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February 16, 2011

VIA EMAIL
Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW.,
Washington, DC 20551
Docket No. R-1404 and RIN No. 7100-AD63
regs.comments@federalreserve.gov

RE: Debit Card Interchange Fees and Routing; Docket No. R-1401 and RIN No. 7100-AD3

Dear Ms. Johnson:

Westbury Bank (Westbury) is a federally-chartered savings bank with $600 million in assets headquartered in West Bend, WI. Westbury appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (FRB's) proposal regarding debit card interchange fees and routing.

Westbury recognizes that the proposal is a direct result of Congressional mandates set forth in section 1075 of the Dodd-Frank Act, which amends the Electronic Fund Transfer Act (EFTA). However, this provision in the legislation was adopted without hearing, debate or study and requires thorough review and amendment before implementation. Unfortunately, FRB's proposed rule, if finalized, will have a negative impact on financial institutions of all sizes, limiting their ability to provide reasonably priced banking services, only further hurting consumers. As a result, Westbury strongly opposes the proposed rule as drafted.

Proposed Interchange Fee Standards Essentially Are Nothing More Than Inappropriate and Unfair Government Price Controls

Westbury fundamentally opposes government-set price controls or any other effort to regulate terms and fees that are currently determined through open, free contract negotiations between parties.

Westbury reminds FRB that merchants are *free* to determine and innovate the types of products and services to offer; the types of payment services to accept, or not accept; and the prices for their products and services. Free negotiation, innovation and offerings *must* likewise be afforded to financial institutions. Similarly, just as merchants are *free* to demand a fair price for the purchase of their products and services, and are *free* to negotiate discounts or other incentives, free negotiation and offerings for the costs of the used services *must* likewise be afforded to financial institutions.

Westbury adamantly believes that government price controls are inappropriate for debit card transactions. As has been most recently demonstrated by past action of the Australian government, government price controls do not work and instead have been found to lead to inefficiencies in payment systems.

Westbury also fears such activities will stifle innovation and improvements, and does not believe government price-fixing will result in lower costs for goods and services to consumers, as some merchants and members of Congress claim.

FRB Must Consider All Factors and Costs In Its Calculation of Interchange Fees

Debit card transactions greatly benefit merchants and consumers alike. For merchants, debit card transactions provide many benefits including: faster credit of sales; increased sales, including the ability for sales to be made on the Internet or via other electronic means; guaranteed payment despite possible loss to the financial institution issuing the card; and reduced costs associated with counting, bundling, transporting, and safekeeping of cash and checks. Consumers benefit in that: they do not need to personally carry with them excessive amounts of cash; they may easily shop on-line or via other electronic methods; and, most importantly, they are protected from unauthorized transactions if cards are lost or stolen.

FRB is asking for comment on two possible alternatives with regard to the interchange fee: (1) safe harbor and fee cap; or (2) fee cap for all transactions. The practical result of either alternative is to set the interchange fee cap at 7 or 12 cents per transaction. For either alternative, FRB does not differentiate between various types of transactions (i.e. PIN, signature and prepaid cards), regardless of the costs associated with those transactions. Moreover, while the statute provides that FRB may allow for a narrow adjustment for certain specified fraud costs, FRB is not, at this time, proposing any such adjustment.

At minimum, FRB *must* consider when calculating an appropriate interchange fee that, while both merchants and consumers directly benefit from debit card transactions, *financial institutions* pay the costs for: (1) providing a reliable uninterrupted network 24/7; (2) issuing and replacing debit cards; (3) fraud losses and fraud prevention and (4) investing time and resources into the creation and development of new or improved debit card system products and services. No bank or any other business will continue to invest in an existing system, let alone create a new and improved one, if the government will insert itself after the fact and redesign the entire business model so that there is no recovery of cost, much less a return on the investment.

To help minimize and prevent fraud-related costs, financial institutions have taken numerous steps, including: setting of daily and transaction limits; country blocks; and various account monitoring methods to alert debit card holders of possible unauthorized debit card transactions.

It is sadly ironic that financial institutions' fraud losses often are due to the actions or inactions of merchants. Merchants routinely fail to properly identify customers presenting debit cards; fail to monitor their own equipment and employees' actions which has resulted in losses due to skimming and other illegal card capture, misuse and unauthorized re-creation of debit card numbers and PINs; and, most egregiously, fail to properly store and destroy debit card information which then results in merchants' own data breaches.

In determining its calculation of the interchange fee, FRB *must* include all fraud-related costs and losses as well as fraud prevention costs. Westbury also recommends FRB include in the calculation of the fee all other factors including network fees, cost of inquiries and disputes, fixed costs, including capital investment, and a reasonable profit.

Given that both alternatives under the proposal ignore critical operational differences and costs, coupled with the total disregard for the enormous fraud-related costs currently absorbed by financial institutions, FRB must not adopt either alternative and, instead, create a realistic calculation that encompasses *all* factors and costs associated with debit card transactions. The statute mandates that the fee be "reasonable." Failure to include all factors and costs associated with debit cards into this calculation is patently unreasonable.

Fees Will Increase and Services Will Be Reduced As a Result of the Proposed Rule

Because the proposal does not permit financial institutions to cover the full costs of providing debit cards, financial institutions will be forced to raise consumer fees or reduce services as a result. FRB even admits that consumers could face higher costs as a result of this proposal. The interchange fee cap will also have a negative impact on an institution's ability to continue to offer and develop products and services to low- and moderate-income customers without charging for card issuance and/or individual debit transactions, or by limiting the dollar amount for which a debit card may be used. Westbury believes it will be increasingly difficult for financial institutions to maintain free and low-cost bank account products and that some low- and moderate-income customers may return to more expensive, less convenient, non-traditional banking services.

All Institutions Will Be Negatively Impacted by the Interchange Fee Cap

Although the statute provides an exemption for smaller institutions from the price control elements, Westbury believes marketplace forces will cause all financial institutions to conform to the same price level. Westbury believes the result of FRB's proposal will be to remove any ability for financial institutions to freely negotiate costs and services with customers and that all institutions will instead be forced to select from one of only two options: (1) adopt the regulatory cap, when otherwise not required, so as to retain some level of debit card service activity, or (2) continue to offer services at the institution's current fee schedule and suffer market-share loss as a result of a mass exodus of services to those who are either required to comply with the regulatory cap or who elect to do so. The result under either option is the same – lost revenue and an inability to freely negotiate and charge a reasonable fee based upon the services used by the institutions' merchant customers. In the end, all financial institutions regardless of size will be hurt by these unfair price controls.

The Exclusivity and Routing Requirements Hurt Community Banks and Add Unnecessary Costs to Debit Cards

As part of the proposal, FRB has provided two alternative approaches regarding the prohibition on network exclusivity: (1) require at least two unaffiliated networks on which a debit card transaction may be processed (Alternative A); or (2) require at least two unaffiliated payment networks be available for processing a debit transaction for each method of authorization available, i.e. PIN and signature transactions (Alternative B). With regard to routing restrictions, the proposal prohibits both issuers and payment card networks from preventing, directly or indirectly, a merchant's ability to route debit transactions over any payment card network that may process such transactions.

These exclusivity and routing requirements will eliminate consumer choice and the ability to deliver secure and reliable debit services. Furthermore, these requirements give merchants the ability to steer transactions away from smaller institutions and their "protected" rates. These requirements will also increase costs to all financial institutions as they will be forced, in one way or another, to add additional networks to their cards.

If forced to choose between the two alternatives set forth above, Westbury believes Alternative A is the least costly to financial institutions. Alternative B would require financial institutions to have and manage multiple network relationships, require re-issuance of cards in many cases, and would be impractical as the signature card payments systems currently do not support such a choice.

Conclusion

In addition to the comments provided above, Westbury respectfully requests FRB delay implementation until Congress can more thoughtfully act on this matter.

Once again, Westbury appreciates the opportunity to comment on FRB's proposal.

Sincerely,

Raymond F. Lipman	James Podewils	Kirk J. Emerich
Chairman/CEO	President/COO	SVP/CFO