

February 21, 2010

*Via Email*      [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

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

**Attention: Docket No. R-1404 and RIN No. 7100 AD63**

Re:      Comments on Notice of Proposed Rulemaking Regarding Prepaid Access

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System ("Board") on behalf of InteliSpend Prepaid Solutions, LLC ("InteliSpend") in response to the Proposed Rules published in the Federal Register on December 28, 2010 at 75 Fed. Reg. 81722-81763 ("Proposed Rule") relating to debit card interchange fees and routing. The Proposed Rule was introduced to implement Electronic Funds Transfer Act Section 920, as added by Section 1075 (the "Durbin Amendment") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

InteliSpend offers business-to-business prepaid reward solutions for corporate incentive and consumer promotions programs. Our clients use our wide selection of prepaid reward cards for programs such as employee recognition, sales incentives, dealer/distributor incentives, and consumer promotions.

InteliSpend is a member of the Network Branded Prepaid Card Association ("NBPCA") and supports the comment letter dated February 17, 2011 submitted by the NBPCA on the Proposed Rule.

Of particular concern to InteliSpend, are the following:

- Requirements under the Durbin Amendment and the apparent misalignment of the Proposed Rule related to the "reasonable and proportional" cost along with the timing of the fraud prevention increase. In Footnote 25 of the Proposed Rule, the per-transaction cost for prepaid cards is identified as 63.6 cents; an extraordinary difference from the price set at 7 and 12 cents. Clearly, the Proposed Rule does not offer a "reasonable and proportional" cost for providers of prepaid cards. Additionally, the permitted fraud prevention increase under the Proposed Rules should not be delayed beyond the cost impact; but should be implemented at the same time as the "reasonable and proportional" cost measures in all fairness to the institutions making these products available. The cost of fraud prevention should not be set aside while we wait for the financial allowance to be determined.
- The requirement of signature and PIN based transactions is onerous to issuers of signature based prepaid cards redeemable only for goods and services. The current signature based transaction requirements provide protection to consumers and keeps fraud at a manageable level. Adding PIN based transactions will not only directly increase the cost of the product; it will also increase the risk and fraud exposure, thereby further increasing the cost to support the product. This additional layer of cost will not be offset by an additional benefit to consumers. The application of PIN based transaction is better aligned with programs that require PIN functionality rather than a broad sweep of all types of prepaid products. Including prepaid products redeemable for goods and services in the PIN requirements goes well beyond what the product requires to protect consumers; regardless of whether the goods and services prepaid product is issued by a merchant or non-merchant.

- We have concerns related to several of the exemptions under the Proposed Rule.
  - First, we are concerned over the actual implementation and the effect on small issuers. We expect that despite the exemption, there will be a negative impact resulting from the price setting for larger issuers that will put downward pressure on exempted issuer products. As noted in Footnote 25 of the Proposed Rule, the cost of a prepaid transaction is much greater than the cost of signature or PIN debit transactions. Even for small issuers exempted under the Durbin Amendment, the market pressure will negatively impact business for exempted issuers as merchants are permitted to persuade consumers to pay with certain forms of payment. Naturally merchants will encourage consumers to use the payment instrument that is most beneficial to the merchant. The impact could be detrimental to small issuers despite the exemption.
  - Second, the exemption permitted under the CARD Act for “loyalty, award and promotion” cards is missing from the Proposed Rules. These reward products are not paid for by the consumer and should be exempted to permit such products to continue to be offered without the serious cost implications of the Durbin Amendment.
- We also have concerns regarding the amount of time permitted to implement the final rules. The timing should consider the amount of time reasonably required to implement, and the proposed timing is simply not reasonable. We support the NPBCA proposed effective date of October 1, 2013.

Finally, we offer a response to certain questions raised by the board in the Proposed Rule. IntelliSpend supports the responses provided by the NBPCA. Additionally we wish to comment on the following:

**QUESTION:** Selective authorization programs enable a merchant to offer gift cards to its customers and ensure that card funds are spent only within the participating merchant(s) without incurring the costs of setting up a separate program. There may be little difference between these programs and closed-loop retail gift card programs operated by a single retailer, but for the fact that these cards are accepted at merchants that are unaffiliated. However, requiring these selective authorization cards to comply with the network exclusivity and routing restrictions could be problematic and costly for the participating merchants with little corresponding benefit. Accordingly, comment is requested on whether a prepaid card that is accepted at a limited number of unaffiliated participating merchants and does not carry a network brand should also be considered a general-use prepaid card under the rule.

**RESPONSE:** Cards that are included in selective authorization programs provide unique benefits for cardholders and merchants. These include mall cards, resort cards, university cards and many other niche payment card products. We agree that such cards accepted at a limited number of unaffiliated participating merchants, **whether or not** they carry a network brand, should **not** be considered a general use prepaid card subject to the Durbin Amendment or the Proposed Rule. Similar to the exemption for general use prepaid cards meeting certain criteria under the Proposed Rules, we propose that any cards that are included in selective authorization programs be exempted under the Proposed Rule, whether or not the card carries a network brand. Selective authorization prepaid cards offer more protection to a consumer than a closed loop card because they permit spend at multiple retailers. Currently, the holder of a closed loop card may be negatively impacted by the retailer filing for bankruptcy protection. The holder of a selective authorization card can still redeem a card that is included in a selective authorization program and is left with additional shopping options in a case where a retailer’s financial condition changes and such retailer cannot or will not accept prepaid cards as a form of payment at the same value paid by or given to the consumer. We wish to emphasize that any allowance given to selective authorization cards should be given **whether or not** the cards carry a network brand.

We would like to stress the importance of the availability of prepaid products to all consumers in the United States. As President Obama recently stated, digitizing and improving payment efficiency is critical. IntelliSpend intends to continue to be an active and participating member of the prepaid market. We sincerely and respectfully request that you thoughtfully consider the impact of the Proposed Rule and take the time necessary to pass rules that will improve and protect the prepaid service availability while permitting those of us in the marketplace to grow our business and improve the services we offer. 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.

Sincerely,

