

United States Senate

WASHINGTON, DC 20510

July 11, 2013

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20220

The Honorable Seth Harris
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20410

Dear Director Cordray and Acting Secretary Harris,

We write to express our concern about the fees and practices associated with prepaid “payroll cards” and to urge the Consumer Financial Protection Bureau (Bureau) and Department of Labor (Department) to take swift action to protect American workers. As highlighted in the June 30, 2013 New York Times story, “Paid via Card, Workers Feel Sting of Fees,” millions of American workers now receive their wages via prepaid cards instead of a traditional paycheck. For businesses, these cards can help make it easier to set up and manage payroll systems. But for workers, these cards sometimes pose real risks to their financial well-being. It is shocking to learn that, according to the New York Times report, some workers incur so many fees in the course of using their payroll cards that their net income ends up below the minimum wage.

We strongly believe that your agencies have the capability to protect workers from at least some of the excessive fees and harmful practices associated with payroll cards. Accordingly, we respectfully request that your agencies take a closer look at whether workers adequately understand these fees, what effect these fees have on employee income in the aggregate, and whether particular fees might violate Regulation E, which implements the Electronic Funds Transfer Act (EFTA), or the Fair Labor Standards Act (FLSA). We ask that you respond in writing detailing the supervisory tools available to the Bureau under Regulation E, the Department under the FLSA, or any other federal laws to ensure that various fees – for ATM use, balance inquiry, swipe purchases, overdraft, and “inactivity,” among other charges – do not harm employees or violate the law. To the extent that you lack relevant data, we urge you, in coordination with other relevant agencies, to undertake a study that examines the scope of these fees, the impact they have on workers, and whether the existing payroll card market provides for adequate competition.

Perhaps even more worrying than the fees associated with these cards is the possibility that employees might be coerced or inappropriately pressured into using them in the first place. Every employee should have the right not to use such a card and to instead receive their pay via a paper check or direct deposit. For employees without a bank account, we recognize that these cards may sometimes be a more affordable alternative to check cashing services. Still, it is important both for employees to know their rights and for employers to understand their

obligations under federal law. This is especially true given the patchwork of state laws governing payroll systems.

In particular, Director Cordray, we ask that you clarify for employees and employers – both in your formal response to this letter and through future rulemakings, guidance, and other communications – what options employers must provide to their employees under Regulation E. Are employers unequivocally in violation of Regulation E if they deliver all salaries through a single payroll card and offer no other option? Our view is that mandating the use of a particular payroll card, with no available alternative, seems clearly to violate federal law. Furthermore, would an “opt-out” program, whereby employees must affirmatively remove themselves from a payroll card service, be compliant with Regulation E? What requirements are there under Regulation E to provide the option of a paper check?

We believe it would go a long way toward protecting workers if the Bureau would clearly and specifically state its view on what is and is not allowed under Regulation E, and we urge the Bureau to use the full extent of its authority under Regulation E to ensure that employees are provided a meaningful choice with respect to the manner in which they are paid. Similarly, Acting Secretary Harris, we ask you to clarify what role the Department plays in overseeing these types of payroll programs and invite you to comment on the Department’s authority under the FLSA over these types of payroll programs.

It is important to emphasize that the vast majority of employers make a good faith effort to comply with the law in paying their employees, and we ought to give them the clear, bright lines they need to set up and maintain their payroll systems. Where systematic abuses are clear, however, we urge the Bureau to use the full extent of its authority under Regulation E and other federal laws and regulations to carry out appropriate enforcement actions. We must send a loud and clear signal that we will not tolerate financial products that take advantage of vulnerable, low-income workers.

We must also ensure that workers are provided with adequate disclosures about their rights under federal law and the fees associated with particular cards. For that reason, we would appreciate a better understanding from the Department of Labor of what disclosures employers are currently required to provide to their employees and whether or not the evidence suggests that employers are complying with these requirements. We urge you to consider additional rulemakings in this area – such as standardized, public workplace notices – so that all employees have the information they need to make sound decisions about their paychecks.

Finally, there are a number of additional areas of concern. It is highly concerning that some employers – as reported by the New York Times – receive commissions for each employee they sign up to a particular payroll card. This situation creates an obviously perverse incentive structure in which employers could be rewarded for steering their own employees toward high-fee products. It is also problematic if companies that operate through franchises do not adequately supervise the payroll-card practices of their franchisees. Finally, as mentioned above, opt-out contracts that steer employees toward particular prepaid cards worry us greatly. On these matters, as well as the others discussed in this letter, we would appreciate guidance from the

Bureau and the Department as to the state of current law on these issues as your agencies understand them.

In many aspects of our economic lives – from paychecks to student loans to Social Security benefits – prepaid cards are becoming more prevalent. It is precisely because of the growing prevalence of these cards that the Bureau, and Department as appropriate, must act quickly to educate consumers, crack down on unscrupulous practices, and stop future abuses before they occur. We believe addressing the issues raised in this letter would be an important first step in this effort.

Thank you very much for your prompt attention to this matter.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



CHARLES E. SCHUMER
United States Senate



JOE MANCHIN, III
United States Senate



TOM HARKIN
United States Senate



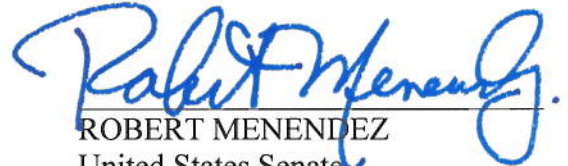
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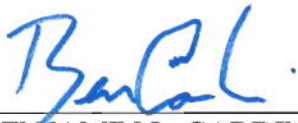
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