

“What keeps you up at night?”

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New federal regulations concerning gift certificates, store gift cards and general-use prepaid cards will come into effect on August 22, 2010

By Dennis J. Brennan

SUMMARY

The Federal Reserve Board is issuing new regulations governing gift certificates and gift cards. Businesses such as retailers that issue them need to educate themselves about the new regulations, which address two primary issues: 1) restrictions on dormancy, inactivity or service fees, and 2) expiration date restrictions.

The Board of Governors of the Federal Reserve has adopted new regulations that concern gift certificates, store gift cards and general-use prepaid cards. Certificates or cards sold on or after August 22, 2010 must comply with these new requirements. Some provisions of the new regulations require certain disclosure requirements to be made on the certificate or card — therefore businesses that issue these kinds of certificates and cards should familiarize themselves with the new requirements well in advance of August 22 to ensure that certificates and cards sold on or after that date are in compliance.

The new regulations concern gift certificates, store gift cards and general-use prepaid cards sold or issued to consumers primarily for personal, family or household purposes, but do not apply to certain excluded kinds of certificates and cards such as telephone cards and gift certificates that are issued only in paper form. The regulations will be codified as part of Regulation E of the Board of Governors of the Federal Reserve System (12 C.F.R. Part 205), and were enacted pursuant to the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Generally, the new regulations address two issues: restrictions on dormancy, inactivity or service fees, and expiration date restrictions.

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RESTRICTIONS ON DORMANCY, INACTIVITY OR SERVICE FEES

Under the new regulations, a dormancy, inactivity or service fee may not be imposed with respect to a gift certificate, store gift card or general-use prepaid card unless all of the following conditions are satisfied: (1) there has been no activity with respect to the certificate or card within the one-year period preceding the imposition of the fee; (2) only one such fee may be assessed in a given calendar month; and (3) the fees must be clearly and conspicuously stated on the certificate or card and disclosed to the purchaser before the purchase.

EXPIRATION DATE RESTRICTIONS

Under the new regulations, a gift certificate, store gift card or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is at least five years after the date of issuance (in the case of a gift certificate) or five years after the date of the last load of funds (in the case of a store gift card or general-use prepaid card). Additionally, disclosure about the expiration of the funds underlying a certificate or card must be clearly and conspicuously stated on the certificate or card and disclosed to the purchaser before the purchase.

The new regulations also mandate certain other required disclosures about fees. Note that the new regulations expressly do not supersede state laws or regulations, which may provide for additional or more strict requirements.

A violation of the rules is a violation of the Electronic Funds Transfer Act, which may result in the violator being liable to the consumer for actual damages, statutory damages of up to \$1,000 in an individual action or \$500,000 in one or more class actions, and the costs of the action.

A copy of the release from the Board of Governors of the Federal Reserve discussing the new regulations, including the text of the new regulations, can be found at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100323a1.pdf>.

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