

The Federal Reserve Board's Final Gift Card Rules for the CARD Act

May 19, 2010

Recently, the Federal Reserve Board announced the final rules that amend Regulation E to implement the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act"). The rules restrict fees and expiration dates on various types of gift certificates and cards, and require sellers and issuers to make specific disclosures. These restrictions and requirements will apply to qualifying gift cards sold on or after **August 22, 2010**.

Scope

Generally, the rules restrict fees, expiration dates, and impose certain disclosure requirements for (1) gift certificates, (2) store gift cards, and (3) general-use prepaid cards, as these terms (collectively, "gift cards") are defined in the CARD Act. The rules state that the CARD Act's scope is intended to extend to gift cards that are sold or issued to consumers primarily for personal, family, or household purposes. Gift cards which qualify under the rules as loyalty, award, or promotional gift cards are exempt from the fee and expiration date rules but must still follow strict disclosure requirements.

Exclusions

The rules also provide specific exclusions, meaning none of its provisions apply to gift cards used solely for telephone services, cards that are reloadable and not marketed or labeled as a gift card or certificate, cards not marketed to the general public, cards issued in paper form only, or cards redeemable solely for admission to specific events or venues. Although the rules exclude several categories of gift cards, the exclusions should be interpreted narrowly to ensure that consumers receive the full protection contemplated by the CARD Act.

Preemption

The lingering issue of how the CARD Act should be treated along with the patch-work of state gift card laws that regulate dormancy fees, inactivity charges or fees, service fees, expiration dates, or escheatment is addressed in the rules as well. State laws that provide greater protection for consumers than the CARD Act, are not preempted according to the rules. Because the question of what is meant by "greater protection" is still unclear, the rules provide a mechanism by which parties may request a preemption determination by the Board with respect to a particular state's escheat law. Due to the ambiguity surrounding state gift card law preemption, gift card issuers and sellers should continue to track or consult legal counsel regarding current state gift card laws and pending legislation in all states.

Information

Check back for future posts on the details of the rules, including posts specific to loyalty, award or promotional gift cards, fee and expiration date restrictions, disclosure requirements, and preemption analysis for state gift cards laws.

Click [here](#) for a post from the Kelley Drye Advertising Group's "Ad Law Access Blog" for further information regarding the Federal Reserve gift card rules.