
February 22, 2011

Via Email: regs.comments@federalreserve.gov

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

Attention: Docket No. R-1404, RIN No. 7100-AD63

RE: Debit Card Interchange Fees and Routing

Dear Ms. Johnson:

In response to the request of the Board of Governors of the Federal Reserve System (“Board”) for public comment on proposed new Regulation II, Debit Card Interchange Fees and Routing (“Reg II”), implementing portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), Insight Card Services, LLC (“Insight”) respectfully submits the comments set forth below.

Insight is a program manager of network branded general purpose reloadable cards issued by financial institutions to underbanked consumers in the United States who do not have a traditional bank account or primarily rely on alternative financial services. In its role as a card program manager, Insight serves as the agent of the financial institutions that issue the card products. Insight’s role is to develop, market and support card programs that provide consumers, who are otherwise underserved by traditional bank products, with affordable financial products tailored to their unique needs.

Millions of American consumers use general purpose reloadable prepaid cards as a substitute for traditional bank accounts. If adopted as proposed, this rule would have a devastating effect on our industry generally and on the millions of underbanked consumers in the United States, including those that we are honored to serve. As stated by Ben Bernanke, Chairman of Board of Governors of the Federal Reserve System, “it’s possible merchants will reject cards from smaller banks.” We believe that the proposed rules will negatively impact the smaller financial institutions that issue the card products that we offer to customers.

We believe that the Proposed Rules go much further than required by the Durbin Amendment; indeed, some of the most proscriptive and burdensome elements of the Proposed Rules are nowhere reflected in the Durbin Amendment itself.

First, the Durbin Amendment requires that the “amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable

and proportional to the cost incurred by the issuer with respect to the transaction.” We believe that both formulations for the determination of interchange fees for prepaid card products do not reflect the reasonable and proportional costs incurred by the issuer of a prepaid product. Instead, the Proposed Rules artificially limit allowable costs and do not provide interchange fees that are either reasonable or proportional to issuers’ actual costs.

Second, the Durbin Amendment requires the Board to:

“prescribe regulations ...to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.”

Prescribing regulations to “establish standards” is a very different exercise than imposing fee caps. The Durbin Amendment did not require or even suggest that the Board should impose specific caps on interchange fees. That, in our view, is an extraordinary expansion of the authority granted by Congress and should not have been undertaken by the Board. Our view is supported by Senator Durbin’s own position statement posted on his Website regarding his amendment:

“Sen. Durbin's amendment would not have the Federal Reserve set interchange prices. Under Sen. Durbin's amendment the Fed would not set debit interchange prices. Instead the Fed would oversee the debit interchange fees set by card networks to ensure that they are "reasonable and proportional" to cost. This is the same "reasonable and proportional" standard that Congress directed the Fed to use to oversee consumer credit card fees in the 2009 Credit CARD Act.”¹

We must also note the detrimental impact that the Proposed Rules will have on already-issued prepaid and debit cards that are currently in the wallets and purses of millions of consumers. Certainly, the costs of reissuing debit cards will be significant. We would urge that the Proposed Rules confirm that they apply solely to cards issued on or after the effective date. Consumers holding pre-existing cards should not wake up one day to discover their cards are no longer usable due to regulatory change.

Finally, we continue to have misgivings regarding the Proposed Rules’ pricing and routing regimes that, in our view, threaten the widespread access, innovative features and even the basic functionality that has led so many consumers and businesses to embrace network branded prepaid card products.

Given the wide range of open issues and the clear and detrimental impact of this hastily-written piece of legislation, we urge that the entire Durbin Amendment be placed on hold pending the completion of a thorough study of its complex and inter-related facets. Although we acknowledge that such a study is outside of the Board’s control, we hope the Board will support

¹ See http://durbin.senate.gov/issues/leg_wallstreet_swipe.cfm

our efforts to request Congress to require a study rather than allowing this legislation to go forward in its current form. Such a study should include:

- The legislative goals of the Amendment and whether they can, in fact, be achieved through the current legislation;
- The operational constraints and the time required to implement the required changes;
- The costs of implementation to banks, consumers and merchants;
- The unintended consequences of the legislation and their impact on the availability and pricing of payment products; and
- Whether there are any other reasonable and less expensive alternatives available that may achieve similar goals but with less disruption.

In further support of our request, we note that the Board's own advisory group, the Federal Advisory Council, issued its own request that the Proposed Rules be withdrawn and fundamentally rewritten:

If enacted as proposed, the results would be extremely damaging to consumers, the U.S. payment systems and financial institutions of all sizes. Given the serious flaws in the Proposed Rule, we urge the Board to withdraw the current proposal, fundamentally revise its overly narrow interpretation of the Durbin Amendment and issue a new Proposed Rules that takes fully into account both the requirements of law and the significant consumer and economic considerations at stake.²

In the meantime, we would request that significant consideration be given to the comments and suggestions submitted by the NBPCA in its email correspondence dated February 17, 2011.

Sincerely,



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² The Federal Advisory Council (FAC), which is composed of twelve representatives of the banking industry, consults with and advises the Board on all matters within the Board's jurisdiction. A copy of its recent official comment on the Proposed Rules may be found at http://www.federalreserve.gov/SECRS/2011/February/20110208/R-1404/R-1401_020411_64080_567728880360_1.pdf.