Regulation E, Gift Card Final Rule FAQs

CARD Act Passed: May 22, 2009
Reg E, Gift Card Rule Proposed for Comment November 20, 2009
Comments Due: December 21, 2009
Final Rule Released: March 23, 2010
Effective Date: August 22, 2010

What card products are covered by the final rule?

The final rule covers gift certificates, store gift cards, and general-use prepaid cards including:
- Retail gift cards used to buy goods and services at a single merchant or group of merchants (closed loop).
- Network branded cards that can be used at any merchant that accepts that card brand (open loop).
- Cards that are reloadable and marketed or labeled as gift cards.

The final rule also applies to any card, code, or other device that serves the same purpose as a gift certificate, store gift card, or general-use prepaid card. This would include an account number or bar code use to access underlying funds or even a device with a chip used to access underlying funds.

Are there any card products excluded from coverage?

There are six categories of exempt products including:
- Prepaid cards used solely for telephone services.
- Prepaid reloadable general use cards not marketed or labeled as gift cards.
- Prepaid cards received through loyalty, award, or promotional programs.
- Prepaid cards not marketed to the general public.
- Prepaid cards associated with admission to specific events or venues.
- Prepaid cards issued in paper form.

The final rule provides clarity regarding an additional sub-category of exempted card product, temporary cards issued in connection with a general-purpose reloadable card. Typically, these cards are purchased as the first step to receiving a general-purpose reloadable card. This initial card is not reloadable, but the funds are later credited to a new reloadable card received after the customer provides additional identifying information.
What restrictions are placed on fees?

The final rule retains the restrictions on the types of fees that can be charged and when they may be assessed. The final rule prohibits dormancy, inactivity, or service fees from being charged except when there has been at 12 months of inactivity on the account, only one fee of could be charged per month, and the fee information must be clearly disclosed to the consumer. All of these conditions must be met in order to impose a fee.

The final rule expands the interpretation of “service fee” to include “periodic fee.” This is important because now fees such as monthly maintenance fees, transaction fees, balance inquiry fees, and reload fees are in the same category. For example, under the final rule if an account is inactive for one year then a “dormancy, inactivity, or service fee” could be charged. But, a card issuer would not be able to charge more than one fee per month even if they card holder made 50 balance inquiries because those are categorized as a service fee. The card issuer must choose which one fee to charge.

Card activation fees are not included in the definition of “service fee.”

What additional disclosure must be placed on the package?

Disclosures regarding all types of fees must be disclosed before a gift certificate, store gift card, or general-use prepaid card is purchased. In addition, information regarding the terms and conditions of the expiration date of the card must also be provided prior to purchase to allow the consumer to compare fees and services. These disclosures are discussed in section 205.20(c), Forms of Disclosures.

Certain information must be disclosed prior to the purchase of the card or gift certificate:

- The amount of any dormancy, inactivity, or service fee that may be charged.
  - How often the fee can be assessed.
  - That the fee may be assessed for inactivity.
  - No more than one dormancy, inactivity, or service fee can be charged in any one calendar month.
- The expiration date for the underlying funds, or a notice that the funds don’t expire.
- A toll-free telephone number and a Web site, if one is maintained, that a consumer can use to obtain a replacement if the underlying funds remain available.
- A statement disclosed with equal prominence and in close proximity to the expiration date that the underlying funds do or don’t expire later than the card and that the consumer may contact the card issuer to receive a replacement card or the remaining balance in some other manner at no cost if the card has expired prior to the underlying funds expiration date.
- A description of all fees (other than dormancy, inactivity, or service fees) that can be charged including:
  - The type of fee
  - The amount of the fee or an explanation of how the fee will be determined
  - The conditions under which it may be imposed.
What disclosure must appear on the card itself?

Certain information must be disclosed on the card itself:

- The amount of any dormancy, inactivity, or service fee that may be charged.
  - How often the fee can be assessed.
  - That the fee may be assessed for inactivity.
  - No more than one dormancy, inactivity, or service fee can be charged in any one calendar month.
- The expiration date for the underlying funds, or a notice that the funds don’t expire
- A toll-free telephone number and a Web site, if one is maintained, that a consumer can use to obtain a replacement if the underlying funds remain available.
- A statement disclosed with equal prominence and in close proximity to the expiration date that the underlying funds do or don’t expire later than the card and that the consumer may contact the card issuer to receive a replacement card or the remaining balance in some other manner at no cost if the card has expired prior to the underlying funds expiration date.
- A toll-free telephone number and a Web site, if one is maintained, that a consumer can use to obtain information about all fees.
- Cards issued for loyalty, award, or promotional purposes must disclose
  - A statement that this is a loyalty, award, or promotional purposes card
  - An expiration date for the underlying funds on front of the card.
  - The amount of any fees that may be charged in connection with the card.
  - A toll-free telephone number and a Web site, if one is maintained, that a consumer can use to obtain information about all fees.

Cards that meet the definition of “loyalty, award, or promotional gift card” are exempt from the restrictions of this final rule, except for certain disclosure requirements. They must make disclosure on the front of the card that they are a loyalty, award or promotional gift card. In addition, the expiration date must appear on the front of the card and if the underlying funds expiration date differs from the card expiration date must be disclosed on the front of the card. These disclosure requirements are intended to lessen consumer confusion surrounding different pricing and expiration requirements for loyalty, award, or promotional cards.

How are the expiration date requirements met?

The final rule requires that the expiration date of the underlying funds be at least five years from the date the card was initially issued. This may differ from the expiration date that was printed on the card when it was manufactured.

In the proposed rule, two alternate methods for meeting the requirement the five-year expiration date restrictions imposed by the statute were considered.
Alternative A was the most straightforward prohibiting the sale of any gift certificate, store gift card, or general-use prepaid card subject to an expiration date unless that expiration date was at least five years after the date the consumer purchased the card. This bright line standard would require a system where cards sold at retail locations would need to be screened by the clerks at checkout for a valid five-year expiration date either through a manual process or an automated system triggered when the card is activated.

Alternative B proposed that cards be produced with expiration dates beyond the five-year requirement. The additional time would allow for storage and shipping of the cards before they are actually placed out for sale. While cards would need to meet the five-year expiration date requirement when made available for sale, it is possible for them to age in inventory and be purchased with less than five years of life left on them. The card would be replaced at no cost and the underlying funds would remain available to the consumer if the card expired before the underlying funds expiration date.

The final rule adopted a modified Alternative B recognizing that it provides more flexibility and the other alternative would have required significant system changes and associated costs to implement. As outlined in the Official Staff Guidance section 20(e)-1, a card issuer can meet the final rule’s requirements by establishing policies and procedures that would allow a consumer a “reasonable opportunity” to purchase a card with at least five years left prior to the expiration date or if the card is made available for sale to the consumer at least five years and six months prior to the expiration date.