



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

**Financial Institution Letter**  
**FIL-129-2008**  
**November 13, 2008**

## **STORED VALUE CARDS AND OTHER NONTRADITIONAL ACCESS MECHANISMS**

New General Counsel's Opinion No. 8

**Summary:** The FDIC's Board of Directors has approved the attached new General Counsel's opinion on the insurability of funds underlying stored value cards and other nontraditional access mechanisms. The new General Counsel's Opinion No. 8 replaces the previous General Counsel's Opinion No. 8, published in 1996.

**Distribution:**

All Insured Depository Institutions

**Suggested Routing:**

Chief Executive Officer  
Chief Operations Officer

**Related Topics:**

Deposit Insurance Coverage  
12 C.F.R. Part 330

**Attachment:**

New General Counsel's Opinion No. 8

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**Note:**

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**Highlights:**

- The new General Counsel's Opinion No. 8 addresses the issue of whether the funds underlying stored value cards and other nontraditional access mechanisms qualify as "deposits" as defined in the Federal Deposit Insurance Act.
- Under the new opinion, the funds will be "deposits" to the extent that the funds have been placed at an insured depository institution. Consequently, the funds will be subject to assessments. Also, the funds will be insured (up to the insurance limit).
- In applying the insurance limit to a pooled custodial account, the FDIC will recognize the holders of the stored value cards (or other access mechanisms) as the owners of the deposits if the FDIC's standard requirements for "pass-through" insurance coverage have been satisfied. Otherwise, the card distributor or other named accountholder will be recognized as the owner.
- The treatment of the funds underlying stored value products does not differ materially from the treatment set forth in the FDIC's proposed rule published in August of 2005 (see FIL-83-2005 at <http://www.fdic.gov/news/news/financial/2005/fil8305.html>).

**INSURABILITY OF FUNDS UNDERLYING STORED VALUE CARDS AND OTHER  
NONTRADITIONAL ACCESS MECHANISMS  
New General Counsel's Opinion No. 8**

In 1996, the FDIC published General Counsel's Opinion No. 8 (GC8). Through that opinion, the FDIC sought to clarify the meaning of the term "deposit" as that term relates to funds underlying stored value cards. Subsequently, the banking industry developed new types of stored value products, resulting in GC8 becoming outdated. For this reason, the FDIC decided to replace the 1996 GC8 with an updated GC8.

Under the new opinion, all funds underlying stored value products will be treated as "deposits" to the extent that the funds have been placed at an insured depository institution. As a result, all such funds will be subject to assessments. Also, all such funds will be insured up to the FDIC insurance limit.

In many cases, stored value products are not distributed directly by an insured depository institution to the holders of the access mechanisms. Rather, the products are distributed by a third party (such as the employer in the case of payroll cards or a retail store in the case of some general spending cards). The existence of the third party raised the issue of whether the funds should be insured to the third party (the party who places the funds into the bank) as opposed to the holders of the stored value cards or other access mechanisms (the parties who withdraw the funds from the bank or direct the payment of the funds to merchants or others). Under the new GC8, in applying the insurance limit to pooled custodial accounts, the FDIC will recognize the holders of the stored value cards (or other access mechanisms) as the owners of the deposits if the FDIC's standard requirements for "pass-through" insurance coverage have been satisfied. Otherwise, the funds will be insured to the third party (the party who places the funds into the bank). The FDIC's "pass-through" requirements (12 C.F.R. § 330.5) can be summarized as follows: (1) the account records at the insured depository institution must disclose the existence of the custodial relationship; (2) the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners of the funds and the amount owned by each such owner; and (3) the deposits actually must be owned (under the agreements among the parties) by the named owners.

This treatment of the funds underlying stored value products does not differ materially from the treatment set forth in a proposed rule published by the FDIC in August of 2005.

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Acting General Counsel