
UNDERSTANDING PREPAID CARD PARTNERSHIPS

A Guide for Nonprofit Organizations in New York

- Can we use prepaid cards to help raise money?
- Are they a good community **outreach** tool?
- Will they provide a needed service for our members?
- How do we **choose** which company to use?
- Can a prepaid card build a **brand** for our nonprofit?
- Are there differences between prepaid cards?
- How much will it cost us?
- Are prepaid cards better for **immigrants**?
- Are they **safer** than bank accounts?



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About Appleseed

A nonprofit network of 16 justice centers in the United States and Mexico, Appleseed is dedicated to building a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest.

About New York Appleseed

New York Appleseed solves problems affecting the daily lives of New Yorkers through projects expanding access to opportunity: economic, social, and legal. We work with volunteer attorneys, business leaders, government, and grassroots advocates to identify critical issues, conduct thorough research, and advocate for effective solutions to structural barriers to economic justice, affordable health care, housing, access to the courts, and education.

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INTRODUCTION

A Simple Question?

The idea for *Understanding Prepaid Card Partnerships* developed out of a seemingly simple question posed to New York Appleseed by a local community-based organization. The organization, a nonprofit advocacy group that provides social services and also engages in grassroots organizing campaigns to advance immigrants' rights, had been approached by a company offering the opportunity to "co-brand" a prepaid card that the organization could provide to its members and clients. In return, the company proposed, the prepaid card user would have a safe place to store money and the organization would get some much-needed income stream from fees associated with the card program. Is this kind of offer too good to be true?

The purpose of this guide is to assist nonprofit organizations considering partnerships with prepaid card providers. The challenge, of course, is how to work with the private sector while advancing your organization's social justice goals. *Understanding Prepaid Card Partnerships* is designed to address several legal issues and broader themes, including:

- The whos and whats of the prepaid card industry
- The nonprofit perspective on prepaid card programs
- Legal and policy issues related to partnerships with private sector companies
- Legal and regulatory issues related to prepaid cards
- Tips and resources for negotiating and managing a prepaid card program

More importantly, we hope this guide will help you—as nonprofit managers, staff, directors or lawyers—by raising questions about the legal, regulatory, resource and policy questions implicated by nonprofit partnerships with private-sector actors in general. Although written with the New York regulatory context in mind, this guide contains general principles that will be useful to nonprofits across the country.

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Changing Landscapes and New Roles for Nonprofits

Nonprofit organizations today face significant challenges. Your clients and members are stretched beyond their means to meet basic needs. Leaders of nonprofits are seeking innovative strategies to generate income that is sustainable and independent. As one manager explained, “We loved the idea of generating income through a private partnership; it seemed like the best of both worlds. We would receive a stream of income that came without strings attached, and our clients would receive a new service.”

In an increasingly globalized society, tools such as prepaid cards offer financial-service providers valuable exposure and relationships with new communities. Given the enormous untapped market in unbanked or underbanked communities, the prepaid card industry is approaching nonprofit organizations with requests for co-branding financial tools and is actively seeking partnerships to expand access to financial services. These arrangements have many potential benefits for a community-based organization, including:

- Providing a new financial service to clients and members;
- Generating an income stream to support the organization’s operations;
- Increasing name and brand exposure for the organization;
- Supporting the organization’s financial literacy and education goals; and
- Promoting consumer empowerment and access to the private sector.

But while the nonprofit and prepaid card provider may have the same short term goal of signing clients up for prepaid cards, long-term goals will typically be very different. Your organization needs to think carefully about whether it is appropriate to get involved in the prepaid card business at all. And if your organization does decide to move forward, your organization will also need to negotiate its contract very care-

fully. Arrangements between nonprofits and prepaid card providers entail significant risks and hurdles, such as:

- Reputational hazard or damage;
- Complicated legal and regulatory issues;
- Product and market pressures that may interfere with a nonprofit's mission;
- Long-term ties to a product without flexibility for changed needs or circumstances; and
- Additional drains on staff time and organization resources.

While industry actors may promote the simplicity and ease of their products, a nonprofit may find the operation of a prepaid card program to bring more challenges than anticipated. When considering a prepaid card program, consider your organization's long-term strategies for activities, membership and resource allocation. Your organization should also seek assistance in approaching legal, technical and business questions in the negotiations process.

Who Should Read This Guide?

There are a number of resources authorized by the prepaid card industry that discuss the benefits of partnerships. This guide, however, is written with a nonprofit organization's perspective and priorities in mind. Organizations that may benefit from this guide include:

- Immigrants' rights advocacy organizations;
- Financial literacy and education providers;
- Credit unions and community financial services organizations;
- Workforce development and social services agencies; and
- Unions and worker advocacy organizations.

How to Use This Guide

We have designed this guide to examine questions that arise in a nonprofit's partnership with a prepaid card provider. Where possible, we have raised issues that affect both the nonprofit and the individual consumer. This guide is not meant to, and **should not**, replace an attorney or business consultant familiar with such partnerships. The prepaid industry and the laws affecting nonprofits are complex, and the consequences of participation may be serious. It is important that your organization seek counsel with experience in this area.

IDENTIFYING NEED | _____

Scenario: A community-based workers' rights center sponsors a financial literacy workshop for its largely immigrant membership. Most of the center's members are undocumented, low-wage immigrant workers. Many banks in the area have not welcomed immigrant customers, and the local check-cashing outlets charge high fees. After many years of working with immigrants to address access to banking issues, the center is considering offering prepaid cards to members as a benefit to joining the center's financial literacy workshops.

Overview: What is a Prepaid Card?

A prepaid card is an electronic payment card that allows consumers to use the value of the card in order to pay for goods and services.¹

Usually prepaid cards store all the information that is necessary to identify the card and its value on a magnetic strip or microchip.² The cardholder adds value to the card before making any transactions using the card.³ Value can be added in various means: loading cash onto the card through an agent, creating a direct deposit for payroll or government benefits onto the card, or transferring funds onto the card through on-line or cell phone programs. Depending on the terms of the card, funds from a prepaid card may be accessed via ATM or at a cash register, much as one would use a credit card.

There are many types of prepaid cards, including gift cards, phone cards, payroll cards, insurance cards, university cards and teen cards. Some nonprofits enter into partnerships with specific stores to offer gift cards in exchange for a percentage of profits. These fundraising partnerships involve "closed-loop" prepaid cards: cards that can only be used at a certain merchant or group of merchants. Although many of the same negotiation points and legal issues pertain to such situations, this guide focuses on "open-loop" prepaid cards – those cards that can be used to store money and make purchases at any merchant that accepts major credit cards.⁴

Prepaid Bank Cards or Network-Branded Prepaid Cards ("open-loop" cards) allow cardholders to pay merchants at a cash register in the same way one would use a credit card. The card provides the cardholder with access to funds at a bank or other depository institution. The bank may distribute the card itself, or third parties may be involved in distributing the card. The funds at the bank are held by the distributor, but transferred or withdrawn by the cardholder. Often prepaid bank cards may be branded with a Visa, MasterCard, Discover, American Express, or other network logo and are accepted wherever these networks are honored.⁵

Why Consider a Prepaid Card?

Approximately 84 million people are unbanked and underserved, representing \$1.1 trillion in income.⁶

Recently, prepaid cards have emerged as a popular payment method for government benefits, payroll processing and retail. Many employers are opting to provide payroll through prepaid cards, rather than traditional paper checks. Employers argue that the cards reduce costs and provide employees with secure, predictable, fee-free payments. Many advocates note, however, that traditional check-cashing fees have been replaced by other potentially onerous burdens related to card fees and penalties.

This section examines some of the advantages and disadvantages of using prepaid cards. Our guide is not intended to promote prepaid card programs or any specific partnerships with private financial-service providers. Faced with a landscape of rapidly changing economic- and financial-services products, nonprofit organizations considering prepaid card programs have found many good reasons for offering prepaid cards to clients and/or community members. Some nonprofits believe prepaid cards are a useful alternative for community members who do not utilize banking or other mainstream financial products to manage money. If your organization's membership has a large immigrant base, for example, a prepaid card may be attractive if it has favorable remittance features and simpler terms of usage than a credit card or bank account.

Be wary of claims that prepaid cards are somehow easier or safer for immigrants because they require fewer forms of identification or are otherwise more "anonymous" than bank accounts or other types of financial services. Comparable forms of identification are usually required to use prepaid cards, and providers are subject to similar banking regulations. Be sure to review the chart on Page __ that summarizes the relevant rules.

The Appeal of Prepaid Cards

Between 2003 and 2007, prepaid transactions jumped from less than \$5 billion a year to somewhere between \$39 billion and \$113 billion, according to industry estimates.⁷

Prepaid card providers and nonprofits have presented a range of explanations for why consumers are drawn to prepaid cards. Some of these include:

- *Minimized Risk Exposure.* Unlike a credit card, a prepaid card user is limited by the funds available. Prepaid consumers are therefore unable to overdraw an account and will not incur overdraft fees.
- *Budgeting and Financial Planning.* Prepaid cards can complement a financial-education program and are useful for the designation and storage of funds.

- *An Option for Non-Traditional Consumers.* Some advocates argue that prepaid cards are a gateway product to introduce customers to mainstream banking, as well as an alternative option for individuals who do not qualify for traditional credit or banking products due to low credit scores or thin credit histories.
- *Convenience and Safety.* Prepaid cards are available to consumers who may not qualify for credit cards. With a prepaid card, a consumer has the opportunity to store funds safely and access the funds as necessary.

Consumer Perspective: Potential Benefits and Risks

As a nonprofit advocacy organization, your first question is likely to focus on the benefits and risks for your clients and members – the consumers of the prepaid card.

⇒ *Potential Benefits to Consumers:*

1. Prepaid cards have many features that meet member needs.

- Consumers can carry funds, pay bills, transfer funds, purchase items and access cash.
- Prepaid cards are potentially more secure and flexible than cash alone.
- Consumers may request that employers load funds onto their cards via direct deposit.
- Consumers can have other kinds of income (*e.g.*, government benefits) loaded onto their cards.

2. Prepaid cards are more accessible than brick-and-mortar banks.

- Our members may feel more comfortable opening a prepaid account, which can be done on the computer and in the office, than going to a bank where staff may sometimes treat immigrants poorly or demand identification requirements beyond what is required by law.
- A consumer does not need a credit history to purchase or use a prepaid card.

3. Prepaid cards can save your members money.

- A cardholder cannot spend or transfer more than the amount on the card.
- Prepaid cards can help consumers avoid high transactional fees, overdrafts, interest charges and late fees that may arise with traditional bank or credit accounts.

4. Prepaid cards can be a first step toward access to financial services.
 - A prepaid card can be a tool for consumer education and financial literacy about money management, financial institutions and financial tools.
 - Prepaid cards can empower consumers who are not banking with traditional institutions such as banks and credit card companies.

⇒ *Potential Risks to Consumers*

1. Prepaid cards, like traditional bank and credit accounts, may have many fees attached to services.
 - Prepaid cards present a range of fees related to usage, account rules and registration. These fees are not always transparent and may be similar to or more confusing than traditional banking products.
2. Prepaid card companies have similar identification requirements to banks and credit cards. They are not necessarily “easier” to get than traditional financial services products.
 - Identification requirements may actually be the same as those required by a mainstream institution.
3. Most prepaid cards do not allow a consumer to build a credit history through traditional credit reporting bureaus.
 - In general, for almost every card on the market, a consumer cannot build any credit history that will be reported to traditional credit bureaus through the usage of that card.
4. Consumers need to be careful about a prepaid card provider’s protocols for maintaining the security of personal information.
 - Depending on who runs the prepaid program and registers cardholders, a consumer’s personal information may be less secure than with a traditional bank.
5. Some prepaid cards may not safeguard adequately against common issues arising in unbanked populations.
 - Consumers may not have access to customer support representatives who can answer questions and troubleshoot.

- Prepaid cards are a way for industry entities to market potentially risky non-prepaid products, such as credit products, to young, inexperienced or uninformed consumers.

Nonprofit Perspective: Potential Benefits and Risks

⇒ Potential Benefits to Nonprofits

1. A prepaid card program can assist in community outreach and build an organization's community presence.
 - Prepaid cards can be a tool for outreach that helps your organization develop relationships with a new client and/or member base.
 - If your prepaid card is "co-branded," your logo and information about your group will be visible in every transaction.
 - The prepaid card may help with community-building and service development.
2. Prepaid cards can be incorporated into your organization's financial-literacy curriculum as a learning tool.
3. Joint ventures with for-profit providers may generate an income stream from products offered, such as prepaid cards, if there is sufficient subscription and usage.

⇒ Potential Risks to Nonprofits

1. Prepaid card programs are a substantial commitment in time and resources.
 - The program may require more money, time and personnel to operate than anticipated.
2. Alliances with the private sector are inherently risky and should be vetted carefully.
 - A partnership with a commercial organization may expose your nonprofit's reputation to risk.
 - Members may not sign up for or use the program at the expected volume, causing you or the provider to determine that the program is not financially viable.
 - Insurance requirements could be prohibitively expensive.
 - The provider's customer service may not address your clients' needs.

- Your clients' confidential information could be compromised if held at an insecure site.

A Note on Prepaid Cards and Remittance Services

Many nonprofits are attracted to prepaid card programs because they may offer a card-based remittance transfer service. If this is a priority for your members, you should examine carefully the remittance-related features, if any, of the prepaid cards offered. Some programs offer card-to-cash alternatives, others are dual-card programs. More recently, some programs are offering sub-account models. Each additional service likely includes a fee and usage limitations.

Prepaid cards that offer remittance-related services fall under money transfer regulations for remittance transactions. As a result, prepaid providers who offer remittance services have additional legal compliance issues, including filing suspicious activity reports for unusual transactions, registration requirements and audits by federal tax authorities.

The chart on the following page compares prepaid cards to other methods of accessing money, such as bank accounts (debit cards), credit cards and check-cashing vendors.

BENEFITS AND DRAWBACKS OF PREPAID CARDS
 (Comparison Chart: Prepaid, ATM, Credit, Check Casher, Bank Account)

PRODUCT	IDENTIFICATION	BENEFITS	RISKS/DISADVANTAGES
Stored Value Card/ Prepaid Card	<ul style="list-style-type: none"> • Same as for bank accounts (state issued ID or passport, Social Security number, address). • Accounts may be opened online through a registered agent, such as the nonprofit. 	<ul style="list-style-type: none"> • Theft protection • No risk of overdraft • Similarity to a debit card • Ability to re-load funds onto card • Ability to withdraw cash • Network brand benefits (i.e. FDIC, ability to use at many locations) 	<ul style="list-style-type: none"> • High fees, including those associated with loading funds • Unlikely to offer the opportunity to build credit history • Unlikely to offer interest income • May not be accepted everywhere that cash is accepted
Bank Account with ATM/ Debit Card	<ul style="list-style-type: none"> • State issued ID or passport • Social Security number • Address • Bank-specific requirements beyond legal requirement 	<ul style="list-style-type: none"> • Theft protection • Credit history • Interest income • No fee to deposit money into account • Network brand benefits (i.e. FDIC, ability to use at many locations) • Ability to withdraw cash 	<ul style="list-style-type: none"> • Risk of overdraft (after August 15, 2010, banks will only be able to allow overdrafts and charge overdraft fees on ATM and debit card transactions for customers who opt-in)⁸ • Minimum balance requirements
Credit Card	<ul style="list-style-type: none"> • Social Security Number • Address and other contact information • Credit history 	<ul style="list-style-type: none"> • Theft protection • Credit history • Ability to withdraw cash 	<ul style="list-style-type: none"> • Risk of charging beyond what one can afford to pay • Risk of charging beyond credit limit • Significant penalty fees and interest charges, which can change
Check Cashing Location	<ul style="list-style-type: none"> • Photo • Identification 	<ul style="list-style-type: none"> • One-time transaction, completed at time of interaction 	<ul style="list-style-type: none"> • High fees and no protection against lost cash • No credit history

Choosing a Product and Provider

Scenario: I met a prepaid card industry representative at a conference discussing financial services for the unbanked. Within a few days, she had sent me information about their products and suggestions on how we might be able to partner together to offer prepaid cards to our clients. The materials looked great, but how can I compare products?

As a manager of a nonprofit organization, a prepaid-card partnership may be the first “business venture” you have ever negotiated. The first step in negotiating a partnership is to identify the private sector partner.

The prepaid card industry has expanded significantly over the past few years, and industry analysts predict continued growth, particularly in products targeting low-income, minority and immigrant markets. This section presents some of the primary considerations for nonprofit organizations when reviewing products and providers.

Some card providers are willing to tailor a prepaid card program to fit the specific needs of a nonprofit and its members. In particular, a provider should be willing to negotiate or eliminate certain fees associated with prepaid-card use, provide customer service for your clients in their primary language and provide the nonprofit with the necessary infrastructure it needs to effectively market and distribute cards.

Choosing a Product

⇒ *Know Your Member/Client Needs*

When considering a prepaid-card program, you should consider canvassing your intended constituency to assess their needs and priorities for a prepaid-card product. Some of the features to discuss with your group include:

- Costs and fees, including the registration and monthly costs;
- The importance of having protection for lost cards;
- Funding and loading methods, procedures and convenience;
- Identification requirements and credit checks;
- Bill-payment and cash-withdrawal options;
- Network-branded opportunities; and
- Perks, including savings plans or periodic free or waived fees.

⇒ *What to Look for in a Prepaid Card*

- *Reasonable Fees and Clear, Limited Penalties.* All fees should compare favorably relative to consumers’ other options such as traditional banks, money-transfer companies or check-cashing facilities. The card should not incur pen-

alties for inactivity. There may also be a registration fee, a monthly fee, ATM fees, pin-purchase fees and reload fees.

- *Clear Disclosures and Access to Information.* Unlike traditional credit cards, the vast majority of prepaid cards do not issue paper statements. The provider may, however, offer status updates online, or via text message. Adequate disclosure is a critical component for understanding how to use a card. You should look for a provider that can meet the needs of your members, including multi-lingual disclosures, regular updates and methods for providing information related to the user's card, including amount, transactions, changed terms or usage penalties.
- *A Network-Branded Card.* Branded cards have a Visa, MasterCard, Discover, or American Express logo on the card and are accepted broadly. Having a network-branded card ensures that the card is protected against identity theft and is FDIC insured. These networks are regulated along with the financial instruments they distribute.
- *Adequate Access to Financial Background of Prepaid-Card Provider.* Make sure that the provider is financially sound and willing to provide information about its financial status and long-range plans for this partnership, including projected alterations to the card terms and future marketing to the participants. You should be particularly aware of plans to offer credit to consumers.

Scenario: One nonprofit manager reported that her organization engaged in negotiations with a prepaid-card provider for over a year. They finally launched the program, expending considerable resources to train staff and develop community-outreach materials. Within a few months, the prepaid card provider decided to abandon the project, due to financial reasons, and the nonprofit was left without a program.

- *Consumer Protections.* Prepaid providers are not required by law to protect cardholders against fraud, identity theft and losses from stolen cards. Your nonprofit should therefore ensure that the prepaid-card program offers the same protections found in the Electronic Funds Transfer Act, including protection against identity theft, and uses practices in accordance with standards of the federal Customer Identification Program.
- *Customer Service.* Your nonprofit should ensure that your staff, as well as customers, will have convenient access to customer-service representatives. If you need multilingual service, you should discuss the availability of interpreters and translated materials. Customer service should include access to

account data and information twenty-four hours a day and seven days a week.

- *Clear, Accessible Privacy and Termination Policies.* Your nonprofit should feel comfortable with the prepaid card's privacy and termination policies. Review what the policies mean in non-legal, laymen's terms and seek language from the provider that you can convey to members with confidence.

Choosing a Provider

There are many different prepaid card systems.⁹ The players involved in a prepaid card program can include an **issuer** or **provider** (e.g., a bank), a **transaction processor**, a **distributor** or **vendor**; and a **program manager**.

- **Issuer:** A prepaid-card issuer is any bank or other depository institution that issues, or causes to be issued, prepaid or credit cards. Consumers may believe that their card is issued by MasterCard or Visa when it is not. Those companies are prepaid- or credit-card transaction processors, not card issuers.
- **Transaction Processor/Network:** In prepaid-card programs, a processor facilitates payment transactions and tracks and distributes funds in pooled accounts that are held in the issuing financial institution.
- **Distributor/Vendor:** An entity that distributes prepaid cards to consumers. Distributors can be entities that sell prepaid products. In some situations nonprofits themselves can be the distributors of prepaid products. Nonprofits can also be affiliates of distributors. Each affiliate enters into a contract with the distributor. The terms of the contract can be negotiated.
- **Program Manager:** The entity or person that provides the customer interface for the prepaid product. Project managers can be entities that sell prepaid products and provide customer service for use of those prepaid products. Nonprofits can be the program manager of prepaid products.

For purposes of this manual, we will refer to all industry players (networks, distributors and issuers) as "**providers**."

⇒ *How to Select a Provider*

Choose a provider that is willing to tailor a prepaid card program to meet the specific needs of your membership. For example, the provider may be able to provide web access or a twenty-four-hour hotline. If your membership includes immigrants, the provider should have consumer-friendly remittance features. The

provider should commit to providing customer service that is friendly and knowledgeable, easily accessible and available in consumers' primary language. The provider should have training and promotional materials that describe these programs and should provide your staff with the required training to ensure consumer protection and compliance with federal and state security, anti-money-laundering and consumer-protection laws.

Defining the Role of the Nonprofit

The role of a nonprofit in a prepaid-card program can include advertising and marketing the card or acting as an affiliate of a provider to sign up potential members. Nonprofits should be aware that the prepaid-card industry has a financial incentive to approach nonprofits as part of a marketing strategy. Both sectors are concerned about unbanked or underbanked populations, but for very different reasons.

EVALUATING INTERNAL CAPACITY |

Scenario: When we first decided to explore offering a prepaid card, our staff was very excited. After we launched the card, however, we were receiving daily phone calls and drop-ins from clients with questions about the card and usage. Our staff couldn't handle the volume of requests.

The capacity to operate a well-organized prepaid-card program includes the ability to negotiate contract terms, collect and protect consumers' personal information and offer continuing education and support to cardholders. Participating in a prepaid-card program requires a significant commitment of time and labor and the flexibility to handle unforeseen challenges that arise.

Organizational Infrastructure and Capacity Requirements

⇒ *Staff Training and Consumer Support*

While the card provider should have an accessible customer-service system, your organization's staff members should be active and able participants in customer service. Even where the provider has a sophisticated customer-service program, nonprofits often find that clients turn first to the nonprofit for help. Your staff must know the basics of how to use the product and also be able to help your clients communicate with the provider's customer-service representatives.

Trained staff members should be available to act as a liaison between the provider and the nonprofit and to counsel clients considering a prepaid card. Staff should be trained to answer questions and help members register for, use and reload the prepaid cards.

You should consider whether you have the resources to operate a time- and labor-intensive program. You may want to consider joining a consortium of community-based organizations that can share costs and resources. Another option is to partner with a business-consulting organization or a nonprofit financial-resources consulting group that can advise you on how to train your staff and can provide support as you develop your program.

A final factor to consider is whether your staff members are willing to be prepaid customers themselves. Staff participation is beneficial on two fronts: (1) it may increase your clients' confidence in the product if they know that your staff members also use the product; and (2) your staff may be more likely to learn how to use the card if they are using the product themselves.

⇒ ***Recordkeeping and Reporting Requirements***

Your nonprofit should have the ability to keep records, fulfill reporting obligations, track data and evaluate programs. These records will inform the card provider as well as your board about the progress of the prepaid card program. You will also need them for reporting to the Internal Revenue Service. Recordkeeping and reporting obligations may include a written contract, accurate and current books and records, registration and reporting to the Attorney General, accounting to the card provider and ensuring that all promotional materials are compliant with federal and state laws, including those related to commercial co-ventures. See Section IV below, *Due Diligence and Compliance: What Do They Mean?*, for more details on compliance and recordkeeping.

⇒ ***Financial Literacy***

Your nonprofit may want to offer a financial-literacy course to educate members about the full spectrum of financial tools. Through a financial-literacy course members can learn how to budget their money and how to use their prepaid card efficiently. Prepaid cards have many fees attached to them and a financial-literacy course can teach members how to use their card without incurring unnecessary fees. If your organization is unable to conduct its own financial-literacy course, you may want to partner with organizations in your area who offer these courses. Your organization should also have a trained staff member that can offer one-on-one counseling to members who have questions and need advice.

⇒ ***Security and Insurance***

A nonprofit operating a prepaid-card program should have adequate insurance coverage to support the potential liability that arises from partnering with a third party, collecting confidential information from clients and distributing a financial instrument. The provider will usually require that the nonprofit retain a certain amount of coverage in the contract.

Your nonprofit should also have the continuing capacity to maintain adequate on-site and computer-based security measures to store, transmit and dispose of clients' personal information.

NEGOTIATING THE CONTRACT

It is important to negotiate the terms of a prepaid-card program carefully and to seek legal and business assistance in doing so. You and your counsel should pay particular attention to contract terms relating to transaction fees, overdraft policies, consumer protection, consumer support, reporting obligations and re-credit rights in case of theft or error. A card provider seeking to build a contractual relationship with your organization and your membership should be willing to work with you and your clients to build a program that is tailored to your specific needs.

Leverage and Terms Subject to Negotiation

Without a strong bargaining position, a nonprofit will be unable to negotiate favorable terms. A nonprofit's leverage comes from its client base. In order to maximize that leverage, you should form coalitions or user groups with other nonprofits to create consumer power from the size of your constituency. Quantify the market: you will need to show the industry players how many potential card accounts are within your constituency.

Contract terms can be negotiated. Terms that nonprofits have successfully negotiated in the past include those relating to the fee structure of the cards, requirements that the provider set up a card-registration system on the internet through a website, disclosure requirements, maintenance of personal information files, customer-service programs, required forms of identification and marketing of "supplemental programs."

Revenue Share

Revenue sharing is negotiable. Revenues may come as a percentage of the fees the cardholder pays to the issuer or as a percentage of the fees the merchant (the store accepting the prepaid card) pays to the provider when a cardholder makes a purchase. The latter is favorable because the nonprofit is generating revenue from a third-party merchant rather than from its clients.

Parties' Rights and Responsibilities

One goal in negotiating the contract should be to ensure a balance of power and even allocation of risk. The contract may state that a party "shall" or "will" perform a certain obligation. If ever there were a dispute about failure to perform a contract obligation, "shall" may be interpreted as a stronger obligation than "will."¹⁰ Make sure that the card provider's obligations are all stated with the "shall" imperative.

The contract may provide for the future negotiation of additional agreements, such as a Service Level Agreement. Although relationships will always evolve, there are certain obligations and responsibilities that all parties should know and state in writing

in the beginning. You should ensure that every obligation and right necessary for the program's success is negotiated in advance and attached as an exhibit to the contract. These important terms should not be left to "good faith efforts" in the future.

Approval Rights for Promotional Materials

Your nonprofit should have final approval rights over any materials that use its name or logos to protect its reputation and preserve tax-exemption. The contract may provide for a grant of license by the nonprofit to the card provider and for the subsequent right to sublicense with the nonprofit's consent. The nonprofit should always maintain right of approval in these provisions. The nonprofit must also ensure that any use of its name or logos is consistent with its mission and with all representations made to the Internal Revenue Service.

Compliance

The contract may state that the nonprofit bears all responsibility for compliance with applicable laws and credit risk. You should have adequate legal counsel to ensure that you and your Board are aware of all applicable laws, especially because prepaid cards are a relatively new device and the laws and regulations that govern prepaid products are in flux.

Licensing requirements oblige the card provider, as a licensed issuer, to include certain provisions in their contracts with agents. The provider will need to ensure that your nonprofit is following certain procedures regarding state banking laws and federal banking and anti-money-laundering laws. The provider may include contract provisions that allow it to control various aspects of the nonprofit's operations and use of its facilities to be compliant with these legal requirements. For example, the provider may control the procedures that your staff uses to handle money, interact with customers and keep records of transactions. The provider must require the nonprofit to place signs that contain information about the provider and the state Banking Department. Like the provider itself, your nonprofit must provide receipts and follow other procedures that the provider has established for running its business. The contract should document all mechanisms the provider will use to comply with its licensing obligations, including record-keeping procedures, training procedures and policies regarding inspection of agents' premises.

To guard against fraud and the theft of property, personal information, or identity, either or both parties may be responsible for the implementation of safeguards and security measures. Either party may also be responsible for losses arising from theft or breach of security. The design and implementation of agreed-upon or required safeguards and procedures should be negotiated in advance. Your nonprofit should be aware of any losses for which it can be held responsible and whether that conflicts with its insurance policies. Make sure to understand the practical implications of

maintaining safeguards in accordance with the “highest standards of best industry practice.”

Consumer Protection

Although no federal or New York State statutes or regulations address consumer-protection issues related specifically to prepaid cards, there are several other sources of guidance that mandate consumer protections, including:

- The Office of the Comptroller of the Currency advisory bulletins that explain best practices for prepaid cards;
- FDIC regulations;
- Federal Reserve regulations; and
- General principles found in consumer-protection laws. (New York has consumer protection statutes that apply to prepaid-card providers and money transmitters).

Contract provisions that refer to consumer protection should refer to and be in accordance with these sources. Nonprofits should keep in mind, however, that some consumer-protection laws are unsettled and providers could challenge with some justification whether they are legally bound to follow certain requirements. If the law is unclear, the contract should affirmatively state the obligations to which the provider is agreeing to be bound.

Insurance

The contract may require the nonprofit to maintain a certain level of liability insurance. Check with your insurance provider to ensure that your organization will be able to obtain and pay for the specified level of liability.

The nonprofit should require that the provider be FDIC insured or have other protections in place for its clients’ funds in the event that the card provider fails. The nonprofit should also require that the provider deposit consumers’ funds in an account at an insured depository institution, such as a bank and that the provider has taken – and will take for the duration of the contract – the required steps for the funds to be FDIC insured.

Termination

Either party may have the right to terminate the contract when it becomes “commercially impracticable” or “not commercially viable” such that a party “would incur financial losses or fail to accrue sufficient benefit to warrant such continuation.” The provider should agree to provide notice to the nonprofit of problems that may rise to this standard and should agree also to work in good faith to resolve such issues without termination.

The right to terminate for the reason that the program is “commercially impracticable” or “not commercially viable” is a broad right of termination. The duty to work in good faith with the nonprofit to resolve problems as an unspecified commitment is only a vague safeguard against misunderstanding and unanticipated complications. It is important for a nonprofit to consider the impact that a termination of agreement would have on their prepaid-card venture. The nonprofit should determine what happens in the event that (1) either party goes bankrupt; or (2) the provider decides the issuance is “commercially impracticable” or “not commercially viable”? What chain of events would ensue and how will that affect cardholders, their funds or the nonprofit and its costs?

Fees and Services

The nonprofit’s share of revenues may be conditioned on the nonprofit’s activities, such as its “active” participation in marketing, promotion and sales. You should ensure that any of your obligations are negotiated up front and included in the contract. The provider may be obligated to provide certain marketing or consumer-support services to consumers in a certain way, such as with “diligent efforts” or “good faith.” You should be sure to define clearly the scope of these provisions in the contract.

Cardholder Information

The contract may state that the Card Distributor or Bank owns all Cardholder Information, regardless of how such Cardholder Information is obtained. A nonprofit should ensure that the Distributor is following the consumer-protection practices outlined in the Electronic Funds Transfer Act. A nonprofit should know whether data is considered “disclosable” and if so, what data could be disclosed and how.

The contract may require various types of identification from consumers, and may require either the nonprofit or the distributor to store that information. All identification procedures should comply with federal Customer Identification Program principles – best practices that can help to protect the nonprofit from liability. You may want to negotiate the storage of less information to protect your nonprofit from liability in the event of theft or increased insurance fees.

Due Diligence

As part of the negotiation process, you will want to ensure that you have adequate time and resources to conduct effective due diligence and to understand the range of compliance obligations to which your organization will be subject. We discuss some broad parameters related to these issues in the next section.

DUE DILIGENCE & COMPLIANCE: WHAT DO THEY MEAN? |

Nonprofit organizations engaging in a partnership with prepaid-card providers have rights and responsibilities. In this section we discuss a range of obligations that you should consider as part of the negotiation process.

The phrase “due diligence” refers to the process of investigation a party undertakes when considering an investment or partnership. As part of this process you will want to review a potential partner’s financial records, industry history and business plan. We have listed below some of the areas nonprofit organizations have prioritized when considering partnerships with private companies, including prepaid programs.

Look Closely at Your Partner

⇒ *Has Your Partner Met All the Legal Requirements for Licensing Under Applicable Federal, State and Local Laws?*

Your chosen provider should have legally required licensing. For example, in New York State a prepaid-card provider must have a money-transmitter license and is subject to continued monitoring by the New York Banking Department.¹¹ The purpose of these requirements is to prevent fraud. Additionally, New York law requires money transmitters to have a \$500,000 bond or security to pay any claims in case of insolvency or bankruptcy.

You should confirm that the prepaid-card provider has a money-transmitter license and that it submits the necessary documentation of the agency relationship to the Banking Department. The contract should state the provider’s obligation to obtain and maintain its license for the duration of the contract term.

⇒ *Can Your Partner Present Proof of Adequate Insurance?*

It is important that the prepaid funds of cardholders are insured by the FDIC. The FDIC currently insures deposits at depository institutions for up to \$250,000 in the case that the bank fails and cannot pay its customers’ funds.¹² The FDIC also issues various consumer-protection and disclosure regulations.¹³ Cardholders do not pay premiums for FDIC insurance.¹⁴

The FDIC will only insure funds that are held in an FDIC insured bank or savings institution.¹⁵ If a bank fails, the FDIC relies on a bank’s records to determine the owner of insured funds. A prepaid cardholder, however, is not identified as the owner of prepaid funds that are held in a pooled account in the name of a provider or other third party. In order for the FDIC to insure the prepaid card holder, the arrangement must meet “pass through” requirements established by

the FDIC.¹⁶ (The insurance coverage “passes through” the provider to the individual cardholders.)

The FDIC also encourages providers to display accurate information concerning FDIC insurance and the name of the bank or savings association where funds are held on the face of prepaid cards.¹⁷

You should confirm with the provider both that the prepaid funds are FDIC insured and that the bank where the funds will be held is FDIC insured. To ensure that the provider meets “pass through” requirements, your contract should require the provider to maintain records with the identity of cardholders and the amounts they own. The contract should also identify cardholders as the owners of prepaid funds. Nonprofits should also require the display of the name of the bank and the FDIC insurance status on the face of the card. The nonprofit should ensure that its clients are signing up for the cards with correct names and other information required for pass-through eligibility.

Understand Your Own Potential Compliance Responsibilities

⇒ *Will Your Organization Have to Obtain Licenses to Partner With Prepaid Providers?*

In most prepaid-card programs the nonprofit does not put the provider’s funds into its own bank account and does not pay funds upon demand through a consumer’s use of the card. If consumer funds remain with the nonprofit, however, the nonprofit would not be considered an agent, but a transmitter of money, and may therefore require its own license.

If a nonprofit engages with the card provider to provide certain services associated with a prepaid card, the nonprofit becomes an agent of the provider and will not be required to get separately licensed under New York state money transmitter laws. Activities of the nonprofit that can create an agent relationship with the provider include opening accounts, accepting funds and payments, loading funds onto cards and other daily tasks associated with servicing the card. A contract documenting the agency relationship must be submitted to the New York State Banking Department. The nonprofit must be sure to keep its activities within the defined scope of the agency relationship to avoid criminal or civil liability for actions taken outside of the protections of the agency relationship.

⇒ *Will Your Organization Have to Alter Its Recordkeeping Obligations?*

Depending on how the prepaid-card partnership is structured, it may qualify as a commercial co-venture, which could trigger certain reporting obligations for the nonprofit. The laws related to co-ventures are intended to protect the nonprofit

against the potential imbalance of power between a for-profit and a nonprofit and to protect consumers against fraud. Your organization should assume that a prepaid card is a commercial co-venture and ensure that applicable statutory requirements are met.

The term “commercial co-venture” applies where a for-profit entity agrees to donate a portion of its revenues on a certain product to a nonprofit.¹⁸ Such “cause marketing” or “co-branding” relationships can assist nonprofits with fundraising, increasing visibility, broadening client base and public relations. The prepaid-card arrangement is different from the traditional model, but could be characterized as a commercial co-venture, depending on how the prepaid card is advertised and branded and whether it is presented as providing a benefit to the nonprofit partner.

At least eighteen states have statutes that regulate commercial co-venturing, including New York.¹⁹ In New York, a commercial co-venture triggers certain requirements including:

- A written contract with a New York State registered commercial entity that governs the agreement;²⁰
- Keeping accurate and current books and records for at least three years after the expiration of the contract term that are available for inspection and audit by the nonprofit and by the attorney general;²¹
- An accounting by the provider to the nonprofit;²²
- Registration and reporting by the nonprofit in its annual filing to the Attorney General’s Office²³ detailing: (i) the names and addresses of all commercial co-venturers authorized to utilize the nonprofit’s name; (ii) a statement of the financial terms and conditions of the co-venturing contract; and (iii) a statement of whether the commercial entity provided the charity with the accounting that is required by the statute;²⁴
- Solicitation or advertising that claims a benefit to a charitable organization must set forth a statement disclosing the portion of any purchase or other specific benefit that will be given to the nonprofit;²⁵
- The nonprofit’s automatic initial right of cancellation without cost, penalty or liability for a period of fifteen days following the date on which the contract is filed with the attorney general, regardless of the date of execution of the contract.²⁶

⇒ ***How Will a Prepaid-Card Partnership Affect Your Tax-Exempt Status?***

Your nonprofit should ensure that the prepaid-card program will not jeopardize the nonprofit’s tax exempt status and should determine whether the prepaid-card activities will be subject to Unrelated Business Income Tax (UBIT) if they are not

related to your nonprofit's exempt purpose approved under §501(c)(3).²⁷

Unrelated Business Income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption. A "trade or business" includes activities that are "carried on for the production of income."²⁸

Whether an activity is "substantially related" depends on the purpose of the activity, and its size and scope compared with the organization's activities on the whole.²⁹ An activity will not be substantially related if the size and scope of the activity exceed what is necessary for the organization to accomplish its purpose.³⁰ "Related" income-generating activity must "contribute importantly to the organization's accomplishment of its exempt purpose."³¹ A trade or business is not substantially related to the organization's accomplishment of its purpose merely because the profits from that trade or business go to that purpose.³² That is, it does not matter what the revenue from the business is used for. What matters is whether the business itself is substantially related to the organization's tax-exempt purpose.

While considering a prepaid-card program, you should seek legal assistance to determine whether the income from the program will be subject to UBIT. To avoid UBIT, the hallmarks and mechanisms of your prepaid-card program should both relate to the nonprofit's exempt purpose and distinguish it from its for-profit analog. It is particularly important to distinguish the nonprofit's role and purpose in a case such as a prepaid-card venture, where the activity itself is similar to an activity conducted by for-profits without a nonprofit partner. Examples of distinguishing factors include charging fees to consumers that are substantially less than what is charged by a for-profit counterpart and offering the card in conjunction with a financial-literacy program to emphasize its educational purpose. The size and scope of the prepaid-card programs should be appropriate to the exempt purpose. For example, the nonprofit may want to demonstrate how its exempt purpose is carried out with respect to all recipients of a prepaid card.

- ⇒ ***How Can Your Organization Protect Against Reputational and Goodwill Risks?*** Your nonprofit's reputation in the community and among your members has value. Make sure to examine, with the assistance of your Board and counsel, how the nonprofit's association with a provider will affect stakeholders' perception of the nonprofit? Will the partnership enhance or diminish the reputation of nonprofit in their eyes? What is the reputation of the provider among your stakeholders? Will your organization be able to explain the benefits that the commercial provider is securing from the partnership?

When a nonprofit agrees to provide its name and logo to the for-profit, there is a heightened risk to the nonprofit's reputation. It is important to set parameters specifying the circumstances under which the name and logo can be used by the commercial partner. Your organization should exercise caution about whether presentation implies endorsement. The nonprofit should also have approval and veto rights over each use of its name and logo.

In the event that the agreement is terminated or the prepaid card suspended, will the nonprofit be able to justify the resources expended on the venture to funders and other stakeholders? How will such a termination impact the organization's relationship with its clients and its reputation in general?

Consumer Protections and Compliance

If you are offering a prepaid program as a service to your clients or entering a "co-branding" relationship that will link your nonprofit organization with the prepaid-card provider in the public sphere, it is important that part of your due diligence research includes an examination into the relevant consumer protections, rights and responsibilities related to the partnership. How will card users be protected? Can your organization advocate for protections beyond those required by law?

⇒ How are Prepaid-Card Consumers Protected?

Nonprofits are not currently considered a Money Service Business (MSB) that would be regulated under federal or New York State Anti-Money Laundering (AML) regulations or the PATRIOT Act.³³ There are consumer protections and identification requirements within these federal and state regulations, however, that could apply to nonprofits in the future and could be followed as model practice. Your nonprofit can also ensure that card providers are following best practices that have been delineated by various regulatory agencies through advisory letters and related (though not necessarily directly applicable) regulations.

Under the Bank Secrecy Act, an MSB must maintain an "effective anti-money laundering program" that prevents it from "being used to facilitate money laundering and the financing of terrorist activities."³⁴ At minimum, the program must include verifying customer identification.³⁵

Under the PATRIOT Act, a financial institution must implement AML programs, including the verification of customer identifications.³⁶ A regulation issued jointly by the Secretary of the Treasury and certain federal functional regulators requires businesses to adhere to a Customer Identification Program (CIP) for a customer opening an account.³⁷ The CIP is set forth as a set of "basic principles" on which "banks" (including institutions that are not federally regulated) should base their identification programs for customers opening an "account."

The CIP Rule requires banks and other financial institutions to adopt written procedures to ensure proper identification of new customers. A business adhering to a CIP would collect, at a minimum, a customer's name, address, date of birth and personal identification number. The identification number can be a social security number or non-U.S. citizens can provide a passport number, alien identification number, or number and country of issuance for any other document bearing a photograph.³⁹

Consumer protections also include mandated business practices. Although some of the practices, such as Regulation E, may not apply, the nonprofit should ask the provider to disclose which of these business practices it complies with. Nonprofits should be careful selecting its business partners and ensure that the for-profit partner is in compliance with all necessary laws.

Another aspect of consumer-protection laws is disclosure. The nonprofit should ensure that it knows the kinds of information that providers must disclose to it. Nonprofits should maintain a complete record of all disclosures and information that the provider provides to the nonprofit and to the customers. In educating constituents about the card, the nonprofit should ensure that cardholders also know what information they should receive from the provider.

Finally, nonprofits should also remember that, in addition to the obligations posed under federal laws, state common law of contracts and general consumer-protection statutes still apply. Organizations should consult a lawyer familiar with contracts and consumer-protection laws before entering into an agreement.

⇒ ***Fraud Prevention***

The nonprofit should create a written set of policies and procedures instructing employees on how to safeguard confidential client information. Creating written policies and procedures concerning the privacy of confidential information will not remove the risk of security breaches, but will significantly reduce such risks.⁴⁰

⇒ ***Garnishment***

Funds stored on prepaid cards are subject to garnishment. Usually, the garnisher will send a subpoena to a bank requesting records regarding an account. For funds underlying prepaid cards, the card holder will not be identified as the owner of a bank account. Instead, the bank may refer the garnisher to the provider who holds the pooled account. The garnisher will then have to subpoena the provider. It is more difficult to subpoena a private provider (such as a network or distributor) than a bank.

END NOTES |

¹ Prepaid cards are sometimes referred to as “Stored Value Cards.” See National Consumer Law Center, Consumer Banking and Payments Law 169 (3d ed. 2005) (“There is not even a consensus on what to call [stored value] cards. Many call them prepaid cards”); Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 Fed. Reg. 67155, 67157 (Nov. 13, 2008) (Making no distinction between ‘stored value products,’ or ‘prepaid products’); Mark J. Furletti, *Prepaid Card Markets and Regulation 2* (Fed. Reserve Bank of Phila. Payment Cards Ctr., Discussion Paper No. 04-01 2004), available at <http://papers.ssrn.com/abstract=927077> (“A prepaid card, commonly referred to as a stored value card”); but see The Federal Reserve Board, *A Summary of the Roundtable Discussion on Stored-Value Cards and Other Prepaid Products*, <http://federalreserve.gov/paymentsystems/storedvalue> (Jan. 12, 2005) (distinguishing stored value and prepaid cards).

² General Counsel’s Opinion No. 8; Stored Value Cards, 61 Fed. Reg. 40490, 40490 (Aug. 2, 1996), *overruled on other grounds by* Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 Fed. Reg. 67155, 67157 (Nov. 13, 2008) (“This opinion replaces the opinion published by the FDIC in 1996”).

³ ATM Industry Association Debit Council, Best Practices for Stored Value Products 3 (2d ed. April 2008).

⁴ See CREDITCARDS.COM, CREDIT CARD GLOSSARY: TERMS AND CONDITIONS, available at <http://www.creditcards.com/glossary> (last visited April 5, 2010).

⁵ See National Consumer Law Center, Consumer Banking and Payments Law 170 (3d ed. 2005); *by* Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 Fed. Reg. 67155, 67156 (Nov. 13, 2008).

⁶ The Center for Financial Services Innovation, US Banker, America’s 84 Million Underserved Underbanked (August 2006), available at http://www.americanbanker.com/usb_issues/116_8/-285214-1.html (last visited April 5, 2010).

⁷ Kristina Peterson, Wall Street Journal, A Push to Regulate Prepaid Cards (June 1, 2009), available at <http://online.wsj.com/article/SB10001424052970203937504574248001346852532.html?KEYWORDS=prepaid> (last visited April 5, 2010).

⁸ See FEDERAL RESERVE, WHAT YOU NEED TO KNOW: NEW OVERDRAFT RULES FOR DEBIT AND ATM CARDS, available at http://www.federalreserve.gov/consumerinfo/wyntk_overdraft.htm (last visited April 5, 2010).

⁹ For a description of different stored value systems, please see General Counsel's Opinion No. 8; Stored Value Cards, 61 Fed. Reg. 40490, 40490 (Aug. 2, 1996), *overruled on other grounds by* Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 Fed. Reg. 67155, 67157 (Nov. 13, 2008) ("This opinion replaces the opinion published by the FDIC in 1996").

¹⁰ See generally Tina Stark, Contracts.

¹¹ A list of licensees is available on most states' Banking Department websites. In New York, the website is <http://www.banking.state.ny.us/simoneyt.htm> (last visited April 5, 2010).

¹² The \$250,000 coverage-limit is only temporary and will return to \$100,000 for all non-retirement deposit accounts on January 1, 2014. See FDIC, FDIC DEPOSIT INSURANCE COVERAGE, available at <http://www.fdic.gov/deposit/deposits/dis/index.html> (last visited April 5, 2010).

¹³ See FDIC, WHO IS THE FDIC?, available at <http://www.fdic.gov/about/learn/symbol/index.html> (last visited Jan. 14, 2009).

¹⁴ *Id.*

¹⁵ Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 Fed. Reg. 67155, 67157 (Nov. 13, 2008).

¹⁶ There are three pass-through requirements: (1) The bank's records must disclose that the distributor-account holder is holding the money on behalf of others. (2) Either the bank's records or the distributor-account holder's records must disclose the identities of the individual cardholders and the amount owned by each cardholder. (3) The funds in the pooled account must actually be owned by the cardholder and not by the distributor-account holder. The agreements between the cardholder and distributor, together with applicable law, will determine who actually owns the funds.

¹⁷ See Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 Fed. Reg. 67155, 67157 (Nov. 13, 2008) ("This opinion replaces the opinion published by the FDIC in 1996").

¹⁸ Under New York State Executive law, a "commercial co-venturer" means "[a]ny person who for profit is regularly and primarily engaged in trade or commerce other than [a fundraiser] who advertises that the purchase or use of goods, services, enter-

tainment, or any other thing of value will benefit a charitable organization.” New York Executive Law Article 7A § 171-a(6).

¹⁹ See Legal Issues in Cause-Related Marketing / Commercial Co-Ventures Outline, presented by Jean L. Tom and Rochelle Korman at NYC Bar Association, September 23, 2005 (listing those states as AL, AZ, CA, CO, CT, FL, GA, IL, ME, MA, NH, NJ, NY, NC, OH, OR, PA and WI).

²⁰ NY Executive Law, Art. 7A § 174(2).

²¹ NY Executive Law, Art. 7A § 173(2).

²² NY Executive Law Art. 7A § 173-a(3).

²³ The CHAR500.

²⁴ NY Executive Law Art. 7A § 173-a(4).

²⁵ NY Executive Law Art. 7A § 174-c.

²⁶ NY Executive Law Art. 7A § 174-a (1).

²⁷ See I.R.C. §§ 511-513

²⁸ Treas. Reg. §1.512(b)-1 (1992). An exempt organization that has \$1,000 or more of gross income from Unrelated Business must file a Form 990-T. I.R.C. §§511, 512 (2008). See also INTERNAL REVENUE SERVICE, UNRELATED BUSINESS INCOME TAX, available at <http://www.irs.gov/charities/article/0,,id=123293,00.html> (last visited April 5, 2010).

²⁹ Treas. Reg. §1.513-1(d)(1).

³⁰ Treas. Reg. §1.513(d)-1(3).

³¹ Treas. Reg. §1.513(d)-1(2) (1972).

³² Treas. Reg. §1.513(d)-1(2).

³³ CED Legal Memo AML at 5.

³⁴ 31 C.F.R. § 103.125 et seq. (2000).

³⁵ CED Legal Memo AML at 5.

³⁶ PATRIOT Act § 326 adds new requirements to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.*

³⁷ 31 C.F.R. § 103.121. See also FAQs: Final CIP Rule, *available at* <http://www.occ.treas.gov/ftp/bulletin/2004-3a.pdf>.

³⁸ FAQs: Final CIP Rule at 1.

³⁹ See PRIVACY RIGHTS CLEARINGHOUSE, FACT SHEET 31: CUSTOMER IDENTIFICATION PROGRAMS FOR FINANCIAL TRANSACTIONS, *available at* <http://www.privacyrights.org/fs/fs31-CIP.htm#5> (last visited April 5, 2010).

⁴⁰ NEW YORK STATE CONSUMER PROTECTION BOARD, NYS CONSUMER PROTECTION BOARD'S BUSINESS PRIVACY GUIDE, *available at* http://www.consumer.state.ny.us/pdf/the_new_york_business_guide_to_privacy.pdf (last visited April 5, 2010).