



August 10, 2021

Via Electronic Mail

Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551
Attention: Docket No. R-1748; RIN 7100-AG15

Re: Debit Card Interchange Fees and Routing; Regulation II – Docket No. R1748

Dear Ms. Misback:

UMB Bank, N.A. (“UMB”) welcomes the opportunity to comment on the Notice of Proposed Rulemaking (the “NPRM”) issued by the Board of Governors of the Federal Reserve System (the “Board”) on May 7, 2021 proposing to amend the Board’s Regulation II.

UMB is the 40th largest issuer of debit cards in the U.S., importantly we are the 5th largest Health Benefit Account Card issuer.

Based on our experience, research, market position, and analysis, we believe that the proposed amendments to Regulation II in the NPRM would result in harm to consumers, small businesses, and debit card issuers that significantly outweigh any potential benefits. In particular, we believe that the proposed amendments would:

- Increase the risk of fraud in debit transactions;
- Increase the costs of goods and services for consumers;
- Increase the costs of providing goods and services for small businesses; and
- Impose significant compliance and logistical costs on card issuers.

Accordingly, we urge the Board to reconsider the NPRM in light of its statutory obligation to assess the costs and benefits of the proposed amendments. If the Board determines to adopt the amendments after consideration, it is imperative that the Board afford the industry an adequate implementation period to permit issuers to minimize the disruptions that the amendments will likely cause.

I. Practical Consequences of the Proposed Amendments

The focus of the NPRM is directed to applying the prohibition on network exclusivity under Section 920(b) of the Electronic Fund Transfer Act (“EFTA”) to card-not-present debit transactions just as the prohibition has applied to card-present debit transactions since 2011. However, the NPRM also proposes a significant change to the responsibilities of card issuers in



card-present transactions. In particular, the proposed amendments would “clarify the responsibility of [a] debit card issuer” in complying with the prohibition on network exclusivity.

The network exclusivity prohibition, as set forth in EFTA, requires the Board to “prescribe regulations providing that an issuer or payment card network shall not . . . restrict the number of payment card networks on which an electronic debit transaction may be processed to” one network or two or more affiliated networks.¹

Current Regulation II implements the network exclusivity prohibition by requiring issuers to “allow” debit transactions “to be processed on at least two unaffiliated payment card networks, each of which does not, by rule or policy, restrict the operation of the network to a limited geographic area, specific merchant, or particular type of merchant or transaction”

The proposed amendments would revise this provision by requiring issuers to “enable[] at least two unaffiliated payment card networks to process an electronic debit transaction” “for every geographic area, specific merchant, particular type of merchant, and particular type of transaction for which the issuer’s debit card can be used to process an electronic debit transaction”

The proposed change is subtle, but eminently consequential. While the statute and current Regulation II refer to an issuers obligation not to limit the processing of debit transactions to a single network or multiple affiliated networks, the proposed amendments impose on issuers an affirmative obligation to ensure that every merchant in every location in the country is able to process debit transactions using multiple unaffiliated networks. In practice, because merchants may have relationships with a limited number of networks (which may be small or regionally specific), issuers like UMB will be required to establish relationships with every debit network in the U.S. to comply with the proposed amendments.

While the NPRM terms this proposed change a “clarification” of an issuer’s responsibility under the network exclusivity prohibition, the NPRM does not describe the Board’s rationale as to why such a change is necessary. As a result, it is difficult to provide meaningful comment on the Board’s basis for the change.

Additionally, as described in more detail below, the costs of this proposed change to consumers and industry are potentially significant and have not been adequately assessed in the NPRM.

II. Cost-Benefit Analysis Under Section 904(a)

A. Statutory Obligations Under EFTA

As recognized by the NPRM, Section 904(a) of EFTA imposes on the Board an obligation to conduct a cost-benefit analysis in implementing the network exclusivity prohibition by rulemaking. In particular, EFTA requires the Board to:

prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of

¹ 15 U.S.C. 1693o-2(b)(1)(A).



electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers.

EFTA further requires the Board to “demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions.”

While Section IV.A. of the Supplementary Information does include a cost-benefit analysis of the proposed amendments with respect to applying the network exclusivity prohibition to card-not-present transactions, the Board’s analysis does not address the changes to the new responsibilities to be imposed on issuers for all debit transactions, including card-present transactions. Moreover, the Board’s analysis does not thoroughly describe the costs of the proposed amendments as they relate to either card-present or card-not-present transactions. Rather, the analysis states in conclusory fashion that the costs are “uncertain” and “depend on various factors,” and that the “Board cannot predict the market response to the proposed rule.”

However, we believe that the proposed changes to the responsibilities of issuers will, in fact, impose tangible costs.

B. Costs Not Considered by the Board

1. Costs to Issuers

The proposed amendments would have the practical effect of requiring each issuer to enter into a contractual relationship with every debit card network processor in the U.S. to ensure that every merchant in every geographic location may process debit transactions over more than one unaffiliated network. There are currently several networks operating. While several networks, such as Visa, Star, or Pulse, operate across most or all geographic regions, and have implemented sophisticated anti-fraud measures, numerous other networks are accessible only in certain geographic regions or are only available to process certain transaction types or amounts.

Each individual merchant determines the networks with which the merchant will contract for debit transaction processing services. Some merchants elect to contract with multiple nationwide networks. For these merchants, issuers may not need to take additional action to comply with the proposed amendments. However, other merchants, especially smaller merchants, may contract with regional networks that charge lower fees and that may only support lower value transactions. Issuers do not typically establish relationships with all such networks. But the proposed amendments would require issuers to do so in order to comply with the network exclusivity prohibition with respect to such smaller merchants.

Establishing relationships with debit processing networks is a costly and time-consuming process, with significant service and legal fees which would dramatically increase the costs associated with issuing debit cards.



Additionally, some smaller, regional debit processing networks not currently supported by issuers may not have implemented the robust anti-fraud protections that larger, nationwide networks have. Requiring issuers to support processing on such networks would increase the dollar value of the transactions processed by those networks that have more limited fraud protection safeguards. Notwithstanding the risk of potential consumer harm, issuers bear the primary burden and costs associated with fraudulent transactions that are reversed – costs that could be substantially increased as a consequence of the proposed amendments.

2. Costs to Consumers

The proposed amendments are likely to lead to higher costs for issuers. Given the limitations on debit interchange fees that can be charged to consumers, such increased costs are likely to lead to fewer debit card options for consumers.

While diminution in consumer choice is always a negative consequence that should be assessed in a cost-benefit analysis, this potential decrease in debit options would strike consumers at a particularly damaging time. Numerous financial services companies relying on technological solutions, such as so-called “challenger banks,” offer consumers a broader array of banking services than ever before. Consumers now have significantly more banking options than at the time Regulation II was initially adopted. This optionality has reduced the size of the unbanked population, and the increased competitive pressure has led to the reduction in numerous fees, such as overdraft fees, that traditional banks commonly assessed in the past.

If debit service availability is reduced as a consequence of the proposed amendments, consumers who rely on innovative or alternative banking services will suffer harm. Further, such harm may be disproportionately borne by low-income consumers, a consequence that EFTA expressly requires the Board to include in its cost-benefit analysis and which is not considered in the NPRM.

Moreover, the increased usage of less sophisticated debit networks stemming from the proposed amendments may increase fraud. While Regulation E limits a consumer’s liability for fraudulent electronic debit transactions in certain cases, a consumer may not always be aware of a fraudulent transaction until it is too late to exercise their rights under Regulation E. In such cases, a consumer could find themselves responsible for a fraudulent transaction and suffer potentially serious financial injury.

3. Costs to Small Businesses

As a result of increased costs for issuers, some merchants may be required to pay higher fees. Large merchants may be in a stronger position to negotiate fees or exert enough market power to avoid increased fees altogether. However, smaller, Main Street merchants may not have similar means to avoid increased fees. Such increased fees would have one or more of the following consequences:

- Reducing the revenue of these small businesses (immediately following the disruption caused by the COVID-19 emergency),



- Increasing the cost to consumers of goods or services offered by the small business,
- Assessing or increasing debit surcharges payable by consumers, or
- Eliminating the debit payment option for consumers at the small business.

None of these potential costs is assessed in the NPRM.

III. Obligation to Support Future Technology

In addition to the proposed change to the regulatory text of the network exclusivity prohibition, the NPRM revises the Official Commentary to provide that

[t]he network exclusivity provisions in § 235.7(a) require that a debit card be enabled by the issuer on at least two unaffiliated payment card networks *for each means of access*. The means of access that carries the debit card information could be a plastic card, a supplemental device such as a fob, information stored inside an e-wallet on a mobile phone or other device, or *another means of access that may be developed in the future*.

By its express terms, this provision would require issuers to support each existing means of access or any means of access that may develop in the future. Such an affirmative obligation is troubling given that it prohibits an issuer from independently assessing whether a new technology poses an unacceptable risk to consumers or the issuer. This requirement would also mandate that an issuer adopt the technology to support all new means of access that may be developed, regardless of the cost or efficacy of the technology or its benefit to consumers.

IV. Suggested Board Action

In order to afford interested parties the opportunity to provide meaningful comment on the Board's basis for proposing changes to issuers' responsibilities under the network exclusivity prohibition, we believe that the Board should describe with particularity why it believes such a change is necessary.

Moreover, we are concerned that the proposed amendments to Regulation II would impose significant costs on issuers, consumers, and small businesses. These costs have not been assessed in the NPRM as required by Section 904(a) of EFTA. Accordingly, we request that the Board engage with industry participants to better understand the consequences and costs of the proposed amendments in order to perform the required cost-benefit analysis. UMB would welcome the opportunity to provide additional relevant information to the Board.

Finally, if the Board substantively adopts the amendments as proposed, we believe that a significant implementation period is necessary to ensure that issuers have adequate time to assess their compliance obligations, engage with the debit processing networks, and deliberately implement changes in order to prevent market disruptions that could harm consumers.

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In closing, we appreciate your consideration of these comments. As one of the largest debit card issuers in the U.S., we support the Board's continuing endeavors to improve our nation's payments infrastructure and offer our comments in furtherance of that shared objective. We would welcome the opportunity to engage with the staff regarding the costs and consequences of the proposed amendments and express our sincere hope that we can engage in such a dialogue in the near future.

Sincerely,

Uma Wilson

Uma Wilson

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