

112TH CONGRESS
1ST SESSION**S.** _____

To study the market and appropriate regulatory structure for electronic debit card transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Kyl and Mr. Toomey

Mr. TESTER (for himself, Mr. CORKER, Mr. CARPER, Mr. ROBERTS, Mr. COONS, Mr. LEE, and Mr. NELSON of Nebraska) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To study the market and appropriate regulatory structure for electronic debit card transactions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Debit Interchange Fee
5 Study Act of 2011".

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) in response to the proposed debit inter-
9 change rule of the Board of Governors of the Fed-

1 eral Reserve System mandated by section 1075 of
2 the Dodd-Frank Wall Street Reform and Consumer
3 Protection Act, the Chairman of Board, the Comp-
4 troller of the Currency, the Chairperson of the Fed-
5 eral Deposit Insurance Corporation, and the Chair-
6 man of the National Credit Union Administration
7 Board have publicly raised concerns about the im-
8 pact of the proposed rule;

9 (2) while testifying before the Committee on
10 Banking, Housing, and Urban Affairs of the Senate
11 on February 17, 2011, the Chairman of the Board
12 stated in response to questions about the small bank
13 exemption to the interchange rule, “. . .there is
14 some risk that the exemption will not be effective
15 and that the interchange fees available through
16 smaller institutions will be reduced to the same ex-
17 tent we would see for larger banks”;

18 (3) the Acting Comptroller of the Currency, in
19 comments to the Board, cited safety and soundness
20 concerns and stated, “. . .we believe the proposal
21 takes an unnecessarily narrow approach to recovery
22 of costs that would be allowable under the law and
23 that are recognized and indisputably part of con-
24 ducting a debit card business. This has long-term

1 safety and soundness consequences – for banks of all
2 sizes. . .”;

3 (4) the chairperson of the Federal Deposit In-
4 surance Corporation stated in comments to the
5 Board regarding the proposed rule their concern
6 that the small bank exemption would not work, stat-
7 ing, “. . .we are concerned that these institutions
8 may not actually receive the benefit of the inter-
9 change fee limit exemption explicitly provided by
10 Congress, resulting in a loss of income for commu-
11 nity banks and ultimately higher banking costs for
12 their customers”;

13 (5) the chairman of the National Credit Union
14 Administration Board, in comments to the Board,
15 cited concern with making sure there are “meaning-
16 ful exemptions for smaller card issuers”; and

17 (6) all of the comments and concerns raised by
18 the banking and credit union regulatory agencies
19 cast serious questions about the practical implemen-
20 tation of section 1075 of the Dodd-Frank Wall
21 Street Reform and Consumer Protection Act, and
22 further study and consideration are needed.

23 **SEC. 3. RULEMAKING AND EFFECTIVE DATES.**

24 (a) **EXTENSION FOR RULEMAKING TIMELINES AND**
25 **REVISED EFFECTIVE DATE.**—Section 920 of the Elec-

1 tronic Fund Transfer Act (15 U.S.C. 1693o-2) is amend-
2 ed—

3 (1) in subsection (a)(3)(A), by striking “9
4 months after the date of enactment of the Consumer
5 Financial Protection Act of 2010” and inserting “24
6 months after the date of enactment of the Debit
7 Interchange Fee Study Act of 2011”;

8 (2) in subsection (a)(5)(B)(i), by striking “9
9 months after the date of enactment of the Consumer
10 Financial Protection Act of 2010” and inserting “24
11 months after the date of enactment of the Debit
12 Interchange Fee Study Act of 2011”;

13 (3) in subsection (a)(8)(C), by striking “9-
14 month period beginning on the date of the enact-
15 ment of the Consumer Financial Protection Act of
16 2010” and inserting “24-month period beginning on
17 the date of enactment of the Debit Interchange Fee
18 Study Act of 2011”;

19 (4) in subsection (a)(9), by striking “12-month
20 period beginning on the date of the enactment of the
21 Consumer Financial Protection Act of 2010” and in-
22 serting “30-month period beginning on the date of
23 enactment of the Debit Interchange Fee Study Act
24 of 2011”;

1 (5) in subsection (b)(1)(A), by striking “1-year
2 period beginning on the date of the enactment of the
3 Consumer Financial Protection Act of 2010” and in-
4 serting “24-month period beginning on the date of
5 enactment of the Debit Interchange Fee Study Act
6 of 2011”; and

7 (6) in subsection (b)(1)(B), by striking “1-year
8 period beginning on the date of the enactment of the
9 Consumer Financial Protection Act of 2010” and in-
10 serting “24-month period beginning on the date of
11 enactment of the Debit Interchange Fee Study Act
12 of 2011”.

13 (b) EARLIER RULEMAKING VOIDED; NEW RULE-
14 MAKING REQUIRED.—Any regulation proposed or pre-
15 scribed by the Board pursuant to section 920 of the Elec-
16 tronic Fund Transfer Act (as amended by the Dodd-
17 Frank Wall Street Reform and Consumer Protection Act)
18 prior to the date that is 6 months after the date of comple-
19 tion of the study required under section 4 shall be with-
20 drawn by the Board and shall have no legal effect.

21 **SEC. 4. STUDY.**

22 (a) STUDY REQUIRED.—Not later than 12 months
23 after the date of enactment of this Act, the study agencies
24 shall jointly submit a report to the Committee on Banking,
25 Housing, and Urban Affairs of the Senate and the Com-

1 mittee on Financial Services of the House of Representa-
2 tives regarding the impact of regulating debit interchange
3 transaction fees and related issues under section 920 of
4 the Electronic Fund Transfer Act.

5 (b) SUBJECTS FOR REVIEW.—In conducting the
6 study required by this section, the study agencies shall ex-
7 amine the state of the debit interchange payment system,
8 including the impact of section 920 of the Electronic Fund
9 Transfer Act on consumers, entities that accept debit
10 cards as payment, all financial institutions that issue debit
11 cards, including small issuers, and debit card networks,
12 and shall specifically examine—

13 (1) the costs and benefits of electronic debit
14 card transactions and alternative forms of payment,
15 including cash, check, and automated clearing house
16 (ACH) for consumers, merchants, issuers, and debit
17 card networks, including—

18 (A) individual consumer protections, ease
19 of acceptance, payment guarantee, and security
20 provided through such forms of payments for
21 consumers;

22 (B) costs and benefits associated with ac-
23 ceptance, handling, and processing of different
24 forms of payments, including labor, security,
25 verification, and collection where applicable;

1 (C) the extent to which payment form im-
2 pacts incremental sales and ticket sizes for mer-
3 chants;

4 (D) all direct and indirect costs associated
5 with fraud prevention, detection, and mitiga-
6 tion, including data breach and identity theft,
7 and the overall costs of fraud incurred by debit
8 card issuers and merchants, and how those
9 costs are distributed among those parties; and

10 (E) financial liability and payment guar-
11 antee for debit card transactions and associated
12 risks and costs incurred by debit card issuers
13 and merchants, and how those costs are distrib-
14 uted among those parties;

15 (2) the structure of the current debit inter-
16 change system, including—

17 (A) the extent to which the current struc-
18 ture offers merchants and issuers, particularly
19 smaller merchants and issuers sufficient com-
20 petitive opportunities to participate and nego-
21 tiate in the debit interchange system;

22 (B) an examination of the benefits of al-
23 lowing interchange fees to be determined in bi-
24 lateral negotiations between merchants and
25 issuers, including small issuers directly;

1 (C) mechanisms for allowing more price
2 discovery and transparency on the part of the
3 consumer; and

4 (D) the ability of new competitors to enter
5 the payment systems market and an examina-
6 tion into whether structural barriers to entry
7 exist; and

8 (3) the impact of the proposed rule reducing
9 debit card interchange fees issued by the Board enti-
10 tled, “Debit Card Interchange Fees and Routing”
11 (75 Fed. Reg. 81,722 (Dec. 28, 2010)), if such pro-
12 posed rule were adopted without change, including—

13 (A) the impact on consumers, including
14 whether consumers would benefit from reduced
15 interchanges fees through reduced retail prices;

16 (B) the impact on lower and moderate in-
17 come consumers and on small businesses with
18 respect to the cost and accessibility of payment
19 accounts and services, the availability of credit,
20 and what alternative forms of financing are
21 available and the cost of such financing;

22 (C) the impact on consumer protection, in-
23 cluding anti-fraud, customer identification ef-
24 forts, and privacy protection;

1 (D) the impact of reduced debit card inter-
2 change fees on merchants, including a compari-
3 son of the impact on small merchants versus
4 large merchants;

5 (E) the potential consequences to mer-
6 chants if reduced debit interchange fees result
7 in elimination of the payment guarantee or
8 other reductions in debit card services to mer-
9 chants or shift consumers to other forms of
10 payments;

11 (F) the impact of significantly reduced
12 debit card interchange fees on debit card
13 issuers and the services and rates they provide,
14 if fees do not adequately recoup costs and in-
15 vestments made by issuers and the potential
16 impact on the safety and soundness of issuers;

17 (G) whether it is possible to exempt or
18 treat differently a certain class of issuers within
19 the debit interchange system, such as small
20 issuers and the impact of market forces on such
21 treatment;

22 (H) the extent to which a transition to a
23 fee cap from an interchange fee that is propor-
24 tional to the overall cost of a transaction could

1 provide a reasonable rate of return for issuers
2 and adequately cover fraud and related costs;

3 (I) the impact on other entities that utilize
4 debit card transactions, including the debit card
5 programs of Federal and State entities.

6 (J) the impact of shifting debit transaction
7 routing from card issuers to merchants, includ-
8 ing resulting changes to interchange fees and
9 costs for card issuers; and

10 (K) the impact of mandating a specific
11 number of enabled networks on merchants and
12 debit card issuers, including the specific and
13 unique impact on small issuers.

14 **SEC. 5. DEFINITIONS.**

15 For purposes of this Act, the following definitions
16 shall apply:

17 (1) BOARD.—The term “Board” means the
18 Board of Governors of the Federal Reserve System.

19 (2) STUDY AGENCIES.—The term “study agen-
20 cies” means the Board, the Office of the Comptroller
21 of the Currency, the Federal Deposit Insurance Cor-
22 poration, and the National Credit Union Administra-
23 tion.

24 (3) SMALL ISSUERS.—The term “small issuers”
25 means debit card issuers that are depository institu-

- 1 tions, including community banks and credit unions,
- 2 with assets of less than \$10,000,000,000.