



December 18, 2009

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

**Re: Docket No. R-1377 – Proposed Amendments to Regulation E**

Dear Ms. Johnson:

Discover Financial Services, Inc. (“Discover”) respectfully submits these comments to the Federal Reserve Board (the “Board”) in response to the Board’s proposed amendments to Regulation E, (“Proposed Rule”) which implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Act”) that will be effective on August 22, 2010.

While Discover supports many aspects of the Board’s Proposed Rule, including the Board’s decision to not impose caps on fees, we do have comments on other provisions which we discuss in detail below. The American Bankers Association (“ABA”) and the Network Branded Prepaid Card Association (“NBPCA”) are also submitting letters in response to the Proposed Rule. Discover supports the arguments and suggestions made in each of those letters.

**1. The Board should clarify that the August 22, 2010 effective date for these provisions applies to gift cards and products issued on or after August 22, 2010.**

We request that the Board clarify that the Proposed Rule only applies to cards that are issued, regardless of when they are purchased, on or after August 22, 2010. To require otherwise would accelerate the effective date of the Act.

**2. Issuers should be permitted to provide the required disclosures via a sticker or other document that accompanies the gift card or product.**

While we support the disclosures proposed by the Board, we are concerned that requiring issuers to print all of this information on the card itself will be difficult due to space limitations, may be technologically infeasible in some instances and will discourage new technologies that are beneficial to consumers without providing any corresponding benefit to consumers.

Given that gift card issuers must currently comply with state laws and network requirements that mandate certain disclosures or other statements appear on the card, there is already very limited space on the card itself to include the additional disclosures. For example, many states require on-card disclosure of the amount, frequency and nature of dormancy fees and Discover network requires, among other things, the issuer’s name, contact

information and a statement regarding where cardholders can retrieve full terms and conditions on each card. As a result, space on the card is already quite limited.

Moreover, the Proposed Rule covers all types of prepaid gift products, including those such as contactless stickers, electronic or digital gift certificates (such as 2D bar codes, SD cards, and SIM cards), or computer chips attached to (or even embedded within) mobile payment devices. As these devices, by design and necessity, are much smaller than traditional card plastics, it will be impossible for issuers to print all of the required disclosures on the product itself. We understand that the Board has sought comment regarding approaches that could avoid “potential impediments to innovation while still providing consumers clear and conspicuous disclosure” for certain products, especially those that have very little space on which to print such disclosures.

Given the already limited space available on most gift cards and the impossibility of placing them on even smaller or electronic devices, we request that the Board allow the disclosures to be printed clearly and conspicuously on a sticker or other card packaging accompanying the gift card or product. Such a rule would permit card issuers to enhance the readability of these disclosures for consumers as issuers would not be as limited by space concerns. In the alternative, we suggest that the Board implement a rule that permits the disclosures on the card to simply inform the consumer that the card is subject to additional terms and conditions stated in the cardholder agreement, provide a toll-free phone number to request a copy of the cardholder agreement and a web site where the consumer can read and print a copy of the cardholder agreement. For virtual and web products, we suggest that the Board permit issuers to provide the disclosures in an electronic format, without regard to E-SIGN, that can easily be printed and retained by the consumer. These methods would ensure that the gift card recipient is made aware of the additional terms and given ample opportunity to review that information.

If the Board retains the requirement to print the disclosures on the card itself, we do not believe the Board should specify type size or prominence requirements. We believe that the Board’s Proposed Rule which provides for a “clear and conspicuous” standard allows gift card issuers the flexibility necessary to comply with the requirements, while also protecting consumer interests.

### **3. The Board should reduce the 5 year expiration requirement to 3 years.**

Although Discover gift cards contain a “valid thru” date, the underlying funds do not expire. For cards where the underlying funds do not expire, we do not believe it is necessary to require that the minimum plastic expiration date should be 5 years. First, according to the NBPCA’s research, most consumers use the entire amount of the funds on their cards within the first year. Second, for those consumers who still have underlying funds on their cards upon expiration of the plastic, replacement cards are readily available and are provided free of charge. Third, many states require card issuers to escheat funds remaining on cards to the state after 3 years. If the plastic expiration date is 5 years instead of 3, issuers will be required to escheat the funds even though the plastic remains valid for an additional 2 years. The Proposed Rule would require issuers to monitor two different dates in order to appropriately manage the funds and could result in an issuer having to fund a card’s load amount twice. Given that consumers are not harmed by a 3 year plastic expiration date when

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the underlying funds do not expire, the Board's Proposed Rule would impose undue operational burdens on issuers, without any corresponding consumer benefit. Accordingly, we request that the Board reduce the 5 year expiration date to 3 years.

**4. The Board should adopt Alternative B with respect to expiration dates.**

The Proposed Rule includes two alternatives for addressing gift card expiration date issues. Alternative B recognizes that cards with plastic expiration dates of less than 5 years may exist in the marketplace, so long as the issuer of those cards has policies and procedures in place that will ensure that consumers have a reasonable opportunity to purchase a card with at least 5 years remaining before the plastic expires. Alternative B provides issuers with greater flexibility to deal with card inventory issues that may otherwise arise. Therefore, we urge the Board to adopt Alternative B in its final rules.

**5. The expiration or valid thru date should be measured from the issue date, not the activation date.**

We request that the Board clarify that the expiration or valid thru date must be measured from the date the card is issued, not from the date the card is activated. For security reasons, Discover, and many other issuers, require that gift cards be activated before they can be used. The valid thru date is printed on the card at the time the card is issued; a consumer may purchase that card a month or later and may not activate the card for several months after that. If issuers were required to begin counting the 5 years (or 3 years, as we have recommended) from the point of activation rather than the point of issuance, the valid thru date printed on the cards could be incorrect and lead to consumer confusion. Therefore, we request that the Board clarify that the expiration date must be 3 years from the date the card is issued, not the date the card is activated.

**Conclusion**

Discover appreciates the opportunity to provide the Board with comments on the Proposed Rule. Should you have questions regarding this letter, please feel free to call Kristin Jackson at 224.405.1841.

Respectfully submitted,



Discover Financial Services, Inc.  
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