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December 21, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
**Attention: Docket No. R-1370**

Re: Proposed Rule Implementing the CARD Act Gift Card Provisions

Dear Ms. Johnson:

This comment letter is submitted on behalf of Applesseed, the national office of a nonprofit network of 16 independent public interest justice Centers in the U.S. and Mexico, in response to the Proposed Rule ("Proposed Rule" or "Rule") issued by the Federal Reserve Board ("Board") to implement gift card provisions of the "Credit Card Accountability Responsibility and Disclosure Act of 2009" ("CARD Act" or "Act").

Applesseed appreciates the opportunity to comment on this important matter. Given the passage of the gift card provisions contained in the CARD Act of 2009, we believe it is critically important that the Board seek to promote transparency, simplicity, fairness, accountability and access in the market for gift card products and services by requiring gift card issuers to engage in fair dealings and transparency in pricing.

Applesseed and its Centers are dedicated to building a society where opportunities are genuine, access to the law is universal and equal and government advances the public interest. Applesseed has convened industry, regulatory and community stakeholders and piloted a fair exchange disclosure template for remittances, conducted numerous studies and has come to be guided by a set of "Fair Exchange Principles" which we believe produce optimal consumer understanding of complicated financial products and promote a comparative, cost-based analysis of products.

In this regard, the Board should ensure:

- Transparency: Disclosure of all costs, including those in the quoted fee for financial products or services, exchange rate fluctuations and other indirect costs,

- should be provided to consumers in a clear and conspicuous manner that is designed to call attention to the significance and magnitude of the information;
- Simplicity: Consumers should have, understand and be able to use the information to make responsible decisions about consumer financial products or services, including the purchase and use of gift cards and certificates;
  - Fairness: Consumers should be protected from abuse, deception, discrimination and financial pitfalls;
  - Accountability: Markets for consumer financial products and services should support true competition and remain sustainable and innovative; and
  - Access: Traditionally underserved consumers and communities must have continued access to financial services.

Further information on Appleseed's Fair Exchange pilot can be found at <http://www.appleseednetwork.org/Portals/0/Documents/Publications/FE%20Final.pdf>

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Appleseed has the following specific comments on the Proposed Rule:

#### **RESTRICTION ON DORMANCY, INACTIVITY OR SERVICE FEES**

Proposed Section 205.20(d) implements the CARD Act restriction on dormancy, inactivity or service fees. Specifically, the Proposed Rule prohibits the imposition of a dormancy, inactivity or service fee in connection with a gift card or certificate unless:

- (1) a fee is imposed only if there has been no activity for one year;
  - (2) clear and conspicuous disclosures are provided on the card or certificate at the time the card or certificate is purchased; and
  - (3) no more than one fee is imposed in any given calendar month.
- Consistent with the principles of transparency and fairness, Appleseed supports this aspect of the Proposed Rule. Given the fact that dormancy, inactivity and service fees can impact the funds underlying the gift card or certificate, Appleseed supports limiting an issuer's ability to impose such fees. That is, Appleseed believes the Proposed Rule will promote transparent terms. In this regard, given the limitation on service fees and the disclosure of such fees, under the Proposed Rule, holders of gift cards and certificates will no longer be surprised about the imposition of such fees and will be equipped to make informed decisions about the purchase and use of the card. Disclosure of such fees is critically important since gift cards often include a range of fees related to usage, account rules and registration and such fees are not always transparent.

- In addition, transparency should facilitate consumer understanding and provide information that consumers can use to make responsible decisions about gift cards and certificates.
- While Appleseed supports the Proposed Rule, we think it essential that the Board monitor the impact the Rule has on traditionally underserved consumers and communities that have limited access to financial services. While transparency might translate to more expensive credit, it is important that consumers continue to have access to prepaid cards, including gift cards and gift certificates because such products often serve as an alternative to some traditional banking services. The Board should review and report on an annual basis how the Rule impacts such consumers.

#### RESTRICTIONS ON EXPIRATION DATES

Proposed Section 205.20(e) provides two alternatives for implementing the CARD Act provision restricting expiration dates. Under Proposed Alternative A, a gift card or certificate cannot be sold with an expiration date, unless:

- (1) the card or certificate expiration date is at least five years after the card or certificate is issued or sold;
- (2) the expiration date for the underlying funds is at least five years after the card or certificate is issued or last loaded, or after the card or certificate expiration date, whichever is later;
- (3) certain disclosures are made, including “[a] statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that the certificate or card expires, but the underlying funds either do not expire or expire later . . . and that the consumer may contact the issuer for a replacement card”; and
- (4) no fee is imposed for replacing the card or certificate prior to the expiration of the underlying funds.

Under Proposed Alternative B, an issuer is required to have policies and procedures to ensure that a consumer has a reasonable opportunity to purchase a card or certificate that has an expiration date that is at least five years from the date of purchase, rather than, as proposed under Alternative A, imposing a flat prohibition against the sale of a card or certificate that has an expiration date of less than five years.

- Consistent with the principle of fair dealing, Appleseed supports the proposed requirement that gift card issuers provide consumers a minimum of five years to use the underlying funds. We believe that the Proposed Rule is consistent with a holder’s reasonable expectation that he or she will be permitted to use the funds underlying the card for a reasonable amount of time after the purchase of the card or certificate.

- In addition, Appleseed supports the proposed requirement that any terms of expiration be clearly and conspicuously disclosed to consumers to ensure that consumers receive the full value of the gift card or certificate.
- To ensure access to financial products, the Board should monitor the impact the Proposed Rule has on traditionally underserved consumers and communities that have limited access to financial services. That is, the rules impacting gift cards and other prepaid cards should provide important protections to consumers and should also facilitate the development of such cards, especially in the unbanked community.

#### DISCLOSURES ON GIFT CARDS OR CERTIFICATES

Proposed Sections 205.20(c) and (d) set forth the disclosure requirements for covered gift cards and certificates. Specifically, the following information would have to be clearly and conspicuously disclosed on the card or certificate itself:

- (1) the amount of any dormancy, inactivity or service fee, how often such a fee may be imposed and that such a fee may be assessed for inactivity; and
- (2) information about the expiration date and potential fees, including a toll-free number, and if one is maintained, a Web site, that a consumer can use to obtain a replacement card or certificate and fee information.

In addition, other fee information must be included with the card or certificate explaining the type of fee that can be imposed, the amount of any fee and the conditions under which the fee may be imposed.

- Appleseed strongly supports the requirement that issuers provide material disclosures ON the card or certificate itself. Requiring key disclosures on the card will call consumer's attention to the importance and significance of such disclosures.
- Furthermore, Appleseed believes that such disclosures should be provided to consumers prior to the purchase of the gift card. More specifically, if the customer is not able to view the material disclosures on the card prior to purchase, such disclosures should be provided orally or in some other manner that calls the consumer's attention to such terms.
- This requirement is consistent with one of the hallmarks of Appleseed's Fair Exchange Principles, which is transparency. That is, Appleseed believes that all fees and charges, including those fees embedded in the cost of the product should be clearly disclosed to consumers in an understandable manner prior to a consumer being obligated on the transaction. We believe that this principle is consistent with the fundamental purposes of the Proposed Rule, which is to enhance transparency and enable consumers to better assess the costs associated with gift cards and the consequences of not using such cards.

- In addition, the Board should require issuers to provide information relating to the risk associated with certain gift cards, including the absence of deposit insurance and potential bankruptcy of any third parties holding the funds.

While Appleseed generally supports the Proposed Rule, Appleseed urges the Board to continue to monitor the gift card industry to determine if, and to what extent, other provisions of the Electronic Fund Transfer Act or Regulation E should apply to gift cards or certificates. Additionally, Appleseed recommends that the Board consider applying some of the provisions in Regulation E to prepaid cards more broadly.

Sincerely,

Betsy Cavendish, Executive Director

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