



NEWS RELEASE – JULY 2011

Federal Reserve Issues Final Rule on Debit Card Interchange Fees and Routing

Last week the Federal Reserve issued its long-awaited Final Rule on Debit Card Interchange Fees and Routing. This rule implements the provisions of the Durbin Amendment to the Dodd-Frank financial reform law.

With respect to debit card interchange fees, the Final Rule's treatment of health care and employee benefit cards largely conforms to the proposed rule issued for comment last December, with one important exception beneficial to HSAs. While benefit cards are not specifically named as exempt from interchange fee regulation, the Final Rule does retain the Durbin Amendment's exemption for general-use reloadable prepaid cards. Our reading and the widely held view of the industry is that benefit debit cards meet the definitional characteristics of general-use reloadable prepaid cards and are therefore exempt from fee regulation. Moreover, the Final Rule confirmed the exemption for small issuers such as The Bancorp Bank (those with less than \$10 billion in assets, including affiliates) regardless of product type. With respect to HSAs, the Final Rule exempts bona-fide trust accounts from the interchange fee provisions of Durbin, thereby clearing up a troubling ambiguity in the December proposed rule and exempting all HSAs.

The Final Rule also addressed the routing provisions of Durbin by requiring that all debit and prepaid cards be routable on an unaffiliated PIN network as well as a signature network (the so-called "network exclusivity" requirements). However, the compliance date for benefit debit cards was delayed until April 1, 2013.

What It Means

The Final Rule exempts health and employee benefit cards from interchange fee regulation.

While this is welcome news, the payment card networks must be willing and able to support a two-tier interchange rate structure in order for this exemption to be honored in practice. While we believe the networks will honor the exemption, the market will ultimately determine the unregulated interchange rates, and there is the risk that over time those rates could change or even collapse into the regulated structure.

On or before April 1, 2013, all debit and prepaid cards, including health and employee benefit cards, will be required to support a PIN for use at the point of sale. That will reduce interchange fees as merchants prompt consumers to use a PIN because PIN transaction interchange fees are lower than comparable transactions routed over a signature network. It is likely that, given the delayed effective date, efforts will be made in the interim to enact legislation to exempt health and employee benefits cards from the network exclusivity provisions.