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November 19, 2004

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

Re: Docket No. R-1210; Regulation E.

Dear Ms. Johnson:

This comment letter is submitted on behalf of the Electronic Funds Transfer Association (**EFTA**) in response to the request for comment recently issued by the Board of Governors of the Federal Reserve System (**Board**) on a proposed revision to Regulation E that addresses its coverage of payroll card accounts and electronic check conversion (**ECK**) services.

EFTA is the nation's leading non-profit, inter-industry trade association dedicated to the advancement of electronic payment systems and electronic commerce. The Association's nearly 900 members represent a broad spectrum of perspectives that engenders accurate and effective analysis of electronic payments and electronic commerce issues. Members include the nation's leading financial institutions, electronic payment networks, card associations, retailers, information processors, equipment, card and software manufactures and vendors, Internet providers, telecommunications companies, state governments and Federal agencies. A list of the members of EFTA's Board of Directors is attached. Please note that none of the governmental members of EFTA was involved in the development of this comment letter.

EFTA generally supports the Board's proposal regarding payroll cards, because we believe that with the increasing popularity of payroll card programs, it is important for the industry and consumers to have the funds underlying such cards treated as "accounts" covered by Regulation E. We urge the Board, however, to modify or waive certain Regulation E requirements to address the unique characteristics of payroll cards.

With respect to the proposal regarding ECK services, we question whether it is necessary for the Board to elaborate on the automated clearing house (**ACH**) rules that currently apply to the disclosure and other operational aspects of such services. These services are in their infancy, and absent significant consumer problems, we believe that it would be better to permit the participants in the ACH system to address any deficiencies in the current voluntary regulatory scheme, rather than to impose additional regulatory requirements that are unnecessary and may impede the development of such products. To the extent that the Board determines to adopt the proposal, we have a number of specific comments regarding the notice and other requirements

PAYROLL CARDS

Definition of Account

EFTA supports the Board's proposal to provide that the term "account" includes a "payroll card account" directly or indirectly established by an employer on behalf of a consumer to which electronic funds transfers (**EFTs**) of the consumer's wages, salary, or other employee compensation are made on a recurring basis. Use of payroll cards by consumers is growing rapidly, and it is important to provide an appropriate level of consumer protection to insure consumer confidence in payroll products. Adoption of the proposal will insure that there is a uniform national standard for payroll card services. The great majority of payroll card issuers currently give consumers such protections, and insuring uniformity will protect consumers and provide a level playing field for issuers and employers.

We agree with the Board's proposal not to extend Regulation E's coverage beyond payroll card products to other prepaid debit products. While use of gift cards and other prepaid products is growing rapidly, consumers use gift cards and other prepaid cards for very different purposes and with entirely different expectations than payroll cards. We do not think regulation of gift card products is currently needed as it may be with respect to cards that access consumers' wages and salary. We ask, however, that the Board clarify that the addition of wages or other employee compensation to an existing non-payroll card at the request of the employee is not intended to be covered by this proposal.

The coverage of Regulation E should not be determined by whether a payroll card account holds consumer funds that qualify as eligible "deposits" for purposes of section 3(l) of the Federal Deposit Insurance Act. Whether the funds existing in an account qualify as deposits is irrelevant to the definition of an "account" for purposes of Regulation E. Making such a connection could result in delaying Regulation E's coverage of payroll card accounts to the detriment of consumers. We do, however, urge the Board to act in concert with the FDIC so that compliance burdens are minimized to the greatest extent possible.

Disclosure Requirements

We urge the Board to grant financial institutions flexibility in complying with the provisions of Regulation E for payroll cards. Payroll cards are a secure and convenient way to pay wages to consumers, many of whom do not have bank accounts. Use of these products can help unbanked consumers learn the benefits of the banking system. Payroll card products are, however, still in their infancy, and they are not a highly profitable business for most financial institutions. To the extent regulatory requirements impose operational and other burdens on issuers and others involved in payroll card systems, they will be more expensive and their availability may be limited. Therefore, while we agree that it is appropriate to include payroll card accounts within the ambit of Regulation E, we ask the Board to be mindful of

the effect of unnecessary regulation on the availability and success of these innovative and valuable products.

In particular, we request that the Board waive the requirement that periodic statements be mailed or delivered to consumers on a monthly basis. The experience of issuers demonstrates that mailing hard copies of monthly periodic statements is not the best way to provide information to consumers about their payroll card accounts. In many cases, payroll card users do not provide a current mailing address where they can be reached. Issuers are faced with a high rate of return of mailed periodic statements. (In some cases, our members have informed us that over 50% of statements are returned because of address deficiencies.) Payroll card issuers are finding that consumers primarily want available balance information and only secondarily want to view transaction and fee information. And for many consumers, the information is outdated by the time the statement reaches them because they have withdrawn all the available funds on their cards.

We believe that there are more effective, lower cost, real time ways of reaching these consumers--by voice response units, through automated teller machines and via the Internet. These methods still provide the information about their payroll cards that is important to consumers and do it in a way that is more useful than a written periodic statement. We therefore recommend that the Board adopt a rule similar to that which is in place for electronic benefit transfer programs under section 205.15(c) of Regulation E and permit payroll card issuers or employers to make account balance and transaction history information available to consumers through automated teller machines and other terminals, by telephone and over the Internet.

Effective Date

To afford financial institutions and employers the requisite time to revise their disclosures in order to comply with any new requirements, we suggest that the Board delay the mandatory effective date for compliance of payroll card programs for 12 months following the adoption of the rule in the case of existing accounts and 6 months following the adoption of the rule in the case of new accounts.

ELECTRONIC CHECK CONVERSION

The rules of NACHA provide notice and other requirements with respect to initiation and processing of ECK, accounts receivable (ARC) and other types of ACH transactions. These rules are generally comprehensive and address the same concerns being addressed by the Board in this rulemaking. While it may be that compliance with the notice requirements may not have been universal, we question whether it is necessary for the Board to amend Regulation E to impose additional requirements on emerging payment products absent widespread consumer problems (which have not occurred with ECK products). The

proposed requirements are generally duplicative of the ACH rules. We believe that the Board should delay any additional rule-making on this matter to afford the participants in the ACH system more time to insure the efficacy of self-regulation.

To the extent that the Board determines that it is necessary to expand the scope of Regulation E to further address ECK conversions, we would have the following specific comments:

1. The Board's proposal to treat merchants or other payees (collectively, **Payees**) that initiate one-time EFTs using information from a consumer's check, draft or similar instrument, as "financial institutions" for purposes of the regulatory requirements is reasonable in light of the disclosure requirements that would be imposed on Payees.
2. We do not believe that it is helpful to consumers for notice to be given on a recurring basis for payments that are not made at point of sale (**POS**) locations. Credit card issuers, utility companies and many other Payees that convert payment checks should have the option to give a notice regarding possible check conversion once, on the agreement forming the relationship between the consumer and the Payee. It is not particularly helpful for consumers to get a notice on the back of a periodic statement already filled with informational and legal notices.
3. Any required notice should be a generic one informing the consumer that the Payee may choose to process the payment electronically. As the Board acknowledges in the proposal, Payees need flexibility because processing or other technical problems may render electronic conversion of the check infeasible. Payees may process the payment as an EFT, as a transfer originated by check or use the check to create a substitute check. EFTA believes that a disclosure stating that a consumer authorizes an EFT, or in the alternative, a check transaction, will not result in any consumer harm or create any other risks. Payees that obtain alternative authorization should not be required to specify the circumstances under which a check that can be used to initiate an EFT will be processed as a check. Such detail in the notice would not be particularly helpful to consumers and would not inform their decision.
4. We believe that Payees should not be required to obtain a signed authorization to convert a check. Doing so would unnecessarily delay POS transactions and may even be impracticable in many of the circumstances in which checks are used. EFTA agrees with the Board's proposal that a payment should be deemed authorized if, after receiving notice that the transaction may be processed as an EFT, the consumer provides a check or checks to a Payee.
5. In the case of ARC transactions, to the extent that the Board does not adopt our suggestion that there should be blanket authorization for such conversions, we agree with the Board's proposal that a single authorization to cover multiple checks submitted as a payment for an invoice or during a single billing period should be considered sufficient.

Initial Disclosures

EFTA does not oppose the addition of a requirement that the initial disclosure statement required by section 205.7 include check conversion transactions as a type of EFT that the consumer may make. We believe that this disclosure should be worded in such a way that it covers all types of conversion transactions. We request that the Board clarify that adoption of this requirement will not trigger a change in terms disclosure under section 205.8(a) for those financial institutions that do not currently include such a notice in their disclosure statements.

In the case of new accounts, we believe that 6 months following the adoption of the rule should be enough time to revise the disclosures to comply with Regulation E.

* * * *

We appreciate the opportunity to comment on the proposed rulemaking.

Sincerely,

/s/ H. Kurt Helwig

H. Kurt Helwig

Enclosure

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