

Tuesday, August 10, 2021

Ann Misback
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-AG15OP-1747)

Submitted electrically: regs.comments@federalreserve.gov
www.regulations.gov

Dear Ms. Misback,

The Ohio Bankers League¹ appreciates the opportunity to provide comments in response to the Federal Reserve's proposed rule to make changes to Regulation II- Debit Card Interchange Fees and Routing. On behalf of our membership, we write in strong opposition to the proposed rule as it will have a significant impact negative impact on Ohio banks and the communities they serve.

OBL members are particularly vulnerable to regulatory changes which combine new compliance costs with reductions in fairly-earned revenue. The expansion of the routing requirement to all card-not-present transactions and the accompanying mandate to accept PINless transactions effectively creates a price cap on the revenue banks receive for participating in these transactions. It also results in extensive and recurring costs to comply with these new rules, while reducing operational latitude to mitigate the higher fraud costs that are associated with these newly covered transactions.

Any expanded requirements will only create significant new challenges for Ohio's small banks trying to provide the best financial products for customers. Debit revenue is particularly vital to offering affordable core deposit accounts, but the proposed rule does not acknowledge the harm that this intervention will cause to consumers in the two-sided debit card market. While we care deeply for merchants in our community, this rule will largely benefit the most profitable national merchants who ship their products to customers. Merchants matter, but community banking is also an essential part of the American economic landscape and should be equally valued in policymaking.

While presented as a clarification, banks will experience the proposed rule as a material change in how they handle debit card transactions. Fundamentally, the rule shifts the compliance paradigm for Durbin by placing the burden on banks to ensure merchants can enforce certain new rights across all

¹ The Ohio Bankers League ["OBL"] is a non-profit trade association that represents the interests of Ohio's commercial banks, savings banks, savings associations as well as their holding companies and affiliated organizations. The Ohio Bankers League has over 170 members which represents the overwhelming majority of all FDIC insured depository institutions doing business in this state. OBL membership represents the full spectrum of FDIC insured depository institutions from small mutual savings associations owned by their depositors, community banks that are the quintessential locally-owned and operated businesses, up to large regional and multistate holding companies that have several bank and non-bank affiliates and conduct business from coast to coast. Ohio depository institutions directly employ more than 70,000 people in Ohio. We are the only trade association in Ohio that represents all segments of FDIC insured depository institutions.
www.ohiobankersleague.com

geographies and transactions. Yet the proposed rule does not explain how an issuer can ensure these conditions are met, in a card system where a bank controls its own cards and has no knowledge of or control over merchants' transaction choices. In a nation as large as the U.S., most merchants are located far from any given bank, making the all-geographies requirement particularly challenging. Ohio banks have complied with the Durbin Amendment for a decade by issuing cards with two networks and the merchant had to do their part by supporting cards that came across the checkout counter.

It is beyond any reasonable technical expectation that a bank can issue a card that is guaranteed to support every merchant across the country who insists on an unsupported transaction configuration. Industry experts believe this would require elaborate technical builds and would potentially still fall short. The Federal Reserve asserts that there are solutions available today, yet they go on to explain that these transactions are not used frequently enough for merchants' liking.

Secondly, it is important to address how this proposed rule could expose the payments ecosystem to more fraud and potentially reduce the overall level of security in the system, creating real consumer impact. Different networks and transaction types offer different protections against fraud, including the ability of issuing institutions to charge back 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 potential fraud.


This 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 current rule (and if it were to be applied to card-not-present transactions) retailers, not consumers, choose how transactions are routed. Often the merchant may choose the lowest-cost routing option, regardless of the value that option provides to other parties in the transaction. Over time, this may undermine fraud protection benefits like zero liability protection and text alerts on potentially fraudulent debit transactions. Consumers expect all these benefits from their bank, but when another party is given nearly total control of how a bank's debit cards operate, they may not be sustainable. At a time when the industry has worked so closely with the Federal Reserve to improve payments security, the proposed rule takes away key latitude and tools for financial institutions to do everything possible.

Additionally, if a retailer chooses a debit network and transaction type that lacks security and necessary fraud mitigation benefits and fraud occurs, the retailer bears limited responsibility. This is particularly true of "PINless" transactions, which consumers assume to be signature transactions, but are entirely different. For instance, the world's leading online retailer says that refunds to consumers can take two to three times longer via PINless transactions, leaving banks to pick up the slack and resolve the customer service problems that can result. 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 did not exist in common usage when the Durbin Amendment was passed, thus we are uncertain how they can be mandated upon card issuers now despite our reasonable reservations. By forcing banks to take these less protected transactions, the proposed rule goes beyond the constrained routing rights merchants acquired in the Durbin Amendment. These transactions are often pushed on banks by core providers who own the very networks that benefit from them, which is hardly a competitive or fair scenario for our members or their customers. Banks cover the losses and reverse fraudulent transactions. Our members have the most incentive to ensure consumers are protected yet this proposal limits their ability to choose the best debit networks to route transactions and best serve and protect consumers.

Lastly, we are concerned the proposed rule would further suppress competition among debit networks and the required competition analyses have not been completed. The rule could drive further consolidation among the debit networks, reducing choices for issuers and small businesses. There has already been significant vertical consolidation between bank technology vendors and payment networks. As proposed, the rule would benefit a handful of large merchants, potentially increasing their competitive advantage over Main Street stores. The proposed rule lacks a comprehensive competition analysis and does not mention that the U.S. Supreme Court found in 2017 that the card market is a two-sided one, where policymakers must balance the commercial interests of issuers and merchants. The proposed rule still follows the one-sided market model where network dynamics will be tilted towards merchants who will not directly bear consequences if the cardholder experience offered by my bank is diminished. We should be encouraging an environment where debit networks compete on the quality of their network and whether they provide the best service for routing debit transactions, not by arbitrarily imposing government mandates that only account for one part of the picture.

The provisions of Regulation II have significant negative effects on consumers and banks and should not be expanded in any way. To enable a truly competitive marketplace, we strongly encourage the Federal Reserve to withdraw the proposed rule to expand routing controls to card-not-present debit transactions and the requirement to have two debit networks for routing.

Sincerely,

A handwritten signature in cursive script that reads "Evan Kleymeyer".

Evan Kleymeyer
SVP, External Relations