



National Association of Federal Credit Unions

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March 13, 2006

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

RE: Docket No. R-1247

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Board of Governors of the Federal Reserve System's (Board) interim final rule and request for comments regarding the coverage of payroll card accounts by Regulation E, 12 CFR Part 205.

The interim final rule provides that payroll card accounts are "accounts" covered by Regulation E and includes those accounts directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis. The rule also provides financial institutions several alternatives for providing account transaction information to payroll card consumers.

NAFCU commends the Board's efforts to provide financial institutions with flexibility in the manner by which information is provided to consumers; however, we suggest that, in practice, compliance with certain requirements may not be feasible. NAFCU believes that an appropriate balance should be struck between providing adequate consumer protections and easing the significant regulatory burden involved. Toward that end, NAFCU provides the following comments below.

Alternatives to Periodic Statements

Under the interim final rule, financial institutions offering payroll accounts may elect not to provide traditional periodic statements to payroll card users. In the alternative, institutions may provide account information over the phone, online, or in writing in response to a consumer's request.

NAFCU agrees that financial institutions should be allowed alternative means for providing account transaction information to payroll card users. As the Board's focus group demonstrated, many payroll card users do not find paper periodic statements useful. Further, payroll card accounts are often utilized by seasonal workers, short-term employees, and other transient workers who may not have fixed addresses or who may move often or with little notice. For these types of consumers, traditional periodic statements are not appropriate. NAFCU therefore supports the alternatives provided under the interim rule.

Error Resolution and Liability Limits

Triggering Mechanism

The interim final rule specifies two triggers for beginning the 60 day period for the limitations on liability and error resolution procedures, depending on how the card user has obtained the account history. If the transaction history is obtained electronically, the period begins running from the date the account was accessed online by the card user; if the history is obtained in writing, the period begins on the date the institution sends the written history to the consumer.

NAFCU is concerned about the feasibility of the triggering mechanism for the limitations on liability and error resolution procedures for those financial institutions that opt not to provide traditional periodic statements. In particular, tolling the 60 day period from the date that a consumer electronically accesses his or her account would be unduly burdensome for some credit unions.

NAFCU recommends that the 60 day time period for liability limits and error resolution rights be triggered by the date of the transaction. As the Board's focus group indicated, the majority of card users regularly monitor their balance and transaction activity over the telephone and online, some "multiple times per week." The date of transaction is easier to identify than the date of web access, and as most card users closely monitor their account activity, tolling the 60 day period from the transaction date would most appropriately balance the benefit to the consumers' interests against the burden imposed on employers and financial institutions.

Should the Board decline to revise the triggering mechanism for the limitation on liability and error resolution procedures, NAFCU encourages the Board to clarify in the

Official Staff Commentary to Section 205.18 that electronic access occurs when the consumer enters login and password information; the rule does not require institutions to determine whether the consumer has *actually* accessed information about specific transactions involving the payroll card account to trigger the 60 day period.

Annual Error Resolution Notice

Section 205.18(c) of the interim final rule requires, among other things, financial institutions to provide in initial disclosures a notice of error resolution rights. Financial institutions are also required to provide an annual notice describing these rights.

While NAFCU believes that the initial notice of error resolution rights is important in protecting the rights of consumers, the requirement for an annual notice is not appropriate for payroll card accounts. Delivery of an annual notice is difficult for many of the same reasons that paper periodic statements are inappropriate for these accounts: payroll card accounts are often used by seasonal and short-term employees and other transient workers without permanent addresses, challenging mail delivery. NAFCU therefore encourages the Board to provide financial institutions with greater flexibility in the manner in which annual error resolution notices are provided to payroll card users.

Additional Comments

In response to the Board's request for comment on its proposal, NAFCU expressed concern that the coverage of payroll accounts under Regulation E might affect the definition of "accounts" for the purposes of other laws. The Board notes that the interim final rule is intended only to address coverage issues under Regulation E; the amendments do not affect the definition of "account" for the purposes of any other law or regulation. NAFCU, however, remains concerned that the coverage of payroll card accounts under Regulation E creates uncertainty as to the applicability of other statutes and regulations such as Truth-in-Savings, Regulation D, USA PATRIOT Act, and various state laws.

Additionally, NAFCU does not believe that the scope of coverage should be extended beyond payroll card accounts at this time. As stored-value and prepaid card products are continuing to develop, expanding Regulation E coverage to other types of stored-value cards may impede innovation of this emerging technology and deter financial institutions from offering products that may provide real benefits to consumers.

Finally, NAFCU would like to commend the Board for conducting focus group testing of consumers to ascertain how actual payroll card users use and manage their accounts. NAFCU encourages the Board to continue to integrate focus group testing into the regulatory process.

Ms. Jennifer J. Johnson

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NAFCU would like to thank you for this opportunity to share its views on this interim final rule. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred R. Becker, Jr." with a stylized, cursive script.

Fred R. Becker, Jr.
President/CEO

FRB/pwy