Courts have split over challenges to gift card expiration dates and inactivity fees, some finding the claims preempts, others rejecting preemption challenges. Some of these decisions deal with the question of whether state law is preempted as to a non-bank entity that sells a gift card that has some connection with a bank—an issue mooted by the Dodd-Frank Act amendments that limit preemption to banks themselves, not to agents of banks. Moreover, federal law also now regulates gift card inactivity fees and expiration dates.

Footnotes

234 [223] See SPGGC, L.L.C. v. Blumenthal, 505 F.3d 183 (2d Cir. 2007) (expiration date was necessary for fraud prevention and card maintenance requirements applicable to all prepaid cards bearing VISA logo, so outright ban on expiration dates could have prevented national bank from acting as VISA issuer which it was authorized to do by NBA); SPGGC, L.L.C. v. Ayotte, 488 F.3d 525 (1st Cir. 2007).

Note that the SPGGC cases involved the operator of shopping malls that sold the cards and operated as an agent of the bank. Agents are no longer entitled to the benefits of preemption.

235 [224] Mwantembe v. TD Bank, 669 F. Supp. 2d 545 (E.D. Pa. 2009) (failure to disclose inactivity and dormancy fees on gift cards); Mann v. TD Bank, 2009 WL 3818128 (D.N.J. Nov. 12, 2009) (challenge to gift card advertising campaigns boasting that cards had “no fees” or were “free,” when there were dormancy and replacement fees); Sharabani v. Simon Prop. Grp., Inc., 942 N.Y.S.2d 551 (N.Y. App. Div. 2012) (common law and UDAP claims challenging $15 renewal fee for card bought in 2007 are not preempted if based on generally applicable law as long as they are not based on state abandoned property law, which is explicitly preempted by OTS regulation) (card bought in 2007); Sheinkin v. Simon Prop. Grp., Inc., 931 N.Y.S.2d 823, 827 (N.Y. Sup. Ct. 2011) (no preemption of state statutory and common law claims challenging small-print disclosures and dormancy and cancellation fees on gift cards; laws would not substantially interfere with or impair OCC’s ability to regulate operations of national banks: “While OCC regulations sanction and permit stored-value gift cards, the OCC has not set any regulations regarding any required disclosures. In the absence of regulation, state substantive law fills the void, such as it would in other areas occupied by ‘mixed state/federal regimes.’ In fact, there is little evidence that the OCC would not recognize application of state law of general applicability in this area.”). See generally National Consumer Law Center, Mortgage Lending § 5.10.3 [1] (3d ed. 2019), updated at www.nclcs.org/library.

236 [225] See § 1.5.3 [2], supra.

237 [226] See § 7.7 [3], infra.

Source URL: https://library.nclcs.org/cbp/01051101-1

Links
[1] https://library.nclcs.org/nclc/link/ML.05.10.03
[2] https://library.nclcs.org/nclc/link/CBP.01.05.03
[3] https://library.nclcs.org/nclc/link/CBP.07.07