

# AMERICA'S CREDIT UNIONS, JIM NUSSLE

## Proposal and Comment Information

**Title:** Regulation II: Debit Card Interchange Fees and Routing , R-1818

**Comment ID:** FR-0000-0095-01-C603

## Submitter Information

**Organization Name:** America's Credit Unions

**Organization Type:** Organization

**Name:** Jim Nussle

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August 27, 2025

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

**Re: Regulation II – Debit Card Interchange Fees and Routing Updates**

Dear Ms. Misback:

On behalf of America's Credit Unions, I am writing regarding the recent U.S. District Court for the District of North Dakota ruling in *Corner Post Inc., v. Board of Governors of the Federal Reserve System*<sup>1</sup> and its relationship to the Federal Reserve's pending proposed rulemaking on debit card interchange fees.<sup>2</sup> America's Credit Unions is the voice of consumers' best option for financial services: credit unions. As not-for-profit, member-owned financial cooperatives, credit unions play a vital role in the financial well-being of individuals, families, and small businesses across the country. We advocate for policies that allow credit unions to effectively meet the needs of their over 142 million members nationwide.

**Recent Legal Developments**

On August 6<sup>th</sup>, 2025, the U.S. District Court for the District of North Dakota invalidated the Board's Regulation II interchange fee standard, finding that it unlawfully allowed recovery of costs beyond the incremental authorization, clearance, and settlement ("ACS") costs that Congress specified in the Durbin Amendment. While vacatur of the current regulation is stayed pending appeal, the court's ruling complicates the administration of any future rule based on the Board's 2024 proposal which is premised on the assumptions about allowable costs (i.e., categories other than incremental ACS costs) which are likely to be part of the ongoing litigation. Although the Court has indicated that its ruling would not preclude issuance of a final rule—the defects identified by the district court would remain unresolved, and proceeding with a final rule on such shaky ground would only create confusion for industry while granting a windfall to merchants, who would reap unjust cost-savings from a rule that is both unlawful (by the district court's reasoning) and subject to concurrent litigation in a different circuit.<sup>3</sup>

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<sup>1</sup> *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, No. 1:21-cv-00095 (D.N.D. Aug. 6, 2025).

<sup>2</sup> See, Debit Card Interchange Fees and Routing, Notice of Proposed Rulemaking, Board of Governors of the Federal Reserve System, <https://www.federalregister.gov/documents/2023/11/14/2023-24034/debit-card-interchange-fees-and-routing>.

<sup>3</sup> *Linney's Pizza, LLC v. Bd. of Governors of the Fed. Reserve Sys.*, No. 3:22-cv-71-GFVT (E.D. Ky. Mar. 19, 2025) (defendant's memorandum in support of summary judgment).

## **America's Credit Unions' Concerns**

Notwithstanding the uncertainty created by pending litigation, the Board's proposal itself is deeply misguided. It is predicated on flawed methodology that disregards the cost experience of most issuers, especially smaller credit unions. The ultimate effect of reducing interchange revenue will be felt mostly by the member-owners of credit unions who will see a reduction in the availability of affordable banking products and services. The proposed rule will also hurt more than just covered credit union issuers, as competitive market pressures inevitably spread the impact to smaller institutions.

Moreover, a Government Accountability Office (GAO) study ranked the Durbin Amendment among the top five laws and regulations that was most cited as having significantly affected the cost and availability of basic banking services.<sup>4</sup> The study found that "debit card interchange fee limits imposed by the Durbin Amendment and Regulation II are associated with increases in the costs of checking accounts."<sup>5</sup> Based on these increased costs, the study also found that, after the regulation was in place, covered banks were about 35 percent less likely to offer noninterest checking accounts without monthly fees.<sup>6</sup> Separately, but still relevant, was the merchant's undelivered promise of savings being passed onto consumers. Instead, the opposite happened, and merchants pocketed the savings. As the Federal Reserve Bank of Richmond found, after the Durbin Amendment was implemented, 98.8 percent of merchants did not pass along savings realized from debit regulation to consumers and over 20 percent increased prices.<sup>7</sup>

America's Credit Unions strongly opposes any reduction in the debit interchange fee cap. A further reduction in the interchange fee cap, as proposed, would amplify Regulation II's known negative effects, yet the Board vastly understates the proposed rule's future impact and fails to offer meaningful analysis of likely consumer harm. Credit unions are less able to absorb reductions in interchange revenue due to their unique, not-for-profit structure. Unlike banks, credit unions are unable to issue shares to outside investors as a means of raising capital. Instead, credit unions must build capital primarily through retained earnings, a slow process which is further constrained by a statutory interest rate ceiling for federal credit unions. Further reduction in interchange revenue could also threaten credit unions' ability to return savings and benefits to their members. Since the implementation of Dodd-Frank, there has been significant consolidation within the credit union industry. The Board's proposal is likely to accelerate this trend.

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<sup>4</sup> See, Government Accountability Office (GAO), Banking Services, Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved, (February 2022) <https://www.gao.gov/assets/gao-22-104468.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

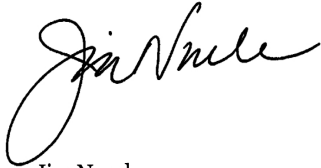
<sup>7</sup> See, The Impact of the Durbin Amendment on Merchants: A Survey Study, [https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic\\_quarterly/2014/q3/pdf/wang.pdf](https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_quarterly/2014/q3/pdf/wang.pdf).

## Conclusion

For these reasons, the Federal Reserve should rescind its proposed debit card interchange fee rule. Moving forward with the outstanding proposal would only exacerbate market uncertainty and diminish access to affordable banking services. America's Credit Unions would welcome the opportunity to meet and further discuss the importance of interchange revenue for credit unions and their members. We deeply appreciate the Board's continued engagement with America's Credit Unions and thank each of the individual Board Governors who have listened to our concerns.

Should you have any questions or require additional information, please contact me or Greg Mesack, Senior Vice President of Advocacy, at [gmesack@americascreditunions.org](mailto:gmesack@americascreditunions.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle", with a large, stylized initial "J".

Jim Nussle