



Network Branded Prepaid Card Association

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November 25, 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-RP)
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") revised rulemaking regarding the clarification and specification as to the permissible methods of wage payment in New York, issued on October 28, 2015 (the "Revised Rule"). The Revised Rule contains several changes to the proposed rule released by the Department on May 27, 2015 (the "Proposed Rule") and includes proposed requirements governing the payment of wages to employees through a "payroll debit card" ("Payroll Card(s)"). While the Revised Rule improves upon the requirements of the initial Proposed Rule, the NBPCA nevertheless remains concerned that certain provisions of the Revised Rule remain impractical and likely to cause Payroll Card issuers to significantly reduce or possibly stop offering these products in New York to the detriment of unbanked and underbanked workers in the state. For this reason, the NBPCA asks the Department to further revise its Revised Rule and continue to work with Payroll Card Providers to create common sense regulations that properly balance consumer protections for New York workers with the continued ability of employers and Payroll Card providers to offer payroll cards in the New York market. The NBPCA appreciates the opportunity to share its comments and concerns regarding the Revised Rule with the Department.

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.

A. Payroll Cards Offer Numerous and Substantial Benefits to Workers in New York, Especially Those Underserved Workers Who are Unable, or Choose Not, to Use Direct Deposit

As we stated in our prior comment letter, electronic wage payment, and Payroll Cards in particular, offers numerous benefits to employees and employers in New York, including 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.

For the 8.5% of unbanked and 19.6% underbanked New York households – according to the FDIC – that rely on alternative financial services, including payday lenders, money orders, and check cashers,² they may incur 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. While the Department has sought to address concerns about check cashing costs in the Revised Rule to some extent by including a requirement that employers provide employees with a free means of cashing or depositing 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. Thus, unbanked and underbanked employees could still incur significant fees through check-based wage payment.

Moreover, employees who rely on alternative financial services will still incur substantial costs and risks after a payroll check is cashed, which 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 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. Taking these realities into account, a cash-based system for personal finances, even one that includes a requirement to provide one free means of 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.

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).

In sum, Payroll Cards offer underserved employees the kinds of convenience and flexibility that wage payment through a paper check cannot.

B. If the Revised Rule is Not Modified Further, Payroll Card Providers Will Likely Stop Offering Products and Services to Workers in New York

Absent further revisions in the final rule, providers may determine that they cannot provide an economically viable or operationally feasible product in New York, and they may eliminate the product altogether. As a result, workers without access to checking accounts will likely have to rely on check cashers and be exposed to the significant costs imposed by a cash based economy.

The NBPCA's specific concerns with the Revised Rule are described below. The Revised Rule remains, in some cases, inconsistent with federal law, specifically Regulation E, which will make it operationally difficult and much more expensive to offer a nationwide program with marginal (if any) incremental benefit to consumers. The NBPCA urges the Department to amend the Revised Rule to make it generally consistent with the Regulation E, by, for example, revising its definition of "payroll debit card" to conform to the definition already in place under Regulation E, and by making the other specific changes discussed below. In particular, the NBPCA notes that the Revised Rule requires employers to provide 30 days' notice of any change in the terms and conditions of a payroll card, which conflicts with Regulation E's 21-day notice requirement of certain adverse changes to the terms and conditions. While the proposed New York requirement may appear reasonable on its face, it would significantly increase the burdens and costs for multi-state employers who have work locations in New York. Further, the Revised Rule continues to impose prohibitions on certain fees that do not relate to the access to wages and that are easily avoidable by cardholders. These and other key concerns are discussed in more detail below. For these reasons, the NBPCA urges the Department to work with employers and Payroll Card providers 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 Payroll Card products in New York.

C. The Requirements and Fee Restrictions in the Revised Rule Remain Overly Burdensome and Impractical

1. The Revised Rule's Requirements for Change in Terms Notices are Inconsistent with Regulation E and the Department's Revised Rule is Overly Burdensome and Unnecessary

The NBPCA believes the change in terms notice requirements afforded under Regulation E adequately address concerns raised by the Revised Rule and consequently, the NBPCA urges the Department to strike this provision from any final rule as it is overly burdensome and unnecessary, and will require a substantially different compliance standard in New York than the rest of the country.

As noted above, the requirements of the Revised Rule for 30-day advance written notice of changes in terms are inconsistent with Regulation E's 21-day advance written notice requirement.⁴ In addition, the Regulation E requirement to provide a change in terms notice is limited to an adverse change in terms and conditions, such as those that would result in increased fees, liability, fewer electronic fund transfers, or stricter limitations on the dollar amount or frequency of transfers.⁵ By contrast, the proposed requirement to provide advance notice of **any** change an issuer makes to the terms and conditions of a Payroll Card may have the unintended consequence of leading Payroll Card providers continuing to offer their products in the state to avoid making any changes to the program, including beneficial ones. Given that the Department removed other provisions from the Proposed Rule on the grounds that Regulation E already addressed the particular issue, it is not clear why the Department retained the proposed change in terms notice requirement in the Revised Rule given the limited benefit and potential unintended consequences.

In addition to being inconsistent with Regulation E, the change in terms requirements included in the Revised Rule would be extremely onerous and difficult to comply with, would result in Payroll Card providers following different rules for employers in New York compared to the remainder of the United States and would likely result in Payroll Card providers leaving the New York market due to the inconsistent compliance requirements and significantly increased costs when operating a nationwide program.

Further, changes to the terms and conditions governing Payroll Cards are common. Most of these changes have no impact on consumer fees, liability, or limitations on electronic fund transfers, and, in many instances, the changes are to the cardholders' benefit. Moreover, it is worth noting that, while cardholders may not receive prior written notice of every change, they can receive notice of changes to their terms and conditions through other avenues and retain access to their then current terms and conditions at all times through other means, such as their provider's website. Requiring providers of Payroll Cards to provide New York employees with 30-days' prior written notice before making **any** change in terms and conditions negatively impacts Payroll Card providers by effectively forcing them to offer a separate product with completely different operational processes and disclosures in the New York market than they offer in any other jurisdiction. Rather than undertaking such efforts, the NBPCA is concerned that many Payroll Card providers will simply stop offering their products to employers and consumers in the New York market. Moreover, the requirement may also force some providers to rethink and avoid making beneficial changes to Payroll Cards in New York, while making those beneficial changes to Payroll Card programs offered in the rest of the country. Thus, the requirement could effectively create a two-tier system where New York Payroll Card users are actually worse off than Payroll Card users elsewhere for those companies who decide that operating such a multi-tier system is viable.

Finally, the NBPCA has concerns regarding the requirement under Section 192-2.3(f) of the Revised Rule that, if a Payroll Card account is closed due to inactivity, the issuer must notify the employee and refund any remaining funds within seven days. The NBPCA believes such a

⁴ 12 CFR § 1005.8 (2015).

⁵ *Id.*

requirement is unnecessary in light of state abandoned property laws and could have the effect of increasing fraud. Today, if a cardholder's account becomes dormant due to the cardholder taking no action for a specified period of time, Payroll Card providers are obligated to follow individual state abandoned property laws regarding accountholder notification and the reporting and escheatment of the funds to the appropriate state abandoned property office. The Revised Rule's requirement to send money to Payroll Card accountholders within seven days is therefore unnecessary in light of the existing state laws, which include detailed requirements for holding, reporting and escheating unclaimed property. Moreover, the NBPCA is concerned that the Revised Rule's requirement to refund unclaimed funds to cardholders within seven days may result in increased fraud because the Payroll Card provider might have an outdated address for the employee in which to send the refund check. Since wage payments automatically occur electronically, an employee may not consider the need to update the Payroll Card provider with her new address whenever her primary residence changes. For these reasons, the NBPCA urges the Department to amend the Revised Rule to strike this provision.

2. Onerous Fee Restrictions

Similar to the Proposed Rule, the Revised Rule contains onerous fee restrictions that are not present in other jurisdictions and would significantly undermine the ability of providers to offer their products to New York workers. Specifically, the NBPCA believes the prohibitions on ATM withdrawal fees, certain declined ATM transaction fees, card replacement fees, and inactivity fees would collectively make already thin margined Payroll Card programs in New York financially unviable and cause Payroll Card issuers to leave the New York market if they cannot operate a sustainable business model. In fact, after speaking with our members, we can unequivocally state that the fee prohibitions alone may cause several Payroll Card providers to cease offering payroll cards in the State of New York and, if they decide to exit the New York market, they will likely point to the Revised Rule as the primary reason for their exit from the New York market. This will effectively leave New York workers who don't have access to bank accounts with only one expensive option – check cashers – rather than the relatively low-cost payroll card products that so many consumers need and desire.

Particularly concerning to the NBPCA is the fact that the Revised Rule continues to impose restrictions on fees that are wholly unrelated to an employee's full and free access to her wages each pay period and that can easily be avoided by the employee, including prohibitions on fees for overdrawn accounts and inactive accounts. Prohibiting employers and issuers from charging reasonable fees for services unrelated to full and free access to wages effectively mandates that one group of employees be provided with free banking services. Thus, the NBPCA believes more changes to the Revised Rule are necessary to allow Payroll Card providers to continue offering their products in the New York market.

For instance, overdraft 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 with fully disclosed terms and conditions can provide much needed short-term liquidity and serve as an important alternative to other financial services, including demand deposit accounts with opt-in overdraft services, which are not readily available to these unbanked

and underbanked employees. 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.⁶

3. The Apparent Basis for Fee Restrictions Fails to Account for The Manner in Which Payroll Cards are Actually Used and the Substantial Steps that Payroll Card Providers Have Taken to Educate Consumers About the Best Way to Use Their Payroll Cards in Order to Minimize Fees

The NBPCA understands that a primary basis of the Department's Revised 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").⁷ The NBPCA wishes to again address 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"⁸ Such a statement fails to account for the fact that many of the fees associated with a Payroll Card account can be easily avoidable by employees receiving wages through this method. In contrast, as discussed above, 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, many 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 Payroll Card program. Notably, the NBPCA has developed guides with Consumer Action, a consumer interest group for low- and moderate-income, limited-English speaking individuals and other underrepresented consumers nationwide, for distribution to groups representing employers and companies which are likely to use Payroll Cards as a wage payment option for their employees. The guides explain how Payroll Cards work and how to determine if a Payroll Card is right for a particular employer or employee. 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."⁹ A copy of the guide jointly developed by the NBPCA and Consumer Action was enclosed with our prior comment letter.

In addition, 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

⁶ 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>.

⁷ <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf> (last visited November 23, 2015).

⁸ *Id.* at page 9.

⁹ *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_payroll_card_best_practices.

use Payroll Cards do so without ever incurring a fee, and those who do incur fees could have avoided them.¹⁰ 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.

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. 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. For example, employees can generally take their Payroll Card to any bank branch that is a member of the payment brand appearing on the front of the card – not just the financial institution that issued the Payroll Card – and receive their full wages at least once each pay period without cost. 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. Moreover, once a check is cashed, an employee will still incur significant costs in purchasing money orders and other financial products such as walk in bill pay services in order to pay bills. This is one more example of how Payroll Cards offer a better wage payment option to employees when compared with a paper check.

D. The Requirement to Wait Seven Business Days After Obtaining Written Consent Before Paying Wages by a Payroll Card Harms the Interests of Employees

The NBPCA believes that the Revised Rule's requirement to wait for a period of seven business days after receiving an employee's consent before taking action to issue a wage payment 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 Revised Rule requires employers to wait for a period of seven business days after obtaining written consent from employees, prior to taking action to pay wages by a Payroll Card. While the NBPCA fully supports the right of employees to choose the method of wage payment that best meets their needs, the NBPCA believes the Revised Rule continues to impose an unnecessarily burdensome and arbitrary seven business day waiting period that harms the interests of employees.

Under the requirements of the Revised Rule, if the first wage payment date occurs within seven business days of the employee's hire date such as cases where the employer pays wages weekly, the employer will be forced to pay the employee by paper check even if the employee consents to using a Payroll Card after receiving all the necessary and required disclosures. Such a result will be confusing to the employee, who will not understand why she cannot receive her wage payment via her chosen method. The unbanked or underbanked employee will then have

¹⁰ 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).

to go to a bank branch or check casher to cash her first paycheck, and incur other costs in order to use that cash to pay bills, make online purchases and engage in other financial transactions. Moreover, once the employee makes any necessary payments, the employee is then forced to carry the remainder of her wages in cash. If those wages are lost or stolen, there is no protection for the employee. Furthermore, the employee will likely be confused when she receives her initial wages by another means than her selected method of wage payment, and uncertain as to how she will be paid after that first wage payment. By contrast, if the employee had the ability to elect to receive her wages by Payroll Card after consenting to this wage payment method during orientation, 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 business 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 payroll cards are a disfavored and unreliable method of payment. Such a result harms the interests of employees by potentially causing them to elect a method of wage payment that may be less convenient and not in their best interests.

Given the strong potential for employee confusion and unnecessary expenses that could be incurred through the seven-business day waiting period requirement in the Revised Rule, the NBPCA suggests that alternatively, 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, plus the ability to opt out at any time, without any minimum waiting period imposed on employers and issuers prior to acting upon the employee's consent.

E. The Revised Rule's Written Notice and Consent Requirements Should Not Apply Retroactively

As noted above, Section 192-1.3 requires any employer offering methods of payment other than cash or check to obtain written authorization and consent from its employees. Although it is not expressly stated in the Revised Rule, the NBPCA understands that the Department intends for the Revised Rule's written notice and consent requirements to apply retroactively to existing employees who are already being paid their wages by direct deposit or Payroll Card. As a result, employers will be required to provide written notice and obtain written consent to the payment of wages through direct deposit or a Payroll Card from all employees selecting one of these methods of payment, even those employees who have been receiving their wages through one of these methods for years.

The NBPCA has serious concerns with the Revised Rule's written notice and consent requirements applying retroactively. Forcing employers and providers to comply with written notice and consent requirements for all employees, even those who are already receiving their wages through a method other than cash or check, would be extremely expensive and difficult to manage.

Moreover, such a requirement would be extremely confusing to employees, who will not understand why they are being required to consent to the payment of their wages in the manner that they have been receiving their wages for several months if not years. This requirement becomes even more troublesome when employees unexpectedly receive their wages by check because they failed to turn in their written consent form before their first pay day following the effective date of the final rule. In the case of Payroll Cards, when coupled with the seven business day waiting period, an employee who was previously receiving her wages through a Payroll Card could reaffirm her desire to be paid by through a Payroll Card and yet be denied this option for one or more pay periods while her employer is forced to wait the required seven business days. This result is both harmful and confusing to the employee who is left to wonder why the method of payment of her wages she has freely selected and grown accustomed to using is now unavailable to her. Furthermore, the unexpected receipt of wages by check might cause some employees to default on the payment of bills that are then being paid from their direct deposit account or Payroll Card account if they are unable to timely arrange for the cashing of their payroll check and the corresponding deposit to the applicable account.

The NBPCA urges the Department to amend the Revised Rule to state that its written notice and consent requirement apply only to new employee elections for direct deposit or Payroll Card accounts after the final rule takes effect.

F. The Revised Rule's "Comprehension Standards" and Other Requirements Remain Unclear, Extremely Subjective, and Difficult to Administer and Enforce

Under the Revised Rule, the written notice and consent must be in both English and in the employee's primary language, when a template notice and consent becomes available from the Commissioner of the Department. The written notice must include a description of the employee's options for wage payment, a statement that the employer cannot require the employee to accept a 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 or residence where he or she can access and withdraw wages at no charge. The NBPCA believes some of these requirements remain subjective and unclear and it will therefore be impractical for employers and providers to comply.

With regard to the Revised Rule's requirement in Section 192-1.3(d) that the proposed disclosures be made in English and the employee's primary language when the Commissioner makes a template notice and consent available, the NBPCA is concerned that employers and Payroll Card providers will not have the ability to comment on the format and language of the template before they are promulgated and requests that the Commissioner make any proposed templates available for such notice and comment before any requirement to provide them to an employee becomes effective. Moreover, the NBPCA is concerned that while the commentary accompanying the Revised Rule appears to make the use of the templates optional, the text of the Revised Rule itself would make the templates mandatory. Specifically, comment number 10 in the commentary accompanying the Revised Rule gives employers and providers the flexibility to provide the required disclosures in the employee's primary language, in a language the employee understands, or, when available, through the Department's templates. Comment number 10 also

notes that employers "elect" to use the templates, indicating their use is not intended to be mandatory. By contrast, the text of Section 192-1.3(d) simply states that the required written notice and consent must be provided in English and "the primary language of the employee when a template notice and consent . . . is available." The NBPCA asks the Department to revise the language of Section 192-1.3(d) to conform to the approach set forth by the Department in comment 10, allowing employers and providers to comply with the Department's language requirements by electing to use the Department's templates when they are available, but not making the use of such templates mandatory.

Similarly, the NBPCA believes, despite the positive changes made by the Department in its Revised Rule, the requirement that the employee be provided a list of locations in "reasonable proximity" to the employee's home or place of work where the employee may access and withdraw their wages at no charge continues to be unnecessary as employees can generally access their full net wages without cost at any financial institution that is a member of the payment brand on the front of the card. In addition, employees are typically provided with a phone number and/or website to assist in locating nearby in network ATMs.

Finally, it remains unclear 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 NBPCA believes the better policy is for employers to explain to their employees how they can access their wages without fees, along with a method for determining physical ATM locations, such as through a website from an ATM provider or an ATM network that is continually updated.

G. Any Final Rules Promulgated by the Department Should Include an Appropriate Implementation Period Providing Employers and Providers with Sufficient Time to Comply

The NBPCA and its members continue to have serious concerns about the Revised Rule's proposed effective date, which would occur six months after adoption of any final rule as published in the state register. For those providers that decide to continue to offer Payroll Card products in New York, the Revised Rule will require substantial changes to their operations. Such providers will, at a minimum, need to (i) create new disclosures, (ii) implement procedures – which differ from and appear to be inconsistent with current requirements under Regulation E – for change in terms notices, and (iii) implement procedures to prevent the assessment of prohibited fees on Payroll Card accounts offered to New York workers. As noted above, the Revised Rule, if adopted as proposed, will ultimately cause providers to create entirely separate processes and procedures for New York workers than such providers have implemented 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 an implementation process cannot even commence until final rules are issued by the Department. In light of this fact, having the final rules effective six months after their publication in the state register is impractical, and could cause the removal/suspension of Payroll Cards in the New York market for several months, while employers and providers develop compliant Payroll Card products, operational processes and procedures.

Moreover, the NBPCA points out that 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 will be needed in order for the industry to be able to comply with that proposed rule.¹¹ The NBPCA further notes that, similar to the Revised Rule, the CFPB's proposed rule also poses substantial operational changes for Payroll Card providers. Additionally, it should be noted that the industry is already undergoing significant change related to the nationwide roll-out of EMV chip-enabled POS terminals and 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. Consequently, given all of these dynamics, 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 of payroll cards the time necessary to comply with both the CFPB proposed rule and the final version of the Revised Rule. Alternatively, the NBPCA requests that the Department provide an implementation period of at least 12 months from the date of publication of the final rule.

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¹¹ 79 Fed. Reg. 77256.

Conclusion

The NBPCA appreciates the opportunity to comment on the Department's Revised Rule. The NBPCA reiterates that Payroll Cards offer substantial and numerous benefits to workers in New York including increased security, convenience, and cost savings. While the NBPCA is appreciative of the positive changes the Department has made in the Revised Rule, the NBPCA believes that the Revised Rule continues to present serious challenges for issuers and Payroll Card providers seeking to offer payroll cards to New York workers. Moreover, the NBPCA reiterates that several laws, including Regulation E, already contain substantial employee protections in connection with the use of Payroll Cards. The end result of the Department's Revised Rule, as proposed, will likely be that employers and card issuers will be 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,



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