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February 15, 2011

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

Dear Ms. Johnson:

I am writing to you to express my opposition to the proposed rule to implement the terms of the "Durbin Amendment" which was a part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

I organized our bank nearly 13 years ago as a de novo charter. We have been fortunate to successfully grow the bank from the $3 million in initial capital, to a bank that now has $330 million in total assets and over $34 million total capital. This growth occurred without participating in the sub-prime mortgage market or though the use of predatory pricing schemes. Our growth was simply a function of offering quality products and services that were priced fairly in a very competitive marketplace.

Although our loan portfolio has grown to over $230 million in total loans, our collective credit losses (net charges to the ALLL) total less than $200 thousand over this entire timeframe. This was accomplished in large part because we were able to underwrite individual loans using best practices and was able to include appropriate covenants to control inappropriate borrower behavior. However, as we evaluate the risks to our institution today, we see some of our greatest exposure coming from fraud in the payments system.

To be competitive, we must offer our depositors access to their funds through multiple access points. One of the most popular access modes is the debit card. Once the card is issued, the bank loses control over when and where the card is used. Additionally, we do not have the ability to prevent the cardholder from using the card in situations that could place the cardholder information in the hands of those who ultimately use this information to commit fraud. Unfortunately, the bank is required (through the VISA rules) to assume all the fraud risk. This risk has no limit! Meanwhile, we have the cost of issuing and replacing lost and expired cards, processor fees to clear the items, and costs to purchase and hold card stock inventory.

In my opinion, the current pricing arrangement barely compensates our bank for the growing potential fraud cost. The rates proposed by the new rule would likely serve to cover our "out of pocket" costs to issue the cards, but leaves nothing to cover fraud costs and profit. Instead the rule gives the merchant a significant price reduction (that they will not be passing through to the customer) without shifting any of the fraud risk to the merchant.

Meanwhile, convenience stores will continue to charge rates for their own products (inside sales) at prices that far exceed prices offered by grocery stores. They will continue to have the benefit of offering 24-hour access to their petroleum products without the added cost of keeping an attendant on the payroll. Additionally, they will continue to eliminate the cost of "insufficient fund" checks and will continue to enjoy the risks associated with keeping large sums of cash on hand in the store. Most importantly, however, they will continue to keep the fraud risk in the hands of the cardholder's bank.
I cannot imagine how anyone can look at this objectively and say that appropriately places the risk and reward in the right balance.

Some have suggested that since our bank is less than $10 billion in total assets, we will not be subject to the new 7-12 cent limit that the rule imposes. Although this may be true at the outset, it is only logical that this "supposed advantage" would not last. The market place will do what it always does. It will drive business to the lowest cost option. The largest retailers will very quickly begin encouraging customers to only use debit cards offered by large banks that are subject the pricing caps. Smaller banks like mine will be forced to either lower our prices, or watch our customers move their accounts to the larger banks.

I am also concerned that the new rule could limit our current network provider (NETS Inc.) from serving as one of the networks for purposes of fulfilling the Durbin Amendment's multiple network routing requirements despite the fact that the vast majority of the transactions made with NETS cards take place within its coverage area.

I understand that Congress passed this legislation and have now left its implementation in the hands of the Federal Reserve. However, it seems to me that there is significant latitude for the Federal Reserve to implement this legislation by crafting a rule that minimizes the negative aspects of the legislation and helps to keep the Community banking model viable.

Thank you for allowing me the opportunity to comment on this very important rule. I appreciate your consideration.

Sincerely,

Michael B. Jacobson

Michael B. Jacobson
President / CEO