



The Electronic Payments Resource®

February 21, 2011

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

Re: Notice of Proposed Rulemaking 12 CFR Part 235: Regulation  
II; Docket No. R-1404

Dear Ms. Johnson:

SWACHA - The Electronic Payments Resource is writing on behalf of its membership to express opposition to the Board of Governors of the Federal Reserve System's (the "Board") Notice of Proposed Rulemaking (the "Proposed Rule") to implement the Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, we believe that that the exemption contained in the Proposed Rule for issuers with less than \$10 billion in assets is illusory, and, therefore, the Proposed Rule will not only harm small issuers but harm them to an even greater extent than larger issuers.

Although the Proposed Rule purports to exempt small issuers from the controls on debit interchange fees, from a practical standpoint, this exemption is nonexistent. First, several networks have not yet disclosed whether they are able or willing to create a two-tiered system (one for covered issuers and one for exempt issuers) to accommodate this exemption, and nothing in the Proposed Rule mandates that they do so. Further, even assuming that such two-tiered networks will be created, merchants will have a strong motivation to drive consumers to the lowest fee payment vehicles—which, under the Proposed Rule, will be the large issuers whose interchange rates are capped at 7 to 12 cents. To avoid such merchant discrimination, the small issuers—supposedly exempt from these price caps—will quickly be forced to the same level of interchange fees as the larger issuers. Thus, the Proposed Rule will effectively cap interchange fees for the smaller issuers as well as the bigger issuers.

In fact, the cap in the Proposed Rule will be more harmful to supposedly exempt issuers than to non-exempt issuers. First, because of the differences in

their economies of scale, the costs associated with debit card transactions are often higher for smaller issuers, and the Proposed Rule failed to consider these costs when setting the cap on interchange fees at 7 to 12 cents. Second, the revenue derived from debit interchange fees constitutes a larger percentage of the smaller issuers' overall revenue. Because of both of these factors, the Proposed Rule will lead to the small issuers losing a larger percentage of their revenue and profits than the larger issuers will lose.

The decrease in revenue from debit interchange fees will, in turn, put pressure on the small issuers to seek revenue from alternative sources, namely, by raising other fees charged to customers. Indeed, smaller issuers will begin to charge for services that are currently being offered for free. Individuals who rely on smaller issuers for services will face higher costs. In addition, the Proposed Rule will push smaller issuers to look for ways to reduce costs, including potentially eliminating jobs, halting plans to open new branches, and possibly closing existing branches.

We understand that the Board proceeded on the understandable but erroneous assumption that smaller issuers would be exempt from the effects of the Proposed Rule, and so did not include small issuers in its survey or consider any of its special effects on this country's community based financial institution debit card issuers. We strongly urge the Board to re-evaluate the proposed rules and to more broadly consider the Proposed Rule's impact on the nation's community based financial institutions.

Additionally, we strongly urge you to extend the implementation date to at least July, 2012 to allow Congress to fully explore the negative implications of this short-sighted and ill advised legislative action on community banks and consumers. Hastily written rules will have the unintended consequences of causing more harm than good to consumers and community financial institutions alike.

SWACHA appreciates the opportunity to comment on the Proposed Rule. If I may be of further assistance, please do not hesitate to contact me at (214) 438-4501 or [dennis.simmons@swacha.org](mailto:dennis.simmons@swacha.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Simmons". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Dennis Simmons, AAP  
President and Chief Executive Officer

Cc: SWACHA Board of Directors