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July 23, 2004

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

RE: Notice of Study and Request for Information
Debit Card Fees (Docket OP-1196)

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Federal Reserve Board (Board) study of the disclosure of fees imposed by the account-holding bank on debit card transactions at merchant locations, generally known as the point-of-sale (POS).

Background

The Board initiated the study at the request of the members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs. Some members of Congress are concerned that banks are increasingly levying fees on PIN debit card transactions to encourage customers to initiate signature debit card transactions instead. Moreover, there is Congressional concern that consumers may be unaware or inadequately informed that fees may be imposed on PIN debit card transactions.

Specifically, the Board is studying whether additional disclosures are needed at the point of sale and whether the Electronic Fund Transfers Act

¹ ICBA represents the largest constituency of community banks in the nation and is dedicated exclusively to protecting the interests of the community banking industry. We aggregate the power of our members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

(EFTA) and Regulation E disclosures are adequate and effective in making consumers aware of the circumstances in which banks may charge a fee for POS debit card transactions.

The Board is also seeking comments on whether periodic statements should include new information regarding debit card fees including:

- o the amount of each fee charged by the account-holding bank;
- o the source of the fee; and
- o a summary of fees for the statement period and year-to-date.

The Board plans to submit its findings to the U.S. Senate Committee on Banking, Housing, and Urban Affairs in November 2004.

Existing Disclosure Requirements

Under the EFTA and Regulation E, the account-holding bank must disclose fees related to electronic fund transfers (EFTs), including PIN debit card transactions at the POS: at the time a consumer contracts for an EFT service, or before the first EFT is made to a consumer's account; in total or itemized on the periodic statement ; and, on the receipt and displayed on or at the terminal *if* the fee is included in the amount of the EFT.

ICBA Comments

The ICBA strongly believes the existing EFTA and Regulation E fee disclosure requirements for PIN debit card transactions made at the POS are adequate and effective in informing consumers of any related fees. Under the existing requirements, fees are disclosed two and possibly three times to the consumer. In addition, banks must provide written notice at least 21 days before the effective date of any change in fees.

Disclosed fees are effective in informing customers of the existence of fees only if consumers review disclosure statements, periodic statements, and terminal screens. Banks can disclose fees to consumers, but cannot force them to review and comprehend the fees. Additional disclosure requirements will not improve consumer awareness of related fees. The ICBA urges the Board to be mindful that a lack of consumer awareness, perceived or real, should not be interpreted as an issue of non-compliance or inadequate disclosure.

The ICBA opposes any new periodic statement requirements, as such requirements would result in significant costs without providing commensurate benefit to consumers. The additional periodic statement disclosure requirements referenced in the Board's notice would necessitate significant and costly modifications to bank, third-party processor, and EFT network accounting and

information systems to capture, transmit, process, and store this information. In view of the existing disclosures made to consumers, such costs are unwarranted.

The ICBA encourages the Board to recommend to Congress that it create a legal framework requiring securities brokerage firms and other non-depositories issuing EFT devices, including PIN debit cards, to be examined for compliance with the EFTA and Regulation E. Such a framework would ensure uniformity for consumers conducting EFTs with financial services firms of all types and charters.

Thank you for the opportunity to comment. For questions regarding our position on this issue, please contact me at (202)659-8111 or by email at cary.whaley@icba.org.

Sincerely,

Cary Whaley
Associate Director
Payments Policy