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## **The Fair Gift Card Act of 2009: Good intentions, disastrous results**

by Brad Fauss

**O**n March 25, 2009, Sen. Charles Schumer, D-N.Y., and Sen. Mark Udall, D-Colo., proposed new legislation called the Fair Gift Card Act of 2009. According to its sponsors, the purpose of the bill is to protect millions of U.S. consumers from unreasonable fees and expiration dates that routinely drain the value of gift cards.

While I applaud the senators' efforts to protect consumers against unfair card practices, I strongly believe the proposed bill will reduce consumer choice. If the bill is enacted into law, the entire segment of open-loop, network-branded prepaid cards (those issued by American Express Co., Discover Financial Services, MasterCard Worldwide and Visa Inc.) may either cease to exist or their availability to consumers will be dramatically limited.

### **Diversity of offerings**

Prepaid cards comprise a diverse group of extraordinarily popular products including gift, promotion and incentive (such as rebate), payroll, government benefits, university refund, flexible savings account, corporate expense management and general purpose reloadable cards (the last serve as an increasingly mainstream alternative to bank accounts).

Generally, prepaid cards reduce costs for all parties involved – they represent a cheaper payment delivery mechanism for corporations and governments, and the fees paid by consumers are much lower than check cashing fees. Prepaid cards also provide people without bank accounts access to the U.S. electronic payment system, while at the same time giving them a safe and secure method to store and spend their money.

The proposed bill prohibits card issuers from imposing a dormancy or service fee on "general use prepaid cards, gift certificates and store gift cards," unless the cards have less than \$5 remaining on them after 24 consecutive months of inactivity, and the fees do not exceed \$1 per month. In addition, the bill requires that prepaid cards remain valid for at least five years. These restrictions present several problems.

### **Not closed-loop**

First, the bill doesn't recognize the significant difference between "closed-loop" (retail gift cards) and "open-loop" (network-branded prepaid cards). Closed-loop gift cards are redeemed at a single retailer or affiliated group of retailers; effectively, they are a prepayment for goods and services to be purchased *at that retailer*, for example a Best Buy Inc. gift card redeemed at a Best Buy outlet. The retailer is guaranteed the entire value loaded onto retail gift cards.

Unlike closed-loop retail gift cards, open-loop prepaid cards represent delivery of a service – the ability to use said cards for payment at millions of locations worldwide. The issuers of open-loop prepaid cards don't receive the amounts loaded on the cards; ultimately that money goes to retailers or is withdrawn by consumers from ATMs.

In fact, open-loop prepaid card issuers earn revenue primarily through the fees associated with the cards. These issuers also bear the costs for a significant number of services related to the cards, including card fulfillment, telephone customer service, protection against lost or stolen cards, data storage and protection, and processing and acceptance services.

As a result, if the primary revenue sources for prepaid cards are eliminated by restricting service fees, these products will no longer be profitable and may no longer be offered.

Furthermore, the proposed bill's restrictions on expiration dates do not increase protection for consumers. For fraud control purposes, many credit card systems work on platforms that require expiration dates on cards of one to three years. In addition, prepaid cards that utilize the existing credit card infrastructure therefore cannot be accepted without expiration dates.

Any proposed legislation that suggests prepaid cards have either no expiration dates or expiration dates of at least five years after activation is not in the best interest of consumers.

## States have already spoken

Finally, prepaid cards are already regulated by a majority of states and, in many cases, by federal agencies. As of the end of 2008, approximately 34 states had legislatively addressed the issue of fees and expiration dates; 28 of those states have excluded cards which are redeemable at multiple, unaffiliated merchants (open-loop prepaid cards) because of the significant economic differences between open-loop cards and closed-loop retail gift cards.

Those issuers not subject to state regulations are regulated by federal agencies such as the Office of the Comptroller of the Currency and the Office of Thrift Supervision, each of which have already adopted guidelines regarding disclosure practices for prepaid cards. There are also ample fair trade laws, both state and federal, that apply to prepaid cards.

I support consumer protection measures such as full and complete disclosure of any fees that apply to prepaid cards, but this bill fails to protect consumers and threatens to wipe out an industry that is providing a valuable service to millions of U.S. consumers. Furthermore, the federal government should be encouraging the continued growth of the prepaid card industry at a time when financial institutions are restricting consumer access to credit nationwide.

To voice your opinions about this proposed legislation, e-mail Brad at [brad.fauss@springbokservices.com](mailto:brad.fauss@springbokservices.com).

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