

# L CORNERSTONE

COMMUNITY BANK

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Robert E. Feldman  
Executive Secretary,  
Attention: Comments/Executive Secretary Section  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

October 31, 20

NOV 07 2005

By \_\_\_\_\_

Re: FIL-83-2005

Dear Mr. Feldman:

In response to the FDIC's request for comments to FIL-83-2005, dated August 22, 2005, Cornerstone Community Bank (CSCB) submits this discussion regarding issues directly pertaining to CSCB's three separate stored value-card programs.

Following are three scenarios outlining our programs:

#### 1. SCENARIO ONE: PAYROLL CARD

In a payroll card scenario, the employer, a third-party processor, and the bank enter into an agreement wherein shortly prior to payday, the employer electronically deposits its payroll into a payroll "funding account" in the name of the employer as custodian for the benefit of its employees. The third-party processor has power of attorney over the "funding account" to transfer monies to fund the transactions from the payroll cards. As payroll card transactions are processed for payment, the third party processor electronically transfers the funds from the payroll funding account to an account owned by the third party processor which serves as a "settlement account." This settlement account is accessed by the Star Network for the payment of ATM and POS settlement transactions.

To enroll employees, the employer obtains the employee's name, physical address, date of birth and social security number. The employer further verifies this information as per BSA/CIP standards. The list of enrolled employees is sent to the third-party processor. The third-party processor runs an OFAC check against the employee list. Employees are advised that election to participate in the payroll card system is voluntary.

The employees are issued a primary payroll card, and, if requested, a secondary card, a default password, and a brochure by their employer. The brochure advises the employee how to change the default password to a personal identification number (PIN). The brochure includes Reg E disclosures such as the processes for error resolution and for lost or stolen cards, the fees involved in using the card, limits on liability for unauthorized use of the card, and where and how the payroll card will be accepted and the funds accessed: The holder of the secondary card is not identified.

The employee can access his earnings through ATMs that display the same network logos as appear on the back of the card: The employee can also use the payroll card to purchase goods at participating retail merchants that accept pin-based debit cards and to make long distance telephone calls.

Value can be added to the payroll card by the employee. There is no reversionary interest in the card, that is, any balance remaining on the card belongs to the employee and cannot revert back to the employer, the processor or the bank. The third-party processor provides periodic statements to the employee. Our name, as issuing bank, appears on the back of the card.

## 2. SCENARIO TWO: STORED-VALUE GIFT CARD/RETAIL CARD-- CARDHOLDER IDENTIFIED BUT NOT VERIFIED

In this arrangement, a merchant, a third-party processor and the bank enter into an agreement wherein the merchant deposits money into a funding account with the bank. The processor has authority to access the funding account. The processor also maintains a settlement account which can be accessed by the Star Network for ATM and POS settlement transactions. The bank records reflect that the merchant is the owner of the funding account and the processor is the owner of the settlement account.

A customer purchases a reloadable or nonreloadable stored-value card from a qualifying retailer. The customer provides the merchant with identifying information including name, physical address, date of birth and social security number. However, this identifying information is not verified as per BSA/CIP standards. The identifying information is sent to the third-party processor who runs the cardholder against the OFAC list.

The cardholder receives a brochure, a secondary card and a default password with the card. The cardholder can call the 800 number to change his password to a personal identification number. To transfer the funds onto the secondary card, the cardholder can call an automated 800 number on the back of the card, call the customer service number on the back of the card, or use the website listed in the brochure. The holder of the secondary card is not identified.

Because of the bank's AML program risk assessment, and because the identifying information is not verified for AML/BSA purposes, the combined balance of the primary and secondary cards would be limited to a maximum total of \$4,999.99. The combined daily activity, cannot exceed \$1,999.99. The secondary card can never have a balance greater than \$500.

In the event the card is reloadable, to reload value to the card, the cardholder may transfers funds onto the card through a qualifying retailer.

The brochure distributed to the cardholders advises them of an 800 number and a website both of which provide transaction history from the processor. For a fee, the cardholder can also receive a written statement.

The cardholder can use his card at any ATM that bears the network logos that appear on his card. The cardholder can also use his card to make purchases at merchants that accept pin-based debit cards, and to make long distance telephone calls. As the cardholder uses his card, the third-party processor transfers the funds from the funding account to the settlement account.

There is no reversionary interest in the card, that is, any balance remaining on the card belongs to the cardholder and cannot revert back to either the merchant, the processor, or the bank. If there is no activity on the card, then eventually any remaining

balance would be escheated to the appropriate government authority after the qualifying dormancy period. The third-party processor provides periodic statements to the cardholder.

Our bank name appears on the back of the card as the issuing bank.

### 3. SCENARIO THREE: STORED-VALUE GIFT CARD/RETAIL CARD-- UNIDENTIFIED CARDHOLDER

The facts involved in this scenario are the same as in Scenario Two above except as follows:

A customer purchases a reloadable or nonreloadable stored-value card from a qualifying retailer for an amount up to a maximum of \$500. No identifying records are kept by the retailer, the card processor, or the bank.

Because of the bank's AML program risk assessment, and because the cardholder is not identified, then to limit the risk of money laundering, the combined balance of the primary and secondary cards cannot exceed \$500. The combined daily activity cannot exceed \$1,999.99. High volume activity would be reported to the bank as possible suspicious activity.

If the cardholder wishes to convert to a card that will allow larger transactions, the cardholder can call the 800 number on the back of the card to receive a second brochure that will require the cardholder to provide identifying information. Upon receiving the identifying information, the third-party processor runs an OFAC check. However, there is no verification of the identity of the cardholder.

Following are our comments to issues raised in FIL-83-2005:

#### **ISSUE I: WHETHER PASS-THROUGH COVERAGE APPLIES TO CARD HOLDERS IN THE ABOVE THREE SCENARIOS?**

The Second Proposed Rule (PR2) at 330.5(c)(3) provides that in cases in which funds are placed at a bank by one party for transfer by another party, the funds would be insured to the first party unless (1) the account records of the bank reflect that the first party is not the owner of the funds and (2) either the first party or the bank maintains records reflecting the identities of the persons holding the access mechanisms and the amount payable to each such person.

Applying PR2 to Scenario One cited above involving payroll cards, pass-through coverage would apply, because both disclosure requirements are met. Thus the bank records reflect that the funding account is in the name of the employer as custodian for the benefit of its employees and the individual interests of the employees/cardholders are identified and maintained by both the employer and the third-party processor. Thus the funds would be insurable to the individual employees/cardholders.

Whereas, in the above scenario two involving gift/retail cards, pass-through coverage would not apply as only one disclosure requirement is met. Although the merchant and the third-party processor do maintain records of the individual interests of the cardholders, the bank records, however, reflect that the funds in the funding account

are owned by the merchant and the funds in the settlement account are owned by the processor. Thus only one prong of the proposed 330.5(c)(3) disclosure rules is met and pass-through coverage should not apply to the individual cardholders.

As to scenario three involving unidentified holders of gift/retail cards, neither of the disclosure requirements are met. The bank records reflect that the merchant and processor are owners of the respective funding and settlement accounts, and there are no records of the identity of the cardholders. Thus, if there were a bank failure, the FDIC could not know who to pay the insurance too. Therefore, pass-through coverage should not apply to the cardholders as neither prong of the proposed disclosure rules exists.

In summary, our position is that payroll cards are insurable at the subaccount level, to the cardholder, because the employer is custodian of the funds for the employee/cardholder and the records of the individual interests of the employees/cardholders are maintained by the employer and the processor. However, in the case of gift/retail cards, the funds are not insurable to the cardholders as the disclosure requirements are not met.

## **ISSUE II: WHETHER CIP RULES SHOULD APPLY TO HOLDERS OF STORED-VALUE CARDS?**

Although FIL-83-2005 states that applicability of other rules and regulations do not turn on the FDIC's definition of "deposit", banks are concerned that if the funds underlying the cards are determined to be "deposits" then a bank may be required to identify these "deposit holders" per BSA/CIP standards. CSCB asserts that verifying the identity of the cardholders would impose an insurmountable burden on banks. The volume of paperwork would be tremendous. The bank does not meet with the cardholders. The bank records do not reflect the names of individual cardholders. Moreover, the record retention requirements would prove to be impossible.

As noted in FIL-83-2005, stored-value cards(1) allow banks to reach out to low and moderate-income consumers who are generally unbanked or underbanked, (2) serve as an alternative to high fees associated with check cashers, and (3) provide credit - building opportunities. Thus it is important for the FDIC to allow banks freedom to engage in stored-value card relationships. However, if CIP rules apply to cardholders, both the cost-benefit analysis and the BSA/AML risk assessment would prove too high and force banks out of the stored-value card business.

## **ISSUE III: WHETHER STORED-VALUE CARDS SHOULD INCLUDE MANDATORY DISCLOSURES?**

CSCB submits that stored-value cards should include separate mandatory disclosures at the time of issuance. In cases involving payroll cards wherein the funds are placed in a custodial account for the benefit of the employees and records are maintained reflecting the identities and interests of cardholders such that the FDIC could determine the amount of insurance coverage due to the cardholder in the event of a bank failure,

then the availability of FDIC insurance could readily be disclosed and distributed at enrollment.

However, in the case of gift/retail cards, since the 330.5(c)(3) disclosure requirements have not been met, then obviously under PR2, FDIC pass-through insurance would not apply. A disclosure indicating that FDIC insurance is not provided could be readily distributed at enrollment.

However, printing the fact that these funds are not FDIC insured on the card, may not be helpful and in fact may be more confusing to the cardholder. To begin with, cardholders do not have an expectation of FDIC insurance with regard to the funds underlying stored-value cards obtained from entities other than financial institutions. In our above scenarios, the cardholders have no contact with a bank. Even their statement comes from the processor. Thus it is our position that mandatory disclosures clarifying insurability should be distributed at the time the card is issued but not placed on the card.

**ISSUE IV: WHETHER THE NAME OF THE BANK HOLDING THE UNDERLYING FUNDS SHOULD BE PRINTED ON THE CARD?**

CSCB submits that the name of the bank holding the underlying funds should NOT be printed on the card, because this information is not helpful to the cardholder and may only be more confusing. The processor provides all account activity history and statement information, and their "HELP" line numbers are included in the brochure distributed at delivery. The brochure further explains the insurability of the funds. Upon a call placed by a cardholder to that bank, the bank would direct the cardholder to the processor.

Further, the funding account and the settlement account may not be held by the same bank. The merchant or employer determines the location of the bank that will hold the underlying funds. These entities have the discretion to move their accounts to other financial institutions. Also mergers or acquisitions may occur which change the name of the bank holding the underlying funds. Upon either occurrence, new cards would have to be reissued at a great expense to the bank. Therefore, CSCB asserts that the name of the bank holding the underlying funds should NOT be printed on the card as it is unnecessary, possibly confusing and is an added expense to the issuing bank.

Sincerely,



Gregory B. Jones  
Cornerstone Community Bank  
Chief Executive Officer