FIRST DATA

12500 East Belford Avenue
Englewood, CO 80112
www.firstdata.com

October 21, 2004

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

Re: Docket No. OP-1196
Request for information on debit card fee study
Federal Register 21 May 2004

Dear Ms. Johnson:

On behalf of First Data Corporation, we would like to share with you our comments regarding the issue of debit card fee disclosures at the point of sale (POS).

Who We Are

First Data Corporation (FDC) is a leading processor of payment transactions for consumers, businesses, and governmental entities. STAR Networks, Inc., a First Data Company, operates STAR®, a coast-to-coast electronic payments network with over one million participating retail locations. As one of the largest PIN-secured debit networks in the United States, STAR is accepted at grocery stores, gas stations, discount stores, drug stores and many other retail locations. STAR has over 5,900 member financial institutions and processes more than seven billion ATM and POS transactions annually.

Position of FDC

We believe the current method for delivering disclosures required by the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, provides an appropriate method to inform consumers of, and provide them with sufficient information to understand, the fees imposed by financial institutions. Disclosure at the point of sale of fees imposed by card issuing institutions would require a significant overhaul of the PIN-debit system, requiring, among other changes, replacement of POS devices at a cost of billions of dollars. These costs would fall primarily upon merchants (and ultimately their consumers), and the PIN-debit networks. Real time fee disclosure would also degrade performance of the PIN-debit networks to the detriment of consumers, financial institutions and merchants. For these reasons and the others stated below, such disclosures would be, in our view, both unfair and unnecessarily burdensome.

Background

It is general knowledge that PIN-secured debit transactions (as opposed to signature debit) are faster, less susceptible to fraud, less expensive for the merchants and, ultimately, for the consumers assuming costs are passed through by merchants. As the Board of Governors of the Federal Reserve System (Board) has noted, however, financial institutions receive greater revenue from signature-based transactions than they do for PIN transactions. Some institutions, therefore, charge their debit cardholders a fee for using PIN-secured transactions in order to encourage those cardholders to choose signature transactions. In response to a congressional inquiry concerning whether consumers are adequately informed of these PIN user fees, the Board is seeking comments, among other things, on the advisability of requiring that such fees be disclosed at the point of sale.

Cost v. Benefit Analysis

In analyzing this subject and balancing the possible benefits of such disclosure against the negative and unintended consequences of such requirements, it is essential to understand one key fact. Such a change would impose an enormous financial burden on the merchants and PIN-debit networks who would need to make extensive system and equipment changes in order to support such POS disclosures. More specifically, recent estimates of the number of PIN-based POS devices in the United States put the number at just under five million. (ATM & Debit News 2005 EFT DataBook.) While it is difficult to predict all of the ramifications of a new POS fee disclosure requirement without knowing all elements of the proposed disclosure, we believe that a substantial majority of existing POS devices could **not** be modified to perform the functions necessary to disclose the range of fees that might be imposed by various account-holding banks and would need to be replaced. The merchants owning/leasing those devices would be forced to replace them, at the retail merchants' sole expense, at a cost in the range of $300 to $900 per device. Should such a disclosure requirement be imposed, merchants would be faced with two options, neither of which is desirable: 1) pass the one to two billion dollar cost of replacing POS devices along to the consumers, or 2) abandon PIN debit. Depending on which option the merchants choose, this regulatory burden will have one of two unintended consequences on consumers. It will result in the consumers being denied the faster, less expensive, more secure system, or it will cost consumers more to purchase goods and services as the costs are passed on by merchants, or both. Either result would be a sad irony. (There is, theoretically, a third option, i.e. the merchants absorb the costs. Realistically, however, many merchants are small businesses who cannot afford to do so. Large merchants with numerous check-out lanes, each requiring a terminal, would be hard hit if required to buy a new terminal for each lane.)

In addition to the cost described above, PIN-debit networks would be required to spend tens of millions of dollars (if not hundreds of millions) to modify their systems to disclose real time fees being imposed and retained by card issuing financial institutions.

By contrast, we see little, if any, benefit to off-set these tremendous costs. Card issuing financial institutions are already obligated under the EFTA, 15 U.S.C. §§ 1693 *et seq.*, and Regulation E, 12

C.F.R. Part 205, to disclose fees they impose for electronic fund transfers in both an initial disclosure and in periodic statements thereafter. If anecdotal evidence suggests that some financial institutions are providing such disclosures in an ambiguous or misleading manner, existing examination and enforcement authority of the federal banking agencies should more than suffice to address such circumstances.

The GAO Report

In an analogous situation a few years ago, the General Accounting Office (GAO) was charged with exploring the feasibility of providing real-time disclosure of all fees that are charged to ATM cardholders. Following its extensive study of fees such as foreign ATM transaction fees (i.e. fees charged by a card issuing institution when a cardholder uses an ATM not owned by that institution), the GAO issued a comprehensive report. In its report, dated July 2000, the GAO concluded that the cost of restructuring the entire ATM industry to implement such a change far outweighed any benefits. Because of the technological overhaul that would be required, the GAO concluded such change was not feasible. In its report, the GAO identified several reasons for opposing a mandate of real time foreign ATM fee disclosures that are pertinent to the Board's inquiry into POS fee disclosures:

- It would require extensive restructuring, and substantial costs would be incurred by all major participants in the ATM industry, including banks, networks, and ATM owners of all sizes. (pp. 2, 28).
- Banking regulators reported that they received "very few complaints on the disclosure of ATM fees". (pp. 3, 30, 31).
- It would take two to three years to implement. (pp. 2-3, 29).
- Each large bank would be required to spend an estimated "tens of millions of dollars" to make necessary upgrades. (pp. 2, 27).

- Surveys show that only a minority of ATM cardholders pay "foreign fees." (p. 3).
- Real time ATM fee disclosures would require changes in the basic infrastructure of the computer systems of the account-holding banks because they are not currently designed to calculate fees on a real-time basis. (pp. 22, 27).
- It was estimated that the cost to make major upgrades to the hardware and software of the ATM networks could be in "the billions" for the industry as a whole. (p. 28).
- The cost to convert to real-time fee disclosures would be comparable to the costs and effort involved in the Year 2000 readiness effort. (p. 29).
- A survey found that 86% of those polled felt that their banks kept them adequately informed about ATM fees because of the current Regulation E requirements on disclosure. (pp. 31, 32).
- Foreign fee disclosure might reduce the availability of ATMs because ATM owners could not justify the cost of modifying or replacing them. (p. 34).

Given the number of POS devices that would require replacement/modification – approximately five million - versus 300,000 to 400,000 ATMs- the GAO's analysis and conclusions are even more compelling when applied to real-time disclosure on POS transactions.

Degradation of Service

A mandate for real-time disclosure of POS fees would negatively impact consumers by degrading transaction response times, resulting in a slow down in the processing of transactions at the POS. Fees charged by account-holding banks vary by financial institutions and within particular institutions based on account types and the cardholders' overall relationship. Obtaining the information for any particular PIN-debit transaction would require an individual analysis and multiple steps and transmissions. There is no standard fee or even a table from which the information can be obtained, making the process far more onerous. In addition, many institutions outsource the authorization of their transaction processing to third-party processors. At STAR, we estimate that roughly two-thirds of the institutions are supported by a third-party processor for transactions authorization. Those processors often are not involved in the calculation of issuer imposed fees on the cardholder's account statement and would have no way at present to provide the information in existing transaction authorization messages. Further cost and delay would be added as many third-party processors that authorize transactions on behalf of financial institutions would be forced to implement their own system changes simply to be able to obtain from the card issuer's account maintenance systems the appropriate fee data to transmit to the network. Accordingly, in order to accommodate the calculations and communications that would need to be completed to permit disclosure of card issuer fees by merchants, transaction speeds at the POS would be decreased, checkout times would be increased, and checkout lines would grow unless merchants added more lanes, once again, increasing costs to merchants who will be forced to pass those costs on to consumers.

In conclusion, in our view, the current disclosures required by Regulation E and the EFTA adequately inform consumers of fees being charged. We also firmly believe that requiring POS debit fee disclosure would add tremendous costs to merchants and others by making it more expensive for them to accept PIN-secured debit as a payment option with very modest benefits in return. Further, consumers could lose a secure and convenient payment choice that they have come to rely upon using if merchants are forced to choose between incurring substantial new costs or giving up PIN-secured debit. Therefore, we believe that the Board should refrain from mandating real-time disclosure of card issuer fees at the POS.

Please feel free to contact me with any questions or comments you may have. I can be reached at 720-332-5214 or joe.samuel@firstdatacorp.com

Sincerely,

Joe Samuel
Vice President, Government Relations
First Data Corporation

cc: Congressman Michael Oxley

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