



August 9, 2021

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

*Submitted electronically via  
reg.comments@federalreserve.gov*

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

Dear Ms. Misback,

The Dakota Credit Union Association (DakCU), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the Board of Governors (Board) regarding its proposed rulemaking concerning debit card interchange fees and routing.

DakCU appreciates the Board's role and responsibility under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) to promulgate regulations to implement Section 1075, *Reasonable Fees and Rules for Payment Card Transactions*, of said Act. However, DakCU is strongly opposed to these proposed amendments to Regulation II with regard to limitations on payment card network restrictions. Furthermore, DakCU strongly disagrees with the Board that these amendments are merely "clarifications." DakCU believes these proposed changes are extremely substantive and, if finalized, will create significant regulatory burden for credit unions.

The Dodd-Frank Act included Section 1075(a) which amended the Electronic Fund Transfer Act (EFTA) to add, in general, provisions for reasonable interchange transaction fees for electronic debit transactions and limitations on payment card network restrictions which are now found under Section 920 of the EFTA. The Dodd-Frank Act Section 1075(a) and subsequently Section 920 of the EFTA provided an exemption for small issuers from the requirements relating to interchange transaction fees restrictions which, in theory, was aimed at protecting the small issuers, but in



reality, interchange income dropped for all issuers, not just large card issuers. Relevant to this proposed rule, however, the small issuer exemption was not extended to provisions for limitation on payment card network restrictions.

Section 1075 of the Dodd-Frank Act, and the implementing regulations, do little to provide protections for small community banks and credit unions. To our knowledge there is no evidence that consumers benefitted from this rulemaking. To our knowledge there is no evidence that merchants reduced the pricing on their goods or services and returned their “savings” on interchange fees to the consumer. Our concern remains the same as it did in 2011, when our comment letter provided, “The proposals in any form, if adopted, would do little to protect consumers. Furthermore, there is nothing in the proposed regulation that would ensure that the money saved from the reduced fees is passed on to the consumer and not retained as additional profit by the merchants. This rule, if adopted, will do little more than to increase fees elsewhere for the consumer and potentially limit services available to consumers through their credit union or other small financial institutions.” *February 21, 2011, Credit Union Association of the Dakotas – Mid-America, comment letter to the notice of proposed rulemaking – debit card interchange fees and routing, Docket No. R-1404.*

EFTA Section 920(b)(1)(A) provides that “an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to-- (i) 1 such network; or (ii) 2 or more such networks which are owned, controlled, or otherwise operated by (I) affiliated persons; or (II) networks affiliated with such issuer.” This requirement is implemented at 12 CFR 235.7(a)(1) of Regulation II.

As explained in the Section-by-Section analysis of the proposed amendments, the Board states it is “proposing to amend § 235.7 of the regulation to emphasize the issuer’s role in configuring its debit cards to ensure that at least two unaffiliated networks have been enabled to comply with the regulation’s prohibition on network exclusivity.” 86 FR 26192, May 13, 2021.

Currently 12 CFR 235.7(a)(2) provides that “An issuer satisfies the requirements of paragraph (a)(1) of this section only if the issuer allows an electronic debit transaction 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, and each of which has taken steps reasonably designed to enable the



network to process the electronic debit transactions that the network would reasonably expect will be routed to it, based on expected transaction volume.”

The Board would seek to put the onus on the credit union and other debit card issuers, that, “An issuer satisfies the requirements of paragraph (a)(1) of this section only if, 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, such issuer enables at least two unaffiliated payment card networks to process an electronic debit transaction, and where each of these networks has taken steps reasonably designed to be able to process the electronic debit transactions that it would reasonably expect will be routed to it, based on expected transaction volume.”

This proposal sets an impossible requirement for debit card issuers to meet. How can a debit card issuer reasonably be held responsible for ensuring their networks are supported by every merchant? Does the Board intend to provide a merchant directory that lists *every* merchant and includes what *every* merchant has for networks and what transactions *every* merchant does? Again, this is clearly an attempt at a substantive regulatory change and not merely a “clarification” as the Board attempts to minimize the potential effects of its proposed rulemaking.

DakCU is opposed to the proposed addition of “or any other method of cardholder authentication that may be developed in the future” to capture cardholder authentication methods that do not yet exist and that would still be captured by Regulation II if they were to be developed. The proposed revisions also recognize instances where no method of cardholder authentication is used.” *86 FR 26192, May 13, 2021.*

Comment 1 to 12 CFR 235.7(a) expands on the scope of the prohibition on network exclusivity restriction. The Board proposes to expand this comment to provide that, in relevant part, “In particular, section 235.7(a) requires this condition to be satisfied 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. As long as the condition is satisfied for each such case, § 235.7(a) does not require the condition to be satisfied for each method of cardholder authentication (e.g., signature, PIN, biometrics, any other method of cardholder authentication that may be developed in the future, or the lack of a method of cardholder authentication).” *86 FR 26194, May 13, 2021.*

DakCU appreciates rulemaking that can be forward thinking in most scenarios, however, with regard to limitations on payment card restrictions, the vagueness of “any other method of



cardholder authentication that may be developed in the future” creates a compliance nightmare. The Board does not provide a timeline for adoption of the new technology. If a new authentication is adopted and released, does it mean the next day every card issuer is out of compliance because their debit card has not enabled the never-before-seen or known technology on day one of its release? This is an impossible requirement to comply with and a regulatory nightmare.

With regard to the Board’s required Regulatory Analysis under Section 904(a)(2) of the EFTA, the Board concludes that “Nevertheless, the effect of the proposed rule on the availability of services to consumers will likely depend on various factors, including each consumer’s payment and purchase behavior, as well as market responses to the increased availability of multiple networks for card-not-present transactions. Ultimately, the costs and benefits of the proposed revisions are uncertain and will depend on the adjustments that different parties may make and the market response to the proposed rule.” *86 FR 26193, May 13, 2021*. As expressed previously, DakCU is concerned regarding the impact this rulemaking will have on the consumer. In addition to the regulatory changes and costs which would be placed on the credit unions, DakCU is also concerned the proposed rule could open the door to more fraud and potentially reduce the overall level of security in the payment system, creating real consumer impact. DakCU urges the Board to sincerely investigate the impact of this Regulation on consumers, small financial institutions and the market-place before it makes any substantive changes and not just brush off its potential impact as insignificant.

Credit unions are member owned not-for-profit financial institutions. Costs for compliance are ultimately bore by the member owner. Income lost due to regulatory changes is bore by the member owner. Fraud losses are bore by the member owner. If finalized, this proposed rule would result in extensive and recurring costs to comply, while limiting the ability of the credit unions to mitigate higher fraud costs. The proposed changes will do little to protect the consumer, and there is no mechanism to require the merchant to return savings back to the consumer.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey Olson". The signature is written in a cursive, flowing style.

Jeffrey Olson  
CEO/President



*Amy Kleinschmit*

Amy Kleinschmit  
Chief Compliance Officer