

The Retail Gift Card Association  
9200 S. Dadeland Boulevard, Suite 705  
Miami, FL 33156

December 21, 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: Proposed Rules Regarding Gift Certificates, Store Gift Cards, and General Use Prepaid Cards

Dear Ms. Johnson:

The Retail Gift Card Association (RGCA) is a member organization of over 50 well known “name brand” retailers, restaurants and hotels that offer their own closed loop “Store Gift Cards” usable to make purchases solely at their owned and affiliated locations. Our members share a common commitment to promote and protect the use of gift cards and in addition follow a Code of Principles which promote best practices standards to help the industry grow and shape in ways that benefit both members and consumers. Our Code of Principles include a commitment:

- Not to charge dormancy or other administrative fees
- To eliminate any expiration dates or conditions on such gift cards, *except for any funds provided as part of a promotion*

To review our entire Code of Principles, please go to [www.thergca.org](http://www.thergca.org).

We are submitting this letter in response to the proposed rule published by the Federal Reserve Board of Governors (the “Board”) in the *Federal Register* on Nov. 20, 2009 at 74 *Fed. Reg.* 60986-61012 (“Proposed Rules”). The RGCA truly appreciates the opportunity to comment on the Proposed Rules not only as they impact our members’ issuance of Store Gift Cards, but also because many of our members sell third party cards including general-use prepaid cards in their stores or locations.

**RGCA Comments regarding Proposed Rules**

**1. Loyalty, award and promotional cards should be defined broadly and have separate disclosures.**

Although RGCA Store Gift Cards sold to consumers have neither fees nor expiration dates, the same is not true for loyalty, award, promotional and other reward card products (“Reward Cards”). When a Store Gift Card is distributed as part of a Reward Card program, it is not unusual to have either an expiration date or service fee. This is because Reward Cards are generally funded by the corporate sponsor as part of a marketing campaign and are used to encourage spend at a particular time and for particular purpose. We would submit that it would make no sense to have a “gift with purchase” promotion that extends for 5 years. The purpose of many Reward Cards is to encourage consumers to shop in the coming months. Reward Cards are win-win products that benefit retailers, manufactures and consumers and are very popular.

The RGCA therefore agrees with the Board’s decision to define loyalty, award and promotional cards broadly to cover all cards that are issued in connection with a loyalty, award or promotional program, and to permit such products to have expiration dates and/or fees provided that the appropriate disclosures are made.

*Recommendation:* We would recommend separate disclosures be provided specifically with respect to loyalty, award and promotional cards. The disclosures should indicate simply that expiration dates and fees be clearly and conspicuously disclosed.

**2. Disclosures “on the card” cannot be required for non-card products such as “codes,” “virtual cards” or “other devices.”**

The Proposed Rules cover all potential types of prepaid gift products, such as electronic or digital gift certificates. These often require disclosures. We understand that the Board has sought comment regarding how disclosures for such products should be given, especially those that have very limited space on which to print disclosures.

*Recommendation:* The Board should specifically exclude all such electronic codes or devices from the “on-card” disclosure requirements. Disclosures for such products should instead be clearly and conspicuously disclosed on the packaging, or, for online products, be offered in a format that can easily be downloaded and/or printed and retained by the consumer.

**3. Specific size of font and other prominence requirements for disclosures are not necessary.**

The Board has already imposed a requirement for “clear and conspicuous” disclosures which we believe is appropriate and provides clarity for consumers while also providing necessary flexibility to issuers. The Board has now requested comments on whether it should specify type size or prominence requirements for disclosures.

*Recommendation:* We believe that the use of the “clear and conspicuous” standard for disclosures provides sufficient clarity while at the same time allowing for flexibility in implementing card disclosures.

4. The exclusion for paper certificates does not create an undue risk of circumvention.

The Proposed Rules exclude cards, codes or other devices that are issued in paper form only from the scope of the Proposed Rules. The Board has requested comment as to whether this aspect of the Proposed Rules creates an “undue risk of circumvention.”

We do not believe that this exemption creates an undue risk of circumvention. There are many good reasons why so many retailers have moved from paper certificates to plastic gift cards, and we do believe it is highly unlikely that a retailer would return to paper certificates simply to avoid application of the Proposed Rules. We also understand that there are small businesses that still issue their certificates on paper, and we agree that these businesses can be excluded.

*Recommendation:* We urge the Board to keep the paper certificates exemption from the Proposed Rules as drafted.

5. Use of two separate displays for the sale of gift and non-gift cards in store locations.

In its discussion of what constitutes cards “marketed or labeled” as gift cards, the Board suggests that two separate displays should be used for the sale of cards, one for “gift cards” and another for other “non-gift” products. Many of our members operate major retail chains and we would urge that a 2-rack solution not be imposed by the Board. Floor, shelf and rack space are at a premium for retailers and such a requirement will unfairly burden the retailers who are selling such cards. .

*Recommendation:* The Board should permit both gift and non-gift cards to be sold in the same rack or shelves so long as the cards are clearly labeled for the customers.

6. The Board should permit grandfathering of existing cards in the marketplace.

The Board has requested comments on the potential costs of replacing existing card stock and whether it should grandfather cards that are in the marketplace as of the effective date. Because the costs of removing and replacing old inventory will fall heavily on those retailers who sell gift cards, we would endorse a policy of grandfathering existing cards.

*Recommendation:* We recommend the grandfathering of all physical cards (gift cards as well as loyalty, award and promotional cards) for at least two years after the effective date of the Proposed Rules.

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**Conclusion**

The RGCA is pleased to provide our comments on the Proposed Rules. If you have any questions, please feel free to contact me directly at 786 270-1276 or [carman.wenkoff@thergca.org](mailto:carman.wenkoff@thergca.org).

Sincerely,

Carman Wenkoff  
Co-President  
The Retail Gift Card Association