



Legal Department  
San Francisco

Bank of America, N.A.  
CA5-705-08-01  
555 California Street, 8<sup>th</sup> Fl  
San Francisco, CA 94104

Tel 415.622.9688  
Fax 415.953.8153  
daniel.weiss@bankofamerica.com

March 13, 2006

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

Docket No. R-1247

Dear Ms. Johnson:

Bank of America Corporation, a diversified financial holding company headquartered in Charlotte, North Carolina, ("Bank of America") is pleased to have this opportunity to comment on the interim final rule ("Interim Rule") as published in the Federal Register by the Federal Reserve Board ("Board") on January 10, 2006. The Interim Rule makes clear that payroll cards are subject to Regulation E.

Bank of America is one of the world's largest financial institutions, serving individual consumers, small businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The company provides unmatched convenience in the United States, serving more than 38 million consumer and small business relationships with more than 5,800 retail banking offices, more than 16,700 ATMs and award-winning online banking with more than 14 million active users. Bank of America is the No.1 overall Small Business Administration (SBA) lender in the United States and the No.1 SBA lender to minority-owned small businesses. The company serves clients in 150 countries and has relationships with 97 percent of the U.S. Fortune 500 companies and 79 percent of the Global Fortune 500. Bank of America Corporation stock (ticker: BAC) is listed on the New York Stock Exchange.

We generally support the approach of the Board in limiting the scope of the Interim Rule. Extending Regulation E protections to all prepaid cards will add significant costs and burdens to this still new set of products without meaningful protection to consumers. Some of the requirements of Regulation E are not appropriate for such prepaid products as gift cards and other products intended for limited use. However, we believe that the scope of the Interim Rule is too limited and so deprives consumers of the protections of Regulation E in many cases where it is both appropriate and feasible. In particular, we are aware of prepaid products marketed to

consumers as an alternative to a traditional checking account. Because not established directly or indirectly by the employer, this account would not meet the definition of a “payroll account” under the Interim Rule even though it allows, and often encourages, direct deposit of payroll funds. However, from the consumer’s perspective this account functions in the same manner as a payroll card account and the funds often represent the primary financial asset of the cardholder.

We recommend that the Board expand the scope of the Interim Rule to include any prepaid product that meets all of the following criteria:

- a. The product is offered primarily for consumer purpose.
- b. The issuer of the card should reasonably expect recurring payroll deposits to the related account on a regular basis.
- c. The card is part of an “open” system that permits use at a large number of unaffiliated merchants or through one or more ATM networks.
- d. The cardholder has an unconditional right to the funds.

The Board should also provide guidance in the Commentary as to what is intended by “directly or indirectly established by an employer on behalf of a consumer.” Financial institutions need sufficient guidance to reasonably determine that a specific account is in fact a “payroll account” and so subject to the alternative statement requirements. For example, if the employer assists in taking an application for an account for the purpose of receiving electronic deposits, this should be sufficient to be a “payroll card account” even if the resulting account is a deposit account for purposes of FDIC insurance and so subject to Regulation E even prior to the Interim Rule. The financial institution should be permitted to clearly designate the type of account, here a “payroll account”, as long as the terms are clearly disclosed, including how statements will be made available.

Bank of America supports the provision in Regulation E for an alternative periodic statement for “payroll accounts.” It is appropriate for payroll card accounts to permit the use of alternative information delivery systems, rather than require the delivery of paper statements. More flexible information provisions are appropriate for the structure and design of payroll cards and the characteristics and needs of payroll cardholders. As noted in the Supplemental Information and as evidenced by the Board’s focus group findings, customers do not typically use paper-billing statements. In addition, payroll cardholders are highly mobile and statements mailed to them are often returned because the consumers have moved. In addition, because payroll cards are often the sole or primary financial asset of the cardholder, their need for current, real time account information is paramount. In this context, providing consumer information electronically, or via paper upon request, is both convenient for consumers and in many cases more effective and efficient.

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By providing the alternative to make available, via telephone and online, balance and transaction information at the convenience of the consumer, in lieu of mailing written periodic statements, the Board has indicated the need to address a number of other issues. These issues included the limitation of liability and the error resolution procedure where time periods to act are triggered by the sending or transmitting of periodic statements. For example, under the Interim Rule, the 60-day period for limiting liability for unauthorized electronic fund transfers and for error resolution runs from the earlier of the time when the relevant account information is available and the account is electronically accessed by the consumer or the date the institution sends the written history.

This rule requires institutions to be able to track when a consumer has last accessed his or her transactional information and when a consumer requested a written history. We currently do not capture and retain the date upon which a consumer has electronically accessed his or her account information and that operationally, capturing and retaining such information would be difficult. To control its liability, it is important that the financial institution have a definitive time period for error resolution and liability purposes. Bank of America recommends that the Board clarify that the error resolution timeframe does not go on indefinitely if a consumer does not trigger the 60-day error resolution procedures by either accessing information via the Internet or by requesting a written history of transactions. In other words, the Board should clarify that a consumer cannot use the error resolution provisions to dispute a transaction more than 120 days old.

Finally, the Interim Rule states that a financial institution must provide an annual notice concerning error resolution. We recommend that the Board also provide the option for providing the Section 205.8(b) abbreviated notice if the financial institution makes available together with the Internet transaction disclosures.

Bank of America appreciates the opportunity to comment on the Proposed Rule. Please contact us if you have any questions on the above.

Sincerely,

Daniel G. Weiss  
Associate General Counsel

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