May 10, 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:

The GoWest Credit Union Association ("Association") provides the following comments in response to the proposed amendments to Federal Reserve Regulation II in the above-referenced proceeding.

Introduction:
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. As outlined below, the Association believes that subsequent events show a need for substantial adjustment to Regulation II, and in fact supports the repeal of the Durbin Amendment altogether.

The Durbin Amendment required that the Board issue rules ensuring that interchange fees for large issuers be "reasonable and proportional" to issuers' costs. The Board now proposes to reduce debit interchange to a level *its own analysis shows is* ***below*** *some issuer's costs.* Importantly, the issuers that will be unable to cover their costs under the proposed rule include credit unions modestly above the $10 Billion large-issuer threshold—a critical component of the financial system already struggling to compete against the scale of the largest institutions.

As the association for credit unions across the West, we encourage the Board to adopt a final rule that is reasonable in view of the higher costs borne by the smallest "large" issuers. Such a rule must allow higher interchange transaction fees for institutions between $10 Billion and $100 Billion in total assets, since a uniform rule based on cost data of the largest issuers does not reasonably reflect the costs of these institutions.

Background:
The above-mentioned backlash to passage of the Durbin Amendment 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. The breakdown of the largest financial institutions left taxpayers on the hook for the failure of some large financial institutions and the bailouts of others. The sentiments above were consistently expressed during deliberations in the House, Senate, and Conference Committee. 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 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 its impact against the intent of the legislation (and benefit to consumers), the Federal Reserve Board proposes to update the Durbin rule to further reduce interchange income, creating 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. This issue was noted by Kryss Wozniak, the Section Chief of 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 consists of the transactions by the smaller covered entities above $10 Billion in assets but well below the $3.39 Trillion JP Morgan Chase. The proposal will therefore perpetuate 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 adjustment to the 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 both Congressional intent as expressed in the language of the statute, and the impacts of the changes on smaller institutions and also consumers as you move forward and develop a rule that is fair and equitable. 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 the Durbin Amendment 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

The Association believes that the language of the Durbin Amendment virtually mandates a tiered fee structure in light of the evolving financial landscape and the disparities in operational costs between large and small financial institutions. The relevant statutory text provides that:

> 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 **<u>incurred by the issuer</u>** with respect to **<u>the transaction</u>**. 15 U.S.C. § 1693o-2(a)(2). (Emphasis added.)

The statute clearly focuses on costs incurred by individual issuers with respect to individual transactions, not average costs incurred by the industry as a whole. Congress did not expect that institutions with higher than average costs would not be able to receive enough interchange to cover those costs. Or to put it more directly, Congress did not intend to penalize smaller institutions with less economies of scale and less leverage with vendors by limiting them to recovery of costs at a level borne by larger institutions that do enjoy those benefits.

To reiterate, the statute requires the Board to establish transaction fees that are "reasonable and proportional" in light of "the cost incurred by *the issuer with respect to the transaction*." To be clear: a rule based solely on a cost analysis *for all large issuers in the aggregate* fundamentally fails to meet this charge, since "costs incurred by the issuer with respect to the transaction" are very different by asset size.

Adopting a tiered approach would align with the statutory mandate of covering operational costs and would address the economic realities faced by institutions of varying sizes. The 50 largest financial institutions control 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 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.

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.

As of the end of 2009 before the Durbin Amendment was adopted, the average asset size of the **7554** credit unions in the United States was **$119 M**. At the end of 2023, that average for the **4604** remaining credit unions had risen to $**490 M**. While there were only 3 credit unions in the U.S. over $10 Billion in assets at the end of 2009, there are 21 credit unions over $10 Billion in assets today.

In 2010, for examination purposes the National Credit Union Administration classified credit unions under $10 Million as small credit unions. Today, that

threshold is $50 Million, a fivefold increase since the passage of Dodd Frank. At the other end of the scale, the asset threshold for credit unions to be examined by the NCUA's large credit union unit has increased from $10 Billion to $15 Billion. These changes illustrate the rapidly evolving dynamics of the financial services sector and credit unions in particular. The $10 Billion exemption in the Durbin Amendment is severely outdated and should be increased to keep pace with the changes in the marketplace.

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.**
- Urge Congress to 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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GoWest Credit Union Association champions credit unions in Arizona, Colorado, Idaho, Oregon, Washington, and Wyoming, and the 16.5 million consumers who have chosen them as their preferred financial services partners. Learn more about credit unions at yourmoneyfurther.com.