



Bailey Cavalieri LLC
ATTORNEYS AT LAW

CLIENT ALERT

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Gift Certificate/Gift Card Legislation Update September 2011

This Client Alert addresses recent federal legislative action relative to issuers of prepaid access (i.e. stored value cards and gift cards). On September 9, 2011, the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued Notice 2011-3 (the "Notice") delaying (from September 27, 2011 to March 31, 2012) the date for compliance with the Bank Secrecy Act's Final Rule (the "Final Rule") for Providers of Prepaid Access ("POPA") and Sellers of Prepaid Access ("SOPA").

Essentially, by virtue of the Notice, FinCEN has provided a grace period for providers and sellers of prepaid access to comply with the Final Rule until March 31, 2012.

Grace Period for Compliance with the Final Rule for SOPAs and POPAs

As we reported to you in August, the Final Rule subjects certain money service businesses (defined by statute to include many gift card issuers) that issue prepaid access to additional registration, reporting and recordkeeping requirements as part of the Bank Secrecy Act's fraud and anti-money laundering prevention programs.

The original compliance date under the Final Rule for POPAs and SOPAs was September 27, 2011. After taking into account concerns raised by POPAs and SOPAs over the past few weeks concerning the short window that the Final Rule provides for compliance, **FinCEN has decided to push back the Final Rule's compliance date for SOPAs and POPAs until March 31, 2012.**

Accordingly, the Notice provides three types of administrative relief for POPAs and SOPAs:

- SOPAs will not have to comply with any provisions of the Final Rule until March 31, 2012.
- POPAs will not be responsible for compliance with all aspects of the Final Rule until March 31, 2012; however, POPAs must comply with three aspects of the Final Rule as of September 27, 2011, including: (i) establishment of an internal Anti-Money Laundering Program, (ii) the reporting of suspicious transactions, and (iii) maintenance of additional transaction records related to sales of prepaid access.
- FinCEN will not initiate any compliance or enforcement actions against POPAs or SOPAs nor will FinCEN assess any civil monetary penalties on POPAs or SOPAs for violations of the Final Rule that occur before March 31, 2012.

Commentary

Based on complaints FinCEN received from the industry, the purpose of the delay of the compliance date for SOPAs is to relieve SOPAs of the obligation of attempting to revamp IT systems during the holiday shopping season when many SOPAs do not have that capability. With respect to POPAs, FinCEN's furlough in compliance with the Final Rule aims to give those entities time to negotiate new agreements with their distributors and retailers as well as clarify the status of their prepaid products under the Final Rule.

While SOPAs are wholly relieved of all compliance obligations with the Final Rule until March 31, 2012, POPAs, beginning September 27, 2011, are still required to comply with the basic requirements of the Final Rule that are applicable to POPAs, including the establishment of an Anti-Money Laundering Program, the reporting of suspicious transactions, and the maintenance of additional transaction and customer records.

Nevertheless, due to the fact that FinCEN will not be enforcing the Final Rule with respect to POPAs or SOPAs for any violations of the Final Rule that take place before March 31, 2012, both SOPAs and POPAs are essentially exempt from compliance with any aspects of the Final Rule until March 31, 2012.

The additional time for compliance with the Final Rule will provide both SOPAs and POPAs with a window of opportunity to evaluate their prepaid access programs and determine if their prepaid programs can be creatively structured to avoid coverage by the Final Rule.

We will continue to monitor new developments regarding compliance with the Final Rule and will update you when new information becomes available.

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