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EMAIL: comments@fdic.gov

Subject Line of Email: Part 330--Stored Value Cards

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

NEW FDIC PROPOSED RULE –INSURANCE COVERAGE FOR PREPAID CARDS

On behalf of NetSpend Corporation, we would like to comment on the proposed changes to Part 330 dealing with insurance of accounts ("Proposed Rule"). In particular, the current proposal purports to clarify when funds at insured depository institutions underlying prepaid cards would constitute "deposits" under the Federal Deposit Insurance Act ("FDIA"). The Proposed Rule would apply existing pass-through deposit insurance rules to prepaid cards issued by persons other than banks where the funds received from the sale of the cards are placed in a bank. The funds would be considered an insured deposit of the seller of the prepaid cards unless the records of the bank indicate that the funds are held "as agent" for the cardholders and the bank or the seller maintains records that identify the cardholders.

Timing of FDIC Insurance

We agree with the FDIC that the critical factor that makes these account relationships individual ones worthy of individual insurance is the fact that each relationship is with that particular account holder even if the funds themselves might be aggregated by the financial institution. However, the Proposed Rule does not indicate when the funds become insured. We believe that, based on the FDIC's own arguments to the comments to the First Proposed Rule, in cases contemplated by the Proposed Rule as qualifying for insurance, such funds should be deemed insured first upon deposit in a custodial account for the use and benefit of all of the cardholders at the selling agent's bank, rather than at the issuing bank. Currently, in many "hybrid" prepaid card programs, the selling agent is viewed as acting as a messenger service for the cardholders and therefore the funds are not constructively received and considered "deposits" (and therefore insured) until they reach the issuing bank. Settlement of such funds with the issuing bank may take 24 hours or more while the cardholder is "credited" with the funds immediately (albeit he or she may not have actual access to all the funds until these reach the bank). We believe that the failure to clarify the timing of insurance of the funds in prepaid card programs will continue to be a matter of concern for state and federal regulators dealing with such programs and create operational uncertainties for card issuers.

We believe that the Proposed Rule fails to take into consideration the FDIC's own admission that new access technologies including prepaid cards where the funds are not "stored on the card" but are deposited with an insured institution and accessed through the card, are for all intents and purposes, simply access mechanisms at a par with paper checks and other traditional means of access to funds. This is further evidenced where prepaid cards may be used as ATM cards, like ordinary ATM cards. The only distinction mentioned in the discussion of the Proposed Rule is that whereas in traditional means of access to funds the holder deals directly with an insured institution, the holder of a prepaid card may deal with a third party other than an insured institution. The FDIC's concern here is presumably the potential for lack of records as to the identity of the cardholders, an issue addressed in "hybrid systems" and programs where the cardholder is identified by the bank or its third party processor. Therefore, to be consistent, the Proposed Rule should treat insured funds under the Proposed Rule in the same manner as insured funds accessed by traditional means: the funds should be insured deposits at the first moment they are received by an insured institution on behalf of another party. In a "hybrid system" for example, the funds would be insured first at the time of receipt by the selling agent's bank at a minimum on an aggregate basis on behalf of the selling agent, or ideally would receive pass-through treatment when deposited into a proper custodial account on behalf of the cardholders at such a bank or insured institution. Logically, the funds would remain insured from that point on and would be treated for insurance purposes in the same manner as funds accessed through traditional means (checks, ATM cards, etc.) since such funds remain within the banking system until withdrawn by the cardholder.

Some examples will help illustrate our position: (i) in regular banking relationships, customers may make deposits at a bank's ATM. Such deposits become insured at the moment they are collected at the ATM, and (ii) when a traditional bank customer makes a purchase of goods using his or her MasterCard or Visa branded ATM card at a retailer's point of sale, the bank deducts the funds from the customer's balance at the time the transaction takes place, not at the time when MasterCard or Visa deduct the amount corresponding to that transaction from the bank's settlement account which often times takes more than one or two days after the transaction took place. The FDIC currently accepts the adjustment in balance from the bank as of the time of the transaction for purposes of the deposit insurance for such a bank customer. The critical factor here would be that the money reaches an account of an identifiable customer, or a custodial account on behalf of an identifiable customer, at an insured institution.

FDIC Logo and Advertising

We recognize that if some prepaid cards are to be considered insured deposits while others are not, the FDIC should, to avoid confusion, require some sort of disclosure for consumers. As part of the Proposed Rule, the FDIC asks whether there should be mandatory disclosures with respect to deposit insurance coverage. We believe that the Proposed Rule should clarify that if prepaid card accounts qualify for FDIC insurance the advertising material for such cards should be able to reflect that this is the case. At a minimum, we believe the Proposed Rule should clarify the type of advertising and where it may be made once the accounts are determined to be insured.

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Insurance Based on Legal Structure

We support the FDIC's efforts to make a principled distinction between prepaid card programs based on their legal structure instead of engaging in case-by-case determinations based on the uses of particular cards. In this regard, we believe that, because the terms of prepaid cards are almost exclusively established by agreements between the card issuers and the cardholders, the FDIC is in a position to establish legal criteria for distinguishing prepaid cards that function as insured deposits and prepaid cards that do not based on the terms of the card agreements. For example, the final rule could provide that insurance coverage will depend on whether or not the bank has undertaken on such, and agreed to be, obligated to repay the full amount of funds associated with a prepaid card directly to the cardholder rather than limiting its liability only to payments on transactions with merchants or other participants in a payment system that have agreed to accept the cards. We believe that such an approach would be consistent with the statutory definition of a "deposit," in the FDIA, which focuses, in part, on whether the bank has accepted liability for the funds.

We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (512) 457-7035.

Sincerely,

Joseph M. Ford
Partner

Cc: Roy Sosa
President
NetSpend Corporation