

**Federal Trade Commission Report on Activities Related to
Section 1075 of the Dodd-Frank Act
December 24, 2012**

INTRODUCTION

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹

EFTA. Violations of Section 920 of EFTA are treated as violations of the FTC Act.⁶ The Commission may use its existing investigative and law enforcement powers to address these violations. The FTC shares authority to investigate and enforce these new requirements with other financial regulators. The FTC's responsibility is limited to the conduct of payment card networks and certain other non-bank entities, such as non-federally chartered credit unions.⁷

A. New Rules Regarding Electronic Payments: Regulation II

Section 1075 introduced a number of changes in debit card regulation. First, the section required that certain non-exempt debit card interchange fees, which are set by payment card networks and ultimately paid by merchants to issuers for processing electronic debit payments, be reasonable and proportional to the cost of the transactions; the Federal Reserve Board was given rulemaking authority for capping those fees. Second, the section required the Federal Reserve Board to issue regulations to end network exclusivity for processing electronic debit transactions: issuing banks and payment card networks must now permit merchants to choose between two or more unaffiliated competing payment networks for such processing. Third, the section required Federal Reserve Board regulations prohibiting issuers and payment networks from adopting rules or fees that inhibit merchants' ability to select which network will process their transactions. These statutory requirements were intended to increase competition among networks that process electronic debit payments.

On July 20, 2011, the Federal Reserve Board issued its final rule on Debit Card Interchange Fees and Routing (Regulation II), which, among other things, provides that

U.S.C. §1691c(c). In addition, the Dodd-Frank Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, and federal credit unions. *See, e.g.,*

an issuer subject to the interchange fee standard (a non-exempt issuer) may not receive an interchange fee that exceeds 21 cents plus 0.05 percent multiplied by the value of the transaction, plus one-cent for certified fraud-prevention programs.⁸

Generally, the interchange fee restriction does not apply to certain government-administered debit cards, certain prepaid cards, or debit cards from issuers with consolidated assets of less than \$10 billion (exempt issuers). The Federal Reserve Board maintains a list of financial institutions that are exempt from the rules regarding interchange fees.⁹

Federal Reserve Board who were responsible for developing Regulation II. These conversations provided helpful background about potential area

C. Responding to Concerns from Merchants

of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions over any payment card network that may process such transactions.”¹⁶

As part of its assessment of network rules and fees, FTC staff has collected information from public sources as well as industry participants, and has had discussions with staff from the Antitrust Division of the Department of Justice who have antitrust expertise in the business activities of financial institutions and payment card networks.¹⁷

Based on information collected to date, FTC staff has begun an initial investigation to determine whether certain payment card network rules may violate Section 1075 or Regulation II, including issuing a request for information to one payment card network. FTC staff continues to assess whether any payment card network rules and fees may operate as a penalty inhibiting merchants’ routing or otherwise violate Regulation II. Certain provisions of the law and regulations were not effective until April 1, 2012, and many of the fees potentially at issue are assessed or invoiced on a quarterly basis, so merchants may not yet be fully aware of their effects.

The FTC will vigorously investigate potential violations of Section 1075 or Regulation II against entities within its jurisdiction. The FTC will continue to collect and evaluate information from merchants and other interested parties about potential violations of these new laws in support of merchants’ ability to direct routing to their network of choice.

D. Effects on Small Banks and Credit Unions

As noted by the Senate Appropriations Committee, FTC oversight is needed to ensure that payment card networks do not undermine the small issuer exemption or the pro-consumer benefits of Section 1075. For instance, some have raised concerns that smaller community banks and credit unions, although exempted from caps on debit card interchange fees, will nonetheless also see a reduction in interchange revenue.¹⁸

¹⁶ 12 C.F.R. 235.7(b).

¹⁷ The FTC shares antitrust enforcement responsibilities with the Antitrust Division of the Department of Justice, and historically, the DOJ has investigated allegations of anticompetitive conduct by the payment card networks. In May, Visa, Inc. revealed the existence of a DOJ antitrust investigation of one of its newly adopted fees, the Fixed Acquirer Network Fee. *See* “Visa Faces DOJ Probe Over New Debit Card Fees,” *Law 360* (May 2, 2012), *available at* <http://www.law360.com/competition/articles/336799/visa-faces-doj-probe-over-new-debit-card-fees>.

¹⁸ *See* Letter from the American Bankers Association, the Credit Union National Association, Independent Community Bankers of America, and National Association of Federal Credit Unions to the Honorable Harry Reid, the Honorable Mitch McConnell, the Honorable John Boehner, and the Honorable Nancy Pelosi, dated September 21, 2012, *available at* http://www.cuna.org/download/congress_letter_092112.pdf.

According to data collected by the Federal Reserve Board and released in May 2012,¹⁹ interchange fees paid to exempt issuers are higher than those paid to non-exempt

A. Law Enforcement

The FTC has a long-standing interest in protecting consumers from unfair or deceptive conduct when they pay for goods or services electronically. The FTC enforces Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, against a variety of financial service companies that offer electronic payments and services. The FTC also enforces EFTA and its implementing Regulation E with regard to most non-bank entities.²² EFTA imposes disclosure and subsequent requirements to protect individual consumers engaging in electronic fund and remittance transfer systems transactions.²³

The FTC has used its authority under Section 5 of the FTC Act, and EFTA and Regulation E, to take action against those who process payments made with credit, debit, and other payment cards and engage in unfair, deceptive, or otherwise unlawful conduct that results in harm to consumers or small businesses.

For example, the FTC filed a complaint against a massive enterprise involving scores of companies, including payment processors and others that allegedly violated Section 5 of the FTC Act and EFTA by luring consumers into deceptive “trial” memberships and bogus government-grant and money-making schemes through a far-reaching Internet scam.²⁴ According to the complaint, the operation used websites that misrepresented that government grants are available for personal expenses, that consumers are likely to obtain grants by using defendants’ program, that users of their

thereby avoid deceptive or unfair practices. The Commission's consumer education materials address many important aspects of using credit, debit, or prepaid cards.²⁹

C. Research and Policy Development

1. FTC Comment on Proposed General Purpose Reloadable Prepaid Cards

In May 2012, the CFPB issued an advance notice of proposed rulemaking, seeking comments on its intent to issue a proposal to extend federal protections regarding costs and terms to general purpose reloadable (GPR) cards. The FTC staff submitted a comment that expressed support for protecting users of GPR cards and for the CFPB's proposal to solicit information about the costs and benefits of extending additional protections to these cards. The comment described the Commission's authority under

above, the Commission has jurisdiction over most non-bank entities involved in mobile payments.

On April 26, 2012, the FTC's Bureau of Consumer Protection convened a workshop on the development of mobile payments and their impact on consumers.³⁵ The workshop examined the innovative products and services being developed and the potential changes coming for consumers and merchants. For consumers, mobile payments can be an easy and convenient way to pay for goods and services, get discounts through mobile coupons, and earn or use loyalty points. For merchants, new options for processing mobile payments may allow them to avoid using the traditional payment card networks and potentially lower their costs. The workshop also examined three primary areas where consumer concerns are likely to arise with the increasing use of mobile payments: dispute resolution, data security, and privacy. Given the potential concerns raised, and the ongoing growth in this area, the agency will continue to monitor mobile payment developments.

CONCLUSION

As discussed above, the Commission has commenced significant law enforcement, outreach, and other efforts to implement Section 1075 of the Dodd-Frank Act and related regulations concerning debit card transactions. The FTC will continue to engage in these types of activities over the next year, including undertaking efforts to implement amendments to Regulation II that took effect in October 2012.³⁶

³⁵ See FTC Workshop, *Paper, Plastic . . . or Mobile? An FTC Workshop on Mobile Payments*