



March 13, 2006

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

Re: Docket No. R-1247; Regulation E.

Dear Ms. Johnson:

This comment letter is submitted on behalf of the Network Branded Prepaid Card Association (NBPCA) in response to the request for comment recently issued by the Board of Governors of the Federal Reserve System (Board) on an Interim Final Rule (Interim Rule) amending Regulation E to cover payroll card accounts.

NBPCA is a newly formed, inter-industry trade association open to all parties interested in the advancement of network branded (open-loop) prepaid cards. These are prepaid cards that carry the brand of a payment network and are useable generally everywhere the payment network's cards are accepted. Our goal is to represent the common interests of the many players in the new and rapidly growing business of such cards. By bringing together a cross-section of network branded prepaid card leaders during the industry's formative years, we desire to serve as a catalyst and to contribute to the long-term success of the prepaid marketplace. NBPCA began its membership drive less than one month ago and currently has four member organizations. Ten additional organizations have indicated their intent to join NBPCA, and we anticipate having more than twenty members by year end. Sixty industry executives, representing thirty-nine companies, recently attended an NBPCA telephone meeting on legislative and regulatory issues.

The Board has addressed the unique characteristics of payroll cards in a thoughtful manner in the Interim Rule. Payroll cards are a secure and convenient way to pay wages to consumers, many of whom do not have bank accounts. We appreciate that the Board has developed a flexible scheme that focuses on consumer protection, yet grants financial institutions flexibility so as to avoid significant operational and other burdens. NBPCA generally supports the Interim

Rule, because we believe that it is important to provide an appropriate level of consumer protection to insure consumer confidence in payroll products. We also support the Board's treatment of payroll card products as "accounts" only under Regulation E, and not under other federal laws or regulations, and the limited applicability of the Interim Rule to payroll cards, and not to other prepaid cards.

NBPCA appreciates the opportunity to comment on the Interim Rule.

### Account Definition

While NBPCA generally supports including within the definition of "account," for purposes of Regulation E, a "payroll card account" directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person," we are concerned that the use of the term "indirectly" is ambiguous and could lead to confusion. Accordingly, we respectfully request that the Board clarify that "indirectly" refers only to those circumstances where an employer authorizes a third party to create or operate its payroll card program, and not to those where a payroll card or payroll card program is sponsored by any party other than the employer. Otherwise, use of the word "indirectly" could result in inadvertent coverage under Regulation E, despite the Interim Rule's more narrow contemplated scope.

We also believe that the Board should address whether certain types of payments would constitute transfers "made on a recurring basis," so as to make a card account a "payroll card account" governed by Regulation E. First, comment 2(b)-2 of the commentary related to the Interim Rule provides that a "payroll card account" does not include a card used for a one-time electronic fund transfer of a salary-related payment, such as an annual bonus. We ask that the Board clarify that a "payroll card account" would not include a card to which transfers of incentives or similar payments may be made more than once during the year or during the employer/employee relationship (but not recurring at substantially regular intervals). Such payments appear to be "isolated or limited instances" and are not the "means by which an employer regularly pays the employee's salary or other form of compensation." Accordingly, we believe that they are properly excluded from the definition of "payroll card account" and request that the Board amend the commentary accordingly.

We also ask the Board to clarify that a card to which only health plan-related benefits are transferred is not a "payroll card account." Because health benefit payments are not direct compensation, are not intended to be the primary source of income, and are often not "designed for ongoing use at multiple locations and for multiple purposes," we suggest that the Board clarify that such a card would not be a payroll card account.

### Alternative Periodic Statement Provisions

We commend the Board for granting financial institutions flexibility in complying with the periodic statement provisions of Regulation E with respect to payroll cards. NBPCA believes that mailing hard copies of monthly periodic statements to consumers is not the best way to provide them information about their payroll card accounts. Among other reasons, payroll card holders may not provide a current mailing address and often prefer, because funds from the payroll cards are withdrawn regularly, real-time information provided by other means.

Accordingly, in response to the Board's request for comment as to whether the option to obtain a written history of transactions under § 205.18(b)(1)(iii) is necessary or appropriate, we suggest that financial institutions not be required to provide a written history of transactions in response to a consumer's request, as long as such financial institutions provide transaction histories through electronic access or a readily available telephone line and can track consumer access for purposes of limited liability and error resolution. These two methods provide the payroll card information that is important to consumers in a manner that is more convenient and up-to-date than written statements.

The Board also requested comment on the feasibility of providing a rolling 60-day transaction history. NBPCA believes that providing such a transaction history would be operationally difficult for issuers and/or service providers. Many financial institutions have developed systems that provide transaction histories only for specific statement cycles, rather than for rolling time periods. For such institutions, providing a rolling history would necessitate costly programming changes. We also believe that a 60-day transaction history exceeds the needs of most consumers. However, in light of the Board's concerns that consumers may waive their right to assert an error if a longer transaction history is not provided, we suggest that financial institutions be given the option of providing 60 days of transaction history information in either rolling 60-day periods or traditional statement cycles. Under either option, consumers will be able to protect their error resolution rights under § 205.11 because, under § 205.18(c)(4), a financial institution must comply with error resolution procedures if a consumer reports an error within 60 days after information about the transaction is made available to the consumer. Accordingly, if an error is made between the end of one statement date and the date a consumer accesses his or her transaction history, the 60-day period for error resolution would not begin until the consumer could access the transaction in question, that is, when the new transaction history statement is available. In addition, an updated account balance, including transactions occurring since the last statement cycle but not yet available in the transaction history, would likely be available earlier under § 205.18(b)(1)(i).

### Annual Error Resolution Notice

We believe that financial institutions should be permitted, at their option, to provide a short-form notice to those consumers receiving transaction histories, as is currently permitted under § 205.8(b). Consumers are more likely to read a

concise notice included with transaction histories, rather than a stand-alone annual mailing. In addition, consumers would have easy access to the error resolution notice because they will have regular access to their payroll card account transaction histories via electronic and/or other means. Accordingly, for the reasons that an abbreviated notice is permitted under § 205.8(b), we respectfully request that a similar notice be permitted under § 205.18(b).

#### Liability and Error Resolution Limitations

NBPCA generally agrees that the Interim Rule's triggers for beginning the 60-day periods for error resolution and unauthorized electronic fund transfers are appropriate. In particular, NBPCA notes that requiring financial institutions to determine when a consumer accesses specific transaction information would impose severe operational burdens on issuers and service providers. By ensuring that a consumer has logged on to a secure portion of the website, the Interim Rule offers protection to consumers yet avoids burdensome regulations of the important payroll card product.

However, we recommend that the Board clarify that the limited liability and error resolution timeframes do not continue indefinitely if a consumer does not access his or her account or request a transaction history for many months after a transaction occurs. Otherwise, consumers would have little incentive to monitor regularly their accounts and financial institutions would be burdened with the administrative difficulties of researching very old transactions.

#### Effective Date

It is our understanding that the Board intends to delay the effective date of the final rule for at least 12 months following the rule's adoption. We believe that financial institutions and employers will need this time to revise their disclosures and systems.

\* \* \* \*

We appreciate the opportunity to comment on the Interim Rule.

Sincerely,

/s/ Anil D. Aggarwal

Anil D. Aggarwal  
Chairman of the Board  
Network Branded Prepaid Card Association