



December 18, 2009

*Via Email*

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Attention: Docket No. R- 1377

Re: Gift Certificates, Store Gift Cards and General-Use Prepaid Cards Proposed Rules

Dear Ms. Johnson:

We are writing to comment on the proposed amendments to Regulation E published on November 20, 2009, in the Federal Register at 74 FR 60986 (the "Proposal"). The Proposal would implement the requirements of the Credit Card Accountability Responsibility and Disclosure Act (the "CARD Act") with respect to certain prepaid products.

Our comments relate to (1) proposed § 20(b)(2) to Regulation E and the corresponding paragraphs of the proposed Official Staff Interpretations ("Commentary") concerning whether a gift card or gift certificate is marketed or labeled as a gift card or gift certificate and (2) the treatment of temporary cards that may be replaced with reloadable cards. We are a state bank that issues general purpose prepaid debit cards in most states of the United States. Most of our cards are sold through third party retailers. Some of these retailers are large retail chain organizations, and others are smaller grocery or convenience stores, gas stations, and similar retailers.

We Believe that How the Card and Related Card Packaging Is Labeled and Packaged Should Be the Determining Factor as to Whether the Card is Marketed or Labeled as a Gift Card or Gift Certificate.

The CARD Act excludes from the definitions of general-use prepaid card, gift certificate and store gift card those cards and other devices that are "not marketed or labeled as a gift card or gift certificate." To address this requirement, the Board of Governors of the Federal Reserve (the "Board") has proposed Commentary to clarify when a card, code or other device would or would not be considered marketed or labeled as a gift card or gift certificate.

We believe that the Board's proposal would be unworkable in practice, would not adequately avoid consumer confusion and, therefore, would lead to increased risks of lawsuits from consumers. As explained below, we believe that the best way to address the requirements of the CARD Act is through focusing on the labeling and packaging of the card itself.

The Board correctly notes that, where the card is sold in a substantial number of retail outlets, the card issuer cannot verify in every instance how the card is displayed or marketed. However, a rule that requires issuers to impose contractual requirements on retailers and to monitor those retailers for compliance is unworkable. As a practical matter, retailers have a limited amount of space for displays, and likely will not agree to shelving, signage and similar rules that require physical separation of reloadable prepaid debit cards and gift cards. Even if they did agree to such rules, most retailers would not be able to implement them in a way that would accomplish the goals of the CARD Act.

Typical retail outlets for reloadable prepaid cards are pharmacies, grocery stores, convenience stores and gasoline stations. For these retailers, reloadable prepaid cards are only one of many other small ticket items sold by the retailer. In most cases, they would be no more willing to maintain one rack for gift cards and another for non-gift, reloadable prepaid cards than they would be to maintain one rack for chocolate bars and another for peanut clusters.

The Board also proposes one promotional display at the retailer for gift cards and another physically separated display for excluded products under § 205.20(b). Many of these retailers, including gasoline stations and small grocery and convenience stores, do not have sufficient space to clearly segregate gift cards from non-gift, reloadable cards. Even if we were to assume that a retailer could find space for two separate racks, in all likelihood they would not be separated from one another in any meaningful way. If the promotional displays are too near each other, a casual consumer will not be able to recognize that the two displays are for two different types of product. The consumer is just as likely to conclude that the displays are separated only because different banks issue the cards on each of the two displays.

In addition, any significant separation of the promotional displays will not be realistic in many cases. If a physical separation standard is required, that invites further debate, and potential lawsuits, concerning *how physically separated* they must be. If there are two separate racks sitting side-by-side, that is physical separation, but that likely would not accomplish the objective of avoiding consumer confusion. If the gas station selling cards has one 8 foot wall and puts two, 2 foot racks on opposite ends of the wall, a consumer searching for cards will see both racks in the same gaze and would not reasonably conclude that the cards are of different types.

For these reasons, we believe that the most effective way to ensure that non-gift cards are not sold or marketed as gift cards is through card package design and labeling. The non-gift, reloadable card packaging could avoid any pictures suggesting presents or gifts, such as bows or gift box designs, and could avoid any words suggesting presents or gifts. The packages also could be clearly labeled along the lines of "PERSONAL USE PREPAID CARD," "NOT A GIFT CARD," or "NOT DESIGNED FOR GIFT PURPOSES."

Consumers do not depend on the comparative locations of products to distinguish one product from another. To continue with the candy analogy, a consumer with a peanut allergy does not assume that all peanut-based products are on a separate shelf. The consumer reads the packaging.

Monitoring these physical separation and signage requirements also will be impractical in many cases and, if implemented, would increase the issuer's costs and thus likely the costs to consumers for cards. Some issuers sell reloadable prepaid cards through tens of thousands of locations nationwide. Monitoring of these retailers would require dedicated staff to travel throughout the country for months out of each year. Again, the better solution is package design and labeling.

Finally, we believe that the Board needs to take into account the fact that non-gift, reloadable prepaid cards have become an important means for the unbanked and under-banked to pay bills, make purchases, and otherwise participate in commerce. If the resulting rules make it too difficult for retailers to sell both gift cards and non-gift, reloadable prepaid cards, the likely result will be for the retailers to choose to sell only one of the products. Moreover, to the extent that the issuers of non-gift cards find it necessary to impose shelving and signage restrictions on retailers for those cards, one might reasonably expect that retailers will migrate towards gift cards and cease to offer non-gift, reloadable cards. For these reasons, we believe that it is important that the final rules allow for enough flexibility to allow retailers to offer both gift cards and non-gift cards and do not result in limiting the options of non-banked and under-banked consumers.

#### Treatment of Temporary Cards that May Be Replaced with Personalized, Reloadable Cards

We also have concerns about the proposed treatment of temporary cards that may be converted to reloadable cards at the consumer's option. If a purchaser of a card always has the option of replacing a temporary card, non-reloadable card with a personalized, reloadable card and the card is clearly labeled as a reloadable card, we believe that the purchaser has effectively purchased a reloadable product and that the product (including both forms of the card) should qualify for the exclusion.

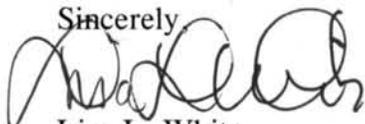
In the Proposal, the Board discusses non-registered cards that may be replaced with personalized, reloadable cards after registration. However, the registration process is driven by regulatory concerns other than the CARD Act and, in that sense, is somewhat of a red-herring.

For at least some bank-issuers of reloadable prepaid cards, the distinction between non-registered cards and registered cards is driven by anti-money laundering concerns. As part of a sound, risk-based anti-money laundering program, the bank limits the dollar values of non-registered cards and does not allow those cards to be reloaded. Through the registration process, the issuer then is able to obtain the identifying information needed to satisfy the customer identification procedure requirements of the Bank Secrecy Act and needed to screen the cardholder through the OFAC data bases. Once the cardholder has gone through the identification and screen process, the cardholder can then reload his or her card.

From the customer's perspective, what is relevant is that the customer has purchased a reloadable *product*. It is not important for purposes of the CARD Act whether reloaded funds are placed on the physical device received in the card package or on a personalized, replacement card. What is important is that, by purchasing the product, the customer has obtained the right to reload the product. So long as the product terms give the consumer the right to reload the product upon satisfying the CIP and OFAC requirements, the product as a whole should qualify as a reloadable card.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa L. White", written over a horizontal line.

Lisa L. White  
Senior Vice President  
Synovus Payment Services