

New Legal Rules Applicable To Gift Cards and Other Prepaid Card Programs

This notice provides only general information and should not be construed as legal advice. Merchants are encouraged to consult with their legal counsel for specific advice and to ensure compliance under the rules.

On July 29, 2011, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued new anti-money laundering rules to prevent the use of prepaid products (including gift cards) for money-laundering.

All merchants who issue their own gift cards (either directly or through a third-party vendor) and merchants who sell or reload other company's gift cards are impacted by the rules.

Your obligations under these rules will depend upon, among other things:

- a) The amount of gift cards sold to any one person**
- b) The amount of value that can be "associated" with any one card during a one day period**
- c) Whether you allow gift cards to be redeemed for cash**
- d) Whether your gift cards are deemed "closed loop" cards**

FinCEN has announced that it will begin enforcing these rules after March 31, 2012, so all gift card merchants will need to take action to comply by that date.

What obligations apply?

The most significant obligations under the rule are applicable to "providers of prepaid access" and "sellers of prepaid access" (as those terms are defined in the rules). However, certain obligations apply to all gift card issuers wishing to avoid falling within the definition of a "provider" or "seller" under the rule. (See below for the respective obligations of "providers" and "sellers" under the rules.)

Who is a "provider" under the rules?

A "provider" is a person who exercises principal oversight and control over a covered "prepaid program." These terms are defined broadly and would generally include any merchant issuing gift cards, unless the merchant's gift card program falls within an exemption to the rule. 2.





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The primary exemption from this definition would apply only if a merchant's card program meets all three of the following requirements:

- a) **All of the gift cards are "closed loop" (defined as gift cards that can be used only for goods or services involving a defined merchant or location or set of affiliated locations, such as a specific merchant or merchant chain, or a college campus);**
- b) **No card can have more than \$2,000 maximum value "associated" with it on any day, meaning the card's balance at the beginning of the day plus any loads made that day (regardless of whether any funds are spent) cannot exceed \$2,000**
- c) **Cards cannot be redeemed, in whole or in part, for cash (beyond any specific dollar amount that might be required by state law).**

Unless the foregoing exemption or another exemption applies, a gift card issuer will generally be treated as a "provider" under the rules, and will be subject to the obligations described below.

Who is a "seller" under the rules?

There are two ways a gift card merchant can be a "seller" under the rules.

First, a gift card merchant is a "seller" if it:

- a) **Sells any type(s) of prepaid cards (even phone cards or closed loop gift cards under \$2,000) having a combined value of more than \$10,000 to any one person during any one day**
- b) **Has not implemented policies and procedures reasonably adapted to prevent such sales**

However, there is an exception for business-to-business bulk sales. A merchant is not a "seller" if it is only selling cards in excess of \$10,000 in a day to another business for further distribution or sale to end users/consumers by that business.

Second, if a merchant sells a prepaid card that does not fall within the exemption for "closed loop cards" having less than \$2,000 maximum associated value in a day (and that cannot be redeemed for cash), and such cards **can be used before personal information about the purchaser is collected by the merchant and verified in accordance with the rules**, the merchant is a "seller" (in addition to likely being a "provider").

What must a merchant do if it is a "provider" or a "seller"?

Merchants that are "providers" or "sellers" under the rules must:

- a) **Develop, implement and maintain an anti-money laundering compliance program.**
 - b) **Collect and retain identifying information about a person who purchases or reloads a prepaid card (including name, address, date of birth, and identification number), and verify that person's identity.**
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- e) “Providers” must also register as an MSB with FinCEN and retain access to certain records related to prepaid access transaction (including detailed transactional information).
- f) “Sellers” must also collect and retain identifying information about a person who obtains any type(s) of prepaid access having a combined value in excess of \$10,000 in a day (including name, address, date of birth, and identification number), and verify that person’s identity.

How can a merchant avoid being a “provider” or a “seller”?

First, for its own gift cards, the merchant must ensure that its gift cards are truly “closed loop,” that not more than \$2,000 maximum value can be associated with the card on any day, as described above, and that cards cannot be redeemed for cash (except as specifically required by law).

Second, where a merchant sells or reloads other companies’ gift cards and open loop prepaid cards, the merchant must not sell or reload cards under any covered “prepaid programs” that can be used before customer identification and verification are performed. Check with the cards’ issuers to confirm.

Third, the merchant must not sell any prepaid cards having a combined value in excess of \$10,000 to any single person during any one day. **The merchant must also implement policies and procedures reasonably adapted to prevent such sales.** These policies and procedures must be risk-based and appropriate to the merchant, taking into account facts such as its typical customers, its location(s), and its volume of prepaid access sales.

Resources

For more information, we recommend the following websites:

- FinCEN’s press release regarding the prepaid access rules (with a link to the rules text):
http://fincen.gov/news_room/nr/html/20110726b.html
- FinCEN’s notice on its extension of the compliance date for the rules:
<http://fincen.gov/whatsnew/html/20110909.html>
- FinCEN’s FAQs on the prepaid access rules:
http://fincen.gov/news_room/nr/html/20111102.html
- FinCEN’s webinar on the prepaid access rules:
<http://treas.yorkcast.com/webcast/Viewer/?peid=65574c79c238460888609760473589dc1d>

For More Information

Contact the Partner Relationship Management Team at 800.509.0625, option 4 or via e-mail at salesupport@valutec.net
