



Capital Communications Federal Credit Union

Together. We can.SM

Main Office and Mailing Address

18 Computer Drive East • Albany, NY 12205-1168
ph. (518) 458-2195 | (800) 468-5500 | fax (518) 458-2261
capcomfcu.org

Other Branch Locations

Clifton Park • Cohoes • Colonie • Glenmont • Latham
Niskayuna • North Greenbush • Waterford

January 27, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

RE: Docket No. R-1404; Debit Card Interchange Fees and Routing

Dear Ms. Johnson;

Thank you for providing us with this opportunity to comment on the Notice of Proposed Rulemaking regarding debit card interchange fees and routing.

Our credit union, Capital Communications FCU, is located in Albany, NY. As a credit union we are dedicated to the founding principles of credit unions; one of which is to assist members of modest means. With that tenet in mind, we are wholly adverse to the Debit Card Interchange proposal as drafted as we are of the belief that it will not benefit the consumer and will have a severe negative financial impact on smaller financial institutions such as ours.

While the intention of the Regulation is to benefit the consumer with the belief that merchants will pass their cost-savings for the processing of debit card transactions on to the consumer in the form of reduced costs for goods and services we are of the opinion that this will not occur. In fact we believe that as written, this regulation will have a detrimental impact and may possibly increase the costs that consumers pay for goods and services (including the costs to maintain basic checking accounts at some banking institutions).

With the impact to both the consumer and small financial institution in mind, it is our opinion that this legislation be repealed in its entirety as it appears that it was drafted and rushed to completion without determining the full impact on all entities including the card issuer, the merchant, and ultimately the consumer. If a revised regulation is eventually issued, additional studies must be undertaken to determine and minimize any negative impact this legislation will have on consumers and small financial institutions, such as Capital Communications FCU.

Should the legislation not be repealed or redrafted, we respectfully would like to comment on the following provisions:

Small Financial Institution Exemption:

The "Exemption for Small Issuers" states that debit card issuers with less than \$10 billion in assets are exempt from the cap placed on an issuer's interchange income. While in principle this would appear to benefit smaller financial institutions such as Capital Communications FCU in all practicality there appears to be no way to put such an exemption into real-life practice and there is no guidance within the regulation as to how it could be done. Furthermore, even if it is possible, there is nothing in the Act or the Durbin Amendment that would require that a merchant accept for payment a debit card issued by an exempt issuer.

It is our opinion that further study must be undertaken to determine the actual financial and operation impact of this exemption. In addition, guidance and specific requirements/guidelines need to be incorporated into the regulation so small financial institutions are not negatively impacted by a provision that should truly provide them with protection.

"Reasonable and Proportional" Interchange Fees:

In regard to the proposed interchange fee caps, it does not appear that all expenses in relation to the processing of processing debit card transactions were fully taken into consideration.

At Capital Communications Federal Credit Union we have two fraud specialists who spend a great deal of time not only putting procedures in place to mitigate debit card-related fraud but who investigate such frauds after they occur. In addition, we subscribe to the Falcon Fraud Prevention Program through our debit card processor. This cost for this service, which provides invaluable protection, is charged to us annually based on the number of debit cards we have issued.

Although the "hard costs" per actual debit card transaction appear to have been taken into consideration by the Federal Reserve Board (FRB) when determining the cap, the costs for network fees, licensing fees, card production, fraud mitigation, personnel training, regulatory compliance and the like do not appear to have been entered into the calculation. Incorporating the aforementioned "soft costs" into the calculation, the computed expense is well beyond the cap of 12¢ per transaction.

In regard to the proposed calculations, the FRB is seeking comments on the following two alternatives for capping interchange fees.

Alternative One:

A "safe harbor" level of 7¢ per transaction would be set and could be charged in all cases. An issuer could charge up to 12¢ per transaction if the issuer can show that the cost to process the transaction exceeds 7¢. This alternative would require that in order to determine the cost, the issuer would need to calculate its average cost for the year by totaling all "allowable" costs (the costs for authorizing, clearing and settling a transaction) over a one year period and dividing that amount by the number of transactions for the same period.

This would be the issuer's per item cost for the year and if the calculated cost is in excess of 7¢, the issuer could charge a fee in excess of 7¢ but no more than 12¢ per transaction. This average cost calculation would be done annually to determine the per-item cost.

Alternative Two:

Under this alternative the flat interchange fee is set at 12¢ per transaction.

While it is our opinion that neither alternative is just and fair to the card issuer as they don't take all processing costs into consideration, of the two proposed alternatives it is our view that Alternative Two would be the least complicated to comply with as there are no convoluted calculations or annual adjustments that need to be computed. In reality, the computed average cost per transaction will almost invariably be in excess of 12¢ so the need to calculate the cost per transaction on an annual basis would almost seem to end up being a required exercise in futility.

Fraud Prevention Adjustment:

Although the FRB has not stated a specific amount as a "fraud prevention adjustment", the proposal indicates that the Board is requesting comments to determine the approach to be taken and any adjustment which can be made above and beyond the 12¢ cap. Specifically, the Board is seeking comments on the following two Fraud Prevention Adjustment approaches:

Technology-Specific Approach:

Under this approach the Board would identify and establish a standard fraud-prevention technology with which card issuers must adopt in order to take advantage of a fraud prevention adjustment.

Non-Prescriptive Approach:

Under this approach the Board would simply set minimum fraud prevention guidelines which must be implemented in order for the issuer to take advantage of the adjustment.

The FRB indicates that under the Technology-Specific Approach they would encourage new prevention technologies however, in reality, because of the inherent bureaucratic process necessary to get new technologies approved under the Regulation, it may have a counter-productive impact by stifling the development of new technologies.

On the other hand, the Non-Prescriptive Approach would allow for an "open market" solution whereby an array of fraud prevention technologies could be made available by multiple vendors and the card issuer could choose the vendor and product.

As the Non-Prescriptive Approach will provide issuers with more options, resulting in increased competition between vendors, and will foster the advancement of new fraud prevention technologies we support the implementation of this approach.

Network Exclusivity:

This Proposed Rule would prohibit network exclusivity so a debit card transaction would not be restricted to processing through one network. To that end, the Board has proposed two options in regard to network exclusivity.

Option 1:

Under option 1 it would be acceptable if the debit card transaction could be placed over one signature-based network and a separate PIN-based network.

Option 2:

This option would require that a signature-based debit card transaction have the ability to be processed over two non-affiliated signature-based networks and a PIN-based transaction processed over two non-affiliated PIN-based networks.

We are in support of Option 1. Option 2 may have the impact of increasing the cost to an issuer dramatically as well as causing a major disruption to the processing networks and alternatives already in place. In a proposed regulation that would already be financially disadvantageous to small financial institutions such as ours, Option 2 could have an extremely detrimental impact.

In conclusion, we would like to thank you for providing us with this opportunity to provide our comments on the proposed regulation regarding debit card interchange fees and we stand ready to further discuss the comments stated within this letter if additional information is necessary. I can be reached by telephone at (518) 458-2195 or (800) 468-5500 (ext. 3204) or by email at pstopera@capcomfcu.org.

Sincerely,



Paula A. Stopera, President/CEO
Capital Communications FCU