KANSAS BANKERS ASSOCIATION

May 10, 2024

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

Re: NPRM on Debit Card Interchange Fees and Routing (Regulation II)
Docket No. R-1818; RIN 7100-AG67

Dear Ms. Misback:

Thank you for the opportunity to provide comments on the above-stated notice of proposed rulemaking to reduce the regulated interchange cap under Regulation II. Before we engage in comments, we thought it appropriate to provide some background of the Kansas Bankers Association.

Kansas Bankers Association Background Information:

The KBA, founded in 1887, is a voluntary, non-profit trade association governed by its membership. The KBA is headquartered in Topeka, Kansas, and is led by our 24-member board of directors. The KBA staff includes 37 professionals, including 11 attorneys, that provide services to Kansas bankers ranging from legislative advocacy to educational training to insurance services to legal and regulatory compliance support. Our mission statement is direct and straightforward:

"Together, we support our member banks and bankers with leadership, advocacy, and education to benefit the communities and customers they serve."

KBA's membership includes 98% of the headquartered banks in Kansas. Our membership also includes 20 out-of-state commercial banks operating in Kansas and seven savings and loans. Our member banks employ more than 22,000 Kansans that provide financial services in every county across the state. While our member banks range in assets from the smallest in our state to the largest in our state, each member bank that belongs to the KBA has one vote on policy positions adopted by either our general membership or our Board of Directors. One member, one vote.

<u>**Banks Are Allowed to Make a Reasonable Profit on Products and Services**</u>

The KBA believes that just as the U.S. Supreme Court found that a public utility is entitled to earn a return on the value of the property which it employes for the convenience of the public, banks also provide a valuable public service, are highly regulated and have property which they employ for the convenience of the public. (*Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 43 S. Ct. 675 (1923))

In the *Bluefield Water Works* case, the Supreme Court looked at the rate fixed by the public service commission and held that the rate cap was not sufficient to yield a reasonable return on the value of the property used to render the service of water to the community. That said, the Court also clarified that while plaintiff had a right to earn a return on the value of the property, it had no constitutional right to excessive or unreasonable returns.

While banks do not have extensive physical infrastructure like utilities, banks still have major capital investments to allow the bank to operate in a manner that serves their customers. Investments in buildings, technology, intellectual property and also the investment in human capital are just some of the property that is valued by their communities. Debit cards are but one example of property that banks invest in to deliver essential banking services. Changes in technology, consumer behavior and the shift from cash to electronic payments requires a constant re-evaluation of that investment which should not be viewed in a vacuum.

We are urging the Federal Reserve to re-evaluate how its regulatory decision impacts the balance between fair returns for the entities they regulate and the protections against excessive charges for consumers. We believe the arguments that caused the Supreme Court to see the value of allowing a public utility to charge more than the actual cost of providing a service to the public apply in this instance.

<u>**Such a Severe Reduction in Debit Card Fees Could Result in an Increase in Fraud**</u>

There is no data on the effect of the Fed's recently imposed debit card routing rule which mandated that banks offer multiple networks for internet, card not present transactions. Since this routing rule only went into effect on July 1, 2023, we have no data on how this changed costs – especially as it relates to fraud. Did mandating another routing rail allow for a rail that is not as secure? Will fraud costs rise as a result and will technology have to adapt and advance to address it? If so, how will banks pay for this if their debit fees are cut by 30%? And if the banks can't pay for this, consumers will lose the benefit of a secure debit card system.

Debit card issuers currently have the most sophisticated and effective fraud detection and prevention tools. Lowering the interchange price cap will effectively discourage issuers from continuing to invest in fraud monitoring and prevention at the level they are able to now. This will result in harm to consumers at a time when instances of fraud are at an all-time high for consumers.

Savings from Interchange Price Caps Have Not Been Passed on to Consumers

There is absolutely no evidence that lowering price caps will benefit consumers. The existing price cap put in place as a result of the Dodd Frank Act has not resulted in lower prices for consumers, but has benefited merchants by giving them an economic windfall over the last decade. Rather than passing along the savings from lower interchange fees, merchants have retained the benefits and have not lowered their prices. Merchants are the only participant in a debit card transaction that will benefit from further lowering the fee cap.

Conclusion

As a banking association, we do not have the data to show that the costs of issuing debit cards will tolerate such a reduction in interchange fees. We have been told by our members that the proposed reduction does not take into account so many costs that are real and simple to factor in - such as card production and delivery, non-sufficient fund losses, statement production and delivery, and customer inquiries. We urge the Board to withdraw this proposal, conduct additional research to include additional cost factors, update its data from recent routing changes, take into account the right that the Supreme Court recognizes for business to make a reasonable profit on products and services, and to consider the harm to consumers that this type of reduction would cause.

Thank you for your consideration of our comments.

Best regards,

Douglas E. Wareham
President/CEO

Kathleen A. Taylor
EVP/General Counsel