



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

Cristeena Naser
Senior Counsel
Regulatory and
Trust Affairs
Phone: 202-663-5332
Fax: 202-828-4548
Email:
cnaser@aba.com

July 15, 2004

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429
Attention: Comments/Legal ESS

Re: Definition of “Deposit”—Stored Value Cards
69 Federal Register 20558, April 16, 2004

The American Bankers Association (“ABA”) is responding to the request of the Federal Deposit Insurance Corporation (“FDIC”) for comments on its proposed definition of “deposit” as it relates to funds at insured depository institutions underlying stored value cards.¹ Many of our members offer various types of stored value or debit cards and, accordingly, are extremely concerned about the potential impact of this proposal on this emerging market.

Although ABA appreciates FDIC’s careful efforts to determine which stored value structures give rise to “deposits” for purposes of the Federal Deposit Insurance Act (“FDIA”), we believe that, given the developing state of this market, the proposal is premature and could have unintended consequences. Rather, we believe that a broad survey of the types and structures of stored value products currently available, including the potential application of numerous federal and state laws and customer expectations, is a necessary first step before rulemaking is considered.

¹ The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country.

BACKGROUND

The proposal classifies stored value products² based on whether the cards are issued by the insured institution or a third party (“sponsoring company”).

Insured institution issues cards. With respect to stored value cards issued by an insured institution, the underlying funds will be “deposits” for purposes of the FDIA if:

- The institution holds the funds in a pooled “reserve account;” *and*
- Maintains directly or indirectly, records or subaccounts reflecting the amount owed to each cardholder.

Under the proposal, the only time funds underlying insured institution-issued cards would not be deposits is when the institution has no records of the amount of available funds on each card.³

Sponsoring company issues cards. With respect to stored value cards issued by a sponsoring company such as an employer, the underlying funds held in an account at an insured institution will be deposits if the insured institution is obligated to:

- Forward the funds to the sponsoring company; or
- Hold the funds for the sponsoring company, however briefly.

Once the funds are forwarded to or withdrawn by the sponsoring company, they would no longer be “deposits.”

Under the proposal, the only time funds underlying sponsoring company-issued cards would not be deposits is when the insured institution actually purchases the cards from the sponsoring company and resells them to the cardholders.

² The proposal defines a “stored value card” as “a device that enables the cardholder to transfer the underlying funds (*i.e.* the funds received by the issuer of the card in exchange for the issuance or reloading of the card) to a merchant at the merchant’s point of sale terminal.”

³ It may not be realistic to assume that there would be a situation in which the insured institution would have no records, either directly or indirectly, reflecting the amount owed to each cardholder.

DISCUSSION

ABA believes that a determination by FDIC that funds underlying virtually all bank-issued stored value cards are “deposits” (1) may not be appropriate depending upon the purpose for which the cards were issued and (2) would add costs that competitors do not incur and which could make many of the products financially unfeasible. In addition, the classification of these funds as “deposits” could trigger the applicability of other federal laws, compounding the adverse consequences.

Participants in the developing market for stored value products need the flexibility to adjust card features as consumers become more aware and accepting of these products, and as technology continues to evolve rapidly. The regulatory implications and related costs, including those related to funds being classified as “deposits,” may stifle development of these cards or the features valuable to consumers. Although FDIC’s proposal applies only to the FDIA, ABA believes there is a significant risk that classifying a stored value product as a “deposit” could be the first step on a slippery slope to the application of other regulations.

Moreover, from a policy perspective, the purposes for which the cards are issued may dictate the imposition of consumer protection or other legal requirements. For example, payroll cards that provide a means for the unbanked to access their wages provide significant benefits to employers, employees, and society as a whole. Employees benefit from having a safe and less expensive means of receiving their wages, and employers benefit from the cost savings of eliminating paper checks and reducing check fraud. For this type of stored value product, employers may want the funds underlying the cards to be eligible for deposit insurance. Insured institutions should have the flexibility to structure the program based on the market’s demand and the costs of the insurance. Employers may also want these products to have other beneficial features such as being reloadable or the ability to have additional cards to transfer funds to other persons.

By contrast, gift cards, analogous in many respects to paper gift certificates, do not carry the same kinds of customer expectations. Typically, customers expect to treat such cards just like cash. If they lose the card, they don’t expect it to be replaced, even if it is reloadable. They don’t expect to provide identifying information when purchasing a gift card, whether buying it from Starbucks, Borders Books, or a bank. And they may likely give it to an individual completely unknown to the card issuer. Because the profit margins on this type of stored value product are so thin, the added costs to the banking industry of complying with the additional regulations would likely drive insured institutions from this business.

In its earlier reviews of whether funds underlying stored value cards were “deposits” in 1996,⁴ FDIC considered a number of policy issues including whether public confidence in these products was critical to the safety and soundness of the banking system such that deposit insurance was warranted. The agency also expressed concern about the competitive equity between depository institution issuers and other issuers if only depository institutions must pay assessments on the underlying funds and comply with other consumer regulations.

These concerns are no less important now than they were in 1996. If anything, they have become more important because of the significant increase in the use of stored value products. Yet, because the proposal focuses only on whether the funds underlying the card pass through a clearing process and where the card’s value is dependent on whether a bank holds sufficient funds to back up the card, it would apply to all types of stored value cards regardless of their purpose and regardless of the competitive impact on issuers. ABA believes that as this market develops, some issuers and their customers may wish to have the card values insured, while others may not. To remain viable, market participants need the flexibility to accommodate a variety of card features while controlling costs so that the products remain economically feasible.

CONCLUSION

ABA strongly urges FDIC to hold this proposal in abeyance until such time as a comprehensive study of the market for stored value products, including a review of both public policy and competitive implications, is completed. This market is too important to have its development potentially impeded by regulatory restrictions until the need for such regulation is grounded on a thorough consideration of all relevant issues.

If you have any questions about the foregoing comments, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, reading "Cristeena G. Naser". The signature is written in a cursive, flowing style.

Cristeena G. Naser

⁴ See, Request for Comments on Stored Value Cards and Other Electronic Payment Systems, 61 *Federal Register* 40494 (August 2, 1996) and General Counsel Opinion No. 8.