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Cc: Michael Barr, Assistant Secretary of the Treasury

The Community Reinvestment Association of North Carolina (CRA-NC) believes that MetaBank is using its OTS charter to develop a new platform for payday loans. These products will have a disproportionate impact upon poor consumers. MetaBank and its distribution partners acknowledge that they are targeting low-income consumers. We believe that MetaBank's prepaid card division, Meta Payment Systems, should provoke regulatory attention not just to this institution, but also to the prepaid card sector as a whole. The fear, in our minds, is the expansion of a second-class payments system for poor households to include high-cost credit that mirrors payday lending. We also believe that these high-risk loans undermine the safety and soundness of MetaBank.

Summary of Concerns

1. MetaBank's *I-Advance* line of credit accounts charge high fees.
2. MetaBank's accounting ignores the high risk in its MetaBank Payment Systems division.
3. MetaBank's fees for inactive cards and to close accounts undermine consumer escheat protections.
4. MetaBank offers a loan on a refund anticipation loan when it provides a "pre-tax season line of credit" to Jackson Hewitt customers.
5. MetaBank's partnership with CashAmerica is a threat to safety and soundness.
6. In partnering with CashAmerica, MetaBank is extending the privileges of an OTS charter to known payday lending institutions.
7. *I-Advance* loan products at Jackson Hewitt are funded from tax refunds. This is high-cost credit with high-cost fees.
8. There is no mention of MPS in MetaBank's 2007 Community Reinvestment Act exam.
9. There is a persistent record of fraud by MetaBank employees.

10. FDIC insurance on general purpose re-loadable cards is inconsistent. In some instances, banks determine how and when insurance is applied to customer accounts. Voluntary participation is an inadequate standard for a type of card that is becoming a popular alternative to mainstream banking.
11. MetaBank may be prepared to extend its i-advance line of credit to more RAL recipients as it builds out its relationship with its new partner, Santa Barbara Tax Products Group.
12. There may be a situation where MetaBank's representations about the extent of FDIC insurance on its accounts are misleading to the point of being 'false and deceptive.'

Prepaid debit cards are becoming the platform for the development of a second-tier banking system where high fees and finance charges are common place and consumer protections are minimal. These are debit cards but many also have lines of credit.

Prepaid cards could become an important platform for addressing the concerns of the unbanked. "Can we find solutions that reduce inequality, instability, and unsustainability….prepaid could bridge the gap between the cash economy and the mainstream," said former President Bill Clinton.

That possibility is a long way away from being met. We feel that their efforts to date pose a threat to many low-income households. We believe that the rules governing these cards demand attention.

This letter focuses on the cards offered by MetaBank. MetaBank is a thrift located in Sioux Falls, South Dakota. MetaBank had $834 million in assets on Sept. 30th, 2009. MetaBank offers some of the traditional products in a normal thrift, from personal banking, mortgages, trust services, as well as agricultural and commercial lending. Increasingly, though, their profits are derived from prepaid debit card programs.

MetaBank acts as a bank partner with marketing firms, tax preparation stores, payday lenders, check cashers, pawn shops and other outlets. The outside groups bring in customers. MetaBank holds the deposits on the cards that those retailers distribute.

Meta Payment Systems (MPS), a subsidiary of MetaBank, has a line of prepaid debit cards and credit lines. The debit cards offer access to the payment systems. Consumers can add additional accounts on to the prepaid "spend" card. Those options include a savings account, as well as a short-term line of credit. The line of credit is known as the "I-Advance" micro-lending product.

There are three types of prepaid cards in MPS:

- Reloadable cards: This includes payroll cards and General Purpose Reloadable cards. There is no limit to the number of reloads. These are generally open-loop cards.

- Non-reloadable cards: for gift cards, rebate cards, or promotional cards. The consumer can only spend the initial “load.”
- Benefit/insurance cards: These cards hold funds sent by employers and insurance companies to distribute benefits. That includes flexible spending account programs. Many of these cards are closed-loop.

Open-loop reloadable cards have the ability to serve as a long-term means of accessing the payments system. The cards available with i-advance are open-loop reloadables.

MetaBank’s partnerships add to the problem. MetaBank’s i-advance product can be added on to Jackson Hewitt’s i-power card. For the most part, the i-power card will be funded from proceeds of refund anticipation loans. MetaBank’s partnerships with NetSpend introduce a direct connection between this bank and a variety of check cashers, pawn shops, and payday lenders.

Prepaid debit cards are a growing element in the banking system. The RushCard, operating through partnerships with Bancorp Bank and M&T Bank, has more than $2 billion in deposits. Government checks are delivered through prepaid cards. Food stamps, unemployment benefits, social security payments, and even Hurricane Katrina relief aid are all going through prepaid cards. That is inconsistent with the assumptions that are used to explain the limited protections given to these accounts. Some cards even have consumer rewards programs[i].

This OTS-regulated institution is playing a part in the evolution of the prepaid card field. Its actions are a potential threat to low-income households.

About the I-Advance product

The *I-Advance* card gives a client access to a high-cost revolving line of credit. Consumers can borrow in $20 increments. For each loan increment, consumers are expected to pay $2.50. The loan term is only one month – so consumers are going to pay an APR of 150 percent. That APR would be even higher in the event that a consumer paid back the loan earlier.

This product evokes payday lending because it requires direct deposit. It is a new innovation on an old problem, but now it is working in conjunction with an OTS charter and with the benefit of the appearance of FDIC insurance.

Here is how it works: If a consumer cannot make good on their payments after one month, MetaBank draws the money out of funds loaded onto the debit card. Consumers “don’t have to do anything,” (MetaBank explanation) – because payments are deducted from the debit card balance.

These lending terms are consistent with payday lending. The interest rates exceed state usury caps, and the loans can be rolled over. By their own view, MetaBank's estimates of the interest on these loans are in the neighborhood of 125 percent. That figure reflects a situation where the borrower draws on the line of credit on the day after the last direct deposit. If the borrower holds the money for 35 days, then the APR is 130 percent. However, it is more likely that the borrower is going to take out money at the end of the month, when they are trying to stretch until their next paycheck. In a scenario where the line of credit is extended for 4 days, then the APR is 1140 percent.

MetaBank's regular prepaid debit cards and credit lines are also problematic. They sap funds out of deposit accounts. There is almost no way to get your money back out of a prepaid debit card account, short of spending the money down to the last cent or paying a fee to obtain the remaining money which may already have required a fee to load onto the card. MetaBank cards have special fees for not using your card, fees for canceling an account, and fees for reactivating an inactive account. Here is a short list of some of the ways that MetaBank's cards impose fees on their customers:

- Initiation or activation fees
- Monthly fees
- Point of sale transaction fees
- Cash withdrawal fees
- Balance inquiry fees
- Customer service fees
- Bill payment fees
- Fees to add or "load" funds.

Some MetaBank products will waive monthly fees if you have a regular direct deposit transaction. Bank Freedom, a card product that uses MetaBank as its bank, will waive its monthly fee if the consumer makes a direct deposit of $350 per month. This is a reverse overdraft charge. Others give consumers a bad choice – either pay a monthly fee or pay a point-of-sale transaction fee for each time that he or she uses the card.

In short, the i-advance product manages to take the basic premise of payday lending and transform it to the prepaid debit card platform. MetaBank adds to the viability of this product by contributing the benefits of its OTS charter to this enterprise.

The relationship with Jackson Hewitt

For Jackson Hewitt customers, the I-Advance card is linked with a high cost prepaid debit card product, the i-power card. The *i-power* card has a high-cost fee schedule. While it is free for consumers to load money onto their card, they often have to pay to use that money. Each PIN transaction costs $0.50, along with each ATM balance inquiry and any ATM decline. It costs $2.50 to withdraw money from an ATM – meaning that a consumer would spend $3.00 (independent of fees provided by the ATM owner) to check their balance and take out money. The card has a bill pay feature, but MetaBank charges $2.50 to use that service, too. Those fees will change on May 1st, and in most instances, they will go up. For example, a new $4.95 monthly fee will be imposed. It will cost $10 to get an existing balance refunded to the client. What makes this new direct deposit payday platform even more threatening is that it seems to be able to evade rules that protect social security income[ii]. The money is deducted from a consumer account prior to any other expenditure. Social security income is normally given more protection. Why not here?

The Partners

MetaBank has teamed up with many companies that share a common purpose. They all serve low-income consumers. MetaBank's draws many of its customers through its partnership with NetSpend, a sales and distribution organization. NetSpend markets the cards. NetSpend offers "NetSpend Preferred" to customers that use direct deposit, and that have regular deposits with frequencies of less than 35 days.

Jackson Hewitt is only one of several marketing relationships for i-advance. NetSpend and Account Now are other important marketing partners. NetSpend's own materials lay out the evidence for why we feel the i-advance line of credit is a problematic product.

NetSpend's distribution strategy is to work with payday lenders, liquor stores, pawn shops, convenience stores, Western Unions. Here is a list of those firms from their web site[iii]:

- Ace Cash Express
- Advance America Cash Advance
- AFEX Money Express
- Albertson's
- Allied Cash Advance
- California Check Cashing Stores, LLC.
- Cash4Checks
- CashAmerica
- CashLand
- CashPlus
- Continental Currency Services
- The Check Cashing Store
- Check Cashing USA
- Check City
- Check$Smart
- Cumberland Farms
- Giant Eagle
- FISCA
- H-E-B
- The Money Box
- MoneyGram
- National Cash Advance
- Nix Check Cashing
- Path Mark
- Payday Advance
- The Payspot
- PLS Financial Services
- Purpose

- Ria Financial Services
- Speedy Cash
- Cash America Super Pawn
- Western Union

NetSpend's Preferred Account is even the "preferred" account for deposits for online gambling services (Full Tilt Poker.)

By saying that NetSpend will be marketing these cards through their partners, MetaBank is rolling out partnerships that target low-income consumers. The new business model combines the low transactional costs of electronic payment systems with an established retail distribution to low-income clients. Electronic payday loans have low transactions costs, but high marketing costs. It is difficult to find and sustain a consumer base. Retail partnerships exist to find those customers.

The stars are aligning between MetaBank and payday lenders. MetaBank recently accepted a large equity investment from Cash America. Cash America, a national payday lender, invested $5.65 million in MetaBank in January 2010. Cash America now holds more than 9 percent of the shares of MetaBank. This was the second reported sale of new equity in one week. The other involved an investment of $2.5 million by NetSpend. NetSpend is not just an arms-length partner. They purchased 150,000 shares of MetaBank common stock in January and now hold about 4.5 percent of all outstanding equity in the thrift

Funding Pre-Paid Debit Card Accounts with Refund Anticipation Loans

We are concerned about MetaBank's new and developing relationship with Jackson Hewitt. The *I-Advance* Card extends high-cost credit to refund anticipation loan consumers. The I-advance card can accept a federal tax refund for Jackson Hewitt clients. Jackson Hewitt is one of several companies that use MetaBank for debit cards. However, it is the only commercial entity that extends a line of credit to consumers through its relationships with MetaBank.

Importantly, although MetaBank is not providing funding for RALs, they are providing a line of credit (the i-advance) that will be connected to a card (the i-power card) that uses RAL dollars as the initial funding source. This distribution will impact low-income and minority communities. That is where the refund anticipation loan product is most popular.

MetaBank is getting closer and closer to offering refund anticipation loans. In 2009, MetaBank offered a "pre-tax season line of credit[iv]" through Jackson Hewitt. This is an advance against the expected proceeds of a refund anticipation loan. While it is not a refund anticipation loan, it is very close – it is a loan on a future RAL. Notably, this is naked underwriting. There is no debt indicator on this loan – only a promise to make a RAL in the future. In its most recent 10-Q, MetaBank acknowledged that it has suffered about $3.6 million in losses in its MPS division for this pre-tax season line of credit. In 2008, MetaBank partnered with H&R Block to make refund anticipation loans for military consumers. The RALs carried a 36 percent rate of interest. In 2010, MetaBank announced a partnership with Santa Barbara Tax Products Groups, LLC (SBTPG). SBTPG is a new entity, formed from the staff, facilities, patents and other elements of Pacific Capital Tax Refund Solutions (TRS) division. TRS had the account for providing RALs to Jackson Hewitt. MetaBank is not funding RALs (Republic Bank & Trust of Kentucky), but they would appear to be closer to entering that market.

It is important that MetaBank not be allowed to take the next step and become a provider of credit on refund anticipation loans.

This new relationships with these market partners will be the basis for expanding this model beyond Jackson Hewitt and on to a new set of independent tax prep stores.

We are concerned for several reasons:

- The I-Advance card allows a national bank's charter to be used to skirt state laws against usury.
- The I-Advance card may use refundable tax credits (from the Earned Income Tax Credit, the American Opportunity Credit, or the Child Tax Credit) as the basis for establishing a high-cost line of credit.
- Refund anticipation loans fuel the use of these cards. The use of refund anticipation loans is concentrated in low-income and minorities communities. The I-Advance adds high-cost credit to those communities.
- MetaBank may seek to make refund anticipation loans in the 2011 tax season, utilizing the i-advance card with both Jackson Hewitt, as well as other independent tax prep firms.

MetaBank does not participate in or provide liquidity for tax partners that make refund anticipation loans. Nonetheless, MetaBank's relationship with Jackson Hewitt keeps it close to the RAL business. MetaBank reports that:

> *MPS originates consumer loans, in some cases related to anticipated tax refunds that are funded to prepaid cards. For certain of these loans, repayment is based on the customer filing a tax return and the Internal Revenue Service funding the tax refund. If either or both do not occur, losses could result*. (2009 10-K, page 42)

Although MetaBank does not fund RALs, they are impacted as a downstream recipient of RAL funds. Through their partnership with Jackson Hewitt, many of their customers have used a refund anticipation loan and many have found the funds that made up their initial deposit through proceeds from a refund anticipation loan. They are the only bank partner for the I-Power and I-Advance products offered in the Jackson Hewitt stores.

Consumer Protections

As the prepaid debit card industry expands, it will become more important to update the protections afforded to the consumers who use these products. This next section reviews some of the shortcomings in the consumer protections accorded to prepaid card accounts.

Liability: Consumers using prepaid debit cards are not given the same protection from fraud and theft as are credit card account holders. Regulation Z limits consumer liability on unauthorized credit card transactions to $50. Regulation E gives some types of prepaid debit card holders some protection. They are liable for up to $500 unless they contact their card company in 48 hours. However, Regulation E only applies to payroll cards. MetaBank's reloadable open-loop cards are excluded from Regulation E's protections (as are closed-loop reloadable and closed-loop non-reloadable cards). The extension of Regulation E to general purpose cards was mentioned as a possibility in Feb. 2009, but no action has been taken to make that a reality. Merchants like the arrangement. They have lower "chargeback" liability[v]. In other words, businesses have recognized that these cards make it that much harder for consumers to make a recovery when they are the victim of fraud.

Escheat: The procedures for inactive accounts would seem to contradict escheat law. This is an important issue. In a system where banking is independent of physical branches, customers are prone to lose their cards. Many customers leave deposits on their cards for long periods of time. Many lose the personal identification numbers that are attached to those cards. Since 2004, the rights to unused funds issued on an open loop card have reverted to the card issuer[vi].

MetaBank's cards may have all of these shortcomings. With escheat, for example, MetaBank policy drains accounts so quickly that consumers may never have the ability to make an escheat claim. Escheat rules, which vary by state, usually require a number of years to pass before the rules are applied. Most of these accounts come with monthly fees of $9.95. The escheat concerns are fueled by the unusual terms on the MetaBank prepaid debit cards. It costs between $9.95 and $15.95 to close your account with MetaBank, depending upon the marketing partner. MetaBank charges $59.95 to issue a replacement for a lost card. Many consumers are going to walk away from their accounts with costs that are this high. The terms and conditions of the account agreements established by MetaBank make it clear. MetaBank intends to drain deposits from consumers.

MetaBank acknowledges in its 10-k that there are rules to govern the return of funds. These rules are enforced by state regulatory agencies. The 10-k reports that "Although MPS utilizes automated programs to ensure its operations are compliant with such applicable laws and regulations, there appears to be a movement among some state regulators to interpret definitions in those statutes and regulations in a manner that is different from standard industry interpretations. Should such state regulators choose to do so, they may initiate enforcement or other litigation action against prepaid card issuers such as MPS."

The Credit Card Act of 2009 imposed new consumer protections for gift cards, but it left the reloadable open loop cards outside of that framework[vii]. MetaBank's open loop reloadable cards are not covered by the CCA. The CCA generally permits most of the problems of the reloadables provided that the card issuer makes disclosures. The CCA of 2009 states that gift cards should not have an expiration date that is sooner than 5 years from issuance. This does not really remedy the problem of inactive fees that draw off account balances on reloadable open loop cards. The proposed rule says that fees can only be imposed for inactivity after one year on gift cards. It puts no restriction on inactivity fees on reloadable open loop cards. MetaBank's cards are currently imposing the fee after 90 days.

PrePaid Cards lack adequate Deposit Insurance

The public needs clear, simple, and reassuring answers from the FDIC to these questions now – as the U.S. faces the beginning of a wave of financial institution failures. There are problems with disclosures and with the basic terms of insurance protection on the MetaBank prepaid cards.

Disclosures

MetaBank's disclosures do not adequately explain the extent of deposit insurance available to account holders. Under Regulation E, these accounts can be classified as aggregated. If they are aggregated, then the account is really held in the name of the bank. Individuals, lacking distinct accounts, have only a fractional claim on their deposits in the event of a bank failure.
Only a portion of prepaid cards have clear claim to deposit insurance. We believe that clear insurance coverage should be extend beyond just payroll cards. Those card types include cards that contain tax refund proceeds, bank issued gift cards, and open loop general purpose reloadable stored value cards. MetaBank issues all of these card types.

It is hard for a consumer to learn what regulatory definition covers their accounts at MetaBank. The fine print on NetSpend's website says "member FDIC." The fine print at AccountNow says "funds are insured up to $250,000 by the Federal Deposit Insurance Corporation." BuyRight cards state that "this card is issued by MetaBank. Deposited fund are insured up to $100,000 to the extent allowable by the Federal Deposit Insurance Corporation." Account Now, BuyRight and NetSpend are marketing partners for MetaBank's cards. Why don't they have the same disclosures on their MetaBank accounts?

Their competitor in the prepaid debit card space, RushCard, adopts an entirely different disclosure. They state that these accounts "are not insured by the FDIC or any other state or federal government agency and are subject to risk of loss." RushCard works with Bancorp Bank and M&T Bank.

Deposit Insurance Coverage

The FDIC has worked to extend insurance to prepaid deposits, but the rules could be enhanced. The FDIC will view the funds as worthy of protection to an individual cardholder if the bank or other party records the funds in the names of individuals. Under General Counsel Opinion #8 (Nov. 2008), funds in stored value cards can be recognized as qualifying for depository coverage. This means that a consumer with funds on a rebate card would not have an insurance protection, but other card types would be able to qualify. Funds in open-loop reloadable cards could have insurance if the participating bank or thrift records the account information in a way that recognizes individual account holders by name, and by the amount of their account balance. The bank/thrift/third party must maintain records that "reflect the identities of the cardholders and the amount payable to each cardholder."[viii] Each account holder has up to $250,000 in insurance protection.

That is good, but it still depends upon adequate record keeping. For MetaBank, that record keeping is usually done by non-bank third party partners like NetSpend or Jackson Hewitt. That puts consumers in a situation where they are dependent on a non-bank institution to do the work to get the consumer the deposit insurance that they deserve.

The best solution would be to eliminate any possibility where individual account holders are excluded from protection. Why have a system that depends upon banks or third parties to protect consumers? Why would regulators want to shift the responsibility for protecting consumers away from a regulatory agency on to the hands of a private institution?

The Federal Reserve should require that prepaid card be kept in accounts that meet FDIC insurance requirements, whether individually, or in meeting the General Counsel Opinion #8's "Pass-Through Requirements."

The coverage should explicitly state that every dollar in an account, up to the standard cap applied to all other deposits, is insured. This seems logical, but in some instances consumers have been forced to accept partial repayment from retailers. The U.S. Bankruptcy Court for the District of Delaware, for example, agreed to refund only $50 of every $100 in outstanding balances, and only as store credit, when Sharper Image filed bankruptcy in 2008[ix].

Regulation E:

This points to a larger regulatory loophole. When the Federal Reserve decided to not provide full protection to prepaid debit cards, they cited the likelihood that most of these cards would only exist for a short time, stating that these cards "may be used for limited purposes or on a short-term basis, and which may hold minimal funds.[x]"The EFTA did give protection to payroll cards. There are many important differences between closed-loop non-reloadable cards (the kind that merchants issue) and open loop reloadable cards. Payroll cards meet the latter definition, but so do most of the cards in the MetaBank portfolio. Those card accounts deserve equivalent treatment to those applied for payroll cards.

The Electronic Funds Transfer Act extended Regulation E protections to payroll cards. Open-loop, reloadable cards like the ones issued by MetaBank are not covered[xi]. Their regulatory obligations are largely untested. Bank Secrecy and Patriot Act provisions have been applied, but many consumer protection questions remain unanswered. In that gap, state laws for money transmitters are often applied.

These cards, however, are different. NetSpend markets these cards as “a better way to bank.” They are meant to serve the banking needs of households. Open-loop cards – those not limited to a internal network of vendors – should have full protections. Regulation E does not provide full deposit insurance for these cards. This is inconsistent with the reality of how these cards are being used. These cards have become a second banking system. MetaBank reports that it has more than $150 million in deposits on its balance sheets from the MPS division. The Rush Card, a competing product working in partnership with Bancorp Bank and M&T Bank, has more than $2 billion in deposits. NetSpend estimates that prepaid cards will be the site for $178 billion in transactions this year. By contrast, they moved just over $50 billion in 2002[xii]. They should be regulated as banking products.

Safety and Soundness

With each quarter, MetaBank’s profits grow in their dependence upon revenues from MPS. MPS’ activities are more risky than traditional lending. In spite of that, MetaBank has set aside less and less for potential losses.

The FDIC’s exposure to MPS is substantial. MPS’ deposits were $422 million. The entire thrift had deposits of $653.7 million. MPS now constitutes more than two-thirds of all deposits at MetaBank[xiii]. The share of deposits at MPS is increasing. In 2008, MPS had approximately $268 million in deposits, or about half of all the balances on hand at MetaBank.

We believe that loan-loss reserves on these accounts are not adequate. MetaBank’s provision for loan losses was $18.1 million in 2009. MPS accounted for $8.1 million of those set asides. MetaBank reports that $7.9 million of the $8.1 million in provisions for all of MPS were dedicated to “MPS’ tax preparation partner.”[xiv] The partner is Jackson Hewitt’s and the product relationship is the Jackson Hewitt-branded i-Advance line of credit.

The set aside for loan losses seems too low in the context of the details in MetaBank's 10-k. MetaBank recognizes that it has loans of $5.4 million and $5.0 million to large debtors (more than $1.7 million in debts) that are "substandard" and "doubtful."

MetaBank's recent charge-offs show that they have been overestimating how well their loan portfolio would perform. At the beginning of the fiscal year ending 2008, MetaBank had set aside $5.7 million. Almost 60 percent of those set asides were for commercial real estate. In FY 2009, MetaBank had $18.08 million in charge-offs and only $632,000 in recoveries. They had to add $18.7 million to reserves over the course of FY 2009. Their charge-offs actually exceeding non-performing assets.

These provisions are not consistent with the nature and size of the MPS program. Given that most of their loss reserves were utilized by I-Advance products, it makes little sense that their total loan-loss reserves have decreased 57 percent from 2008 to 2009. MPS's cards business has grown during that time, with card fees more than doubling in that year. In 2005, MetaBank set aside $3.73 dollars for every dollar in non-performing loans. In 2009, MetaBank set aside just 55 cents for every dollar in non-performing loans. (10-K, page 52.) Even MetaBank concedes that "due to higher levels of concentration risk, the low- and no-cost checking deposits generated through MPS may carry a greater degree of liquidity risk than traditional consumer checking deposits."[xv]

MetaBank is also highly leveraged. Shareholder's equity, as a share of total assets, was just 5.67 percent at the end of the filing period for their last 10-k. Shareholder's equity only averaged 5.42 percent during the preceding year ending September 30th, 2009. Among large banks, equity constituted 9.73 percent of assets on average on Sept. 30th, 2009[xvi]. The next chart compares their risk-weightings to large banks during the same time period (9-30-2009).

	MetaBank	Large Banks (peer ratios)
Tier 1 Capital (to adjusted assets)	6.69	8.33
Tangible Capital	6.69	8.02
Risk-Based Capital	13.01	13.58

Source: MetaBank 10-k, Peer Group Data from National Information Center

It is our understanding, from accounts that are admittedly anecdotal, that the high losses on the MPS produce are offset by very high margins on loans that do perform. MPS drives the profits at MetaBank. That exchange of losses for margins is not really reflected by the balance sheet reporting on their statements. We feel that their accounting should be far more conservative.

MetaBank is dependent upon the ongoing health of just a few business partners. The risk to assets is significant. MetaBank's ongoing financial profitability is, in their own words, such that "three of its partners have reached a size that, should these partners' business with the Company end, the revenue attributable to them would have a material effect on the financial results of the company. (10-k, page 48)

MetaBank has had other problems with maintaining the integrity of its deposits. In June of last year, a group of credit unions, pension funds, and municipalities filed suit against MetaBank. Their complaint alleges that MetaBank's name was used by a third party to sell certificates of deposit. The third party appears to have been an employee within MetaBank. The employee took the funds deposited by these groups and transferred them into a private account. The lawsuit asks MetaBank to make good on the $4.2 million in stolen deposits. MetaBank objects and the case is currently in court.

There are other reasons to worry about the safety and soundness at MetaBank. It's relationship with Jackson Hewitt is hardly sound, and there are elements of MetaBank's balance sheet that should provoke some scrutiny from regulators. Consider these issues:

- MetaBank reports in its most recent 10-Q[xvii] that 15 percent of its outstanding mortgage loans has a balloon payment. Balloon payments have some of the same problems as commercial real estate loans. Their entire structure assumes that the borrower will refinance. Along the way, most borrowers defer payments on principal. The balloon payment, if applied, forces the borrower to catch up. Banks aren't that interested in making refinance loans with high loan-to-value features.
- Outside of allowances attributed to MetaBank's MetaBank Payment Systems division, allowances for loan losses amount to only 61 percent of non-performing loans.
- By its own estimate, the company will derive one-third of its revenue from its relationship with one national tax preparation firm (Jackson Hewitt), and that company has acknowledged that the lack of availability of funding for its refund anticipation loan products is going to have a materially adverse effect upon its operations. At this moment, Jackson Hewitt shares are trading for just a bit under $3.
- The OTS has stated that four of the trust preferred securities it owns should be classified as "substandard." Four securities, with a value of $25.1 million, are substandard. Their conclusion is based upon a decision by a ratings agency to give these securities a sub-investment grade rating. MetaBank has $44 million in equity.

This information is all reported on MetaBank's 10-Q, filed on February 9th, 2010.

MetaBank's Business is Dominated by Prepaid Card Activity

MetaBank is not a profitable entity without MPS.

The 2009 10-K filed by MetaBank indicates that its non-interest income “is derived primarily from prepaid card, credit products, and ATM fees attributable to MPS.[xviii]” That is certainly accurate -- $77.5 million of MetaBank’s non-interest income came exclusively from its MPS division.

The following table compares fee income and deposits within and outside of MetaBank’s MPS division.

Review of Income at MetaBank (FY 2008)				
	MetaBank Payment Systems (MPS)	"Traditional Banking”	Bank, w/o MPS	Bank
non-int. inc.	$77.4	$2.5	$0.1	$ 80.0
non-int. exp.	$(71.0)	$(18.8)	$ (1.3)	$(91.1)
Non-Interest Net	$ 6.4	$(16.3)	$ (1.2)	$(11.1)
Interest Inc.	9.415	$ 35.1	$ (7.7)	$ 36.8
Interest exp.	$(0.84)	$(15.3)	$7.3	$ (8.9)
Net Interest	$ 8.6	$ 19.8	$ (0.5)	$ 27.9
Loan Losses	$ (8.3)	$(10.4)	$ -	$(18.7)
Operating Inc.	$ 6.7	$ (7.0)	$ (1.6)	$ (2.0)
income tax (gain)	4.098	$(4.45)	$ (0.6)	$ (0.9)
AT NET INCOME	$ 2.6	$ (2.5)	$ (1.1)	$ (1.0)
Fees on Pre Paid Card Deposit Accounts				
deposits	$422.1	$232.0	$3.0	$657.1
Fees per $1	**18.3 cents**	1.1 cents	3 cents	12.2 cents

This table shows that the bank is reliant upon the MPS division for its profits. MPS fee income grew 124 percent in 2008, and non-interest income within the MPS division at MetaBank was $77.4 million. MPS is the only profitable division at MetaBank. MetaBank, in its entirety, lost more than $1 million in both 2007 and 2008. We estimate that MetaBank, if acting without the benefit of MPS, would have lost $1.37 per share in 2009.

CRA Examinations

The Community Reinvestment Act encourages banks and thrifts to make credit available in low-income neighborhoods. The prepaid debit cards marketed on behalf of MetaBank are aimed at non-banked and under-banked consumers. These cards constitute the most profitable division at MetaBank.

These cards should be reviewed as part of MetaBank’s next Community Reinvestment Act exam. That exam is scheduled to take place later this year.

As well, we believe that the assessment areas for MetaBank should reflect the wide diversity of its deposit base. Only a fraction of MetaBank's deposits come from its branches. While it might be onerous to have exams in all of the communities that have deposits from MPS, it seems wrong to ignore the geography of the majority of the deposits in a thrift.

Systemic Policy Changes

Office of Thrift Supervision

- The OTS should not allow any new member banks to offer lines of credit on unsecured prepaid debit cards.
- The OTS should not allow existing banks to connect direct deposit to lines of credit on prepaid debit cards. This is a new form of payday lending.
- Apply OTS guidelines for payday lending and car title lending to open-loop reloadable cards with lines of credit when those cards require direct deposit.
- Draw a line and do not allow MetaBank to begin making refund anticipation loans.
- Risk weight loans and lines of credit on prepaid cards at 100 percent.
- Enhance transparency on the use of cards. These cards, with their lack of required disclosures to open an account, push the limits of the Patriot Act and the Bank Secrecy Act.
- Pre-empt state escheat provisions on "abandoned" cards with deposits. Establish a time period that imposes escheat provisions in less than 6 months.
- Establish a standard that requires MetaBank to take responsibility to verify consumer identities. The OTS should expect MetaBank to demonstrate to the OTS that it has complied with those rules.
- For purposes of calculating the APR on these cards for TILA, include the fees that are generated by using the i-advance card. At $2.50 per $20 for 35 days, these fees are going to produce an APR of greater than 150 percent.
- The use of high interest-rate, high-fee prepaid debit cards and card-based lines of credit should be considered by OTS examiners when they conduct their CRA exam.
- Extend the CRA exam assessment areas to include areas with high shares of the MPS deposit portfolio.

Congress

- Update the Electronic Funds Transfer Act to provide protection to general purpose reloadable cardholders against stolen funds and fraudulent transactions at a level that is consistent with the rules for credit cards.
- Extend Regulation E of the EFTA to include protection to all "open-loop" prepaid debit cards. Currently it only applies to payroll cards.

Federal Reserve

- Require that all prepaid card funds be kept in accounts that meet FDIC insurance requirements, whether individually, or in meeting the General Counsel Opinion #8's pass through requirements.

FDIC

- Establish uniform and explicit disclosures on FDIC insurance coverage.
- Require that open loop reloadable card consumers opt-out of having their account in their name. Do not allow the card issuer to determine what name the account is held in.

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