

## New Federal Gift Card Statutes and Regulations

**The Credit CARD Act amends the Electronic Fund Transfer Act to establish a federal law on general-use prepaid cards, gift certificates and store gift cards, effective August 22, 2010.**

A new federal gift card law was passed this year which may affect your business.

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Credit CARD Act") was signed into law on May 22, 2009. Among other things, the Credit CARD Act amends the Electronic Fund Transfer Act to establish a federal law on general-use prepaid cards, gift certificates and store gift cards, effective August 22, 2010.

On November 16, 2009, proposed regulations were issued by the Board of Governors of the Federal Reserve System (the "Board") to implement the gift card provisions of the Credit CARD Act. Comments to the proposed regulations must be submitted within thirty days after publication in the Federal Register, which is expected shortly. Final regulations will be adopted by February 22, 2010.

### Products Covered:

The proposed regulations apply to gift certificates, store gift cards, and general-use prepaid cards, as those terms are defined in the Credit CARD Act.<sup>1</sup> However the Board is proposing certain

adjustments to the statutory definitions to provide clarity, to avoid arbitrary and unintended distinctions among types of certificates and cards, and to provide consistency across definitions. These adjustments are not intended to make substantive changes to the statutory definitions.

Covered products include retail gift cards or gift certificates, which can be used to buy goods or services at a single merchant or affiliated group of merchants, and network branded gift cards, which are redeemable at any merchant that accepts the card brand. The proposed regulations cover both certificates and cards with amounts predenominated by the issuer and certificates and cards with amounts designated by consumers.

### Notable Exclusions:

Consistent with the Credit CARD Act, the proposed regulations state that the terms general-use prepaid cards, gift certificates and store gift cards do not include cards, codes or other devices that are (i) reloadable and not marketed or labeled as a gift card or gift certificate, (ii) issued in connection with a loyalty,

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<sup>1</sup> The Credit CARD Act defines a general-use prepaid card as a card or other payment code or device that is (i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines, (ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder, (iii) purchased or loaded on a prepaid basis; and (iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

Gift certificate means an electronic promise that is (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, (ii) issued in a specified amount that may not be increased or reloaded, (iii) purchased on a prepaid basis in exchange for payment; and (iv) honored upon presentation by the single merchant or affiliated group of merchants for goods or services.

Store gift card means an electronic promise, plastic card, or other payment code or device that is (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark or logo, (ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder, (iii) purchased on a prepaid basis in exchange for payment, and (iv) honored upon presentation by the single merchant or affiliated group of merchants for goods or services.

award or promotional program, (iii) not marketed to the general public, (iv) issued in paper form only<sup>2</sup> or, (v) redeemable for admission to an event or for the purchase of goods or services in conjunction with the admission.<sup>3</sup>

However, disclosures of all fees, including dormancy, inactivity or service fees, and any expiration dates that may apply, would be required for certificates or cards issued through a loyalty, award or promotional program. In addition, if a retail chain markets its gift cards only to members of its frequent buyers' program, but any member of the general public may become a member of the program, the cards would be covered by the regulations, unless another exclusion applies.

#### **Restrictions on Dormancy, Inactivity or Service Fees:**

The proposed regulations prohibit the imposition of dormancy, inactivity, or service fees. However, these fees may be assessed if:

- (1) there has been at least one year of inactivity on the certificate or card;
- (2) no more than one such fee is charged per month; and
- (3) the consumer is given clear and conspicuous disclosures about the fees.

Pursuant to the Credit CARD Act, the disclosure requirements are met if a card or certificate clearly and conspicuously states (i) that a dormancy fee, inactivity charge or fee, or service fee may be

charged, (ii) the amount of the fee or charge, (iii) how often the fee or charge will be assessed, and (iv) that the fee or charge may be assessed for inactivity. In addition, the charge or fee must be disclosed to purchasers of the certificate or card prior to purchase, regardless of whether the purchase is in person, over the Internet or by telephone.

In addition to dormancy, inactivity or service fees, any other type of fee must be disclosed on or with the certificate or card prior to purchase. Issuers must disclose a toll-free telephone number and Web-site (if maintained) for consumers to obtain fee information.

Fees subject to the proposed regulations include monthly maintenance or service fees, balance inquiry fees, and transaction-based fees, such as reload fees and point-of-sale fees.

#### **Restrictions on Expiration Dates:**

The proposed regulations prohibit the sale or issuance of a gift certificate, store gift card, or general-use prepaid card that has an expiration date of less than five years after the date a certificate or card is issued or the date funds are last loaded. The imposition of any fees for replacement of an expired card or certificate if the underlying funds remain valid is prohibited.

#### **Relation to State Law:**

The federal law does not preempt any state laws that address dormancy, inactivity, or service fees or expiration dates for gift certificates, store gift cards,

<sup>2</sup> This exclusion applies where the sole means of issuing the card, code, or other device is by paper. An example includes a paper gift certificate distributed by restaurants that is redeemable for a specific dollar amount. The proposed regulations set out that the exclusion does not apply simply because a card, code, or other device is reproduced or otherwise printed on paper. For example, the exclusion would not apply where a retailer electronically mails a certificate redeemable for goods or services to a consumer, which the consumer could print out on a home printer. Comment was requested as to whether this aspect of the proposed regulation would create a risk of circumvention of the regulation because, for example, a paper certificate could be encoded with a magnetic stripe.

<sup>3</sup> While the exclusion would apply to cards, codes, or other devices that are redeemable for admission to an event or venue, and for goods or services purchased in conjunction with that admission, the exclusion does not cover cards, codes, or other devices issued in a specified monetary value that could be applied toward such admission.

There is also an exclusion for cards, codes, or other devices usable solely for telephone services.

**For more information on the Credit CARD Act, the proposed regulations, items on which the Board is seeking comments, or assistance with submitting comments on the proposed regulations to the Board, please contact:**

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or general-use prepaid cards if the state laws provide greater consumer protection than the new federal gift card law.

**Comments Sought:**

The following are some of the issues about which the Board is seeking comments:

- Whether the Board should consider rules to grandfather gift certificates, store gift cards, or general-use prepaid cards that are in the marketplace as of the effective date of the regulations from some or all of the requirements set forth in the rulemaking.
- Suggestions for an appropriate transition period after which all certificates or cards must fully comply with the new regulations.
- Whether there are any actions taken by a consumer that should be considered “activity” for purposes of the requirement that in order to charge fees, there must be at least one year of inactivity on the certificate or card.
- Whether additional guidance is needed to clarify what is meant by “marketed or labeled as a gift card or gift certificate” with respect to the exclusion from the regulations for cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate.
- Whether issuers should be required to automatically issue a replacement card to consumers prior to the card expiration date of a reloadable card if the underlying funds will not expire until after the card expiration date.

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