



72 North Main Street, Suite 301  
Concord, NH 03301

December 18, 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, Regulation E, Gift Cards, Gift Certificates and General Use Prepaid Cards**

Dear Ms. Johnson:

The National Card Coalition (“NCC”) appreciates the opportunity to submit written comments on the recently proposed Federal Reserve rule Regulation E, Docket No. R-1377 relating to gift cards, gift certificates and general use prepaid cards. The NCC consists of major national card issuers and related companies with an interest in legislative and regulatory matters affecting the payment card industry and consumers.

The NCC believes that additional clarity may be needed with regard to the types of cards and other devices that are impacted by the proposed rule. We are concerned that the rule does not specifically exempt contactless stickers or other mobile payment devices such as 2 Dimensional bar codes (a pattern of symbols which can be read by an optical scanner), Secure Digital cards (a memory card attached to a portable device via a slot, as in a PDA or camera), Subscriber Identity Module (SIM) cards (an internally installed device which identifies a subscriber), etc. from the disclosure requirements. As these devices, by design and necessity, are much smaller than traditional plastic cards, it will be impossible for the issuer to print all of the required disclosures on the device itself. This requirement will get even more complex once cell phones have payment chips embedded in them by the manufacturers. We propose that the disclosure requirement should allow for an alternative approach for these products and suggest that the relevant disclosures be allowed to be printed on the card packaging, but as the rule is currently drafted it does not appear that such an accommodation exists. It is our interpretation of the proposed rules that, as written, these new and emerging products and technologies may be left behind if they do not fit within either the exclusion for reloadable products or any of the other exclusions.

The NCC has concerns with proposed 20(b)(2)-4.i, which addresses the obligation of the issuer and program manager to ensure that a retailer does not place a reloadable, non-gift card on a gift card display. Although issuers and program managers could -- and will-- develop policies and procedures to address these issues, including inserting requirements in contracts with retailers and performing spot checks, issuers and program managers could not do anything about a retailer intentionally switching the placement of reloadable, non-gift cards to a different location. These actions by a retailer could subject issuers and program managers to claims under Regulation E, despite the clear intent (evidenced by packaging and features) to target consumers seeking cards for personal use.

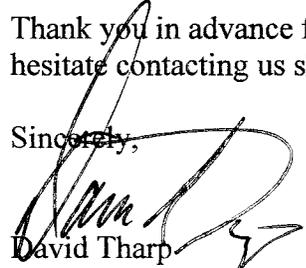
Instead, we propose defining this exception by whether 1) a purchased reloadable card (a "temporary card") would be replaced with a reloadable card embossed with the consumer's name; and 2) the intent of the issuer is to offer a personal, reloadable card except where doing so would violate other federal laws (in which case the consumer could request a full refund of the fund and, in some cases, fees). These facts would support a conclusion that the card is not a gift card.

In addition, Section 205.12 of Regulation E allows the Board to determine whether the law and this part preempt state laws. The proposed change to this section would allow the Board on a case by case basis to determine if state laws relating to dormancy fees, inactivity fees or service fees, or expiration dates, are preempted. Section 205.20(e) prohibits the sale of a Covered Card with an expiration date which is less than five years. The problem and concern we see is that a conflict may develop because some states have shorter escheat periods. The potential conflict and confusion could place additional financial risk on the card issuer whereby the issuer and cardholder must adhere to two different time periods.

We believe the best approach to resolve this problem is for the Board to preempt state laws as it relates to escheat periods, thereby giving everyone the same period.

Thank you in advance for reviewing the comments of the National Card Coalition. Please do not hesitate contacting us should you have any questions or future needs.

Sincerely,



David Tharp

National Card Coalition