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August 11, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Federal Reserve System: Debit Card Interchange Fees and Routing*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Board of Governors of the Federal Reserve System, entitled “Debit Card Interchange Fees and Routing” (RIN: 7100-AD 63). We received the rule on July 28, 2011. It was published in the *Federal Register* as an interim final rule; request for public comment on July 20, 2011. 76 Fed. Reg. 43,478.

The interim final rule implements section 920(a)(5) of the Electronic Fund Transfer Act (EFTA) which governs adjustments to debit interchange transaction fees for fraud-prevention costs. The provisions of the interim final rule allow an issuer to receive an adjustment of one cent to its interchange transaction fee if the issuer develops, implements, and updates policies and procedures reasonably designed to identify and prevent fraudulent electronic debit transactions; monitor the incidence of, reimbursements received for, and losses incurred from fraudulent electronic debit transactions; respond appropriately to suspicious electronic debit transactions so as to limit the fraud losses that may occur and prevent the occurrence of future fraudulent electronic debit transactions; and secure debit card and cardholder data. If an issuer meets these standards and wishes to receive the adjustment, it must certify its eligibility to receive the fraud prevention adjustment to the payment card

networks in which the issuer participates. The interim final rule is effective October 1, 2011, and the Board has requested comments that must be submitted by September 30, 2011.

Enclosed is our assessment of the Federal Reserve's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Federal Reserve complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Linda Robertson
Assistant to the Board of Governors
Federal Reserve System

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL RESERVE SYSTEM
ENTITLED
"DEBIT CARD INTERCHANGE FEES AND ROUTING"
(RIN: 7100-AD 63)

(i) Cost-benefit analysis

The interim final rule does not contain a cost-benefit analysis.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Board of Governors incorporated by reference the final Regulatory Flexibility Act (FRFA) analysis published in a related rule published on the same day at 75 Fed. Reg. 43,394. As described in our report on that rule, the Board states that the restrictions related to the interchange fee in the final rule do not directly impact small issuers, because EFTA section 920(a)(6)(A) provides an exemption for any issuer that, together with its affiliates, has assets of less than \$10 billion. However, commenters on the Board's initial regulatory flexibility analysis expressed concerns that absent an express requirement on networks to adopt higher tiers of interchange fees for exempt issuers, such issuers would experience a significant reduction in interchange fee revenue. The Board asserts in its FRFA that EFTA does not impose an affirmative duty on networks to implement different interchange transaction fee rates for covered and exempt issuers. The Board has taken two steps to address these concerns. The Board will publish lists of institutions above and below the small issuer exemption asset threshold to facilitate the implementation of two-tier interchange fee structures by payment card networks. In addition, the Board plans to publish annually information regarding the average interchange fees received by exempt issuers and covered issuers in each payment card network; this information may assist exempt issuers in determining the networks in which they wish to participate.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Federal Reserve is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 28, 2010, the Board published a proposed rule in the *Federal Register*. 75 Fed. Reg. 81,722. As part of the proposal, the Board requested comment on two approaches to designing a framework for the fraud-prevention adjustment to the interchange transaction fee: a technology-specific approach and a non-prescriptive approach. The Board noted that the comments would be considered in the development of a specific proposal for further public comment. The Board received numerous comments on the fraud-prevention adjustment from issuers, depository institution trade associations, payment card networks, merchants, merchant trade associations, individuals, consumer groups, technology companies, consultants, other government agencies, and Members of Congress. The Board summarized and responded to the comments in the interim final rule, and is seeking further comments which must be submitted to the Board by September 30, 2011. 75 Fed. Reg. 43,478. The Board found good cause under 5 U.S.C. 553(b) to conclude that providing notice and opportunity to comment before issuing the interim final rule would be contrary to the public interest, because doing so would prevent the fraud-prevention adjustment from being effective at the same time as the interchange fee standards published at 75 Fed. Reg. 43,394.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The interim final rule contains information collection requirements under the Paperwork Reduction Act (PRA), and the Board requests comments on the requirements. The Board estimates that there are 380 issuers regulated by the federal financial regulatory agencies required to comply with the recordkeeping and reporting provisions under the interim final rule. The Board estimates that the 380 issuers would take, on average, 160 hours (1 month) to develop and implement policies and train appropriate staff to comply with the recordkeeping provisions. This one-time annual PRA burden is estimated to be 60,800 hours. On a continuing basis, the Board estimates issuers would take, on average, 40 hours (one business week) annually to review its fraud prevention policies and procedures, updating them as necessary, and estimates the annual PRA burden to be 15,200 hours. The Board estimates 380 issuers would take, on average, 5 minutes to comply with the reporting provision of the annual certification requirement, and estimates the annual reporting burden to be 32 hours. The total annual PRA burden for this information collection is estimated to be 73,032 hours.

Statutory authorization for the rule

The final rule is authorized by section 920 of the Electronic Funds Transfer Act, as added by section 1075 of the Dodd-Frank Wall Street Reform and Consumer

Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376, as codified at 15 U.S.C. 1693o-2.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Federal Reserve is not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Federal Reserve is not subject to the review requirements of the order.