

## CARD Act Will Exempt Prepaid Phone Cards (Not Mobile Broadband/Internet Access)

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*Prepaid “cards, codes and other devices” redeemable solely for telephone services are exempt from a new federal law that goes into effect August 22, 2010. However, if they can also be redeemed for related technology services, these products will (at least in most instances) be subject to provisions restricting fees, prohibiting expiration in less than five years, and imposing strict disclosure requirements if fees are charged or the products expire.*

On March 23, 2010, the Federal Reserve Board ("Board") issued its Final Rule implementing Title IV of the federal Credit Card Accountability, Responsibility and Disclosure Act of 2009, which was signed into law by President Obama on May 22, 2009 (collectively, the "CARD Act"). The CARD Act amends the federal Electronic Funds Transfer Act (EFTA), and the Final Rule amends the EFTA's implementing regulation, Regulation E. It takes effect **August 22, 2010**. It applies to prepaid card products sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such product. State laws that are **consistent** with the CARD Act are **not preempted**, which means the CARD Act provides a minimum floor. State laws that provide greater protection for consumers are not inconsistent with the CARD Act.

The CARD Act restricts most fees and expiration dates on prepaid cards, and requires various disclosures if fees are charged or the products expire. **This Advisory, one of several Advisories on the CARD Act, focuses on the exemption for cards, codes and other devices useable solely for telephone services** (referred to collectively as "Prepaid Calling Cards").<sup>1</sup> Companies that offer or issue Prepaid Calling Cards may be surprised to learn that if these products are also redeemable for related technology services, they will not qualify for this exemption. All persons involved in issuing or distributing Prepaid Calling Cards should review and potentially revise their disclosures, as well as their redemption policies and procedures.

### CARD Act Restrictions on Fees and Expiration Dates

The CARD Act restricts fees for dormancy, inactivity and services on gift certificates, store gift cards and general-use prepaid cards (collectively referred to herein as "Cards"). It permits **one** fee per month and only after there has been **no activity** during the preceding 12 months. It also prohibits Cards from expiring in less than **five years** from the date the Card was issued or the date funds were last loaded, whichever

is later. A plastic Card is not required—covered products include “cards, codes and other devices.” If a fee will be charged or the Card will expire, the CARD Act requires certain disclosures to be made.

### Exemption for Cards, Codes or Other Devices Useable Solely for Telephone Services

The CARD Act exempts from coverage Prepaid Calling Cards useable **solely** for telephone services (e.g., long-distance or wireless telephone service or other services analogous in function, including VoIP). The Board, recognizing that many mobile phones are capable of functions in addition to voice communications, such as sending text messages and accessing the Internet, considered whether the exclusion should cover Cards that may be redeemed for related technology services (e.g., mobile broadband or Internet access time). Ultimately, it declined to expand the exclusion to cover Cards that may be redeemed for prepaid Internet access, applications or similar technology services.

### Exemption for Cards, Codes or Other Devices Redeemable For Specific Goods or Services

This exclusion is generally limited to Cards that do not state a specific monetary value but instead are redeemable for (1) a specific good/service or “experience” (e.g., a spa treatment, hotel stay, airline flight) or (2) a certain percentage off the purchase of a good/service (e.g., 10% off). These Cards are not covered by the CARD Act because they are not issued “in a specified amount.” However, if a Card is issued in a specific amount that can be applied toward the purchase of a specific good/service (e.g., \$50 off spa treatment but does not attribute a specific value to the treatment, e.g., “a \$50 value”), it is subject to the CARD Act unless it qualifies for another exemption (e.g., footnote 1).

### What to Watch Out For

When reviewing a Prepaid Calling Card program, companies should identify the relevant redemption policy for these products, e.g., are they redeemable solely for telephone services. If they are not, identify whether the Cards should be modified so that they are (1) redeemable solely for telephone services, (2) comply with the CARD Act, disclosure requirements; or (3) configured to qualify for another CARD Act exemption.

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If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the authors below.

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<sup>1</sup> The new law includes six exemptions from these requirements. The six exemptions are cards, codes or other devices that are: 1) useable solely for telephone services; 2) reloadable and not marketed or labeled as a gift card or gift certificate; 3) part of loyalty, award or promotional programs; 4) not marketed to the general public; 5) issued in paper form only; or 6) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods/services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue. The Board indicated that the statutory exemptions should be interpreted narrowly to ensure consumers receive the full protection contemplated by the CARD Act.

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