



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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Boston, Massachusetts 02110

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June 30, 2004

Ms. Stacey Hackler
Rolls-Royce Corporation
P.O. Box 420
Indianapolis, IN 46206-0420

Dear Ms. Hackler:

This letter is written in response to your correspondence of May 7, 2004 to the Division of Banks (the "Division") requesting clarification of certain opinions issued by the Division relative to employer practices with regard to payroll direct deposit.

Your letter requests clarification as to whether any employer may require direct deposit as long as the employees can choose the financial institution that will receive the direct deposit or does such provision extend only to financial institutions, as employers. The Division issued an opinion to a state-chartered savings bank dated March 4, 1997 (Opinion #97-013) stating that the bank, as an employer, may require direct deposit of salary if employees are allowed to choose the institution that will receive the direct deposit. This position is consistent with the applicable provision of Federal Regulation E¹ and the Official Staff Commentary, the 1997 version of which was cited in the Opinion. Federal Regulation E at 12 CFR 205.10(e)(2) provides that "No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit." In 1997, the pertinent portion of the Commentary stated "A financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution or to any other particular institution. *An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit.* Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash." (emphasis supplied.)

The applicable provision, paragraph 10(e)(2), of Federal Regulation E has not been amended since 1997. However, the Official Staff Commentary, pertaining to paragraph 10(e)(2), was amended in 2001 to read as follows: "An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by

¹ See 12 CFR 205.10(e)(2).

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check or cash.”² This Commentary has not been subsequently amended. The changes in the Commentary reflect, in part, a clarification in the applicability of the section evidenced by the changed language to “An employer (including a financial institution)” amended from the previous language which began “A financial institution (as an employer)...”. You will note that the regulation itself states “No financial institution *or other person*...”. Accordingly, it is the Division’s position that, consistent with Regulation E, the direct deposit provisions apply to financial institutions and other employers. This position is also consistent with the Division’s previously issued Opinion 00-148.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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² See 66 FR 15192, March 16, 2001.



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ARGEO PAUL CELLUCCI
GOVERNOR

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THOMAS J. CURRY
COMMISSIONER

October 27, 2000

Laura Lough, Esq.
Editor
American Payroll Association
30 East 33rd Street
New York, New York 10016-5386

Dear Ms. Lough,

This letter is in response to your correspondence dated October 6, 2000 to the Division of Banks (the "Division") in which you request an opinion as to whether a company may require its employees to use direct deposit.

Your letter contains an excerpt from the APA's Guide to Successful Direct Deposit containing the appropriate Massachusetts General Laws chapter 167B, section 7 and the supporting Division Opinion Letter 97-013 a copy of which is enclosed for your review. Your letter asks whether Massachusetts' law requires 1) the employee to authorize participation (under state law or Attorney General Opinion); 2) the employee must not incur additional cost as a result of participation; and/or 3) the employee must be able to choose the financial institution .

The position set forth in Opinion Letter 97-013 remains the position of the Division. Specifically, the Division's regulations governing electronic fund transfers, 209 CMR 31.00 et seq provide that compliance with any provision of the Federal Electronic Fund Transfers Act, the Board's Regulation E, official Board interpretations and official staff interpretations, which does not conflict with G.L. c. 167B and 209 CMR 31.00 or an advisory ruling of the Commissioner, shall be deemed to be compliance with G.L. c. 167B. " As noted in Opinion 97-013, the Division reviewed 12 CFR 205.10(e)(2), a comparable provision of said Regulation E. The Official Staff Commentary for this section of Regulation E states that "A financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution or to any other particular institution. *An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit.* Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash." (emphasis supplied.)



Upon review of the above provisions of Federal Regulation E and Official Staff Commentary thereto, it is the position of the Division that an employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. This practice is specifically listed as permissible in the Official Staff Commentary and compliance with this provision will be deemed to be compliance with Massachusetts General Laws chapter 167B.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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