



*National Payroll Reporting Consortium*

PO Box 850 ★ Henrietta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

August 26, 2010

James H. Freis, Jr.  
Director  
Financial Crimes Enforcement Network  
Regulatory Policy and Programs Division  
PO Box 39  
Vienna, VA 22183

Re: Docket number TREAS–FinCEN–2009–0007; RIN 1506-AB07  
Amendment to the Bank Secrecy Act Regulations – Regulations Relating to Prepaid Access

Dear Mr. Freis:

We are writing to provide comments on the referenced Notice of Proposed Rulemaking (NPRM), with respect to potential impact on payroll and health benefit prepaid card programs. Members of the National Payroll Reporting Consortium (NPRC) provide payroll processing services to over 1.4 million employers. Many member companies offer prepaid payroll cards as an alternative to paper checks and direct deposit, and many offer similar health benefit cards such as Flexible Spending Accounts (FSAs), Health Spending Accounts (HSAs), etc.

The payroll services industry seeks clarification on the proposed exclusion for payroll cards; whether the requirement to register with FinCEN would extend to payroll service providers; and whether payroll service providers may satisfy the identity verification requirements of the NPRM by contractually requiring the card-issuing banks and/or employers (clients) to verify the identification of their employees, and to retain documentation of such verification.

*§103.125 Anti-money laundering programs for money services businesses.*

*(d) (1) (i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this part including, to the extent applicable to the money services business, requirements for:*

- (A) Verifying customer identification, including as set forth in paragraph (d)(1)(iv) of this section.*
- (B) Filing Reports;*
- (C) Creating and retaining records;*
- (D) Responding to law enforcement requests.*

\* \* \* \* \*

*(iv) A money services business that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program, obtain identifying information concerning such a person, including name, date of birth, address, and identification number, and retain such identifying information for five years after the termination of the relationship.*



## Concerns

NPRC members expressed concerns in three areas: (1) That the exemption for payroll card programs should be broadened; (2) that payroll service providers should not be subject to registration as a MSB because they offer payroll cards; and (3) that payroll service providers should not be obligated to verify the identity of their clients' employees.

### 1. The Exclusion for Payroll Cards should be Broadened

The NPRM provides a narrow payroll card exemption from the BSA requirements, but it would cover few payroll card programs:

However, an arrangement is not a prepaid program if:

- (A) The prepaid access provided is limited to one of the following:
  - (1) Payment of benefits, incentives, wage or salaries through payroll cards or other such electronic devices for similar purposes... and
- (B) It does not permit:
  - (1) Funds or value to be transmitted internationally;
  - (2) Transfers between or among users of prepaid access within a prepaid program such as person-to-person transfers; or
  - (3) Unless it qualifies as closed loop prepaid access, the ability to load monetary value from other non-depository sources onto prepaid access.

A major benefit of payroll cards is that they provide access to the banking system to those most in need of affordable banking services - - the unbanked and underbanked. Payroll cards should optimally function like bank debit cards. To exclude from the exemption payroll cards that permit other loading sources, person-to-person transfers and international transactions would be a significant step back. Cardholders would be forced to carry cash, incur fees to purchase other card products, traveler's checks or money orders, and would not be able to use their payroll card abroad while on vacation. Payroll card providers may feel compelled to restrict the functionality of current payroll cards to come within the exemption.

FinCEN has acknowledged that payroll cards are low risk. The definition of payroll card should not include the proposed restrictions. We would suggest, instead, added requirements for a card program to fit a payroll card definition; for example, that the prepaid access device must initially be issued for payroll and/or be issued through an employer (rather than a J hook type card marketed to the public) and be loaded primarily or initially by an employer. Also, if the concern for MSB registration is to make certain one entity is responsible for BSA compliance and to provide one point of contact for law enforcement, the issuing bank could be the designated entity for payroll cards. There could be a further requirement that a payroll card contain the name of the program provider so that law enforcement can quickly identify who to contact to get information on the cardholder and transactions.

Again, payroll cards are acknowledged as low risk for valid reasons. Employers already collect and document identification information from their workers via DHS Form I-9 when they are first



hired (as discussed in more detail below). Employers obtain Forms W-4 from each employee with additional personal and taxpayer information, and periodically report identification information for their employees to a number of government agencies.

Some program providers will likely offer restricted-use payroll cards in order to avoid the costs and complications of inclusion in the FinCEN regulations. The more than ten million unbanked and under banked U.S. citizens who are most in need of appropriate, inexpensive banking services would be severely disadvantaged if the functionality of payroll cards was limited because of the restrictions proposed by FinCEN.

## **2. Payroll Service Providers Should Not Be Subject To Registration as a MSB**

In Section VI, FinCEN acknowledges the difficulty of assessing which among the entities involved in providing prepaid access is in the best position to administer BSA compliance requirements. With respect to payroll administration, there are indeed often several entities involved in different roles, and as noted above, not all payroll service providers offer prepaid access in the same way.

We agree with the approach that FinCEN has proposed, which is to define the organization that demonstrates the most control and oversight of transactions as the “provider of prepaid access.” The provider of prepaid access would be responsible for AML programs, reporting, and recordkeeping. As the NPRM noted, “centralizing primary BSA obligations in the prepaid provider will unify an otherwise fragmented transaction chain where it is likely that no single player has the necessary financial transparency to comply adequately with BSA requirements.”

We would suggest permitting organizations to contractually designate which party has responsibility for all BSA compliance requirements, such as transaction monitoring, SAR reporting and AML programs. In contract negotiations, participants carefully assess such responsibilities, and typically the organization that is best able to address them does so. Given the diverse roles the FinCEN noted in the NPRM, permitting the parties to contractually assign responsibility would seem more likely to achieve the most effective result than any general rule that might be adopted in the final regulation.

Given the primarily marketing role of payroll service providers, there is some concern within the industry that registration with FinCEN would be redundant and unnecessary; that if a payroll service provider has appropriately designated a party in the prepaid access chain, such as the issuing bank, to be responsible for AML programs, reporting, recordkeeping and other BSA obligations, that the payroll service provider should not be required to register with FinCEN.

## **3. Payroll Service Providers Should Not Be Obligated To Directly Verify the Identity of Their Clients’ Employees**

Service models vary within the payroll services industry. A few payroll service providers assume substantial responsibilities for operating prepaid payroll card programs; for example handling cardholder agreements directly, fielding customer service phone calls and the like. Payroll service providers (other than banks and other financial institutions that offer payroll services) do not themselves issue prepaid access cards. Most payroll service providers place



primary reliance on the banks that actually issue the payroll cards. The issuing bank has the ultimate approval or denial authority when it comes to issuing cards. Issuing banks may perform the full customer identification verification, or they would be obligated to review and approve the process that the payroll service provider and/or their client (the employer) is performing.

Other payroll service providers contract with a prepaid access provider to perform all services necessary to enable the payroll service provider to offer payroll cards as an alternative to paper checks and Direct Deposit. In these cases, the prepaid access provider maintains all operations and works with an issuing bank to provide such services. The prepaid access provider, the issuing bank and/or the employer are responsible for verifying cardholder identification.

Third-party payroll service providers have no current obligation to verify the identity of the employees of their client employers. Payroll service providers typically contractually obligate the issuing banks, other third-party processors, or clients to verify and document the identification of their employees.

A requirement that payroll service providers directly verify the identification of the employees of their client employers would likely confuse employers and their employees, and complicate existing employer obligations. For example, employers may misunderstand the verification measures taken by the payroll service provider, and incorrectly cease any such measures on their own. Employers and employees would note that the identification verification measures are redundant. It could also confuse the participants if identity verification measures conducted by both the employer and their payroll service provider produced different results; i.e., if the employer accepted the identification documents as valid and the service provider did not.

FinCEN has asked, *“What qualifications must a payroll program establish to ensure that the employer obtains all the necessary information regarding each employee participant, and that the information is kept current? Are there methods to ensure that the company and employees are legitimate, and that the program is valid?”*

We believe that existing employment law requirements sufficiently ensure that employers will effectively verify the identity of workers. For example, all U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States, within three business days of the first day worked. In completing the form, the employer must examine identification documents that an employee presents to determine whether the documents appear genuine and relate to the individual. Employers must record which types of identification documents were verified on the Form I-9.

The Department of Homeland Security defines what documents are acceptable for identity verification purposes (including, for example, a U.S. Passport, Permanent Resident Card, Driver’s license or other government-issued ID card, or U.S. military card. A complete list of acceptable documents is attached and may be found on Form I-9 as well.) Form I-9 must be kept by the employer for three years after the date of hire or for one year after employment is terminated, whichever is later, and be made available for inspection by DHS officials

Critically, only the employer has face to face dealings with the employee, and hence only the employer can adequately assess whether the identification information (i.e., photograph)



resembles the employee. Further, in connection such responsibilities, the employer must view *original* documents. It would not be feasible to require a payroll service company to review original documents and/or meet face-to-face with the employees of its clients. Conversely, any requirement for a third-party service provider to “verify” copies of identification documents would not add appreciably to the protections gained from the original document review requirement between the employee and the employer. It would, instead, weaken the existing requirement by introducing an apparently redundant procedure that some employers would rely on instead of diligently conducting their own review.

In addition, all employers are required to obtain IRS Forms W-4 from each employee. Form W-4 includes the individual’s full name, Social Security Number, home address, and marital status, among other things. Employees must attest that the Form W-4 is true, correct, and complete under penalties of perjury. Employers are required to keep all records of employment taxes, including Forms W-4, for at least 4 years. Such records must include names, addresses, and Social Security Numbers of employees; amounts and dates of all wage, annuity, and pension payments; dates of employment, etc..

Lastly, employers are required to report the names and Social Security Numbers of their employees to various government agencies periodically; i.e., initially when they are hired; with quarterly wage reports to State Workforce Agencies, and with annual W-2 reports to the Social Security Administration (which shares the data with the IRS), state tax authorities etc. Employers are often advised by these agencies if there is a problem with the identification information of their employees, and are subject to penalties for reporting incorrect information.

Again, Payroll service providers generally require banks or prepaid access providers that issue the payroll prepaid access cards to either perform the full customer identification verification or to approve the CID process that the payroll service provider and/or their client (the employer) is performing. Consequently, we believe that existing employment law and/or BSA requirements sufficiently ensure that the most appropriate party in the chain will effectively verify the identity of workers who use prepaid access devices to receive their pay.

### **Request for Clarification**

The payroll services industry would like clarification on the NPRM on the points raised in this letter:

- Consider broadening the exemption for payroll card programs to avoid creating a new class of restricted-use payroll cards, which would severely disadvantage those most in need of affordable banking services.
- We ask that FinCEN clarify that third party service providers in the employment context may satisfy the identification verification requirements cited in the NPRM by contractually obligating an appropriate party to conduct and document such verifications.
- We also ask that FinCEN clarify that when a payroll service provider has appropriately designated a party in the prepaid access chain to be responsible for all BSA compliance requirements, such as transaction monitoring, SAR reporting, AML programs and



Customer Identification measures, the payroll service provider does not need to register with FinCEN.

We appreciate this opportunity to comment on the proposed regulations, and welcome any questions you may have. I can be reached at (909) 971-7670. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Isberg", is positioned to the right of the word "Sincerely,".

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)  
[www.nprc-inc.org](http://www.nprc-inc.org)



## **Form I-9 Employment Eligibility Verification**

### **Documents That Establish Identity and Employment Authorization**

1. U.S. Passport or Passport Card
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)
4. Employment Authorization Document (Card) that contains a photograph (Form I-766)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI

### **Documents that establish identity include**

For individuals 18 years of age or older:

1. Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor or hospital record
12. Day-care or nursery school record

*All documents must be unexpired.*

*Source: DHS Handbook for Employers, Instructions for Completing Form I-9 (Employment Eligibility Verification Form) M-274 (Rev. 07/31/09)*