

# PREPAID CARDS: UPDATING THE RECENT REGULATORY CHANGES

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# Overview

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- Credit Card Act (Gift Card Provisions)
    - Federal Reserve Proposed Regulations; Comments Dec. 21
  - FinCEN
    - MSB Regulations
    - Stored Value
  - CFPA
    - Revamp all consumer related regs/laws/agency oversight
    - Demand Deposit
    - Money Remittances
  - Other, including
    - Prepaid Card Consumer Protections Act of 2009/Senator Menendez
    - Credit CARD Act (Credit Card Provisions)
  - Questions and Discussion
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# Credit CARD Act (Gift Card Provisions)

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- Signed into Law May 22, 2009; Effective Aug. 22, 2010
  - Amends EFTA
    - restrictions on dormancy, inactivity or service fees with respect to gift certificates, store gift cards, and general-use prepaid cards (subject to exclusions)
    - expiration date restrictions
    - disclosure requirements
  - Requires Federal Reserve to implement regulations by Feb. 22, 2010
    - Proposal published Nov. 20, 2009; Comments due Dec. 21, 2009

# Credit Card Act (Gift Card Provisions) – Federal Reserve Board Proposed Regulations

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- Restrictions on Dormancy, Inactivity, or Service Fees
  - Applicable to Gift certificate, store gift card, or general-use prepaid card (subject to exclusions)
  - No fee allowed if there has been activity within past year
  - After one year inactive, only one such fee per month allowed
  - Disclosures “clearly and conspicuously” stated on certificate or card; disclosures must be provided before purchase
- “Service fees” include monthly maintenance; transaction fees; reload fees; balance inquiry

# Credit Card Act (Gift Card Provisions) – Federal Reserve Board Proposed Regulations

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- Expiration Date Restrictions
  - No expiration dates unless:
    - plastic card expiration date at least 5 years from sale date
    - underlying funds expiration date either 5 years after issuance/load or date on card, whichever later
    - certain information regarding expiration of underlying funds “clearly and conspicuously” disclosed on card and disclosed prior to purchase
  - Expiration Date on Card – 5 years after sale or reload; or 6 years from date of production and on display rack w/in 6 months; or 7 years after production and on display w/in 18 months
  - Card not “issued” until “activated

# Credit Card Act (Gift Card Provisions) – Federal Reserve Board Proposed Regulations

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- Mandatory Disclosures
  - “Valid Thru” vs actual expiration of funds
  - Fees
  - Replacement of Cards
  - Certain disclosures must be on card; Fed is considering whether to mandate type size and asks for input on appropriate standards
  - Requesting input on length of time to grandfather current stock
  - Preemption – same as under Reg E

# Credit Card Act (Gift Card Provisions) – Federal Reserve Board Proposed Regulations

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- Exclusions
  - Exclusions for long distance phone services, wireless and VoIP – query whether to include text and Internet
  - GPR exempt, unless “marketed” as gift
  - Loyalty and promotion cards exempt, but special disclosures required
  - Exemption for cards “not marketed to general public”; issued only in paper form; and “redeemable solely for admission to events or venues”, but limits scope
- Transition Issues
- Future broader rulemaking?

# FinCEN

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- Notice of Proposed Rulemaking – Money Services Businesses
  - Meaning of “Money Transmitter”
  - Meaning of “Stored Value” for BSA/AML
  - Aggregation and Thresholds
  - Regulation of different parties in stored value

## Proposal on Stored Value

# CONSUMER FINANCIAL PROTECTION AGENCY ACT

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- Aka Dodd's: "Restoring American Financial Stability Act"
- CFPA would regulate and supervise consumer protections for all consumer financial services provided by banks, MSBs, money transmitters, retailers, processors, program managers, distributors, sellers of stored value, etc.
- Includes prepaid

# CONSUMER FINANCIAL PROTECTION AGENCY ACT (Continued)

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- Broad authority given to Director to write and enforce consumer protection rules
- Dodd's bill: No preemption of state regulations with more extensive consumer protections (except where inconsistent)
- Frank's bill – allows OCC to preempt state on a case-by-case basis where substantial interference with a nat'l banks ability to conduct business.
  - White House position
- Coverage of almost anything that touches a financial product

# MONEY REMITTANCES – SECTION 139 OF CFPA

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- International remittances
- Bank and money transmitters
- Prepaid Card Coverage?

# MONEY REMITTANCES (Continued)

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- Required Disclosures Prior to Transaction
  - Total amount paid; amount to be received in foreign currency
  - Fee charges
  - Exchange Rate – unless not fixed on send
  - Amount of time in effect; expected time to reach recipient
  - Locations where funds will be available
  - Specific info on written receipt

# MONEY REMITTANCES (Continued)

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- Similar requirements for telephone and electronic
- Foreign Language Disclosures
- Cancellations, Refunds and Errors
- No Preemption

# PREPAID CARD CONSUMER PROTECTION ACT OF 2009

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- Senator Menendez – Not yet introduced; Consumers Union, etc
- Open loop prepaid cards – both reloadable and non-reloadable
- Mandates FDIC pass-through insurance
  - no more anonymous cards?

# MENENDEZ BILL (Continued)

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- Significant limits on types of fees; following fees prohibited:
  - initiation, activation or enrollment; annual; overdraft
  - transaction at POS; declined transaction
  - inactivity, balance inquiry or access to transaction info
  - customer service; first replacement card; account closing
  - finance charge or other fee for extension of credit

# MENENDEZ BILL (Continued)

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- Periodic Statements or telephonic, Internet AND electronic terminals
  - If written periodic requested max fee of \$1/each statement
- Annual notice of error resolution
- Reg E protections
- Fed to issue regs
- Effective 2010

# Credit CARD Act (Credit Card Provisions)

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- Three phases: Aug. 20, 2009; Feb. 22, 2010; and Aug. 22, 2010
  - Aug. 20, 2009 – Advance notice of rate / fee increases; consumer right to reject; mailing requirements
  - Feb. 22, 2010 – Limitations on increases in rate / certain fees; underwriting requirements; over the limit fee opt-in; payment allocation; payment due date; cut-off times; limits on first year fees; minimum and late payment disclosures; renewal disclosures; online disclosures; limits on cards for young people and college students and marketing to students; timely settlement of estates; enhanced penalties
  - Aug. 22, 2010 - Requires a credit card issuer who increases a cardholder's interest rate to periodically review and decrease the rate if indicated by the review; Requires penalty fees to be reasonable and proportional to the omission or violation

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# QUESTIONS AND DISCUSSION