America's Credit Unions

crossstate Credit Union Association

Reg II – Debit Card Interchange Regulations

Proposed Debit Interchange Cap Changes

America's Credit Unions has significant concerns with the Federal Reserve's Notice of Proposed Rulemaking (NPRM) to modify the debit interchange cap and codify an approach for regularly updating the cap on a going-forward basis. Specifically, the NPRM would:

- Decrease the base component from 21 cents to 14.4 cents.
- Decrease the ad valorem component from 5.0 to 4.0 basis points.
- Increase the fraud-prevention adjustment from 1 to 1.3 cents.

- Future updates to the cap would automatically occur in odd numbered years, beginning in 2025, subject to proposed formulas using data contained in the biennial report of debit issuer costs for covered issuers (those with more than $10B in total assets).

Credit Union Concerns:

- **The Federal Reserve Board's debit card interchange fee proposal is seriously flawed.** The NPRM does not reflect changes that went into effect in July 2023, requiring dual routing for card-not-present transactions. This change has a direct bearing on the data used to calculate the proposed interchange fee cap.
- **The Board is not required to lower the debit interchange fee cap.** The Durbin Amendment directed the Board to establish a cap that was "reasonable and proportional" to the costs of the issuer. In 2011, the Board determined that the cap met this standard when only 80% of covered debit card issuers would see cost recovery for their authorization, clearance, and settlement (ACS) costs—the largest banks. The latest data collection shows only 77.4% of debit card issuers are experiencing full recovery of ACS costs— once again leaving high-cost, low-volume issuers, including many credit unions, operating at a deficit. If anything, this data suggests the debit interchange cap should be raised, not lowered.
- **The small financial institution exemption does not work.** Market pressures cannot be contained by regulatory thresholds. The Federal Reserve's Regulation II data indicates

the average per transaction interchange fee for exempt single-message transactions is down nearly 31% in inflation-adjusted dollars from 2011 to 2021.

- **Merchants did not pass on their cost savings to consumers from the initial regulation. They will not pass it along with further cuts.** The Federal Reserve's own research shows that only about 1% of merchants passed savings on to consumers after the initial adoption of Reg II and more than 20% increased their prices.
- **Consumers lost with the first regulation. Consumers will lose with further reductions.** The GAO ranks the Durbin Amendment "among the top five laws and regulations most cited…as having significantly affected the cost and availability of basic banking services." It's estimated $1-$3 billion annually transfers from low-income households to large retailers and their shareholders due to the Durbin Amendment.

Legislative Actions:

- The **Secure Payments Act** (H.R. 7531), introduced by Rep. Blaine Luetkemeyer (R-Mo.), prevents finalizing the Federal Reserve's Reg II proposal to adjust debit interchange until both a study and quantitative analysis on the impacts of the rule take place. This includes impacts to consumers' access to low-cost or free checking accounts, fraud prevention, and merchants' costs of accepting debit cards. America's Credit Unions supports H.R. 7531.
- A bipartisan group of representatives wrote Federal Reserve Chair Jerome Powell, outlining concerns with the proposed changes to Regulation II.
- America's Credit Unions President/CEO Jim Nussle wrote to both the Senate Banking Committee and the House Financial Services Committee in advance of March 7 hearings.
- Karen Harbin, President and CEO of Commonwealth Credit Union, testified on these issues on behalf of America's Credit Unions during the March 7 HFSC Financial Institutions Subcommittee hearing, outlining credit union concerns.

Reg II Proposal Key Dates:

- The Federal Reserve Board of Governors issued the notice on October 25, 2023, with **comments due May 12, 2024.** If adopted, the revisions would take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published.