



Network Branded Prepaid Card Association

10332 Main Street, Suite 312

Fairfax, VA 22030

202.548.7200

July 31, 2015

Michael Paglialonga
New York State Department of Labor
Building 12, State Office Campus, Room 509
Albany, NY 12240

Re: Methods of Payment of Wages
(I.D. NO. LAB-21-15-00009-P)
Filed via e-mail to regulations@labor.ny.gov

Dear Mr. Paglialonga:

This letter is submitted on behalf of the Network Branded Prepaid Card Association (the "NBPCA")¹ in response to the New York Department of Labor's (the "Department") proposed rulemaking regarding the clarification and specification as to the permissible methods of wage payment in New York, issued on May 27, 2015 (the "Proposed Rule"). The Proposed Rule includes several proposed requirements governing the payment of wages to employees through a "payroll debit card" ("Payroll Card(s)"). While the Proposed Rule appears to be directed at employers and the conditions under which they may use Payroll Cards, the Proposed Rule also significantly impacts financial institutions that issue Payroll Cards, and, as such, indirectly regulates financial institutions in New York through labor regulations. The NBPCA cautions that the requirements of the Proposed Rule are impractical and are likely to harm employees by causing Payroll Card issuers to stop offering these products in New York. For this reason, the NBPCA asks that the Department substantially revise its Proposed Rule and work with industry participants to create common sense regulations that properly balance the need to protect New York workers with the continued ability of Payroll Card providers to offer their products in the New York market. The NBPCA appreciates the opportunity to share its comments and concerns regarding the Proposed Rule with the Department, and to explain many of the benefits provided by the use of Payroll Cards for the distribution of wages.

¹ The NBPCA is a nonprofit, inter-industry trade association that supports the growth and success of network branded prepaid cards and represents the common interests of the many participants in this new and rapidly growing payments category. The NBPCA's members include banks and financial institutions, the major card networks, processors, program managers, marketing and incentive companies, card manufacturers, card distributors, payment industry consultants and law firms. The comments made in this letter do not necessarily represent the position of all members of the NBPCA.



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A. Payroll Cards Offer Numerous and Substantial Benefits to Workers in New York, Especially Those Underserved Workers Who are Unable to Participate in Direct Deposit Because they Lack Access to Traditional Banking Services

Prior to discussing why the requirements of the Proposed Rule will likely cause providers to stop offering Payroll Cards in New York, the NBPCA would like to first briefly detail the numerous benefits that electronic wage payment, and Payroll Cards in particular, offer to employees and employers in New York. These benefits include increased security, convenience, and cost savings. In addition, electronic wage payment allows employers to deliver wages to their employees in a timely manner even when an employee is away from the work place or when faced with unexpected contingencies such as severe weather conditions and natural disasters.

A surprisingly large number of workers are unable to participate in direct deposit because they do not have bank accounts or have limited access to traditional banking services. A 2013 study by the FDIC revealed that 8.5% of all New York households are unbanked and another 19.6% are under banked, meaning that they have a bank account but still rely on alternative financial services, such as check cashers,² who, in New York, may charge check cashing fees equal to 2.01% of an employee's paycheck.³ This reliance on alternative financial services can result in significant costs to underserved employees for performing simple tasks like bill payment. The NBPCA acknowledges that the Department has sought to address this concern in the Proposed Rule by including a requirement that employers provide employees with a free means of cashing or depositing a check. Despite the inclusion of this requirement, the NBPCA nevertheless believes wage payment through a check imposes significant costs and risks on unbanked and underbanked employees. Specifically, despite the inclusion of a requirement to provide employees a free means of cashing a check, there is no guarantee that an employee will utilize the free method of check cashing provided, and the employee may therefore still utilize a check casher, and pay the corresponding fees, in order to gain access to his or her wages.

Moreover, employees who rely on alternative financial services will still incur substantial costs and risks after a payroll check is cashed. These costs and risks are not present when wage payment is made through a Payroll Card. For example, after cashing a payroll check, whether a check cashing fee is paid or not, an underserved employee may still have to purchase money

² Economicinclusion.gov, *2013 Survey Results for New York*, available at https://economicinclusion.gov/surveys/place-data.html?where=New_York&when=2013 (last visited, June 13, 2015). Further, it is worth noting that in New York City alone, more than 825,000 adults live without a bank account. NYC.gov, *More Than 825,000 Adults in New York City Do Not Have Bank or Credit Union Accounts According to New Citywide Study*, available at http://www.nyc.gov/html/dca/html/pr2010/pr_022510.shtml (last visited June 24, 2015).

³ 3 NYCRR § 400.11 (2015).



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orders to pay rent, bills, and utilities. The underserved employee's alternative to making these purchases is to incur the cost of traveling all over town to pay bills in person with cash. If the underserved employee loses his or her wallet, the funds are gone, and the employee has no way of recovering his or her loss. Packed with inconvenience, security risks, and the possibility for fraud and loss, a cash-based system for personal finances, even one that includes a requirement to provide free check cashing, is probably the most expensive way to handle personal financial services.

Payroll Cards, by contrast, can provide underserved employees with electronic payment options, security, limitation of liability and protection against loss from unauthorized transactions, FDIC insurance, and the convenience of cash access at ATMs, bank branches and many retail stores. These protections and conveniences, not available to unbanked individuals, also include online bill payment, online shopping, the ability to reserve a hotel room and more. These benefits have led many to agree that Payroll Cards offer a valuable solution for underserved workers. For example, in a recent Op-Ed, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, emphasized that: "Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of Payroll Cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation."⁴ Payroll Cards thus offer underserved employees the kinds of convenience and flexibility that wage payment through a paper check cannot.

B. The NBPCA believes that the Department Should Substantially Revise the Proposed Rule, Which is Confusing and Impractical to Comply with and will Likely Cause Payroll Card Providers to Stop Offering Products and Services to Workers in New York

Without substantial revisions to the final rule, the Department's Proposed Rule will likely cause providers to stop offering Payroll Cards in New York and thereby harm New York workers by depriving them of the many benefits of Payroll Cards detailed above.

The NBPCA's specific concerns with various aspects of the Proposed Rule are described below. The NBPCA, however, notes at the outset that the Proposed Rule, read as a whole, is confusing and, in many cases, it is unclear exactly what the Proposed Rule is requiring and from whom. As a result, compliance with the Proposed Rule will be extremely challenging for

⁴ http://www.huffingtonpost.com/javier-palomarez/payroll-cards-a-valuable-_b_4555801.html; For another excellent discussion of payroll cards from an organization committed to protecting low wage earners, see Benjamin Mangan, *Stop Blacklisting Payroll Cards for Worker*, available at <http://www.linkedin.com/today/post/article/20130710205603-132220-stop-blackballing-payroll-cards-for-workers>.



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employers and their agents which are subject to its requirements. Based on a review of several of the requirements in the Proposed Rule, it is not clear that the Department consulted with prudential financial regulators or any industry participants before promulgating the Proposed Rule. The result is a Proposed Rule that, in some cases, is inconsistent with federal law, specifically Regulation E, and with which it will be extremely difficult for employers, their agents and service providers to comply. For these reasons, the NBPCA urges the Department to work with employers and industry participants to develop common sense regulations that properly balance the need to protect the interests of New York workers with the continued ability of employers and providers to offer beneficial Payroll Card products in New York.

C. The Fee Restrictions in the Proposed Rule are Overly Burdensome and Impractical

In addition to the concerns described above, the NBPCA wishes to highlight specific sections of the Proposed Rule that are particularly onerous and will likely result in providers of Payroll Cards leaving the New York Market.

1. Onerous Fee Provisions

The Proposed Rule contains onerous fee restrictions that are not present in other jurisdictions and would very likely cause providers to stop offering their products to New York workers. Specifically, Section 192-2.3(c) of the Proposed Rule prohibits charging Payroll Card users a myriad of fees, including all transaction fees. The NBPCA believes that, given the thin margins that already exist for these products, such a broad prohibition would make providing Payroll Cards to New York workers financially unviable and cause Payroll Card issuers to leave the New York market. Furthermore, this is not a case of forcing providers to accept lower margins on an already thinly margined product, the requirements of the Proposed Rule will, in most cases, cause providers to offer Payroll Card products at a loss, which is not a sustainable business model.

Particularly concerning to the NBPCA are restrictions on fees wholly unrelated to an employee's full and free access to their wages each pay period and fees that can easily be avoided by the employee. For example, the Proposed Rule prohibits charging an employee a fee when a transaction is declined because the employee has insufficient funds in his or her Payroll Card account. A declined transaction is not related in any way to an employee's full and free access to their wages. Moreover, whether an employee incurs such a fee is in the employee's total control as Payroll Card programs provide employees with at least one free method of checking their balances. Similarly, fees for overdrawn accounts, inactive accounts, and receiving written paper statements do not affect an employee's ability to fully and freely access wages and are within the employee's own control. Prohibiting employers and issuers from charging reasonable fees for services unrelated to full and free access to wages effectively mandates that one group of



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employees be provided with free banking services. Such a result is impractical and will likely cause providers of Payroll Cards to stop making these products available to workers in New York.

Further, the NBPCA notes that the Proposed Rule's fee restrictions would make it unlawful for Payroll Cards to provide overdraft services for a fee. Such services can be a valuable resource for unbanked and underbanked Payroll Card users who may need access to short-term liquidity that they cannot otherwise easily obtain. For unbanked and underbanked employees, overdraft services on Payroll Cards can provide much needed short-term liquidity and serve as an important alternative to financial services, which are readily available to those employees with greater access to traditional banking products. For this reason, the NBPCA urges the Department to continue to permit overdraft services consistent with the current federal regulations governing the use of Payroll Cards rather than eliminating a valuable option some cardholders have today.⁵

2. The Apparent Basis for Fee Restrictions Fails to Account for how Payroll Cards are Actually Used and the Substantial Steps Industry Has Taken to Help Consumers Avoid Costs for Using Payroll Cards

The NBPCA understands that a primary basis of the Department's Proposed Rule, and, in particular, the Department's apparent concern regarding fees charged to workers under Payroll Card programs, is a report issued by the New York State Attorney General in June 2014, entitled "*Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers*" (the "Report").⁶ The NBPCA wishes to clarify a few of the points made in the Report. Specifically, while the Report itself notes that fees for Payroll Card programs are modest, it expresses concern that the fees may nevertheless "add up quickly . . ."⁷ Such a statement fails to account for the fact that employees who receive wages through a Payroll Card can avoid the fees associated with the Payroll Card account. In contrast, employees who receive wages via paper check often incur check cashing fees if they choose to visit a check casher to access their wages, or, if they receive free check cashing, must nevertheless incur unavoidable expense in making necessary payments and purchases after their check has been converted to cash. Moreover, employees are provided with clear instructions by or on behalf of their employers about how they can avoid the already modest fees that apply to their particular program. Notably, the NBPCA has partnered with

⁵ For further discussion and information regarding the benefits and importance of overdraft services for unbanked and underbanked consumers, please see the NBPCA's comment letter responding to the Consumer Financial Protection Bureau's (the "CFPB") proposed rule for prepaid accounts, available at:

<http://www.nbpc.com/en/~media/Files/Public%20Comment%20Letters/NBPCA%20Comment%20Letter%20on%20CFPB%20Prepaid%20Accounts%20NPRM.ashx>.

⁶ <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf> (last visited June 8, 2015).

⁷ *Id.* at page 9.



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Consumer Action, a consumer interest group focused on financial education and empowerment for low income, limited-English speaking individuals, to develop guides to help employers and employees understand how Payroll Cards work and how to determine if a Payroll Card is right for them. The NBPCA distributes these guides to groups representing employers and companies likely to use Payroll Cards as a wage payment option for their employees. In a press release, Consumer Action explained that “Payroll Cards offer the opportunity for workers who would otherwise receive a paper paycheck to avoid potential check cashing fees, money orders and the risk of losing cash.”⁸ A copy of the guide jointly developed by the NBPCA and Consumer Action is enclosed with this letter for your convenience.

Moreover, numerous studies have shown that Payroll Cards are actually one of the least expensive ways for employees to receive their wages. In fact, a recent study by the Payment Cards Center of the Federal Reserve Bank of Philadelphia confirmed that many employees who use Payroll Cards do so without ever incurring a fee, and those who do incur fees could have avoided them.⁹ The NBPCA acknowledges that, of course, employees can incur fees using Payroll Cards if they choose not to take advantage of the free methods of cash access provided by their program or if they elect to use a discretionary, value added service or feature offered to employees for a fee. This aspect of Payroll Card programs, however, is no different than an employee who is paid by direct deposit and incurs fees to access his or her 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 by the employer for cashing the check without cost.

Moreover, studies have shown that even when employees incur fees for using a Payroll Card, the fees are generally lower than the fees incurred by underserved workers who receive a paper paycheck.¹⁰ A 2012 study by the Massachusetts Division of Banks revealed that an unbanked employee earning \$30,000 a year who was paid with a paper check would spend approximately \$650 annually in check cashing fees and fees to purchase money orders to pay the employee's bills, or about 2.2% of their annual earnings.¹¹ While the NBPCA again acknowledges that the Department has attempted to address the issue in its Proposed Rule in part by requiring one no cost means of access to the full amount of wages through a check casher, employees receiving wages through paper check will still incur significant costs in purchasing money orders to pay bills, and may, despite the Department's requirement, still seek out other traditional check cashing services to gain access to their wages. In light of this, although all

⁸ *Consumer Action and NBPCA partner to offer payroll card best practices for employees and employers* (February 20, 2014 Press Release) available at:

http://www.consumer-action.org/press/articles/consumer_action_nbpc_a_payroll_card_best_practices.

⁹ S. Wilshusen, R. Hunt, J. van Opstal, and R. Schneider, *Consumers’ Use of Prepaid Cards: A Transaction-Based Analysis* (FRB of Philadelphia Payment Cards Center, August 2012).

¹⁰ See Massachusetts Division of Banks, *2012 Report on Check Cashers and Basic Banking Fees*.

¹¹ *Id.*



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methods of wage payment involve potential fees, the NBPCA believes Payroll Cards often offer the best financial value to underserved employees.

Finally, the NBPCA notes that the vast majority of Payroll Cards are branded, meaning they bear the logo of a major payment brand such as Visa or MasterCard. Employees can take their Payroll Card to any bank branch that is a member of the payment brand – not just the financial institution that issued the Payroll Card – and receive their full wages at least once each pay period without cost. Consequently, instead of solely allowing employees to access their wages at the financial institution that issued the Payroll Card, the Visa and MasterCard payment network rules allow employees to obtain their full net wages in cash and at no cost at least once per pay period at any financial institution that is a member of either the Visa or MasterCard payment brand network depending on the logo appearing on the front of the Payroll Card. As a result, employees receiving their wages through a Visa or MasterCard branded Payroll Card have thousands of locations at which they can access their full wages at no cost. By contrast, employees who receive wages through a paper check today are typically limited to the financial institution upon which the check is drawn as their only free option to cash their pay check for free. This is one more example of how Payroll Cards offer a better wage payment option to employees when compared with a paper check.

In fact, studies have shown that employees who opt to receive their wages through a Payroll Card often incur fewer fees than those who do not. The NBPCA believes this highlights that the requirements in the Proposed Rule are not only overly burdensome, but are also unnecessary and will harm consumers by possibly depriving them of one of the least expensive ways in which they can receive their wages.

D. The Requirement to Provide Disclosures Seven Days Prior to Seeking Consent to Receive Wages by a Payroll Card Harms the Interests of Employees

The NBPCA believes that the Proposed Rule's requirement to wait for a period of seven days after providing required disclosures before seeking an employee's consent to pay wages through a Payroll Card is not only impractical for employers, but harmful to the interests of the employee. Specifically, Section 192-2.3(1) of the Proposed Rule would require employers to obtain written consent from employees prior to paying wages by a Payroll Card. Section 192-2.3(2) would further require employers to provide a number of written disclosures to their employees at least seven business days prior to seeking such consent. While the NBPCA fully supports the right of employees to choose the method of wage payment that best meets their needs, the NBPCA believes imposing an arbitrary seven day waiting period before an employee may elect a Payroll Card as their method of wage payment harms the interests of employees.



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If the employee is unbanked or underbanked, and the employer either pays wages weekly or the first pay period ends within seven days of the employee's hire date, the employer will be forced to pay the employee by paper check even if the employee asks for a Payroll Card. The unbanked or underbanked employee will then have to go to a bank branch or check casher to cash their first paycheck. In addition to any fee the employee may pay to a bank branch or check casher if the employee does not choose to utilize a free method of check cashing provided by his or her employer, the employee is now forced into an inconvenient and expensive process in order to use cash to pay bills, make online purchases and engage in other financial transactions. For example, the employee might be required to obtain money orders to pay necessary bills or incur the expense of traveling around town in order to pay bills in cash. Moreover, once the employee has made all necessary expenditures, they are then forced to carry the remainder of their wages as cash. If those wages are lost or stolen, there is no protection for the employee. By contrast, if the employee had the ability to elect to receive his or her wages by Payroll Card during orientation, he or she could have received those initial wages on the Payroll Card, paid necessary bills online and had the remainder of the wages protected against loss and unauthorized use by both federal regulation and the applicable card network rules. The NBPCA believes this is a far better result for the employee.

The NBPCA is also concerned that a seven day waiting period will stigmatize Payroll Cards by leading employees to assume, since no other method of payment is subject to a similar requirement, that something must be wrong with the Payroll Card offered by their employer. Such a result harms the interests of employees by potentially causing them to elect a method of wage payment that is less convenient and not in their best interests.

While the NBPCA supports the right of employees to choose the manner of wage payment best suited to their individual needs, the NBPCA believes forcing employees to wait seven days before they can elect to receive their wages by a Payroll Card is harmful to the interests of employees and any final rules promulgated by the Department should remove any such requirement. As an alternative, the NBPCA suggests that employees be given a clear list of options for wage payment along with all terms and conditions and be allowed to choose the method of wage payment that best meets their individual needs without any minimum waiting period.

E. The Proposed Rule's "Comprehension Standards" and "Reasonable Proximity" Requirements are Unclear, Extremely Subjective, and Difficult to Enforce

Under the Proposed Rule, required disclosures must be in the employee's primary language, or in a language the employee understands, and must include a description of the employee's options for wage payment, a statement that the employer cannot require the employee



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to accept the Payroll Card for the payment of wages, a statement that the employee may not be charged a fee for services necessary to access his or her wages in full, and a list of locations in reasonable proximity to the employee's place of work and residence where he or she can access and withdraw wages at no charge. The NBPCA believes some of these requirements are subjective and unclear and therefore impractical to comply with.

With regard to the requirement that the proposed disclosures be made in the employee's primary language or one that the employee understands, the NBPCA notes that such "comprehension standards" are extremely subjective and difficult to enforce. In fact, the NBPCA could find no similar requirements attached to any other employer notice and disclosure provisions. As an alternative, the NBPCA suggests that any rule from the Department should instead simply require that disclosures to employees be provided "in a clear and conspicuous manner and in language(s) the employer normally uses to communicate employment-related policies to its employees."

Similarly the NBPCA believes the requirement that the employee be provided a list of locations in "reasonable proximity" to the employee's home and place of work where the employee may access and withdraw their wages at no charge is ambiguous and may invite conflicts of opinion and complaints as to what constitutes "reasonable proximity". Such complaints, in turn, may add to the Department's adjudication workload. Moreover, providing a list of locations in "reasonable proximity" to an employee's work or home is unnecessary as employees can access their full net wages without cost at any financial institution that is a member of the Visa or MasterCard payment network and receive a phone number and website to assist in locating nearby ATMs.

Finally, it is not clear what the Department intends when it says that the employer must disclose to the employee "a list of locations where employees can access and withdraw wages at no charge." Disclosure of every bank that is a member of the Visa or MasterCard payment network would be voluminous and overly burdensome. The better policy is to explain to the employee how he or she can access his or her wages without fees. There are also serious compliance challenges such as the potential requirement of tracking every time an employee changes his or her residence, then listing additional locations where withdrawals can be made. This creates a logistical nightmare that will make it nearly impossible for an employer to comply.

F. The Proposed Rule's Requirements for Periodic Statements, Transaction History, Changes in Terms, and Unauthorized Transactions are Already Addressed Under Regulation E and the Department's Proposed Rule is Overly Burdensome and Unnecessary



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Payroll Cards are already subject to the requirements of Regulation E regarding the provision of periodic statements, transaction history, rules concerning the change in terms of the Payroll Card program, and consumer protections in instances of unauthorized use of the Payroll Card, and have been subject to these rules since 2007. The NBPCA believes the protections afforded under Regulation E adequately address concerns raised by the Proposed Rule and urges the Department to strike these provisions from any final rule as they are overly burdensome and unnecessary.

In particular, the NBPCA notes that the provisions of Regulation E addressing unauthorized transfers already strike an appropriate balance between the interests of the cardholder and the financial institution issuing the Payroll Card and such provisions of Regulation E already apply to Payroll Cards issued to New York workers. For example, Regulation E limits cardholder liability for unauthorized transfers but requires the cardholder to report the card as being lost or stolen within specified time periods.¹² In addition, Regulation E does not cover instances where the employee has given his or her card to a third party unless the employee has notified the financial institution that transfers by that person are no longer authorized.

By contrast, under Section 192-2.3(g) of the Proposed Rule, if a worker reports fraudulent activity on a Payroll Card, or that the Payroll Card is lost or stolen, the issuer of the Payroll Card must (i) stop all Payroll Card activity, (ii) conduct a "reasonable" investigation within ten days, and (iii) re-credit or reimburse the worker within one business day of concluding the investigation. For the reasons discussed below, this requirement is unclear and will result in confusion for providers who will not know how to comply.

Among other things, it is not clear whether the ten day period applies to the commencement or the completion of the investigation of an alleged fraudulent use or lost or stolen Payroll Card. Even more troubling, if the issuer stops all Payroll Card activity after a worker reports unauthorized use on a Payroll Card, it is unclear how the worker is supposed to access his or her wages. There is no clear answer to either of these important issues in the Proposed Rule. Rather, issuers are left to determine what is required themselves, a result that will lead to inconsistent practices and confusion. Moreover, if the requirement is to start and complete the investigation of a fraudulent use within ten days, and re-credit the cardholder's account within one business day thereafter, such a requirement will result in substantially increased fraud losses for issuers of Payroll Cards to New York workers. This requirement alone

¹² Under the EFTA and Regulation E, an employee's liability is limited to \$50 (if the loss or theft is reported within 2 business days of learning of the loss or theft) or \$500 (if reported after), with the possibility of unlimited liability for untimely notice to the financial institution (normally after 60 days of learning of the loss or theft).



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from the Proposed Rule will likely cause issuers to stop offering Payroll Card products in New York. For these reasons, the NBPCA again urges the Department to revise its Proposed Rule.

Finally, the NBPCA notes that the payment networks (i.e., MasterCard and Visa) also have zero liability policies, which provide substantial additional protection against unauthorized use when a card is lost or stolen. The NBPCA thus believes it is simply unnecessary for the Department, through regulations, to require additional and sometimes conflicting protections against unauthorized use.

G. Any Final Rules Promulgated by the Department Should Include an Appropriate Implementation Period so that Industry has Sufficient Time to Comply

The NBPCA and its members have serious concerns about the proposed effective date, which occurs immediately upon publication of the final rule in the state register. As noted above, the Proposed Rule in its current form will likely cause several providers of Payroll Cards to stop offering these products in New York. For those providers that continue to offer Payroll Card products in New York, the Proposed Rule will require substantial changes to their operations. Such providers will, at a minimum, need to (i) create new disclosures, (ii) develop and implement new card distribution processes, (iii) implement procedures – which differ from and appear to be inconsistent with current requirements under Regulation E – for fraudulent, lost, or stolen cards and the creation of transaction histories and account statements, and (iv) implement procedures to prevent the assessment of prohibited fees on Payroll Card accounts offered to New York workers. The Proposed Rule will ultimately cause providers to create entirely separate processes and procedures for New York cardholders than such providers have for every other jurisdiction in which they offer Payroll Cards. Creating entirely separate disclosures and operations for New York cardholders will take significant time and resources to implement and such implementation process cannot even commence until final rules are issued by the Department. In light of this fact, having the final rules effective immediately upon their publication in the state register is impractical, and will cause the immediate removal/suspension of Payroll Cards in the New York market for at least several months, and likely more than a year, while employers and providers develop compliant Payroll Card products, operational processes and procedures.

Moreover, to our knowledge, making any final rule on payroll cards effective immediately upon publication is inconsistent with similar rulemakings addressing payroll cards both at the state and federal level. Even the CFPB's proposed rule for prepaid accounts issued late last year (which will impact payroll cards) is proposed to have an effective date of nine months following the date any final rule is published in the Federal Register, and many commenters, including the NBPCA, have recommended that a minimum period of 18-24 months



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will be needed in order for the industry to be able to comply with that proposed rule.¹³ The NBPCA further notes that, similar to the Proposed Rule, the CFPB's proposed rule also poses substantial operational changes for Payroll Card providers. Consequently, the NBPCA believes that the Department should refrain from issuing any final rule of its own before the CFPB has issued its final rule, and then include an extended effective date which gives employers and providers the time necessary to comply. For a more detailed discussion of the necessary implementation steps to comply with the CFPB's proposed rule on prepaid accounts (which will be extremely similar to the requirements to implement the Proposed Rule), we would encourage you to review the NBPCA's comment letter to the CFPB on this topic¹⁴. Additionally, it should be noted that, concurrently with the CFPB's proposed rulemaking and likely during the timeline for the implementation of the Proposed Rule, the industry is undergoing significant change related to the nationwide roll-out of EMV-enabled POS terminals and EMV enabled cards and a longer implementation period should be provided to ensure that the industry has time to comprehensively implement any system and operational changes required under the final rule.

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¹³ 79 Fed. Reg. 77256.

¹⁴ See pages 17 and 92 of the NBPCA's comment letter responding to the CFPB's proposed rule for prepaid accounts, available at:

<http://www.nbpc.com/en/~media/Files/Public%20Comment%20Letters/NBPCA%20Comment%20Letter%20on%20CFPB%20Prepaid%20Accounts%20NPRM.ashx>.



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Conclusion

The NBPCA appreciates the opportunity to comment on the Department's Proposed Rule. The NBPCA reiterates that Payroll Cards offer substantial and numerous benefits to workers in New York including increased security, convenience, and cost savings. The NBPCA believes that the Department's Proposed Rule is unclear and compliance would be both impractical and extremely challenging for employers and providers alike. Moreover, the NBPCA stresses that several laws, including Regulation E, already contain substantial employee protections in connection with the use of Payroll Cards. Therefore, much of the regulation proposed by the Department is unnecessary. The end result of the Department's Proposed Rule will likely be that employers and card issuers are unable to offer Payroll Cards in New York thus decreasing consumer choice and leaving employees with more expensive and less convenient options for the receipt of their wages.

Sincerely,

Brad Fauss
President and CEO, NBPCA
(202) 548-7200

Brian Tate
VP of Government Relations, NBPCA
(202) 548-7200