

## **NATIONAL ASSOCIATION OF CONVENIENCE STORES COMPLIANCE GUIDE FOR NEW FEDERAL GIFT CARD RULES**

The federal Credit CARD Act of 2009 enacted in May 2009 contains new requirements for gift cards and gift certificates that will probably affect you if you sell, accept, or issue these items. Starting August 22, 2010, inactivity fees and service fees for gift cards and gift certificates will generally be prohibited, and the ability to impose expiration dates for these items will be limited. A chart summarizing the new requirements appears at the end of this discussion.

While the law sets out many of the new gift card restrictions, it is important to note that more details on the restrictions and compliance obligations will be provided in regulations to be published by the Federal Reserve Board in February 2010. In addition, the federal law gives states the ability to impose even stricter requirements, so retailers should check their state's law to determine whether it imposes separate requirements on top of the new federal ones.\*

In the meantime, following is a discussion of what you need to know and anticipate to make sure you are ready to comply with the new federal gift card restrictions by August 2010.

### **What Kinds of Cards Are Covered Under the New Law?**

The new law applies to “store gift cards,” “pre-paid general use cards,” and “gift certificates” (which all will be referred to here as “gift cards”), and these terms are defined to include practically any type of single-use or reloadable electronic gift card that is now in common use:

- “Store gift cards” are defined as plastic cards, payment codes, or any type of electronic promise or other device, that is issued in a specific amount on a pre-paid basis, that is redeemable at a single merchant (or an affiliated group of merchants that share the same name, mark or logo) and is honored by that merchant or affiliated merchant group.
- “Pre-paid general use cards” are defined as plastic cards, or other payment codes or devices, issued in a specific amount on a pre-paid basis, that are redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines (“ATMs”), that are honored upon presentation by merchants for goods or services, or at ATMs.
- A “gift certificate” is defined as an electronic promise redeemable at a single merchant (or affiliated group of merchants that share the same the same name, mark or logo), that is purchased in a specific amount on a pre-paid basis and

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\* One resource that may be a starting point for locating individual state laws on gift cards is a state-by-state summary of such laws available at <http://www.ncsl.org/programs/banking/giftcardsandcerts.htm>. Note, however, that NACS has not reviewed the information on that website for correctness and cannot vouch for its accuracy or completeness.

cannot be increased or reloaded, and is honored upon presentation by such single merchant or affiliated merchant group.

There are several types of cards or gift card-like items that the new law does not cover:

- phone cards;
- loyalty cards, award cards, or promotional gift cards (these types will be defined further by the Federal Reserve Board);
- reloadable cards that are not marketed or labeled as gift cards, and cards that are not marketed to the general public;
- gift certificates and the like that are issued in paper form only (including for tickets or events); and,
- gift cards redeemable for admission to events or venues at a particular location (or group of affiliated locations), which may also include services or goods attainable at or in conjunction with the event or venue after admission.

### **What Are the New Limits on Fees?**

Under the new law, periodic service fees and fees for non-use can no longer be imposed on gift cards unless there has been no activity on the gift card for 12 months prior to the date the fee is imposed. However, one-time, initial issuance or activation fees will continue to be allowed for pre-paid general use gift cards.

Only one type of fee can be charged in any given month (for example, either a non-use fee or a service fee, but not both). And certain disclosure requirements must be met before such fees can be assessed, specifically:

- Information about the fees must be disclosed “clearly and conspicuously” on the gift card itself, including a statement that a non-use or service fee may be charged, the amount of the fee and how often it may be assessed, and a statement that the fee may be assessed for not using the card; and
- The issuer or vendor of the card must inform the purchaser of the non-use or service fees that may be assessed, regardless of whether the card is purchased in person, by phone, or over the Internet. Note that while this “inform-the-customer” obligation can be handled in a relatively simple fashion for sales via telephone or Internet, it is currently unclear how an issuer or vendor will be expected to inform customers making gift card purchases in person. More details concerning this requirement may be provided by the Federal Reserve Board in the gift card regulations that are to be published in February 2010. In the meantime (or if the regulations do not address this issue) possible approaches include posting the fee disclosure information on gift card displays, or having sales clerks inform gift card customers of applicable fees.

These fee limits and disclosure obligations do not apply to award, loyalty, or promotional gift certificates that are given away for free (that is, are not offered in exchange for money or any other thing of value). Be aware that the Federal Reserve's upcoming regulations may impose caps on the fee amounts that can be assessed, and other fee-related limitations.

### **What Are the Limits on Expiration Dates?**

The ability to impose expiration dates on gift cards is now limited so that gift cards must be valid for at least five years after the date of issuance or date funds were last loaded onto the card. If a card has an expiration date, the terms of expiration must be "clearly and conspicuously stated." The legislation is not clear as to whether the gift card itself must contain the expiration terms, and this is another matter that may be cleared up by the upcoming regulations. In the meantime, a reasonable approach is for gift card issuers and sellers to anticipate having to ensure that the expiration terms appear on the cards themselves.

Another important matter for retailers to be aware of is the wording of the statute's expiration date restriction, which makes it "unlawful for any person to sell" a gift card that does not comply with the expiration restrictions. This could make retailers liable for merely selling cards with expiration periods of less than five years (or that otherwise fail to comply with the expiration requirements), even if retailers did not issue the cards. Therefore, unless the Federal Reserve Board's regulations provide otherwise, retailers should be prepared to examine any gift cards they sell to make sure any that have expiration dates comply with federal law.

### **Who Can Be Held Responsible for Compliance With the New Law?**

- **Gift Card Issuers:** Because the new law places limits on the fees and expiration dates that can be imposed on gift cards – terms that are usually determined by those who issue the cards – it is clear that issuers will be responsible for ensuring that the terms of the gift cards they issue are consistent with the law's requirements.
- **Sellers of Gift Cards:** Because of the wording of the statute's expiration date provision, which will make it "unlawful for any person *to sell*" a gift card that does not comply with the expiration restrictions, it appears that retailers can be liable for merely selling cards with expiration periods of less than five years (or that otherwise fail to comply with the expiration requirements) even if retailers did not issue the cards. Thus, as previously discussed, unless and until the Federal Reserve Board provides guidance to the contrary, retailers should anticipate needing to ensure that the gift cards they sell comply with the law. Retailers who are concerned with the possible imposition of such liability are strongly urged to raise their concerns by submitting comments in the rulemaking proceeding that the Federal Reserve Board will conduct as part of the process of implementing this legislation. NACS also plans to file comments in this rulemaking proceeding, and plans to object to any compliance obligations being imposed on sellers of gift cards.
- **Those Who Accept Gift Cards As Payment:** Based on the language of the statute, it does not appear that those who merely accept gift cards as a method

of payment will have any compliance responsibility, because such activity does not involve setting the terms of use for gift cards. This is another matter that may be addressed and/or clarified in the Federal Reserve Board's rulemaking proceeding, however, so the question should not be considered closed until the final federal gift card regulations are adopted.

### **What Are the Penalties for Violation?**

Failure to comply with the new gift card obligations will be considered a violation of the Electronic Fund Transfer Act (15 U.S.C. § 1693 et seq.), which can subject violators to enforcement action by the Federal Trade Commission, private lawsuits, and criminal prosecution, and carries civil penalties of up to \$1,000 per violation (which could be assessed per card and/or per provision violated) in individual civil suits, and \$500,000 or 1% of net worth in class action suits.

**NACS COMPLIANCE GUIDE**  
**SUMMARY OF NEW FEDERAL GIFT CARD RESTRICTIONS**

		YES	NO
<b>I. Items Covered</b>			
• Store gift cards		<b>X</b>	
• General use gift cards		<b>X</b>	
• Electronic gift certificates		<b>X</b>	
• Paper gift certificates			<b>X</b>
• Promotional, award, or loyalty gift cards			<b>X</b>
• Phone cards			<b>X</b>
• Reloadable cards not marketed or labeled as gift cards			<b>X</b>
• Cards not marketed to general public			<b>X</b>
<b>II. Permissible Fees</b>			
• Periodic service fees	* Before 12 months		<b>X</b>
	* After 12 months	<b>X<sup>1</sup></b>	
• Non-use/inactivity fees	* Before 12 months		<b>X</b>
	* After 12 months	<b>X<sup>2</sup></b>	
• One-time activation or issuance fee		<b>X<sup>3</sup></b>	
<b>III. Expiration Policies</b>			
• Less than 5 years			<b>X</b>
• More than 5 years		<b>X<sup>4</sup></b>	

<sup>1</sup> Only with disclosures required by the new law; no other fees can apply at same time.

<sup>2</sup> Only with disclosures required by the new law; no other fees can apply at same time.

<sup>3</sup> Allowed for pre-paid general purpose gift cards only.

<sup>4</sup> Only with disclosures required by the new law.