



## Questions and Answers on Store Gift Card Regulations Compliance

December 14, 2010

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act) was signed into law.<sup>1</sup> The CARD Act contains provisions affecting fees, expiration dates and related disclosures on store gift cards among other things. The CARD Act was modified by a law signed on July 27, 2010,<sup>2</sup> to give retailers more time to comply. Retailers have had a number of questions regarding compliance with the CARD Act. This document addresses the key questions retailers have posed to FMI. For additional information please contact FMI's regulatory counsel, Erik Lieberman at [elieberman@fmi.org](mailto:elieberman@fmi.org) or (202) 220-0614.

The regulations implementing the CARD Act are found in 12 CFR §205.20.

### *What are the inactivity fee restrictions?*

- An inactivity fee cannot be imposed before one year has elapsed without activity.
- Inactivity fees cannot be imposed more than once a month.
- Inactivity fees cannot be imposed retroactively, only going forward after the one year period in which there has been no activity.

### *What are the inactivity fee disclosure requirements?*

The following inactivity fee<sup>3</sup> disclosures must be on the card itself:<sup>4</sup>

- The amount of the inactivity fee that may be charged.
- How often the fee is charged.
- That such fee may be charged for inactivity.
- Not more than one inactivity fee is imposed in any given calendar month.
- A toll-free telephone number<sup>5</sup> that a consumer may use to obtain information about inactivity fees.

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<sup>1</sup> P.L. 111-24.

<sup>2</sup> P.L. 111-209.

<sup>3</sup> The term "inactivity fee" includes service fee and dormancy fee.

<sup>4</sup> Disclosures made on: packaging surrounding a card, a label affixed to the card or an accompanying terms and conditions document do not meet this requirement.

<sup>5</sup> And website, if one is maintained.

***What are the expiration date restrictions?***

- Store gift cards may not expire sooner than 5 years after purchase by a consumer.<sup>6</sup>
- The funds underlying the store gift card must be valid for at least 5 years, funds that have been loaded or reloaded onto the card after it has been purchased must be valid for at least 5 years.

***What are the expiration date disclosure requirements?***

The following expiration date disclosures must be on the card itself:

- The expiration date for the underlying funds, or if the underlying funds do not expire, a statement of that fact.
- A toll-free number<sup>7</sup> that a consumer may use to obtain a replacement card after the card expires.<sup>8</sup>
- A statement near the expiration date that the card expires but the underlying funds do not expire, or expire later than the card, and; that the consumer may contact the issuer for a replacement card<sup>9</sup>; and no fee is imposed for replacing the card (or providing the balance to the consumer) prior to the expiration date of the underlying funds, unless the card has been lost or stolen.

***What are the compliance dates?***

- Store gift cards must comply with these requirements as of August 22, 2010. Store gift cards produced prior to April 1, 2010 may continue to be sold until January 31, 2010.<sup>10</sup>

***Disclaimer:*** *This guidance is provided by the Food Marketing Institute as a service to its members and does not constitute legal advice. As legal advice must be tailored to the specific circumstances of each case and laws and regulations are frequently changing, nothing provided herein should be used as a substitute for the advice of competent counsel.*

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<sup>6</sup> Technically consumers must have a “reasonable opportunity” to purchase a card with at least five years remaining before the expiration date.

<sup>7</sup> And website, if one is maintained.

<sup>8</sup> If underlying funds may be available.

<sup>9</sup> These statements are not required if the card is not reloadable and the expiration date is at least seven years from the date of manufacture.

<sup>10</sup> Provided the store gift card: (1) does not have an expiration date for the underlying funds; (2) is replaced free of charge at the consumer's request (if it has funds remaining); and disclosures are given to consumers through in-store signage that: (a) the underlying funds of the card do not expire; (b) consumers holding the card have a right to a free replacement certificate or card; and, (c) any inactivity fee will not be charged if such fee does not comply with Section 915 of the Electronic Fund Transfer Act.