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M E M O R A N D U M

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To Our Clients and Friends

Re: Federal Reserve Regulation E Action on Payroll Card Accounts and NSF Charges

The Federal Reserve Board has issued a final rule that subjects payroll card accounts to the Board's Regulation E, Electronic Fund Transfers. The Board is also soliciting comment for 30 days on an interim final rule that clarifies Regulation E's coverage of the electronic collection of insufficient funds ("NSF") fees and consumer notice requirements for electronic check conversion transactions.

PAYROLL CARDS

The Board's rule applies Regulation E to payroll card accounts 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. Payroll cards are comparable to debit cards. Consumers can use payroll cards to withdraw funds at ATMs and to make purchases at merchants through POS terminals. The final rule is substantially similar to the interim rule, adopted by the Board in January 2006, regarding this matter. The effective date for this rule is July 1, 2007.

Under the final rule, payroll card accounts will be "accounts" under Regulation E whether operated or managed by the employer, third-party processor, depository institution or other person.. An employer or a third-party processor would be a financial institution under Regulation E if it held payroll card accounts, or if it issued payroll cards and agreed to provide EFT services to payroll card holders. While a financial institution is required to comply with the requirements of Regulation E with respect to payroll cards, it need not provide periodic statements if it makes the following information available to consumers:

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- Account balance through a local or toll-free telephone line that is available during standard business hours
- History of account transactions occurring within the previous 60 days through electronic means such as a website
- Written history of account transactions occurring within the previous 60 days provided promptly in response to oral or written requests

The rule also clarifies how financial institutions that do not provide periodic statements can comply with Regulation E's error resolution procedures. A consumer's 60-day period to report errors begins on the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history including that transaction. Alternatively, the rule permits institutions to comply with the error resolution provisions by allowing a consumer to report an error up to 120 days after the date the transaction that is allegedly in error was credited or debited to the consumer's account. The rule includes modifications to the initial disclosures, error resolution and annual error resolution notices that financial institutions are required to provide to consumers. The Board also provides model clauses that financial institutions may use to implement the disclosures.

NSF CHARGES AND ELECTRONIC CHECK CONVERSIONS

In a separate action, the Board has requested public comment on an interim final rule to provide additional clarification regarding Regulation E's coverage of the electronic collection of NSF fees by merchants and other payees and consumer notice requirements for electronic check conversion transactions. The amendments clarify that the requirement to obtain a consumer's authorization to collect a fee for insufficient or uncollected funds through an electronic debit to the consumer's account applies to any person that intends to collect the fee in that manner. The amendments also clarify notice requirements for electronic check conversion transactions and for collecting NSF fees electronically. The interim rule is effective January 1, 2007. Comments are due within 30 days after publication in the Federal Register.

A copy of the Board's actions can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.