

UPDATE: New Gift Card Rules To Take Effect on August 22, 2010 and Disclosure Requirements Will Now Take Effect on January 31, 2011

August 12, 2010

This is an update to an [earlier post](#) regarding the Federal Reserve Board's final rules implementing the gift card provisions of the [Credit Card Accountability Responsibility and Disclosure Act of 2009](#) ("CARD Act"). On July 27, 2010, [H.R. 5502](#) was signed into law, extending the effective date of disclosure requirements under the CARD Act from August 22, 2010 to January 31, 2011, for qualifying gift cards produced prior to April 1, 2010. You may recall that the rules restrict fees and expiration dates on various types of gift certificates and cards, and require sellers and issuers to make specific disclosures.

Gift Certificates, Store Gift Cards, and General-Use Prepaid Cards

Generally, the rules restrict fees, expiration dates, and impose certain disclosure requirements for (A) gift certificates, (B) store gift cards, and (C) general-use prepaid cards, as these terms (collectively, "gift cards") are defined in the CARD Act.

Definitions

(A) Gift Certificates - are defined in the CARD Act as a card, code, or other 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 that may not be increased or reloaded; (iii) purchased on a prepaid basis in exchange for payment; and (iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(B) Store Gift Cards - these types of cards are commonly known as "closed-loop cards", and are essentially the same as Gift Certificates, but are reloadable or may be increased in value. The CARD Act specifically defines these cards as electronic promises, plastic cards, or other payment codes or devices that are: (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 such single merchant or affiliated group of merchants for goods or services.

(C) General-Use Prepaid Cards - commonly referred to as "open-loop cards", are defined in the CARD Act as cards or other payment codes or devices issued by any person that are: (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.

Exclusions

Gift Certificates, Store Gift Cards, and General-Use Prepaid Cards, do not include an electronic promise, plastic card, or payment code or device that is: (i) used solely for telephone services; (ii) reloadable and not marketed or labeled as a gift card or gift certificate; (iii) a loyalty, award, or promotional gift card, as defined by the Federal Reserve Board; (iv) not marketed to the general public; (v) issued in paper form only (including for tickets and events); or (vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, including services or goods obtainable at the event/venue after admission or in conjunction with admission to such events/venues.

Fees

Under the rules to the CARD Act, no person may impose a dormancy, inactivity, or service fee with respect to Gift Certificates, Store Gift Cards, or General-Use Prepaid Cards unless all of the following occur:

1. **No Activity for 1 Year** – fees are only imposed if there has been no activity for 1 year prior to imposing the fee; and
2. **1 Fee Per Month** – only 1 fee is imposed per calendar month; and
3. **Disclosures** – disclosures regarding fees must be clearly and conspicuously stated on gift cards, and disclosures must be provided to purchasers before issuance.

The rules additionally prohibit fees for replacing or reissuing an expired Gift Certificate, Store Gift Card, or General-Use Prepaid Card if the remaining funds remain valid. This is to ensure consumers may access and use the underlying funds for a full 5-year period.

Expiration

Expiration dates are also prohibited for Gift Certificates, Store Gift Cards, or General-Use Prepaid Cards except if:

1. **Expiration of Funds from Date of Issuance** – the expiration date of the funds underlying the Gift Certificate is 5 years or more from the Gift Certificate's issuance date, or
2. **Expiration of Funds from Date of Last Load** – for Store Gift Cards or General- Use Prepaid Cards, the expiration date of the funds underlying the gift card is 5 years or more after the date of the last load of funds.

Disclosure Requirements

The rules to the CARD Act also require the disclosure of permitted expiration dates and of all other fees, such as initial issuance fees and cash-out fees. These disclosures must be provided on or with the Gift Certificate, Store Gift Card, or General-Use Prepaid Card prior to purchase. Additionally, a toll-free number and, if available, a web site – that a consumer may use to obtain fee information or to order a replacement – must be disclosed on the Gift Certificate, Store Gift Card, or General-Use

Prepaid Card.

Information

Check back for future posts on further details of the rules, including posts specific to loyalty, award or promotional gift cards and preemption analysis for state gift cards laws.