



First National Bank

---

May 11th, 2024

(Via Electronic Delivery)

Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551

Re: First National Bank of Pennsylvania (“FNBPA”)  
Docket No. R-1818, RIN 7100-AG67; Debit Card Interchange Fees and Routing

Dear Board of Governors of the Federal Reserve System:

FNBPA concurs with the comment letter sent to the Board of Governors of the Federal Reserve System (the “Board”) by the Clearing House Association L.L.C., The Bank Policy Institute, and the American Bankers Association (collectively, “the Associations”), and we appreciate the opportunity to focus on specific commentary related to debit card interchange fees (“NPRM”). We strongly urge the Board to withdraw its Proposed Rule as it is a violation of the United States Constitution, and at the very least, the terms and purpose of the Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act. The transaction processing costs, in conjunction with the costs FNBPA has already incurred by entering the debit card payment system, will not reasonably and proportionally compensate FNBPA for its continued participation in this voluntary system, and will diminish FNBPA’s ability to receive a return on invested capital.

The Board justified its proposal to amend Regulation II asserting that the “transaction-processing costs of the average debit card transaction declined by nearly 50 percent between 2009 and 2021, and therefore, the current interchange fee standards may no longer be effective for assessing whether any interchange fee is reasonable and proportional to the cost incurred by the issuer.” We note, with the Associations, the fact that the current 21 cent cap does not allow cost recovery for the 80 percent of issuers it was designed to protect. Additionally, the statement is based on the transaction weighted average, which over-weights the costs of the largest debit card issuers, as they compose 94.3 percent of transactions in the market; this results in a failure to consider the costs of two-thirds of covered issuers. All of this is notwithstanding a material change by the Board in calculating interchange cap results in the Proposed Rule, the use of non-comparative survey data results from 2011 onward, and a lack of transparency regarding how the Board calculates costs from the data it receives. The Board also cites a 2021 debit card issuer survey that we believe is inconsistent with other data collection years given the massive economic disruption caused by the global pandemic. A debit card issuer survey for 2023 is in process and will provide the Board with a more accurate depiction of the current state.

In enacting the Durbin Amendment Congress stated its purpose was to lower interchange fees charged by card networks so merchants could pass these costs down to the consumer. The Board’s implementation of the Durbin Amendment interchange fee cap in October 2011 has not proven to accomplish its stated purpose.

Several years following the Board’s implementation of the interchange fee cap in October 2011, the Federal Reserve Bank of Richmond conducted a study which essentially found that the fee cap had limited and unequal effects on merchants and the so-called interchange fee savings were largely not passed on to the consumer. (see, Federal Reserve Bank of Richmond Economic Brief, December 2015, EB15-12; see also, [Did the Durbin Amendment](#)

[Reduce Merchant Costs? Evidence from Survey Results | Richmond Fed](#)). Below are some of the noteworthy findings and analysis from the Federal Reserve Bank of Richmond's study:

- (i) Over a third of the merchants experienced increased costs and a sizeable portion of these merchants raised consumer product and service prices and increased debit card usage restrictions (e.g., set higher minimum transaction amount requirements);
- (ii) Merchants who specialized in small ticket transaction (e.g., fast food, delivery services etc.) experienced increased debit costs, while large ticket merchants (e.g., furniture sales, sporting goods etc.) experienced reduced debit card fees; and
- (iii) The vast majority of merchants, almost 80% of them, did not change prices following implementation of the fee cap, while only 1.2% of the merchants actually passed the savings on to the consumer by reducing prices, and a sizeable portion of the merchants (over 20%) increased their prices.

Clearly, this study demonstrates that the Board should carefully evaluate the disparate and unintended impact that another reduction of the interchange fee cap will have on merchants and consumers, including accounting for the full array of costs and benefits impact not only for card issuers, but also for merchants and consumers.

We further note that the interchange fee cap also fails to consider costs permitted by the Durbin Amendment. The Durbin Amendment requires distinguishment between (i) incremental costs, and (ii) other costs incurred that are not specific to the transaction. Non-fraud related cardholder inquiries, NSF handling costs, costs of NSF losses, transaction specific compliance costs, card production costs, international fraud costs, and other costs associated with FNBPA building its debit card program throughout its branch network and other invested capital, including but not limited to the aforementioned "sunk costs," have not been considered.

The Constitution prohibits setting rates so low to be "inadequate to compensate current equity holders for the risk associated with their investments."<sup>1</sup> The Constitution provides protection in that it assures a "fair and reasonable rate of return."<sup>2</sup> When the government acts to regulate prices it must "enable [a] company to operate successfully in a safe and sound manner, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed."<sup>3</sup> Regarding the Durbin Amendment (as applicable to Banks with over \$10 Billion in Assets), it directed the Board to "establish standards for assessing whether the amount of any interchange transaction fee [received or charged by a debit card issuer] is reasonable and proportional to the cost incurred by the issuer with respect to the transaction."<sup>4</sup> Congress permits the amount of interchange fees to be "reasonable and proportional" to the costs incurred by issuers with respect to certain debit card transactions. The language "reasonable and proportional" parallels the Congressional phrase "just and reasonable." This language has been interpreted to "yield[] sufficient revenue to cover all proper costs . . . plus a specified return on invested capital."<sup>5</sup>

It is clear, on its face, that in not allowing cost recovery for all issuers, FNBPA, and numerous other similarly situated entities, will not be guaranteed to receive their Constitutionally granted fair and reasonable rate of return for not only interchange transaction fees, nor invested capital, but various costs associated with providing this service. The Board has failed to consider the costs of two-thirds of covered issuers, points to inconsistent data, and is materially changing its calculation methodology without proper transparency. Even if it was found that the Proposed Rule was Constitutional, at the very least, it is a violation of the Durbin Amendment as it is unreasonable, disproportional, does not allow cost recovery for all issuers, nor a return on FNBPA's invested capital.

---

<sup>1</sup> *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307, 312 (1989).

<sup>2</sup> *Michigan Bell Tel. Co. v. Engler*, 257 F.3d 587, 595 (6th Cir. 2001).

<sup>3</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944).

<sup>4</sup> 15 U.S.C. § 1693o-2(a)(3)(A).

<sup>5</sup> *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 951 (D.C. Cir. 2007) (per curiam); see also, e.g., *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968).

The Proposed Rule, if in effect, would result in numerous, ill-researched, damages to multiple debit card issuers. It is likely that the industry members will respond by either passing these expenses on to consumers through other means, significantly reducing improvement within the debit card market, or altogether exiting the voluntary system.

On behalf of FNBPA, I respectfully request that the Proposed Rule be withdrawn, or at the very least, delayed until the 2023 debit card issuer survey is available to provide current information so a proper analysis may be made.

Sincerely,

Vincent J. Delie, Jr.  
Chairman, President and C.E.O.

CC: James G. Orie, Chief Legal Officer and Corporate Secretary  
Tom Whitesel, Chief Risk Officer