



American Payroll Association

Government Relations • Washington, DC

June 5, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20220

Dear Director Cordray,

The American Payroll Association (APA)¹ appreciates the opportunity to comment on the May 9, 2014, letter submitted to the Consumer Financial Protection Bureau (CFPB) and the United States Department of Labor (USDOL) by various labor, consumer and civil rights organizations (the “Interest Groups”). The APA agrees with many of the principles set forth in the Interest Groups’ letter and believes that the vast majority of payroll card providers already adhere to those principles.

We are concerned, however, by the Interest Groups’ suggestion that payroll cards “come with numerous fees that erode already low wages,” that employees lack choice and are denied access to account information, and that some payroll card providers engage in “unfair, deceptive or abusive practices.” To the extent that any of these problems exist today they are the exception not the rule. The Interest Groups’ characterization to the contrary and their plea for restrictive rules that are anything but “minimum standards,” perpetuate misconceptions about payroll cards and provide fodder for media outlets seeking sensational headlines rather than factual accounts. We are concerned that the perpetuation of these misconceptions will lead to overly restrictive regulation on both a federal and state level that will threaten the continued viability of this beneficial wage payment method.

Existing legal requirements provide appropriate consumer protections and ensure that employees have full and free access to their wages. Problems can occur, however, when employers are unaware of their legal obligations and when employees don’t understand how to use their payroll cards to their best advantage. The solution is education, like the CFPB’s September 2013 Bulletin, not overregulation. The APA would welcome the opportunity to work with the CFPB, as well as

¹ The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA’s primary mission is to educate its members and the payroll industry regarding best practices associated with paying America’s workers while complying with applicable federal, state, and local laws. In addition, the APA’s Government Affairs Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

with the Interest Groups, to increase public awareness of legal requirements, develop educational materials and promote mutually agreeable best practices.

Set forth below is the APA's response to a few of the issues raised by the Interest Groups in their May 9 letter.

Full and Free Access to Wages

Payroll cards “should offer free and clear access to wages without fees.” In other words, employees must be able to treat their payroll card like a plastic paycheck and cash out their net wages each pay period, to the penny, without cost. We agree that fees for nondiscretionary services that deny employees full and free access to their wages are not appropriate. These include fees for the employee's initial payroll card, fees for loading wages onto the card by the employer, fees for maintaining an active account, and fees for the privilege of participating in the payroll card program. Beyond that, employers should not be required to absorb the discretionary banking costs of their employees.

The Interest Groups suggest that employees should be provided unlimited ATM withdrawals without fees. This is not required in any state. While most financial institutions provide free in-network ATM withdrawals to their banking customers, they are not required to do so; the service is provided in exchange for minimum account balance requirements, account maintenance fees, and similar fees that allow the financial institution to offer this type of service to its customers. The Interest Groups request that the CFPB prohibit fees for a number of other discretionary banking services such as ongoing maintenance of dormant accounts, replacement cards, processing of declined transactions and monthly written statements. Providing free banking services is not required with respect to any other method of wage payment and is unrelated to the payment of full net wages.

Choice of Wage Payment Method

The APA also thanks the CFPB for issuing its September 2013 Bulletin reiterating that employers may not use payroll cards as the sole method of wage payment. This is the very type of education that is needed since it is not intuitive that employers must look to federal banking law when determining how to pay their employees. We agree that employers should “offer employees a clear, conspicuous and early choice of all payment methods,” that a “clear fee schedule for the payroll card should be provided at the same time,” and that employees should be allowed to change their payment selection upon reasonable notice to their employer. Indeed, these provisions are required by the wage and hour laws in many states.

Unlike the Interest Groups, however, the APA sees no value in requiring employers to offer paper paychecks. To the contrary, we believe that paper paychecks are an increasingly inefficient way to pay workers and that paper paychecks put employee earnings at risk. Not only are paychecks susceptible to loss and theft, but many workers rely on expensive check cashing services to access their wages. According to the City of San Francisco's Office of Financial Empowerment, workers who rely on check cashing services spend an average of \$711 a year just to access their wages.² In contrast, a study by the Federal Reserve Bank of Pennsylvania confirmed that many employees who use payroll cards do so without ever incurring a fee and

² See, <http://currenscf.org/>.

that fees that are incurred can be avoided.³ Wages that are paid electronically, whether by traditional direct deposit or on a payroll card, go directly into the employee's account preventing loss, saving time and increasing convenience. For these reasons, the APA has and will continue to support legislative efforts that allow employers to implement purely electronic wage payment programs, as is currently allowed in half the states throughout the country.

With regard to the Interest Group's assertion that card issuers should be held responsible for policing their customers' compliance with Regulation E's compulsory use provision, the APA believes that compliance is rightly placed with the customers, not the service providers. This principle follows the general practice in all forms of payroll services.

Default to Payroll Cards

The Interest Groups also express concern that employees are being defaulted into payroll card programs. Obviously, a default method of wage payment is necessary to accommodate situations where employees fail to make a payment selection. In states that permit purely electronic wage payment, default to a payroll card is appropriate where employees have received information about the program (including possible fees) and have been notified that failure to provide the information necessary to establish direct deposit will be deemed an election to receive wages on a payroll card. In this situation, the default is triggered by the employee's failure to complete the paperwork necessary to pay wages, not by any coercive tactics by the employer. Of course, employees must always be able to switch to direct deposit upon reasonable notice to their employer.

Employees should be able to indicate payment choice when completing their employment forms. We see no value in prohibiting the provider from issuing a payroll card for 30 days, as the Interest Groups propose, however. An employee who elects a payroll card should not have to wait to receive it. Nor should an employer be required to maintain a separate process for paying employees that will be utilized only for the first 30 days of employment. In the worst cases, employees who could otherwise benefit from using payroll cards might gravitate toward expensive nontraditional financial institutions, such as check cashing establishments.

Access to Account Information

Employee access to account information is crucial and is appropriately addressed in existing wage and hour law and Regulation E. The state wage and hour laws require that employees be provided with access to their balance without cost. This can be accomplished in many different ways including over the Internet, using an interactive voice response system, and through mobile applications, two-way texting, and e-mail alerts. In addition, as you know, Regulation E requires card issuers to provide account information to cardholders using periodic statements. Alternatively, issuers can provide payroll cardholders with specified account information over the telephone, online and, upon request, in writing.

In their letter, the Interest Groups express concern that the transaction histories required in conjunction with the alternative to periodic statements do not provide access to fee summaries and other information typically provided on periodic statements. They also assert that employees

³ S. Wilshusen, R. Hunt, J. van Opstal, and R. Scheider, Consumer's Use of Prepaid Cards: A Transaction-Based Analysis (Federal Reserve Bank of Philadelphia Payment Cards Center, August 2012).

have no right to monthly statements. Contrary to the Interest Group's assertions, written and electronic transaction histories made available as part of the alternative to periodic statements must contain all of the information required for periodic statements including fee summaries.⁴ Moreover, if an employee wants a written account of their transaction history, they may obtain one simply by making an oral or written request.

Overdraft Protection Programs

The Interest Groups urge the CFPB to ban overdraft fees and credit features on payroll cards. The APA advises its members to be wary of such programs, with the understanding that some programs can be harmful to the users. We are not prepared to condemn all current and future overdraft protection programs, however, and recognize that some employees want access to them.

Conclusion

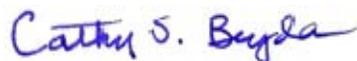
The APA appreciates the opportunity to comment on the concerns raised in the Interest Group's letter. We believe that appropriate consumer protections on payroll cards already exist under Regulation E, other federal banking law provisions, and the state wage and hour laws. We are concerned that further regulation in this area, particularly in the manner suggested in the Interest Group's letter, would unnecessarily encumber the use of payroll cards and deny low-wage workers of a valuable wage payment solution. The APA would, however, welcome the opportunity to work with the CFPB and the Interest Groups to educate employers on their legal obligations and to dispel common misconceptions that threaten the future of this beneficial wage payment method.

We hope this letter has been helpful. Please feel free to contact us with any questions or to further discuss the issues addressed in this or the Interest Groups letters.

Respectfully Yours,



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⁴ 12 C.F.R. § 1005.18(b)(2).