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By Electronic Mail

November 19, 2004

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

**Re: Proposed Rule and Official Staff Interpretation of Regulation E
Docket No. R-1210**

To Whom It May Concern:

MasterCard International Incorporated ("MasterCard")¹ submits this comment letter in response to the proposed rule and official staff interpretation (the "Proposal") issued by the Board of Governors of the Federal Reserve System (the "Board") regarding the Board's Regulation E, 12 C.F.R. Part 205, issued under the authority of the Electronic Fund Transfer Act, 12 U.S.C. § 1693 *et seq.* (the "EFTA"). See 69 Fed. Reg. 55996 (Sept. 17, 2004). MasterCard appreciates the opportunity to comment on the Proposal.

Payroll Cards

Over the past several years, payroll cards have become an increasingly widespread method by which employers can pay wages or salary to employees. Payroll cards provide a number of advantages to each of the participants in a payroll card system.

First, to employers, payroll cards offer a less expensive way to deliver wages than paper checks, particularly for employees who do not have access to direct deposit services. The employer can experience significant savings in the costs of printing paper checks, delivering the checks, and processing replacements for lost or stolen checks.

Second, payroll cards give employees a safe and reliable means to receive their wages. An employee holding a MasterCard-branded payroll card, for example, can access funds at thousands of ATMs and merchant locations where MasterCard debit cards are

¹ MasterCard is an SEC-registered private share corporation that licenses financial institutions to use the MasterCard service marks in connection with a variety of payments systems, including stored value cards.

accepted. The employee is no longer forced to incur fees for check cashing, or carry large amounts of cash. The employee also enjoys the benefits of MasterCard's \$0 liability policy for unauthorized use, and can obtain a replacement if a card is lost or stolen.

Third, payroll cards provide the issuing financial institutions with a manner to deliver services to traditionally "unbanked" people. And payroll cards may serve as a way to transition the unbanked to more traditional banking products, such as checking or savings accounts.

We believe that, in certain respects, it may be appropriate to treat payroll cards as "accounts" for purposes of Regulation E. Payroll cards should not, however, be subject to the full range of Regulation E requirements. In particular, any effort to apply Regulation E to payroll cards must be carefully crafted to avoid imposing undue burdens on financial institutions and employers that may harm consumers by impacting the availability of the cards. The following discusses several suggested modifications to the Proposal to address the issues.

Periodic Statements. Under the Proposal, payroll cards would become subject to all aspects of Regulation E. We urge the Board to consider modifying the requirement of sending periodic statements to holders of payroll cards. *See* 12 C.F.R. § 205.9(b). The costs of providing such statements likely outweigh any benefits to cardholders. *See* EFTA, § 904(a)(3) (requiring Board to demonstrate that the consumer protections of its regulations outweigh the costs of compliance).

First, there is no reason to expect that the employee/cardholders of payroll cards desire periodic statements, or would derive any benefits from receiving periodic statements. While a person opening a checking account likely expects to receive a monthly statement, there is no evidence that a cardholder accepting a payroll card would have any such expectation. Indeed, the holder of a payroll card may have chosen not to open a traditional checking account because he or she wants to have greater simplicity than can be offered through checking or similar accounts. In most, if not all, payroll card systems, the cardholder can obtain the salient information—available balance and transaction history—through a variety of other means, such as a toll-free automated telephonic information system (often called a voice response unit or "VRU"), a customer service representative, a web site, or an ATM. These information systems can deliver information on demand, when the customer requests it, and are likely to offer more timely information than that contained in a periodic statement.

In our experience, most cardholders are likely to want three types of information about their accounts: current balance, indication of unauthorized use, and indication of a billing error. All of this information can be made available through means other than periodic statements. Instead of offering the information only once per month, a VRU, web site, or ATM can provide balance and transaction history on demand. This gives the cardholder the information needed, at the time it is needed.

Second, sending periodic statements imposes a substantial cost on the financial institution that issues a payroll card. Printing periodic statements each month for each

cardholder, and mailing those statements through the U.S. mail, adds a substantial cost component. Those costs include printing and postage, and the costs of processing and handling both outgoing mail and mail that is returned by the post office. To supply this service, the financial institution is forced to increase the cost of the product to either the employer or employee. This may make the payroll card product unattractive and, in many circumstances, not viable. At the very least, it would likely require consumers to pay for statements that they may not even want or need.

Instead of imposing the burden of providing periodic statements for all payroll cards, we ask the Board to consider implementing the same compromise adopted by the Board for electronic fund transfers of government benefits. *See* 12 C.F.R. § 205.15. In that context, the Board held that a government agency was not required to send periodic statements, as long as it both: (1) made the consumer's balance information readily available by telephone and at terminals, and (2) made a written history of the consumer's account transactions available on request. § 205.15(c). This same solution is appropriate for payroll cards, "particularly given the expense of routinely mailing monthly statements..." 59 Fed. Reg. 10678, 10681 (Mar. 7, 1994). As the Board recognized in adopting Section 205.15(c), requiring periodic statements "could impede the effort to eliminate paper and move toward a fully electronic system." *Id.*

Alternatively, we ask the Board to consider other methods by which a financial institution could deliver periodic statements to cardholders in a cost-effective manner. For example, an issuer of payroll cards should be permitted to make statements available for pick up by the customers at the place of employment, or provide access to statements through a computer terminal owned by the employer, without obtaining separate consent from each employee.

Financial Institution. The Proposal indicates that multiple persons (for example, the employer and the bank that holds funds) may qualify as "financial institutions" with respect to a payroll card program, depending on how the program is structured. 69 Fed. Reg. at 55999. Thus, both the employer and the bank may have obligations under Regulation E, subject to the Regulation's provisions for electronic transfer services involving more than one provider. 12 C.F.R. § 205.4(e).

We believe that the Proposal should be clarified to indicate that an employer will not be considered a "financial institution" under the Regulation simply because it sponsors or participates in a payroll card program, or assists in gathering and processing enrollment forms or the actual cards. Under MasterCard's rules, only a financial institution is permitted to issue a MasterCard card, including a payroll card. Thus, we expect that for payroll card programs using MasterCard-branded cards, only the financial institution (and not the employer) would be subject to duties under Regulation E.

Compulsory Use Prohibition. We also urge the Board to adopt a clarification to existing comment 10(e)(2)-1 regarding compulsory use. That comment currently provides, among other things, that "an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer), or receiving their salary by another means, such as by check or cash." We urge the Board to make it clear

that, in addition to “check or cash” it would be acceptable for an employer to offer direct deposit at a financial institution of the consumer’s choice. In this regard, employers who offer payroll cards to their employees typically will choose a single financial institution to offer those cards but will also give the employees the choice of receiving their salary by direct deposit. To clarify that this approach is acceptable, we urge the Board to modify the last sentence of comment 10(e)(2)-1 to read as follows:

“Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer), or receiving their salary by another means such as by other direct deposit, check or cash.”

Other Stored Value Cards. We welcome the Board’s decision to limit the Proposal to payroll cards, and we agree with the Board’s definition of the term “payroll card account.” It is important to recognize that there are a wide variety of different types of stored value cards in the marketplace, serving many different consumer needs, and issuers are continuing to develop new types of cards in response to consumer demand. We believe that it would be a mistake to attempt to regulate stored value cards as a whole under Regulation E, because to do so may curtail or eliminate the availability of many of these cards. Any regulation of stored value cards should be undertaken only to the extent that there is a clear, identifiable need to do so and such regulation can be implemented without affecting the economic or practical viability of the cards.

Effect of Other Regulations. In the Proposal, the Board sought comment on whether Regulation E coverage should be linked to whether funds underlying a payroll card account qualify as “deposits” under section 3(l) of the Federal Deposit Insurance Act (the “FDI Act”), including the proposal by the Federal Deposit Insurance Corporation to provide regulatory guidance on when stored value card funds qualify as “deposits.” 69 Fed. Reg. at 55999.² We believe that the coverage of Regulation E should be considered independently of the coverage of deposit insurance under the FDI Act, and other regulatory issues (such as the coverage of the Truth-in-Savings Act and Regulation DD, the Expedited Funds Availability Act and Regulation CC, reserve requirements under Regulation D, and the Customer Identification Program rules under the USA PATRIOT Act).

The principal reason for considering these regulatory issues separately is that there are very different policy reasons to apply coverage under the different statutes and regulations. For example, Regulation E is designed to provide certain consumer protections with covered accounts, in the form of mandatory disclosures, error resolution rights, limitation of customer liability, and other provisions. Deposit insurance, on the other hand, is limited to protecting account holders in the event of bank failure. Different types of stored value products call for different application of those two regulatory regimes, and the others mentioned above.

² MasterCard submitted comments to the FDIC’s proposal.

Preauthorized Transfers

Under the Proposal, the Board would eliminate from comment 10(b)-(3) the sentence indicating that the recording of a telephone conversation with a consumer who agrees to preauthorized debits does not constitute written authorization for purposes of Regulation E. We fully support the deletion of this provision and commend the Board for acknowledging that preauthorized transfers may be authorized in a telephone call provided that the requirements of the E-SIGN Act are satisfied. More and more consumers are seeking to establish preauthorized transfer arrangements and demand the convenience of being able to do so via the telephone. The proposed modification to comment 10(b)-(3) will remove a major impediment to satisfying these consumer demands and expectations, and we urge the Board to adopt this revision in final form.

The Proposal also would modify comment 10(b)-7 which deals with the circumstance where the consumer authorizes a preauthorized transfer indicating that he or she is using a credit card account when in fact a debit card is being used. Comment 10(b)-7 currently provides that the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error and the payee maintains procedures reasonably adopted to avoid any such error. The Proposal would modify comment 10(b)-7 to include, among other things, the following language:

“Procedures reasonably adopted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit card or is a credit card, using those terms, is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit card), however, the payee may rely on the consumer’s assertion without seeking further information about the type of card.”

We agree with this proposed modification, and we urge the Board to adopt it in final form. The Supplementary Information to the Proposal also states that “merchants are not required to obtain or consult BIN tables to maintain procedures reasonably adopted to avoid error. Similarly, merchants would not be required to check card numbers already on file against BIN tables.” We believe that this is an important clarification, and we urge the Board to include the same clarification in the Supplementary Information to the final rule.

Electronic Check Conversion

We do not have a position on most of the Board’s Proposal with respect to electronic check conversion. The one area of concern, however, is the requirement to provide a notice about the electronic check conversion “for each transaction” in the context of so-called “ARC” transactions. 69 Fed. Reg. at 56000. Thus, for example, a credit card issuer that would like to use electronic check conversion for payment checks submitted by cardholders would be required to include the notice on each periodic statement. *Id.*

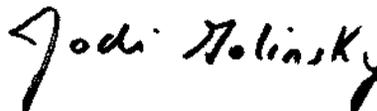
Recurring disclosure, however, is not justified in this case. Adding additional language to a periodic statement will serve to detract from the important disclosures and information already contained on periodic statements.

Instead, we ask the Board to consider allowing creditors to provide a one-time notice that checks submitted by mail may be processed through electronic check conversion. A one-time disclosure will provide the appropriate information for consumers, while not burdening the periodic statement with yet more legal boilerplate. This is especially true because with the increasing use of electronic check conversion, and the processing methods allowed by the Check 21 Act, consumers will be more accustomed to check conversion and the effects thereof (such as quicker debiting and no return of paper checks).

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Once again, we appreciate the opportunity to comment on the Proposal. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin Brown & Wood LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,



Jodi Golinsky
Vice President and
Senior Regulatory Counsel

cc: Michael F. McEneney, Esq.