



Federal Reserve Board Issues Final Rules on the Durbin Amendment

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On July 20, 2011 the Board of Governors of the Federal Reserve System (FRB) approved two final rules (collectively, the Final Rules) implementing the Durbin Amendment. One rule caps the amount of debit interchange fees and regulates debit payment networks. The second rule authorizes an upward adjustment to the interchange fee cap to support issuing banks' qualifying fraud prevention activities. A summary of the contents of the Final Rules appears below. For full information, please refer to the full text of the Final Rules which are codified as Regulation II, 12 C.F.R. Part 235.

Debit Interchange Fee Cap

The Durbin Amendment required the FRB to cap debit interchange fees at a "reasonable and proportional" level commensurate with issuing banks' costs. The proposed rule set out two options to satisfy this requirement: (1) a simple flat cap of twelve cents per transaction or (2) a cap set at an issuer's average allowable cost per transaction up to a maximum of twelve cents coupled with a safe harbor of seven cents. The Final Rules adopted a modified version of the flat cap which allows issuers to charge up to 21 cents per transaction plus five basis points times the transaction amount.

Fraud Prevention Adjustment

The Dodd-Frank Act permitted the FRB to modify the interchange fee cap so that issuers could recover their fraud prevention costs. The proposed rule did not include a fraud prevention adjustment, but asked for public feedback related to the topic. The Final Rules allow issuers to impose a one cent interchange fee surcharge for fraud prevention conditioned upon maintenance of debit card fraud detection and deterrence programs. Issuers must also certify that their programs are in compliance on an annual basis. The Staff Commentary provides guidance regarding what constitutes "compliance" for these programs.

Small Bank Exception

The Durbin Amendment includes an important exception for small banks (i.e., banks with less than \$10 billion in consolidated total assets). These issuers are not subject to the stated cap on interchange fees. Under the Final Rules, bank assets will be measured as of December 31 each year to determine eligibility for the small bank exception. Banks that qualify for the small issuer exception for a current year but exceed the total assets threshold at the end of that year must comply with the interchange fee cap by July 1 of the following year. The FRB has published two lists related to the small bank exception. The first lists the large issuers subject to the interchange fee cap. The second lists the small banks that qualify for the exception for 2011.

Debit Network Requirements

The Durbin Amendment also grants merchants more choice and flexibility in routing and processing electronic transactions. The proposed rule again described two potential approaches for handling of this issue. In the Final Rules, issuers and payment networks must enable debit cards to be processed on at least two unaffiliated networks. The Final Rules also provide that (1) payment networks may not restrict an issuer's ability to enable its cards to be processed on an unaffiliated network, and (2) merchants control the routing and may route an electronic debit transaction to any network that is enabled to process a transaction.

Effective Date

The Final Rule is effective October 1, 2011; however, compliance with the debit network requirements (subject to certain exceptions) is not mandatory until April 1, 2012.

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