

One Minute Memo®



Federal Regulation of Pay Cards Proposed by Consumer Financial Protection Bureau

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On November 13, 2014, the Consumer Financial Protection Bureau (CFPB) proposed new federal consumer protections for prepaid financial products, which include payroll cards (a/k/a “pay cards” or “e-pay”).¹ Payroll cards are prepaid cards that employers use to pay wages, salary, or other compensation in lieu of more traditional forms of payment, such as paper check, direct deposit, or cash. Employees can then withdraw funds at an ATM or over-the-counter via a bank teller. Other forms of prepaid cards allow users to make purchases online and at physical retail locations, and some provide more advanced features such as electronic bill payment.

The proposed regulations note that over five million payroll cards were issued in 2013, with \$30.6 billion loaded onto them. The CFPB recognizes that payroll cards can be an effective means for employees who lack a traditional banking relationship to receive their wages. At the same time, the CFPB is concerned that not all employees receive adequate information about pay cards, including clear notice that they can receive pay by some other means. In addition, CFPB wants to make sure employees understand when and how fees attach to pay card use.

State and Federal Law Interplay

Payroll cards have been the subject of increased regulation in various states over the past decade. In New York state, for example, following an investigation into employer payroll card programs, Attorney General Eric Schneiderman’s office published a report in June 2014 entitled “Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers.” That report takes issue with allegedly inadequate disclosures about employees’ ability to receive wages free of charge, the various fees associated with the cards, and availability of non-electronic pay methods. To address these issues, the NY AG’s office proposed the “Payroll Card Act”, which would govern both the terms and conditions of pay card programs themselves, as well as wage payment methods offered by New York employers. While the bill has seen little legislative progress to date, Schneiderman was recently reelected.

Many large employers have until now understood state law compliance to be their chief regulatory concern; these employers looked to major banks and other payroll vendors to provide pay card materials, and thus to comply with state law requirements. Now, the federal government has self-identified as the new sheriff in this still relatively unregulated territory.

CFPB Moves Forcefully

Consistent with this enforcement theme, at the same time it was issuing its proposed rules, the CFPB began investigating employer payroll card practices. The CFPB’s purpose in investigating at this juncture is unclear. Regardless, the proposed rule makes clear that the Bureau sooner than later will look to hold employers accountable for their payroll policies and practices *under federal law*.

To address many of the above-mentioned concerns, the CFPB's proposed rule would require, among other things, that:

- Employers provide alternative ways for employees to receive wages or salary;
- Employees be specifically informed in writing that they need not receive wages by payroll card (before the card is activated);
- Employees receive a statement of paycard fees like monthly and per use fees, plus ATM withdrawal charges, and have ready access to a statement of all fees and related information;
- Employees receive a proposed model short-form or similar disclosure specific to pay cards, plus either receive or have access to a longer disclosure—all before the card is activated;
- Employees receive periodic statements of recent account activity, or (alternatively) free and easy access to account information online; and
- Employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their account.

Further Context and Next Steps

The rule is subject to a 90-day notice and comment period, which means stakeholders have until mid-February to submit comments. In the meantime, employers may want to make sure employees receive the model disclosures contained in the proposed rule.

For additional background information, see CFPB's September 2013 guidance bulletin, according to which existing regulations apply to payroll card accounts.² Citing Regulation E of the Electronic Fund Transfer Act, the bulletin states that employers cannot require that employees receive wages via pay card as a condition of employment. It also states that various Regulation E protections apply to payroll card accounts, including those pertaining to fee disclosure, access to account history, limited liability for unauthorized use, and error resolution rights.

We invite you to [register](#) for Seyfarth Shaw's webinar on Monday, November 24th entitled *Critical Issues for Companies Using Payroll Cards* for further information on this topic.

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¹ The text of the proposed rule can be found on the CFPB's [website](#).

² *FPB Bulletin 2013-10, Payroll Card Accounts (Regulation E) (Sept. 12, 2013)*.

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