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March 13, 2006

Jennifer J. Johnson
Secretary,
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue, NW.
Washington, DC 20551

Re: Docket No. R-1247; Regulation E.

Dear Ms. Johnson:

This comment letter is submitted on behalf of the Electronic Funds Transfer Association (**EFTA**) in response to the request for comment recently issued by the Board of Governors of the Federal Reserve System (**Board**) on an Interim Final Rule (**Interim Rule**) amending Regulation E to cover payroll card accounts.

EFTA is the nation's leading non-profit, inter-industry trade association dedicated to the advancement of electronic payment systems and electronic commerce. The Association's nearly 500 members represent a broad spectrum of perspectives that engenders accurate and effective analysis of electronic payments and electronic commerce issues. Members include the nation's leading financial institutions, electronic payment networks, card associations, retailers, information processors, equipment, card and software manufactures and vendors, Internet providers, telecommunications companies, state governments and Federal agencies. A list of the members of EFTA's Board of Directors is attached. Please note that none of the governmental members of EFTA were involved in the development of this comment letter.

EFTA commends the Board for its prudent manner of handling a new and emerging product that provides many consumers convenient and inexpensive access to their income. EFTA generally supports the Interim Rule regarding payroll cards, because we believe that it is important to provide an appropriate level of consumer protection to insure consumer confidence in payroll products. The great majority of payroll card issuers currently give consumers such protections. The Interim Rule will insure uniformity, protecting consumers and providing a level playing field for issuers and employers. Furthermore, we applaud the Board's treatment of payroll card products as "accounts" only under Regulation E and not under other federal laws or regulations.

We appreciate the opportunity to comment on the Interim Rule.

Definition of Account

As noted above, EFTA generally supports the Board's decision to include within the definition of "account" a "payroll card account" 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." However, EFTA is concerned that the word "indirectly" is ambiguous and may cause confusion. We suggest that the Board clarify that "indirectly" refers only to situations where an employer authorizes a third party to create or operate its payroll card program, and not to situations where the employer does not directly sponsor or authorize the payroll card or payroll card program. Otherwise, inclusion of the term "indirectly" in the definition of "account" may inadvertently render a number of situations (*i.e.*, those where the employer has only very limited involvement) covered under Regulation E, despite the more narrow application intended by the Interim Rule.

We also suggest that the Board clarify whether certain types of payments would make a card account a "payroll card account" governed by Regulation E. First, comment 2(b)-2 of the Interim Rule provides that cards to which only one-time transfers of salary-related payments (e.g., annual bonuses) are made are not covered. We question whether transfers of incentives or similar payments that may be made more than once during the employer/employee relationship or more than once during a year, but that are not recurring at substantially regular intervals, would be covered. We would think that such incentives would constitute "isolated or limited instances" and so would not fall under the definition of "payroll card account." Indeed, such payments would not be "replenished on a recurring basis" and would not represent the "means by which an employer regularly pays the employee's salary or other form of compensation."

We also question whether health plan-related benefits transferred to a card would fall under the definition of "payroll card account" if such payments were the only payments made to such a card. While health benefit payments are arguably related to compensation, they are not direct compensation itself, are not intended to be the primary source of income, and are often not "designed for ongoing use at multiple locations and for multiple purposes." Accordingly, we suggest that the Board clarify that such a card would not be a payroll card account.

Alternative Periodic Statement Provisions

We commend the Board for granting financial institutions flexibility in complying with the periodic statement provisions of Regulation E with respect to payroll cards. For some of the very same reasons that payroll cards are a benefit to many consumers, traditional means of providing transaction histories, such as mail, may prove less useful than with traditional accounts. As we noted in our comment letter, dated November 19, 2004, on the proposed

rule addressing coverage of payroll card accounts, the experience of issuers demonstrates that mailing hard copies of monthly periodic statements is not the best way to provide information to consumers about their payroll card accounts. In many cases, payroll card users do not provide a current mailing address where they can be reached. Issuers are faced with a high rate of return of mailed periodic statements. (In some cases, our members have informed us that over 50% of statements are returned because of address deficiencies.) And for many consumers, the information is outdated by the time the statement reaches them because they have withdrawn all the available funds on their cards. Furthermore, payroll card issuers are finding that consumers primarily want available balance information and only secondarily want to view transaction and fee information.

Accordingly, in response to the Board's request for comment as to whether the option to obtain a written history of transactions under § 205.18(b)(1)(iii) is necessary or appropriate, we suggest that financial institutions not be required to provide a written history of transactions in response to a consumer's oral or written request, as long as such financial institutions make available transaction histories through electronic access or a readily available telephone line. These methods provide the payroll card information that is important to consumers and do so in a way that is more convenient and up-to-date for consumers than written statements.

In response to another of the Board's specific requests for comment, many of our members have communicated to us that providing a 60-day rolling transaction history would be operationally difficult. As you are aware, due in part to current Regulation E requirements, many financial institutions have developed systems that provide transaction histories only for specific statement cycles, rather than rolling time periods. Modifying this construct would be costly for our members. However, because consumers will not be receiving regular written histories from the financial institution, we agree with the Board that providing a longer transaction history may be helpful. The Board, in particular, expresses concern that consumers may waive their right to assert an error under § 205.11 if a longer transaction history is not provided. We respectfully request that financial institutions have the option of providing 60 days of transaction history information in either rolling 60-day periods or traditional statement cycles. Under this plan, consumers may protect their rights under § 205.11, because under § 205.18(c)(4), a financial institution must comply with error resolution procedures in response to errors reported by the consumer within 60 days after information about the transaction is made available to the consumer through either electronic or written means. If an error is made between the end of one statement date and the date a consumer accesses his or her transaction history, the 60-day period for error resolution would not begin until the consumer has access to the transaction in error, *i.e.* until the new transaction history statement is available. In addition, an updated account balance (including transactions made since the last statement cycle) would be available, pursuant to § 205.18(b)(1)(i).

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Limitations on Liability and Error Resolution

We agree with the Board's proposed triggers for measuring the 60-day periods for unauthorized electronic fund transfers and for error resolution procedures. With respect to electronic access in particular, requiring financial institutions to determine when a consumer accesses specific transaction information would impose severe operational burdens. By ensuring that a consumer accesses a secure portion of the website where transaction history is available, yet not requiring that a consumer necessarily accesses specific transaction information, the Interim Rule protects consumers but avoids stifling product development and innovation.

Annual Error Resolution Notice

We agree generally with the Board's proposal to require financial institutions to provide an annual notice concerning error resolution. However, we suggest that, as an alternative, financial institutions be permitted to provide an abbreviated notice to those consumers receiving transaction histories under proposed § 205.18(b), as is currently permitted under § 205.8(b). Our members' experience suggests that consumers are more likely to read a concise notice included with information that the consumer reviews, such as transaction histories, rather than a stand-alone annual mailing. Payroll card account holders will have regular access to their transaction histories via electronic and/or other means, so will have convenient and frequent access to such error resolution notice. Accordingly, for the same reasons that an abbreviated notice is permitted under § 205.8(b), we respectfully request that a similar notice be permitted under § 205.18(b).

Effective Date

To afford financial institutions and employers the requisite time to revise their disclosures and accompanying systems in order to comply with any new requirements imposed by the final rule, we suggest that the Board delay the mandatory effective date for compliance of payroll card programs for 12 months following the adoption of the final rule.

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We appreciate the opportunity to comment on the Interim Rule.

Sincerely,

/s/ H. Kurt Helwig

H. Kurt Helwig

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