

February 24, 2006

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

Re: Docket No. R-1247; Regulation E Interim  
Rule on Payroll Card Accounts

Dear Ms. Johnson:

Navy Federal Credit Union provides the following comments in response to the Federal Reserve Board's (Board) interim final rule on the coverage of payroll card accounts under Regulation E. Navy Federal is the nation's largest natural person credit union with \$25 billion in assets and 2.6 million members.

Navy Federal agrees with the Board that payroll cards are more likely than other types of stored value cards to represent the bulk of a consumer's income, and that applying Regulation E protections to the accounts underlying payroll cards will likely benefit consumers. However, with the exception of payroll card accounts, we do not believe that Regulation E should be applied to accounts underlying other types of stored value cards. We believe that the various types of stored value cards in existence today offer real benefits to consumers, businesses and government alike. Applying Regulation E protections to other types of stored value products at this time would likely stifle innovation in this area of emerging payment technology and greatly diminish the business case for financial institutions offering these products.

If the Board chooses to pursue future rules governing the accounts underlying stored value cards, Navy Federal strongly urges the Board to coordinate its efforts with the other federal financial institution regulators, the industry, and even state and federal law-making bodies. If coordination among these entities does not occur, we believe the regulations governing stored value cards will emerge in a piecemeal fashion and result in a complicated regulatory scheme for financial institutions. Such governance is already emerging in a piecemeal fashion on the state level, and compliance with these state laws - each with its own unique requirements and restrictions - imposes an undue burden on financial institutions offering stored value products.

In addition, we fear that this interim final rule could set an unwieldy precedent for other types of stored value cards. We do not believe that Regulation E protections are appropriate for all types of existing and future stored value products. It is imperative that any future regulation, whether proposed by the Board or other bodies, consider the wide variety of stored value cards in existence today and those that might evolve in the future before imposing strict compliance requirements.

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Navy Federal opposes the interim final rule's definition of the term "payroll card account." The interim final rule defines "payroll card account" in Regulation E Section 205.2(b)(2) as an account that is

"...directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person."

We believe this definition could result in confusion among consumers and financial institutions. For example, we believe that the meaning of the words "*or indirectly*" in the definition should be clarified in the Regulation E Official Staff Commentary. Based on the information provided in the interim final rule, we believe that the employer must be involved in the establishment of the account for it to meet the definition of a "payroll card account." Inclusion of the words "*or indirectly*" in the definition, however, makes the employer's role unclear. We encourage the Board to clarify in the Commentary to Section 205.2(b)(2) that the words "*or indirectly*" are included to cover the limited situations in which the employer uses an agent (e.g., a third party payroll processor) to facilitate the use of payroll cards to pay its employees. It does not cover situations in which the employer has not directly authorized the account to be established.

We believe that the meaning of the words "*are made on a recurring basis*" also could result in confusion. The supplementary information to the interim rule states that the Board included this in the definition to cover situations in which the employer *intended* to make recurring payments of the consumer's wages or salary, but actually only made a single payment (e.g., in the case of an employee who separates at the end of the first pay period). We agree with the Board that the employer's intention is an important element in determining whether an account meets the definition of a "payroll card account." However, a plain reading of the interim final rule's definition appears to require the payments to actually recur. We believe the use of a reloadable platform for the payroll card clearly demonstrates that the employer *intended* to make recurring payments. Therefore, we encourage the Board to add language to Section 205.2(b)(2) to clarify that the account must be connected to a reloadable card to meet the definition of "payroll card account," regardless whether more than one payment is actually made.

We oppose inclusion of the clause "*whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution*" in the definition. It is our understanding that the Electronic Fund Transfers Act applies only to accounts owned by consumers for personal, family, or household purposes. We believe that this clause, specifically the words "*operated or managed by*" could be interpreted to mean that someone other than the consumer controls or owns the account. We believe this would be contrary to the explicit purpose of the Electronic Fund Transfers Act. Further, we are unclear what value this clause adds to the definition. We strongly encourage the Board to remove this language.

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Under the interim final rule, financial institutions offering payroll card accounts will not be required to provide traditional periodic account statements to card users; instead, institutions will be able to take advantage of an alternative, which includes providing account information over the phone, online, and in written form in response to a consumer's request. We believe that many payroll card users are un-banked and somewhat transient, thereby diminishing the effectiveness of traditional monthly account statement distribution. It is our understanding that payroll cards also are a relatively inexpensive way for employers to pay their employees. Adding the cost of traditional periodic account statements would make payroll card accounts much more expensive for employers. Further, we believe that the alternative meets the spirit of consumer protection embodied in the Electronic Fund Transfers Act and Regulation E because it provides consumers convenient and timely access to their account information. Therefore, we support the alternative and believe that it strikes an appropriate balance between the needs of consumers and the costs to employers and financial institutions.

We are concerned that some payroll card users may make unreasonably frequent requests for written transaction histories. According to the interim final rule, however, financial institutions taking advantage of the alternative to periodic account statements would have to reply to each of these written history requests. We encourage the Board to clarify in the Commentary to Section 205.18(b) that a financial institution may deny unreasonably frequent consumer requests for written transaction histories, as long as such denials do not prohibit a consumer from disputing a particular transaction.

We applaud the Board for using consumer focus group testing as part of this rule-making process to identify the most appropriate methods for consumers to access their account balance and transaction information. We encourage the Board to continue to use consumer focus group testing as part of its future rule-making efforts

At this time, Navy Federal does not believe that Regulation E should be amended to cover accounts underlying other types of stored value products. We appreciate the opportunity to provide comments in response to the Board's interim rule on payroll card accounts.

Sincerely,



Cutler Dawson  
President/CEO

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