

March 13, 2006

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

Re: Interim Final Rule Regulation E Payroll Cards

Docket No.: R-1247

Dear Ms. Johnson:

KeyBank NA welcomes the opportunity to comment on the interim final rule to Regulation E applicable to payroll cards and commends the Board for taking the initiative to submit these changes for public comment. As electronic funds transfers become an even more significant part of the payments system and innovation creates such far-reaching changes in how consumers conduct financial transactions, we feel it is critical that regulations keep up with changes in the marketplace. We believe that the changes requested will benefit consumers, billers and financial institutions. Increased consumer awareness and knowledge are an important component in assuring the country's continued confidence in our payments system, and we think these regulatory changes are also a significant step in that direction. Please consider our specific comments in regard to the regulatory proposal below and feel free to contact us if further clarification is desired.

About KeyCorp

Cleveland-based KeyCorp is one of the nation's largest bank-based financial services companies, with assets of approximately \$93 billion. Key companies provide investment management, retail and commercial banking, consumer finance, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. The company's businesses deliver their products and services through branches and offices and a network of approximately 2,200 ATMs.

Financial Institution. We encourage the Board not to expand the definition of "financial institution" to include employers per §205.18(a). Employers are not considered "financial institutions" for purposes of originating payroll direct credit transactions via the ACH payment network to an employee's deposit account at a

financial institution. While we agree it is important to provide consumer protection rights under Regulation E, such protection can be provided without forcing new compliance requirements on nonbank entities. Many employers that are likely to offer payroll cards will be small or medium size companies that are unfamiliar with Regulation E and may be reluctant to take on the risk of noncompliance or added cost of compliance under Regulation E. This burden may be sufficient to be a disincentive for offering payroll cards to the “unbanked” consumer.

Account. We encourage the Board to clarify the definition of “account” as set forth in §205.2(b)(2). The Board’s supplementary comments with the Interim Rule states that a general spend card, purchased by a consumer, may be used by the consumer at a later date to add recurring payroll or other compensation, but that such type of multi-purpose card is not intended to be within the scope of the definition of “account” and that the possibility of adding future pay to a general spend card does not make the card subject to Regulation E.

It is our experience, that card issuers deliver general spend cards with expiration dates of two to four years from card issuance, which is often required by recent state laws regulating gift cards and stored value cards. Also, a cardholder may easily add value through a variety of means, including (i) customer service, (ii) telephone authorization, (iii) in person transactions at merchant locations or retail locations of authorized agents, or (iv) by contacting the cardholder’s employer and giving authorization to transfer funds from wages or compensation from recurring pay periods. In many cases, these combo cards are issued with a long-term perspective, in dual card packets, which allows the wage earner to deliver a second card to an authorized user with the expectation that the second cardholder will withdraw part of a periodic payment of wages – often involving transfer of funds cross-boarder outside the U.S. These general spend cards function like a payroll card, and the only difference is the marketing activities used for enrollment and delivery of cards to employees. To exclude these multi-purpose cards from Regulation E creates a competitive disadvantage for banks and other financial institutions that issue and market directly a payroll card.

However, it is very important to have laws that are uniform and predictable regarding enforcement and risks of noncompliance. Certainty and clarity in any law or regulation allows for financial institutions to design and implement programs that comply with the Regulation E, without risk of violation, this is somewhat unclear, and there could be some ambiguity over this point. Therefore, we encourage the Board to strengthen reliance on this exclusion by adding a comment directly on point in the Official Staff Commentary. There may be a material risk of third party lawsuits that may assert the card issuer’s failure to comply with Regulation E in the case the card issuer mistakenly believes the card is only a general spend card and excluded from coverage under Regulation E.

Stored Value Cards. We commend the Board’s decision under the Interim Final Rule not to extend Regulation E coverage to all stored value products on a universal basis, but to limit the scope of the coverage to payroll cards. However, we encourage the

Board to consider that any future regulation of stored value cards be undertaken only if deemed to be absolutely necessary.

There are a variety of employee benefit accounts that are subject to IRS Regulations and the IRS Code [Title 26, Subtitle A, Chapter 1; Subchapter B, Part III], which allow for the following: (i) Section 125: **Cafeteria Plans**; (ii) Section 129: **Dependent Care Assistance Programs**; (iii) Section 132: **Certain Fringe Benefits** (including mass transportation costs and monthly parking expenses) and (iv) Section 223: **Health Savings Accounts**. Issuers of cards and other financial institutions are currently offering card access to these accounts, which may be on a pre-tax or post-tax basis. Contributions to the related account may be funded by an employer, an employee, or both. Depending on the terms of the program and activities by an employer, part of these benefits may be reported as income to an employee, or an employee may authorize recurring deductions from periodic paychecks to fund the account, bonus/incentive cards and employee expense reimbursement cards are frequently used and should be excluded from the definition as well. While these types of card accounts are not generally perceived by the public to be a payroll card, there may be some confusion on the application of this Final Interim Rule to these types of card programs. This area for stored value cards has the greatest potential for future growth. We encourage the Board to provide further specific guidance to confirm these programs are not considered wage related or payroll related accounts and not subject to the Final Interim Rule.

Periodic Statements

The alternatives to periodic statements set forth in § 205.18(b) of the Interim Final Rule benefits payroll cardholders by allowing them to access account balance information and transaction histories on demand via a toll-free, telephonic information system or via the Internet. As the Board rightly notes, information accessed by telephone or online is typically updated regularly in contrast to periodic statements that provide only a static snapshot of account activity at the end of each statement cycle. Therefore, the alternatives to periodic statements will afford cardholders more timely information that may be of particular importance to consumers who may need to track their account balances on a transaction-by-transaction basis to avoid overdrawing their accounts. Further, we note that consumers who would prefer to receive paper statements have the option of receiving such statements upon request. Under § 205.18(b) the alternative disclosures to periodic statements allow payroll cardholders to access account balance information and transaction histories on demand. Most financial institutions of payroll cards provide some type of alternative disclosures today, or even a mini-statement for the payroll card account printed at an ATM, which may be limited to the last 10 transactions rather than transactions over a 60 day period; however, some financial institutions provide written periodic statements in full compliance with Regulation E in effect before adoption of the Final Interim Rule. However should the financial institution provide a periodic statement they would still have the liabilities of the alternatives defined in the proposal. The regulation should clearly state that if the financial institution provides a periodic statement as defined in §205.9 (b), they should be precluded from the

requirements and liabilities of having to provide a 60 day history on request and that the liability limits be based on the periodic statement and not on the requested history.

It is quite possible that a financial institution will issue a variety of stored value card products, some of which a written statement will be delivered, while the alternative method of delivering account statements may be used for other products. However, additional account information may be made available as “good customer service” by use of the internet, and telephone VRUs. Unfortunately these multiple procedures for different products will undoubtedly cause confusion to the extent a customer has multiple products and must adhere to different notice requirements for asserting errors and limiting liability.

Additional Information. The Board has solicited comment on whether additional transaction information should be provided to payroll card users, or whether certain information should be excluded from the account transaction history. We believe the information that Regulation E currently requires to be disclosed on periodic statements is sufficient. Pursuant to § 205.18(b)(2), the Interim Final Rule requires the same type of transaction information to be provided to consumers that is set forth in §205.9(b) of Regulation E. We believe Regulation E should not require more information regarding transactions be provided to payroll cardholders than is provided to other consumers. Additional information appears unnecessary and more information may be confusing to or ignored by cardholders.

Liability Limits.

We urge the Board to clarify the provision in the Interim Final Rule relating to the time frames for purposes of error resolution and liability for unauthorized transfers. The rule contemplates that the sixty day period for limiting liability for unauthorized electronic fund transfers is triggered on the date the transaction history for the account is electronically accessed by the consumer or, in the case the consumer requests a written history of his or her account transactions, on the date the financial institution sends the written history. In all cases, the sixty day period begins to run only if the transaction at issue appears in the information provided to the consumer. We believe that, in the interest of providing consumers with the greatest amount of information regarding their transaction history as possible, the Interim Final Rule should be clarified to provide that at any given time, a financial institution may only be liable for unauthorized transfers incurred in the previous sixty days.

As currently drafted, the Interim Final Rule appears to allow the consumer to dispute the validity of a transaction (either due to billing error or unauthorized use) sixty days after the consumer accesses the transaction information, regardless of when the transaction occurred. For example, if a consumer has not accessed his or her account information for six months, the consumer then accesses the account, and a bank makes transaction history

available dating back to the last time the consumer accessed the account (*i.e.*, transaction history for 180 days), it appears as though the consumer would have the right to dispute *any* of those transactions for sixty days after accessing the information. Financial institutions may decide to limit their liability exposure in these circumstances by limiting the amount of transaction history they provide to the regulatory minimum (*i.e.*, transaction history for the prior sixty days).

We recommend that the Board begin the 60-day period applicable to both the liability limitations and error resolution at the time the information becomes available to the account holder. We see no reason for payroll account holders to have greater protections than other account holders or electronic benefit transfer account holders.

KeyBank appreciates the opportunity to comment on the Interim Final Rule Regulation E Payroll Cards. We are happy to provide additional information.

Sincerely,

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