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District Court Vacates Regulation II's Debit Card Interchange Fee Standard

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On August 6, the US District Court for the District of North Dakota, in *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, vacated the entirety of Regulation II – the Federal Reserve Board's framework for setting debit card interchange fees (often referred to as "swipe fees") – after concluding that the rule is contrary to law and the Federal Reserve exceeded its statutory authority.[1] Regulation II caps the fees that bank debit card issuers may charge merchants for processing debit card transactions and includes routing and exclusivity requirements related to debit transactions.

The district court simultaneously stayed its own vacatur pending appeal to avoid an unregulated marketplace during an anticipated appeal by the Federal Reserve. However, the decision still signals a fundamental shift in how interchange fees may be regulated going forward.

The Durbin Amendment and Regulation II

In 2010, Congress enacted the Durbin Amendment within the Dodd-Frank Act to require that interchange fees charged by large debit card issuers, meaning banks with $10 billion or more in assets, be "reasonable and proportional to the cost incurred by the issuer" with respect to an electronic debit transaction.[2] The Durbin Amendment states that when prescribing implementing regulations, the Federal Reserve should "distinguish between … the incremental cost incurred by an issuer for [its] role in the authorization, clearance, or settlement of a particular electronic debit transaction" and "other costs incurred by an issuer which are not specific to a particular electronic debit transaction," and only consider the incremental costs incurred by an issuer for its role in the transaction when determining if an interchange fee is reasonable and proportional.[3]

In 2011, to implement the Durbin Amendment, the Federal Reserve promulgated Regulation II, which permits issuers to recoup not only incremental authorization, clearance or settlement (ACS) costs but also fixed ACS costs, fraud losses, transaction-monitoring expenses and network processing fees. Regulation II also sets a universal fee cap of 21 cents plus five basis points of the value of the transaction (and allowed a one cent adjustment if the issuer implements fraud prevention standards).[4]

Corner Post (a North Dakota merchant that began accepting debit cards after the rule became effective) and the trade groups North Dakota Retail Association and the North Dakota Petroleum Marketers Association filed a lawsuit challenging the regulation in 2021, arguing that the regulation was arbitrary and capricious and contrary to law under the Administrative Procedure Act.

While the district court initially dismissed the lawsuit in 2022, holding that it was outside the statute of limitations, the US Supreme Court determined that the plaintiffs' claim was timely, and the case returned to the district court to be considered on the merits.[5]

The District Court's ruling

On remand from the Supreme Court, the district court agreed with the plaintiffs, holding that Regulation II is contrary to the Durbin Amendment and was promulgated in excess of the Federal Reserve's authority. Specifically, the court found:

1. **Unlawful cost categories**

The court found that the Federal Reserve Board impermissibly included fixed ACS costs, network processing

fees, transaction-monitoring costs and fraud losses when setting the interchange fee standard. The court explained its view that Regulation II's inclusion of these costs contravened the Durbin Amendment, which by its plain language authorizes the Federal Reserve Board to consider only incremental ACS costs in its interchange fee standard.

2. **Universal cap rejected**

Corner Post had argued that Regulation II should tailor interchange fees to be "issuer-specific and transaction-specific." The court agreed, holding that by imposing a universal, one-size-fits-all fee cap, the Federal Reserve ignored the plain language of the Durbin Amendment's statutory text that required assessment of costs "with respect to *the transaction*."

3. **No agency deference**

Citing the Supreme Court's decision in *Loper Bright*, the court rejected arguments that it should defer to the Federal Reserve's interpretation, emphasizing that courts – not agencies – determine statutory meaning.

What's next?

The Federal Reserve is expected to appeal to the US Court of Appeals for the Eighth Circuit. In the meantime, the district court stayed the vacatur of Regulation II pending the resolution of the appeal "to prevent interchange transaction fees from becoming a completely unregulated market." Notably, the stay does not impact a current pending proposal by the Federal Reserve, which would lower the current fee cap from 21 cents per transaction to 14.4 cents "based on the latest data reported to the [Federal Reserve] by large debit card issuers."

Should the court's decision stand, large issuers subject to Regulation II may ultimately recover only incremental ACS costs and may need to implement issuer-specific and transaction-specific standards, which the court acknowledged could pose challenges. Merchants could see lower interchange fees if the decision stands or if the Federal Reserve revises the rule consistent with the court's interpretation of Regulation II.

Notes

1. *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 1-21-cv-00095, 2025 WL 2253474 (D.N.D. Aug. 6, 2025).
2. 15 USC § 1693o-2(a)(2).
3. Id. § 1693o-2(a)(4)(B).
4. I12 CFR § 235.3.
5. *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, No. 1:21-CV-00095, 2022 WL 909317 (D.N.D. Mar. 11, 2022), *aff'd sub nom., N. Dakota Retail Ass'n v. Bd. of Governors of the Fed. Rsrv. Sys.,* 55 F.4th 634 (8th Cir. 2022)*, rev'd and remanded sub nom., Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.,* 603 U.S. 799 (2024)*, and remanded sub nom., N. Dakota Retail Ass'n v. Bd. of Governors of Fed. Rsrv. Sys.*, 113 F.4th 1027 (8th Cir. 2024).

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