

December 5, 2011

BY ELECTRONIC SUBMISSION TO:

regcomments@fincen.gov

Office of Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183
Attention: PRA Comments – MSB Registration – Form 107

Dear Sir or Madam,

The Retail Gift Card Association (“RGCA”) (www.rgca.org) is a member organization of diverse, closed loop gift card retailers with a commitment to promote and protect the use of gift cards. Our members follow a code of principles which promote best practices standards to help the industry grow and shape in ways that benefit both members and consumers. Our membership is comprised of the top retailers in the nation, all of which are impacted financially and operationally each time new gift card legislation passes.

The RGCA respectfully submits the following comments in response the Financial Crimes Enforcement Network (“FinCEN”) Notice and Request for Comment (“Notice”) published in the Federal Register on October 6, 2011 (76 Fed. Reg. 62149) pertaining to changes proposed to FinCEN Form 107.

1. **Eliminate the registration language of “sellers of prepaid access”.** We believe that the current check-the-box format in Section 36 of the proposed form and the requirements for “Who Must Register,” under “General Information,” is inconsistent with the language found in 31 CFR 1010 and 31 CFR 1022 regarding sellers of prepaid access and in the FinCEN Final Rule (the “Final Rule”) published in the Federal Register on July 29, 2011 (76 Fed. Reg. 45403).

The definition of “seller of prepaid access” in 31 CFR 1010.100(ff)(7) is “[a]ny person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person:

- (i) Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under §1022.210(d)(1)(iv); or
- (ii) Sells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.”

The registration requirement set out in 31 CFR 1022.380 (a) provides, in part, that “except for sellers of prepaid access as defined in §1010.100(ff)(7) of this chapter to the extent that they are not

already agents (emphasis added), each money services business (whether or not licensed as a money services business by any State) must register with FinCEN.”

Moreover, in the summary of the Final Rule, FinCEN states that the purpose of the Final Rule is to amend the regulations by, among other things, “imposing... a registration requirement on providers only (emphasis added).”

As such, we respectfully submit that the “Seller of Prepaid Access” check-off box of Section 36 and the reference to “Seller of Prepaid Access” under No. 7, General Information, Who Must Register, be eliminated from the final Form.

We note that under “General Information” the revised FinCEN Form 107 provides that the sellers of prepaid access are not required to register:

“3. A seller of prepaid access is any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access, unless that person only sells prepaid access offered under a prepaid program that cannot be used before verification of customer identification and has implemented policies and procedures reasonably adapted to prevent the sale of more than \$10,000 of any type of prepaid access.”

We respectfully submit for your consideration whether paragraph 3 of the General Instructions, referenced above, is inconsistent with 31 CFR 1010.100(ff)(7), which it is paraphrasing. We believe that the phrase “and has implemented” in the second line from the bottom should be changed to “or has implemented”.

2. Include language describing program exemptions from prepaid access definition. In addition to the changes noted above, we believe that including the language provided in 31 CFR 1010.100(ff)(4)(iii) that describes certain arrangements that are not considered prepaid programs would be helpful to persons and entities in determining whether registration is required. Specifically, under 31 CFR 1010.100(ff)(4)(iii) provides, in part, that “an arrangement is not a prepaid program if:

- A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;
- B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency;
- C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 USC 105(b) and 125) for health care expenses; or
- D) (1) It provides prepaid access solely to:
 - a. Employment benefits, incentives, wages or salaries; or

- b. Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and
- (2) It does not permit;
- a. Funds or value to be transmitted internationally;
 - b. Transfers between or among users of prepaid access within a prepaid program; or
 - c. Loading additional funds or the value of funds from non-depository sources.

The revised Form 107 provides the broad definition language of “Provider” under 31 CFR 1010.100 (ff)(4)(i) and (ii) but fails to provide the language under (iii) regarding programs that are not considered prepaid access (see No. 4 under “General Information, Who Must Register” from FinCEN revised Form 107). This can be confusing and misleading as participants of exempt prepaid programs under 1010.100(ff)(4)(iii) could interpret the instructions under No. 4 of the revised Form 107 as requiring their registration as MSBs. Therefore, we respectfully recommend that the language of 1010.100(ff)(4)(iii) be incorporated in some fashion under the section of the revised form titled, “The following are not required to register.”

In conclusion, we submit that, while the Notices’ stated purpose is to further its continuing effort to reduce paperwork and respondent burden, the effect of the revised Form 107, in its current form, may unnecessarily increase respondent burden. Thus we respectfully recommend changing the revised portions of Form 107 as provided in this comment letter.

Sincerely,

The Retail Gift Card Association