

New Federal Regulations Change the Rules for Gift Cards, Customer Loyalty Programs, and Sales Promotions

The Federal Reserve Board recently released final regulations governing the use of gift cards and customer loyalty programs under the Credit Card Act of 2009. The new regulations are far-reaching and will significantly impact current gift card programs offered by many businesses. This alert provides a broad overview of the new regulations, which are scheduled to take effect on August 22, 2010.

1. What Types of Programs Fall Under the New Regulations?

The new regulations apply to gift cards, customer loyalty programs, customer or employee award programs, and sales promotions that incorporate gift cards. They do not apply to gift certificates issued in paper form only.

2. Who Must Comply With the New Regulations?

Any person or entity in the chain of sale must comply with the new regulations. In practice, this means the new rules will apply to everyone from the initial issuer to the retail seller of a gift card.

3. What Changes Will Take Place on August 22, 2010?

The most important changes in the law apply to gift cards. There are a number of changes in the new rules, but three major issues stand out – expiration dates, gift card fees, and customer disclosures.

The regulations require that the funds stored on every gift card or gift certificate remain valid for at least five years. In addition, the regulations prohibit charging any kind of dormancy fee, activity fee, or service fee for at least the first year after the purchase of any gift card. Additionally, the regulations require that you make clear and conspicuous disclosures of the expiration date and any possible fees associated with your gift cards, both before the customer purchases the card AND on the card itself. These disclosure rules apply regardless of whether the customer purchases the gift card online, by telephone, or in person.

The regulations also require loyalty card programs and sales promotion card programs to disclose all expiration dates and potential fees. Companies must also maintain a toll-free telephone hotline (and in some cases a website) that will allow customers to obtain card-specific information at no cost.

4. What Else Should I Know About the Regulations?

The regulations impose new records retention requirements. Persons subject to the regulations will be required to retain evidence of compliance, including proper disclosures, for at least two years.

5. Do the Federal Regulations Preempt State Laws?

No. The new federal regulations expressly provide that state laws offering consumers greater protections are not preempted. Thus, reviews of applicable state are still important.

Gift cards, customer loyalty programs, and related sales promotions are important to many businesses – large or small. The detailed nature of these new regulations will require a hard look at any existing or proposed programs to ensure full compliance by August 22, 2010. Failure to comply with the new regulations may subject a person to civil or criminal penalties, including fines up to \$5,000 or possible imprisonment of up to one year, and potential civil litigation (including class action lawsuits).