National Association
of Federal Credit Unions
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

March 20, 2016

Mr. Robert deV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

RE: EGRPRA, Docket No. R-1510

Dear Mr. Frierson:

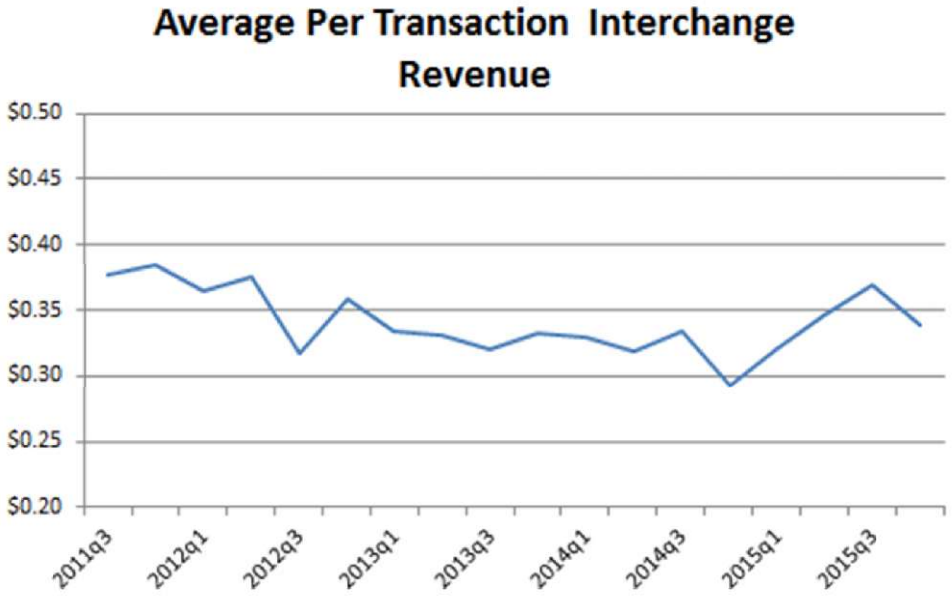
On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I write to you regarding the Board of Governors of the Federal Reserve System's (Board or the Fed) notice of regulatory review and request for comments under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). *See* 80 FR 79724 (Dec. 23, 2015). While NAFCU encourages the Board to work with industry stakeholders to eliminate any unnecessary or overly burdensome provisions of its rules, we would like to limit our comments in this round of EGRPRA to those regulations related to calculating the actual costs associated with debit interchange transactions (Regulation II). *See* 12 CFR Part 235.

General Comments

NAFCU appreciates this opportunity to participate in the Fed's EGRPRA review process, as it provides an important opportunity for credit unions and other financial institutions to voice their concerns about outdated, unnecessary or unduly burdensome requirements of existing rules and regulations. As NAFCU has consistently maintained, regulatory burden is the top challenge facing all credit unions. While smaller credit unions continue to disappear from the growing burden, all credit unions are finding the current environment challenging. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve.

As part of this effort to review its existing regulations, NAFCU firmly believes that the Fed should closely study the specific costs to debit card issuers with less than $10 billion in assets. While it is true that the law includes an exemption from certain parts of the interchange rule for issuers under $10 billion in assets, NAFCU has found that there has been a marked decline in interchange rates for issuers of all sizes since Regulation II went into effect. According to a NAFCU survey of our members, the average interchange transaction fee remains approximately

4 to 5 cents below interchange fees in 2010. As the chart below indicates, NAFCU's data shows that the median interchange fee, as well as the median fee as a percent of the total amount of a transaction, has decreased since the rule came into effect. In a May 2013 report by the Fed, the Board acknowledged that, at least with respect to one part of the report, 'the results of the survey may not be representative of the experience of small issuers overall.' Our member credit unions, contrary to what the Fed implies, have reported that the rule has caused them significant problems and challenges, and continues to be harmful. Additionally, many aspects of the debit interchange rule applies to issuers of all sizes, such as the requirements that all card issuers ensure debit cards are processed on at least two unaffiliated networks. This network exclusivity prohibition has disproportionately increased costs for small issuers with less than $10 billion in assets.



Note: All survey responses were from credit unions below $10 billion in assets
Source: NAFCU *Economic & CU Monitor* survey

While NAFCU and our members understand that the Fed was trying to carry out the Congressional intent of the Dodd-Frank Act to provide a benefit to consumers using debit cards for retail transactions, over the past several years data continues to prove that the regulation is simply not working as intended. In particular, a recent Federal Reserve Bank of Richmond study found that "few merchants are found to reduce prices or debit restrictions as debit costs decrease."[1] In September, Phoenix Marketing International conducted its fourth annual survey of nearly 2,000 consumers and found that the vast majority of shoppers have not

[1] Zhu Wang, et al., *The Impact of the Durbin Amendment on Merchants: A Survey Study*, 100 **Econ. Q.** 183 (2014).

experienced a price drop at the point of sale.[2] In fact, in each of the 15 categories measured, at least 92% of shoppers reported that prices rose or stayed the same over the past year. Further, there has been a decline in the interchange rate since the price controls went into effect. NAFCU is very concerned that the capped interchange rate will ultimately become the default rate for all card issuers, regardless of size. Smaller institutions would be disproportionately impacted if the scenario above comes to pass. NAFCU strongly believes that gathering information on smaller issuers is vital for the Board to obtain an accurate idea of overall costs this regulation has had on the industry.

When the Fed is working with Congress to provide its EGRPRA report, NAFCU urges the Fed and Congress to consider legislative solutions to ease burdens on the credit union industry while also promoting consumer protection. Credit unions are member-owned, not-for-profit organizations that have the specified mission of meeting the credit and savings needs of their members. Because credit unions are member-owned cooperatives, debit interchange fees do not simply go to lining the pockets of disinterested shareholders; for credit unions debit interchange fees are vital to ensuring the efficient and safe movement of their member's money in the course of each debit transaction.

Conclusion

NAFCU continues to advocate on behalf of credit unions for a reasonable return from interchange fee income. It also maintains that merchants have not passed interchange savings on to consumers. NAFCU appreciates the opportunity to provide our comments on this round of the EGRPRA review. Should you have any questions or concerns, please feel free to contact me at ksubramanian@nafcu.org or (703) 842-2212.

Sincerely,

K. Subramanian

Kavitha Subramanian
Regulatory Affairs Counsel

[2] Sam Fabens, *Four Years Later, Consumers Aren't Seeing Savings Promised by Retailers from the Durbin Amendment*, **Reuters** (Sept. 30, 2015), http://www.reuters.com/article/dc-epc-idUSnBw305358a+100+BSW20150930.