



December 21, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street, NW
Washington, DC 20551

Re: Proposed Rule to amend Regulation E in Regard to the Treatment of Gift Cards and other Pre-Paid Products (Docket No. R-1377)

Dear Ms. Johnson,

The Food Marketing Institute¹ (“FMI”) and the members that we represent appreciate the opportunity to respond to the Federal Reserve System’s Board of Governors (“Board” or “Fed”) request for comments on the proposed rule to amend Regulation E in regard to the treatment of pre-paid products, primarily gift cards, as directed by the Credit Card Accountability, Responsibility, and Disclosure Act of 2009. 74 Fed. Reg. 60986 (November 20, 2009).

Gift cards are a valuable tool for merchants and customers. Gift cards help merchants strengthen brand loyalty and provide customers with gift-giving flexibility. FMI values high levels of consumer transparency and many of the store card programs administered by our members have limited, if any, dormancy, inactivity, or service fees, or establish expiration dates with respect to the underlying funds.

FMI members sell both open-loop and closed-loop products in their stores, however, our comments primarily address closed-loop cards. Specifically, our comments address disclosure and marketing requirements, application of existing Regulation E obligations, and transition challenges. Some of these issues will, however, cover the challenges retailers may face under the proposed rule as sellers of both open-loop and closed-loop cards.

¹ FMI conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI’s U.S. members operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI’s retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from more than 50 countries. FMI’s associate members include the supplier partners of its retail and wholesale members.

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Disclosure & Marketing Requirements:

To the extent our members' store gift card program products are covered by the Board's proposed rule, we support the Board's definition of "clear and conspicuous" disclosures. The size, shape and form of retail gift card products change with market demand. Thus, we appreciate the Fed's recognition that a specific font type size and disclosure notice location may not make sense for all store gift card products. We believe the proposed "clear and conspicuous" definition is sufficient to ensure that store gift card purchasers receive adequate disclosure.

Additionally, many of our members sell pre-paid cards that may fall under the exclusion for cards not labeled or marketed as gift cards (i.e., "open loop" cards). Retailers often display these cards at a gift card mall/display at the front of our stores because consumers expect all such cards to be displayed in the same place. As a result of consumer expectations, as well as front of the store and check-out lane space constraints, it may not make sense to shelve these products in an alternative location. However, the proposed exclusion only applies to pre-paid cards that are not sold on a display with gift cards so the proposed rule will create some stocking challenges for retailers and some confusion for consumers. We recommend that the final rule permit the greatest possible degree of flexibility for retail implementation.

Application of Existing Regulation E Obligations:

FMI supports the Board's decision to limit the application of the Electronic Funds Transfer Act ("EFT Act") and Regulation E requirements to gift cards to fee disclosures. Other requirements of the EFT Act and Regulation E, such as the issuance of periodic statements, simply would not make sense in the gift card context. Specifically, gift cards differ from many of the products covered under Regulation E because gift cards are primarily "gifted" or "exchanged." Customers who purchase gift cards are rarely the ultimate user. Therefore, requiring merchants to provide a periodic statement to the ultimate user would present untold logistical challenges in terms of trying to capture and follow user information. Moreover, gift card purchasers might be uncomfortable providing information of that type to a store clerk, and might not even have the recipient's contact information with them at the store. Given the transferable nature of store gift card products, FMI strongly supports the Board's application of Regulation E obligations to store gift card products under the proposed rule and hopes the Board will maintain the same stance for store gift card products in further rulemakings.

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Transition Challenges:

FMI commends the Board for recognizing the challenge posed by a short six month implementation date, especially for brick and mortar retailers. As stated earlier, many of the FMI member store gift card programs do not have fees or expiration dates, so few store gift card inventories will be affected by the proposed rule. However, many merchants sell pre-paid gift cards that may be affected by the proposed rule, and it could take some time for retailers to turn over their inventory of those products. A realistic timeframe for this transition could extend beyond the August 22, 2010 implementation deadline depending on the size and resources of the merchants involved. We recommend that the Board expressly exercise their administrative enforcement discretion for an additional six months to ensure adequate time for current products to clear the marketplace.

Additionally, there may be some merchants who need to update their store gift card program products, policies and procedures in order to meet the new proposed requirements. Currently, many store gift card programs are subject to state gift card laws, but for those that are not, or for those who currently have a minimum card expiration date of less than five years, significant changes may need to be made.

* * *

We appreciate the opportunity to comment on the Board's proposed rule on the treatment of pre-paid products under changes to Regulation E, and we respectfully request that you consider our comments as you promulgate the final rule. If you have any questions on the foregoing, or if we may be of assistance in any way, please do not hesitate to let us know.

Sincerely,



Deborah R. White
Senior Vice President &
Chief Legal Officer

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