



## The Legal Report

# U.S. Consumer Protections Proposed for Stored-Value Cards?

---

By Richard L. Field  
[field@nyc.pipeline.com](mailto:field@nyc.pipeline.com)

Mr. Field is an attorney and legal consultant in Cliffside Park, New Jersey, U.S.A. He chairs the Electronic Commerce Payment Committee of the American Bar Association.

---

Your first real vacation in three years. You've just polished off dinner at the most exclusive restaurant in town. As you flip open your wallet, panic strikes.

"My ecash card! It's.....gone!!!"

"Not to worry, sir," your waiter sniffs, "we keep a supply of empty cards for people in your situation. Call your bank on our smart house phone and they surely will give you a full refund. You'll pay for your dinner and tip and be on your way in no time."

A likely scenario? Does the bank have to cooperate? And who takes the hit on those occasions when the money ends up being spent twice: first by the lucky local who found your card (with your PIN number scratched on the back, of course), and second by you, courtesy of the replacement ecash?

Up to this point there are no U.S. laws to protect consumers in this situation. But the U.S. may soon have one covering individuals, worldwide, who keep U.S. bank accounts for their personal use. Certain types of withdrawals from those accounts are currently protected by the Federal Reserve's Regulation E, which traditionally has governed ATM cards and other types of electronic, telephone, and preauthorized access to your consumer bank account. A current proposal would purport to extend some of these protections to previously withdrawn money that is sitting on your pre-paid smart card. The Fed's problem is, that it is only authorized to regulate consumer deposit accounts, and it is not clear that stored-value funds are still considered to be in an account.

The proposal therefore distinguishes on-line stored-value systems from off-line systems, further separating the latter into "off-line accountable" and "off-line unaccountable". A stored-value account would be entirely exempt from the disclosure rules and consumer liability protections of Reg E if the maximum amount that may be on the card at any given time is US \$100 or less.

On-line stored-value systems, apparently, are those in which value is not stored on the cards, but on a separate database that is accessed at the time of the transaction. They would be subject to the existing consumer protections of Reg E, with slight modifications.

Off-line accountable systems are those that keep the balance recorded on both the card and a separate database, but that need not access the separate database at the time of the transaction. They would be subject only to truncated initial disclosures from the financial institution to the consumer. They would offer no protection against loss to the consumer, unless the financial institution volunteered it.

Off-line unaccountable systems approximate anonymous payments, since no record of individual transactions is

maintained on a separate database. Reg E, as proposed, would exempt these systems entirely, and require no disclosures or protection against loss.

Significantly, the proposal would also expressly permit electronic communications to substitute for traditional written disclosures and other required writings.

New forms of network payment products are not covered by the proposed regulation (secure credit card payments over the Internet are already covered under the Federal Reserve's Regulation Z), but the proposal suggests the same sort of analysis would be appropriate.

It is clear that, despite all the wrestling with smart card variations, the proposed regulation is essentially a disclosure rule. It represents a cautious step toward regulating these new forms of consumer payment systems. They do not provide much consumer protection (particularly when compared to the current Reg E protections for ATM cards), but they do provide additional guidance to stored-value card issuers, and they establish a platform for future Federal Reserve regulation of new electronic payment systems.

Where does this leave you, stuffed but penniless? Well, unless you've found a bank that offers, for competitive business reasons, to refund your money on a lost card, you're probably going to be out of luck. Or unless the card you lost happened to be an on-line stored-value system. If not, maybe you'll be able to get a new card filled with cash, but it will be out of your own bank account, a second time. If the finder of the first card is caught in the act of spending the money, perhaps he will be prosecuted or you can file a private law claim against him (possibly for conversion of property belonging to another, under principles of common law).

When you get home from your vacation, you will immediately search through your closed for the initial disclosure statement that his bank originally sent to you with the card. It will likely say, "sorry, not our problem".

To download the full text or a summary of the Reg E stored-value card proposal as published in the Federal Register, do a GPO Access search of the 1996 Federal Register, proposed rules, date: "on 05/02/96", search terms: "page 19696". To access the search page, click here: <http://www.access.gpo.gov/su-doc/aces/aces140.html>.

For a sample letter drafted by Richard Field click [here](#).