

(B) the issuer or vendor of such certificate or card informs the purchaser of such charge or fee before such certificate or card is purchased, regardless of whether the certificate or card is purchased in person, over the Internet, or by telephone.

(4) Exclusion

The prohibition under paragraph (1) shall not apply to any gift certificate—

(A) that is distributed pursuant to an award, loyalty, or promotional program, as defined by the Bureau; and

(B) with respect to which, there is no money or other value exchanged.

(c) Prohibition on sale of gift cards with expiration dates

(1) In general

Except as provided under paragraph (2), it shall be unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

(2) Exceptions

A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if—

(A) the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and

(B) the terms of expiration are clearly and conspicuously stated.

(d) Additional rulemaking

(1) In general

The Bureau shall—

(A) prescribe regulations to carry out this section, in addition to any other rules or regulations required by this subchapter, including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed and the amount of remaining value of a gift certificate, store gift card, or general-use prepaid card below which such charges or fees may be assessed; and

(B) shall² determine the extent to which the individual definitions and provisions of this subchapter or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

(2) Consultation

In prescribing regulations under this subsection, the Bureau shall consult with the Federal Trade Commission.

(3) Timing; effective date

The regulations required by this subsection shall be issued in final form not later than 9 months after May 22, 2009.

(Pub. L. 90–321, title IX, §915, as added Pub. L. 111–24, title IV, §401(2), May 22, 2009, 123 Stat. 1751; amended Pub. L. 111–203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

²So in original. The word “shall” probably should not appear.

PRIOR PROVISIONS

A prior section 915 of Pub. L. 90–321 was renumbered section 916 and is classified to section 1693m of this title.

AMENDMENTS

2010—Pub. L. 111–203 substituted “Bureau” for “Board” wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 111–24, title IV, §403, as added by Pub. L. 111–209, §1, July 27, 2010, 124 Stat. 2254, provided that:

“(a) IN GENERAL.—Except as provided under subsection (b) of this section, this title [enacting this section and amending sections 1693m to 1693r of this title and provisions set out as a note under section 1693 of this title] and the amendments made by this title shall become effective 15 months after the date of enactment of this Act [May 22, 2009].

“(b) EXCEPTION.—

“(1) IN GENERAL.—In the case of a gift certificate, store gift card, or general-use prepaid card that was produced prior to April 1, 2010, the effective date of the disclosure requirements described in sections 915(b)(3) and (c)(2)(B) of the Electronic Funds [probably should be “Fund”] Transfer Act [15 U.S.C. 1693f–1(b)(3), (c)(2)(B)] shall be January 31, 2011, provided that an issuer of such a certificate or card shall—

“(A) comply with paragraphs (1) and (2) of section 915(b) of such Act [15 U.S.C. 1693f–1(b)(1), (2)];

“(B) consider any such certificate or card for which funds expire to have no expiration date with respect to the underlying funds;

“(C) at a consumer’s request, replace such certificate or card that has funds remaining at no cost to the consumer; and

“(D) comply with the disclosure requirements of paragraph (2) of this subsection.

“(2) DISCLOSURE REQUIREMENTS.—The disclosure requirements of this subsection are met by providing notice to consumers, via in-store signage, messages during customer service calls, Web sites, and general advertising, that—

“(A) any such certificate or card for which funds expire shall be deemed to have no expiration date with respect to the underlying funds;

“(B) consumers holding such certificate or card shall have a right to a free replacement certificate or card that includes the packaging and materials, typically associated with such a certificate or card; and

“(C) any dormancy fee, inactivity fee, or service fee for such certificates or cards that might otherwise be charged shall not be charged if such fees do not comply with section 915 of the Electronic Funds [probably should be “Fund”] Transfer Act [15 U.S.C. 1693f–1].

“(3) PERIOD FOR DISCLOSURE REQUIREMENTS.—The notice requirements in paragraph (2) of this subsection shall continue until January 31, 2013.”

Pub. L. 111–24, title IV, §403, May 22, 2009, 123 Stat. 1754, which provided that title IV of Pub. L. 111–24 was to become effective 15 months after May 22, 2009, was repealed by Pub. L. 111–209, §1, July 27, 2010, 124 Stat. 2254.

§ 1693m. Civil liability

(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who

fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Unintentional violations; bona fide error

Except as provided in section 1693h of this title, a person may not be held liable in any action brought under this section for a violation of this subchapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Good faith compliance with rule, regulation, or interpretation

No provision of this section or section 1693n¹ of this title imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an ap-

propriate model clause issued by the Bureau or the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) Notification to consumer prior to action; adjustment of consumer's account

A person has no liability under this section for any failure to comply with any requirement under this subchapter if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this subchapter, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 1693h of this title.

(f) Action in bad faith or for harassment; attorney's fees

On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Jurisdiction of courts; time for maintenance of action

Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(Pub. L. 90-321, title IX, §916, formerly §915, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737; renumbered §916, Pub. L. 111-24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; amended Pub. L. 111-203, title X, §1084(1), (4), July 21, 2010, 124 Stat. 2081, 2082.)

REFERENCES IN TEXT

Section 1693n of this title, referred to in subsec. (d), was in the original a reference to section 916 of Pub. L. 90-321, and was translated as meaning section 917 of Pub. L. 90-321 to reflect the probable intent of Congress and the renumbering of section 916 of Pub. L. 90-321 as section 917 by Pub. L. 111-24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.

PRIOR PROVISIONS

A prior section 916 of Pub. L. 90-321 was renumbered section 917 and is classified to section 1693n of this title.

AMENDMENTS

2010—Pub. L. 111-203, §1084(1), which directed the substitution of "Bureau" for "Board" wherever appearing in section, was not executed in subsec. (d), which was the only place such term appeared, to reflect the probable intent of Congress and the amendment by Pub. L. 111-203, §1084(4). See below.

Subsec. (d). Pub. L. 111-203, §1084(4), struck out "of Board or approval of duly authorized official or employee of Federal Reserve System" after "interpretation" in heading that had been supplied editorially and inserted "Bureau of Consumer Financial Protection or the" before "Federal Reserve System" in par. (1) and "Bureau or the" before "Board" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L.

¹ See References in Text note below.

111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1693n. Criminal liability

(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter

Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this subchapter or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this subchapter;

shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(b) Violations affecting interstate or foreign commerce

Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating \$1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating \$1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating \$500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating \$1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost,

stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(c) “Debit instrument” defined

As used in this section, the term “debit instrument” means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

(Pub. L. 90-321, title IX, §917, formerly §916, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3738; renumbered §917, Pub. L. 111-24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.)

PRIOR PROVISIONS

A prior section 917 of Pub. L. 90-321 was renumbered section 918 and is classified to section 1693o of this title.

§ 1693o. Administrative enforcement

(a) Enforcing agencies

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part;

(4) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act and¹

(5) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person sub-

¹ So in original. Probably should be “; and”.