

# Disclosures for Prepaid Card Programs: An Overview of the Rules

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## Overview

- Rules Vary by Issuer and Card Type
- Rules for Federally-Chartered Institutions (Open-Loop)
  - Stored Value Cards: Guidance from OCC
  - Gift Cards: Guidance from OCC and OTS
  - Properly Documenting that Bank is the Issuer
- Rules for Retailers (Closed-Loop)
  - Cards Covered
  - Disclosures
  - Expiration Dates
  - Fees



## Rules Vary by Issuer and Card Type

### **Bank-Issued Network**

#### **Branded Card:**

- Material terms
- Regulation E
- Bank Secrecy Act
- FDIC Deposit Insurance
- Privacy policy
- Arbitration
- UDAP
- Preemption

### **Retailer-Issued Closed-Loop Card:**

- Material terms
- State stored value/gift card laws
- UDAP



## Disclosures: Federally-Chartered Institutions

**Stored Value Cards** – (OCC) To adequately inform consumers, banks should consider disclosing:

- How, when and where to use the card
- How to increase the balance
- Whether interest, dividends or other return is paid on the electronic cash
- All fees charged
- Name of issuer and its obligation to redeem the electronic cash
- What happens to abandoned or expired funds
- Where liability lies if a transaction is not properly consummated
- Where, how and when to redeem cash
- Whether customer is protected if card is lost or stolen
- Whether the amount is insured by the FDIC
- How consumers can resolve disputes involving transactions
- Circumstances under which information about transactions may be disclosed to third parties

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## Disclosures: Federally-Chartered Institutions

### **Gift Cards** (OCC and OTS):

- Whether the value is accessible from an ATM
- Whether the consumer can make a purchase for an amount greater than the gift card value
- In a form that can be passed on to gift card recipient from purchaser:
  - Where the card may be used
  - Policies governing fraud, errors, and merchant disputes
  - Name of issuer
  - Issuer's obligation to authorize transactions
  - Any fees that apply to the card
  - Importance of tracking the balance and how to check
  - Whether and how card may be used with other payment methods
  - What to do and responsibility if the card is lost or stolen
  - How to report complaints and receive information about the cards
  - Issuer's ability to revoke or change the terms
  - Whether and how to receive replacement card



## Disclosures: Federally-Chartered Institutions

continued...

- On the card or on a sticker on the card
  - How consumers can resolve problems or complaints
  - Customer service number or website address to obtain additional information about the card
  - Amount or existence of any maintenance, dormancy, usage or related fees
  - Whether the gift card may only be used domestically if applicable
  - Expiration, disclosed on the card (OCC: on the front of the card)

OCC Bulletin 96-48; OTS Guidance, Gift Card Programs, Feb. 2007



## Establishing that Cards are Issued by a Federally-Chartered Institution

- Consumer's agreement is with the bank
- Card and disclosures identify the bank as the issuer
  - [advertisements, point-of-sale materials, Terms and Conditions, collateral, card carrier, and agreements with card program partners should all reflect bank as issuer]
- Bank establishes and imposes the fees and terms
- Bank controls the net proceeds of the fees
- Bank has financial responsibility to merchants that honor the card (holds the funds)

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## State Laws: Which cards are regulated?

- State laws vary widely
- Broad definitions under many gift certificate or escheat laws:

“Gift card means any gift certificate, gift card or electronic gift card or any other medium issued or sold . . . for which the issuer has received payment for the full face value or full banked dollar value of the card for the future purchase or delivery of goods or services.” Ariz. Rev. Stat. Ann. §44-7401.

- State legislative activity continues (~11 States have amended or proposed changes for 2008)





## State Laws: Which cards are regulated?

Common exceptions include:

- General use prepaid cards - cards issued by a financial institution usable at multiple unaffiliated merchants
- Awards, loyalty, or promotional program cards where no consideration received from consumer
- Cards donated or sold below face value to employers or charitable organizations for fundraising purposes
- Payroll cards
- Prepaid calling cards



## State Laws: Disclosure requirements

- Conspicuous disclosure of key terms, fees and conditions, including type size requirements

“...the following practices are declared unlawful... (33)(A) For any person, firm, partnership, association, or corporation to issue a gift certificate, store gift card, or general use gift card without: . . . (ii) Conspicuously printing the expiration date . . . and conspicuously printing the amount of any dormancy or nonuse fees....” Ga. Code Ann., § 10-1-393(b).

- Certain terms on face of card and on promotional materials, some with type size requirements
- Keep in mind State and federal UDAP laws



## State Laws: Expiration date restrictions

- Expiration date permitted (with conspicuous disclosure, if reasonable, etc.) (~11 States)
- Minimum expiration period (1 to 7 years) (~13 States)
- Expiration dates are prohibited (~7 States)
- Escheat if expires (~5 States)

The trend with national retailers is to not include expiration dates



## State Laws: Fee restrictions

- Dormancy, account maintenance, service, inactivity, or post-sale fees:
  - Permitted (with conspicuous disclosure, if reasonable, etc.) (~8 States)
  - Permitted after certain period of time (~7 States)
  - Prohibited or VERY limited (~15 States)
  - Escheat required if fees imposed (~3 States)
- Some States regulate fees for activation, re-activation, cash redemption, or card replacement
- Some States restrict fee amounts



# Questions?

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