

**Office of Thrift Supervision**

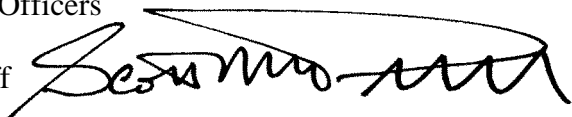
Department of the Treasury

Deputy Director

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February 28, 2007

MEMORANDUM FOR: Chief Executive Officers

FROM: Scott M. Polakoff 

SUBJECT: Guidance on Gift Card Programs

Gift cards continue to grow in popularity and are projected to continue to increase in volume. Approximately 20% of OTS-regulated institutions currently offer gift card programs. The majority of these savings associations began offering gift cards during the last few years – primarily as a customer service convenience. However, for some of our associations, gift cards are a significant line of business generating large volumes of activity with increasing levels of income.

The attached guidance outlines the Office of Thrift Supervision's supervisory expectations for savings associations' gift card programs. The purpose of the guidance is to assist the thrift industry with ensuring adequate account administration, marketing, and consumer disclosure practices for gift card programs; to encourage more uniform practices among thrifts that offer gift card programs; and to promote consumers' understanding of gift card features while continuing to encourage product innovation.

OTS expects savings associations to develop and maintain appropriate policies, procedures, and processes to effectively administer their gift card programs. Associations offering gift card programs must implement a framework to appropriately identify, mitigate, manage, and monitor inherent risks. Savings associations must also ensure that consumers receive appropriate and pertinent information about the gift cards the institution offers such as principal features, applicable fees, and expiration dates. Additionally, OTS expects savings associations to avoid the use of promotional materials that could mislead a reasonable consumer about the terms, conditions, or limitations of the association's gift card program.

Questions regarding this guidance should be directed to your OTS Regional Office.

Attachment

Gift Card Programs

Purpose and Scope

This document outlines the Office of Thrift Supervision's (OTS's) supervisory expectations for savings associations' gift card programs. The purpose of this guidance is to ensure adequate account administration, marketing, and consumer disclosure practices for gift card programs; to encourage more uniform practices among the thrift institutions that offer gift card programs; and to promote consumer protection while continuing to encourage product innovation.

Background

A gift card is a payment card with a preloaded value that one consumer typically gives to another as a gift. Like a gift certificate, a consumer may use a gift card to purchase goods or services from one or more merchants. There are generally two types of gift cards:

Branded or open-system gift cards carry the logo of a payment card network (e.g., Visa, MasterCard, Discover, or American Express) are sold by savings associations and other financial institutions or their non-thrift partners, and can be used at any merchant that accepts the corresponding payment network's brand. Typically, open system cards may be reloaded, allowing the cardholder to add value.

Private-label or closed-system gift cards are usually limited to a defined merchant or location (or set of locations) and to the initial value posted to the card. However, some closed-system card programs may allow the cardholder to add value.

OTS Supervisory Expectations Governing Gift Card Programs Offered by Savings Associations

OTS conducts regular examinations of thrifts to assess safety and soundness as well as compliance with established consumer laws and regulations. OTS expects savings associations to ensure that consumers receive appropriate and pertinent information about gift card products such as principal features, applicable fees, and expiration dates. OTS also expects savings associations to follow safe and sound practices and ensure appropriate levels of consumer protection when issuing gift cards. For example, OTS considers establishing minimum expiration dates of at least twelve months from the date of issuance to be a sound practice.

Associations issuing gift cards must comply with several federal requirements affecting consumer protections.¹ Among them are:

- OTS's Advertising rule, which prohibits thrift institutions from using any advertising or promotional material or making any representation that is inaccurate or that in any way misrepresents the services offered;²
- OTS's Nondiscrimination rule, which prohibits discrimination not just in lending but in other services as well;³

¹ State-chartered savings associations must also comply with applicable state laws. Refer to OTS Legal Opinion P-2006-3 (June 9, 2006) regarding preemption of five types of state law restrictions on gift cards for federal savings associations and their operating subsidiaries.

² 12 C.F.R. § 563.27.

- Section 5 of the Federal Trade Commission Act, which prohibits, among other things, unfair or deceptive acts or practices in or affecting commerce;⁴
- The Bank Secrecy Act (BSA) and implementing regulations;⁵
- USA PATRIOT Act;⁶
- OTS's Funds Transfer Services rule, which requires the activity to conform to applicable laws and established commercial practices;⁷ and
- OTS's Electronic Operations rule, which requires numerous precautions including identifying, assessing and mitigating risk, implementing security measures, and complying with security device requirements in 12 C.F.R. part 568.⁸

Consumer Protection Considerations

OTS expects savings associations to provide consumers with information concerning the terms, fees, and basic features of their gift cards. In addition, savings associations should avoid use of promotional materials that could mislead a reasonable consumer about the terms, conditions, or limitations of the associations' gift card programs.

Disclosures should provide consumers with information in a format that is readily available to both the purchaser and the recipient. Examples of disclosures that savings associations should provide include:

- Where the consumer can use the gift card.
- The expiration date of the gift card.
- The amount of shipping and handling fees, if any.
- The amount of service fee(s), if any.
- The amount of monthly maintenance fee(s), if any.
- How the consumer can check/track the gift card balance.
- Policies for lost or stolen gift cards.
- Whether the consumer can exchange the gift card for cash.
- Whether the consumer can use the gift card to withdraw cash at an automated teller machine (ATM).
- Whether the consumer can make a purchase for an amount greater than the gift card.

³ 12 C.F.R. pt. 528.

⁴ 15 U.S.C.A. § 45. – OTS may take enforcement action against a savings association for violating § 5 under § 8 of the Federal Deposit Insurance Act. OTS Opinion Chief Counsel October 25, 2004 at 10 n.37. The Federal Trade Commission highlighted the need for gift card issuers to provide consumers clear and conspicuous disclosures, particularly of fees and expiration dates. See Letter from FTC Chairman Honorable Joe Barton, February 14, 2006.

⁵ 12 U.S.C.A. § 1818, 1829b, and 1951-1959; 31 U.S.C.A. 5311 *et seq.*; 12 C.F.R. § 563.177 and § 563.180; and 31 C.F.R. pt. 103.

⁶ Regulations implementing section 326 (Customer Identification Programs) (CIP) of the USA PATRIOT Act require each savings association to implement a written CIP appropriate for its size, location, and type of business that includes certain minimum requirements. The association must incorporate the CIP into its anti-money laundering compliance program, which is subject to approval by the association's board of directors. 12 C.F.R. § 563.177.

⁷ 12 C.F.R. § 545.17.

⁸ 12 C.F.R. § 555.210.

Such disclosures will provide consumers with information to understand and consider the cost, fees, terms, features, and risks of purchasing a gift card product. The content and format of the disclosures and cardholder agreement should promote consumer understanding and usability. Savings associations should utilize plain language, clear and conspicuous font, and bold headings to distinguish important topics from surrounding text. Institutions should also present similar information together to simplify the disclosure.

Format for Disclosures

A financial institution should provide the following information in a form that can be passed on from the gift card purchaser to the gift card recipient. This can be accomplished through a sleeve insert or other promotional packaging:

- The savings association's policies governing fraud, errors, and merchant disputes.
- The name of the issuing association.
- Any fees that apply to the card.
- What to do if the card is lost or stolen.
- When applicable, the issuer's ability to revoke or change the terms of the gift card agreement.

Basic information that is essential to a gift card recipient's decisions about when and how to use the card should be provided on the gift card or on a sticker affixed to the gift card. Generally, this information will include disclosures relating to the following matters:

- How consumers can resolve problems and complaints about their cards.
- A customer service number or Web site address to obtain additional information about the gift card.
- The amount or existence of any monthly maintenance, dormancy, usage, or related fees.
- Whether the gift card can only be used domestically, if applicable.
- The expiration date, which should be prominently displayed on the card.

BSA/Anti Money Laundering/OFAC Considerations

Savings associations should consider anti-money laundering (AML) laws, regulations, and guidance⁹ in connection with establishment and administration of a gift card program for reporting suspicious activities. Specifically, savings associations must consider BSA, the USA PATRIOT Act, and the regulations of the Office of Foreign Assets Control (OFAC), which prohibits any U.S. person from conducting transactions with certain entities and persons listed on OFAC's specially designated and blocked persons list. Gift card providers should consider risk-based internal controls to screen private information against the OFAC list to avoid liability for conducting transactions with people or entities that have ties to terrorism.

Currently, issuers of disposable, fixed denomination gift cards are not required to comply with a major aspect of the USA PATRIOT Act: customer identification. However, savings

⁹ Refer to the Electronic Cash section of the FFIEC BSA/AML Examination Manual dated July 28, 2006 for additional information.

associations that issue open system reloadable prepaid cards¹⁰ should develop systems to apply the customer identification program to such gift card products. Conversely, open system gift cards carrying a major payment card network that are not reloadable and have no cash access are less likely to be used for money laundering or terrorist financing. Thrift institutions should:

- Conduct a risk assessment relating to AML laws and regulations and establish systems for BSA/AML monitoring, identification, and reporting for unusual and suspicious activities occurring through e-cash (a digital representation of money) that are commensurate with the risks identified.
- Maintain records of the buyer of the gift card and its intended recipient.
- Review gift card activity reports for unusual and suspicious activities.

Risk Management

Savings associations should consider the following before offering a gift card program:

- Appropriate due diligence including a risk assessment.
- An assessment of the institution's risk management capabilities to address identified risks.
- An evaluation of whether existing staff has appropriate skills to administer the new product(s).¹¹
- Resources needed to establish appropriate back-end processing capabilities.
- Identification of distribution channels.
- Consumer disclosure content.
- Establishment of an internal audit program, including scope and frequency of reviews.
- Employee training.

OTS expects savings associations to implement a framework to effectively identify, mitigate, manage, and monitor operational risks in connection with gift card programs. Examples of such risk management practices include:

- Ensuring that the institution has individuals with appropriate skills to rollout and oversee the program.
- Developing and maintaining appropriate policies and procedures to effectively administer the program.
- Periodically reviewing consumer disclosures for adequacy.
- Establishing internal controls and loss prevention procedures.
- Developing an internal audit program to conduct periodic reviews of internal controls and risk management systems.
- Performing appropriate due diligence and monitoring of third-party service providers.

¹⁰ Open system cards can be used to connect to global debit and ATM networks; the cards can be used for purchases at any merchant or to access currency at any ATM that connects to global payment networks.

¹¹ Use of third parties is appropriate provided thrifts follow OTS guidance on such arrangements. See Thrift Bulletin 82a.