



February 14, 2006

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue, N.W.
Washington, DC 20551

Re: Regulation E, Docket No. R-1247
By email, regs.comments@federalreserve.gov

Dear Ms. Johnson and members of the Board of Governors,

Consumers Union, the nonprofit publisher of *Consumer Reports*, Alabama Watch, California Reinvestment Coalition, Consumer Action, Consumer Federation of America, Democratic Processes Center, Inc., The Edgemont Neighborhood Coalition of Dayton Ohio, Jacksonville Area Legal Aid, Neighborhood Economic Development Advocacy Project (NEDAP), South Carolina Appleseed Legal Justice Center, and U.S. Public Interest Research Group (U.S. PIRG) offer these comments on the final interim rule on coverage of payroll cards under Regulation E.

Our organizations strongly support the basic result of the rule – Electronic Fund Transfer Act and Regulation E protection for all payroll card accounts established directly or indirectly by an employer to receive wages, salary, or other recurring employee compensation. We believe that the rule should be strengthened in several respects and should go into effect sooner.

We also ask the Federal Reserve Board to initiate a new rulemaking to apply and clarify coverage of the Electronic Fund Transfer Act and Regulation E to other types of stored value cards which hold important household funds, such as emergency benefit payments, income tax refunds, or loan proceeds; and to cards marketed or used as account substitutes.

Minuses: The interim final rule should be strengthened to overcome these flaws:

The rule fails to protect one-time payments of wages, salary, or other employee compensation by payroll card unless the employer had the intent to make the payments recurring. In other words, an employee who receives a one-time emergency payment of wages by card rather than by check or cash will be deprived of key protections, such as the right to have funds promptly recredited after reporting unauthorized use of the card. As our nation prepares for future disasters, employees who receive pay on a one time use payroll card should not be exposed to the risk of loss of those funds due to gaps in Regulation E coverage created by the fact that the interim final rule covers only cards intended for multiple deposits of compensation. Employee pay which is delivered on a one time use card due to emergency circumstances such as a disaster which disrupts a regional economy may be even more essential to a household than regular, recurring pay.

Wages, salary, and other compensation delivered on a one time use card should be protected from unauthorized use just as effectively as recurring pay. Unauthorized use of a payroll card which drains funds from such pay poses a risk of serious household disruption for wage earning households with low savings and limited ability to absorb temporary deprivation of any income. Unauthorized use is a real risk. The Federal Trade Commission's Annual Study of Consumer Fraud and Identity Theft Complaint Data for 2005 reports that "electronic fund transfer" was the most frequently reported type of identity theft bank fraud during calendar year 2005." Consumer

West Coast Office
1535 Mission Street ■ San Francisco, CA 94103
415.431.6747 Tel ■ 415.431.0906 Fax

Fraud and Identity Theft Complaint Data January – December 2005, *Federal Trade Commission*, January 2006, p. 3. The theft of card information from merchants and processors adds to the risk of unauthorized use. The American Banker recently linked the growth in disputes related to card fraud to 2005's data security breaches. Fraud Emerges as Top Chargeback Trigger, *American Banker*, Jan. 17, 2005, p. 1. The article reports widespread agreement in the industry that the increase in chargebacks reflects a spate of data security breaches in 2005 and more sophisticated scams by crime rings. It quotes an executive of the credit union debit network, the Co-Op Network, who reported that since 2003, "...chargebacks have increased by 350% and in 2005 fraud generated 88% of them." The article goes on to say, "He blamed last year's string of data security breaches."

Consumers have to wait too long to get the protections provided by the rule. The effective date, July 1, 2007, is too far in the future. Industry studies estimated that there were already 1.8 million payroll cards in circulation in 2004, with the number expected to rise to 3.5 million in 2006. These consumers should not face loss of crucial wage, salary, and other employee compensation funds due to unauthorized use for the more than a year between now and July 1, 2007.

The rule will start the time clock for reporting of unauthorized transactions when the consumer authenticates himself or herself on a web site that offers both balance and account history solely to access the account balance. Where the consumer visits only the account balance feature, and not the account history, this should not start the time clock running.

The rule does not guarantee periodic statements to all consumers.

While we continue to believe that all payroll card holders should receive the same guarantee of periodic statements which is provided to demand deposit account holders with ATM cards, the manner in which the rule provides for alternatives to periodic statements should be improved. For example:

- The rule should require that the number for the phone line must be printed on the card and not just in the initial disclosures. A consumer will have the card in his or her wallet at the time the consumer needs to know the balance; while the initial disclosures may have been filed away or misplaced;
- The rule should define "readily available" for the phone line to include no fee for use regardless of the number of times per month the balance is checked. For phone lines supporting consumer demand deposit accounts, some financial institutions charge a fee for more than a certain number of calls per month to the automated phone line. Because the phone line may be the only way to check the payroll card balance without making a purchase or going online, it is crucial that consumers not face any fees for the use of the phone line, even if the consumer calls every day or more than once a day. The rule or the official staff interpretations should expressly state that a phone line is not "readily available" if the consumer must pay a fee to use it;
- The rule or the official staff interpretations should define "readily available" for the phone line to include more than regular business hours in a single time zone. Working people can't always make phone calls during regular business hours, and the time period of regular business hours in one time zone is a time period that stops too early in another time zone. Because the phone system will be a key way to track balances in the absence of a periodic statement, the rule should require availability for a time period, such as 7 am to 9 pm, in each time zone in which the card is offered for use;
- The rule should require that the phone line include and disclose an option to order the account history, rather than having to call a different number for that purpose;
- The rule should require that the phone line include a method to get recent transaction information, and to do so without a fee. Without a method to get at least recent transaction information by phone, the digital divide will prevent consumers who lack secure, private internet access from any way to get their transaction history without waiting for it to arrive by mail. A form of no-fee phone access for

transaction history information is particularly important given, as the explanatory material notes, that some cardholders “are transient, complicating the mailing” of statements, and presumably, of account histories; and

- Access to a card balance only, without examination of the transaction history, must not count as access to the account statement for purposes of starting the time clock to report errors or unauthorized transactions.

Pluses: The rule does contain several important provisions that will help to make it of value to consumers. These provisions should not be modified. They include:

The rule covers all cards issued directly or indirectly by an employer to deliver recurring employee compensation.

The rule treats all entities with a part in card distribution, card processing, or transfer of funds as financial institutions for purposes of Regulation E responsibilities.

The rule makes no distinction between individual accounts and subaccounting. From the point of view of the cardholder, these products appear identical, and should have identical protections.

The rule does not permit internet-only as a method to check balances, although, unfortunately it does permit internet as the only real-time method to get transaction history information.

Mere checking of balance information on the phone line does not start the time clock to report unauthorized transactions. This should remain the rule even if the phone system is augmented to include access to some or all transaction history information.

The Regulation E restrictions on compulsory card use apply. These are important protections, and it is helpful that the rule makes no exceptions to their application. When use cannot be compelled, entities offering these products will have to better explain them to consumers to get consumers to choose them. It is unfortunate, however, that these provisions will permit compulsory use of either direct deposit to the financial institution of the consumer’s choice or of a payroll card.

The rule sets a standard for the transaction history of 60 days, rather than 30 days. Because there is no periodic statement, we agree that the longer time period for the transaction history is important.

Other issues on which comment was sought:

The interim final rule solicits comment on whether the option to obtain written account histories is necessary and appropriate. It is both. Consumers without private, secure internet access will have no other way to get account history information. Consumers who must use a public library, an employer’s computer, or a community center computer for their internet access will be rightfully cautious about calling up their payroll card account information on a shared machine, and may have a restricted ability to print what they do find.

The interim final rule also solicits comment on whether certain information should be excluded from the history of account transactions. It should not. The account history will be inadequate to show funds in and out of the account if it doesn’t show all deposits, debits, and fees.

Conclusion:

The interim final rule takes an important step toward protecting consumers who receive their paychecks through a debit card type arrangement. It is valuable in that it does not segregate the consumer protection based on how the card is structured between the employer, financial institution, and any third party provider. However, consumers need to track their balances and transactions to avoid over limit fees and to identify unauthorized transactions. The absence of a requirement for periodic statements will make it harder for consumers to fulfill that

responsibility, and will reduce the value of the payroll card as a product that can introduce the benefits of the banking system to the unbanked. The proposals in this comment letter to improve telephone access to balance information, and to provide transaction history information by phone, only partially address these disadvantages.

Finally, consumers receive other essential funds via stored value card, in dollar amounts that are significant to a household. These cards include card delivering emergency payments from employers, government, or charity; tax refund proceeds; and loan proceeds. This interim rule does nothing to guarantee that the protections associated with these cards are more than an accident of the way in which the administering financial institution chooses to structure the card and account for the funds. The Federal Reserve Board should finalize the interim payroll card rule with the earliest possible implementation date and at the same time begin a process to protect significant consumer funds held through these other types of stored value cards.

Very truly yours,



Gail Hillebrand
Consumers Union of U.S., Inc.
West Coast Office
1535 Mission St.
San Francisco, CA 94103

Barbara Evans
Director
Alabama Watch
Lowndesboro, Alabama

Rhea L. Serna
Policy Analyst
California Reinvestment Coalition
San Francisco, California

Linda Sherry
Director, National Priorities
Consumer Action
Washington, DC

Jean Ann Fox
Consumer Federation of America
Washington, DC

Al Sterman
Secretary Treasurer
Democratic Processes Center, Inc.
Tucson, Arizona

Stanley Hirtle
Attorney
The Edgemont Neighborhood Coalition of Dayton Ohio
Dayton, Ohio

Lynn Drydale, Esquire
Consumer Law Attorney
Jacksonville Area Legal Aid
Jacksonville, Florida

Deyanira Del Rio
Neighborhood Economic Development
Advocacy Project (NEDAP)
New York, New York

Sue Berkowitz
Director
South Carolina Appleseed Legal Justice Center
Columbia, South Carolina

Ed Mierzwinski, Consumer Program Director
U.S. Public Interest Research Group (U.S. PIRG)
Washington, DC