



Office of the President

December 18, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1377; Electronic Fund Transfers

Dear Ms. Johnson:

Navy Federal Credit Union provides the following comments on the Federal Reserve Board's proposal to amend Regulation E and the Staff Commentary to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009. Navy Federal is the nation's largest natural person credit union with \$40 billion in assets and 3.3 million members.

We support the elimination of acts and practices that are truly unfair or deceptive; however, we firmly oppose unwarranted controls on fees and other features of electronic services and products that would interfere with free market supply and demand. On average, we issue 150,000 gift cards per year to our members. Of these cardholders, 90% expend their gift cards balance before the first year. We have nominal fees connected to our program. We charge no purchase fee and do not charge a maintenance fee until the 13th month. Due to this impending regulation we are now being forced to rethink our business platform, such as, charging higher fees or eliminating our card program altogether. If implemented, this proposal may hurt the very consumers it purports to help.

We strongly support the indefinite retention of both proposed Alternative A and Alternative B for the prohibition on the sale of gift certificates with expiration dates. We urge the retention of both provisions not just as a transitional process but as a permanent solution. This will provide issuers with the options and flexibility for managing their programs and inventory.

We believe the term "service fee" should only include fees imposed at regular intervals such as weekly, monthly, or annual maintenance fees charged for the general holding or use of the gift card and exclude fees triggered by consumer actions for specific transactions or activities. Additionally, the Board should enumerate what cardholder actions constitute "activity" for purposes of triggering regulatory requirements. There are a limited number of actions that a gift cardholder can take with respect to his or her card and the Board should classify those actions as either "constituting activity" or not "constituting activity."

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Only basic information including the expiration date, amount of any maintenance or dormancy fee, and how consumers may obtain additional information should be disclosed on the gift card. We believe the current information included on our card is sufficient. We do not believe all disclosures required under proposed Section 205.20(c)(4) should be disclosed on the card. It is our view that requiring all of the disclosures on the gift card is not feasible. Such a volume of disclosures will present implementation challenges and force issuers to compromise the legibility of the disclosures on to the card. Additional disclosures should be made in an accompanying terms and conditions document or a removable label temporarily affixed to the card. We do not believe the description of clear and conspicuous within the final rules should include a type size or prominence requirement for disclosures.

To the extent practicable, requirements for gift cards should be kept consistent with other products and services covered by Regulation E. It requires initial disclosures be provided at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account. A gift card does not afford greater financial responsibility than a checking account; therefore, its disclosure requirements should not be held to a higher standard. Furthermore, the purchaser is not the actual user of the gift card; consequently, we believe the disclosures should be provided in a form that is designed to be passed on with the card to the recipient. This practice insures the recipient will have the opportunity to inspect disclosures before use of the gift card. Moreover, Sections 205.20(c)(4) and (c)(3) contain similar disclosure requirements. Section 205.20(c)(3) requires the disclosure of information required by paragraphs (d)(2), (e)(3) and (f)(1) prior to the purchase of the card. Section 205.20(c)(4) requires information required by paragraphs (d)(2), (e)(3) and (f)(2) be provided on the card itself. We believe such requirements are redundant and request proposed Section 205.20(c)(3) be withdrawn.

The proposed rule is inconsistent when it provides examples of what is and is not considered a gift card. Section 205.20(b)(4)(iii) of the commentary sets forth the following example of a gift card that the Board would deem "marketed to the general public" and subject to the proposed rule:

"An issuer of prepaid cards advertised a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, school books and by parents to monitor spending. Because the card is marketed to and may be sold to any member of the general public, the exclusion in Section 205/20(b)(4) does not apply."

We believe the card above is exempt from the requirements of Section 205.20 because it falls under the provided exclusion within Section 205.20(b)(2) which excludes cards that are reloadable and not marketed or labeled as a gift card. To provide clarity with respect to the activities that trigger coverage under the proposed rule we suggest Section 205.20(b)(4)(iii) of the commentary be modified to read "An issuer of prepaid cards advertises a reloadable card labeled on the package as a *gift card* to teenagers and their parent for use by teenagers for occasional expenses." In our view this would correct the example and reduce confusion.

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The Board is seeking comments whether it should require issuers of gift cards to automatically issue a replacement card to consumers prior to the card expiration date if the underlying funds will not expire until after the card expiration date. We strongly disagree that the Board should mandate issuers of gift cards to automatically issue a replacement card prior to the cards expiration date. Issuers do not collect the recipients name and address from the purchaser. This practice would be unfeasible for financial institutions and burdensome for consumers. It would be unreasonable for card issuers to request such information from the purchaser of the card when often times the purchaser does not have this information. We believe providing consumers with information that they may request an additional card once their current card has expired is sufficient.

Gift cards that are already in the marketplace as of the effective date of the rule should be exempt from the proposed rule. Additionally, we strongly suggest the effective date be extended to February 2011. The current effective date of August 2010 does not provide issuers sufficient time to make necessary changes to comply with the requirements including removing and replace existing stock, update policies, update procedures, train staff, update attendant materials and modify system changes. We strongly urge the Board to provide issuers with enough time to make the appropriate changes.

Navy Federal appreciates the opportunity to provide comments on the Board's proposed changes to Regulation E. If you have any questions, please contact Charla Tompkins, Senior Policy Analyst & Compliance Officer, at (703) 206-2672.

Sincerely,

A handwritten signature in black ink that reads "Cutler Dawson". The signature is written in a cursive style with a large, prominent "C" and "D".

Cutler Dawson
President/CEO

CD/ct