



June 6, 2023

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2221 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McHenry and Ranking Member Waters:

On behalf of the National Restaurant Association, we appreciate the opportunity to provide you with our views on draft legislation that would increase asset thresholds at which financial institutions become subject to Federal Reserve Regulation II. In short, we oppose any change to the asset threshold for the applicability of the regulatory requirements governing debit card fees because of the negative impacts it would have on an already stressed restaurant industry.

The U.S. restaurant and foodservice industry is comprised of nearly one million outlets with a workforce of more than 15 million employees that is forecast to reach nearly \$1 trillion in sales this year. The National Restaurant Association ("the Association") is the leading business association for the industry, and together with 52 state associations, we serve every restaurant through advocacy, education, and food safety.

For restaurant owners and operators, accepting debit cards are an absolute imperative to best serve their customers, and ultimately, stay in business. However, facilitating card payments is often one of the highest costs borne by our industry, behind labor and food. And in the current economic environment, restaurants are juggling a roughly 25% increase in food costs and an 18% increase in payroll expenses on top of these extremely costly interchange fees.

As such, making any change in the asset threshold for covered financial institutions in the debit space would allow the big banks to continue to take advantage of small- and medium-sized businesses. In fact, Regulation II already provides huge profits to those that are subject to it. In 2021 alone, financial institutions' swipe fee revenue exceeded their costs by about \$11.4 billion – making the total of their revenues since 2011 about \$90 billion more than their costs.

Further contributing to card issuers' profits is the fact that the debit swipe fees merchants pay to cover fraud losses exceed the fraud losses that financial institutions incur from debit transactions. The Federal Reserve has noted that [merchants pay the costs of more than 60% of fraud](#) on dual message debit cards. Today, restaurant operators pay for fraud in three separate ways:

- 1) Banks and networks require merchants to pay fraud adjustment costs as part of their interchange fees. So, every time a payment is swiped, a restaurant is pre-paying for fraud losses.
- 2) When a card is fraudulently used, merchants are responsible for the full cost of the amount charged back to the card – plus an additional fee to process the chargeback – instead of the loss coming from the amount already collected in the original processing fee.
- 3) If a merchant suffers a data breach, that business is responsible for the cost of all the consumer fraud losses, plus the costs for the issuing bank to replace any card that could have been impacted by the breach.

Finally, we'd be remiss not to point out that Regulation II allows any financial institution, no matter its size, to freely set its own prices and not be subject to any regulatory limits on its fee levels. However, most financial institutions have not utilized this "safe harbor" mechanism and have continued to align their debit fee structures with the two dominant card networks that set the rates for the entire ecosystem.

Again, the Association appreciates the opportunity to provide the Committee with our views on making any changes to the asset threshold provided in Regulation II governing debit card fees. We believe it would be more productive if the Federal Reserve were to update its regulations to both incentivize competition and improve security in debit cards – and for Congress to pass reforms that finally brings market competition to credit cards. We look forward to our continued collaboration with each of you and the Committee on improvements to the payment card market to bring about much-needed relief to both consumers and to Main Street businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Brennan Duckett", with a stylized flourish at the end.

Brennan Duckett
Director, Technology & Innovation Policy

CC: Members of the Committee on Financial Services of the U.S. House of Representatives