

Federal Reserve Finalizes Rule Eliminating Exclusive Debit Card Networks for E-Commerce

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On October 3, the Federal Reserve Board (Fed) [finalized](#) amendments to Regulation II, the implementing regulation for the Durbin Amendment, now requiring debit card issuers to provide at least two unaffiliated payment card networks to process card-not-present debit card transactions. The final rule is substantially similar to the proposal issued last year, but with certain changes, including changes clarifying that an issuer is not required to ensure that two or more unaffiliated networks will actually be available to the merchant to process every electronic debit transaction.

As a practical matter, an issuer will first need to determine whether card-not-present transactions performed with its debit cards can already be processed on at least two unaffiliated networks; if not already compliant with the final rule, the issuer will need to adjust its debit card processing arrangements to meet the final rule's requirements by July 1, 2023.

As we explained in [our initial alert](#) on this issue, the Durbin Amendment (1) requires card issuers to provide at least two unaffiliated payment card networks to process electronic debit transactions, preventing network exclusivity; and (2) prohibits card issuers from inhibiting merchants from directing the routing of an electronic debit transaction over any network that may process that transaction. However, at the time the Durbin Amendment passed, dual-message networks were primarily used to process card-not-present transactions, such as phone orders and online purchases, while single-message networks had limited ability to process such transactions. Industry practice at that time had been to only enable one dual-message network, causing merchants not to have a choice of payment card network when processing card-not-present transactions. Since the regulation's initial promulgation, payment card networks have adapted to the changing modes of commerce to allow for single-message networks to process card-not-present transactions. However, according to the Fed, as of 2019, roughly a quarter of issuers subject to Regulation II only had card-not-present operability with a single network.

Promulgated under the Dodd-Frank Act, Regulation II governs debit card interchange fees and routing, with the intent to give merchants a way to control their expenses and deliver lower retail prices to consumers. However, bank and credit union trade groups vigorously opposed the current amendment, contending that the amendment would constitute a heavy burden on debit card issuers.

The ABA also opposed the amendment when it was introduced last year, with ABA President and CEO Rob Nichols issuing a [statement](#) on the day it was finalized, stating: "We are deeply disappointed in the Federal Reserve's decision to issue a final rule on changes to Reg II without resolving multiple flaws in the propose identified by the more than 1,700 community financial institutions who offered their comments."

At least one member of the Federal Board of Governors also took issue with the amendment. Michelle Bowman issued a dissenting opinion, highlighting her concern about the amendment's effect on community banks. In her [statement](#), she said: "I believe that significant questions remain about how the rule will affect banks, and particularly community banks, with respect to both fraud and the cost of compliance."

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