



August 25, 2015

Mr. Michael Paglialonga  
Senior Attorney  
New York State Department of Labor  
State Office Campus, Building 12, Room 509  
Albany, NY 12240

***Re: Addition of Part 192 to Title 12 NYCRR relating to payroll cards [UPDATED]***

Dear Mr. Paglialonga:

I write on behalf of the American Financial Services Association (AFSA)<sup>1</sup> to provide additional information provided by our members in support of our concerns about the Department of Labor's proposed rule relating to the payment of wages by payroll card for New York residents ("proposed rule," as outlined in our letter on July 8, 2015, of which this is an updated version.

**Employees Benefit from Payroll Cards**

A 2013 study by the Federal Deposit Insurance Corporation found that 8.5 percent of all households in New York are unbanked.<sup>2</sup> In New York City, 825,000 adults do not have bank accounts.<sup>3</sup> This means they cannot receive their wages by electronic direct deposit and have historically been limited to being paid by cash or check. Prepaid payroll cards offer the unbanked a significantly better option than paper checks, by giving them a means to make electronic payments in stores, online, or over the telephone, along with greater security, convenience, and control over their finances. Payroll cards put unbanked employees on an equal footing with employees that have bank accounts.

Electronic wage payment offers employees immediate access to their wages, even for those who may be away from work for reasons such as illness or travel. Each pay period, employees without bank accounts or with limited access to financial services can incur significant fees to cash their paychecks or purchase money orders to pay their bills. A 2009 report estimated that while check cashing services cost a typical employee \$1,042 a year and a basic checking account costs \$175 a year, payroll cards cost only \$75 a year.<sup>4</sup> Not needing to cash a paycheck, saves employees time and money, particularly for those who live in rural parts of the state. Prepaid payroll cards can also serve as a money management tool for employees, allowing them to track expenses and better manage

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<sup>1</sup> The American Financial Services Association is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA member financial institutions offer vehicle financing, cards, personal installment loans and mortgage loans. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

<sup>2</sup> Federal Deposit Insurance Corporation, *2013 National Survey of Unbanked and Underbanked Households Appendices* at <https://www.fdic.gov/householdsurvey/2013appendix.pdf> (October 2014).

<sup>3</sup> NYC Department of Consumer Affairs, *More Than 825,000 Adults in New York City do not have Bank or Credit Union Accounts According to new Citywide Study*, at [http://www.nyc.gov/html/dca/html/pr2010/pr\\_022510.shtml](http://www.nyc.gov/html/dca/html/pr2010/pr_022510.shtml).

<sup>4</sup> Mercator Advisory Group (2009).

monthly budgets. Employees also face fewer problems related to handling checks and cash, such as theft and fraud.

### **Businesses Benefit from Payroll Cards**

Prepaid payroll cards are popular with business owners because they allow businesses to increase efficiencies and more effectively control spending. Prepaid payroll cards enable businesses to minimize paperwork, streamline costs, simplify record keeping, accurately track expenses, improve efficiency, and can help increase employee satisfaction. On top of this, prepaid payroll cards reduce the amount of time and money businesses spend on issuing checks and processing paper and eliminate the need for a two-tiered payroll system because everyone can receive electronic payments. The cost savings realized by companies can allow them to invest in new capital or jobs, or pass the savings onto consumers.

In the restaurant industry – a significant employer in New York – for example, prepaid payroll cards are a very welcome innovation, allowing employers to establish a more efficient payroll system by supplementing direct deposit with prepaid cards for employees that do not have bank accounts. Approximately 3.6 million – or 30 percent – of restaurant industry employees in the United States do not have access to mainstream banking, either through circumstance or choice.<sup>5</sup> On average, every paper paycheck costs a restaurant around \$2.<sup>6</sup> Direct deposit by contrast, costs only about 35 cents per payment. Lost checks cost an employer \$8 to \$10 per check to generate a replacement, and time spent tracking and managing state escheat regulations for unclaimed paychecks is very burdensome for restaurant operators.

### **The Proposed Rules Risk Sacrificing Undoubted Benefits**

The proposed rules contain a number of elements that will render payroll cards unviable for those that provide them. They take a blanket approach to the prohibition of imposing fees including fees on overdrawn or inactive accounts, transaction fees, maintenance fees, inactivity fees, and fees for providing written statements to the cardholder. It is important, indeed vital, that fees relating to payroll cards are kept to an absolute minimum, but this wholesale approach makes no attempt to assess the merits or otherwise of individual fees or the circumstances in which they are assessed.

In addition, the requirement that employees must wait seven business days before electing to receive their wages via a payroll card is likely to act as a disincentive for adoption. Many employers will need to issue a paper check due to the timing, and some employees will instead opt for instant payment by paper check. The current proposal does not permit an employer to utilize a payroll card within the first seven days even if the employee unilaterally requests one.

On top of this, the proposed regulations are scheduled to take effect immediately after the close of this notice and comment period. This does not provide employers with enough time to manage the inevitable upsets to payroll services if card issuers opt to cease business in New York, or to adapt current programs if issuers are willing to continue issuing cards under these restrictions. The

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<sup>5</sup> National Restaurant Association, *Solve Your Direct Deposit Dilemma with a Prepaid Card*, available at <http://www.restaurant.org/Manage-My-Restaurant/Workforce-Management/Training/Solve-your-direct-deposit-dilemma-with-a-prepaid-c>.

<sup>6</sup> Society of Human Resource Management (SHRM), *Many Small Businesses Still use Paper Checks for Pay*, at <http://www.shrm.org/hrdisciplines/compensation/articles/pages/directdeposit.aspx>.

immediate effective date will force employers to shut down any offering of payroll cards for a substantial period of time. This disruption to employees and employers alike serves no useful purpose.

We note that the Consumer Financial Protection Bureau is also looking into the issue of prepaid payroll cards and is expected to promulgate its rules in January 2016. It might make sense, therefore, for New York to wait until the rules are promulgated, and perhaps, in the meantime, to endorse various best practices for payroll cards from groups such as Consumer Action<sup>7</sup> or the Center for Financial Services Innovation (CFSI).<sup>8</sup>

We respectfully request that you give our concerns due consideration and reconsider the proposed rules in their current form. We would be happy to work with the department to craft a regime that balances the needs of employees and employers alike. If you have further questions, or would like to discuss this further, I can be contacted by phone at 952-922-6500 or email at [dfagre@afsamail.org](mailto:dfagre@afsamail.org).

Respectfully,



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<sup>7</sup> Consumer Action, *An Employer's Guide to Payroll Cards*, at [http://www.consumer-action.org/downloads/english/Employer\\_Guide\\_to\\_Payroll.pdf](http://www.consumer-action.org/downloads/english/Employer_Guide_to_Payroll.pdf) (2014).

<sup>8</sup> Center for Financial Services Innovation, *The Compass Guide to Payroll Cards*, at <http://www.cfsinnovation.com/Document-Library/The-Compass-Guide-to-Payroll-Cards> (January 27, 2015).