



New State Gift Card Laws; Delay for Federal Gift Card Rule

New York, Hawaii, and New Jersey have recently enacted laws relating to gift cards and rebates issued in the form of gift cards.

New York A.B. 11007, effective January 1, 2011, creates a new provision requiring businesses advertising or offering consumer rebates to conspicuously disclose, including in any advertising, if the rebates will be issued in the form of a gift certificate or gift card – or any form other than cash or a check – and whether any additional fees related to the use or non-use of the rebate may apply.

As part of the proposed safe harbor, companies that participate in and comply with FTC-approved self regulatory programs would not be subject to (1) liability for a private right of action, or (2) the express affirmative consent requirement for disclosing covered information to third parties.

Hawaii H.B. 2289, effective July 1, 2010, revises Hawaii's gift card statute to align it with the Federal gift card act. The new Hawaii law sets a cap on issuance fees, and prohibits expiration dates for electronic gift cards within the first five years of issuance. Limits on the expiration date for paper gift certificates remain unchanged – such date cannot be less than two years after issuance. The definition of "gift certificate" expressly exempts certain types of certificates/cards, including those that are (i) issued for loyalty, award, or promotions; (ii) reloadable and not marketed or labeled as a gift card or gift certificate; (iii) used solely for telephone services; (iv) not marketed to the general public; and (v) redeemable solely for admission or redeemable for goods and services in conjunction with admission to events

or venues at a particular location or group of affiliated locations.

New Jersey A.B. 3002, effective July 1, 2010 as to all cards outstanding on that date, amends the state's unclaimed property act to explicitly include "stored value cards," broadly defined to include paper gift certificates, rebate cards and gift cards, among other forms of "stored value." The new law establishes a presumption of abandonment of card balances after two years of inactivity, rather than tying abandonment to the date of purchase or activation. The law requires that issuers obtain the name and address of the purchaser or owner of each card, including at least the person's zip code. If this information is not available, the address of the person who owns the card will be presumed to be where the card was sold. The law also prohibits the imposition of dormancy fees on stored value cards. The law exempts stored value cards issued pursuant to a promotional or loyalty program and stored value cards issued by any issuer that in the past year sold stored value cards with an aggregate face value of \$250,000 or less. Finally, the law vests in the New Jersey State Treasurer the power to exempt a business or class of businesses from its obligations.

Implementation of Federal CARD Act Delayed for Cards Issued Prior to April 2010

As we mentioned in our March 2010 Alert, the Federal Reserve Board issued a final rule implementing the Federal CARD Act and regulating gift certificates, store gift cards,

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and general-use prepaid cards. Generally, the rule (i) limits dormancy, inactivity or service fees; (ii) requires certain disclosures, including on certificates and cards and in conjunction with their sale; and (iii) prohibits expiration dates less than five years after issuance of gift certificates, store gift cards, and general-use prepaid cards.

The rule takes effect August 22, 2010. However, on July 21, Congress enacted the ECO Gift Card Act, H.R. 5502, which delays the effective date of certain disclosure requirements for certificates or cards produced prior to April 1, 2010. This was reportedly done to allow card issuers to use cards that have already been produced, rather than requiring card issuers to destroy millions of cards.

On August 11, the Federal Reserve issued an interim rule to reflect this delay. The interim rule states that, with respect to gift certificates, store gift cards, and general-use prepaid cards produced prior to April 1, 2010, the effective date of certain disclosure requirements pertaining to fees shall be delayed until January 31, 2011.

Additionally, as a condition of this delayed effective date, issuers of such cards are required to: (1) comply with the rule's provisions relating to dormancy, inactivity, or service fees; (2) consider any such certificate or card for which funds expire to have no expiration date with respect to the underlying funds; (3) replace, at consumer request, any such certificate or card that has funds remaining at no cost to the consumer; and (4) comply with certain consumer rights disclosure requirements.

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