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Name: Shirley M Halas

Affiliation: Comerica Bank

Category of Affiliation: Commercial

Address: 500 Woodward Avenue  
MC 3391

City: Detroit

State: MI

Country: UNITED STATES

Zip: 48226

PostalCode: n/a

Comments:

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By electronic delivery

Ms. Jennifer J. Johnson, Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20051

Regulation E Electronic Fund Transfer Act Docket No. R-1247 Federal Register 10 January 2006.

Comerica Bank (“Comerica”) is pleased to submit our comments to the Federal Reserve Board’s (“Board”) request for comment on its interim final rule regarding Regulation E’s (“Electronic Fund Transfer Act”) application to payroll card accounts. Comerica Bank is a subsidiary of Comerica Incorporated. Comerica Incorporated (NYSE: CMA), is a financial services company headquartered in Detroit. Comerica’s approximately 10,800 employees focus on relationships, and helping people and businesses be successful. Comerica Bank’s United States locations are in Michigan, Texas, California, Arizona and Florida.

Regarding the interim rule, the Board specifically covers payroll card accounts under Regulation E. In its wisdom, the Board gives the account holder, generally a financial institution who is also the card issuer, the flexibility as to how it will provide account information to the payroll card account owner (employee). The information is the same type information that has generally been included as required by Regulation E in periodic statements that have traditionally been mailed via U.S. mail to consumer’s who have checking and savings accounts. Allowing alternative means to get this transactional information and balance information to payroll cardholders is more in line with the

product and the desire of those who benefit from the use of a payroll card account over a traditional bank checking or savings account. Payroll card accounts are being used by employees that do not always have traditional bank checking or savings accounts nor a stable address at which they can receive statements and notices regarding their accounts. Many of these employees are transient for a variety of reasons. By allowing financial institutions the flexibility to deliver required Regulation E information by telephone, IVR, ATM receipt or internet website or as an alternative to a monthly mailed paper statement, will give the payroll cardholders current information any time they want it, making the information relevant and useful to the cardholder. The Board observed the critical and practical need for such flexibility for “government benefits”. We believe the need for such flexibility for payroll cardholder is no different.

Most existing state laws and those under consideration require an employer to offer alternatives e.g. a check or direct deposit of pay, if the employer also wants to offer payroll cards. To mandate that the financial institution holding the payroll card account mail a paper statement to employees who elect to receive their pay/compensation/benefits (collectively “wage”) via a payroll card will, in the long run, be more costly to the financial institution who will, in the end, pass the cost to the employer, who may, as a result, determine that a payroll card is not a cost effective option. If that happens, unbanked employees will again have fewer choices. There is no benefit to the cardholder to receive a mailed statement (or annual error resolution notice, see comments below) if the information is readily available to the cardholder on a daily basis by other means. In fact, the information contained in a mailed monthly statement is often stale by the time it is received. Further, because a payroll card can be used in every state and in many countries, a mailed statement has little value when the information the cardholder really wants and needs is waiting at home. More timely results and benefits can be obtained, and more timely reporting of unauthorized transactions and errors will be made when the information is more readily available. We believe that the flexibility provided in the interim rule should carry forward in the final rule.

In this regard Comerica concurs with the American Bankers Association’s comment letter. We agree that alternative means of providing information traditionally provided in monthly mailed paper statements make economic sense for the employer and the employee and better serves the needs and desire of the cardholder who is protected by the requirements of Regulation E. While we agree with the flexibility approach taken by the Board, we offer several observations, comments and suggestions. Definition of “account”. Under the interim final rule, the Board adds to the definition of account, payroll card accounts. Specifically, it provides that “account” includes: “[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 recommend that the board remove the requirement that the funding be “made on a recurring basis”. Some employees will receive a one time pay or a one time bonus from an employer and those payments should be covered by the same rule.

Further, we don’t believe that it would be possible to monitor whether payments were “recurring” if it is intended to mean receiving funds on a weekly, by-weekly, monthly or annual basis. We also recommend that the words “or other employee benefit” be added after “other employee compensation” to clarify that it is any kind of payment in the form of compensation or benefit made by an employer. The key should be that the payment is related to employment. Expanding the definition of “accounts” as suggested by the American Bankers Association comment letter, would, we believe, result in funding of the cards with proceeds from sources other than wages. If such an

expansion as suggested by the American Bankers Association were adopted, Comerica requests that the Board then eliminate any liability to the financial institution under Regulation E for failing to mail paper statements/notices to the cardholders whose card accounts are funded from sources other than or in addition to wages.

There is no technology that we are aware of that could be used to limit funding from wage sources. A card that started out being used for receiving wages could end up being funded by any source. We believe that limiting the issuance of payroll cards through an employer or payroll processor will limit the primary source of funding to wages with a secondary source being generally limited to merchant credits for returned merchandise. Controlling “credits” to a payroll account is a challenge. In our own experience, as an issuer of payroll cards, when the cards are offered through the employer or payroll processor they do not appear to be used by the employees for purposes other than receiving wages from their employer and for merchandise returns. The likely reason for this is the fact that the card is obtained as a result of employment and all of the material the employee receives indicates that the payroll card is funded by the employer. In many cases, the card has the name of the employer on the face of the card, e.g. Pace Company Payroll Card. Most cardholders therefore do not consider the possibility that the card account could be used for purposes of receiving funding from other sources. At the end of the employment relationship with the employer the funding stops and the balance is either used up or is escheated as the applicable law may require. Therefore the integrity of the protections offered by Regulation E would not be compromised when the flexibility given for payroll cards is limited to cards issued directly through a relationship between an employer or payroll processor.

Alternative to periodic statement. The Board allows financial institutions as an option to providing a periodic statement, making available: 1. The consumer’s account balance through a telephone line; 2. An electronic history, such as through an Internet Web site, of the consumer’s account transactions that covers at least 60 days preceding the date the consumer electronically accessed the account; and 3. A written history of the consumer’s account transactions that is provided in response to an oral or written request and that covers at least 60 days preceding the date of receipt of a request by the consumer. We recommend that the Board clarify that ATM access to transaction history is an acceptable means of obtaining an electronic history. Some banks allow customers to access account history through the ATM and obtain a paper statement. This option may be more useful and convenient to customers who may not have regular access to the Internet. ATMs are generally readily available to payroll account holders and banks report that ATMs are the primary means of accessing payroll account funds. For these reasons, it should be clear that ATM access to account information is an acceptable alternative to a periodic statement if such information includes transactions that covers at least 60 days preceding the date the consumer electronically accessed the account. Annual error resolution notice. The interim final rule requires that financial institutions provide an annual notice concerning error resolution to the employee payroll cardholder. We suggest that the regulation permit financial institutions the option of providing the Section 20.8(b) abbreviated notice currently permitted on periodic statements, on the ATM screen or on the ATM receipt, in a recorded message on the telephone line that is used to access payroll account information and on the internet site used to access the account information. Consumers are more likely to read a notice on the ATM or ATM receipt, listen to it on the telephone line or read it on the website each time they get account information rather than on an annual notice mailed to them. All of the same reasons given for allowing flexibility in the means used to deliver monthly statement information apply to the need for the same flexibility in providing the annual error resolution notice. To reiterate, the address of payroll card account owners change more often than those that have

traditional bank accounts, so the annual mailed notice is less likely to reach the cardholder. Finally, elimination of the mailing requirement may reduce the cost of offering the payroll card account. Limitations on liability for unauthorized use and error resolution. The interim final rule provides that the 60-day period for reporting unauthorized transfers that appear on a periodic statement begins on the earlier of: [T]he date the consumer electronically accesses the consumer's account... provided the information about the transfer was made available to the consumer at that time; or ... the date the financial institution sends a written history of the consumer's account transactions requested by the consumer...

The 60-day period applicable to the error resolution provisions is also calculated in this fashion. We recommend as did the America Bankers Association, that the Board begin the 60-day period applicable to both the liability limitations and error resolution at the time the information is first made available to the account owner, without regard as to whether the account owner actually reviewed the information. We see no reason for a payroll card account owner to receive more time and thus greater protections than other consumer bank account owners or electronic benefit transfer account holders. Starting the clock running from when a person actually looks at the information that is made available would mean that the clock might never start if the cardholder elects never to check his/her transaction information or checks it years later if the history is made available as a service to the customer. There is nothing in Regulation E today that requires the account owner to read the paper statement on which a questionable transaction appears before the clock starts ticking, rather the clock starts running when the information is first made available via a paper statement. Allowing a lengthy and undefined time to file a dispute puts financial institutions at an unfair disadvantage: under Regulation E, they must complete an investigation within set time frames, but for transactions older than 60 days, research becomes more complicated and time-consuming and thus a longer time to investigate is often necessary. For example, documents such as receipts and ATM photographs are often archived or destroyed after 60 days. Further, obtaining information from merchants whose charge is being disputed may be difficult if not impossible after 60 days. Older information and documentation are simply more difficult to retrieve. Financial institutions should not be limited in their time to investigate in these older cases and cardholders should not have the same right to make claims and receive responses in same time frame as they are entitled when they make a claim within 60 days of the information first being made available to them. Financial institutions are put at greater risk if liability is not limited for unauthorized transactions made longer after the initial unauthorized transaction, even though the consumer, not the financial institution, is in the best position to detect those unauthorized transactions and even though the information was available to the consumer, but the consumer chose not to review the information. Without limiting the time within which a payroll card account owner has to report a claim, the account owner will have less incentive to monitor his/her account. We believe that there is no reason to change this provision except to address the methods by which the information may be made available. If the Board nevertheless determines that it is appropriate and necessary to base the 60 day period beginning on actual electronic access to the account, it should clarify that "access to the account" means the consumer has logged into the bank website or called the telephone IVR. It may be possible to determine whether a customer has logged in or called the IVR, but it is not likely that the financial institution can tell if the person actually accessed a particular account. Comerica appreciates the opportunity to comment on this important matter. We commend the Board for adjusting Regulation E so that it is more suitable for an emerging and important product that truly offers a form of banking to many who would otherwise have no choice but to receive checks, incur check cashing fees and expose themselves to risks associated with carrying in their pocket or purse

what may be their only money until their next pay. If we can provide additional information, please contact us.

Sincerely,

Comerica Bank

Shirley M. Halas Vice President and Corporate Counsel