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NBA Nebraska Bankers Association

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August 2, 2021

Ann E. Misback, regs.comments@federalreserve.gov
Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Ave.
Washington, DC 20551

RE: Proposed changes to Regulation II – Debit Card Interchange Fees and Routing (Docket No. R-1748, RIN 7100-AG15)

Dear Ms. Misback:

On behalf of the Nebraska Bankers Association ("NBA"), I appreciate the opportunity to comment on the Board of Governors of the Federal Reserve System's ("Board") proposed revision to Regulation II (Debit Card Interchange Fees and Routing). The NBA is a trade association representing 167 of the 175 commercial banks and savings institutions in the state of Nebraska.

The NBA takes strong exception to the FRB's proposed rule to make changes to Regulation II, as it will have a significant impact on the many small NBA member community banks. Community banks frequently are impacted most significantly by regulatory changes which impose additional new compliance costs while reducing their ability to garner revenue from legitimate banking activities. Expansion of the routing requirement to all card–not–present transactions and the accompanying mandate that PINless transactions be accepted effectively creates a price-ceiling on the revenue community banks receive to participate in these transactions. It also results in extensive and recurring costs to comply with these new rules and reduces flexibility for banks to mitigate increased fraud costs that will inevitably be associated with these newly covered transactions.

The proposed expanded requirements will create significant challenges for small banks trying to provide the best financial products for customers in their communities. Debit card revenue is a vital component to offering affordable core deposit accounts, but the proposed rule will cause harm to consumers in the debit card market. We fear that national merchants who ship their products to customers will be the primary beneficiaries under the proposed rule with little, if any, benefit to the customers that our community bank members serve.

The proposed rule will materially change how community banks handle debit card transactions. The rule places the burden for compliance with the “Durbin Amendment” on community banks to ensure merchants can enforce specified new rights across all geographies and transactions. It does not appear that an issuer can ensure that these new conditions are met in a card system where all the bank controls is its own cards and the bank lacks knowledge or control over merchants’ transaction choices. It is beyond any reasonable technical expectation that community banks can issue cards that are guaranteed to support every merchant across the country who insists on an unsupported transaction configuration. The time and expense associated with trying to comply with the proposed requirements will deflect resources from projects providing more value to our customers, such as adoption of faster payments systems.

We believe the proposed rule could expose the payments ecosystem to additional fraud and potentially reduce the overall level of security in the system, creating additional risk for consumers. Different networks and transaction types offer different protections against fraud, including the ability of issuing institutions to chargeback fraud to the merchant. Banks manage the transactions they support with these differences in mind and work to offer customers the most secure experience, minimizing fraud events. The proposal makes it even more difficult, if not impossible, for fraud–conscious financial institutions and consumers to manage how debit transactions are processed. Under the proposed rule, if applied to card–not-present transactions, retailers, not consumers, choose how transactions are routed. Frequently, the merchant may choose the lowest – cost routing option, regardless of the value that option provides to other parties to the transaction. Over time, the lowest – cost routing option may undermine fraud protection benefits such as zero liability protection and text alerts on potentially fraudulent debit transactions. Consumers have come to expect these benefits as part of their bank’s brand promise but by granting the merchant nearly – total control of how the banks’ debit cards operate, the frequency of fraudulent transactions is likely to increase.

Additionally, if a retailer chooses a debit network and transaction type that lacks security and necessary fraud mitigation benefits and fraud results, the merchant bares limited responsibility. This is particularly true in PINless transactions, which consumers assume to be signature transactions, but are entirely different. Refunds to consumers on PINless transactions can take significantly longer to process, leaving banks to pick up the slack and resolve the customer service problems that can result. In addition, PINless transactions are often difficult or impossible to decline when necessary and can be harder or impossible to reverse in the event of fraud or consumer error. These “novel” transactions were not commonly utilized when the Durbin Amendment was passed, so it is unclear as to how they can be mandated upon card issuers. By forcing community banks to take these less protected transactions, the proposed rule goes beyond the merchant routing requirements under the Durbin Amendment. Community banks that cover the losses and reverse fraudulent transactions for their consumers have the most incentive to ensure that their consumers are protected yet the proposed rule limits their ability to choose the best debit networks to route transactions and best serve and protect their consumers.

Finally, we are concerned that the proposed rule would further suppress competition among debit networks. The rule could fuel consolidation among the debit networks, reducing choices for issuers and small businesses. We have already experienced significant vertical consolidation between bank technology vendors and payment networks. Furthermore, the proposed rule would certainly benefit a handful of large merchants, potentially increasing their competitive advantage over MainStreet small businesses. The proposed rule allows the one-sided market model where network dynamics will be tilted towards merchants who do not directly bear consequences if the cardholder experience offered by community banks is diminished. Rather than imposing arbitrary government mandates that only account for one part of the picture, we should be encouraging an environment in which debit networks compete on the quality of their network and whether they provide the best service for routing debit transactions.

In closing, the provisions of Regulation II will have significant adverse effects on consumers and banks, is fundamentally flawed and should be withdrawn. As always, thank you for your consideration of our comments on the proposed rule.

Very Truly Yours,

Richard J. Baier
NBA President & CEO

Jsh/RJB