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Here Comes the Durbin Amendment

On June 29th the Federal Reserve Board (Fed) issued the final version of Regulation II, which sets new rules for debit card transactions. The Final Rule implements Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act — known in the payment industry as the Durbin Amendment. Signed by the president on July 21, 2010, the Act gave the Fed one year to draft the proposed regulation, obtain public comment, and issue a final, revised rule. In order to help you understand the impact of the amendment, this article looks at what was in the proposed rule and what you need to know about the Final Rule.

New Rule Effective Date is October 1, 2011

The Fed issued its proposed regulation — Proposal II — on December 16, 2010. The Proposal included two proposed alternative interchange fees standards and provisions governing transaction routing. The draft rule attracted thousands of comments from consumers, lawmakers, academics, and the industry. Although Fed Chairman Ben Bernanke asked Congress to extend the deadline to propound the final rule, the legislative effort to do so failed earlier this month, and, barring a court-ordered stay, this final rule will go into effect on October 1, 2011 — a new deadline set by the Fed.

Rule Addresses Two Major Issues

Most of the attention paid to Reg II has centered on two issues — the limits on debit interchange fees and the interpretation of the routing and exclusivity provisions. The Final Rule answers those questions. It sets a cap of 21 cents on transactions that fall within its scope (plus 5 basis points on the transaction value) and requires issuers to place two unaffiliated marks on every debit card. But the Final Rule does not answer every question that had been raised in or about the original draft, and it does not account for many of the concerns raised in the public comments.

Final Rule Highlights

Pricing Proposals

The Proposed Rule requested comment on two alternative proposals for interchange fees. One of the alternatives contains an issuer-specific standard with a safe harbor (of 7 cents per transaction) and a cap (of 12 cents per transaction), and the other simply provides the 12 cent per transaction cap.

The Final Rule adopts a modified version of the second alternative: issuers may charge up to 21 cents per transaction, plus five basis points of the transaction value (the *ad valorem* component). On a \$40 transaction, this represents a 48 percent cut in revenue, which is a substantial improve-

ment, from an issuer perspective, on the 75 percent cut originally proposed.

Routing Provisions

The Proposed Rule requested comment on two alternative approaches: one alternative would require at least two unaffiliated networks per debit card, and the other would require at least two unaffiliated networks per debit card for each type of cardholder authorization method (such as signature or PIN). Under both alternatives, the issuers and networks would be prohibited from inhibiting a merchant's ability to direct the routing of debit card transactions over any network that the issuer enabled to process them.

The Final Rule adopts the first alternative. Issuers must put two unaffiliated networks on each card.

Fraud Adjustment

The Proposed Rule did not set a standard for an allowable fraud adjustment, although the Fed recognized that an adjustment to the statutorily-set interchange fee prices may be appropriate to account for costs associated with fraud prevention programs. The Fed instead left this adjustment to be determined at a future time.

The Final Rule recommends a standard cap of 1 cent per transaction to account for fraud prevention and seeks comment on whether that cap

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What Payments Instrument Will You Declare Independence from This Year?

With the seriousness of Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (aka the Durbin Amendment) looming, I hope you enjoy these light-hearted articles about payments independence from PYMTS.com.

Give Me Liberty or Give Me Death (of Paper Checks)



By Karen Webster, CEO, Market Platform Dynamics

“Truth loves an appeal to the common-sense of mankind.” — “American Independence” by Samuel Adams (August 1, 1776)

As we celebrate the 235th anniversary of our independence, here's the common-sense truth about payments: a lot of them still happen via paper check. Sure, as an overall percentage of payments, it is declining, but for crying out loud, paper checks have been around since about 1500 and don't seem like they are going away any time soon. Be honest, how many times a month do you still write checks in spite of all of the electronic methods available to make payment?

Virtually all of the service people I deal with (plumber, electrician, landscaper, etc.) invoice me and ask for a check as payment. When it came time to pay the piper (well actually, the doctor and hospital) for the balance due from my winter broken wrist escapade, it had to be done by check, too. (In truth, I could have written my credit card number on the billing receipt, but as long as I was writing, I might as well just write the check and be done with it). Now,

it would be much easier to rid myself of my check dependence if two things happened: the people I paid each month were part of my online banking biller directory (or even had online bill payment capabilities) and/or the mobile acceptance revolution made its way to my service providers. Both strike me as another revolution away from happening.

The other paper dependence that I would love to shed, but don't think I will any time soon, is being paid by check. That, as we know, is among the last bastions of electronic payments and will take time. I will say though that it is really ironic that an industry that has done so much to further electronic payments still uses paper checks to pay its own bills. That in and of itself is an interesting insight into the challenges of cracking that chicken-and-egg dilemma, the industry not eating its own dog food or whatever. But make no mistake, getting paid — paper check and all — is certainly better than the alternative.

In the infamous words of Samuel Adams, “Courage, then, my PYMNTS.com countrymen!” and help us shed the shackles of paper check and experience the freedom of electronic payments!

Help Me Declare Independence from Receipts



By Margaret Weichert, Managing Director, Market Platform Dynamics

“I have not yet begun to fight.”

I hate receipts. They fill up my wallet, making it big and bulky. They line the bottom of my purse, and they are never where I need them on the rare occasion when I need to return something. And don't even get me started on the receipt mess I need to deal with for expense reports.

So in this month of Independence Day, I send out the call to patriots and technologists alike: help me declare independence from receipts. All I will need is an effective mobile solution that captures, stores, and organizes my receipts electronically, with a few small enhancements that allow me to export the receipts for expense reports and show them on screen to skeptical sales clerks. It's not much to ask and would be so liberating. Perhaps not “give me liberty or give me death” type liberation but certainly something to think about. ■

Sheshunoff™

Editor-in-Chief: Marge Simmons

Marge Simmons is a Certified Cash Manager (CCM) and Accredited ACH Professional (AAP), as well as a nationally recognized speaker, author, and consultant specializing in financial products, bank operations, and ACH services.

Editorial queries:
tellers@sheshunoff.com

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should be adjusted. Issuers can only take advantage of this adjustment if they develop and implement fraud procedures designed to meet the standards for an effective fraud-prevention program set forth in the Final Rule.

Three-Party Networks

In the Proposed Rule, the Board requested comment on the application of the interchange fee standards to three-party systems, in which a single payment card network typically operates as both the card issuer and merchant acquirer. The Board noted potential complications, including the potential for such a network to apportion all fees to its acquirer function (which is not covered by the interchange fee standards) rather than its issuer function (which is covered). The Board also raised the potential for complications caused by its proposed routing and exclusivity regulations on these traditionally "closed" systems.

The Final Rule excludes three-party networks from its definition of "payment card networks." The Final Rule also excludes from the definition of "card, other payment code or device" any card, code, or device only used to initiate general ledger transactions not issued or approved for use through a payment card network.

Reloadable Prepaid Cards

In addition, the Proposed Rule listed exemptions, including certain reloadable prepaid cards that are (i) not issued or approved for use to access or debit accounts held by or for the benefit of individual cardholders; and (ii) reloadable and not marketed or labeled as gift cards or gift certificates. Thus, the exemption would apply to prepaid cards that access underlying funds held in an omnibus account or subaccounts created for accounting purposes, but not to prepaid cards that accessed separate accounts established by the issuer.

Rule II now clarifies that a general-use prepaid card is only exempt from the Rule's requirements either (1) if the card is the only means to access the funds underlying the card; or (2) unless all remaining funds are provided to the cardholder in a single transaction.

Exclusion of ACH Transactions

Under the Proposed Rule, "Debit Card" was defined as: "any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, and regardless of whether the issuer holds the account," and "[i]ncludes any general-use prepaid card." Further, the term debit card did not include: "(i) Any card, or other payment code or device, that is redeemable upon presentation at only a single merchant

or an affiliated group of merchants for goods or services; (ii) A check, draft, or similar paper instrument, or an electronic representation thereof; or (iii) An account number, when used to initiate an ACH transaction to debit a person's account."

Account numbers used to initiate ACH transactions used to debit individual users' accounts were specifically excluded from the definition of "debit card." However, the Board suggested that decoupled debit arrangements — which involve ACH debit instructions sent by an issuer to a non-affiliated account-holding institution — were included in the definition of "debit card."

Under the Final Rule, certain forms of decoupled debit cards are included within the definition of "debit card." Specifically, decoupled debit cards that are processed solely through ACH are not included, but decoupled debit cards that involve any processing over payment card networks are considered "debit cards." The Final Rule defines the issuer of a decoupled debit transaction as the entity that provides the card to the consumer and initiates a preauthorized ACH debit from the consumer's account held at an unaffiliated financial institution. Furthermore, the Board removed the language explicitly exempting ACH transactions, but noted in the Federal Register Notice that such transactions are not covered. ■

Source: Tom Brown is a partner, Katherine Robison is counsel, and Samuel Zun is an associate in the San Francisco office of O'Melveny & Myers LLP.

News from the Front Line ...

BBVA Improves Customer Experience with Rollout of ATM for the Future

Banco Bilbao Vizcaya Argencaria (BBVA) and NCR Corporation (NCR) plan to roll out revolutionary concept ATMs called ABIL. The ATMs will provide BBVA customers with a faster, easier, and intuitive experience through a radical new interface and technology innovation.

Touch-Screen Display

The sleek, streamlined design completely changes the traditional look and feel of the ATM and looks more like a multimedia device with internet access to be used in the financial branch. A touch-screen display provides an intuitive interface that is simple and easy to use and displays relevant service information in a clear way. For practical and privacy reasons, the screen rotates 90 degrees. A

single slot accepts cash, checks, and passbooks and distributes cash and receipts.

ATMs to be Deployed in Southern U.S.

The new ATM has been rolled out in Spain with 20 units deployed in 2010. The bank is planning to install 200 more units in Spain during 2011, followed by ATMs spread across a

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number of countries, including the southern United States and some in South America.

Humanizing the ATM

"BBVA is constantly looking for ways to strengthen relations with its customers and the project was not how to further automate the terminal, but how to humanize the machine," commented Vicente Amores, NCR's global director for BBVA. "The result is a new self-service device based on three qualities: simple, human, and flexible." BBVA Group received the Innovation in Banking Technology award for its ABIL project from the *The Banker* magazine.

About BBVA

BBVA is a global group that offers individual and corporate customers a complete range of financial and non-financial products and services. It enjoys a solid leadership position in the Spanish market, where it first began its activities over 150 years ago. It also has a leading franchise in South America, is the largest financial institution in Mexico, is one of the 15 largest U.S. commercial banks, and is one of the few large international groups operating in China.

Chase Offers Military Personnel Premier Checking Account Benefits

On July 1 Chase launched Military Banking, its latest initiative to support military personnel with special benefits. The premium checking account benefits typically reserved for high-balance customers are now available to active-duty Armed Forces service members along with members of the Guard and Reserve. Current Chase military customers with direct deposit were automatically upgraded to Chase Premier Plus with Military Banking Benefits on July 1. New Chase Military Banking customers will receive the benefits if they set up direct deposit of their military base pay. The deposit of allotments does not meet this requirement.

Lower Costs for Everyday Banking

"Our servicemen and servicewomen deserve the very best Chase has to offer," said Todd Maclin, CEO of Retail Banking at Chase. "We are lowering the cost for military personnel to do their everyday banking wherever they are around the world." Benefits of Chase Military Banking include:

- No monthly fee or balance requirements
- No Chase ATM withdrawal fee for using non-Chase ATMs anywhere in the world
- No Chase fee on incoming/outgoing wire transfers
- No fee for money orders, official checks, and travelers checks at any of Chase's branches
- Free Chase design checks
- Free safe deposit box
- Interest paid on the checking balances
- Chase Plus Savings with higher interest rates and no monthly service fee
- Two additional Chase Premier Plus Checking accounts with no monthly service fee

In addition, active-duty service members who own a small business are now able to take advantage of special Business Banking offers that began July 1. Chase also has a Military Mortgage program that provides military service members with significant financial advantages and customized offers on home loans.

Initiatives to Support Military Veterans

Earlier this year, the bank developed a comprehensive strategy to support the unique needs of military members, veterans, and their families in the areas of homes, jobs, and education. Since then, it has launched a series of initiatives in close partnership with government organizations, non-profits, educational institutions, and other firms. Specifically, Chase is providing 1,000 homes to veterans in the next five years through its non-profit partners, and through the 100,000 Jobs Mission partnership pledges with

other firms to collectively hire 100,000 veterans by 2020.

Chase also partnered with Syracuse University to establish the Institute for Veterans and Military Families to provide education programs for veterans and in-depth analysis of the challenges facing the veteran community. The institute will capture best practices and serve as a forum to facilitate new partnerships and strong relationships between the individuals and organizations committed to making a difference for veterans and military families. In addition, the bank established a multi-year partnership with the Center for a New American Story to address issues impacting U.S. service members, veterans, and their families in support of the White House's "Joining Forces" initiative.

About Chase

Chase is the U.S. consumer and commercial banking business of JPMorgan Chase & Co., a leading global financial services firm with assets of \$2.2 trillion and operations in more than 60 countries. ■

It's One of Those Days...

when one of our regular talkative customers came through the drive thru and started her daily chit chat, a second car drove up in lane 3 and buzzed in. We then told our regular that we would be right with her because another customer had just buzzed in. She looked confused, so we then repeated to her a couple of times that a customer had just buzzed in. The regular customer then asked "Who got busted?"

Heidi R. Arnaud
Gulf Coast Bank
Lafayette, LA

Do you have a story to share? A \$10 check is awarded to all tellers whose contributions are printed in BTR. Please e-mail your stories to tellers@sheshunoff.com.