Network Branded Prepaid Card Association
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August 15, 2013

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20220

Re: Prepaid Payroll Cards

Dear Director Cordray:

This letter is submitted on behalf of the Network Branded Prepaid Card Association ("NBPCA"), regarding prepaid payroll cards ("Payroll Cards"). We wish to offer our assistance and provide a comprehensive and accurate overview of Payroll Cards to ensure that the Consumer Financial Protection Bureau (the "Bureau") has the information it needs to address the concerns raised in the letter recently submitted by sixteen United States Senators on July 11, 2013 (the "Congressional Letter"). Similar concerns in various media stories have also been raised, and we will address those issues as well.

Payroll Cards provide numerous and substantial benefits for employees.

Payroll Cards serve as a tool of inclusion for the estimated 68 million Americans who are unbanked and underbanked (collectively referred to as "underserved workers").[1] Without Payroll Cards, many underserved workers are forced to operate outside of the financial mainstream and are unable to enjoy the benefits of electronic wage payment. These benefits include prompt access to full wages on payday even when the employee is away from the workplace and in situations where normal delivery of paper paychecks is often disrupted (e.g., severe weather conditions and natural disasters). Payroll Cards also provide these employees with electronic payment options that are not available to unbanked individuals, such as online bill payment, online shopping, the ability to reserve a hotel room and more.

Payroll Cards offer underserved employees the kinds of convenience and flexibility that payment through a paper check cannot. For example, consider the case of a typical employee who does not have a traditional bank account, either because they do not qualify for one, cannot afford one,

[1] 2011 FDIC National Survey of Unbanked and Underbanked Households, Section III.

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or because of past negative experiences.[2] When the employee receives his wages on a paper check, the employee must first access his funds in cash, typically by going to the issuing bank or to a check casher. If the employee elects to use a check casher, he must pay a fee to obtain his funds. Next, the employee will need to pay a fee to purchase money orders in order to pay his bills and other obligations. Whatever funds are left after these transactions, the employee must carry in cash. If that cash is lost or stolen, the employee is simply out of luck.

In contrast, Payroll Cards provide employees with the ability to access their full wages on payday without fees. For example, the VISA and MasterCard payment network rules permit a cardholder to undertake an over-the-counter transaction at any member financial institution branch and receive funds from the teller in cash without payment of fees to the teller, with the bank which issued the payroll card waiving any fee it may impose on the over-the-counter transaction at least once per pay period. Moreover, wages paid to employees using a payroll card are typically made available to the employee earlier on payday than wages delivered to employees by paper checks, and are immediately available for use. Finally, the funds loaded onto a payroll card are typically FDIC- or NCUA-insured and are protected by Regulation E's limitations on liability for unauthorized transactions in the event of loss and theft, as well as the payment networks' respective zero liability policies.

Payroll Cards are one of the least expensive ways for employees to receive their wages.

Critics of Payroll Cards often cite cardholder fees as the primary drawback of their use. Such criticism is reflected in both the Congressional Letter and the recent media coverage. What the critics fail to mention is that many employees use their Payroll Cards without ever incurring a fee. In fact, state wage and hour laws require that employees have full and free access to their wages, meaning that employees must be provided with a means of accessing their full net pay in cash each pay period without cost. A recent study by the Payment Cards Center of the Federal Reserve Bank of Philadelphia confirmed that many of the employees who use payroll cards do so without ever incurring a fee, and those who do incur fees could have avoided them.[3]

Of course, employees who are paid using a payroll card can incur fees if they choose not to take advantage of the methods of free cash access provided by their program or if they elect to use a discretionary service or feature offered to employees for a fee. This is no different than an employee who is paid by direct deposit and incurs fees to access his wages from an out of network ATM or an employee who incurs fees at a check cashing service rather than going to the employer's bank or other location provided for cashing the check without cost.

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[2] The reasons people do not have traditional bank accounts are discussed in the FDIC survey on page 26.
[3] S. Wilshusen, R. Hunt, J. van Opstal, and R. Schneider, Co*nsumers' Use of Prepaid Cards: A Transaction-Based Analysis* (FRB of Philadelphia Payment Cards Center, August 2012).

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By comparison, the fees associated with a check cashing service can be enormous. For example, according to a 2012 study by the Massachusetts Division of Banks, if an unbanked employee earning $30,000 a year was paid with a paper check, he or she would spend approximately $650 annually in check cashing fees and fees to purchase money orders to pay their bills, or about 2.2% of their annual earnings[4]. In contrast, the actual costs associated with Payroll Cards are much lower. According to a 2011 report by Bretton Woods, Inc., the average annual costs associated with a Payroll Card are just $83.[5] Thus, although all methods of wage payment involve potential fees, Payroll Cards often offer the best financial value to underserved employees.

Payroll Cards are currently well-regulated, offering employees numerous legal protections and rights.

The Congressional Letter asks the Director, in his response, to address Payroll Cards in relation to federal legal requirements under Regulation E which implements the Electronic Funds Transfer Act ("EFTA"). The Congressional Letter is primarily concerned with three key issues: (i) mandatory payroll card programs and the possibility of coercion in the selection of a Payroll Card; (ii) the disclosures provided to employees receiving Payroll Cards; and (iii) the legality of fees charged in relation to Payroll Cards. Each of these concerns is addressed separately below.

Mandatory Payroll Card Programs: As you know, the Board of Governors of the Federal Reserve System brought Payroll Cards under Regulation E effective as of July 1, 2007.[6] Thus, the compulsory use provisions of the EFTA and Regulation E protect against mandatory Payroll Card programs. Specifically, these provisions prohibit an employer from requiring employees to establish an account at a particular financial institution as a condition of employment. In other words, an employer may not require its employees to receive their wages by direct deposit to a particular financial institution. The Board of Governors has made clear that this applies to Payroll Cards as well:

> provided that an employer does not require a consumer to obtain a payroll card account as the method of receiving pay, and permits, for example, a consumer to

[4] Massachusetts Division of Banks, *2012 Report on Check Cashers and Basic Banking Fees.*

[5] Bretton Woods, Inc., Analysis of Network Branded Pay Cards: Comparative Analysis of Pay Cards to Other Payment Options, available at http://www.nbpca.org/~/media/2FC202D665494C1EACFC9E3B95B77F81.ashx (last visited July 15, 2013).

[6] 12 CFR § 205.2 (2013).

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> receive pay via direct deposit to a financial institution, the compulsory use prohibition should not be implicated.[7]

As such, employers must offer at least one alternative method of wage payment, such as direct deposit to the employee's financial institution. In addition, some states still require that employees be given the option of receiving their wages by check or cash.

Disclosures: Given that Payroll Cards are subject to Regulation E, the financial institutions that issue the Payroll Cards must provide clear and readily understandable disclosures of the terms and conditions of the Payroll Card account. The initial disclosures must include: contact information (phone and address); transfer types and limits; fees; disclosure of right to online account information and phone number for balance inquiries; consumer liability; stop payment process for preauthorized transfers; bank's liability for failing to stop payment; confidentiality – information sharing with third-parties; error resolution procedure; ATM fee notice; the business days of the bank; and a telephone number the consumer may call to obtain the account balance, means of accessing an electronic account history, a summary of the consumer's right to receive a written account history upon request, and a summary of the consumer's right to receive a periodic statement.

Fees: One important aspect of Payroll Cards not acknowledged by the Congressional Letter or the recent media stories is the fact that Payroll Cards are subject to state wage and hour laws. Twenty states have updated their wages and hour laws to expressly address Payroll Cards, and the wage and hour enforcement agencies in the majority of the remaining states take the position that their current wage payment statutes are broad enough to encompass Payroll Cards. As discussed above, these state laws require that employees have access to their full net pay each pay period without cost.[8] Therefore, fees that violate the full and free access rule by denying employees any ability to access their full net pay (to the penny) are not permitted.

In summary, Payroll Cards are currently subject to numerous regulations at both the federal and state level. These regulations explicitly address concerns raised in the Congressional Letter regarding hidden fees, coercing or forcing employees into payment via Payroll Cards, and full disclosure of all terms associated with the Payroll Card.

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[7] Section by Section Analysis to Interim Final Rule on Electronic Fund Transfers, 71 Fed. Reg. 1473, 1479 (Jan. 10, 2006).

[8] *See e.g.*, Ariz. Rev. Stat. § 23-351 (2013); MICH. COMP. LAWS SERV. § 408.476 (LexisNexis 2012); N.J.ADMIN.CODE § 12:55-2.4 (2013).

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Industry Initiatives

While federal and state laws provide important consumer protections that govern Payroll Card programs, the NBPCA and its members recognize that consumer education is critical to ensure that employees understand how to use their Payroll Cards. Many of our members have already made great strides in providing meaningful resources to their Payroll Card recipients, and the NBPCA is in the process of updating its industry-wide best practices. Our goal is not just to have industry comply with disclosure requirements as prescribed by federal or state law; rather, we want to encourage Payroll Card providers to present the information in a way that employees are more likely to read it and internalize it. For example, instead of just disclosing fees, a suggested best practice would be to outline all the ways an employee can access their wages for free.

I expect our updated industry best practices for Payroll Cards to be complete in the coming weeks, and the NBPCA will share them with the CFPB and we would welcome your input.

Conclusion

Payroll Cards offer substantial and numerous benefits to employees including inclusion in the increasingly digital economy, convenience and flexibility in the use of funds, and inexpensive access to funds as compared to check cashing or money order based payment services. Further, Payroll Cards are subject to substantial laws and regulations including Regulation E and state laws governing the payment of wages to employees.

We hope overview has been helpful. If you have any questions or require further information, please do not hesitate to contact us.

Sincerely,

Kirsten Trusko, Executive Director, NBPCA