

**United States Senate**

WASHINGTON, DC 20510

**FDIC**

February 23, 2011

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The Honorable Ben Bernanke  
 Chairman  
 The Federal Reserve Board  
 Twentieth and Constitution Avenue, NW  
 Washington, DC 20551

**OFFICE OF LEGISLATIVE AFFAIRS**

Dear Chairman Bernanke:

We are writing to urge the Federal Reserve Board (the "Board") to create a meaningful and workable small issuer exemption from the interchange requirements under Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") that takes into account the interests of all stakeholders before implementing any final rule.

As you know, the Act requires that "[t]he amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer. . . ." The Act, however, exempts certain issuers from the requirement if they, and their affiliates, have fewer than \$10 billion in assets.

When we supported the amendment that created Section 1075, we understood that small community banks would be exempt from the lower interchange fee levels. In your testimony before the Senate Committee on Banking, Housing and Urban Affairs on February 17, 2011, you indicated that, "it is possible that because merchants will reject more expensive cards from smaller institutions or because networks will not be willing to differentiate the interchange fee for issuers of different sizes, it is possible that that exemption will not be effective in the marketplace." and that "it is possible that, in practice, [community banks] would not be exempt from the lower interchange fee." Chairwoman Bair echoed your comments when she expressed concern about the efficacy of the exemption at the same hearing.

We are very concerned that the rule might prevent small issuers from benefiting from the exemption set forth in the Act. We would also like the Board to adequately account for fraud prevention costs, which all issuers typically absorb, when determining the final rule. Interchange fees offset the costs associated with debit transactions and enable smaller institutions to provide their customers lower cost access to their checking accounts. If the Act's limits on such fees ultimately affect smaller institutions,

consumers may lose access to free checking or other important services that have become common in today's marketplace.

We supported interchange reform with the understanding that the Act explicitly exempted smaller institutions from its limits on interchange fees. It is therefore our hope that the Board will work aggressively to ensure that the small issuer exemption is fully realized in its final rules.

We appreciate the complexity involved in the rule writing process and urge you to create a practical and effective small issuer exemption that takes into account the interests of all stakeholders before the rules pertaining to Section 1075 are implemented. Thank you in advance for your consideration. If you have any questions regarding the foregoing, please do not hesitate to contact us.

Sincerely,



Kay R. Hagan  
United States Senator



Michael F. Bennet  
United States Senator

cc: The Honorable Sheila Bair  
Chairman  
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