



February 12, 2024

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

RE: Debit Card Interchange Fees and Routing
Docket No. R-1818, RIN 7100-AG67

Dear Secretary Misback:

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the Federal Reserve Board's ("Board's") proposed rule on Regulation II Debit Card Interchange Fees and Routing, which technically applies only to banks and credit unions with more than \$10 billion in assets but, in reality, affects all debit card issuers. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 3.6 million consumer members. The Association has developed these comments in consultation with our members.

The Association's High-Level Comments

- The Association opposes the Board's unnecessary proposal to further reduce credit unions' debit interchange fee income whether or not they are technically exempt from Regulation II. There is no statutory requirement for the Board to revise Regulation II and the Board's proposal is flawed because it is based on the costs of large, non-exempt issuers.
- Credit unions under \$10 billion in total assets will be negatively impacted if the Board finalizes this rule as proposed even though they are technically exempt from Regulation II. As the Board's own data demonstrates, the rates for single-message exempt transactions closely tack the rates for non-exempt single message transactions, with exempt single-message transactions receiving on average \$0.27 versus \$0.24 for non-exempt single-message transactions in 2022. Prior to Regulation II in 2011, credit unions received on average \$0.32 per exempt single-message transaction, which adjusted for inflation using the Consumer Price Index would be equivalent to \$0.43 per transaction today.
- Credit unions' financial inclusion efforts may be frustrated by the proposed reductions in the debit fee base component from 21.0 cents to 14.4 cents as well as by the proposed reduction in the ad valorem component from 5 basis points to 4 basis points. These changes to the Board's price caps will

significantly reduce credit unions' non-interest income whether or not they are technically exempt from Regulation II. This fee income is often necessary for the economic sustainability of credit unions' low-cost and free services they offer their members, many of whom are low- and moderate-income individuals who belong to underserved communities.

The Association's Detailed Comments

The Association opposes the Board's proposed rule and believes it should be withdrawn because it is unnecessary. The proposal also fails to consider sufficiently the rule's impact on credit unions with assets below \$10 billion, which are impacted by Regulation II de facto even though they are technically exempt.

Regulation II significantly impacts exempt issuers' single-message debit card transactions (i.e. those processed using PIN-based debit card networks as opposed to signature-based networks like Visa or MasterCard), as shown by the Board's own data.¹

Exempt issuers are only receiving approximately 63% of the income from these transactions that they received in 2011 once inflation is taken into account.²

As the Board notes in its proposal, Section 920 of the Electronic Funds Transfer Act (i.e. the "Durbin Amendment") does not permit the Board to consider "costs incurred by the issuer that are not specific to a particular debit card transaction," 15 U.S.C. 1693o-2(a)(4), meaning that the issuing credit union or bank cannot recover much of the costs of its debit card program through debit interchange fees.

While many banks chose to discontinue free checking programs when faced with the reduction in fee income caused by the Durbin Amendment, most credit unions continue to offer free checking accounts to their members, even at a loss.

Further reducing credit unions' already artificially low debit interchange fee income, however, may force some institutions to discontinue free checking simply because these programs are no longer economically sustainable.

1. As stated in paragraph (a) of proposed appendix B to Regulation II, the Board would determine the base component, ad valorem component, and fraud-prevention adjustment for every two-year period, beginning with the period from July 1, 2025, to June 30, 2027. Is the proposed two-year cadence appropriate, or should the Board determine these amounts more or less frequently?

¹ Federal Reserve Board, "Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network;" <https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm> (last visited Feb. 9, 2024).

² *Id.*; see Bureau of Labor Statistics, "CPI Inflation Calculator;" https://www.bls.gov/data/inflation_calculator.htm (last visited Feb. 9, 2024).

The Association does not support the Board revising Regulation II at this time. There is no statutory requirement for the Board to do so either now or on a periodic basis.

2. As described in paragraph (c)(1) of proposed appendix B to Regulation II, the Board would determine the base component as a fixed multiple of the transaction-weighted average of per-transaction base component costs (i.e., allowable costs (excluding fraud losses)) across covered issuers. As described in section III.B, supra, the fixed multiplier corresponds to the percentage of covered issuer transactions for which the Board believes covered issuers should fully recover their base component costs over time. Should the Board select an alternative cost-recovery target from among the possibilities below, or another cost-recovery target not included below? If so, why?

The Board's methodology should take into account the rule's impact on all issuers, including credit unions with less than \$10 billion in assets.

While technically exempt, credit unions with less than \$10 billion in assets face much the same reduced fee income as non-exempt issuers, especially on single-message transactions.

4. As described in paragraph (d)(1) of proposed appendix B to Regulation II, the Board would determine the ad valorem component, for a particular debit card transaction, as the median ratio of issuer fraud losses to transaction value among covered issuers, multiplied by the value of the transaction. Should the Board adopt an alternative methodology for determining the ad valorem component? If so, why?

While we support including fraud losses in this component, the Board should also consider the fraud losses of exempt issuers, such as credit unions with less than \$10 billion in total assets, in establishing these rates.

5. As described in paragraph (e)(1) of proposed appendix B to Regulation II, the Board would determine the fraud-prevention adjustment as the median per-transaction fraud-prevention costs among covered issuers. Should the Board adopt an alternative methodology for determining the fraud-prevention adjustment? If so, why?

We believe the Board should also consider the fraud costs of exempt issuers.

7(b). Should the Board amend §235.8 of Regulation II to specify that a covered issuer is required to retain records supporting the data that the covered issuer reports on the Debit Card Issuer Survey? Would this record retention requirement be duplicative of any existing recordkeeping requirements for covered issuers? If not, what would be the estimated additional annual burden of this requirement, in terms of hours and cost, for covered issuers?

The Association does not support amending Section 235.8 to create new recordkeeping requirements for covered issuers such as credit unions with more than \$10 billion in assets.

This record retention requirement would be largely duplicative with existing recordkeeping requirements for federally insured credit unions under NCUA regulations and other laws. *See, e.g.*, 12 C.F.R. pt. 749, Appendix A.

10. Proposed comments 235.3(b)-4 and 235.4(b)-1 would provide that, for purposes of determining in which two-year period a debit card transaction is considered to be performed, a debit card transaction is considered to be performed on the date on which it is settled on an interbank basis. Is this proposed convention sufficiently clear? For example, should the Board specify which time zone is controlling for purposes of determining the date on which a transaction is settled on an interbank basis? Should the Board adopt an alternative standard, such as considering a transaction to be performed on the date on which the cardholder presents the debit card to the merchant for payment?

The Association believes that the settlement date is sufficiently clear with respect to determining in which two-year period covered issuers like credit unions with more than \$10 billion in assets should report a transaction. The settlement date will also be the easiest date for the covered issuer to determine from its records.

12. Does the Board's economic analysis of the proposal, set forth in section VIII.A, appropriately describe the likely impact of the proposal on various participants in the debit card market? Are there additional impacts of the proposal that the Board has not considered?

The Association does not agree with the Board's conclusion that "the proposal would not directly or, the Board believes, indirectly affect exempt issuers (i.e., those with consolidated assets under \$10 billion)."

As the Board's own data demonstrates, the rates for single-message exempt transactions closely tack the rates for non-exempt single message transactions, with exempt single-message transactions receiving on average \$0.27 versus \$0.24 for non-exempt single-message transactions in 2022.³ Prior to Regulation II in 2011, credit unions received on average \$0.32 per exempt single-message transaction, which adjusted for inflation using the Consumer Price Index would be equivalent to \$0.43 per transaction today.⁴

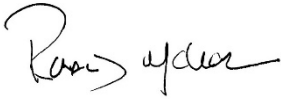
The Board should withdraw this proposal. If the Board does decide to move forward with revising Regulation II, it should issue a new proposal that better considers the rule's impact on exempt issuers including credit unions with less than \$10 billion in assets.

³ Federal Reserve Board, "Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network;" <https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm> (last visited Feb. 9, 2024).

⁴ *Id.*; see Bureau of Labor Statistics, "CPI Inflation Calculator;" https://www.bls.gov/data/inflation_calculator.htm (last visited Feb. 9, 2024).

Thank you for the opportunity to comment on the Board's proposed rule on Regulation II Debit Card Interchange Fees and Routing. If you have any questions or desire further information, please do not hesitate to contact the Association at (508) 481-6755 or govaff-reg@ccua.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald McLean". The signature is fluid and cursive, with a large initial "R" and "M".

Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.
rmclean@ccua.org