

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-1377]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, in order to implement legislation that modifies the effective date of certain disclosure requirements in the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009.

DATES: This interim final rule is effective August 22, 2010. Comments must be received on or before [insert date that is 30 days after publication in the **Federal Register**].

ADDRESSES: You may submit comments, identified by Docket No. R-1377, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Counsel, Vivian Wong or Dana Miller, Senior Attorneys, or Mandie Aubrey, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law.¹ Section 401 of the Credit Card Act amended the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and imposed certain restrictions on a person's ability to impose dormancy, inactivity, or service fees with respect to gift certificates, store gift cards, and general-use prepaid cards. In addition, the Credit Card Act generally prohibited the issuance or sale of such products if they expire earlier than five years from the date of issuance of a gift certificate or the date on which funds were last loaded to a store gift card or general-use prepaid card.

Section 403 of the Credit Card Act required that the gift card and related provisions of the Credit Card Act become effective 15 months after enactment, or on August 22, 2010. *See* EFTA Section 915(d)(3). The Board published a final rule implementing the gift card provisions of the Credit Card Act on April 1, 2010 (final gift card rule). 75 FR 16580. As mandated by the Credit Card Act, the final gift card rule has an effective date of August 22, 2010.

Congress recently passed legislation that amends Section 403 of the Credit Card Act to delay the effective date of certain gift card disclosure provisions of the Credit Card Act for certificates or cards produced prior to April 1, 2010 (Gift Card Amendment).² The Gift Card Amendment provides a delayed effective date with respect to these provisions in order to permit the sale of existing card stock through January 31, 2011. Nonetheless, the substantive fee and expiration date protections provided by the Credit Card Act continue to apply to those certificates or cards sold to a consumer on or after August 22, 2010. The interim final rule published today revises the April 2010 final gift card rule in order to implement the Gift Card Amendment.

As discussed in IV. Legal Authority, the Board is issuing this rule as an interim final rule based on its determination that, given the impending August 22, 2010 effective date of the Credit Card Act and the final gift card rule, it would be impracticable to issue a proposal for public comment followed by a final rule. However, the Board intends to consider comments on this interim final rule for purposes of publishing a final rule and may issue final clarifications and amendments to the extent appropriate.

II. Summary of Interim Final Rule

¹ Pub. L. No. 111-24, 123 Stat. 1734 (2009).

² Pub. L. No. 111-209, 124 Stat. 2254 (July 27, 2010).

With respect to gift certificates, store gift cards, and general-use prepaid cards produced prior to April 1, 2010, the Gift Card Amendment delays the effective date of the disclosure requirements in EFTA Sections 915(b)(3) and (c)(2)(B) (as amended by the Credit Card Act) until January 31, 2011, provided that several specified conditions are met. This interim final rule implements the Gift Card Amendment.

While the Gift Card Amendment delays the effective date for certain disclosure requirements set forth in the Credit Card Act, the Gift Card Amendment does not address the status of additional requirements adopted in the Board's final gift card rule. As a result, persons seeking to take advantage of the relief afforded by the Gift Card Amendment may be unable to do so if certain of these additional provisions were to apply after August 22, 2010. For example, § 205.20(e)(1) prohibits any person from selling or issuing a certificate or card unless the consumer has had a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Thus, a card produced prior to April 1, 2010 that has a card expiration date of less than five years could not be sold under the final gift card rule, notwithstanding the provisions of the Gift Card Amendment. Therefore, in order to carry out the intended purpose of the Gift Card Amendment, this interim final rule also delays the effective date of certain of these supplemental requirements.

This interim final rule revises §§ 205.20(c) and (g) of the final gift card rule ("Form of Disclosures" and "Compliance Dates," respectively) and adds a new § 205.20(h) ("Temporary Exemption").

III. Section-by-Section Analysis

20(c) Form of disclosures

20(c)(2) Format

The Gift Card Amendment requires that certain alternative disclosures be made to the consumer in order for an issuer to take advantage of the delayed effective date, through in-store signage, messages during customer service calls, Web sites, and general advertising. These disclosure requirements are implemented through § 205.20(h)(2) of the interim final rule, discussed in more detail below.

Section 205.20(c)(2) of the final gift card rule generally requires disclosures to be made in writing or electronically, and in retainable form. The Board believes such requirements are unnecessary with respect to the disclosures required by § 205.20(h)(2). For example, it would be impracticable to provide in-store signage under § 205.20(h)(2) in a retainable form. Moreover, the alternative disclosures required by § 205.20(h)(2) are intended to relieve the burden of replacing non-compliant card stock with card stock bearing disclosures that comply with the final gift card rule, so Board believes that the format standards in § 205.20(c)(2) are less appropriate in this instance. Thus, § 205.20(c)(2) has been revised to provide that the disclosures required by § 205.20(h)(2) need not be made in a retainable form. For similar reasons, § 205.20(c)(2) is revised to provide that the prior-to-purchase disclosures required by § 205.20(c)(3) need not be

provided in a retainable form. Section 205.20(c)(2) has also been revised to make clear that the disclosures required by § 205.20(h)(2) may be provided orally.

20(g) Compliance dates

20(g)(1) Effective date for gift certificates, store gift cards, and general-use prepaid cards

The final gift card rule becomes effective August 22, 2010, consistent with the Credit Card Act. To give effect to the delayed effective date set forth in the Gift Card Amendment, the interim final rule revises § 205.20(g)(1) to state that, except as provided in new § 205.20(h), § 205.20 applies to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

20(g)(2) Effective date for loyalty, award, or promotional gift cards

Section 205.20(g)(2) of the final gift card rule sets forth a special transition rule for the disclosure requirements applicable to loyalty, award, and promotional gift cards. Specifically, § 205.20(g)(2) provides that the disclosure requirements in § 205.20(a)(4)(iii) apply to any card, code or other device provided to a consumer in connection with a loyalty, award, or promotional program where the period of eligibility for the program begins on or after August 22, 2010. The Gift Card Amendment does not specifically delay the effective date of the disclosures required by § 205.20(a)(4)(iii), and accordingly the effective date for loyalty, award, and promotional cards remains unchanged in this interim final rule.

20(h) Temporary exemption

20(h)(1) Delayed effective date

As discussed above, the Gift Card Amendment delays the effective date of the disclosure requirements in EFTA Sections 915(b)(3) and (c)(2)(B) under the Credit Card Act under certain circumstances. Section 205.20(h)(1) implements the delayed effective date. Specifically, § 205.20(h)(1) provides that, for any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the effective date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card meets several specified conditions.

Provisions of the final gift card rule subject to the delayed effective date

Section 205.20(h)(1) delays the effective dates of §§ 205.20(d)(2) and (e)(3)(i) of the final gift card rule. Section 205.20(d)(2), which implemented EFTA Section 915(b)(3)(A), prohibits the imposition of any dormancy, inactivity, or service fee unless, among other things, certain specified clear and conspicuous disclosures about the fees are made on the certificate or card. Section 205.20(e)(3)(i), which implemented EFTA

Section 915(c)(2)(B), requires that the expiration date for the certificate or card's underlying funds—or the fact that the underlying funds do not expire—be disclosed on the certificate or card. These disclosure requirements are subject to the delayed effective date under the Gift Card Amendment for certificates or cards produced prior to April 1, 2010.

In addition, § 205.20(h)(1) delays the effective dates of §§ 205.20(e)(1), (e)(3)(ii), (e)(3)(iii), and (f). Section 205.20(e)(1) prohibits the issuance or sale of certificates or cards, unless policies and procedures have been established to ensure that a consumer will have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Section 205.20(e)(3)(ii) requires the disclosure on the certificate or card of a toll-free telephone number, and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after expiration if the underlying funds may be available. Section 205.20(e)(3)(iii) requires certain disclosures on the certificate or card about expiration and replacement cards, except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture. Section 205.20(f) requires additional fee disclosures on or with the certificate or card, and, similar to § 205.20(e)(3)(ii), disclosure on the certificate or card of a toll-free telephone number, and, if one is maintained, a Web site that a consumer may use to obtain fee information. As discussed in more detail in the final gift card rule, these provisions were adopted pursuant to the Board's authority under EFTA Sections 904(a) and 915(d)(2), as amended by the Credit Card Act.

Although not mandated by the Gift Card Amendment, the Board believes that §§ 205.20(e)(1), (e)(3)(iii), and (f) should also be subject to the delayed effective date in order to carry out the intended purpose of the Gift Card Amendment. For example, some gift cards produced before April 1, 2010 may bear expiration dates of less than five years, which would not comply with § 205.20(e)(1). If the Board did not provide for a delayed effective date with respect to § 205.20(e)(1), issuers would not be permitted to sell this existing card stock, even if issuers otherwise satisfied the statutory prerequisites to qualify for relief under the Gift Card Amendment. Such a result would undermine the purpose of the Gift Card Amendment.

Finally, § 205.20(h)(1) delays the effective date of § 205.20(c)(3). Section 205.20(c)(3) requires that the disclosures required by §§ 205.20(d)(2), (e)(3), and (f)(1) be disclosed to the consumer prior to purchase. As discussed in more detail in the final gift card rule, § 205.20(c)(3) was adopted in the final rule both pursuant to statutory mandate (in EFTA Section 915(c)(3)(B)) and pursuant to the Board's authority under EFTA Section 904(a). For the reasons discussed above, under § 205.20(h)(1) of this interim final rule, any disclosures that are required to be provided prior to purchase under § 205.20(c)(3) are subject to the delayed effective date, provided that the issuer complies with the conditions specified in § 205.20(h)(1).

Conditions imposed

To take advantage of the Gift Card Amendment's delayed effective date, an issuer of the certificate or card must meet several specified conditions. First, the issuer must comply with the other provisions of § 205.20, including the section's substantive restrictions on the imposition of fees. Second, the issuer must not impose an expiration date with respect to the funds underlying such a certificate or card. Third, the issuer must, at the consumer's request, replace such certificate or card if the certificate or card has funds remaining at no cost to the consumer. Finally, the issuer must satisfy the disclosure requirements of new § 205.20(h)(2), discussed in more detail below. See §§ 205.20(h)(1)(i)-(iv).

Comment 20(h)(1)-1 explains that certificates or cards produced prior to April 1, 2010 may be sold to a consumer for a limited time without satisfying the requirements of § 205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f), provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§ 205.20(h)(1)(i)-(iv). In contrast, issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the April 2010 final gift card rule. Thus, if on August 22, 2010 an issuer sells gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the final gift card rule, that issuer would not then be required to make the in-store signage and other disclosures required by § 205.20(h)(2) with respect to those gift cards because those cards satisfy the requirements of the final gift card rule.

Comment 20(h)(1)-2 clarifies when the temporary relief afforded by the Gift Card Amendment expires. This comment explains that certificates or cards produced prior to April 1, 2010 that do not fully comply with the final gift card rule may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2) Additional disclosures

In order for an issuer to take advantage of the delayed effective date, the Gift Card Amendment requires that certain alternative disclosures be made to the consumer. Section 205.20(h)(2) of the interim final rule implements these disclosure requirements, largely tracking the language of the statute. Specifically, § 205.20(h)(2) provides that issuers relying on the delayed effective date in § 205.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that: (i) the underlying funds of such certificate or card do not expire; (ii) consumers holding such certificate or card have a right to a free replacement certificate or card, accompanied by the packaging and materials typically associated with such certificate or card; and (iii) any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with Section 915 of the Electronic Fund Transfer Act.

In some cases, issuers may not have direct control over in-store signage and store advertisements. Accordingly, comment 20(h)(2)-1 explains that issuers may make the

disclosures required by § 205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by § 205.20(h)(2) on the issuer's behalf.

20(h)(3) Expiration of disclosure requirements

The Gift Card Amendment requires the disclosures implemented in § 205.20(h)(2) to be maintained until January 31, 2013. The Board believes that such a requirement is appropriate with respect to Web sites that a certificate or card recipient may visit and phone numbers that a recipient may call for more information. For example, a gift card recipient may call a customer service phone number printed on the card to obtain more information about the card's fees or terms of expiration. See § 205.20(h)(3)(ii).

However, certificates or cards sold on or after January 31, 2011 must comply with §§ 205.20(a)-(f) of the final gift card rule. Because consumers would only be able to purchase cards that are fully compliant with the Credit Card Act from that date forward, consumers purchasing certificates or cards might mistakenly believe that the disclosures on the signage are applicable to their certificates or cards. Thus, the Board believes that requiring issuers to maintain advertisements or in-store signage on or after January 31, 2011 which reference certificates or cards that are no longer permitted to be issued or sold, could be confusing and even misleading to consumers.

For this reason, the Board is exercising its exception authority in EFTA Section 904(c) to provide that, with respect to in-store signage and general advertising, the disclosure requirements of § 205.20(h)(2) are not required to be provided on or after January 31, 2011. See § 205.20(h)(3)(i). Section 904(c) of the EFTA provides that regulations prescribed by the Board may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers that in the judgment of the Board are necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance.

IV. Legal Authority

General Rulemaking Authority

Section 401(d)(1) of the Credit Card Act directs the Board to prescribe rules to carry out the gift card requirements of the Credit Card Act. The Board is exercising its authority under Section 401(d)(1) to implement the provisions of the Credit Card Act as superseded by the Gift Card Amendment with respect to the delayed effective date of the requirements in §§ 205.20(d)(2) and (e)(1)(i), and part of § 205.20(c)(3).

In addition, Section 401(d)(2) of the Credit Card Act requires the Board to determine the extent to which the individual definitions and provisions of the EFTA and Regulation E should apply to gift certificates, store gift cards, and general-use prepaid cards. See EFTA Section 915(d)(2); 15 U.S.C. 1693m(d)(2). Further, Section 904(a) of the EFTA authorizes the Board to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA are to establish "the rights,

liabilities, and responsibilities of participants in electronic fund transfer systems” and to provide “individual consumer rights.” See EFTA Section 902(b); 15 U.S.C. 1693. The Board is exercising its authority under EFTA Sections 904(a) and 915(d)(2) for the reasons discussed above to provide for the delayed effective date of the disclosure requirements of §§ 205.20(e)(1), 205.20(e)(3)(ii)-(iii), and 205.20(f), and part of § 205.20(c)(3).

Finally, as discussed above, the Board is exercising its authority under EFTA Section 904(c) to implement § 205.20(h)(3)(i), which clarifies that, with respect to in-store signage and general advertising, the disclosures required by § 205.20(h)(2) are not required to be provided on or after January 31, 2011.

Authority to Issue Interim Final Rule Without Notice and Comment

The Administrative Procedure Act (5 U.S.C. 551 et seq.) (APA) generally requires public notice before promulgation of regulations. See 5 U.S.C. 553(b). Unless notice or hearing is required by statute, however, the APA provides an exception “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B). The Board finds that, with respect to this rulemaking, there is good cause to conclude that providing notice and an opportunity to comment within the timeframe mandated by Congress is impracticable.

The gift card provisions of the Credit Card Act are effective August 22, 2010, and the Gift Card Amendment delays this effective date only with respect to certain specified disclosure provisions. The time period remaining before August 22, 2010 does not provide sufficient time for the Board to prepare proposed regulations and publish them in the Federal Register; provide a reasonable period for interested parties to review the proposal and prepare comments; analyze the comments submitted; and prepare the final regulations and publish them in the Federal Register. Even if the Board were able to technically comply with the notice-and-comment process required by § 553 within the allotted time, such a process would not comply with the purpose of the APA because interested parties would not have sufficient time to prepare well-researched comments and the Board would not have time to conduct a meaningful review and analysis of those comments. Furthermore, a notice-and-comment process would leave no time between the issuance of final regulations and August 22, 2010 for affected parties to adjust their procedures in order to comply. In contrast, the adoption of an interim final rule enables the Board to provide guidance in advance of the effective date and provides affected parties with more time to comply with the statutory provisions.

Authority To Issue an Interim Final Rule With an Effective Date of August 22, 2010

Because the gift card provisions of the Credit Card Act, and the rule promulgated thereunder, are effective on August 22, 2010, the Board’s interim final rule implementing those provisions is also effective on that date. The APA generally requires that rules be published not less than 30 days before their effective date. See 5 U.S.C. 553(d). As with the notice requirement, however, the APA provides an exception when “otherwise

provided by the agency for good cause found and published with the rule.” Id. § 553(d)(3).

Notwithstanding the time saved by issuing an interim final rule without advance notice and the similarity of the new statutory provisions to regulations previously issued by the Board, the effective date is less than 30 days away, and thus it would not be possible to issue final regulations 30 days before the August 22, 2010 effective date. Accordingly, the Board finds that good cause exists to publish the interim final rule less than 30 days before the effective date.

Similarly, although 12 U.S.C. 4802(b)(1) generally requires that new regulations and amendments to existing regulations imposing additional reporting, disclosure or other requirements on insured depository institutions take effect on the first day of

the calendar quarter which begins on or after the date on which the regulations are published in final form, the Board has determined that—for the reasons discussed above—there is good cause for making the interim final rule effective on August 22, 2010. See 12 U.S.C. 4802(b)(1)(A) (providing an exception to the general requirement when “the agency determines, for good cause published with the regulation, that the regulations should become effective before such time”). The Board also believes that providing the affected parties with guidance regarding compliance with the Gift Card Amendment as soon as possible is consistent with 12 U.S.C. 4802(b)(1)(C), which provides an exception to the general requirement when “the regulation is required to take effect on a date other than the date determined under [12 U.S.C. 4802(b)(1)] pursuant to any other Act of Congress.” The remaining provisions of the rule are effective on August 22, 2010.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an initial and final regulatory flexibility analysis only when 5 U.S.C. 553 requires publication of a notice of proposed rulemaking. See 5 U.S.C. 603(a), 604(a). As discussed in IV. Legal Authority, however, the Board has found good cause under 5 U.S.C. 553(b)(3)(B) to conclude that, with respect to this interim final rule, publication of a notice of proposed rulemaking is impracticable. Accordingly, the Board is not required to perform an initial or final regulatory flexibility analysis. Nonetheless, in order to solicit additional information from small entities subject to the interim final rule, the Board is publishing an interim final regulatory flexibility analysis. Based on its analysis and for the reasons stated below, the Board believes that the interim final rule is not likely to have a significant economic impact on a substantial number of small entities.

1. Statement of the need for, and objectives of, the final rule. This interim final rule implements the Gift Card Amendment by delaying the effective date of certain disclosures required by the Credit Card Act. This interim final rule also carries out the intended purpose of the Gift Card Amendment by delaying the effective date of certain supplemental requirements adopted the final gift card rule. The Board believes that these

revisions to Regulation E are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the Credit Card Act and to facilitate compliance with the EFTA. These revisions facilitate compliance with the EFTA by permitting gift certificates, store gift cards, and general-purpose prepaid cards produced prior to April 1, 2010 to be sold through January 31, 2011, even if they do not state the disclosures required under the final gift card rule, so long as consumers continue to receive specified substantive protections with respect to certificate or card fees and expiration dates.

2. Small entities affected by the interim final rule. The number of small entities affected by this interim final rule is unknown, as discussed in more detail in the Regulatory Flexibility Analysis in the final gift card rule. 75 FR 16610 (Apr. 1, 2010). The delayed effective date of certain disclosures on certificates and cards will reduce the burden and compliance costs for small institutions by providing relief from the requirement to remove and destroy non-compliant certificates and cards and to replace them with compliant certificates or cards, so long as consumers are provided substantive rights under the rule and so long as alternative specified disclosures are made.

3. Reporting, recordkeeping, and compliance requirements. The compliance requirements of this interim final rule are described above in Part III. Section-by-Section Analysis.

4. Steps taken to minimize economic impact on small entities. As previously noted, the interim final rule implements the statutory mandate to delay the effective date of certain gift card provisions of the Credit Card Act. The interim final rule also delays the effective date of certain additional requirements finalized in the April 2010 final gift card rule. As such, the interim final rule minimizes the economic impact of the final gift card rule on small entities.

5. Other federal rules. The Board has not identified any federal rules that duplicate, overlap, or conflict with the interim final revisions to Regulation E.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this interim final rule is found in 12 CFR part 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0200.

This information collection is required to provide benefits for consumers and is mandatory. See 15 U.S.C. 1693 *et seq.* Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

The Gift Card Amendment amends Section 403 of the Credit Card Act to delay the effective date of certain gift card disclosure provisions of the Credit Card Act for certificates or cards produced prior to April 1, 2010. The Gift Card Amendment provides an extended effective date with respect to these provisions in order to permit the sale of existing card stock until January 31, 2011. The interim final rule published today revises the April 2010 final gift card rule in order to implement the Gift Card Amendment.

While the interim final rule delays the implementation of several disclosure requirements (§§205.20(c)(3), (d)(2), (e)(1), and (e)(3)), and temporarily implements several other requirements (§§205.20(h)), it does not change the overall burden associated with Regulation E. The Federal Reserve believes that the original burden estimates are more than sufficient to cover the temporary requirements. The estimates and total burden (738,600 hours) therefore will remain unchanged as published in the final rule. The Federal Reserve continues to expect that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total annual burden for the respondents regulated by the federal financial agencies is estimated to be 4,430,659 hours. This estimate also remains unchanged.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

Part 205 – ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

2. Section 205.20 is amended as follows:

A. Paragraph (c)(2) is revised.

B. Paragraph (g)(1) is revised.

C. New paragraph (h) is added.

§ 205.20 Requirements for gift cards and gift certificates.

* * * * *

(c) Form of disclosures

(2) Format. Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2), written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraphs (c)(3) and (h)(2) of this section may be given orally.

(g) Compliance dates.

(1) Effective date for gift certificates, store gift cards, and general-use prepaid cards. Except as provided in paragraph (h), the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

(h) Temporary exemption.

(1) Delayed effective date. For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the effective date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

- (i) Complies with all other provisions of this section;
- (ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;
- (iii) At the consumer's request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and
- (iv) Satisfies the requirements of paragraph (h)(2).

(2) Additional disclosures. Issuers relying on the delayed effective date in § 205.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that:

(i) The underlying funds of such certificate or card do not expire;

(ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, accompanied by the packaging and materials typically associated with such certificate or card; and

(iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with Section 915 of the Electronic Fund Transfer Act.

(3) Expiration of additional disclosure requirements. The disclosures in paragraph (h)(2):

(i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.

(ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

3. In Supplement I to part 205,

a. New paragraph 20(h) is added.

Supplement I to Part 205 – Official Staff Interpretations

* * * * *

Section 205.20 – Requirements for Gift Cards and Gift Certificates

* * * * *

20(h) Temporary exemption

20(h)(1) – Delayed effective date

1. Application to certificates or cards produced prior to April 1, 2010.

Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of § 205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§ 205.20(h)(1)(i)-(iv). In contrast, issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§ 205.20(a)-(f)). For example, for gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule, the in-store signage and other disclosures required by § 205.20(h)(2) are not

required with respect to those gift cards because those cards satisfy the requirements of the rule.

2. Expiration of temporary exemption. Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§ 205.20(a)-(f) may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2) – Additional disclosures

1. Disclosures through third parties. Issuers may make the disclosures required by § 205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by § 205.20(h)(2) on the issuer's behalf.

2. General advertising disclosures. Section 205.20(h)(2) does not impose an obligation on the issuer to advertise gift cards.

By order of the Board of Governors of the Federal Reserve System, August 11, 2010.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board.