

CFPB Finds State Unclaimed Property Law Preempted by Federal Credit CARD Act

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Last week, the Consumer Financial Protection Bureau (CFPB) issued its [final determination](#) regarding whether Maine and Tennessee unclaimed property laws were preempted by the federal Credit Card Accountability and Responsibility and Disclosure Act of 2009 ("the Credit CARD Act"). Both state laws provided that certain gift cards would be deemed abandoned as early as two years after purchase and thus require the issuer to transfer the value of the card to the state as unclaimed property. The CFPB was tasked with deciding whether those laws conflicted with the requirement under the Credit CARD Act that gift card funds not expire for at least five years after issuance. Gift card issuers and sellers have been watching these matters with the hope that the inconsistency between federal and state gift card law requirements might be eliminated by the CFPB.

The CFPB distinguished the two states laws on the basis of whether the card issuer was required to continue to honor the gift card after the funds were deemed abandoned and turned over to the state. Under Maine law, as interpreted by the Office of the State Treasurer for Maine and communicated to the CFPB, the issuer was required to continue to honor the card even after the issuer had transferred the underlying funds to the state as abandoned property. The CFPB reasoned that "[b]ecause the Maine Act does not interfere with consumers' ability to use their gift cards at the point-of-sale for at least as long as they are guaranteed that right" under federal law, the Maine law did not conflict with federal law and was not preempted.

While the CFPB acknowledged that the Maine law potentially subjects the card issuer to duplicative liability on the same card, it noted that this was the case notwithstanding the federal provision because "the Maine Act itself requires abandoned gift cards to be honored indefinitely." The CFPB further explained that it expressed no view on potential constitutional due process issues of requiring an issuer to honor abandoned gift cards when those funds had already been transferred to the state. The CFPB explained that it could not opine on such concerns because its role was limited to a determination on federal preemption.

With regard to the Tennessee law, the CFPB explained that, unlike the Maine law, it did not require the issuer to continue to honor the card after the funds had been transferred to the state. To the contrary, Tennessee law expressly provided that Tennessee assumed custody and responsibility for the underlying funds after transfer and therefore permitted the issuer to decline to honor funds once transferred to the state. As such, the CFPB reasoned that consumers attempting to reclaim their property would be required to submit an unclaimed property claim form to Tennessee's Department of Treasury. Because such a requirement requiring consumers to seek refund from the state conflicted with the Credit CARD Act's mandate to permit use of funds for at least five years after card issuance, the Tennessee law was in direct conflict with, and thus preempted by, federal law.

We will continue to monitor the case, as the CFPB's determinations may be destined for appeal. More information on developments in gift card laws is available at www.adlawaccess.com.