

information. The total cost of the contractor-provided information is estimated to be \$21.88 for the 40 minute period. Minimal operation and maintenance costs are expected for photocopying and postage.

#### **Are There Changes in the Estimates From the Last Approval?**

EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection request because there has been no change in the information being collected and approximately the same number of contracts are closed out each year.

#### **What Is the Next Step in the Process for All Four ICRs?**

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue **Federal Register** notices pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about these ICRs or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: November 6, 2008.

**Elena deLeon,**

*Service Center Manager, Acquisition Policy and Training Service Center, Office of Acquisition Management.*

[FR Doc. E8-26947 Filed 11-12-08; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of New General Counsel's Opinion No. 8.

**SUMMARY:** In 1996, the FDIC published General Counsel's Opinion No. 8 ("GC8"). Through that opinion, the Legal Division of 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 Subsequently, the banking industry developed new types of stored value products with the result that GC8 is obsolete. For this reason, the Legal Division has decided to replace GC8. Under the new GC8, all funds

underlying stored value products will be treated as "deposits" if they have been placed at an insured depository institution. As a result, all such funds will be subject to FDIC assessments. Also, all such funds will be insured up to the insurance limit. Whether the funds are insurable to the holders of the access mechanisms, as opposed to the distributor of the access mechanisms, will depend upon the satisfaction of the FDIC's standard requirements for obtaining "pass-through" insurance coverage. This treatment of the funds underlying stored value products does not differ from the treatment set forth in a proposed rule published by the FDIC in August of 2005. *See* 70 FR 45571 (August 8, 2005).

The new GC8 will provide guidance to the public about the insurance coverage of funds underlying nontraditional access mechanisms. Also, the new GC8 will promote accuracy and consistency by insured depository institutions in reporting "deposits" for inclusion in an institution's assessment base.

**FOR FURTHER INFORMATION CONTACT:** Christopher L. Hencke, Counsel, Legal Division, (202) 898-8839, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

#### **Text of General Counsel's Opinion**

By: Sara A. Kelsey, General Counsel, FDIC.

#### **Introduction**

The evolution of stored value cards since the issuance of the original General Counsel's Opinion No. 8, in 1996, has created the need to revisit the issue of deposit insurance coverage for the holders of such cards. Stored value cards now commonly serve as the delivery mechanism for vital funds such as employee payroll and government payments such as benefits and tax refunds. Network branded reloadable stored value cards also serve as an alternative mechanism for holders to access funds held in a bank for their benefit. This new General Counsel's Opinion No. 8 seeks to clarify the deposit insurance coverage available to the holders of stored value cards whose funds are held for their benefit in insured depository institutions.

The FDIC is responsible for insuring "deposits" at insured depository institutions. *See* 12 U.S.C. 1821. Also, the FDIC is responsible for collecting assessments on "deposits." *See* 12 U.S.C. 1817. In fulfilling these responsibilities, the FDIC must be able to determine the existence of "deposits" at insured depository institutions.

In the Federal Deposit Insurance Act ("FDI Act"), the term "deposit" is defined at section 3(l). *See* 12 U.S.C. 1813(l). In general, a "deposit" is "the unpaid balance of money or its equivalent received or held by a bank or savings association." 12 U.S.C. 1813(l)(1). The definition encompasses the funds in checking accounts, savings accounts and certificate of deposit accounts. *See id.* It also includes the funds received by a bank or savings association in exchange for the issuance of traveler's checks. *See id.* Similarly, the term "deposit" includes the funds underlying official checks and money orders. *See* 12 U.S.C. 1813(l)(4).

In short, the statutory definition of "deposit" at section 3(l) of the FDI Act is very broad. By express terms, section 3(l) encompasses almost all funds subject to transfer or withdrawal through traditional access mechanisms (such as checks, traveler's checks, official checks and money orders) provided that the funds have been placed at an insured depository institution.<sup>1</sup>

Following the failure of an insured depository institution, the FDIC is responsible for paying insurance on "deposits." *See* 12 U.S.C. 1821(f); 12 U.S.C. 1821(a). In applying the insurance limit, the FDIC must aggregate all deposits "maintained by a depositor in the same capacity and the same right." 12 U.S.C. 1821(a)(1)(C). In other words, the FDIC must aggregate all deposits owned by a particular depositor in a particular ownership category. For example, the FDIC will aggregate all deposits held by a particular depositor in the form of "single ownership accounts." The FDIC will provide separate insurance coverage for deposits in other ownership categories, such as "joint ownership accounts" or "revocable trust accounts." *See* 12 CFR part 330.

In applying the insurance limit, the FDIC must be able to determine the identities of depositors. This task is different than determining the existence of "deposits." A depositor is the owner of a deposit, *i.e.*, a creditor with a particular type of claim against a depository institution. In contrast, as previously discussed, a "deposit" is the money entrusted to the depository institution, *i.e.*, the depository institution's obligation to repay the money.

The FDI Act provides that the FDIC, in determining the identities of

<sup>1</sup> The only exceptions are certain narrow exceptions expressly created by Congress (such as an exception for bank obligations payable solely outside the United States). *See* 12 U.S.C. 1813(l)(5).

depositors following the failure of an insured depository institution, may rely upon the records of the failed insured depository institution. See 12 U.S.C. 1822(c). In accordance with this statutory authority, the FDIC has promulgated rules for determining the owners of deposits placed at insured depository institutions by agents or custodians, *i.e.*, deposits owned by persons who do not deal directly with the depository institution. First, the agency or custodial relationship must be disclosed in the account records of the insured depository institution, *e.g.*, through an account title such as "ABC Company as Custodian." See 12 CFR 330.5(b)(1). Second, the identities and interests of the actual owners must be disclosed in the records of the depository institution or records maintained by the custodian or other party. See 12 CFR 330.5(b)(2). Third, the deposits actually must be owned (under the contract between the parties or any applicable law) by the named owners and not by the custodian. See 12 CFR 330.3(h); 12 CFR 330.5(a)(1).

When the FDIC's requirements are satisfied, the insurance coverage "passes through" the custodian, *i.e.*, the nominal accountholder, to each of the actual owners of the deposit. See 12 CFR 330.7(a). When the requirements are not satisfied, the named accountholder is treated as the owner.

The rules summarized above can be applied to the funds underlying stored value products. In the case of such funds, two issues must be addressed: (1) whether (or when) the funds should be classified as "deposits"; and (2) whether (or when) the holders of the access mechanisms (as opposed to the distributor of the access mechanisms) should be treated as depositors. Stored value products are discussed in greater detail below.

### Stored Value Products

Stored value products, or "prepaid products," may be divided into two broad categories: (1) Merchant products; and (2) bank products.

A merchant card (also referred to as a "closed-loop" card) enables the cardholder to collect goods or services from a specific merchant or cluster of merchants. Generally, the cards are sold to the public by the merchant in the same manner as gift certificates. Examples are single-purpose cards such as cards sold by book stores or coffee shops. Another example is a prepaid telephone card.

Merchant cards do not provide access to money at a depository institution. When a cardholder uses the card, the merchant is not paid through a

depository institution. On the contrary, the merchant has been prepaid through the sale of the card. In the absence of money at a depository institution, no insured "deposit" will exist under section 3(l) of the FDI Act. See *FDIC v. Philadelphia Gear Corporation*, 476 U.S. 426 (1986).

Bank cards are different. Bank cards (also referred to as "open-loop" cards) provide access to money at a depository institution. In some cases, the cards are distributed to the public by the depository institution itself. In many cases, the cards are distributed to the public by a third party. For example, in the case of "payroll cards," the cards often are distributed by an employer to employees. In the case of multi-purpose "general spending cards" or "gift cards," the cards may be sold by retail stores to customers.

A bank card usually enables the cardholder to effect transfers of funds to merchants through point-of-sale terminals. A bank card also may enable the cardholder to make withdrawals through automated teller machines ("ATMs"). In other words, a bank card provides access to money at a depository institution. The money is placed at the depository institution by the card distributor (or other company in association with the card distributor), but is transferred or withdrawn by the cardholders. In some cases, the card is "reloadable" in that additional funds may be placed at the depository institution for the use of the cardholder.

This General Counsel's opinion does not address merchant cards because such cards do not involve the placement of funds at insured depository institutions. The applicability of this General Counsel's opinion is limited to bank cards and other nontraditional access mechanisms, such as computers, that provide access to funds at insured depository institutions.

### "Deposits"

The original GC8 did not address all types of stored value products offered by (or through) insured depository institutions. For example, it did not address systems in which the depository institution maintains a pooled self-described "reserve account" for all cardholders but also maintains an individual subaccount for each cardholder. Likewise, the original GC8 did not discuss systems in which the access mechanisms are distributed not by the insured depository institution but instead are distributed by a third party (such as the employer in the case of payroll cards or a retail store in the case of general spending cards). Hence, the

original GC8 is obsolete and must be replaced.

Having reconsidered the issue of whether funds underlying stored value products qualify as "deposits," the Legal Division has concluded that such funds always should be treated as "deposits" provided that the funds have been placed at an insured depository institution. This conclusion is based upon the general premise that the funds underlying stored value cards and other modern access mechanisms are no different, in substance, than the funds underlying traditional access mechanisms such as checks, official checks, traveler's checks and money orders.

In other words, the access mechanism is unimportant. Whether funds should be classified as "deposits" should not depend upon the access mechanism (or whether the access mechanism is a plastic card as opposed to a paper check). Rather, as recognized by the Supreme Court, the existence of a "deposit" depends upon whether "assets and hard earnings" have been entrusted to a bank. See *FDIC v. Philadelphia Gear Corporation*, 106 S. Ct. 1931 (1986).

In concluding that the funds are "deposits," the Legal Division relies upon paragraph 3(l)(1), paragraph 3(l)(3) and paragraph 3(l)(4) of the statutory definition. See 12 U.S.C. 1813(l)(1); 12 U.S.C. 1813(l)(3). Each of these paragraphs is discussed in turn below.

*Paragraph 3(l)(1).* This paragraph defines "deposit" as "[t]he unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account." \* \* \* 12 U.S.C. 1813(l)(1). Under this paragraph, funds are "deposits" when a commercial entity (such as the employer in the case of payroll cards or a retail store in the case of general spending cards) places "money or its equivalent" at an insured depository institution (*i.e.*, places funds into a "commercial" account). Also, under this paragraph, funds are "deposits" when placed into checking accounts. In addition, funds are "deposits" when given to a bank in exchange for a traveler's check. See *id.* Some stored value products are the functional equivalents of checks or traveler's checks.

*Paragraph 3(l)(3).* This paragraph defines "deposit" as "money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or

savings association, in the usual course of business for a special or specific purpose.\* \* \* 12 U.S.C. 1813(l)(3). Under this paragraph, funds are “deposits” when held by a bank for the “special or specific purpose” of covering withdrawal or transfer instructions from the holders of stored value cards or other nontraditional access mechanisms. In the original GC8, the Legal Division found that paragraph 3(l)(3) applies only to cases in which the customer’s spending plans are very specific but such a narrow reading of the statute is not supported by the legislative history. *See FDIC v. Philadelphia Gear Corporation*, 106 S. Ct. 1931 (1986). Also, the Legal Division is unaware of any case in which a court found that a bank’s liability did not qualify as a “deposit” because the customer’s spending plans were insufficiently specific.

*Paragraph 3(l)(4).* This paragraph defines “deposit” as “outstanding draft \* \* \* cashier’s check, money order, or other officer’s check issued in the usual course of business for any purpose.\* \* \* 12 U.S.C. 1813(l)(4). Some stored value products are the functional equivalents of cashier’s checks or money orders.

As outlined above, the statutory definition of “deposit” is very broad. The Legal Division concludes that this definition encompasses all funds underlying stored value cards and other nontraditional access mechanisms to the extent that the funds have been placed at an insured depository institution.

A separate issue is whether the holder of an access mechanism (as opposed to the distributor of the access mechanism) should be treated as the insured depositor for the purpose of applying the insurance limit. This issue is addressed below.

### Depositors

Under the existing insurance regulations at 12 CFR part 330, the FDIC is entitled to rely upon the account records of the failed insured depository institution in determining the owners of deposits. *See* 12 CFR 330.5. Therefore, in cases in which a separate account has been opened in the name of the holder of the access mechanism, the FDIC will recognize the holder as the owner of the deposit.

In some cases, in an agency or custodial capacity, the distributor of the access mechanisms (or agent on behalf of the distributor) might open a pooled account for all holders of the access mechanisms. In such cases, the FDIC may provide “pass-through” insurance coverage (*i.e.*, coverage that “passes through” the agent to the holders). *See*

12 CFR 330.7. Such coverage is not available, however, unless certain requirements are satisfied. First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship. *See* 12 CFR 330.5(b)(1). This requirement can be satisfied by opening the account under a title such as the following: “ABC Company as Custodian for Cardholders.” Second, the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner. *See* 12 CFR 330.5(b)(2). Third, the funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian (or other party). *See* 12 CFR 330.3(h); 12 CFR 330.5(a)(1). If these three requirements are not satisfied, the FDIC will treat the custodian (*i.e.*, the named accountholder) as the owner of the deposits.

It is encouraged that accurate information concerning FDIC insurance coverage be displayed on stored value cards. This information should include the name of the insured depository institution in which the funds are held. When appropriate, the card also should state that the funds are insured by the FDIC to the cardholder. These disclosures will provide the cardholder with important information concerning FDIC deposit insurance coverage.

### Conclusion

This opinion replaces the opinion published by the FDIC in 1996. Under this opinion, all funds underlying stored value cards and other nontraditional access mechanisms will be treated as “deposits” to the extent that the funds have been placed at an insured depository institution. If the FDIC’s standard recordkeeping requirements are satisfied, the holders of the access mechanisms will be treated as the insured depositors for the purpose of applying the insurance limit. Otherwise, the distributor of the access mechanisms (*i.e.*, the named accountholder) will be treated as the insured depositor.

This opinion is based upon the proposition that the form of the access mechanism is unimportant. Whether the mechanism is traditional, such as an ATM card, book of checks or official check, or nontraditional, such as a stored value product, the access mechanism is merely a device for withdrawing or transferring the underlying money. The “deposit” is the underlying money received by the

depository institution and held for an accountholder.

By order of the Board of Directors, dated at Washington, DC, this 31st day of October 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–26867 Filed 11–12–08; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Thursday, November 13, 2008 at 1:30 p.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

### ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2008–14:

Melothe, Inc. by Marc E. Elias, Esquire.

Report of the Audit Division on Edwards for President.

Report of the Audit Division on the Kuhl for Congress Committee.

Report of the Audit Division on the Missouri Democratic State Committee.

Report of the Audit Division on the Oregon Republican Party.

Report of the Audit Division on Sharpton 2004.

Management and Administrative Matters.

### PERSON TO CONTACT FOR INFORMATION:

Robert Biersack, Press Officer,  
Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E8–26877 Filed 11–10–08; 11:15 am]

BILLING CODE 6715–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this