



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2013-10

Date: September 12, 2013

Subject: Payroll Card Accounts (Regulation E)

The Consumer Financial Protection Bureau (CFPB or the Bureau) is issuing this bulletin to reiterate the application of the Electronic Fund Transfer Act (EFTA) and Regulation E, which implements the EFTA, to payroll card accounts. Payroll card accounts are accounts that are established directly or indirectly through an employer, and to which transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis.¹

The EFTA generally covers the electronic transfer of funds to and from consumers' accounts.² Since 2006, Regulation E,³ which implements the EFTA, has defined the term "account" to include a "payroll card account" and covers such accounts "whether ... operated or managed by the employer, a third party payroll processor, a depository institution or any other person."⁴ Thus, employees whose wages are deposited onto a payroll card are entitled to the protections of the EFTA generally, and Regulation E's provisions applicable to payroll cards specifically.

The protections in Regulation E for consumers who receive wages on a payroll card mirror those available to consumers who make electronic fund transfers (EFTs) generally with some exceptions. These protections include the following:⁵

- **Disclosures:** Under Regulation E, payroll card holders are entitled to receive initial disclosures of any fees imposed by the financial institution for EFTs or for the right to make such transfers. The financial institution must also provide to cardholders initial

¹ 12 CFR 1005.02(b)(2).

² See EFTA §§ 901 *et seq.*, 15 USC 1693 *et seq.*

³ 12 CFR part 1005.

⁴ 12 CFR 1005.2(b)(2).

⁵ See 12 CFR 1005.18(a).

disclosures containing, among other things, details regarding limitations on liability and the types of EFTs they may make with the card.⁶

Regulation E requires that these disclosures be made at account opening or before the first transfer occurs,⁷ although some state laws dictate that certain information be provided before an employee elects to receive wages via payroll card. Regulation E also provides that the disclosures be “clear and readily understandable, in writing, and in a form the consumer may keep.”⁸

- **Access to account history:** A payroll card issuer must either provide periodic statements as required by Regulation E generally, or alternatively must make available to the consumer (1) the consumer’s account balance, by telephone; (2) an electronic history, such as through an Internet web site, of the consumer’s account transactions covering at least 60 days preceding the date the consumer electronically accesses the account; and (3) upon the consumer’s oral or written request, promptly provide a written history of the consumer’s account transactions covering at least 60 days prior to the request. The history of account transactions provided electronically or upon request must set forth the same type of information required on periodic statements under Regulation E generally, including transaction information and the amount of any fees imposed during the 60 day period for EFTs, the right to make EFTs, or account maintenance.⁹
- **Limited liability for unauthorized transfers:** With limited exceptions regarding the period within which an unauthorized transfer must be reported, Regulation E’s limited liability protections fully apply to payroll cards.¹⁰
- **Error resolution rights:** Financial institutions must respond to a consumer’s report of errors regarding a payroll card account if the report is received within 60 days of the consumer either accessing account history or receiving a written account history on which the error appears, whichever is earlier, or within 120 days after the alleged error occurs.¹¹

⁶ 12 CFR 1005.7 and 1005.18(c)(1).

⁷ 12 CFR 1005.7(a).

⁸ 12 CFR 1005.4(a)(1).

⁹ 12 CFR 1005.9(b), 1005.18(b) and (c).

¹⁰ 12 CFR 1005.6 and 1005.18(c)(3).

¹¹ 12 CFR 1005.11 and 1005.18(c)(4).

In addition to these protections for holders of payroll cards, Regulation E states clearly that no “financial institution *or other person*” can mandate that an employee receive direct deposit into an account at a particular institution.¹² Said another way, Regulation E prohibits employers from mandating that employees receive wages only on a payroll card of the employer’s choosing.

Regulation E permits an employer to require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit.¹³ Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.¹⁴ Thus, an employer may not require that its employees receive their wages by electronic transfer to a payroll card account at a particular institution. An employer may, however, offer employees the choice of receiving their wages on a payroll card or receiving it by some other means. Permissible alternative wage payment method(s) are governed by state law, but may include direct deposit to an account of the employee’s choosing, a paper check, cash, or other evidence of indebtedness.

Most states’ laws contain additional restrictions on the manner in which employers may make wages available to their employees, sometimes specifically addressing payment of wages via payroll card, or calling for particular alternatives to payroll cards. The Bureau notes that the EFTA and Regulation E preempt state laws “relating to” EFTs, among other things, only to the extent of any inconsistency between the state laws and the EFTA / Regulation E. A state law is not considered inconsistent with the EFTA and Regulation E if the state law affords consumers greater protections than afforded by the EFTA and Regulation E.¹⁵

Finally, the Bureau notes that it has supervisory authority over larger depository institutions engaged in, among other things, providing payroll cards.¹⁶ That authority includes the ability to examine supervised entities’ use of third-party service providers, to assess both the supervised

¹² 12 CFR 1005.10(e)(2) and comment 10(e)(2)-1 (emphasis added). As the Federal Reserve Board explained in 2006, Regulation E’s compulsory use provisions “apply to payroll card accounts because they are established as accounts for the receipt of EFTs of salary.” 71 FR 1473, 1476 (Jan. 10, 2006).

¹³ 12 CFR 1005.10(e)(2) and comment 10(e)(2)-1.

¹⁴ *Id.*

¹⁵ EFTA § 922, 15 USC 1693q, 12 CFR 1005.12(b).

¹⁶ The Bureau also has supervisory authority over, among others, non-depository larger participants in consumer financial product or service markets, as defined by rule, and over non-depository covered persons engaging, or who have engaged, in conduct posing risks to consumers with regard to the offering or provision of consumer financial products or services. 12 USC 5514(a)(1)(B) and (C). *See also* 12 CFR parts 1090 and 1091.

entity's and service provider's compliance with federal consumer financial laws, including the EFTA and Regulation E.¹⁷

The Bureau is also authorized, subject to certain exceptions, to enforce the EFTA and Regulation E against any person subject to the Regulation, including financial institutions *and* employers.¹⁸ In addition, subject to certain exceptions, the Bureau has enforcement authority over covered persons offering or providing certain consumer financial products or services – including payroll cards – under the Consumer Financial Protection Act.¹⁹ In exercising our enforcement authority, our goals are to be proactive about identifying violations, stopping violations before they grow into systemic problems, maximizing remediation to consumers, and deterring future violations.

This bulletin and other information related to Regulation E are available on the CFPB's website at www.consumerfinance.gov.

¹⁷ See CFPB Bulletin 2012-03, *available at* http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

¹⁸ EFTA § 918(a)(5), 15 USC 1693o(a)(5).

¹⁹ 12 USC 5515.