



NEW YORK STATE DEPARTMENT OF LABOR REVISED PROPOSED RULEMAKING: METHODS OF WAGE PAYMENT

Presenters:

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Agenda

- The NY Paycard DOL timeline – How did this proposal come to be?
- Summary of proposed regulations concerning payroll cards ("Payroll Card(s)") issued by the New York Department of Labor (the "Department") on October 28, 2015
- The Comment Letters
- FinCen Guidelines
- Questions and Comments

The New York Paycard Story – How did this proposal come to be?

- **Background**
- **Prepaid cards are recognized, mainstream financial products, used by individuals and private- and public-sector entities.**
- Paycards can be used at
 - Multiple, unaffiliated merchants
 - Permit cardholders to perform a variety of functions
 - Including some that have traditionally been conducted using other mechanisms
 - Such as checks or debit cards tied to bank deposit accounts or credit cards
 - These functions include withdrawing cash at automated teller machines, paying bills, and transferring funds

The New York Paycard Story – How did this proposal come to be?

- **Background**
- **Prelude to the Proposed Regulations**
- According to a 2013 research report by *Forbes*, U.S. employers pay an estimated **5.8 million workers through the use of payroll debit cards.**
- Payroll prepaid debit cards are a valuable tool to people who don't have or can't get a traditional bank account. A **2014 FDIC survey tells us that 34 million U.S. households — 28% of the country — are unbanked or underbanked.**

The New York Paycard Story – How did this proposal come to be?

- **Background**
- **Prelude to the Proposed Regulations**
- **In New York State, an estimated 13,000 businesses pay wages to approximately 200,000 workers through the use of payroll debit cards.**

The New York Paycard Story – How did this proposal come to be?

- **Background**
- **Prelude to the Proposed Regulations**
- In parts of **New York City**, the problem is worse. According to the city **Consumer Affairs Department**, **38% of households in West Harlem have no bank account at all**. In **Bushwick, Brooklyn**, it's **47%**, and in the **South Bronx**, it's an unbelievable **56%**.

The New York Paycard Story – How did this proposal come to be?

- **Prelude to the Proposed Regulations -continued**
- The growing use of payroll debit cards is attributed to the significant cost savings that an employer may achieve by paying employees with debit cards instead of paper checks.
- According to Visa Inc.,
 - An **employer spends approximately \$0.35** making a deposit on an **employee's payroll debit card**, while the same transaction costs as much as **\$2.00 if the employer uses a paper check.**

The New York Paycard Story – How did this proposal come to be?

Prelude to the Proposed Regulations -continued

- After getting complaints from employees via the Consumer Action Consumers Union about receiving their wages through payroll debit cards
- New York State Attorney General's office began reviewing the use of payroll debit cards within New York State.

The New York Paycard Story – How did this proposal come to be?

Prelude to the Proposed Regulations -continued

• Consumer Action Consumers Union argument against paycards is;

- Some workers may find payroll cards a convenient non-cash option for receiving wages.
- However, using payroll cards can come with serious downsides. Employees may be forced or steered into using the cards, limiting their choice in how to be paid, and once enrolled in a payroll card program, workers may be charged fees that undercut their wages.
- The proposed rules provide protections to ensure employee choice in how they are paid and prohibit the more noxious fees associated with payroll cards. As discussed the Consumer Action Consumers Union support these provisions of the proposed rules and urge the Department of Labor to adopt additional protections for workers: **Choice**

The New York Paycard Story – How did this proposal come to be?

TIMELINE

- **February 18, 2015** - Following his investigation of the issue, New York Attorney General Eric Schneiderman proposed the Payroll Card Act

New York Department of Labor

Proposed Action: Addition of Part 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

- **Purpose:** This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.
 - These Proposed Regulations follow similar attempts earlier by New York Attorney General Eric Schneiderman and legislators to regulate the use of payroll debit cards for the payment of wages.
- **Initial Proposal** was published on **May 27, 2015**
- **NYS Register** published on **October 28, 2015**

The New York Paycard Story – How did this proposal come to be?

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New York Department of Labor

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The New York Paycard Story – How did this proposal come to be?

TIMELINE

- The American Payroll Association (“APA”) submitted the comments to the Revised Rulemaking (“Revised Rule”) in a comment letter on **July 30, 2015**
 - And again on **November 25, 2015** because Revised Rule imposes a number of unduly burdensome requirements on employers and payroll card providers that will limit their ability to continue to offer this beneficial payment method in the state
- **Initial Proposal** was published on **May 27, 2015**

The New York Paycard Story – How did this proposal come to be?

TIMELINE

- **July 31, 2015** Consumer Action Consumers Union applauds the Department of Labor for proposing important protections for payroll card users.
- **August 19, 2015** the New York Daily News publishes a letter to the editor from **Russell Simmons**, the founder of the RushCard “**Low-income N.Y.ers need payroll cards: State regulations threaten a lifeline for unbanked and underbanked workers**”
- **NYS Register** published on **October 28, 2015**

The New York Paycard Story – How did this proposal come to be?

TIMELINE

- **November 27, 2015** rapid! PayCard submits comments in response to the Revised Rulemaking issued by the New York State Department of Labor
- They **stated that the Revised Rule continues to include many problematic and burdensome provisions** that may limit the functionality and features that rapid! PayCard is able to offer on payroll debit cards in New York,
 - The Revised Rule **also imposes a number of onerous requirements on employers, making it less likely that they will offer this beneficial payment method to employees** in the State.
 - rapid! PayCard **urges the Department to continue to work with industry to develop reasonable standards** that ensure the preservation of payroll debit cards without compromising protections for New York workers who voluntarily choose to receive their wages using this beneficial payment method.

The New York Paycard Story – How did this proposal come to be?

TIMELINE

- **Revised rule compared with proposed rule:**
 - Substantial revisions were made in sections 192-1.2(b), (d), (e), 192-1.3, 192-1.4, 192-2.3(a)-(c), (g) and (i).
- **Text of revised proposed rule and any required statements and analyses may be obtained from**
 - Michael Paglialonga,
Department of Labor, Building12,
State Office Campus, Room 509, Albany, NY 12240,
(518) 457-4380,
email: regulations@labor.ny.gov

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Permissible Methods of Payment

- Employees may be paid wages by employers using the following permissible methods:
 - Cash
 - Check
 - Direct Deposit or
 - Payroll Debit Card

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Definitions

Payroll Debit Card

Shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer

- To which transfers of the employee's wages are made on an isolated or recurring basis.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Definitions (cont.)

Consent

Shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment.

- Consent may be withdrawn at any time, provided however,
 - That the employer shall be given a reasonable period of time
 - But no longer than two full pay periods, to finalize such change

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Definitions (cont.)

No Cost

Shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.

Local Access

Shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home, and without unreasonable restraint by the employer or its agent

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Definitions (cont.)

Employee

Shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide

- Executive
- Administrative
- Or professional capacity

Whose earnings are in excess of the dollar threshold contained in Section 192(2) of the Labor Law, or an employee working on a farm not connected with a factory.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Definitions (cont.)

Direct Deposit

Shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.

Reasonable Intervals

Shall mean not less frequently than annually.

Negotiable Instrument

Shall mean be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Disclosure Requirements (Content Requirements and Methods of Delivery)

- ***Initial Proposal:*** Employers must provide the following written disclosures when paying via payroll debit card:
 - A description of all payment methods;
 - A statement that the employer may not be charged any fees for services necessary for the employee to access wages in full
 - A statement that the employer may not require employees to accept wages by direct deposit or a payroll card
 - A list of location where employees can access and withdraw wages at no charge to the employee within reasonable proximity of the employee's residence and place of work.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Disclosure Requirements (Content Requirements and Methods of Delivery)

- ***Revised Proposal:*** The content of the disclosures remains the same except that locations of free cash access must be within reasonable proximity of the employee's residence or place of work.
- The disclosures must be provided when paying via payroll card *or direct deposit*.
 - The disclosures may be provided electronically if
 - The employee is provided the ability to view and print the notice while at work without cost
 - The employee is notified by the employer of his/her right to print the materials.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Disclosure Requirements (Content Requirements and Methods of Delivery)

- *Notice and Consent – Direct Deposit and Payroll Cards*
- The Proposed Rule requires employers offering wage payment through any method other than cash or check, including both direct deposit and Payroll Cards, to provide employees with a written notice and then obtaining the employees' written consent to the alternative wage payment method.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Disclosure Requirements (Content Requirements and Methods of Delivery)

- *Notice and Consent – Direct Deposit and Payroll Cards*
 - The notice is required to contain the following information:
 - A plain language description of the employee's wage payment options;
 - A statement that the employee is not required to accept wages via direct deposit or via Payroll Card;
 - A statement that the employee may not be charged fees for actions necessary to access their wages in full; and
 - A list of fee-free ATM locations where the employee can access and withdraw wages within reasonable proximity to their home or work.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Disclosure Requirements (Content Requirements and Methods of Delivery)

- *Notice and Consent – Direct Deposit and Payroll Cards*
- The written notice and **consent must be given in English and in the employee's primary language when a template prepared by the Department in the employee's primary language** is available.
 - If no Department template is available, providing the notice and consent in English will suffice.
 - Notably, under the Proposed Rule, the written notice and written consent are allowed to be given and obtained electronically, so long as the employee has the ability to print the information for free at work, and this fact is disclosed to the employee through the electronic process.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Disclosure Requirements (Content Requirements and Methods of Delivery)

- ***Consent – Rules Specific to Payment of Wages via Payroll Card***
- Once an employer obtains the required written consent from its employee, as described previously
- The employer must wait 7 business days before issuing a wage payment through the Payroll Card.
 - This new approach to the waiting period still presents challenges for employers
 - The new approach will likely required the continued availability of paper checks in order to address employees hired in the middle of a payroll cycle who may be required to be paid their wages in less than seven business days after hire.
 - Some quality paycard providers allow employers to have access to an instant fund loading tool (not ACH) and the ability to automate such a tool that may allow this requirement to be more tenable

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Access to ATMs – *Rules Specific to Payment of Wages via Payroll Card*

- Employers paying employees via a Payroll Card must ensure each Payroll Card has local access to fee free ATMs.
- "Local access" means in reasonable proximity to the employee's work or home.
- Employees must also receive one method of withdrawing the total amount of their wages for free in each pay period.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Fees – *Rules Specific to Payment of Wages via Payroll Card*

- The Proposed Rule contains **substantial fee restrictions including**;
 - Prohibitions on point-of-sale transactions
 - Overdraft / shortage / low account balance status
 - Inactivity, maintenance
 - Card replacement
- The Proposed Rule appears to **allow fees for declined transactions**
 - At the point-of-sale and declined transactions
 - At an ATM
 - As long as the ATM provides an employee with free balance inquiries.
- The Department notes that the inclusion of a service in the subsection does not impose a separate obligation to provide such services to an employee.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Other – *Rules Specific to Payment of Wages via Payroll Card*

- The Payroll Card **cannot** be linked to any form of credit
 - Other than inadvertent overdrafts covered by an issuer at no charge to the employee.
- The funds underlying the Payroll Card cannot expire
 - This fact must be included in the agreement between the employer and Payroll Card issuer.
 - Allows for an employee's Payroll Card account to be closed for inactivity
 - If the issuer gives reasonable notice to the employee
 - Refunds any remaining balance within 7 days.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Other – Rules Specific to Payment of Wages via Payroll Card

- When a change in terms or conditions occurs,
 - Employee must receive thirty days prior notice of the change.
 - The change in terms notice must be in 12-point font
 - Appear in the employee's primary language or one the employee understands.
 - This provision is still inconsistent with the 21 day notice requirement under Regulation E.
- When applicable, union approval is required to pay wages via a Payroll Card.

New York State Department of Labor Revised Proposed Rule making: Methods of Wage payment October 28, 2015

Other – Rules Specific to Payment of Wages via Payroll Card

- The Proposed Rule prohibits an employer
- From receiving any form of kickback or other financial remuneration from the
 - Issuer
 - Card sponsor
 - Any third party for delivering wages by payroll debit card.

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

October 28, 2015

| Change | Original Proposal | Revised Proposal |
|--|--|---|
| Providing Employees with List of Fee-Free ATM Locations | Employers must provide a list of fee-free ATM locations near the employee's work location and the employee's home. | Employers must provide a list of fee-free ATM locations near the employee's work location or home, not both. |
| Conflicts with Regulation E | The Original Proposal included requirements to provide employees with transaction histories, banking statements, and fraud/dispute resolution protection that appeared inconsistent with Treasury rules for receiving government payments on prepaid cards and Regulation E. | The Revised Proposal removes the requirements relating to banking statements, transaction statements, and fraud / dispute resolution. |
| Consent Requirement | <p>Employers must wait seven days after providing required disclosures to employees before seeking an employee's consent.</p> <p>If an employee ever withdraws their consent, the employer must act on the withdrawal within a "reasonable period of time."</p> | <p>An employer can obtain an employee's immediate consent after delivering required disclosures. However, the employer must wait seven business days after receiving the consent before making a wage payment through the payroll card.</p> <p>"Reasonable period of time" for withdrawing employee consent may not exceed two pay periods.</p> |

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

October 28, 2015

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| Fee Restrictions | <p>The Original Proposal prohibited the following fee types:</p> <ul style="list-style-type: none">• Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;• POS transactions, declined transactions, and other transactions;• Overdraft, shortage, or low balance status;• Account inactivity;• Maintenance;• Telephone or online customer service;• Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the Payroll Card, or at any ATM in network made available to the employee;• Providing the employee with written statements, transaction histories or the issuer's policies;• Replacing the Payroll Card at reasonable intervals;• Closing an account or issuing payment of the remaining balance by check or other means; or• Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the Payroll Card provided to the employee. | <p>The Revised Proposal has removed "declined transactions" as well as the "and other transactions" language from the provisions on fee restrictions.</p> <p>The Revised Proposal has added a new prohibited fee category – Declined transaction fees at ATMs that do not provide free balance inquiries. In its accompanying commentary, the Department notes that charging a declined transaction fee at an ATM that provides fee-free balance inquiries is permissible because the employee has the ability to reasonably avoid the declined transaction fee.</p> |
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New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

October 28, 2015

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| Electronic Distribution / Collection of Information | Unclear. | Employers may provide the notice and consent information under the Revised Proposal electronically, and obtain employee consent electronically as well. The ability to deliver disclosures and obtain consent electronically is conditioned on the employee having the ability to print the required information for free during work hours. This ability must be disclosed to the employee through the electronic process. |
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New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

October 28, 2015

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|------------------------------|---|---|
| Language Requirements | Required notice and consent must be in a language understood by the employee. | Required notice and consent must be provided in English and either in the employee's primary language or in a language the employee understands. The Department intends to develop a template with required information in the following languages – English, Spanish, Chinese, Haitian Creole, Korean, Polish, and Russian. If an employer has an employee who speaks a language not included in the templates, the employer may simply provide the required disclosures in English. |
|------------------------------|---|---|

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

October 28, 2015

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|---|--|---|
| Overdraft | Overdraft fees prohibited. | No change. In its accompanying commentary, the Department clarified its position, stating that, while overdraft services are still permissible, a fee for such services may not be charged. |
| Financial Remuneration to Employer | Prohibits the employer from receiving any form of “kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.” | No change in final rule. |
| Effective Date | The Original Proposal had an immediate effective date after its final publication. | The Revised Proposal would take effect six months after adoption of a final rule. |

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

rapid! PayCard submits comments in response to the Revised Rulemaking issued by the New York State Department of Labor

- When payroll debit cards are used, the employee's net wages are automatically deposited into his or her payroll card account on payday, just like they would be with direct deposit to the employee's checking account.
- The employee can then use her payroll debit card to make purchases and pay bills online, in person and over the phone.
- Employees can also use their payroll debit cards to access cash at the tellers of financial institutions, at ATMs, and by using the cash back feature at the point of sale.
- Additionally, the rapid! PayCard provides employees with one free U.S. post office money order during each pay period.

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

rapid! PayCard submits comments in response to the Revised Rulemaking issued by the New York State Department of Labor

- Employers also benefit from offering payroll cards.
- Payroll cards allow employers to deliver wages to employees in a reliable and timely manner even when the employee works offsite, is away from the workplace, or when severe weather conditions or natural disasters like **Hurricane Sandy impede the delivery of paper paychecks.**
- Employers also enjoy administrative efficiencies when using payroll cards and, in many instances, cost savings.

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

rapid! PayCard's Comments and Concerns

- Undue Burdens on Providers Will Make Offering Payroll Debit Cards Economically Unsustainable in the State of New York
 - The Revised Rule Would Require Providers to Incur Significant Expense Adopting Unique Processes in New York
 - The Proposed Rule Imposes Onerous Fee Prohibitions
 - In-Network ATM Withdrawals
 - In-Network ATM Balance Inquiries
 - Declined Transactions
 - Account Inactivity
 - Fees Not Disclosed to Employees

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

rapid! PayCard's Comments and Concerns

- Undue Burdens on Employers Will Lead Many to Stop Offering Beneficial Payroll Card Programs to Their Employees.
 - The Seven-Day Cooling Off Period is Impractical and Prohibitive
 - The Notice and Consent Requirements are Burdensome and Unclear
 - Existing Payment Consents Should Be Recognized as Valid

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

rapid! PayCard's Comments and Concerns

- **The Six Month Implementation Period is Insufficient**
 - The rapid! PayCard thanks the Department for adding an implementation period to the Revised Rule.
 - However, if rapid! PayCard is able to continue offering payroll debit cards in New York after the rule is finalized, six months would not give us and other providers sufficient time to implement the significant changes that will be required to comply.

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

rapid! PayCard's Comments and Concerns

- **Conclusion**

- Payroll cards offer employers and employees a **safe, convenient, and reliable wage payment option.**
- For **unbanked employees, payroll cards often offer the *only* alternative to paper checks .**
- Under the restrictions of the **Revised Rule**, however, providers and employers **may no longer be able to offer this beneficial service to employees in New York.**
- The rapid! Paycard urges the Department to continue to work with our Company and other industry participants to further modify the Revised Rule and preserve the benefits of payroll debit cards for New York workers.

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 25, 2015

APA's Government Relations Comments and Concerns

- The Seven-Day Cooling Off Period is Impractical and Prohibitive
 - The seven-day cooling off period threatens to harm more employees than it seeks to benefit and should be eliminated from the final rule

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 25, 2015

APA's Government Relations Comments and Concerns

- The Notice and Consent Requirements Require Further Clarification
 - **Template Development.** The Department has proposed a system that would allow employers to satisfy the proposed language requirements using templates prepared by the Department.
 - **Language Requirements.** The Revised Rule does not address whether employers are required to use the templates or what requirements must be satisfied if an employer elects to prepare its own notice and consent forms.
 - **Content of Notice.** A few provisions of the notice and consent requirements remain so vague that it is difficult to determine what is required.
 - **Application to Direct Deposit.** Application of the above notice requirements to direct deposit also is unclear.

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 25, 2015

APA's Government Relations Comments and Concerns

- ***Existing Payment Authorizations Should Be Honored***
 - Employers that relied on the Department's previous guidance when obtaining consent from employees should receive the benefit of such compliance. Language Requirements. The Revised Rule does not address whether employers are required to use the templates or what requirements must be satisfied if an employer elects to prepare its own notice and consent forms.
 - **APA members pay 88.4% of their employees by direct deposit, 1.9% by payroll card, and 9.6% by paper check.**
 - Requiring employers to obtain a new consent from every employee who already participates in direct deposit or receives wages via a payroll card would be extremely burdensome and disruptive

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

APA's Government Relations Comments and Concerns

• Undue Burdens on Providers Continue to Threaten the Availability of Payroll Cards in New York

- *Notice of Changes in Terms.*
- *Fee Prohibitions and Cash Access.*
- *Implementation Period.*

New York State Department of Labor Revised Proposed Rule making: Summary of the major changes made to the May 27, 2015 Original Proposal

November 27, 2015

APA's Government Relations Comments and Concerns

- **Conclusion**
- The APA supports the Department's efforts to establish standards for offering payroll cards that include important consumer protections for New York workers.
 - We remain concerned, however, that the **Revised Rule imposes a number of burdensome and costly requirements on employers and payroll card** providers that make it unlikely that they will continue to offer this beneficial payment method in the state.
 - **This will hurt the very workers the rule seeks to protect.**
 - To avoid this result, the **APA encourages the Department to establish regulatory requirements governing payroll cards that offer employees the greatest benefit** while faithfully adhering to the letter and spirit of New York's Labor Law.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

Clarifying the applicability of the **"know-your-customer" or "customer identification program (CIP)"** regulations under Section 326 of the USA PATRIOT Act to prepaid cards deemed issued by banks, thrifts, credit unions, and branches of foreign banks.

- Guidance applies, effective March 21, 2016, to cards that are sold and distributed by banks or by third parties that design, manage, and operate prepaid card programs for banks.
- Noncompliance could result in material adverse regulatory action, especially where anti-money laundering compliance is affected.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

Highlights

- General purpose, reloadable prepaid card programs are "accounts" of the issuing banks, and the cardholders are bank "customers" under the Regulations.
- Cardholders in employee payroll card programs and government electronic benefit transfer card programs are not bank "customers" under the Regulations, unless the bank's program offers cardholders access to credit or overdraft features or allows cardholders to deposit funds onto the card other than through the employer or the government program.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

The Guidance

Controls implemented by depository institutions and the prepaid card industry, such as

- Limits on card values and the frequency and number of transfers permitted
- As well as due diligence on third parties and cardholders
- Have reduced the risks posed by prepaid cards.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

The Guidance - *continued*

The **Guidance provides interpretations of the Regulations** and offers additional steps that should be taken to comply with the Regulations, including:

- Issuing a general-purpose prepaid card that may be reloaded by the cardholder **or**
- Another party (ie; Employer) on behalf of the cardholder, in a manner that is similar to the way in which funds can be added to a traditional deposit, asset, or transaction account
- **Creates a formal banking relationship and is equivalent to opening an account for purposes of the Regulations.**

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

The Guidance – *continued*

Cards that offer

- Non-card transfers by ACH,
- Wire,
- Check,
- Mobile phone,
- Cardholder-to-cardholder transfer, or to another account of the cardholder at the issuing bank, if such transfers result in the reloading of the prepaid card, create an account with the bank.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

The Guidance – *continued*

Prepaid cards issued without any reloadable functionalities or credit features will not result in the establishment of an account with the bank until those functions or features are activated by the cardholder.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

The Guidance – *continued*

Cardholders should be treated as the bank's customers for purposes of the Regulations,

- Even if the cardholders are not the named accountholder
- But have obtained the cards from a third party who uses a pooled account with the bank to fund the cards.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

The Guidance - *continued*

Payroll and health benefit cards (e.g., health savings account cards or flexible spending arrangement cards) create a bank–customer relationship with the employer (not the individual employees),

- **Unless** the individual employees are permitted to access credit through the card
- **Or** to reload the payroll card account from sources other than the employer. (Portability)

Similarly, no customer relationship with a government entity or the beneficiary is created where government benefit cards (electronic benefit transfer cards) do not permit the beneficiaries to load funds unconnected to the government program onto the card and do not permit access to credit.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

Action Items

- Banks should consider their prepaid card programs carefully, especially their third-party and pooled prepaid card programs, as well as their know-your-customer controls and procedures, in light of the Guidance. At a minimum, prepaid card programs should:
 - Be established and monitored in accordance with appropriate bank vendor management programs and in accordance with banks' internal product approval and risk committee processes.
- Identify third-party marketers and distribution channels to be used in the program.
 - These considerations are helpful not only to reduce anti-money laundering compliance risks, but also other bank regulatory policy risks, such as regulatory policies regarding overdrafts and other short-term consumer loans.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

Action Items- *continued*

- Be documented by contracts that allocate obligations and risks between the bank and its program managers and that require adequate recordkeeping.
 - Any agency relationship described in the Guidance should be appropriately limited to avoid unexpected liabilities to the banks or their program managers.
- Require compliance with applicable bank rules and policies, including the Regulations, the Guidance, FDIC deposit insurance rules and, as applicable, the FFIEC IT Handbook

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

Action Items- *continued*

- Specify the respective parties' know-your-customer obligations.
 - Ensure the bank's right to transfer, store, or otherwise obtain immediate access to all customer and account information held by the third-party program manager.
 - Such information also should be kept in accordance with FDIC deposit regulations to maintain as much FDIC insurance as possible.
 - Special care should be used for pooled accounts to provide pass-through FDIC insurance coverage to the extent possible.

U.S. federal banking regulators and the Financial Crimes Enforcement Network ("FinCEN") recently released guidance

Action Items- *continued*

- Permit the bank to audit the program managers and to monitor their performance.
- Consider the Bank Service Company Act and, where it is applicable, permit the appropriate regulatory agency to examine the third-party program manager.
- Consider the Guidance in connection with mobile and internet banking applications and in programs where prepaid cards are only an ancillary feature or delivery mechanism.

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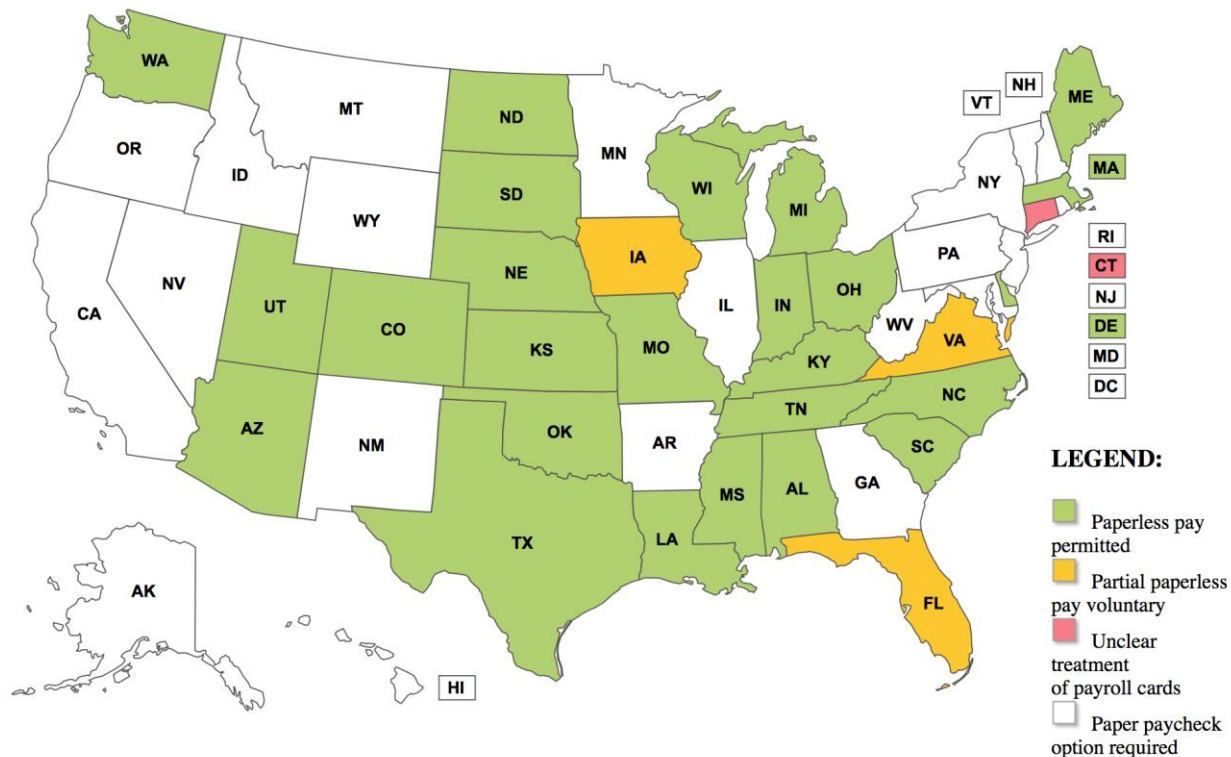


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Compass Guide Paycard Stretch Practices

Convenience

Cardholders:

- Can send money to other cardholders from their card.
- Can register for secondary cards to provide to friends or family.
- Are offered the option to split their wages:
 - Payroll card
 - Another form of electronic disbursement.
- Sub-accounts allow cardholders to set aside funds for budgeting or saving purposes.

Mobile application or a mobile-enabled website

- Allows cardholders to perform basic transactions
- Access important account information on the go.

Advice is provided to cardholders

- Ensure they derive the most value from their cards.

Portability

Cardholders can choose to receive multiple sources of funds on their cards.

Next Generation Practices

Personal financial management (PFM) tools enable cardholders

- Plan
- Budget
- Track their expenses.

Savings

Cardholders have the option

- Store
- Accumulate funds

If a credit service is offered in conjunction with a payroll card

- Providers exercise caution
- Only offer affordable and high-quality options that cardholders can repay without incurring a cycle of debt.

Questions?

Thank you!





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