

## Congress Extends Implementation Date of Final Rule Governing Gift Cards

Client Alert

August 5, 2010

As detailed in a previous client alert issued by Michael Best on March 29, 2010 (available [here](#)), the Federal Reserve Board recently issued new federal regulations governing the provision of retail gift cards. Specifically, the new Rules amend Regulation E of The Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*, which, in conjunction with the recently promulgated Credit Card Accountability and Responsibility Disclosure Act of 2009 (the "CARD Act"), requires greater transparency for retailers seeking to impose fees (such as dormancy fees for non-use) and/or expiration dates on users of gift cards. The new Rules, originally slated to take effect on August 22, 2010, apply to both retail cards sold for store credit and cards issued through loyalty or other reward programs.

On July 27, 2010, the ECO-Gift CARD Act became public law (No. 111-209) after the House passed it unanimously on June 14, 2010, and the Senate passed it by unanimous consent on July 13, 2010. The ECO-Gift CARD Act extends the gift card implementation deadline under the CARD Act from August 22nd to January 31, 2011. This extension allows retailers to sell existing gift cards that were produced prior to April 1, 2010, and ensures consumer access to them during the busy holiday shopping season. The Network Branded Prepaid Card Association had sought the delay, arguing that the Rules' requirements regarding the display of expiration dates would result in more than a hundred million gift cards having to be scrapped.

The extension of the effective date for the Rules is conditioned upon the requirement that gift certificate and card issuers comply with the dormancy, inactivity and service fee restrictions set forth in the CARD Act. Consumers who purchase old gift card stock currently in stores during this transition period must still receive the full benefits of the new Rules, including:

- No service fees such as ATM or reload fees until one year after inactivity and then only one fee may be charged per month;
- Gift cards must have expiration dates of not less than five years from the last load; and
- Free replacement cards must be provided or issuers can provide the remaining balance to the cardholder.

These conditions must be disclosed to consumers via in-store signage, messages during customer service calls, on web sites and in all general advertising. Compliance with these notice requirements must continue through January 31, 2013.

The import of the ECO-Gift CARD Act is that the destruction and reprinting of cards that do not meet the CARD Act's original August 22 deadline need not occur. Rather, these cards may be used until January 31, 2011, provided the aforementioned conditions are met. Finally, retailers should be aware that the other gift card requirements established by the Federal Reserve, per the CARD Act, will still go into effect August 22 as originally planned.