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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. 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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

(1) in response to the proposed debit inter-

change rule of the Board of Governors of the Fed-
eral Reserve System mandated by section 1075 of
the Dodd-Frank Wall Street Reform and Consumer
Protection Act, the Chairman of Board, the Com-
troller of the Currency, the Chairperson of the Fed-
eral Deposit Insurance Corporation, and the Chair-
man of the National Credit Union Administration
Board have publicly raised concerns about the im-
 pact of the proposed rule;

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

(3) the Acting Comptroller of the Currency, in
comments to the Board, cited safety and soundness
concerns and stated, "...we believe the proposal
takes an unnecessarily narrow approach to recovery
of costs that would be allowable under the law and
that are recognized and indisputably part of con-
ducting a debit card business. This has long-term
safety and soundness consequences – for banks of all sizes. 

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

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

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

SEC. 3. RULEMAKING AND EFFECTIVE DATES.

(a) EXTENSION FOR RULEMAKING TIMELINES AND 
REVISED EFFECTIVE DATE.—Section 920 of the Elec-
Electronic Fund Transfer Act (15 U.S.C. 1693o-2) is amended—

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

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

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

(4) in subsection (a)(9), by striking “12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010” and inserting “30-month period beginning on the date of enactment of the Debit Interchange Fee Study Act of 2011”;
(5) in subsection (b)(1)(A), by striking “1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010” and inserting “24-month period beginning on the date of enactment of the Debit Interchange Fee Study Act of 2011”; and

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

(b) EARLIER RULEMAKING VOIDED; NEW RULEMAKING REQUIRED.—Any regulation proposed or prescribed by the Board pursuant to section 920 of the Electronic Fund Transfer Act (as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act) prior to the date that is 6 months after the date of completion of the study required under section 4 shall be withdrawn by the Board and shall have no legal effect.

SEC. 4. STUDY.

(a) STUDY REQUIRED.—Not later than 12 months after the date of enactment of this Act, the study agencies shall jointly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Com-
mittee on Financial Services of the House of Represen-
tatives regarding the impact of regulating debit interchange
transaction fees and related issues under section 920 of
the Electronic Fund Transfer Act.

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

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

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

(B) costs and benefits associated with ac-
ceptance, handling, and processing of different
forms of payments, including labor, security,
verification, and collection where applicable;
(C) the extent to which payment form impacts incremental sales and ticket sizes for merchants;

(D) all direct and indirect costs associated with fraud prevention, detection, and mitigation, including data breach and identity theft, and the overall costs of fraud incurred by debit card issuers and merchants, and how those costs are distributed among those parties; and

(E) financial liability and payment guarantee for debit card transactions and associated risks and costs incurred by debit card issuers and merchants, and how those costs are distributed among those parties;

(2) the structure of the current debit interchange system, including—

(A) the extent to which the current structure offers merchants and issuers, particularly smaller merchants and issuers sufficient competitive opportunities to participate and negotiate in the debit interchange system;

(B) an examination of the benefits of allowing interchange fees to be determined in bilateral negotiations between merchants and issuers, including small issuers directly;
(C) mechanisms for allowing more price
 discovery and transparency on the part of the
 consumer; and

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

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

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

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

 (C) the impact on consumer protection, in-
 cluding anti-fraud, customer identification ef-
 forts, and privacy protection;
(D) the impact of reduced debit card interchange fees on merchants, including a comparison of the impact on small merchants versus large merchants;

(E) the potential consequences to merchants if reduced debit interchange fees result in elimination of the payment guarantee or other reductions in debit card services to merchants or shift consumers to other forms of payments;

(F) the impact of significantly reduced debit card interchange fees on debit card issuers and the services and rates they provide, if fees do not adequately recoup costs and investments made by issuers and the potential impact on the safety and soundness of issuers;

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

(H) the extent to which a transition to a fee cap from an interchange fee that is proportional to the overall cost of a transaction could
provide a reasonable rate of return for issuers and adequately cover fraud and related costs;

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

(J) the impact of shifting debit transaction routing from card issuers to merchants, including resulting changes to interchange fees and costs for card issuers; and

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

SEC. 5. DEFINITIONS.

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

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

(2) **STUDY AGENCIES.**—The term “study agencies” means the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

(3) **SMALL ISSUERS.**—The term “small issuers” 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.