



November 22, 2023

Ms. Ann E. Misback  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

**BY ELECTRONIC MAIL**

**Re: NPRM on Debit Card Interchange Fees and Routing (Regulation II), Docket No. R-1818**

Dear Ms. Misback:

The American Bankers Association, the Bank Policy Institute, the Consumer Bankers Association, the Credit Union National Association, the Electronic Payments Coalition, the Independent Community Bankers of America, the Mid-Size Bank Coalition of America, the National Association of Federally-Insured Credit Unions, the National Bankers Association, and The Clearing House (together, the Associations) are writing with respect to the Board of Governors of the Federal Reserve System's (Board) notice of proposed rulemaking (NPRM) regarding Debit Card Interchange Fees and Routing (Regulation II).<sup>1</sup> The NPRM proposes significant changes to the provisions of Regulation II related to interchange fee caps. The NPRM would substantially reduce the interchange fee cap and permit the Board to amend the interchange fee cap every two years without engaging in a notice and comment rulemaking process. In support of the significant reductions and other proposed changes, the Board relies on data collected every other year from large debit card issuers.<sup>2</sup>

---

<sup>1</sup> 88 Fed. Reg. 78,100 (Nov. 14, 2023).

<sup>2</sup> The NPRM refers to the "2021 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions" report.

Board of Governors of  
the Federal Reserve System  
November 22, 2023

We are supported by other credible voices<sup>3</sup> in our view that the NPRM is a discretionary rulemaking that is neither required by statute nor urgent. However, we intend to comment on the NPRM. In order for the public to meaningfully review and comment on the NPRM, we respectfully request that the Board extend the comment period by at least 90 days.

For complex proposals such as this—which require thorough analysis of the underlying data and which would provide for future amendments to Regulation II that would **not** be subject to the notice and comment rulemaking process—the Office of the Federal Register has indicated that extended comment periods of 180 days or more are appropriate.<sup>4</sup> To thoughtfully opine on the NPRM, the Associations need this additional time to collect current and historical data from our members and analyze such data against the Board’s proposed interchange fee caps. The data presented to support the Board’s proposal is complex, dated, and incomplete, requiring the private sector to invest significant time to digest and supplement it. Moreover, the NPRM coincides with a number of other major rulemaking proceedings that impact our members. The Associations need time to consider the interplay between these rulemakings and the holistic impact that these rulemakings will have on our members, consumers, and financial markets in order to thoughtfully comment. These concerns are especially acute given the timing of the publication of the NPRM, which has resulted in much of the comment period coinciding with the holiday season.

Additionally, the Board has not released to the public the underlying disaggregated data and empirical analysis on which the Board relies. Without this information, it is difficult to replicate the analysis in any meaningful way, significantly hindering the public’s ability to comment on the methodology proposed. The Associations understand that releasing the data on which the Board has relied may raise confidentiality concerns; accordingly, we request only that the Board release the disaggregated data in a manner that is anonymized to the extent necessary to protect confidential bank and credit union information. Such disclosure is consistent with bedrock principles of administrative law. As the D.C. Circuit has explained, it “is the agency’s *duty* to identify and make available . . . data that it has employed in reaching the decisions to propose particular rules.”<sup>5</sup> After all, “[i]t is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.”<sup>6</sup> In short, the Board must disclose the “most critical factual material” on which it relied and provide “further opportunity to comment.”<sup>7</sup>

---

<sup>3</sup> “I don’t think that the Fed was legally required under the Durbin Amendment -- there are a variety of very clear interpretive practices that would have said that ‘we’ve done what we need to do, we don’t need to go further in ratcheting the fees down further’ and I think the Fed should have taken that path.”  
Former Federal Reserve Vice-Chair Randal Quarles on *Banking with Interest* (Nov. 14, 2023).

<sup>4</sup> Office of the Federal Register, *A Guide to the Rulemaking Process* (2011), available at [https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf).

<sup>5</sup> *Owner-Operator Indep. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (emphasis added; citation omitted).

<sup>6</sup> *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973).

<sup>7</sup> *Chamber of Commerce v. SEC*, 443 F.3d 890, 900-01 (D.C. Cir. 2006).

Board of Governors of  
the Federal Reserve System  
November 22, 2023

In light of the above considerations, we respectfully request that the Board extend the comment period for the NPRM by at least 90 days to ensure adequate time for the public to review and meaningfully comment on the proposal and the data that we have requested the Board to release.

Sincerely,

AMERICAN BANKERS ASSOCIATION

BANK POLICY INSTITUTE

CONSUMER BANKERS ASSOCIATION

CREDIT UNION NATIONAL ASSOCIATION

ELECTRONIC PAYMENTS COALITION

INDEPENDENT COMMUNITY BANKERS OF AMERICA

MID-SIZE BANK COALITION OF AMERICA

NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS

NATIONAL BANKERS ASSOCIATION

THE CLEARING HOUSE