UNCLAIMED PROPERTY
PROFESSIONALS ORGANIZATION

763.253.4340
uppo@uppo.org
8441 Wayzata Blvd., Suite 270
Golden Valley, MN 55426
uppo.org

February 2, 2018

Robert H. Davidson
Administrative Practice Officer
Unclaimed Property Administration
PO Box 214
50 West State Street, 6th Floor
Trenton, NJ 08625-0214
unclaimedproperty@treas.nj.gov

Re: Comments on Proposed Regulations 17:18-3.1 and 17:18-3.3

Dear Mr. Davidson:

The Unclaimed Property Professionals Organization (UPPO) is the national trade association of unclaimed property holders and service providers. We represent over 400 unclaimed property holders and service providers and 1,300 unclaimed property professionals of diverse industries and employer size. UPPO advocates for fairness in unclaimed property laws and regulations, and respectfully submits our comments with respect to Proposed Regulations 17:18-3.1 and 17:18-3.3.

1. **General Escheat Provisions.** Section 17:18-3.3(b) of the Proposed Regulations provides that "[r]etailers that issue stored value cards that may be redeemed for goods or services only at their stores or on their websites … [w]ill be required to escheat 60 percent of the value of the unused balance if there is no consumer-generated activity for five years or longer…." For this purpose, an "issuer of a stored value card" is defined in section 17:18-3.1 of the Proposed Regulations to mean:

   "any person, retailer, merchant, vendor, provider, institution, or business association that:

   1. Sells the stored value card directly to the purchaser and is also responsible for honoring the liability represented by the face value of the card that may be redeemable for, solely or in a combination of, merchandise, services, or cash; said issuer is also responsible for reporting and delivering proceeds of the stored value card if abandoned; or

   2. Acts as an agent, distributor, or retailer for the holder and is not directly responsible for honoring the liability represented by the face value of the stored value card, but must sell the card under the same terms and conditions as required of the holder of the stored value card."

Section 17:18-3.3(a) of the Proposed Regulations also provides that stored value cards are escheatable to New Jersey "if the last known address on the records of the issuer or seller is located in New Jersey." For this purpose, "last known address" is defined in Section 17:18-3.1 to mean "a description of the location of the apparent owner, sufficient for the purpose of determining which state has the right to escheat the abandoned property and the zip code of the apparent owner's (creditor's) last known address is sufficient." Finally, "face value" is defined in Section 17:18-3.1 to mean "the agreed-upon value of the stored value card to the purchaser, which may not necessarily equal the amount paid by the purchaser for the card."

COMMENT: Section 17:18-3.3(b) of the Proposed Regulations, as drafted, is contrary to the New Jersey Unclaimed Property Act (the "Act"), due process and federal common law. N.J.S.A. § 46:30B-46 provides that "A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the administrator concerning the property as provided in this article." Thus, the entity that has the obligation to escheat an unclaimed stored value card is the "holder" of the card, not the "issuer" of the card, though the Act attempts to reconcile these provisions by defining an "issuer" to mean "an issuer of a stored value card that is a person, retailer, merchant, vendor, provider or business association **with the obligations of a holder** to accept the stored value card as redeemable for, solely or a combination of, merchandise, services, or cash, and to report and deliver proceeds of the stored value card if abandoned." N.J.S.A. § 46:30B-42.1(k) (emphasis added). A "holder," in turn, is defined to mean "a person, wherever organized or domiciled, who is the original obligor indebted to another on an obligation." *Id*. § 46:30B-6(g).

Accordingly, because the Proposed Regulations do not limit the definition of "issuer" to a "holder," the Proposed Regulations conflict with the Act and thus would be void for that reason. Furthermore, the Proposed Regulations specifically provide that an "issuer" includes **both** (1) **the seller** of the stored value card (if the seller is also responsible for "honoring the liability represented by the face value of the card") and (2) **an agent, distributor, or retailer for the holder** (if such person is **not** directly responsible for honoring the liability represented by the face value of the card). This proposed definition thus would apparently impose escheat liability not only on the seller of the card, but also on any third-party distributor of the holder, such as a grocery store, drugstore or other retailer where stored value cards are commonly sold. A requirement for two or more entities to escheat the same property violates due process. *See Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961). Finally, the proposed definition of "issuer" also violates federal common law to the extent that such definition requires escheat by any entity other than the legal "debtor" with respect to the property. *See Delaware v. New York*, 507 U.S. 490, 499 (1993) (ruling that the "holder" of unclaimed property with the potential obligation to report and remit such property to the state is the "debtor" or the "obligor"). These problems can be easily addressed by making the following changes to the Proposed Regulations (underlined language added):

- Section 17:18-3.3(b) should be revised as follows: "(b) ~~Retailers that issue~~ <u>Holders of</u> stored value cards that may be redeemed for goods or services only at their stores or on their websites…."

- The definition of "issuer of a stored value card" should either be deleted or revised to match the definition in N.J.S.A. § 46:30B-42.1(k).

The language quoted above in Section 17:18-3.3(a) of the Proposed Regulations is also problematic for two reasons. First, the Proposed Regulations permit New Jersey to escheat stored value cards "if the last known address on the records of the issuer or seller is located in New Jersey." In *Texas v. New Jersey*, 379 U.S. 674, 682, n. 11 (1965), the U.S. Supreme Court held that, for purposes of applying the federal common law jurisdictional escheat rules, "the address on the records of the debtor, which in most cases will be the only one available, should be the only relevant last-known address." Thus, New Jersey cannot look to the records of any person other than the holder of the cards to support a claim. In many cases, the seller of a stored value card is not the holder because the cards are sold by third party merchants (*e.g.*, grocery stores or drugstores) or because the stored value cards are issued by a special-purpose entity that does not itself sell cards.

Second, the definition of "last known address" conflicts with the reasoning of the Supreme Court in *Texas v. New Jersey*, wherein the Court held that intangible property was "subject to escheat only by the State of the last known address of the creditor, as shown on the debtor's books and records." *Texas*, 379 U.S. at 682. The Court did not define the term "address" for this purpose. Accordingly, the ordinary meaning of the term should apply. *See, e.g., Perrin v. United States*, 100 S. Ct. 311 (1979) ("[U]nless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."). The ordinary meaning of the term "address" is a mailing address.[1] Furthermore, the federal common law rules established in *Texas* were chosen for their tendency to **simplify** (rather than complicate) the process of determining state rights to unclaimed property. *Id*. at 681. The Court stated the rule was the "fairest, […] easy to apply, and in the long run will be the most generally acceptable to all the States." *Id*. at 683. The Court also chose the creditor's last known address rule as it was a workable test that would avoid double jeopardy in violation of due process, which would necessarily result from a rule which did not clearly identify which state had the right to escheat. *Id*. at 678-79 (*citing Western Union Tel. Co.*, 368 U.S. 71).

New Jersey's proposed definition of "last known address" to include "and the zip code of the apparent owner's (creditor's) last known address is sufficient" also conflicts with the *Texas* rules because there are currently thirteen (13) "multi-state ZIP Codes," and the following pairs of states each share one of the same exact ZIP Code: (1) Massachusetts and Rhode Island; (2) Kentucky and Tennessee; (3) Montana and North Dakota; (4) Illinois and Missouri; (5) Arkansas and Louisiana; (6) Oklahoma and Texas; (7) Colorado and New Mexico; (8) Arizona and Utah; (9) Arizona and Utah again; (10) Arizona and New Mexico; (11) New Mexico and Texas; (12) California and Nevada; (13) California and Oregon.

[1] *See, e.g., State v. Knudson*, 174 P.3d 469 (Mont. 2007) (relying on Black's Law Dictionary's definition of "address" as the "[p]lace where mail or other communications will reach [a] person.... Generally a place of business or residence; though it need not be." Black's Law Dictionary 38 (6th ed., West 1990)); *In re Application of Cty. Collector*, 826 N.E.2d 951, 954, 956–57 (Ill. App. Ct. 2005) ("The common and ordinary meaning of the term address…clearly contemplates a number and street address. No reasonable argument can be made that the conventional meaning of 'address' does not encompass a number and street name. This clearly is the plain and ordinary meaning of the term 'address.'").

Thus, for example, if Kentucky escheated unclaimed property because the holder had on file the "last known address" of 42223 (ZIP Code only), and then Tennessee decided to escheat the same property because the 42223 ZIP Code could also mean a Tennessee address, the holder would be subject to double liability, in violation of due process. New Jersey's proposed definition thus ignores the rationale for the *Texas* rules, and causes unnecessary confusion and conflict. The definition of "address" to mean a mere zip code is also the minority rule adopted by the states, and thus is more likely to result in inter-state conflict.[2]

Finally, it should be noted that the Proposed Regulations use the terms "face value" and "value" interchangeably without consistency. To avoid confusion, we recommend that the term "value" be used exclusively, and be defined to mean "the agreed-upon value of the stored value card to the purchaser."[3]

2. **Exemptions to Escheat Provisions.** Section 17:18-3.3(a) of the Proposed Regulations provide that stored value cards are not required to be escheated if the cards (1) "are redeemable for merchandise or services only [and] were issued or sold prior to July 1, 2010;" (2) were issued "[u]nder a promotional, customer loyalty, or charitable program for which no monetary or other consideration has been tendered by the owner;" (3) were issued "[b]y any issuer that in the preceding year beginning July 1 through June 30, sold stored value cards with an aggregate total value of $250,000 or less;" or (4) are designated as exempt by the State Treasurer pursuant to N.J.S.A. § 46:30B-42.1(f). Section 17:18-3.3(j) of the Proposed Regulations further provides that "For purposes of (a) above [exclusion for certain promotional, customer loyalty or charitable program cards], any monetary or other consideration that has been tendered by the recipient/owner for the stored value card obtained under a promotional, customer loyalty, or charitable program may consist of, but is not limited to, a rebate for a purchase made, a credit to be given by the issuer or holder in return for taking certain action, or an incentive for taking some other action. Such action or incentive on the part of the recipient/owner may include providing a service, making a purchase, or taking some other action beneficial to the issuer or holder, such as agreeing to promote the issuer's or holder's merchandise or services or entering a contest to increase the sales of a given product, even if no cash or other item of monetary value was exchanged, in reliance on the stored value card being offered to the owner. Stored value cards obtained under these circumstances are not exempt and, therefore, must be reported under *N.J.S.A. 46:30B-1* et seq." Section 17:18-3.1 of the Proposed Regulations include the following definitions for purposes of these exemptions:

- "Consideration" means "a right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by another. It can also be the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid. A discount offered

[2] Only seven states have adopted a definition of "last known address" to mean a mere zip code (Delaware, Florida, Illinois, Indiana, Tennessee, Utah and Virginia).

[3] Section 17:18-3.3(h) of the Proposed Regulations also provide that "[s]tored value cards issued as a result of merchandise that is returned without a receipt that are redeemable for merchandise or services only shall be subject to the reporting requirements of N.J.S.A. 46:30B-42.1." This section should clarify, as in Section 17:18-3.3(a), that such cards are exempt if issued prior to July 1, 2010.

for a promotional stored value card would be considered consideration. For example, a card with a $10.00 face value given to a consumer as a result of the consumer purchasing a minimum amount of goods or services, would be deemed to have been given for consideration, and any unused balances would be reportable to New Jersey as five-year property."

- "Charitable program" means "a program that provides money, goods, or services to accomplish a social benefit or to promote the welfare of a community in whole or as individuals, usually without anticipating or receiving consideration or anything of value in return. It employs all its resources to those charitable activities under its direct control, does not distribute any part of income generated for the benefit of any trustee, trustor, member, or other private individual and does not contribute to or associate with political organizations. A charitable program may be one that is run by an organization with a 26 U.S.C. § 501(c)3 status."

COMMENT: These provisions of the Proposed Regulations directly contradict with the Act in several respects:

- First, the exemptions in the Proposed Regulations do not include the statutory exemptions for (1) cards donated or sold below face value to a nonprofit or charitable organization or an educational organization; or (2) cards redeemable for admission to events or venues at a particular location or group of affiliated locations, or for goods or services in conjunction with admission to those events or venues, or both, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue. N.J.S.A. § 46:30B-42.1(e). Since the Proposed Regulations suggest that cards are escheatable unless one of the exemptions specifically addressed in the regulation applies, these statutory exemptions need to be included as well.

- Second, the promotional exemption in the Proposed Regulations applies where "no monetary **or other consideration** has been tendered by the owner," whereas the statutory exemption applies where "**no direct monetary consideration is paid** by the owner." N.J.S.A. § 46:30B-42.1(e)(1) (emphasis added). This difference is significant in two respects: (1) under the Proposed Regulations, any promotional cards issued for non-monetary consideration would be escheatable, whereas such cards would be expressly exempt under the statute; and (2) under the Proposed Regulations, any promotional cards issued for monetary consideration would be escheatable, whereas such cards would only be escheatable under the statute if issued for "direct" monetary consideration. This is particularly notable given that the legislative history of the statute specifically indicates that the language in the Proposed Regulations was considered and rejected.[4] The proposed definition of consideration and the explanation of how it applies to promotional, customer loyalty and charitable program cards are similarly contrary to the explicit language of N.J.S.A. § 46:30B-42.1(e)(1). These provisions would entirely negate the Act's exclusion for cards for which no "**direct monetary consideration**" is paid by the owner. Since all benefits under such programs

[4] In particular, S.B. 1928 was amended on June 14, 2012 to change the statutory language from "no monetary or other consideration has been tendered by the owner" to "no direct monetary consideration has been paid" by the owner.

are provided in exchange for some action by the owner, such as making a purchase, adoption of the proposed regulation would mean that no such programs would ever be exempt. The Proposed Regulation would read both **direct** and **monetary** out of the statute.

Furthermore, the proposed provisions are far too broad from a practical standpoint. These provisions are contrary to the laws in all other states. The proposed definition is also contrary to the Revised Uniform Unclaimed Property Act adopted by The Uniform Law Commission. RUUPA provides that "direct monetary consideration" is necessary to create an unclaimed property obligation under an "award, reward, benefit, loyalty, incentive, rebate, or promotional program." *See* Uniform Unclaimed Property Act, Article 1(12) (2016). Adopting the proposed definition would therefore make New Jersey an extreme outlier among state unclaimed property laws. The practical effects of the proposal are also extreme because the definition of stored value card is very broad ("any record"). Application of the provision would result in a substantial increase in unclaimed property liability for businesses without any increase in funds held by those businesses on behalf of owners. Every loyalty program that offers points for purchases would be ensnared in the Proposed Regulations, even though the determination of how points are awarded, when they expire, and what they may be redeemed for is frequently determined, in part, on the expected redemption rate. Because the expected redemption rate dictates the value of the points, there is no unclaimed property in the hands of the issuer. Furthermore, many of these loyalty programs have limited use dates and limited redemption options. They are merely another marketing tool, similar to coupons.

The Proposed Regulation would also apparently reach many transactions for which no legal consideration of any kind was exchanged because the definition of "consideration" is not limited to "bargained for" benefits or detriments. For example, it is not uncommon for a consumer to purchase the same volume of goods, regardless of whether the $10.00 gift card is offered; the card is merely a pleasant event. In such a scenario, the customer has provided zero additional consideration to the seller for receipt of the card yet under the Proposed Regulations the seller would still have $10.00 of unclaimed property liability. The result is even more extreme in the case of points offered for purchases which have limited redemption periods or limited products/services for which they can be redeemed. Similarly, numerous promotional activities are intended to be short term incentives to encourage specific activity. Such incentivized activity could include: purchasing overstocked inventory or frequenting a store during a low volume period. If the card is not used as intended, the issuer has received no additional consideration, but yet again would have unclaimed property liability. Section 17:18-3.3(b) of the Proposed Regulations should be revised to track the language of the Act that the exemption applies to "a stored value card that is distributed by the issuer, directly or indirectly, to a person under a promotional, incentive, rewards, or customer loyalty program or a charitable program for which no direct monetary consideration is paid by the owner." Section 17:18-3.3(j) of the Proposed Regulations should be deleted in its entirety. The definition of "consideration" should be revised as follows:

"Consideration" means "a bargained for right, interest, profit, or benefit accruing to one party, or some bargained for forbearance, detriment, loss, or responsibility given, suffered, or undertaken by another. It can also be the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid. For purposes of 17:18-3.3 consideration means direct monetary consideration. ~~A discount offered for a promotional stored value card would be considered consideration.~~ For example, a card with a $10.00 face value given to a consumer as a result of the consumer purchasing a minimum amount of goods or services, would not be ~~deemed to have been given for~~ consideration, and any unused balances would not be reportable to New Jersey ~~as five-year property~~. A $10 card offered in conjunction with a discounted product may be received in return for direct monetary consideration based on the books and records of the issuer."

- Finally, the definition of "charitable program" in the Proposed Regulations is also problematic because it requires, to qualify for the exemption, that the program "employ all its resources to those charitable activities under its direct control" and that the program "not distribute any part of income generated for the benefit of any trustee, trustor, member, or other private individual" and "not contribute to or associate with political organizations." The definition also indicates that "A charitable program may be one that is run by an organization with a 26 U.S.C. § 501(c)3 status." None of these requirements is practical in the context of stored value cards. Issuers of those cards are almost never 501(c)(3) organizations, nor do they "employ all their resources" for charitable activities or refrain from distributing to shareholders. Rather, in a typical stored value card charitable program, a for-profit retailer will simply donate cards to select charitable organizations, which may use the cards or resell them to raise money for the organization. The statutory exemption was intended to apply to such cards because the retailer is not paid for those cards, but rather gives them away for free. Accordingly, the definition of "charitable program" should either be deleted (we are not sure a definition is necessary) or revised to mean "a program pursuant to which the issuer of the stored value card provides stored value cards to a charitable organization." A more complex definition is unnecessary, as the exemption only applies to such cards if the issuer did not receive direct monetary consideration for the cards.

3. **Bank-Issued Cards.** Section 17:18-3.3(c) of the Proposed Regulations provide that "banks and other financial service companies that issue stored value cards that may be redeemed at multiple merchants (general purpose reloadable cards) …[w]ill be required to escheat the full value of the unused balance if there is no consumer-generated activity for five years or longer…."

   COMMENT: Section 17:18-3.3(c) references the term "general purpose reloadable card" in a parenthetical but does not make clear that the requirement to escheat 100% of the value of the stored value card is limited to such cards, which are defined in N.J.S.A. § 46:30B-42.1(k)) to mean a "stored value card issued by a bank or other similarly regulated financial institution or by a licensed money transmitter that is (1) usable and honored upon

presentation at multiple merchants or service providers that are not under common ownership or control for goods or services or at automated teller machines, (2) issued in a requested prepaid amount which amount may be, at the option of the issuer, increased in value or reloaded if requested by the cardholder, and (3) not marketed or labeled as a gift card; the term "reloadable card" includes a temporary non-reloadable card issued solely in connection with a reloadable card." The current ambiguity in the Proposed Regulations regarding bank-issued stored value cards creates several problems:

- Open-Loop Gift Cards. First, under the Proposed Regulations, all open-loop gift cards (*i.e.*, cards issued by banks/financial institutions and redeemable at multiple unaffiliated merchants) are arguably escheatable at 100% of their value, whereas under the Act, an open-loop **gift card** is expressly excluded from the definition of "general purpose reloadable card" and thus is subject to escheat only at 60% of its value. In other words, the Act treats all gift cards the same no matter what type of entity is issuing the gift card or whether the card is open-loop or closed-loop. The Proposed Regulations should be consistent with the Act and the public policy selected by the legislature.[5]

- Non-Reloadable Cards. Second, under the Proposed Regulations, non-reloadable open-loop cards are arguably escheatable at 100% of their value, whereas under the Act, a non-reloadable open-loop card is expressly excluded from the definition of "general purpose reloadable card" and thus is subject to escheat only at 60% of its value.

- Cards Not Usable at ATMs. Third, under the Proposed Regulations, an open-loop card that is not usable at an ATM is escheatable at 100% of its value, whereas under the Act, an open-loop card that is not usable at an ATM is excluded from the definition of "general purpose reloadable card" and thus is subject to escheat only at 60% of its value.

The Act distinguishes between GPR cards and other stored value card types because under federal law GPR cards are subject to fewer restrictions than gift cards and other types of cards that are not redeemable for cash or are not reloadable and thus do not function like a currency.

Accordingly, we would recommend that the introductory language to Section 17:18-3.3(c) of the Proposed Regulations be revised as follows: "(c) Banks and other financial service companies that issue ~~stored value cards that may be redeemed at multiple merchants (~~general purpose reloadable cards~~)~~:"

[5] Banks and financial institutions most commonly operate gift card programs that meet one of the following scenarios: (1) the gift card is redeemable for goods and services at certain merchant or group of affiliated merchants and is not redeemable for cash; (2) the gift card is redeemable for goods and services at multiple unaffiliated merchants operating in a geographical location, such as a mall or campus gift card, and is not redeemable for cash; (3) the gift card is redeemable for goods and services at any merchant that accepts MasterCard, Visa, Discover or Amex and is not redeemable for cash. Banks and financial institutions also operate GPR and payroll card programs that are redeemable for goods and services at multiple unaffiliated merchants that accept MasterCard, Visa, Discover or Amex, are redeemable for cash at automated teller machines, and are not marketed or labeled as gift cards.

We would also recommend that the Proposed Regulations include in Section 17:18-3.1 a definition of "general purpose reloadable card" that is identical to that in the Act (*i.e.*, "a stored value card issued by a bank or other similarly regulated financial institution or by a licensed money transmitter that is (1) usable and honored upon presentation at multiple merchants or service providers that are not under common ownership or control for goods or services or at automated teller machines, (2) issued in a requested prepaid amount which amount may be, at the option of the issuer, increased in value or reloaded if requested by the cardholder, and (3) not marketed or labeled as a gift card; the term "reloadable card" includes a temporary non-reloadable card issued solely in connection with a reloadable card.").

4. **Definition of Stored Value Card.** Section 17:18-3.1 of the Proposed Regulations defines a "stored value card" to mean "a record that evidences a promise, made for monetary or other consideration, for the face value of the card by the holder, issuer, or seller of the record that the purchaser/owner of the record will be provided, solely, or for a combination of, merchandise, services, or cash in the value shown in the record, which is pre-funded and the value of which is reduced upon each redemption." The term "stored value card" "includes, but is not limited to, the following items: paper gift certificates, records that contain a microprocessor chip, magnetic stripe, or other means for the storage of information, general purpose reloadable cards, gift cards, electronic gift cards, rebate cards, credits for merchandise returned without a receipt, stored value cards, or certificates, store cards, and similar records or cards." The Proposed Regulations then provide that the following types of cards will **not** be considered "stored value cards":

   - Wage pay cards. The Proposed Regulations provide that "[t]hese are cards that are issued for wages owing in the ordinary course of business. A related bank account is opened for the employee when a stored value card is issued for the purpose of wage payments. The bank holding the funds will have the primary obligation of identifying and reporting any funds that are deemed abandoned. The deposit is presumed abandoned three years from the last transaction in accordance with N.J.S.A. 46:30B-18."

   - Cards issued for merchandise credits. The Proposed Regulations provide that "[c]ards issued for credit balances, customer overpayments, security deposits, refunds, credit memoranda, unused tickets, or in payment of other liabilities that occur in the ordinary course of business that are redeemable for cash are deemed credits and have three-year abandonment periods pursuant to N.J.S.A. 46:30B-42. Issuers of stored value cards issued for the above-mentioned purposes are required to obtain and maintain the name and address of the recipients of these cards."

   COMMENT: The definition of "stored value card" in the Proposed Regulations differs slightly from the definition in the Act.[6] While these differences do not appear to be

[6] The Act defines the term to mean "a record that evidences a promise, made for monetary or other consideration, by the issuer or seller of the record that the owner of the record will be provided, solely or a combination of, merchandise, services, or cash in the value shown in the record, which is pre-funded and the value of which is reduced upon each redemption. The term 'stored value card' includes, but is not limited to the following items: paper gift certificates,

significant, there is no basis for the Proposed Regulations to include a definition that is different from the statutory definition, and any different definition may also add confusion and complexity. The provisions regarding "wage pay cards" and "cards issued for merchandise credits" are also problematic for the following reasons and should be deleted in their entirety from the Proposed Regulations:

- First, it is not clear to us from the legislative history of the stored value card provisions that wage pay cards were intended to be excluded from the definition of a "stored value card." Rather, it would appear that such cards should generally be included within the definition of a "general purpose reloadable card," in which case they would be escheatable at 100% of their value after remaining unused for a period of five years.[7]

- Second, the title of the section applying to "cards issued for merchandise credits" is misleading, as that section applies not just to cards issued for credit balances, but to a variety of other cards, including cards issued for unused tickets, security deposits and refunds, if those cards can be redeemed for cash. As discussed below, we believe this section should be deleted in its entirety, but if it is not, the title should be changed to something like "Cards issued in payment of other liabilities that occur in the ordinary course of business and that are redeemable for cash."

- Third, and more importantly, it is not as clear to us that the legislative intent was to exclude the items listed (or at least all of the items listed) from the definition of "stored value card." For example, we see no reason why an unused ticket should not be treated as a stored value card, even if it is redeemable for cash, when a gift card that is redeemable for cash is considered a stored value card and is escheatable at 60% of its value under the statute. After all, a ticket is, like a gift card, otherwise redeemable for goods or services. In addition, if a company issues a refund in the form of a GPR card, it would seem that such a card would be subject to escheat based on the five-year dormancy period for GPR cards rather than the three-year dormancy period for refund checks, as the legislative intent appears to be that all obligations issued in the form of a stored value card are escheatable based on the five-year dormancy period.[8]

---

records that contain a microprocessor chip, magnetic stripe or other means for the storage of information, gift cards, electronic gift cards, rebate cards, stored-value cards or certificates, store cards, and similar records or cards." N.J. Stat. § 46:30B-6(t).

[7] Section 17:18-3.3(g) of the Proposed Regulations provides that "[s]ince stored value cards issued for purposes of wage payments result in the funds being placed in a related bank account in the name of the employee, the bank has the primary responsibility for compliance with the Act. The appropriate dormancy period is three years from the date of the last customer generated transaction or contact in accordance with N.J.S.A. 46:30B-18." Again, we are not sure that this three-year dormancy period is consistent with legislative intent. In addition, the language stating that "the bank has the primary responsibility for compliance with the Act" suggests that some other entity may have "secondary responsibility" for compliance with the Act. Accordingly, regardless of this dormancy period issue, this language should be changed to "the bank is the holder with the sole responsibility for compliance with the Act."

[8] Even if the exclusion of these items is consistent with legislative intent, we would recommend that this section be revised to make clear that the exclusion applies to the identified property types only if they are incurred in the ordinary course of business and are not redeemable for cash. As currently drafted, that appears to be the case, but it is not clear. To eliminate this ambiguity, the section should be rewritten as follows: "Cards issued in payment of other liabilities that occur in the ordinary course of business that are redeemable for cash, including but not limited to credit balances,

- Fourth, the Proposed Regulations provide that "[i]ssuers of stored value cards issued for the above-mentioned purposes are required to obtain and maintain the name and address of the recipients of these cards."[9] We are aware of no statutory authority that permits New Jersey to require collection and maintenance of this information. To the contrary, the legislature specifically repealed provisions requiring issuers of stored value cards to collect and maintain such information on other types of stored value cards. P.L. 2015, c.8, §1 (eff. Feb. 5, 2015). Moreover, the collection and maintenance of this information would raise similar compliance problems as with respect to the repealed provision, particularly for issuers of tickets and other instruments covered by this section that do not normally collect (and may have difficulty collecting) such information.

5. **Non-Escheat Considerations.** The Proposed Regulations also include several non-escheat-related consumer protection provisions regarding the use of fees, expiration dates and payment of cash to the owner of a low-balance stored value card, including Sections 17:18-3.3(b), -3.3(c), -3.3(d), -3.3(e) and -3.3(i).

   COMMENT: Although these provisions are generally consistent with the statutory provisions already in effect, there are a few exceptions that should be corrected:

   - First, the Proposed Regulations state that "[b]anks and other financial service companies that issue stored value cards that may be redeemed at multiple merchants (general purpose reloadable cards) …[m]ay charge fees other than for activation or replacement." This provision suggests that GPR cards cannot impose fees for activation or replacement. This may simply be poor drafting in the Proposed Regulations (*i.e.*, "other than" as used in the proposed regulation, may have been intended to mean "in addition to"), but under the statute, GPR cards may charge any type of fees. Accordingly, to eliminate this ambiguity, Section 17:18-3.3(c) should be changed to "Banks and other financial service companies that issue general purpose reloadable cards…[m]ay charge fees in addition to fees for activation or replacement."

   - Second, the Proposed Regulations provide that "Beginning September 1, 2012, if a stored value card is issued as a gift card or gift certificate that as a result of its usage has a residual value of $5.00 or less, at the owner's request the merchant or other entity redeeming the card must refund the balance in cash to the owner." Prop. N.J.A.C. § 17:18-3.3(e). By contrast, the statute exempts from this cash-back requirement (1) a non-reloadable stored value card with an initial value of $5 or less; (2) a stored value card that is not purchased but is provided in lieu of a refund for returned merchandise; and (3) a stored value card that can be redeemed at multiple merchants that are not under common ownership or control, including but not limited to network-branded stored value cards. N.J.S.A. § 46:30B-42.1(h). Thus, the Proposed Regulations

customer overpayments, security deposits and refunds, are deemed credits and have three-year abandonment periods pursuant to N.J.S.A. 46:30B-42."

[9] The Proposed Regulations are not entirely clear what the "above-mentioned purposes" refer to, but we assume this to mean the category of cards described as "cards issued for merchandise credits."

conflict with the statute insofar as the Proposed Regulations apply the cash-back laws to the following products which should be exempt:

- Cards issued in exchange for merchandise returned without a receipt, if the card is labeled as a "gift card" (which is not uncommon among retailers)

- Open-loop gift cards

Accordingly, the Proposed Regulations should be revised to include these three statutory exemptions.

- Third, Section 17:18-3.3(i) of the Proposed Regulations does not make clear which cards are allowed to charge a dormancy fee and which cards are not allowed to charge a dormancy fee. Thus, this section should be revised to include the last sentence of N.J.S.A. § 46:30B-42.1(j), which states that "A general purpose reloadable card shall not be subject to the provisions of this subsection."

Thank you for your consideration of our comments. Please let me know if you have any questions or if we can be of further assistance.

Sincerely,

Toni Nuernberg
Executive Director, Unclaimed Property Professionals Organization
763-253-4344
toni@uppo.org