



PAYROLL CURRENTLY

The Payroll Compliance Publication of the American Payroll Association

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CFPB Releases Final Rules Applicable to Payroll Cards

On October 4, the Consumer Financial Protection Bureau (CFPB) announced that it had issued its final rules on prepaid accounts (CFPB, *New protections for prepaid accounts*, 10-4-16; www.consumerfinance.gov/prepaid-rule/). Generally, the rules will take effect on October 1, 2017; however, the requirement for issuers to provide the CFPB with new and amended payroll account agreements is not effective until October 1, 2018. A prepublication version of the rule, to be published in the Federal Register, is available at

http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/20161005_cfpb_Final_Rule_Prepaid_Accounts.pdf. This completes a rulemaking process that began with proposed regulations issued by the CFPB in December 2014 (see **PAYROLL CURRENTLY**, Issue No. 2, Vol. 22).

Background

The final rules revise Regulation E, which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, and are intended to “create comprehensive consumer protections for prepaid accounts” – including payroll cards. The CFPB explains the need to extend protections to payroll card accounts, in part because of the increase in their use. The CFPB cites a Mercator Advisory Group study indicating that the use of payroll cards will continue to increase, with the rate of funds loaded growing by 6% a year through 2019, when it will reach \$44.6 billion. While acknowledging that “employers market payroll cards as an effective means to receive wages for employees who may lack a traditional banking relationship, and that unbanked consumers may find the cards to be a more suitable, cheaper, and safer method of receiving their wages,” the CFPB notes that “within the last 10 years, there have been increasing concerns raised about payroll cards, with specific focus on potentially harmful fees and practices associated with them.” The CFPB is also concerned with how employers are complying with current rules, including that employers may not require employee to use payroll cards.

The process by which employees are presented payroll cards is also a focal point of the rules. The CFPB notes that an employee may be provided with a stack of forms to complete and may not have the time or opportunity to review them. Also, the CFPB asserts that the forms the employee may receive from the employer may not always include all of the relevant information regarding the terms and conditions of the payroll card account, such as fees associated with the card and how cardholders can withdraw money on the card.

Written disclosures

The final rules require written disclosure of payroll card account-related information to employees. Templates for the disclosures are included in the final rules.

Timing. The final rules require that financial institutions (FI) provide consumers with certain information before and they may choose to be paid via a payroll card account. While FIs are required to provide the disclosures, they often will be distributed to employees by their employers.



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Note: Generally, employers and third-party service providers do not meet the definition of a “financial institution” subject to the final rules because they neither hold prepaid accounts (including payroll card accounts) nor issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts.

The required pre-acquisition disclosures include: a short form disclosure; additional information that must be disclosed “in close proximity” to the short form; and a long form disclosure.

Short form disclosures. The short form disclosure must include:

- A statement that an employee does not have to accept the payroll card account and can ask about other ways to get wages or salary from the employer instead of receiving them via the payroll card account. Alternatively, employee may be provided a statement that the employee has several options to receive wages or salary, followed by a list of the options available to the employee, and a statement directing the employee to tell the employer which option the employee chooses.

- A list of fees, including (1) periodic fees, (2) per purchase fees, (3) ATM withdrawal fees, (4) cash reload fees, (5) ATM balance inquiry fees, (6) customer service fees, and (7) inactivity fees. The CFPB refers to these fees as “static fees” because they must be included on the short form. **Note:** Issuers are directed to list zero if no fee is charged.

- The number of fee types in addition to the static fees (excluding any purchase price, activation fee, and finance charges for credit) that the employee may be charged under the specific payroll card account program.

- A statement that credit-related fees may apply if, at any point, a credit plan is offered in connection with the prepaid account.

- With limited exceptions, the two additional fee types that generated the highest revenue from employees during the previous 24 months. Static fees, any purchase price, activation fees, finance charges for credit, and fee types that generated less than 5% of the total revenue from employees are excluded from this disclosure requirement.

- Statements regarding linked overdraft credit features, registration and FDIC/NCUA insurance, the CFPB website where the employee can obtain general information about prepaid accounts (www.cfpb.gov/prepaid), and information on where the employee can find the long form disclosure.

The short form may also include a statement regarding state-required information or other fee discounts and waivers. “In close proximity” to the short form, the financial institution (FI) must disclose its name, the name of the payroll card account program, any purchase price, and any fee for activating the account.

Long form disclosures. The long form disclosures will provide comprehensive fee information and must also include:

- A title, including the name of the prepaid account program;

- Information about all fees that may be imposed in connection with the payroll card account (not just fees for electronic fund transfers) and the conditions under which they may be imposed;

- A statement regarding registration and FDIC/NCUA insurance;



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- A statement regarding linked overdraft credit features;
- A statement containing the FI's contact information;
- A statement directing the employee to www.cfpb.gov/prepaid for general information about prepaid accounts; and
- A statement directing the employee to www.cfpb.gov/complaint and to the CFPB's telephone number (855-411-2372) to submit a complaint related to prepaid accounts.

Account information: periodic statement alternative

FIs that use periodic statements must provide electronic account transaction histories that cover at least the 12 months preceding the date on which the employee electronically accesses the account. Written account transaction histories provided upon request must cover at least the 24 months preceding the date on which the FI receives the request for the transaction history. This rule will be phased in for FIs that do not have the data to meet this requirement as of October 1, 2017.

Periodic statements and account transaction histories must disclose the amount of any fees assessed against the account (not just fees for electronic fund transfers), and also must display a summary total of the amount of all fees that the FI assessed against the account for the prior calendar month and for the calendar year to date.

Agreements submitted to the CFPB

Payroll card issuers must provide the CFPB with new and amended payroll account agreements and notification of withdrawn agreements no later than 30 days after the issuer offers, amends, or ceases to offer the agreement. Issuers are also required to make the agreement available to employees, either through its website or in writing.

Overdraft protections

In certain circumstances, payroll cards that have access to overdraft credit features are subject to Regulation Z's credit card rules.

Additional resources

The CFPB has created a website providing in-depth informational resources concerning the implementation of the rules (www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/), including a quick reference guide on the Prepaid Rule's Key Changes for Payroll Card Accounts (http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Prepaid_payrollcard_v1_10052016.pdf).