

**BEFORE THE
BOARD OF GOVERNORS OF THE
FEDERAL RESERVE
WASHINGTON, D.C.**

In the matter of: :
 :
Notice of Proposed Rulemaking :
Debit Card Interchange Fees and Routing : **Docket No. R-1404**

Comments of the Air Transport Association of America, Inc.

On December 28, 2010, the Board of Governors of the Federal Reserve System (Board) published a Notice of Proposed Rulemaking (NPRM) in the Federal Register at 75 FR 81722, seeking comment on new regulations that would govern interchange transaction fees and rules for payment card transactions. The Air Transport Association of America, Inc. (ATA) on behalf of several members,¹ has a strong interest in these debit card interchange fee regulations and respectfully submits the following comments in response to the notice.

Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act” or “Dodd-Frank Act”), Public Law 111-203 (2010) was enacted. Section 1075 of the Act amends the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) by adding a new section that regulates several aspects of debit transactions, which includes debit cards associated with a bank account and prepaid debit cards and authorizes the Board to issue implementing regulations.

The Act requires that by July 21, 2011, interchange transaction fees for electronic debit transactions (EDT) that a card issuer may receive or charge be reasonable and proportional to the issuer’s transaction costs. *See* 15 U.S.C. § 1693o-2(a)(2). The Act mandates the Board to establish standards for assessing whether any interchange debit transaction fee is reasonable and proportional to its transaction cost. *See* 15 U.S.C. § 1693o-2(a)(3)(A). The Board also has the authority to collect information from an issuer or payment card network to aid in developing the standards and regulations and discretion to publish aggregate data on costs based on the information the Board collects. *See* 15 U.S.C. § 1693o-2(a)(3)(B).

The Act authorizes the Board to permit an adjustment to the debit interchange fee for issuer fraud prevention costs. The Board must propose new regulations that set standards to determine whether a fraud prevention cost adjustment is reasonably necessary. Any permitted adjustment must take into account any fraud-related reimbursements (including amounts from charge-backs) that issuers receive from consumers, merchants, or payment card networks. *See* 15 U.S.C. §

¹ ATA airline members supporting these comments include: American Airlines, Inc.; Delta Air Lines, Inc., and Southwest Airlines Co.

1693o-2(a)(5). When drafting the fraud adjustment regulatory standards the Board must consider several factors including the nature, type, and occurrence of fraud in EDT and the fraud and data security costs expended and absorbed by each party involved in EDT (including consumers, merchants, financial institutions, and payment card networks).

The Act also prohibits the use of network fees as a means to compensate an issuer or to circumvent or evade the Board's determination of a reasonable and necessary EDT interchange transaction fee and requires the Board to issue regulations to that end. *See* 15 U.S.C. § 1693o-2(a)(8). It requires the Board to issue regulations to prevent payment card networks from (1) restricting the number of networks on which an EDT may be processed or (2) limiting or directing the routing of an EDT to a certain payment card network. *See* 15 U.S.C. § 1693o-2(b)(1). The Act also prohibits a payment card network from inhibiting any person from providing a discount or in-kind incentive for the type of payment method used (cash, checks, debit cards, or credit cards) so long as the discount or in-kind incentive does not differentiate on the basis of the issuer or payment card network. *See* 15 U.S.C. § 1693o-2(b)(2). The Act prohibits a payment card network from directly or indirectly inhibiting the ability of any person to set a minimum dollar amount for the acceptance of credit cards for payment as long as the minimum dollar value does not differentiate between issuers or payment card networks and does not exceed ten dollars. *See* 15 U.S.C. § 1693o-2(b)(3).

Finally, the Act requires that the Board issue interchange fee regulations nine months after the Act was signed or April 21, 2011 with an effective date of July 21, 2011. *See* 15 U.S.C. §§ 1693o-2(a)(3)(A) and 1693o-2(a)(9)(A). The Act also provides the Board shall issue network exclusivity and routing regulations by July 21, 2011 but does not mandate an effective date for those provisions. *See* 15 U.S.C. §§ 1693o-2(b)(1)(A) and 1693o-2(b)(1)(B).

Board Actions

The Board held numerous meetings with debit card issuers, payment card networks, merchants, industry trade associations and consumer groups to gather information to assist in implementing the statute. Information the Board received at these meetings is posted on the Board's website.² In addition, the Board distributed three surveys in September 2010 one to issuers, one to networks, and a third to merchants. The Board issued 131 surveys to card issuers and received 89 responses; network surveys were distributed to the 14 networks that process debit card transactions and 14 responses were received, and; surveys were sent to the largest 9 merchants/processors, with 9 responses received.

The Board summarized the results of the surveys in the preamble to the proposed rule. The survey data showed credit card networks collecting \$16.2 billion in debit and prepaid card interchange fees in 2009 with an average interchange fee of \$0.44 per transaction. Card issuers reported that the median per-transaction total processing cost (including authorization, clearance, and settlement costs of a transaction) was \$0.119 and the median per-transaction variable

² <http://www.federalreserve.gov/newsevents/reform.htm>

processing cost was \$0.071 for all types of debit and prepaid cards. In addition and separate from the interchange fee, surveys indicated that the average network fee (charged and received by a credit card network) for a debit card and prepaid card transaction was \$0.065.

The surveys also asked and confirmed that arrangements exist by contractual or other means that require transactions to be routed exclusively over specific networks or that commit issuers to meet certain volume and dollar thresholds for transactions on those networks. The surveys also indicated that networks with exclusivity arrangements provide incentives, usually in the form of lower network fees.

The Board's Proposal

The Board proposed several items for comment in response to various legislative mandates in the Dodd-Frank Act. The Board proposed two standards for determining whether an interchange fee is reasonable and proportional. Alternative 1 would allow an issuer to set an interchange fee between \$0.07 and \$0.12. In setting the interchange fee the issuer could charge a safe harbor fee of \$0.07 with no analysis required. The issuer would also have the option of estimating and reporting its costs for electronic debit transactions, excluding fees charged by a payment card network, and recovering those costs up to \$0.12 per transaction. The second interchange fee option would set an interchange fee at \$0.12 per transaction, with no analysis or justification required by issuers. The Board also proposed to prohibit the circumvention or evasion of the interchange fee limits by prohibiting an issuer from receiving net compensation from a payment card network in regards to electronic debit transactions.

For network exclusivity, the Board also provided two options for public comment. The first option (Alternative A) would prohibit an issuer or payment card network from directly or indirectly restricting the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks. As discussed in the preamble, this option does not take into account the two methods of authorization used in debit transactions, signature debit and PIN debit transactions. Therefore, this option would allow a debit card that can be processed over two signature-based networks or two PIN-based networks, or one of each, provided the networks are not affiliated. The second option (Alternative B) does consider the method of authorization, it would prohibit an issuer or payment card network from directly or indirectly restricting the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks for each method of authorization. For example, a debit card under option two must have two unaffiliated networks authorized to process signature debit transactions and two unaffiliated networks to process PIN debit transactions. The proposal also prohibits payment card networks from mandating that EDT must route over a particular network.

The Board did not propose regulations that would (1) provide for an interchange fee adjustment for issuer fraud prevention costs, (2) prohibit issuers or payment card networks from preventing merchant discounts based on the method of payment, or (3) prohibit issuers or payment card networks from preventing merchants from setting minimum and maximum transaction amounts for accepting credit cards. The Board needed more information before proceeding with the fraud cost adjustment and asked a series of questions in the preamble to assist with a better informed

decision that will likely result in a future rulemaking on this topic. The Board discerned that discounts and transaction minimum and maximum statutory provisions are self-executing and do not require implementing regulations.

The Board proposed that any interchange fee regulations take effect on July 21, 2011 as the Act instructs. The Board suggested network exclusivity requirements take effect on October 1, 2011 or January 1, 2013 depending on which option is adopted.

The Proposal Complies with the Dodd-Frank Act and the Administrative Procedures Act

Interchange Fees

The Board's process for implementing the Act was an open and fair ensuring that all stakeholders had the opportunity to provide input before drafting a proposal. The Board proposed standards to determine whether an interchange fee is reasonable and proportional to an issuer's cost, provided different options for public comment, and explained the foundation of the standards. To establish the basis for a proposed issuer's cost, the Board first developed and then distributed surveys to the three primary stakeholders, card issuers, payment card networks and merchant acquirers. To ensure that these surveys were accurate, clear, and included all relevant information the Board sought and received stakeholder input before distribution. The surveys were distributed to many stakeholders, 131 potential card issuing organizations, all 14 payment card networks and several major merchants. Respondents had 30 days to submit answers to the survey. Each survey is available to the public on the Board's website.³

After collecting and aggregating survey responses, the Board had a sound basis for determining an issuer's cost for debit transactions. To provide flexibility, the Board provided two interchange fee options for public comment. As explained in the preamble, the basis of the Board's proposed standards was information received directly from issuer surveys. Specifically, the safe harbor standard in Alternative 1 (\$0.07) is based on the median per-transaction variable processing cost (\$0.071) and the cap (\$0.12) is based on the median per-transaction total processing cost (\$0.119). Likewise the stand-alone-cap in Alternative 2 (\$0.12) is also based on the median per-transaction total processing cost (\$0.119).

Network Exclusivity and Routing

Like interchange fees, the Board proposed two different options for public comment concerning network exclusivity. Network exclusivity Alternative A represents one interpretation of the Act's network exclusivity mandate, which precludes an issuer from restricting the number of payment card networks on which an EDT may be processed to 1 network or 2 affiliated networks. Alternative B would require at least two payment card networks for each method of authorization. In providing this second option the Board recognized that only about two million of eight million merchant locations offer PIN debit transactions and PIN debit transactions may

³ http://www.federalreserve.gov/newsevents/files/card_issuer_survey_20100920.pdf;
http://www.federalreserve.gov/newsevents/files/payment_card_network_survey_20100920.pdf; and
http://www.federalreserve.gov/newsevents/files/merchant_acquirer_survey_20100920.pdf.

be not be available for certain kinds of merchant categories. The Board reasons these limiting circumstances could defeat the purpose of the legislation, which is to have multiple unaffiliated networks available to process debit card transactions. In our view, Alternative B, as opposed to Alternative A, better serves this legislative purpose. The network routing proposal contains the same substantive requirements as the statute and therefore reflects an accurate transcription of the statutory mandate.

Fraud Adjustments, Discounts, and Minimum and Maximum Transaction Amounts

The Board's decision to acquire additional information before determining how to implement a fraud cost adjustment is logical and reasonable. As the Board stated in the preamble, it received a variety of fraud-prevention and data security activities in its survey responses from issuers, merchants, and networks. These responses indicated there may be more than one way to implement a fraud cost adjustment scheme and the Board wisely decided to seek more information from the public before proceeding. Doing so will provide the Board with a better-informed choice with additional stakeholder input before proceeding.

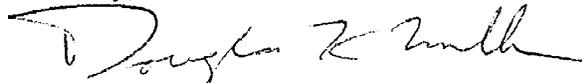
Finally, the Board's determination that the Act's lawful discounts and minimum and maximum transaction amounts are self-executing is logical and reasonable. Neither section of the Act, 1693o-2(b)(2) and 1693o-2(b)(3) include a mandate for the Board to issue implementing regulations as many other sections of the Act do.

Effective Dates

The Board's proposed effective dates align with statutory mandates and where necessary allow for additional time to implement regulations. The interchange fee regulatory effective date of July 21, 2011 is statutorily mandated and the Board rightfully adopted this requirement. The effective dates proposed for network exclusivity and routing provisions, while not statutorily mandated, are reasonable and provide ample time for implementation.

We appreciate the opportunity to comment and the Board's willingness to receive stakeholder input in this proceeding.

Sincerely,



Douglas K. Mullen
Senior Attorney Regulatory Affairs

February 22, 2011