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Federal Gift Card Law to go into Effect in 2010

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Beginning on August 22, 2010, most gift cards sold in the United States will have to comply with a new federal statute. In the last few years, several states passed or expanded gift card laws, with over thirty states now having gift card statutes. Adding to the patchwork of laws, Congress got into the act recently when it passed the Credit Card Accountability, Responsibility and Disclosure Act (the “Credit CARD Act”), which President Obama signed in May. While chiefly aimed at reforming credit card practices, the Credit CARD Act contains several provisions that all issuers of gift cards must consider when structuring their gift card programs in addition to the various state laws already on the books as the new law does not preempt state laws that are more restrictive.

The Credit CARD Act will impose requirements on gift certificates, store gift cards, and general-use prepaid cards, each of which the legislation defines. The new law places restrictions on “inactivity fees,” “dormancy fees,” and “service fees,” as several state laws already do. Such fees will only be permitted where: (1) there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the fee is imposed; (2) the certificate or card clearly and conspicuously states—(i) that such a fee may be imposed; (ii) the amount of such fee; (iii) how often such fee may be imposed; and (iv) that such fee may be imposed for inactivity. Also, not more than one fee may be charged to the consumer during any one-month period. Issuers or vendors of gift certificates or cards must inform consumers of any fees before the consumer purchases the card. Gift certificates and cards that are distributed as part of award, loyalty or promotional programs for which no money or other value is exchanged are exempt from the new law.

The new law also places restrictions on expiration dates, another common feature of state gift card laws. It will prohibit the sale of gift certificates or cards that have an expiration date which is less than five years after the date it was issued, or the date that funds were last loaded on a store gift card or general-use prepaid card. A certificate or card carrying an expiration date must clearly and conspicuously disclose the expiration date.

The law requires the Federal Reserve Board to issue final regulations, including any relating to the amount of any fees which may be imposed, by February 22, 2010, after consulting with the Federal Trade Commission. The gift card provisions of the Credit CARD Act were inserted into the already existing Electronic Funds Transfer Act, which is generally enforced by the FTC.

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