NORTH DAKOTA
BANKERS ASSOCIATION

November 1, 2005

Robert Feldman, Executive Secretary
Attention. Comments/Executive secretary Section
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Via Facsimile Transmission
(202) 898-3838

RE Proposed Rule-Insurability of Funds Underlying Stored Value Cards (FIL 83-2005), 70 Federal Register 45571, August 8, 2005

Dear Secretary Feldman

The North Dakota Bankers Association (NDBA) welcomes this opportunity to comment on the Proposed Rulemaking regarding the insurability of funds underlying stored value cards. NDBA is a trade association for banks and thrift associations Our 93 state and national banks and federal thrift members operate more than 300 offices throughout the state of North Dakota. NDBA members strive to provide their customers with access to new financial products as they "come on line", provided they can do so in a manner that is economic for the customer and profitable for the bank.

Proposed Rules Must Allow Banks To Be Flexible With Product Offerings
NDBA endorses the FDIC effort to address the treatment of stored value cards for the purpose of federal deposit insurance, but cautions against overbroad or inflexible regulation due to the risks that it will, in essence, kill the product by making it too expensive for banks to offer competitively and profitably Accordingly, we urge proposed rules for insurability of funds underlying stored value cards to establish clear requirements that must be met if the funds underlying a stored value card product are to be treated as an insured deposit, but not to define those funds as deposits carte blanche This approach recognizes the facts that deposit insurance imposes a cost on banks which other providers of stored value cards do not incur. It also recognizes that the product is extremely versatile and that purchasers and users of a stored value cards have very different motivations for purchasing it (For example, some may desire a card that is of a low value so that it can be distributed as a gratuity for advertising or public relations, while others will purchase the product and use it instead of a credit card, while yet others will purchase the product and use it to pay wages to employees) To be viable providers

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of stored value cards, banks must have the flexibility to offer products that are not backed by insured funds as well as those that are. Banks will then be able to price product offerings to reflect the product's cost to the bank, utility to the customer, whether that customer is the "first depositor" as it were, or a different person who is the ultimate user of the product, and whether the bank can provide the product and still make a profit on it. If the FDIC regulations make it unprofitable for banks to sell stored value cards to their customers, banks won't do so and will be forced to cede this product and a potentially large market to commercial money transmitters NDBA sees this consequence as being negative for customers and banks

Proposed Rules Must Not Require Extensive Disclosures

NDBA is of the view that detailed consumer disclosures are not necessary for bank issued stored value card products. Stored value cards are not typically issued for huge amounts of money Most users of the cards regard the cards as a cash substitute and recognize that a lost card likely means that the funds underlying the card may also be lost. (This perception exists even though there are stored value card products that have features to protect the user against this type of loss.) In reality the risk that a consumer user of the cards will lose a large sum of money due to an unused stored value card and a bank failure is minimal Furthermore, any user of a stored value card is free to immediately liquidate the value of the card and to deposit/use the realized funds as the user chooses

The risk of a substantial loss in the event of a bank failure is greater for a "first depositor" such as an employer which uses stored value cards for payroll. But employers and other large depositors are aware of the dollar limits of deposit insurance and currently are required to make their own assessment of the financial strength of their depositories. From the perspective of an employer (or other entity that uses the cards to transfer funds to others) the situation with payroll cards is no different than if funds are deposited in a checking account upon which checks are drawn to pay obligations of the drawer. If the drawee bank fails, checking account deposits over the $100,000 limit are not insured and the drawer's obligation to pay the obligation has not been met Recipients of stored value cards should have the same, but no better protections than apply when funds are accessed through traditional methods, such as a check.

If FDIC, nonetheless, concludes that some disclosure requirement should be imposed, then care should be taken that the requirement is practical, not misleading, and that it will fit on a stored value card so that the customer will see it A statement that "The value of the funds underlying the card may not be insured by the FDIC" or another equally short and to the point would be adequate

Payroll Cards

NDBA does object to a rule to require cards that are used for payroll be insured on a pass through basis because it is beyond the scope of FDIC's proper role as an insurer, intrudes on the prerogatives of state legislatures[1], and , in effect, preempts state laws that do not impose a deposit insurance requirement for payroll cards Furthermore, such a

[1] North Dakota law does require deposit insurance for funds underlying payroll cards NDCC 34-14-02 This legislation was supported by NDBA.

requirement could be interpreted to require the bank to police an employer who is obligated to maintain records sufficient to conform to the requirements for pass through insurance and cause banks to incur such compliance costs as to price banks out of the payroll card market during a time when federal regulatory agencies suggest that payroll cards are a sound method for providing financial services to the "unbanked"

Defining Deposit to Exclude Small Value Cards

The issue of creating a small card exclusion within the definition of "deposit" is rendered moot if banks are enabled to offer cards without underlying deposit insurance and cards that are backed by deposit insurance, and, to price them accordingly

Again, thank you for the opportunity to comment on the proposed rules for insurability of funds underlying stored value cards.

Sincerely Yours,
NORTH DAKOTA BANKERS ASSOCIATION

Marilyn Foss

Marilyn Foss
General Counsel