**August 9, 2021**

*By Electronic Delivery to regs.comments@federalreserve.gov*

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

Re: Comment on Docket No. R-1748: *Debit Interchange Fees and Routing* (RIN 7100-AG15)

Dear Ms. Misback:

We are writing to express our serious concerns regarding the impact that the Board of Governors of the Federal Reserve System's (the "Board") proposed rule to amend Regulation II (the "Proposal") will have on the prepaid debit card programs our States currently use to disburse government benefits and emergency assistance to citizens. The Proposal, among other things, would clarify an issuer's obligations to ensure that there are multiple unaffiliated debit networks to process card-not-present transactions. In other words, debit cards, including state disbursement cards, would be required to have two unaffiliated networks for e-commerce transactions. Although the Proposal characterizes these changes as a "clarification," we think these changes are substantial and would have a high impact on our prepaid debit card programs, increasing cost and potentially introducing higher risk of fraud. These changes threaten to drive States back into relying on costly and cumbersome paper checks for benefit distribution.

Today, our states are among the 49 states and the District of Columbia that have implemented, or are in the process of implementing, prepaid card debit programs for the distribution of government benefits. These payments include Unemployment Insurance, Child Support, Temporary Assistance to Needy Families (TANF) and Personal Income Tax Refunds. The Social Security Administration and the U.S. Department of Treasury also use prepaid cards as a quick and cost-efficient way to disburse benefits to citizens. Prior to this innovative use of prepaid card programs, federal and state government agencies issued paper checks to recipients, a costly and inefficient process for governments and citizens alike.

Prepaid debit cards provide governments, taxpayers and the recipients of government assistance programs with numerous benefits. For states, these cards eliminate the need to print and mail checks to government assistance beneficiaries, saving our state, and taxpayers, millions of dollars each year. For government assistance recipients, these cards provide secure and convenient access to their benefit dollars. This is especially important for recipients who are "unbanked or underbanked," sparing them from high check cashing and money order fees they are otherwise forced to pay in order to access their funds.

In May of 2010, thirteen state treasurers and comptrollers wrote to members of Congress expressing serious concerns about the impact of the debit interchange provisions (the "Durbin Amendment") of Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Senator Durbin responded with a hastily drawn carve out from the interchange rate cap for government disbursement cards, however as you are aware, a second provision was added by Senator Durbin in conference that required two unaffiliated processing networks be enabled on all debit cards; this provision did not include an exemption for government cards.

In 2011, the Federal Reserve Board was tasked with interpreting the Durbin provisions, and determined that the dual network provisions could be satisfied by providing two unaffiliated networks on all debit cards, for example, one signature network and one unaffiliated PIN network. In many cases, to comply with the Durbin Amendment and the Fed's Rule, government programs had to incur additional expenses to add the second unaffiliated network to existing cards, and in some cases to reissue cards altogether. Currently, for the purposes of state disbursements, the cards now in market are enabled for two unaffiliated networks and satisfy the provisions of the Durbin Amendment as implemented by the Fed..

If the Proposal is finalized as written to require an issuer to ensure there are two unaffiliated networks in every geographic area and for every merchant and type of transaction, it will potentially lead to the recall and reissuance of the millions of state disbursement cards currently being used for aid by our citizens, particularly if issuers are only able to ensure compliance with the rule by enabling cards to operate on all networks because they will not be able to determine which merchants accept which debit networks. More importantly, it will create additional expenses for our states' card programs due to costs from contracting with additional new networks and the significant costs associated with card reissuance.

The Proposal may also necessitate modifications at the network, issuer and processor (both issuer and acquirer) level as well as complex infrastructure changes at the point of sale. Government programs often rely on specialized processors that can handle specific requirements of such state programs, such as limits on the type of products that can be purchased. These modifications will at the very least lead to increased costs, potential disruptions in service, and difficulties utilizing these disbursement instruments which our citizens have come to rely upon.

Finally, we are very concerned merchants may choose to route transactions to a network based solely on cost consideration, without regard for the security of that network. Given the prevalence of fraud and security incidents in cyberspace, we believe our citizens funds could be placed at risk when making eCommerce purchases in this situation. Likewise, the potential addition of more networks for a "card not present" transaction on a government disbursement card will increase consumer confusion around the network processing a particular transaction, and importantly over which consumer protections and rights (including fraud protections) will apply to the transaction. For example, zero liability protections from unauthorized transactions may not apply consistently across debit networks. Again, merchants may route transactions without regard to the consumer protections that may be available through a particular network. Networks themselves may also be less motivated to introduce additional security or fraud enhancements if they cannot be assured that their cardholders will benefit from those enhancements given merchant routing choice.

Quite simply, the Proposal could lead to erosion or, at worst, an elimination of efficiencies and cost savings provided by disbursing government benefits by prepaid cards. We are seriously concerned that these potential new costs and complexity may lead our state government agencies to reintroduce a paper check model for the distribution benefits if they cannot manage the compliance obligations associated with the Fed's Proposal. This step backwards would result in not only a higher cost to both the states and their taxpayers but also significantly reduced advantages that come with electronic payments. Even if these programs continue, we are concerned that financial institutions will be forced to raise fees on cardholders or States to recoup lost revenue from implementing the new requirements.

The use of electronic payment instruments for government disbursement of benefits has been a great innovation. We respectfully urge you to consider these consequences and protect States, taxpayers, and the recipients of government assistance as you consider implementation of a final rule.

Sincerely,

Dennis Milligan
Arkansas Treasurer of State

Julie Ellsworth
Idaho State Treasurer

Kelly Mitchell
Indiana Treasurer of State

John Schroder
Louisiana State Treasurer

David McRae
Mississippi State Treasurer

Scott Fitzpatrick
Missouri State Treasurer

John Murante
Nebraska State Treasurer

Stacy Garrity
Pennsylvania State Treasurer

Josh Haeder
South Dakota State Treasurer

Riley Moore
West Virginia State Treasurer

David Atilig
Secretary of Finance, Commonwealth of the Northern Mariana Islands