



CFPB Bulletin Addresses "Payroll Card Accounts"

Insights

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A statement of some federal-law limitations and requirements relating to the increasingly popular practice of compensating employees via the use of "pay cards" came from an atypical direction on September 12.

The federal Consumer Financial Protection Bureau published Bulletin 2013-10 to address the impact of the Electronic Fund Transfer Act upon "payroll card accounts". CFPB describes these broadly as being "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."

The Bulletin said among other things that EFTA-implementing Regulation E prohibits requiring an employee to receive his or her wages by electronic transfer to a payroll card account at a particular financial institution. CFPB bases its view upon a provision saying that a consumer may not be required to "*establish an account* for receipt of electronic fund transfers with a particular institution as a condition of employment . . ." 12 C.F.R. § 1005.10(e)(2) (emphasis added). The agency says that this prohibits requiring employees to "receive direct deposit" at an employer-designated financial institution, and from this CFPB derives its opinion regarding payroll card accounts.

But the Bulletin offers no discussion of how or why an employee paid by payroll card is necessarily required to "establish [any] account" anywhere for that purpose. Neither does CFPB appear to take into consideration the significant ways in which payroll-card arrangements differ from direct-deposit, including some that make pay cards more-readily-usable than a check is.

In any event, CFPB apparently construes Regulation E to mean that an employer is permitted to pay wages via a payroll card issued by a financial institution of the employer's choosing *if* employees have the option to receive their wages in another form instead, such as by paper check or in cash.

CFPB's Director Richard Cordray released a statement saying that the Bulletin "warns employers that they cannot mandate that their employees receive wages on a payroll card." However, this does not appear to be entirely accurate. Both the relevant section in Regulation E and the Bulletin seem to mean that EFTA *does* permit an employer to require wage payment by payroll card alone *if* the employee is allowed to choose the financial institution at which the wages will be deposited.

Some states now specifically regulate wage payment through the use of payroll cards or debit cards. Many address whether and under what conditions employers may compensate employees through electronic-funds-transfers more generally. The Bulletin says that EFTA does not preempt such laws, at least where they provide greater employee protections than those called for by EFTA.