank accounts (e.g. checking accounts), either because they are unable to obtain a traditional bank account, they do not desire a traditional bank account or formal banking relationship, or they simply prefer the convenience offered by a GPR card. The functionality of a GPR card account is analogous to a traditional checking account with debit card access, minus in most cases check-writing functionality. Yet the Proposed Rule discriminates against GPR cards in three very important ways.

First, the Proposed Rule suggests that if loan funds from a line of credit are accessible by an account number and such funds are transferred to checking account (or other asset account), the account number used to access such funds is not a credit card. Presumably this would also be the case if the loan funds could be obtained by paper check (i.e., the paper check is the device used to access the loan funds). Yet, if loan funds from a line of credit are accessible by a prepaid card, the Board is proposing that the prepaid card be considered a “credit card”, even in cases, for example, where the loan funds are transferred from the credit account to a GPR card account established primarily to hold consumer funds. Whether it’s a GPR card account or a checking account, in both cases, funds from the line of credit are being transferred from a credit account to an asset account. However, the GPR card account in this example is being treated differently from the checking account due to the device used to access the loan funds. Should the Board decide to re-characterize certain devices as “credit cards,” it should do so uniformly for all devices – checks, debit cards, prepaid cards, account numbers or any other device that functions similarly with respect to accessing a line of credit account. By re-characterizing debit and prepaid cards as “credit cards” without doing so for other devices that have similar functionality,

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the Board is creating an irrational distinction based on the composition of the device rather than the underlying functionality of the device.

Second, if the prepaid card has functionality to allow consumers to load and spend their own funds and is not solely a device used to access loan funds to purchase goods and services at point of sale, the prepaid card account should not be treated any different than any other asset account. We believe the Board should clarify in the Proposed Rule that a GPR card account will be considered an asset account if such account was established primarily to hold consumer funds and not solely to access loan funds for point of sale purchases.

Third, GPR cardholders should have access to the same features and products available to checking account holders and other asset account holders. We are concerned that the current language of the Proposed Rule creates a confusing and complex regulatory burden that undoubtedly will limit credit options for GPR card users and prevent them from having access to credit products that are available without similar burdens to checking account holders and other asset account holders.

MetaBank agrees that it would be damaging to consumers and our industry if a prepaid card was used solely as an access device for credit in an attempt to circumvent the requirements of the CARD Act. Such a product would be counterproductive to the enormous efforts that have been made by the prepaid industry to educate the general public about the unique differences prepaid cards and credit cards. However, we draw an important distinction between prepaid products designed to circumvent the requirements of the CARD Act and legitimate prepaid debit card products used by millions of American consumers today. We do not believe that the Board's Proposed Rule and proposed revision to the Official Staff Interpretations make this distinction.

If the goal of the proposed revisions is to prevent intentional circumvention of the CARD Act, we believe that the Board and all of the bank regulatory agencies already have the authority to prohibit such practices under the Federal Trade Commission ("FTC") Act to prohibit unfair or deceptive acts or practices ("UDAP"). In fact, we believe it would be more effective for the Board to exercise its UDAP authority rather than to add language to the Official Staff Interpretations under Regulation Z that would likely create mass confusion about the differences between prepaid cards and credit cards.

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However, if the Board believes it is necessary to add language to the Official Staff Interpretations of Regulation Z to address such activity, MetaBank has serious concerns about the current language in the proposed revisions and the practical application of such requirements. Although we do not believe that it was the Board's intention to subject certain debit and prepaid card products to the regulatory framework of the Truth-In-Lending Act, it is our belief that the current language of the proposed revisions does just that.

Below please find an outline of the concerns of MetaBank with the current language of the proposed revisions, along with a proposal for dealing with the Board's apparent concerns over certain entities that are using the pretext of a prepaid card or debit card to try to circumvent the requirements of the CARD Act. MetaBank appreciates the opportunity to comment on the Proposed Rule and respectfully requests that the Board consider adopting the suggestions set forth herein.

Significant Concerns with Current Language of Proposed Revisions to the Official Staff Interpretations Relating to Section 226.2(a)(15).

A. Including debit or prepaid cards in the definition of "credit cards" will create significant confusion for consumers.

Network branded GPR cards are relatively new payment instruments and are used by millions of traditionally overlooked and underbanked consumers. As mentioned above, GPR card accounts are analogous to checking accounts with debit card functionality, minus in most cases check-writing functionality. The main distinction between GPR card accounts and checking accounts with debit card functionality is that consumer funds are pre-loaded to the GPR card accounts, thus preventing in most circumstances the ability of GPR cardholders to spend more than the value loaded to their GPR card account. These cards are not and never have been "credit cards" as defined in Section 226.2 of Regulation Z. Indeed, precisely because the cards are not credit cards, GPR cards have enjoyed tremendous growth in recent years as consumers attempt to curtail their debt load and avoid high interest rates and overdraft charges.¹

¹ See *The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006 – 2009* (December 8, 2010). Available at <http://www.federalreserve.gov/newsevents/press/other/20101208a.htm>. The study found that more than 75 percent of noncash payments in the U.S. were made electronically in 2009, a 9.3 percent increase on an annual basis since 2006. Prepaid cards grew 21.5 percent annually from 2006 to 2009,

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Because a prepaid card is akin to a debit card linked to an asset account, entirely different legal, regulatory, and payment card association rules apply to prepaid cards and prepaid card accounts as opposed to credit cards, and there are different transaction capabilities and fundamentally different fee structures associated with them.² The only similarity between prepaid cards and credit cards is that they are both tangible plastic cards that have the network branch imprinted on them.

Admittedly, the newness of prepaid cards and their physical similarities to credit cards originally created confusion in the marketplace that has not been fully eliminated. In response, media, government agencies, nonprofit groups, financial institutions, and credit, prepaid, and debit card companies have contributed news stories, financial education tools, public relations campaigns, and the like, to help consumers understand these very important distinctions. MetaBank shares the concern of the NBPCA that the progress made to educate consumers will languish if debit or prepaid cards are included in the definition of “credit card,” and that the resulting confusion will: (a) create unnecessary financial and seemingly insurmountable compliance burdens; (b) remove a critical access point to the financial mainstream by discouraging financially overlooked and underbanked consumers from obtaining and using prepaid cards, or even worse (c) mislead consumers into purchasing prepaid cards because they believe that they are credit cards. This would be a disservice, particularly to underserved consumers, as the anti-fraud protections afforded certain network-branded prepaid card accounts under Regulation E and the card association rules give these consumers protections over carrying cash and allow them to make certain purchases, such as online purchases and online bill pay, that are not available to cash only users.

B. Debit and prepaid cards should only be considered “credit cards” if the sole functionality of the device is to receive and spend loan proceeds.

As previously noted, in its proposed additions to the Official Staff Interpretations, the Board staff has proposed to include the following clarification: “[I]f the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of §

according to the report - the highest rate of growth among any noncash payment type. See also 6th Annual Network Branded Prepaid Market Assessment, Mercator Advisory Group, 2009; and *One Size Does Not Fit All, A Comparison of Monthly Financial Services Spending*, Center for Financial Service Innovation (CFSI), 2008.

² Electronic Funds Transfer Act, 15 U.S.C § 1693 (1978); Regulation E, 12 CFR 205.

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226.2(a)(15)(i).” It is unclear what products the Board intended to capture by adding this statement. We believe that debit and prepaid cards should only be considered “credit cards” if the *sole* functionality of the card is to receive and spend loan proceeds (i.e., there is no ability for the consumer to use their debit or prepaid card to access funds other than loan proceeds). The fact that a consumer opens a line of credit, makes a conscious decision to take an advance, and has the loan proceeds from that advance transferred to their prepaid card account or checking account should not transform their prepaid card or debit card into a “credit card.” Indeed, these transactions should not be treated any differently than those made by a consumer who obtains an advance from a line of credit, receives cash, and either loads the cash onto their prepaid card or deposits it to their checking account.

- C. **Any time there is a transfer of loan funds from the credit account into an asset account (such as a checking account, GPR card account or other asset account established primarily to hold consumer funds), whether it’s with the same creditor or not, the account number (or any other device that may be used to access the loan proceeds) should not be considered a “credit card.”**

The proposed additions to the Official Staff Interpretations of the definition of “credit card” include the following:

For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of §226.2(a)(15)(i) (emphasis added).

First, we believe this language should be clarified to provide that a GPR card account that allows consumers to load and spend their own funds (and not solely loan proceeds) is an asset account, just like a checking account or any other asset account.

Second, the above language seems to make clear that where there is a transfer of funds between a credit account and an asset account with the same creditor, the account number is not a credit card. On the other hand, if there is a transfer of funds between a credit account with one institution and an asset account with a different institution, it appears by implication that the account number or potentially any other device that could be used to access the loan proceeds *would* be a credit card. We fail to understand the rationale behind the underscored language and

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believe it will only serve to create confusion in the industry and potentially bring certain prepaid and debit cards into the realm of credit cards when that was not the card issuer's intent. We believe that whenever there is a transfer of loan funds from a credit account to an asset account, the device used to obtain access to the credit (whether a check, account number, debit card, prepaid card or other device) should not be a credit card, regardless of whether the credit account and asset account are with the same or different creditors. Consider the following example:

Bank A opens a line of credit for a consumer. The Consumer takes an advance and has the advance transferred via ACH to their prepaid card account or checking account at Bank B. Under the current language of the Board's proposed rule, Bank B's prepaid card or debit card could be reclassified as a "credit card" (a product which Bank B neither disclosed for or even intended to offer).³

If a consumer transfers loan proceeds to a checking account at the same or a different financial institution and that checking account is accessible with a debit card, neither the account number nor debit card should be transformed into a "credit card" simply because the credit account and asset account are held at different institutions. Similarly, if a consumer transfers loan proceeds from a credit account into a GPR card account and the GPR card account is held at a different financial institution, that prepaid card should not become a "credit card" simply because the credit account and the GPR card account are held at different institutions.

However, the current language of the proposed addition to the Official Staff Interpretations would arguably make debit cards and prepaid cards "credit cards" in these instances. To avoid a situation in which a consumer can obtain a financial product from one institution and then use it in a manner which causes another financial institution's product to become something it never intended, we urge the Board to clarify that any time there is a transfer of loan funds from a credit account to a checking account, GPR account or other asset account established primary to hold consumer funds, whether or not the accounts are held with the same institution, the device used to obtain access to the credit (whether a check, account number, debit card, prepaid card or other device) is not a "credit card."

³ Such an example becomes even more complex if the debit card is "decoupled," and issued by a third financial institution. For additional information on how decoupled debit cards work, see http://www.americanbanker.com/usb_issues/118_2/-343006-1.html and <http://www tempo.com/Press/20080226-american-banker.pdf>.

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D. The act of transferring loan funds from a credit account to an account underlying the debit card or prepaid card should not transform that debit card or prepaid card into a “credit card.”

Many checking accountholders and, increasingly, GPR card accountholders, obtain lines of credit in which funds either are automatically transferred, or can be affirmatively transferred, into an accountholders’ checking account or GPR card account in the event transactions presented against the asset account would otherwise create a negative balance. These lines of credit are typically designed to transfer funds from the line of credit account to the accountholder’s asset account in either (a) an amount sufficient to cover the negative balance, or (b) preset incremental amounts.

The last line of the Official Staff Interpretations provides, “Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of § 226.2(a)(15)(i).” First, under Section 226.2(a)(15)(ii), “an overdraft line of credit accessed by a debit card” is excluded from the definition of “credit card account under an open-end (not home-secured) consumer credit plan.” The proposed language appears to negate this clearly-defined exclusion by calling into question whether a transaction that triggers an automatic transfer of funds to the accountholder’s asset account to cover a negative balance would change the debit card or prepaid card into a “credit card.” Second, the proposed language calls into question whether a transfer of funds in an incremental amount to the consumer’s checking account or GPR card account upon the affirmative consent or request of the consumer would change the debit card or prepaid card into a “credit card.” When line of credit advances are triggered by the use of a debit card or prepaid card and the amount of the advances are automatically transferred to the accountholder’s asset account to cover a negative balance or when the consumer affirmatively consents to or requests the transfer of such funds to the consumer’s checking account or GPR card account, the Official Staff Interpretations should be clarified to make it clear that the debit card or prepaid card would not be considered a credit card in connection with these types of advances.⁴

E. It is unclear which disclosures would apply and what the content of such disclosures would look like if a prepaid card is reclassified as a “credit card.”

⁴ See footnote 4. Again, the application of the proposed language to “decoupled” debit cards becomes very complex.

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As indicated above, we believe that the proposed additions to the Official Staff Interpretations create confusion as to when a prepaid card could fall within the definition of a “credit card.” Moreover, when a prepaid card does fall within the definition of “credit card,” several additional, potentially more confusing, questions arise:

1. Which disclosures should be provided (the prepaid card disclosures, the credit card disclosures, both⁵)?
2. What is the triggering point when the credit card disclosures must be provided (when the consumer purchases the prepaid card, even if no credit account exists, or at some later time)? Is it possible that a prepaid card is not a “credit card” at the time of purchase, but later becomes one?
3. How should the periodic statements distinguish credit balances from the consumer’s own funds? Is it possible for the billing cycles and due dates to change based upon whether or not there is a credit balance?
4. Will consumers receive the disclosures twice – from both the entity extending credit and the issuer of the card (if different)? If the originator of the loan and the issuer of the card are the same entity, can the disclosures be combined without confusing consumers?

The Regulation Z credit card rules and model forms associated therewith are not suited for application to prepaid card products and will undoubtedly result in increased consumer confusion. If the Board intends to make such rules applicable to prepaid cards, additional rules and clarification as to how to apply the Truth-In-Lending Act and its implementing regulations will apply to prepaid card products must be proposed and comment sought prior to any mandatory compliance date. However, we do not believe this approach is necessary or appropriate for the reasons set forth above.

⁵ Regulation Z, 12 C.F.R. §§ 226.5a, 226.6.

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Alternative Proposal in Light of Concerns Noted Above

We support the Board’s efforts to stop entities from circumventing the CARD Act provisions on open-ended credit by issuing a “loan access device” which may be labeled a debit card or prepaid card, but functions essentially the same as a credit card. We believe it would be deceptive to call a product a debit or prepaid card when the card does not act in any way like a debit or prepaid card, but instead functions exactly like a credit card. However, as demonstrated from the concerns of the current language of the proposed revisions, MetaBank believes that it would be more appropriate for the Board to use its UDAP authority to prevent such intentional circumvention of the CARD Act rather than to risk creating substantial consumer and industry confusion associated with providing credit card disclosures with the issuance of a debit or prepaid card. Such an approach would eliminate the potential to create consumer confusion about whether certain debit and prepaid card products are also “credit cards.” Plus, it avoids the “slippery slope” created by re-characterizing some devices (i.e. prepaid cards, debit cards and account numbers) as a “credit card” and not others (i.e. a paper check or ACH), even in cases where the latter devices have similar functionality with respect to accessing a line of credit. Finally, it avoids placing the Board in a position where it must constantly monitor innovation in the marketplace to determine whether certain devices constitute “credit cards” for purposes of Regulation Z.

If, however, the Board believes that it is necessary to add language to Regulation Z to clarify that certain types of devices are “credit cards” if the only funds that may be accessed using such devices are funds from a line of credit, we would propose the following changes to the current language of the proposed changes to the Official Staff Interpretations, along with the necessary changes to the Section-by-Section Analysis in light of the concerns outline above.

Subpart A—General

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Section 226.2—Definitions and Rules of Construction

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2(a)(15) Credit card.

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2. Examples.

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ii. In contrast, credit card does not include, for example:

* * * * *

C. ~~An account number~~ A device (such as a check, account number, debit card, general purpose reloadable prepaid card, or similar device) that accesses a credit account, unless the ~~account number device~~ can access an open-end line of credit solely to purchase goods or services at point of sale. For example, if a creditor provides a consumer with an open end line of credit that can be accessed by an account number, debit card, general purpose reloadable prepaid card, check, or other similar device in order to transfer funds into ~~another~~ an asset account (such as ~~an asset account~~ a checking account, general purpose reloadable prepaid card account, or other account established primarily to hold consumer funds, whether or not such account is held with the same creditor), the ~~device account number~~ device account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the ~~account number device~~ device allows the consumer to ~~can also~~ access the line of credit solely to purchase goods or services at point of sale, including the Internet, and not to transfer funds into an asset account (such as an account number that can be used to purchase goods or services on the Internet), the ~~device account number~~ device account number is a credit card for purposes of § 226.2(a)(15)(i). ~~Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of § 226.2(a)(15)(i).~~

If this approach were adopted, an issuing bank would at least know at the outset whether its product was a prepaid card or a credit card and could tailor its disclosures accordingly. Furthermore, this language should go a long way in preventing entities from circumventing the CARD Act by labeling a card as a debit card or prepaid card when the card's sole functionality is to allow consumers access to credit to make purchases at point of sale.

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Conclusion

We respectfully urge the Board to consider our comments and suggestions. If you have any questions, or would like to discuss any of the matters outlined above in further detail, please do not hesitate to contact me at 605-782-0796.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy M. Lauck".

Amy M. Lauck
Senior Legal Counsel
MetaBank d/b/a Meta Payment Systems

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