February 21, 2011

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

RE: Comments on Regulation II; Docket No. R-1404 and RIN No 7100 AD63

Dear Governors:

Thank you for the opportunity to comment on proposed new Regulation II governing price controls and administrative procedures for Interchange Fees connected to debit card transactions.

Our interpretation of the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law No. 111-203) with respect to health care financing products is different than the interpretation in the Federal Reserve Board's (The Board) proposal.

Specifically, we believe that the Board's proposal results in the treatment of Health Savings Accounts (HSAs) and other health care financing products in a manner that is contrary to congressional intent.

On the eve of the bill becoming law, the Senate author of this legislation, Senator Chris Dodd (D-CT), Chairman of the Senate Committee on Banking, made the following comments on the floor of the United States Senate:

> *Mr. President, I would also like to clarify the intent behind another of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 1075 of the bill amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. This is a very complicated subject involving many different stakeholders, including payment networks, issuing banks, acquiring banks, merchants, and, of course, consumers. Section 1075 therefore is also complicated, and I would like to make a clarification with regard to that section.*
>
> *Since interchange revenues are a major source of paying for the administrative costs of prepaid cards used in connection with health care and employee benefits programs such as FSAs[1], HSAs, HRAs, and qualified transportation accounts--programs which are widely used by both public and private sector employers and which are more expensive to operate given substantiation and other regulatory requirements—we do not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue. That could directly raise health care costs, which would hurt consumers and which, of course, is not at all what we wish to do.* ***Hence, we intend that prepaid cards associated with these types of programs would be exempted within the language of section 920(a)(7)(A)(ii)(II) as well as from the prohibition on use of exclusive networks under section 920(b)(1)(A).*** *(emphasis added)*

[1] Flexible Spending Arrangements (FSAs), Health Reimbursement Arrangements (HRAs)

It seems clear that Congress did not intend to remove from the banks, insurers and technology providers that service the millions of Americans who fund their health care with HSAs the revenue necessary to operate their businesses. In fact, the Senate Banking Committee Chairman made it expressly clear that imposition of price controls on Interchange Fees associated with FSAs, HSAs and HRAs would lead to higher administration costs and that higher costs would hurt consumers.

Therefore, the absence of any provisions exempting FSAs, HSAs and HRAs from the requirements of proposed regulation II appears contrary to Congressional intent. Accordingly, we respectfully request that the proposed regulation be amended to exempt transactions associated with health care generally and FSAs, HSAs, and HRAs in particular.

We also believe the proposed rule fails to consider the market effects of defining "account" without reference to the different approaches to HSA administration financial institutions may take.

The proposed rule provides a market advantage to financial institutions (and other qualified HSA custodians/trustees that are non-depositories) which administer HSAs through omnibus account structures instead of through individual asset accounts. Omnibus structured HSAs qualify for the omnibus account (prepaid card) exemption provided in Section 920; accordingly, debit cards issued by these institutions for the purposes of managing HSAs will be exempt from the proposed rule.

By contrast, financial institutions that provide HSAs directly to the consumer typically structure HSAs as individual accounts. The proposed rule's broad definition of "account" would include HSA-related debit cards issued by these institutions and they would not be exempt from the proposed rule.

We believe disparate market treatment of HSA Trustees/Custodians is contrary to the legislative intent with respect to the treatment of healthcare accounts under the legislation. We do not believe the framers of the Dodd-Frank Act intended to arbitrarily punish one HSA administration model but favor another for the same type of account.

We respectfully request that the Board comply with Congress' intent with regard to HSAs and exclude both models from the definition of "account", thus eliminating the distinction between HSA providers based upon account structure.

Sincerely,

Gregg Larson
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National HSA Solution Product Leader