January 24, 2024

Ann Misback
Secretary, Board of Governors
Federal Reserve System
20th St and Constitution Ave NW,
Washington, DC 20551

Delivered Electronically

Subject: Debit Card Interchange Fees and Routing - RIN: 7100-AG67

Dear Ms. Misback,

Intro:
The Durbin Amendment, was a component of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The current rule went into effect on October 1, 2011, and was crafted during a period of significant financial turmoil as part of a backlash against large banks.

Background:
The backlash was in response to a two-year period where 8 million people lost their jobs, tens of millions saw the value of their homes and retirement savings plummet, and homes and businesses were lost in foreclosure due to a breakdown of the largest financial institutions that left taxpayers on the hook for the failure of large financial institutions and bailouts of others. During deliberations in the House, Senate, and Conference Committee the sentiments above were consistently expressed. The legislation was enacted with a promise to end "Too Big to Fail"

More than 15 years have passed since that tumultuous time and regulators seem to have forgotten the congressional intent. Today Dodd Frank is more closely associated with having resulted in financial regulations that have resulted in "too small to succeed". The largest financial institutions have continued to grow larger while thousands of small relational banking institutions have shuttered.

Instead of monitoring the rule and evaluating the impact against the intent of the legislation. The Federal Reserve Board has decided to update the Durbin rule to further reduce interchange income specifically crafting a rule that covers the costs for the largest institutions but results in the smallest regulated entities not receiving interchange income commensurate to their costs. A fact noted by Kryss Wozniak the Section Chief, Payment System Studies for the Federal Reserve who presented the proposal to the FRB. In presenting to the

Board Wozniak notes that the proposal has full cost recovery for 98.5% of transactions by covered issuers. He failed to highlight that the 1.5% of transactions that will not achieve full cost recovery are the transactions by the smaller covered entities above $10 Billion in assets but well below the $3.39 Trillion JP Morgan Chase. Thus, perpetuating the regulatory trend of ensuring the largest financial institutions continue to thrive while regulating smaller institutions out of existence. Not only was this not the intent of Dodd-Frank this provision of the new rule is in direct conflict with the statute.

The broad application of Dodd-Frank has swept up credit unions and other community financial service providers, which were not the primary targets of regulatory concern. The 'one-size-fits-all' approach failed to account for the diverse nature and operational models of smaller financial institutions, leading to unintended and often adverse impacts on smaller entities.

In addition, numerous provisions of Dodd-Frank such as the Durbin amendment are increasingly outdated in the context of a rapidly evolving payments industry, that has seen new participants and has become more competitive over the past decade.

We would strongly encourage the Board to consider the impacts and Congressional intent as you move forward and develop a rule that is fair and equitable and considers the impacts on smaller institutions. To that end we have some specific recommendations.

Shift in the Payments Ecosystem

In 2009 when Congress was developing the Dodd-Frank legislation, merchants argued that they were captive to the likes of Visa and Mastercard and their monopoly on the payments system. Over the past fifteen years, the payments landscape has evolved dramatically. The dominance of traditional card payments has been challenged by new payment systems and options, such as mobile payments, digital wallets, and peer-to-peer platforms like Venmo. These emerging payment solutions offer different pricing structures and often lower or no swipe fees, providing merchants and consumers with more cost-effective alternatives. This evolution has diminished the need for interchange rules.

With the advent of diverse payment options, debit cards, once a cornerstone of electronic payments, are now less competitive. The interchange fee cap has limited the ability of these cards to evolve and adapt in this changing market. Merchants now have the flexibility to choose more economical payment methods, further diminishing the relevance and competitiveness of traditional card payments.

Eliminating or significantly revising the Durbin Amendment would allow for a more balanced and competitive payments environment, encouraging innovation and adaptation in line with contemporary market dynamics. GoWest recognizes that eliminating many outdated rules would require an act of Congress. However, Chairman Powell should keep Congress informed of the changing payment landscape and the consequences of failing to maintain modernized financial statutes that reduce American competitiveness.

Tiered Interchange Fee Rule

In response to the evolving financial landscape and the disparities in operational costs between large and small financial institutions, a compelling case emerges for setting tiered interchange fees by rule. This approach aligns with the statutory mandate of covering operational costs and addresses the economic realities faced by institutions of varying sizes. The 50 largest financial institutions control $90 Trillion in assets representing the vast majority of debit transactions. Smaller covered entities those above $10 Billion but below $100 Billion represent a very small percentage of covered debit transactions. As Wozniak pointed out to the Fed Board many of these institutions that do not have economies of scale to rival trillion-dollar-plus institutions under the new proposed rule will not cover the cost on a per transaction basis.

> **REASONABLE INTERCHANGE TRANSACTION FEES**.—The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

Based on the specific statutory language above it is clear that Congress envisioned a tiered system of interchange fees where smaller institutions that don't have the scale to build their own payment networks, like Bank of America did when they originally created VISA, are still able to cover the costs associated with the transaction. Reasonable and proportional are very different by asset size and must be considered per statute.

Raise the Interchange Exemption Threshold

The financial landscape has evolved significantly since the initial adoption of the $10 billion exemption threshold for the interchange fee standards. This evolution warrants a reevaluation and adjustment of the threshold to align with current economic realities and the original legislative intent.

> **EXEMPTION FOR SMALL ISSUERS.— IN GENERAL**.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than $10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

The statute, while mandating a $10 billion exemption, does not preclude a higher threshold. This flexibility was likely intended to accommodate changes in the financial sector. Adjusting the threshold is a prudent exercise of regulatory discretion, ensuring that the exemption keeps pace with economic growth and inflation.

Since the threshold's adoption, there has been a marked increase in assets across the banking sector. This growth dilutes the relative significance of a $10 billion asset size, adjusting is necessary for parity to the original intent.

Conclusion:

Eliminating or significantly revising the Durbin Amendment would allow for a more balanced and competitive payments environment, encouraging innovation and adaptation in line with contemporary market dynamics.

Setting tiered interchange fees by rule is not only consistent with the statutory guidelines of Dodd-Frank but is also a necessary adaptation to the differentiated cost structures in the banking sector. This approach would ensure that interchange fees are both fair and reflective of actual operational costs, thereby supporting a diverse and healthy financial ecosystem where institutions of all sizes can thrive.

Considering the factors outlined above, it is both reasonable and necessary to revisit and revise the interchange exemption threshold. Raising the threshold would not only align with the statutory framework's flexibility but also reflect the significant asset growth and original legislative intentions. Such a revision would ensure that the regulation continues to effectively balance the interests of smaller financial institutions with the overarching goals of the interchange fee standards.

The Association appreciates the opportunity to provide comments and recommends the following:

- Urge Congress to eliminate the Durbin Amendment as it is no longer relevant in a rapidly evolving payments ecosystem.

- Create a tiered interchange system that would be a more faithful execution of the statutory intent, ensuring that fees correspond more closely to the varied costs of different institutions.
- Raise the exemption threshold to account for the significant asset growth of smaller financial institutions that were never intended to be subject to this rule.

Respectfully,

John Trull

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