Delivery via E-mail to regs.comments@federalreserve.gov

February 21, 2011

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

Re: Docket No. R-1404—Regulation of Debit Interchange Fees and Routing Under Section 920 of the Electronic Fund Transfer Act

Dear Ms. Johnson:

The Wisconsin Credit Union League, serving 230 credit unions and over two million members, welcomes the opportunity to provide the following comments to the Federal Reserve Board's proposed interchange rule. The credit unions we represent appreciate having a voice in the important and challenging decisions the Board is making regarding the interchange system and payment for it.

Credit unions are a breed apart. Because they are not-for-profit, member-owned financial cooperatives, they cater to the average, working class Americans who belong to them and depend on them for fairly-priced financial services. And under a law particular to them, credit unions may build capital only through retained earnings—a substantial part of which must come from fee income in a time of historically low interest margins. These two facts, taken together, make the interchange rule on which the Board is currently working of essential import to credit unions.

Please consider the following points:

1. *Work with Congress to postpone implementation of any regulation of interchange fees until there has been time for a meaningful study of its effect on small debit card issuers and time to write a regulation consistent with statutory language and Congressional intent.*

We recognize that the Board was given a very short timetable by Congress for writing and implementing a rule governing interchange fees – this after Congress itself included interchange regulation in the Dodd-Frank Wall Street Reform and Financial Protection Act without any hearings and with very little debate. The results are significant shortcomings in the Act itself *and* a resulting proposed rule that is missing essential safeguards for small issuers that are required by the Act as it

is now written, as well as the clearly stated intent of Congress. Without these safeguards, there will be, without question, significant harm to all small issuers, including credit unions, and even more importantly to credit union member-owners and all consumers.

We urge the Board to work with Congress to delay implementation of the interchange rule until both Congress and the Board have had time to study its effects on the small issuers and their consumers the Dodd-Frank law intended to exempt. Indeed, all but three of the nation's 7,700 credit unions – including all of Wisconsin's – have under $10 billion in assets and therefore deserve the protection promised by the Act but missing from the Board's proposed rule.

Whether with this currently proposed rule or another in the future after Congress has had a chance to "fix" the statute, we strongly recommend that the Board reconsider its proposed rule to take the following into account:

2. *The small issuer exemption in the statute should be enforced as intended by Congress.*

We urge the Board to find a way to give meaning to the exemption for small issuers contained in the law. It is clear from the language of Section 920(a) and the legislative history associated with it that Senator Durbin and Congress intended to exempt financial institutions with less than $10 billion in assets from the provisions of the law pertaining to interchange fees. Unless the Board specifically writes protections of a two-tier interchange fee system into the regulation, along with a means of enforcing the protections, the likely outcome is that merchants will migrate to the lower-cost tier required of large banks. Credit unions will then have to choose: either stop providing an important service to their member-owners or start charging for the service. In either case, the every day working credit union member will pay twice: first for his own debit card service and second because the financial institution he owns loses an important source of income.

3. *The rule should not permit merchants to undermine the benefits of a two-tier payment system with their determination of the routing of debit transactions.*

Section 920(b)(1) prohibits networks and issuers of debit cards from limiting to only one the number of networks on which a debit card may be processed. But the Board has authority under the law "to prevent circumvention or evasion of this subsection." This language provides substantial authority for the Board to assure that the small issuer exemption is honored by doing two things: 1) requiring and then monitoring a two-tiered approach so that merchants are not allowed to direct the routing of transactions in a way that disadvantages small issuers like credit unions; and 2) minimizing the cost to small issuers of the routing networks (including the number of them) in which they must participate.

The Board has asked for comments on two alternatives that speak to our plea to monitor and minimize the costs of this law on small issuers. We urge the Board to choose Alternative A, which would require each issuer to participate in only two unaffiliated networks, such as one independent signature network and one independent PIN network. This Alternative A would be less burdensome on credit unions than Alternative B, which would require participation in four networks.

4. *Set standards for the "reasonable and proportional" cost of interchange services rather than imposing a set fee, and in setting the standards take into account all costs to issues permitted by the law.*

Because of the very real concern that the two-tiered pricing system intended by Congress may collapse into just one, it is very important to small issuers that the Board follow Congress's mandate to set standards by which it can determine whether interchange rates for large issuers are "reasonable and proportional" to the cost of providing the debit card services, rather than imposing a set fee that ignores many actual costs.

An objective analysis of current interchange fees finds them not unreasonably high now. The direct costs to an issuer of operating a debit card program – including infrastructure, marketing, fraud prevention, and fraud coverage – are considerable. We urge the Board to evaluate fully and carefully all the costs that go into providing debit card services that consumers and merchants alike value. Merchants enjoy great benefits from the availability of debit cards: they have expedited access to their customers' payments and that payment is guaranteed, with no worries about bounced checks or the availability of funds.

Moreover, when merchant systems are breached or other fraud occurs, it is the issuers, small or large, that are first in line to pay for the fraud—with their dollars and their reputations. It is the issuers that communicate the fraud to their cardholders. It is the issuers that provide new cards so consumers can continue to buy from the merchants. And it is the issuers that make consumers whole.

Given this significant value of the debit system to merchants, it is only fair that they pay their fair share—the real "reasonable and proportional" costs—of the benefits they receive. Instead, in its proposed rule the Board has set a fee that issuers may charge that is below the actual costs of the service. This is not only fundamentally unfair but unless small issuers implement new fees or raise the fees they charge their customers and members to use debit cards, the rule as proposed may undermine the very safety and soundness of the financial institutions that best serve America's Main Street citizens and that Congress intended to exempt from the pricing provisions of the regulation altogether.

In conclusion, we respectfully ask the Board to consider the consequences of its interchange rule on the small financial institutions such as credit unions that operate on thin margins and serve so well the working class Americans who are the backbone of our country. Credit unions and their members are asking only that the Board's regulation comply with the statutory language of the Dodd-Frank Act and that merchants pay fairly for the debit card services they use.

Sincerely,

Joanne R. Whiting

Joanne R. Whiting
Executive Vice President and Chief Advocacy Officer
The Wisconsin Credit Union League

Corporate Office: N25W23131 Paul Road, Suite 500, Pewaukee, Wisconsin 53072-5779
Credit Union House: 1 East Main St., Suite 101, Madison, Wisconsin 53703-5109
Phone: (262) 549-0200 or (800) 242-0833 Fax: (262) 549-7722 Web: www.theleague.coop
Member Credit Union National Association