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November 14, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

RE: FR 3064a (debit card issuers); Comments on the Federal Reserve Board's Debit Card Issuer Survey.

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the nation's federal credit unions, I am writing to provide NAFCU's comments on the Federal Reserve Board's (the Board) request for comment regarding surveys to be conducted to help implement § 920 of the Electronic Fund transfer Act (EFTA). NAFCU has thoughts on several issues regarding the survey. First, the survey does not provide sufficient detail regarding exactly how costs should be reported. Second, the survey should collect additional information regarding issuer costs beyond "allowed costs." Third, NAFCU is concerned with some aspects of the survey in regards to fraud. Fourth, the Board should consider surveying institutions or employing other methods to determine the cost for issuers with less than $10 billion in assets.

Additional Details Required for Reporting Costs

It would be helpful if the survey provided more information regarding how issuers should report costs. The survey does provide a list of the "allowed costs" as defined in the regulation. Debit Card Interchange Fees and Routing, 76 Fed. Reg. 43,394, 43,430 (July 20, 2011) (to be codified at 12 C.F.R. pt. 235). The survey glossary of terms also provides a slightly more detailed description of the costs that should be included. Nonetheless, the survey could likely benefit from an improved and more precise description of exactly what costs issuers should include. Specifically, the Board's description of costs associated with authorization, clearance and settlement is somewhat vague. It is actually possible that some issuers would prefer the flexibility that comes hand-in-hand with the somewhat vague explanation of costs the survey provides. Nonetheless, more precise definitions generally and specifically with regard to authorization, clearance and settlement would be beneficial. Additional guidance in this regard will enhance uniformity and improve the accuracy of the survey results.

The Board Should Collect Additional Information Regarding Issuers' Costs

Second, it may ultimately prove useful if the survey gathers data on cost information beyond those costs the Board has currently chosen to include in the interchange rate. In its final rule, the Board explained, in detail, those costs that it chose not to include in the interchange fee.

Debit Card Interchange Fees and Routing, 76 Fed. Reg. 43,394, 43,427-29. The Board chose to exclude, among other things, the cost of producing and delivering debit cards, research and development and the cost of performing due diligence. The Board determined these costs were inappropriate to include because they are not specific to a particular transaction and thus were prohibited from inclusion by § 920. Nonetheless, it would be valuable to collect data on the actual, total cost of operating a debit card program, even though the statute only allows for recovery of some of those costs. Requesting data on the total cost of operating a debit card program would provide the Board additional information that may be instructive going forward. Further, as the Board is obviously aware, there has been a very sharp debate over some banks' decisions to implement a fee for debit card use. Further, there has been and likely will continue to be legislative efforts to amend § 920. Legislation considered in the Senate earlier this year that would have altered §920 and potentially required inclusion of several costs, which the Board excluded, actually garnered a majority in the Senate (54-45) but failed to pass because of a filibuster threat. Given the ongoing debate on this issue and the potential for change in the future, it might very well be helpful if the Board begins collecting data on all costs associated with debit card interchange in this survey.

<u>Suggested Changes to the Section Regarding Fraud</u>

The section regarding fraud could be improved in some ways. First, the Board specifically asked for comment regarding the check list of fraud activities. The check list is a good starting point, and the "other" option does provide issuers the opportunity to add costs not included in the survey. However, the check list should be a non-exhaustive list that issuers can add to as necessary. Accordingly, it would be helpful if the survey allows issuers to add more than one field under the "other" option. Further, one type of fraud that does not appear to be covered in section 7b is cardholder fraud, which occurs when a card is used to purchase items by the cardholder, then fraudulently reported as stolen after the fact. Another concern is that 7b request that fraudulent transaction be reported in only one category. Some fraud may not neatly fall within one defined category. Consequently, issuers may not retain information in a way that makes it easy to report each instance of fraud in such clearly defined categories, without overlap.

In addition, NAFCU strongly recommends that the Board request additional information regarding fraud related losses that can be linked to data breaches. This information should not be an additional option within 7b as information compromised during a data breach may ultimately lead to fraud that could fall under any of the categories listed in 7b. Instead, the survey should ask if the issuer can link particular losses to a specific data breach or breaches. If so, the survey should ask the issuer to itemize the total losses associated with each data breach. This information would be helpful in a number of ways. First, it may prove useful as the Board considers the fraud adjustment in the future. Second, given the growing number and the severity of data breaches over the last several years, data of this nature would obviously be useful. The data would likely serve as the most comprehensive summary of costs associated with data breaches, at least among large institutions. Further, the information could be used to help target areas, industries or procedures where data protection could be improved.

The Board Should Gather Information from Exempt Issuers

Finally, NAFCU requests that the Board survey issuers with less than $10 billion in assets. NAFCU has discussed this issue with Board staff and is aware of the Board's position. To briefly summarize the issue, NAFCU – like much of the financial services industry – believes the capped interchange rate will ultimately become the default rate for all card issuers, regardless of size. Accordingly, it is logical to base the capped rate on the actual costs for all card issuers. Although the Board stated that it will only survey institutions with more than $10 billion in assets (because the statute only explicitly applies to such institutions) nothing in the statute explicitly restricts the Board from surveying smaller institutions regarding their costs. In fact, § 920(a)(3)(B) specifically grants the Board discretion to gather information it "considers appropriate and in the public interest." If, as many expect, the capped rate impacts the entire industry, the Board would be well served by beginning to collect cost data for all issuers beginning now. Setting a capped rate based only on the costs of large issuers but that ultimately impacts all issuers, regardless of size certainly impacts the public interest. Smaller institutions would be disproportionately impacted if the scenario above comes to pass. Consequently, member of credit unions and community bank customers would be impacted, potentially creating highly undesirable unintended consequences regarding both the cost and availability of debit cards. Accordingly, it is both (1) prudent and (2) within the Board's authority to survey institutions with less than $10 billion in assets regarding the costs of processing debit card transactions. The survey should not be mandatory. However, with some simple outreach efforts, the Board could likely collect data on a regular basis from a significant number of small, medium and large debit card issuers with less than $10 billion in assets. Given that there would be little, if any, additional burden on the Board, there is no reason not to invite issuers with less than $10 billion in assets from completing the survey. At the same time, gathering information on smaller issuers may prove helpful in allowing the Board to respond sooner in the event that Congress or the Board determines that the costs of smaller issuers should be considered.

NAFCU appreciates the opportunity to share our thoughts on the proposed survey. The interchange fee issue continues to be a key concern to our members. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Dillon Shea

Dillon Shea
Regulatory Affairs Counsel