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RE: CFPB-2011-0002-0001

**“Defining Larger Participants in Certain Consumer Financial Products and Services Markets”**

Dear Sirs:

I would like to comment on proposed standards for defining large participants in the alternative credit score reporting industry. A common name for these products is “credit builder,” so I will reference all of this entities within that name.

The Community Reinvestment Association of North Carolina (“CRA-NC”) is a non-profit (501 © 3) advocacy group that seeks to promote the capacity of low-income and minority consumers to access capital.

I am research director for CRA-NC. I am also the author of BankTalk.org, a popular blog that covers the unbanked. Bank Talk gets about 1.1 million hits per year. Prepaid cards constitute one of the more frequent topics. I reported on the use of credit on prepaid cards by MetaBank. Subsequently, I submitted comments to the Department of the Treasury and to the Office of Thrift Supervision. Ultimately, the OTS intervened to stop MetaBank from offering credit.

*Credit Builder Products*

The CFPB should consider the supervision of credit rating products as a fundamentally important element of its mission.

In recent years, people have recognized that lower-income households are less likely to create a trail of spending that generates a full credit history. In part, it is an issue of budget. When you spend two thousand dollars a month on your credit card and also have a mortgage and a car loan, your payment history is transparent. When you pay rent, use a prepaid card or cash, and take advantage of little or no credit, you are unlikely to cross into the viewpoint of an Experian or a TransUnion. There is also the issue of people that are new to the financial system – immigrants, young people, and divorcees. Others are disqualified merely because they have atypical lifestyles. This includes transient households, people without a land line phone, and individuals without cars. Empirically, these modes most often characterize single-parent households, minorities, and women. The latter two are protected classes.

Credit building products were added to prepaid cards to address this problem. Unfortunately, the results have been checkered. These unusual innovations, which tracked rental and utility payments, were able to create good credit profiles. The problem was that they were never adopted into credit scoring models that had any standing with traditional lenders.

While there are many protections in place for how the Big Three/Four (TransUnion, Equifax, Experian, and Innovis) treat consumers, the rules are less effective in protecting the interests of un-banked and under-banked households.

The Consumer Financial Protection Bureau has the authority to supervise, write rules, and enforce orders on large-sized participants in this field.

It should be a clear cause of concern that the bank partners most actively engaged in prepaid included many institutions with checkered consumer protection records. We are concerned that so many of the banks engaged in the fee harvester secured credit card model have now become engaged in prepaid cards. Fee harvester cards were widely used by vulnerable consumers. Consumers chose the cards because they saw it as a way to build credit. The FTC punished Columbus Bank & Trust. Now other subsidiaries of the same holding company – Synovus Bank – have become entities in payments processing and card issuance. Urban Trust Bank, which issued CompuCredit cards that collected \$400 million in fee harvester card fees (the “MySaluteCard,” for example) – is now a prepaid issuer. Urban Trust Bank has teamed up with CompuCredit to offer prepaid cards. First Bank of Delaware – a funder to payday lenders through the rent-a-bank model – is now an issuer of prepaid cards.

The hunger to repair credit drove the secured credit card fee harvester model. That same hunger remains and it should serve as a beacon for regulators that want to intervene before the next problem occurs. In the new model, real power is held by MSPs and ISOs. These are non-bank financial institutions.

### Defining Large Participant

In defining the notion of large participant, the CFPB should consider that sales-driven credit scoring firms attempt to achieve universal coverage. Most of the firms analyzing the credit worthiness of unbanked and under-banked households claim to have data on approximately 50 million households.

There is really only one distinction in size. The CFPB should differentiate between firms that sell credit scoring data versus those that develop metrics from internal information. Some firms do create their own metrics. The small firms are still accountable to TILA, ECOA, and other fair lending laws, but they are not appropriately defined as large participants.

This standard is consistent with the oversight of consumer reporting agencies outlined in the Fair Credit Reporting Act (the “FCRA”). The FCRA says that a consumer reporting agency is one that”

“Compiles and maintains files on consumers on a nationwide basis...that regularly engages in the practice of assembling or evaluating, and maintain for the purpose of furnish consumer reports to third parties bearing on a consumer’s credit worthiness, credit standing, or credit capacity.” (FCRA Section 603 part p).

A reseller is one that “assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning

any consumer for purposes of furnishing such information from which new consumer reports are produced.”

The CFPB should define large participant through the specific legal definitions in the FCRA, whereby any company that is both a “reseller’ and a “consumer reporting agency” falls under the scope of the CFPB.

*These groups are not known to consumers, yet they sell their private information to third parties*

The Fourth Bureau, as these institutions have been labeled by the Washington Post, uses practices that stretch the limits of privacy for consumers. In practice, most of the consumer payment records that are collected in these databases do not know that they are being tracked.

These groups are not household names. They are probably unknown to most credit counselors. They are probably unknown to most financial services professionals. Since people do not know that they are being tracked, they do not utilize important protections. For one, it is impossible to request your credit score or to attempt to correct an error in your file if you do not know who is collecting data on your payment history.

Here is a short list of alternative credit score data services:

- L2C
- ChoicePoint
- MicroBilt/PRBC
- LexisNexis RiskView
- CL Verify Credit Solutions
- CredCo/Anthem Suite
- DataX, Ltd./DataX Credit Reporting Agency
- TargusInfo/ElementOne Analytics Platform
- eCredable

These are not names that consumers are aware of, yet they are companies that collect personal information on their payments decision and ones that act as significant gatekeepers of their access to financial services.

The scope of these companies is very wide. For example, First American Core Logic's "CoreLogic CredCo" LexisNexis' RiskView rates risk for 70 million non-traditional consumers.

These companies have a two-part revenue model. The first part comes from the fees consumers pay to use the products. The second comes from the sales of the data to third-parties.

*There is a Lack of fit between FCRA Disclosure Rules and Typical Use by Unbanked Households*

Generally, consumers are given several protections against the work of the bureaus that analyze their credit worthiness. The Fair Credit Reporting Act, these institutions meet the definition of a "consumer reporting agency" because they sell information to third parties.

Under-banked consumers are less likely to use credit, but they still are impacted by their credit score. According to the FDIC, under banked and unbanked households use many types of financial services that do use a credit unbanked households used an alternative financial service (FDIC, 2009). These are substitutes for mainstream loans. The lack of the use of a credit reporting agency does not interfere with access to these services.

Still, the impact of a credit score is still significant. A credit score is still used for cell phone service, for insurance, for cable, for utility service and for a rental application. It is very possible that when these businesses get an application from a consumer with an inadequate credit file at the Big Four will instead seek a report from one of the alternative services.

With the case of cell phones, home phone service, utilities, and cable, the credit score does not mean that the account is turned down. There is no “adverse action” when the account is approved, even if the result of the credit score is that the consumer must put down a higher deposit.

There are a few reasons why existing guidelines do not adequately protect the relationship between unbanked households and the alternative data providers that supply information on their credit worthiness.

For one, the consumer may not know the identity of their score reporter or the means to contest that report. CoreLogic CredCo will provide free credit data and dispute resolution to any person in its files. However, the person must know to contact CoreLogic to request that information.

Two, these scores are used for more than just decisions about credit. By their nature, unbanked consumers do not seek out prime credit. When they do seek credit, it is more often with a non-traditional lender.

Non-traditional lenders are unlikely to turn down applicants. Lenders use risk-based pricing in lieu of denying loans. In some instances, all loans are priced based on equivalent risk assumptions. This is the case with payday lenders. It is effectively the case with firms that substitute the cost of interest through fees – such as pawn shops or rent-to-own stores. In other instances, lenders do use risk-based pricing to lower or increase the cost of credit. This is commonly the case with buy-here pay-here auto sellers. Even though only 10 percent of applicants for subprime auto loans were approved by independent finance companies in 2009 (Drive Time, 2010), buy-here-pay-here lenders continued to approve the great majority of applicants through their own captive financing. The nation’s largest buy-here-pay-here chain, Drive Time, reported that the weighted average interest rate for its loans, which have an average duration of only 23 months, was 20.8 percent in 2009 (Drive Time, 2010).

Existing law offers protection to consumers when a credit score report leads to an “adverse action.” However, non-bank financing entities often have low denial rates. This curbs the number of “adverse actions.” (FCRA Section 603 part k) Lenders have to reveal when they used a credit score to turn a borrower down. This is less protective in a subprime risk-based pricing environment. Consumers are turned down infrequently, but those with lower credit scores pay higher rates of interest.

The result is that disclosures generated by credit denials are likely to be infrequent for un-banked households. This means that unbanked consumers are less likely to know the sources of credit information that was used for their application. In turn, they are unable to contest the accuracy of data in their credit file.

### *There is a lack of pricing transparency among credit builder products*

There is precedent for these products to cost more than they deliver. Secured credit cards offer consumers the ability to have a line of credit if they put down a deposit. These cards come with high fees. In some instances, the cards have given advocates reason to label them as fee harvesters. The costs at one such card even generated a Federal Trade Commission settlement.

The same opacity relates to pricing. In the past, MSPs created cards with an optional credit-builder product. The product was still bundled, so that there was only one credit builder vendor available through any one MSP.

The evidence does seem to show that they are still expensive. The Eufora Credit Builder is one good example. The Eufora product is available at four different levels: is offered through the Eufora card. Like some of its brethren, credit builder customers pay out of pocket to have this service. Credit Builder is sold as a membership service with a fee to join, a fee to process and application, and a monthly fee. The fee structure is different for each, based on a differing balance between startup membership fee and ongoing monthly fee. In general, costs for an entire year amount to about \$200. eCredable charges consumers \$9.95 a month for their credit reporting service. Capital One offers Credit Inform on some of its cards. The product costs \$8.99 per month.

Pricing is not always so transparent. Some cards fold the credit builder product into their main card offering. The result is pricing opacity. The RushPath to Credit comes for free on Rush Cards. However, Rush Cards charge higher fees than most other cards. A person pays \$10 a month for the card, plus additional fees for any ATM transaction. There is even a \$1 signature fee. While most companies offer free billpay and free mobile banking, Rush Card consumers have to pay to use BillPay and to send money via different Rush Cards.

### *MSPs have too much Control over the Credit Builder Products Used by Consumers*

Credit building products have not gone away. Instead they have shifted to the prepaid platform.

MSPs bundle credit builder products into prepaid cards. Bundling takes away consumer choice. The choice is made by MSPs. Consumers are dependent upon the decisions made by card bundlers.

Bundling is a problem in this market because independent sales organizations (“ISOs”) and member service providers (“MSPs”) have power over how card services are combined into one prepaid card. MSPs and ISOs include NetSpend, RushCard, Green Dot, Account Now, Mango and Eufora. Consumers have no ability to pick their credit builder. Credit repair services are bundled with a prepaid card. Consumers do not have an opportunity to pick a credit repair program to append to their card. Rather, they only have a choice of paying for a specific service that is available with that card.

### *Alternative Credit Builder Products Fail their Promise to Consumers*

These products are not worth the money that cash-strapped consumers pay for them. The National Council of La Raza has found that even when lenders do use data from these firms, they tend to discount

their value. La Raza has found cases when consumers were able to show twelve accounts with regular on-time payments. The lenders are willing to take that data but they will not use such data to replace traditional credit scores. In the instance of the consumer with data to show twelve current accounts, the lender put their credit at “620.”

The product has never been as effective as traditional credit reporting. Most credit builders do not report to the three major credit services (Equifax, Experian, and Transamerica) but instead to a series of alternative credit scoring firms. In the last few years, the most active players in this segment have been Payment Reporting Builds Credit (“PRBC”) and Eufora Credit Builder. There are others, such as VantageScore and Lexis-Nexis, but these are the most popular.

Even now, when some report to TransUnion or to FICO, the scores remain only a fraction of the overall score algorithm.

Recent history demonstrates how the credit builder product may harm consumers. Payment Reporting Builds Credit (“PRBC”) redefined the credit score process. The system utilized payment obligations that were not made through loans. This included utility bills, rent, cell phone service plans, and others. They also re-defined the distribution system for credit scores. Rather than move data to lenders and then make it available to them, PRBC gave consumers the exclusive right to pull their own credit. A person seeking a loan could pull their credit and show it to a landlord or to an auto finance company. Indeed, PRBC promised that only the account holder would be able to access the data. This is a key point, because it has been broken on such a fundamental level.

The promise was broken. PRBC floundered and it was ultimately sold to MicroBilt. MicroBilt has decided to sell that data to subprime credit firms. Those firms can use that data to solicit new business from the former PRBC customer base. The data collected to build credit for unbanked consumers is now being sold to companies that want to push bad credit: by-here pay-here auto finance companies, payday lenders, pawn shops, auto title stores, and rent-to-own furniture stores (Payments News, 2008).

Those aren’t the only bad actors using this data. It is also popular with debt collectors and car repossession firms (Mui, 2011). CompuCredit has incorporated PBRC reporting into the set of services that it offers to its debt collection customers (CompuCredit, 2011). CompuCredit was one of the firms implicated in fee harvesting secured credit cards. Now they are back, using PRBC as a gateway to enhancing how they price credit to the same set of consumers.

### *How to Supervise*

The issue for the CFPB is not to regulate the bank partners. But it is important that someone regulated the credit builders and the CFPB is poised to be that entity.

The question of large participant status in this area is complicated because most of these companies market and sell their services to many entities that are external to prepaid. In some cases, these companies offer a prepaid credit builder as part of an entire suite of different credit rating products. Fair

Isaac is a national credit reporting service. It markets FICO Expansion as a special service of consumers with non-traditional credit profiles. It is the only product that FICO offers for prepaid. FICO's traditional product is offered for mortgage lending and other more common credit applications.

I would argue that any entity that partners with a national consumer credit rating agency should be classified as a "large participant." There are two elements to that belief. For one, contributing to a credit scoring model is tantamount to being a part of that model. TransUnion, FICO, Experian, and Equifax all provide the first tier of credit score review for the important gatekeepers of credit that is most commonly utilized by unbanked consumers. Landlords never checked with PRBC. They run credit through the first tier agencies.

The framework of a supply-chain analysis makes more sense for the arrangement of alternative credit building services within prepaid. The important thing is to make sure that the cards with the largest consumer audiences are supervised by the CFPB.

Important policy priorities for subsequent regulation:

1. In regulating these programs, the CFPB should make sure that credit builder programs follow the idea that they provide a net tangible benefit to consumers.
2. Credit Builder programs should serve consumers first. Because most credit building programs are voluntary, they should not be used as a way for business-to-business credit reporting agencies to collect data that is then used by debt collection agencies or subprime lending firms. Unbanked and under-banked consumers sign up for a credit builder product in order to regain access to mainstream credit products. The end result should not be that auto title lenders, pay day lenders, pawn shops, and rent-to-own businesses are able to increase their profits.
3. Make disclosures about sale of personal data much more transparent and simple for consumers. People should know if the use of a prepaid card will expose them to frequent exposure to subprime lenders.
4. Consumers should be able to get credit reports from these firms for free, and they should be able to dispute the data contained in those reports without paying any fees.

### *Conclusion*

I would like to close my comment with a statement from Resea Willis, the president of Brunswick Housing Opportunities ("BHO"). BHO is a HUD-approved housing counseling agency in the Wilmington, North Carolina MSA. They qualify buyers to purchase homes and they engage in loan modifications to avoid foreclosure:

*Restoring credit is going to be a major industry unlike no other for the lower middle class and upper lower class. They have survived on credit and now due to modified mortgage payments, missed credit card payments and slow car payments that "safety net" no longer exists for them.*



*They are desperate to look for ways to rebuild their credit. When they use these “subprime” products they once again are misled and duped into thinking that they are rebuilding their credit in the traditional market. But once again they are regulated to the subprime market. There are legitimate credit restoration programs like our “A fresh Start” Credit rebuilding Program. We provide money management education coupled with working with a group of banks and credit union offer small loans and secured credit cards that report to E, E,T. Also, there are no quick fixes. The very formula of credit is as devised by the big three credit reporters is based on time, consistency and money.*

*Once again Wall Street is devising another way to keep the Workforce paying a higher price for credit even though most people regardless of income has a higher risk factor as it relates to the ability to obtain credit.*

*The CFPB needs to recognize that education must be the key to any products offered. Also, those products need to be required to be reported to traditional credit bureaus. If not then we just create another subprime market for the Workforce.*

“Banked” Americans do not pay for their credit data to be collected. Why is it acceptable to shift the costs of gathering credit data on to un-banked and under-banked households?