



Credit Union National Association

cuna.org

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December 21, 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 – Proposed Rule on Implementation of the CARD Act Provisions for Gift Cards

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the Federal Reserve Board (Board) in response to the proposed rules that will implement the restrictions on fees and expirations dates for gift cards and similar products, as required under the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act). By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,900 state and federal credit unions, which serve 93 million members.

Summary of CUNA's Comments

- The exception to the rules for reloadable cards that are not marketed as "gifts" should apply if the issuer does not market the card in this manner, regardless of how the card may be characterized by others.
- As for the requirement to provide an expiration date that is at least five years after issuance, the Board provides two alternatives for compliance. CUNA prefers the alternative of requiring that issuers and others have policies and procedures to ensure a consumer has a reasonable opportunity to purchase a card with an expiration date that is at least five years from the date of purchase. However, much of the current confusion and concerns about expiration dates can be alleviated if the Board and others educate consumers



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that the expiration date on the card does not necessarily coincide with the expiration date of the underlying funds.

- Although CUNA generally supports disclosure information that helps consumers understand financial products, we request that the Board provide credit unions and others with additional flexibility as to the placement of the information and allow information on fees to be provided with the card, instead of on the card itself.
- Credit unions should not be required to automatically issue a replacement card if the underlying funds will not expire until after the expiration date. This would simply be impossible since credit unions do not have records as to who is the ultimate recipient of these cards.
- Gift cards or certificates should not be exempted from these requirements solely because they are issued in paper form.
- Cards that are sold and in circulation as of August 22, 2010 should be exempted from these new rules.

Applicability to Reloadable Cards

The proposal outlines several products that would not be subject to these rules, such as telephone cards, loyalty cards, and others not marketed to the general public. One of these exceptions would be a card that is reloadable and not marketed as a gift card or gift certificate. The official staff commentary indicates that this exception will not apply if any party markets these products as gifts at any time, including the payment network.

We urge the Board to revise this interpretation in the official staff commentary. We believe there may be many situations in which a credit union offering a reloadable card will not label or otherwise market the card as a gift. However, there is always the possibility that the payment network will, on occasion, suggest in certain advertisements that these cards may be suitable for gifts, such as during the holiday season.

In these situations, the credit union that sells these cards will have no control as to how other parties advertise or characterize these cards. The practical result will be that this proposed exception will be meaningless as credit unions will have to apply these rules to all of their reloadable cards to ensure they are in compliance in case other parties choose to market these cards as gifts, regardless of how remote that possibility may be.

Concerns About the Five-Year Expiration Date

For nonreloadable gift cards, the significant problem with regard to the five-year expiration date requirement under the CARD Act and these proposed rules is that credit unions and others do not have the means in which to track the gift

cards to ensure they expire at least five years after they are purchased. Currently, the manufacturer prints the expiration date when it receives the order for the cards. There is then a significant time lag between the time the card is manufactured and the time it is purchased by the member, which can be several months or more.

We recognize this can be remedied if the manufacturer prints an expiration date that is significantly more than five years in the future, such as six or seven years. However, we are concerned about the increased fraud risks with cards that remain in circulation for such a long period of time.

The proposal includes the following two alternatives to address these concerns:

- Requiring that the card cannot be sold or issued if the printed expiration date is less than five years from the date of purchase.
- Requiring that there must be policies and procedures to ensure that a consumer has a reasonable opportunity to purchase a card with an expiration date that is at least five years from the date of purchase.

We strongly oppose the first alternative as it would be impossible to ensure that the expiration date would be at least five years after the date of purchase, for the reasons noted above in that credit unions often order a significant number of cards at once and then sell them individually over time. Again, the option of providing expiration dates that are significantly longer than five years in order to comply with these provisions is also not advisable, due to the fraud and security problems, as noted above. For these reasons, we would prefer the second option, although this also raises concerns, such as the standards for developing these policies and procedures and how to evaluate whether they are adequate. We urge the Board to provide additional guidance in this area if it adopts this alternative.

We realize consumers are concerned about expiration dates in that they believe the underlying funds will no longer be available at that time. However, the underlying funds are often available after the expiration date, and we believe ensuring that consumers understand this will to a large extent alleviate these consumer concerns.

Although the proposal will address this issue through additional disclosure requirements, we believe the Board should also undertake an effort to educate consumers about the difference between the expiration date and the availability of the underlying funds, through public service announcements, information on the Board website, and other means. We have recently reviewed the comments that have been submitted to the Board on this issue and nearly all of them have been submitted by individuals who are upset and angry about expiration dates. This clearly indicates that consumers are confused about the significance of

expiration dates, and we believe this would be alleviated if they knew the underlying funds are still available and if there were means in which they can easily obtain a replacement card at the time of expiration.

For reloadable gift cards, the proposal will allow the expiration to be stated as “funds expire 5 years from the date funds last loaded to the card,” “funds can be used 5 years from the date money was last added to the card,” or “funds do not expire” (if that is the case). We agree that disclosures similar to these are appropriate and will be effective.

Disclosure Requirements

We also have concerns with the provisions of the proposal that will require additional disclosures on the gift card. Although we generally support disclosure information that helps consumers understand financial products, our primary concern is that it will not be possible to place all these disclosures on the card in a manner in which the consumer will be able to read them, especially since there are also a number of placement restrictions. These include disclosures that are required to be on the front of the card and certain other disclosures that will not be permitted on the reverse side of the card if they are printed directly on top of the indentations from the embossed type.

For example, in situations in which the expiration date of the card occurs prior to the expiration of the underlying funds, the proposal will require a statement indicating that these dates are different and that this information must be with equal prominence and in close proximity to the expiration date of the card. Although the official staff commentary provides examples of concise language that may be used, we are still concerned because this will require that the information be on the front of the card, since this is where the expiration date is generally located. Certain States, such as California, actually require expiration dates on the front of the card and these requirements will not be preempted by this proposal or the underlying statutory provisions. In these situations, we do not believe there will be sufficient space on the front of the card to provide this information, along with the other required disclosures. In addition, the proposal will require certain fee information to be included on the card, and we are also concerned as to whether there is enough space for that as well.

To alleviate these problems, we request the Board provide some flexibility in the placement and location of these disclosures. For the information as to how the expiration date of the card differs from the expiration of the underlying funds, the issuer should have the option to place this information on the back of the card. This will benefit consumers because this will still be on the card where they are likely to see this information while providing issuers with the flexibility they need to ensure that all the required information is on the card.

We also suggest flexibility with regard to the disclosure of the fees. Under the proposal, certain fee information may be provided with the card while other information must be on the card itself, which includes the dormancy, inactivity, and service fees. We request the Board provide issuers with flexibility to allow all fee information to be provided with the card, instead of requiring that certain fee information be on the card.

We certainly understand that certain information should be on the card, such as indicating that there is a difference between the expiration date of the card and the expiration date of the underlying funds. This type of information is generally not known by the general public, as indicated by the comments that individuals have been sending to the Board in response to this proposal.

However, a significant percentage of consumers do understand that fees are often associated with gift cards. According to a survey released by the Consumer Federation of America on October 26, 2009, approximately 54% of consumers recognized that they may be charged a monthly fee after six to 12 months.

Although we realize this number should be higher, and believe it will be as consumers understand more about gift cards as a result of the new CARD Act provisions and these rules, it does indicate that consumers in large numbers do understand that fees are charged after a period of time. Therefore, even if the separate disclosure with the fees is lost or otherwise not provided to the ultimate recipient, we believe this general awareness about fees and the requirement to provide a toll-free telephone number directly on the card for consumers to use if they want more information about fees and other features should be sufficient for consumers who want this information. This will also provide the necessary flexibility for card issuers so that they can include the other required information on the card in a manner that will be recognized and understood by consumers.

Replacement Cards

In the proposal, the Board requested comment as to whether gift card issuers should be required to automatically issue a replacement card if the underlying funds will not expire until after the expiration date. This would simply be impossible. By their very nature as "gifts," members generally purchase these cards to give to others and credit unions have no means in which to track who is the ultimate recipient of these cards. We believe the disclosures required under this proposal are the only reasonable means to inform consumers that replacement cards are available.

Gift Certificate/Card Issued in Paper Form

The proposal will exempt any gift card or device that is issued solely in paper form. Subject to our comments above, we believe this proposal provides significant protections that consumers deserve. Whether these protections apply should not be based solely on whether these devices are issued in paper form and they should apply to all types of gift cards and certificates, regardless of how they are constructed. We are also concerned that such an exception would be subject to easy circumvention, such as allowing for the creation of paper-based products with magnetic coding that is similar to what would be on a plastic card.

Transition Period

The CARD Act provisions and these rules for gift cards will be effective as of August 22, 2010. In the proposal, the Board requested comment as to the costs that will be incurred to remove and replace existing cards at that time to ensure all cards will be in compliance with these provisions.

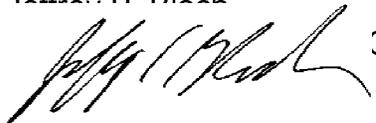
For the reasons noted above with regard to issuing replacement cards, it will be simply impossible to reissue cards that have already been purchased by consumers, which in turn have been given as gifts to others, and there should be no expectation that credit unions should be required to issue new cards under these circumstances. Cards that are sold and in circulation as of August 22, 2010 should be exempted from these new requirements.

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Thank you for the opportunity to comment on the proposed rules that will implement the restrictions on fees and expirations dates for gift cards and similar products, as required under the CARD Act. If you have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Jeffrey D. Black



Counsel