



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-322284

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 a final rule on July 20, 2011. 76 Fed. Reg. 43,394.

The final rule implements the provisions of section 920 of the Electronic Fund Transfer Act (EFTA), including standards for reasonable and proportional interchange transaction fees for electronic debit transactions, exemptions from the interchange transaction fee limitations, prohibitions on evasion and circumvention, prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions, and reporting requirements for debit card issuers and payment card networks. The final rule is effective October 1, 2011. For the prohibition on network exclusivity (§ 235.7(a)), the general compliance date is April 1, 2012, except as follows:

- payment card networks must comply with §§ 235.7(a)(1) and (a)(3) on October 1, 2011;

- issuers must comply on April 1, 2013, with respect to debit cards that use transaction qualification or substantiation systems and general-use prepaid cards sold on or after April 1, 2013;
- issuers must comply with respect to reloadable general-use prepaid cards sold and reloaded prior to April 1, 2013, by May 1, 2013; and
- issuers must comply with respect to reloadable general-use prepaid cards sold prior to April 1, 2013, and reloaded after April 1, 2013, within 30 days of the reloading.

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

In the final rule, the Board of Governors states that it cannot, at this time, determine whether the benefits to consumers exceed the possible costs to financial institutions. According to the Board, the overall effects of the final rule on financial institutions and on consumers are dependent on a variety of factors, and the Board cannot predict the market response to the final rule.

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

In the final rule, the Board states that although it is difficult for the Board to quantify the analysis at this point, the Board believes that the rule, if promulgated, may have a significant economic impact on a substantial number of small entities. Accordingly, the Board prepared a final regulatory flexibility analysis (FRFA) statement pursuant to the Act. 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. The Board received comments from more than 11,500 commenters regarding the proposal, including comments from issuers, payment card networks, merchants, consumers, consumer advocates, trade associations, and Members of Congress. The Board summarized and responded to the comments in the final rule. 75 Fed. Reg. 43,394.

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

The final rule contains no collections of information pursuant to the Paperwork Reduction Act.

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.