



Consumer Financial
Protection Bureau

1700 G Street, N.W., Washington, DC 20552

September 12, 2013

The Honorable Richard Blumenthal
United States Senate
724 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Joe Manchin, III
United States Senate
306 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators:

Thank you for your July 11, 2013 letter expressing concerns about fees and practices associated with prepaid payroll cards and the potential harms that inappropriate marketing and issuance of such cards pose to American workers. I share your concerns and appreciate this opportunity to respond. Specifically, this letter details the applicability of existing federal law to payroll cards, the Consumer Financial Protection Bureau's (Bureau) ability to supervise for compliance with and enforce these laws, and the steps we will take to educate issuers and consumers and to learn more about these potential abuses.

You first asked about the extent to which existing federal laws and regulations apply to payroll cards and to disbursement of wages to employees. With respect to those statutes for which the Bureau has authority, the Electronic Fund Transfer Act (EFTA) generally covers the electronic transfer of funds to and from consumers' accounts.¹ Since 2006, Regulation E,² which implements the EFTA, has defined the term "account" to include a "payroll card account" and covers such accounts "whether ... operated or managed by the employer, a third party payroll processor, a depository institution or any other person."³ Thus, employees whose wages are deposited onto a payroll card are entitled to the protections of the EFTA generally, and Regulation E's provisions applicable to payroll cards specifically. Among other things, Regulation E contains provisions specific to payroll cards that provide consumers with error resolution rights, limited liability for unauthorized use of a payroll card, and access to account history.⁴

In addition, although Regulation E generally does not regulate the type or size of fees that can be charged for electronic transfers, under Regulation E advance written disclosure is required of "[a]ny fees imposed by the financial institution for electronic fund transfers or for the right to make transfers."⁵ Such disclosures must be made at account opening or before the first

¹ EFTA § 901 *et seq.*, 15 USC § 1693 *et seq.*

² 12 CFR Part 1005.

³ 12 CFR 1005.2(b)(2).

⁴ *See* 12 CFR 1005.18.

⁵ 12 CFR 1005.7(b)(5).

transfer occurs.⁶ The disclosures must be “clear and readily understandable, in writing, and in a form the consumer may keep.”⁷

With respect to employers mandating that employees receive their wages on a particular payroll card, Regulation E states clearly that no “financial institution *or other person*” can mandate that an employee receive direct deposit into an account at a particular institution, including a particular payroll card account.⁸ Said another way, Regulation E prohibits employers from mandating that employees receive wages only on a payroll card. However, Regulation E does not prohibit an employer from providing unactivated payroll cards to employees, together with required materials regarding their terms and conditions, so long as employees retain the option to receive compensation by other means, and certain other conditions are met.⁹

Regulation E does not require that employers offer employees the option of receiving wages via a paper check.¹⁰ Permissible alternative wage payment method(s) are governed by state law, but may include direct deposit to an account of the employee’s choosing, a paper check, cash, or other evidence of indebtedness.

The Bureau has a number of different consumer protection tools it can use to address harmful practices associated with payroll cards and, if applicable, rectify or prevent particular harms. First, the Bureau is authorized, subject to certain exceptions, to enforce the EFTA and Regulation E against any person subject to the Regulation, including financial institutions *and* employers.¹¹ The Bureau also has enforcement authority over covered persons offering or providing certain consumer financial products or services under the Consumer Financial Protection Act.¹² In exercising our enforcement authority, our goals are to be proactive about identifying violations, stopping them before they grow into systemic problems, maximizing remediation to consumers and deterring future violations.

Second, the Bureau has supervisory authority over larger depository institutions engaged in providing payroll cards, and service providers to such institutions, to assess their compliance with federal consumer financial laws, including the EFTA and Regulation E. Through this supervision, the Bureau can examine for compliance with the relevant regulations.

Third, the Bureau has the rulemaking authority to amend Regulation E and the official interpretations of the regulation in order to protect consumers engaged in electronic fund transfers, which includes addressing any identified harms. The Bureau plans to issue a bulletin that reiterates the treatment of payroll card accounts under Regulation E.

Finally, the Bureau is working to educate consumers about their options through its Office of Financial Education. One tool is *Ask CFPB* (consumerfinance.gov/askcfpb/), which is an

⁶ 12 CFR 1005.7(a).

⁷ 12 CFR 1005.4(a)(1).

⁸ 12 CFR 1005.10(e)(2) and comment 10(e)(2)-1 (emphasis added).

⁹ 71 *Fed. Reg.* 51437, 51422 (Aug. 30, 2006). The other conditions that must be satisfied relate to the requirements for issuing an unsolicited access device. See 12 CFR 1005.5(b).

¹⁰ See, e.g., comment 10(e)(2)-1. Certain state laws, however, may require that employers provide the option of receiving wages via a paper check.

¹¹ EFTA § 918(a)(5), 15 USC § 1693o(a)(5).

¹² 12 USC § 5515.

interactive online tool that gives consumers answers to almost 1,000 questions about financial products and services, including prepaid cards and payroll cards.

As you know, the Bureau strives to be a data-driven agency, and we believe that analyzing relevant data is crucial to addressing several of the issues raised in your letter. The information we collect in the course of our research will help inform future rulemaking actions that we might undertake in this area. For example, in 2012 the Bureau published an advance notice of proposed rulemaking (ANPR) seeking comment, data and information from the public about general purpose reloadable (GPR) prepaid cards. Through this ANPR, which asked ten broad questions about GPR cards, we sought to learn more about these products, including the costs, benefits and risks to consumers. The Bureau notes that several of the issues addressed in connection with the Bureau's ANPR overlap with the concerns raised in your correspondence regarding payroll cards. We are reviewing the comments received – many of which discussed payroll cards as well as GPR cards – to determine what rule(s) may be appropriate, and based on that analysis, we expect to issue a proposed rule on prepaid cards. As the Bureau recently indicated in its Unified Agenda submitted to the Office of Management and Budget, the Bureau is in the process of developing a notice of proposed rulemaking on prepaid card products.

In addition to the Bureau's own tools, certain other federal agencies as well as state attorneys general also have the ability, to varying degrees, to enforce the EFTA and Regulation E as they pertain to payroll cards. A private right of action exists under the EFTA and Regulation E as well, allowing individuals to bring their own lawsuits directly against employers.¹³

Thank you for your interest and concern in this area of critical importance to American workers. The Bureau is committed to working closely with the Department of Labor and with you on these issues.

Sincerely,



Richard Cordray
Director

*We see this as a basic issue of fairness
to working Americans - Rich*

cc: The Honorable Tom Harkin, United States Senator
The Honorable Barbara Boxer, United States Senator
The Honorable Richard J. Durbin, United States Senator
The Honorable Debbie Stabenow, United States Senator
The Honorable Robert Menendez, United States Senator
The Honorable Benjamin Cardin, United States Senator
The Honorable Robert P. Casey, Jr., United States Senator
The Honorable Jeffrey A. Merkley, United States Senator
The Honorable Brian Schatz, United States Senator
The Honorable Martin Heinrich, United States Senator
The Honorable Elizabeth Warren, United States Senator
The Honorable Mark R. Warner, United States Senator
The Honorable Al Franken, United States Senator
The Honorable Thomas Perez, Secretary, U.S. Department of Labor

¹³ EFTA § 916, 15 USC § 1693m.