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February 18, 2011

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

RE: Durbin Amendment, Docket No. 1-404, Section 1075 of the Dodd Frank Act

Dear Ms. Johnson:

I appreciate the opportunity to comment on the rules for debit card interchange that the Federal Reserve has proposed. I represent TruWest Credit Union located in Tempe, Arizona. Currently we are a credit union with $742 million in assets, with 59,000 members located primarily in Phoenix, Arizona and Austin, Texas.

While I recognize that the rules proposed by the Fed were developed at the request of the U.S. Congress, I must first interject that the Durbin Amendment to the Dodd-Frank Act that amend the Electronic Funds Transfer Act was horribly ill-conceived, and will ultimately hurt all consumers, and ultimately damage commerce in this country. With that stated, I will center my remarks on your proposed rules.

Without question, if left unchanged, your proposed rules, with its interchange fee caps, exclusivity rules, routing rules, and lack of enforcement for the ($10 billion and under financial institutions) two tiered system will clearly hurt all consumers. Evidence has already shown (in Australia and Canada) that when interchange price controls are put in place that consumers ultimately pay the price for the change, and merchants do not pass along the cost savings to their customers.

Clearly, financial institutions will find a way to replace the "lost" interchange revenue with higher monthly checking account fees, per item transaction fees, the elimination of "free" checking account programs, and the elimination of debit reward programs. Many smaller financial institutions will be faced with a decision to eliminate debit card programs altogether. The ones that will suffer in the end are all consumers, including my members.

What has been totally disregarded (due to the lack of hearings or debate in Congress) is the significant benefit that debit card programs bring to the merchants. Merchants receive immediate transfer of payment and zero liability in the event of insufficient funds, fraud or other settlement problems. Yet, at the same time merchants have been the cause of the majority of debit card data breaches that have caused my institution hundreds of thousands of dollars in fraud related losses for which I have not been reimbursed.

And what about the legions of back office staff that the merchants have eliminated due to not having a meaningful volume of check activity, and losses due to returned items? How much more merchandise do the retailers push through their checkout stands because of debit cards (versus checks)?

Your proposed cap on interchange fees in the 7 to 12 cent range is not "reasonable" or "proportional" when those costs are factored in. That is like saying it is reasonable and proportional to clear a check for one cent, because that is all it costs the financial institution. That may be true because the liability is assumed by the merchant who deposits the item. In the case of debit, the liability is born by the issuer. When the merchants are forced to bear the liability for their portion of the debit transaction, then it would be fair to cap debit interchange fees.

In regards to protecting the smaller institutions, even if the proposed two-tiered system works in practice, small issuers will be severely disadvantaged if the provisions for exclusivity and routing (that will allow merchants to choose how debit card transactions are processed) are not implemented in a way that prohibits discrimination. As I understand the rules, the new provisions give the merchant the right to direct the routing of debit transactions. The marketplace will do what it has always done, which will be to drive business to the lowest cost option.

The Federal Reserve Board has also asked for comments related to the proposed routing rules. Alternative A proposes that each issuer have at least one signature debit network and one non-affiliated PIN network. Alternative B calls for each issuer to have two of each type of network. If I must be forced into any such rule, I urge the Federal Reserve Board to adopt "Alternative A"," which would only require issuers to provide debit cards that can be used over two unaffiliated networks, such as a PIN-based network and an unaffiliated signature based network. Requiring more than two networks would add substantial costs to TruWest Credit Union and all financial institutions. The vendor management costs, as well as the costs to follow multiple sets of rules for different networks would be unreasonable at best. It would also place a substantial regulatory burden on our credit union that could negatively impact service to our members.

Thank you for the opportunity to comment. I would be more than happy to discuss this further with any interested party.

Respectfully submitted,

Daniel F. Desmond
President & CEO
TruWest Credit Union
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