American Bankers Association

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By electronic delivery to:

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

Re: Board of Governors of the Federal Reserve System, Docket No. R-1377, Electronic Funds Transfers, Amendments to Regulation E, 75 Federal Register, 50683-50688

Dear Ms. Johnson,

The American Bankers Association (ABA)[1] appreciates the opportunity to submit these comments on the interim final rule regarding amendments to Regulation E to modify the effective date of certain disclosure requirements for gift cards under the Credit Card Accountability, Responsibility, and Disclosure Act of 2008 (CARD Act).[2] The regulations being amended by this interim final rule became effective as required by law on August 22, 2010, 15 months after the CARD Act was enacted and only five days after this interim final rule was published in the Federal Register.

The ABA supports the intent of this interim final rule and the implementing legislation, Public Law 111-209, to lessen the disclosure burden on gift cards that were produced prior to the new disclosure requirements being known and allowing them to be sold after August 22, 2010. The intention to allow these gift cards to continue to be sold for an additional time period as long as substantive consumer protection provisions were observed, instead of being destroyed, was a good one. However the requirements of the amending legislation to impose additional substitute disclosures plus the short time period allowed to plan for and take advantage of the changes of the interim final rule make this proposal a case of "too little, too late" to provide substantial benefits to the majority of gift card issuers and their customers affected by the CARD Act. Nevertheless, ABA supports the interim final rule's truncation of the signage/advertising period and the expiration date fix. We propose other changes to make the intended relief practical for gift card issuers to utilize.

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[1] The American Bankers Association (ABA) represents banks of all sizes and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. The majority of ABA's members are banks with less than $165 million in assets. Learn more at www.aba.com.
[2] 75 Fed. Reg. 50683 (August 17, 2010)

Background

A review of the chronology of events will help to illustrate the time constraints that gift card issuers were required to operate under to comply with the new regulations.

- On May 22, 2009, the CARD Act became law. The CARD Act contained a statutory requirement that the gift card related rules be finalized within 15 months, not later than August 22, 2010.

- On November 20, 2009, 275 days before the effective date of August 22, 2010, the proposed regulations governing the gift card provisions were published in the Federal Register with comments due on December 21, 2009, after an unusually brief comment period.

- On April 1, 2010, 144 days before the effective date of August 22, 2010, the Board of Governors issued the final rule on the gift card provisions of the CARD Act.[3] Gift card issuers immediately began to "manage down" their current inventories to minimize the number of legacy gift cards on hand that didn't meet the new standards and would have to be scrapped on August 23, 2010.

- On July 27, 2010, 27 days before the effective date of August 22, 2010, the President signed PL 111-209 into law amending the disclosure requirements to allow gift cards manufactured prior to April 1, 2010, to continue to be sold after the August 22, 2010, effective date, but only if they complied with the pricing limitations imposed by the previously issued final rule <u>and</u> if sellers of the cards met alternative disclosure requirements to compensate for these legacy products not meeting the new disclosure mandates.

- On August 17, 2010, <u>five</u> days before the effective date of August 22, 2010, the Board of Governors issued the interim final rule under consideration in this comment letter.

- On August 22, 2010, the effective date of the prior final rule and the interim final rule, gift cards that met the new requirements including pricing restrictions and extended expiration dates, but not the disclosure requirements, could continue to be sold until January 31, 2011, if they met the provided alternate disclosure standards, an extension of 162 days.

[3] At that time, card issuers relied on the newly issued final rules to determine which segments of their existing card stock products complied with the new requirements or did not. The production of plastic gift cards and the associated material is a complex process that requires large amounts of lead time to allow for the design and manufacture of products in order them to comply with the regulation.

It is important to note that compliance with these new rules is not a simple task. It goes well beyond a bank being required to update its own internal policies and procedures. Changes to gift card products and marketing materials are expensive, and banks rely on outside vendors to provide the plastic cards and printed materials. The less lead time there is to make these changes means greater expenses incurred. The greater the change required, the greater the expense.

From April 1, 2010, when the final rule was published to July 27, 2010, when the amending legislation had been signed, gift card issuers made their business and production decisions based upon the April 1, 2010, rule. Gift card issuers recognized that the changes required long lead times and to delay would mean a greater expense. They could not wait to make these changes based on the uncertainty of a legislative amendment becoming law. When the law was passed, gift card companies could not make adjustments to their production schedules because the rule implementing the law was not available to provide the details they needed to take advantage of the law. When the interim final rule was at last published just five days before the effective date there was not enough time for most gift card issuers to evaluate whether the changes to the rule could be incorporated into their programs practically or economically.

A further complication to the short time frame to review, evaluate, and implement the new requirements was that the time period to take advantage of the extension was less than six months in length. Any costs associated with creating a new disclosure scheme would need to be recouped in a short amount of time, making the extension less attractive.

ABA Comments

ABA supports the Board of Governors exercise of its exception authority in EFTA Section 904(c) to alter the requirements stated in the law with regard to in-store signage and general advertising. The statute states in section 403(b)(2)(C),

> "PERIOD FOR DISCLOSURE REQUIREMENTS.—The notice requirements in paragraph (2) of this subsection shall continue until January 31, 2013."

The Board of Governors correctly recognized that this statutory requirement would cause customer confusion in bank lobbies and retail stores where gift cards are sold. The statute actually requires the disclosure notices to stay up in bank lobbies for two years after the products they described have been outlawed. These notices for discontinued products may not necessarily apply to products sold anytime after August 22, 2010. As a result, the Board of Governors exercised its exception authority to allow these notices including in-store signage and general advertising to be removed on the same date that the legacy cards could last be sold, January 31, 2011, two years earlier than required by statute.

ABA also supports the Board of Governors cure for the fact that that the amending legislation did not address the matter of card expiration dates. Under the new rule, cards are prohibited from sale unless the customer has a reasonable opportunity to purchase a card that has at least five years remaining until it expires. In order to fix this discrepancy, the Board of Governors drafted the interim final rule to allow for a temporary delay in the effective date for the requirements related to card expiration dates. This is a sensible correction.

Unfortunately, gift card issuers have been subject to a whirlwind of added compliance expenses, increased costs of producing new cards and destroying old cards combined with decreasing revenues on gift card products. Due to the tight time constraints that gift card issuers have been working on since the first proposed rule was published, they have been actively reducing their inventory of legacy cards and removing them from active inventories. Consequently, many gift card issuers that may have benefitted from this change being made six months ago, may not be able to take advantage of it now because they have already destroyed their card stock. An additional 24 month extension to sell the legacy cards with no decrease in customer protections would protect the customer and achieve the relief that Congress and the President sought to deliver.

Consequently, ABA recommends that the Board of Governors use its exception authority to make the following changes.

First, eliminate the notice requirements for these legacy cards as long as the cards meet all of the fee requirements and provide the same customer protections. The intent of the legislation was to allow legacy cards that provided consumer protection to continue to be sold. The expense and burden of providing the additional disclosure notices serve as a barrier to selling the legacy cards even though the customer is receiving the substantive protections of the new law.

Second, expand the extension's brief time window that began on August 22, 2010, and runs to January 31, 2011, by two additional years so that it ends on January 31, 2013. This will allow gift card issuers to dispose of their legacy card stock without enduring the cost of destroying it. The existing six month extension period is very short, and gift card issuers may decide that there is not enough time allowed to sell their legacy cards to justify the additional expense. An additional 24 months makes this a more attractive option.

ABA appreciates the opportunity to respond to this important proposal. We appreciate the Board of Governors' effort in implementing a difficult provision of a difficult statute in a compressed time frame. We hope the Board of Governors' is sensitive to ensuring customer and card issuer choice when considering updates to the interim final rule. The Board of Governors has the ability to simplify the complicated and to reduce the cost of the expensive regulation that is currently in place.

Sincerely,

Stephen K. Kenneally
Vice President
American Bankers Association