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August 27, 2010

Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

Re: TREAS-FinCEN-2009-0007; RIN 1506-AB07

Dear Sir or Madam:

The Independent Community Bankers of America<sup>1</sup> (ICBA) appreciates the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) notice of proposed rulemaking on regulations regarding stored value.

As mandated by the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, FinCEN is proposing to develop Bank Secrecy Act regulatory oversight of the stored value/prepaid products that have emerged into mainstream financial services by establishing clear requirements for certain non-bank actors involved in providing prepaid access.

In its proposal, FinCEN is revising the Bank Secrecy Act (BSA) regulations applicable to Money Services Businesses (MSBs) with regard to stored value by imposing suspicious activity reporting, customer information and transaction information recordkeeping requirements on both providers and sellers of prepaid access. The proposed changes will not affect banks' BSA responsibilities and are intended to address regulatory gaps that have resulted from the use of stored

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<sup>1</sup> The Independent Community Bankers of America 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. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an everchanging marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

value as an accepted payment method. Additionally, FinCEN does not intend for this rule to have an impact on the use of credit cards or debit cards and is meant to establish a clear difference between those systems and prepaid access and anticipates obtaining further insight to ensure the most accurate and precise terminology possible. ICBA agrees with FinCEN's approach to specifically addressing the higher risk products that have a limited degree of regulatory oversight rather than collectively group all financial products together.

FinCEN is also proposing to reiterate a clear distinction that already exists between money service businesses (MSBs) and depository institutions and will not change banks' BSA responsibilities in this rulemaking. ICBA fully supports this distinction as depository institutions are already responsible for maintaining thorough BSA/AML programs which include identifying AML risks, developing and implementing a customer identification program, identifying and reporting suspicious activity and maintaining appropriate records. As such, ICBA supports imposing the same regulatory requirements on non-bank entities engaged in financial services as are imposed on banks.

ICBA appreciates FinCEN's efforts to work with the industry to understand the prepaid network and address vulnerabilities in the types of prepaid programs that are exposed to illicit activity. ICBA fully supports the fight against terrorist financing and money laundering activities and is committed to supporting effective measures that will prohibit these offenders from using financial products for illegal gains. The ease with which prepaid access can be obtained, combined with the potential for relatively high velocity of money through accounts involving prepaid access and anonymous use, may make it particularly attractive to illicit actors.

### The Terms Stored Value and Prepaid Access

FinCEN is proposing to replace the terms "issuer" and "redeemer" of stored value with "prepaid access" and "provider of prepaid access." ICBA supports the proposed terms as the terms "issuer" and "redeemer" may unintentionally imply that banks must comply with these regulations. Furthermore, the proposed terms accurately describe the payment product for which these regulations apply and are not limited by the technology used to store and provide access to funds.

FinCEN is seeking comment on whether its proposal is sufficiently technologically neutral to be forward looking so as not to stifle growth or innovation within the payments industry. ICBA agrees that the proposed terms are neutral and will be applicable in the future payment environment.

However, FinCEN's proposed definition of "prepaid access" may unintentionally include secured credit cards and debit cards. The term, "prepaid access" is being defined as, "Electronic device or vehicle... that provides a portal to funds or the value of funds that have been paid in advance and can be retrievable and transferable at some point in the future."

Individuals that would like to build, establish or repair credit may obtain a secured credit card, which is a credit card that a cardholder must secure with an account deposit in advance so that the card issuer is guaranteed payment. The credit limit is restricted by the amount that is deposited in advance in the account. Likewise, a debit card provides access to funds that are deposited in advance in an account and can be retrieved at some point in the future. In each product, funds are deposited in advance of obtaining a card. While ICBA supports the term "prepaid access," we suggest FinCEN expressly exclude credit and debit cards from the definition.

### Seller of Prepaid Access

FinCEN is proposing additional obligations on sellers of prepaid products and is defining "seller of prepaid access" as:

"...any person that receives funds or the value of funds in exchange for providing prepaid access as part of a prepaid program directly to the person that provided the funds or value, or to a third party as directed by that person."

ICBA is concerned that banks may unintentionally be swept under this definition and recommends that the definition expressly exclude banks by stating, "...any person that is not a bank as defined in section 103.11(c) that receives funds..." Alternatively, ICBA suggests amending the definition of "money services business" to include sellers of prepaid products.<sup>2</sup> As previously stated, banks are already subject to a vast amount of BSA regulatory obligations including requirements for the Customer Identification Program, and are subject to routine regulatory examinations by their federal regulators on their BSA compliance.

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<sup>2</sup> Although banks are expressly excluded from the definition of money services business (MSB), an MSB is defined as "...any person doing business...in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6)..." which would not include the proposed new subsection, (uu)(8), sellers of prepaid access.

FinCEN is proposing new obligations on sellers of prepaid access. Sellers of prepaid cards would be required to maintain an AML program and comply with requirements for Suspicious Activity Reporting, customer identification verification and recordkeeping of customer and transactional data. While ICBA agrees with FinCEN that the party with the most face-to-face contact with the purchaser is a valuable resource for capturing important information, we believe that at times, it may not be feasible or effective for a seller to implement these requirements. We suggest that sellers be permitted to outsource their BSA requirements to third parties. Similar to a bank's responsibilities, the seller should exercise due diligence over the transferred functions and would not be able to transfer their BSA/AML liabilities.

### Provider of Prepaid Access

FinCEN is proposing to impose AML program, reporting and recordkeeping obligations on the "provider of prepaid access," which is the non-bank business entity that engages in activity that demonstrates the most control and oversight of transactions. ICBA fully supports bringing non-bank entities involved in the provision of prepaid access under the requirements of BSA regulations. As FinCEN stated, there are money laundering and terrorist financing vulnerabilities that prepaid access poses because non-bank entities are not subject to many of the reporting requirements that would apply to comparable transactions involving accounts at banks.

FinCEN's proposal would impose requirements on those within the transaction chain that possess the greatest ability to control the program's operations, either directly or through an oversight role. FinCEN's approach of centralizing primary BSA obligations in this manner, and defining the provider of prepaid access by the activities in which it engages, address the dilemmas that arise from having various participants with inconsistent functions in the industry complying with BSA regulatory requirements. We understand that program managers, sponsors, processors, distributors and other participants have differing roles and varying access to records depending on the type of program in which they are participating and contractual obligations to which they agreed. Therefore, determining the provider of prepaid access based on various activities that indicate principal oversight and control will enable the participants in a prepaid program to determine who in the transaction chain will be the provider of prepaid access.

However, there may be circumstances in which it may be more effective for different participants to implement different BSA requirements. ICBA

recommends that the provider of prepaid access be able to use other program participants to assist with BSA/AML compliance similar to the way banks can outsource certain BSA compliance functions to third parties. Similar to a bank's responsibilities, the provider should exercise due diligence over the transferred functions and would not be able to transfer their BSA/AML liabilities.

Thank you for the opportunity to comment. If you have any questions, please contact me at 202-659-8111 or [LillyThomas@icba.org](mailto:LillyThomas@icba.org).

Sincerely,

/s/

Lilly Thomas  
Vice President and Regulatory Counsel