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24TH DISTRICT, TEXAS

COMMITTEE ON
FINANCIAL SERVICES

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

Congress of the United States
House of Representatives
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February 7, 2011

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, D.C. 20551

Dear Chairman Bernanke:

As you are aware, Public Law 111-203, Section 1075 (hereafter Section 1075), requires the Federal Reserve to issue final rules concerning debit interchange transactions by April 21, 2011 regarding a "reasonable and proportional" debit fee, fees for fraud prevention, and debit transaction network fees. In addition to these rules, the law also requires the Federal Reserve to issue new rules regarding transaction routing and exclusivity agreements. Section 1075 exempted financial institutions below an asset size of \$10 billion from the debit rules, but not the routing and exclusivity rules.

I am concerned that the nine month timeline imposed by Congress may not be sufficient for the Federal Reserve to fully consider all of the aspects of these final rules. Hastily issued rules, with a quick implementation timeframe of three months, can do more harm than good and could have negative impacts on our markets and consumers' personal checking accounts.

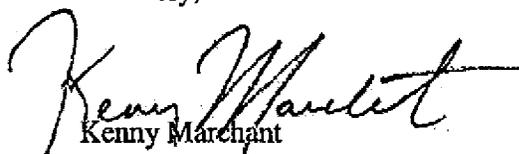
The House of Representatives did not spend sufficient time considering the full impact of debit interchange fee regulatory caps, and in particular, what the new fee structure may end up doing to consumer checking accounts in smaller institutions. For instance, we certainly would not want to reach a situation where consumers are pushed out of their checking accounts because they cannot afford the access or maintenance fees and, in turn, rely primarily upon payday lenders and check cashing services. While the supporters of Section 1075 argued that consumers would benefit from the debit interchange provision, the provision could in fact have the opposite effect.

Given the stringent timelines placed on the Federal Reserve and the need for Congressional oversight, the Financial Institutions and Consumer Credit Subcommittee will be holding a hearing on this subject on February 17, 2011. In preparation for this subcommittee hearing, it would be very helpful to have responses from you to the following questions in advance of the hearing.

- Under the current statutory implementation timeline of Section 1075, does the Federal Reserve have sufficient time to fully consider all of the factors regarding debit interchange fees, the card payment system, and the operation of debit card programs at small financial institutions?
- Does the Federal Reserve have the authority (statutory or otherwise) to delay issuing a final rule or delay implementation of a final rule (without congressional intervention)?
- What steps has the Federal Reserve taken to consider the concerns of financial institutions below \$10 billion in assets?
- While small financial institutions are exempt from the proposed debit rate cap, does the Federal Reserve believe the exempt entities will eventually be participants in the rate cap due to network and merchant pressure?
- If given more time to produce a final rule, would the Federal Reserve be able to sufficiently consider the concerns of small financial institutions?
- Does the Federal Reserve need congressional intervention in order to more fully consider the impact on small financial institutions?
- Does the language of Section 1075 restrict the Federal Reserve from looking at the complete costs of a debit card transaction (including such things as card replacement and customer assistance for debit questions)?
- How will the Federal Reserve enforce the exemption of financial institutions below \$10 billion in assets?
- Does the Federal Reserve need additional statutory authority to effectively enforce the exemptions within Section 1075 in the present and/or in the future?
- Because of the enormous impact of Section 1075 on every American consumer and his or her checking account, does the Federal Reserve believe this section will dramatically change the terms of personal checking accounts and the safety and soundness of small financial institutions?
- Because of this far-reaching impact, does the Federal Reserve believe there is a role for the prudential banking regulators in review of debit card revenue and consumer checking accounts?
- I understand the Federal Reserve surveyed issuers regarding the costs associated with interchange. Were all debit card issuers surveyed, regardless of size? How are the proposed rate caps responsive to the survey? In addition, why was a hard rate cap selected rather than a proportional rate cap that accounts for risk?

I thank you for your attention to this request. Should you have any questions regarding this correspondence, please feel free to contact me or my Legislative Director, Scott Cunningham, at 202.225.6605 or scott.cunningham@mail.house.gov.

Sincerely,


 Kenny Marchant
 Member of Congress

cc: **The Honorable Shelley Moore Capito**
Chairman, Financial Institutions and Consumer Credit Subcommittee