

October 15, 2021

Via Electronic Delivery

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R-1748, RIN 7100-AG15; Debit Card Interchange Fees and Routing

Dear Ms. Misback:

HealthEquity, Inc. (“HQY”) provided comments on the proposed Debit Card Interchange Fees and Routing regulation previously on August 12, 2021. As this is a complicated topic, and prompted by feedback provided by an industry association, we would like to emphasize the following points in the hope that it will help as you continue your deliberations:

- The Board has already ruled that cards associated with Health Savings Accounts (HSAs) are bona fide trust accounts which are exempt from Reg II. We request that the Board reaffirm this exemption in any final regulations.
- We would draw your attention to the impossibility of complying with the proposed regulation when applied to cards that are required to meet certain IRS rules when used with a Flexible Spending Arrangement (FSA) or Health Reimbursement Arrangement (HRA). Operationally, many cards attached to HSAs also utilize the IRS-required rules for FSAs and HRAs for the protection of the consumer (e.g., fraud protection and preventing inadvertent use of the card for non-medical expenses, which would result in tax and penalties). As a result, consumers can access their HSA funds and their benefit accounts (FSAs, HRAs) under one “stacked” card. Thus, our reference to HSAs in our earlier comment letter is strictly related to the operational choice to treat the HSA card as subject to the IRS requirements.

The IRS rules that apply to FSAs require that every expense be substantiated and reviewed by an independent third party. IRS Publication 969¹ states:

“You must provide the health FSA with a written statement from an independent third party stating that the medical expense has been incurred and the amount of the expense. You must also provide a written statement that the expense hasn’t been paid or reimbursed under any other health plan coverage. The FSA can’t make advance reimbursements of future or projected expenses. Debit cards, credit cards, and stored value cards given to you by your employer can be used to reimburse participants in a health FSA. If the use of these cards meets certain substantiation methods, you may not have to provide additional information to the health FSA.”

Similarly, the IRS rules that apply to HRAs also require substantiation. IRS Publication 969 states:

“Generally, distributions from an HRA must be paid to reimburse you for qualified medical expenses

¹ <https://www.irs.gov/pub/irs-pdf/p969.pdf>

you have incurred. The expense must have been incurred on or after the date you are enrolled in the HRA. Debit cards, credit cards, and stored value cards given to you by your employer can be used to reimburse participants in an HRA. If the use of these cards meets certain substantiation methods, you may not have to provide additional information to the HRA.”

However, substantiation of HSA expenses is solely the responsibility of the taxpayer, and must be reported annually on Form 8889. IRS Publication 969 states:

“Recordkeeping. You must keep records sufficient to show that:

- The distributions were exclusively to pay or reimburse qualified medical expenses,
- The qualified medical expenses hadn’t been previously paid or reimbursed from another source, and
- The medical expenses hadn’t been taken as an itemized deduction in any year.

Don’t send these records with your tax return. Keep them with your tax records.”

Providers that utilize the IRS rules for HSA debit cards do so as a fraud prevention measure, as the cards are restricted to health care Merchant Category Codes (MCCs). This approach also prevents unintentional use of the card for non-qualified expenses at merchants that also sell non-qualified items (e.g., Walmart, Target, Amazon). An HSA card not utilizing the IRS required rules for FSAs and HRAs could be used at these merchants, to inadvertently purchase non-qualified items such as clothing, TVs, tires, or any other merchandise, whereas an HSA card that utilizes the IRS rules would require another form of payment for non-qualified items.

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We appreciate the opportunity to comment on the proposal. Because of the complexity of these rules and additional regulatory requirements in order for cards used with FSAs and HRAs and often used with HSAs, we’d be happy to serve as a resource for you or to provide additional information for you. Please contact me at jdietel@healthequity.com or 650.577.6372 if you have any questions or would like for us to provide any additional information.

Sincerely,



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