Eighth Circuit Affirms Vacatur of the Federal Reserve's Debit-Card Interchange Fee Cap

On October 26, 2026, the U.S. Court of Appeals for the Eighth Circuit affirmed the District of North Dakota's vacatur of the Federal Reserve Board's (the "Board") current Regulation II cap on debit-card interchange fees.[1] Applying post-*Loper Bright* principles of statutory interpretation,[2] the court held that the Board considered categories of costs that the Durbin Amendment to the Dodd-Frank Act forbids.[3] If it takes effect, the decision would unsettle the pricing architecture that has governed covered debit interchange since 2011.

BACKGROUND

Every debit-card purchase moves through authorization, clearance and settlement, with the merchant's bank paying an interchange fee, set by the payment network, to the cardholder's bank. The Durbin Amendment requires covered debit interchange fees to be reasonable and proportional to the cost incurred by the issuer with respect to the transaction, and directs the Board to establish standards for assessing compliance with that requirement. The interchange-fee standards apply only to debit-card issuers that, together with their affiliates, have consolidated assets of $10 billion or more ("covered issuers"). Issuers below that threshold qualify for the small-issuer exemption. Regulation II currently caps covered interchange fees at 21 cents plus 0.05% of transaction value, with a possible additional one-cent fraud-prevention adjustment.[4] The Board has proposed, but not adopted, a revised cap of 14.4 cents plus 0.04% and a potential 1.3-cent adjustment,[5] which the court treated as outside its review of the rule in force.

Corner Post, a North Dakota truck stop and convenience store, challenged Regulation II under the Administrative Procedure Act ("APA") as not in accordance with law and in excess of statutory authority. After the Supreme Court held in 2024 that an APA claim accrues when the plaintiff is injured by final agency action, the district court reached the merits, granted summary judgment, vacated the current interchange-fee cap and stayed vacatur pending appeal. The Eighth Circuit affirmed on de novo review.

KEY HOLDINGS

The court first held that, after *Loper Bright*, courts must independently construe the statute, and that statutory ambiguity alone does not entitle the Board to deference. The Board's express authority to prescribe regulations and establish standards permits it to act only within the statute's boundaries. Exercising that independent judgment, the court concluded that "incremental cost" means marginal cost (*i.e.*, the cost added by one additional debit transaction) rather than broader fixed or aggregate costs.

Applying that reading, the court held that the Board improperly built into the cap costs that are not transaction-specific, including fixed authorization, clearance and settlement costs, network processing fees, transaction-monitoring costs for fraud prevention, and fraud losses. The court also observed that the statute's references to "standards" in the plural and to costs tied to a particular transaction are in tension with a single, uniform cap. The Board may, however, use a reasonable proxy, potentially including average variable cost, if it reasonably relates to marginal cost and sorts transaction-specific from non-transaction-specific costs. The court therefore

affirmed vacatur of the current 21-cent cap and remanded to the Board to adopt a fee structure reflecting the statute.

WHO IS AFFECTED

Covered issuers, including banks and credit unions, face the most direct revenue and pricing exposure. Small issuers exempt from the interchange fee cap may be indirectly affected through network pricing, merchant routing and competitive dynamics. Payment networks, processors, acquirers, sponsor banks, banking-as-a-service platforms and debit-dependent fintechs may need to revisit pricing assumptions, network schedules, merchant and program-manager agreements, revenue-share arrangements, routing economics and disclosures.

WHAT TO WATCH

The ruling takes effect only when the mandate issues. A motion to stay the mandate, a petition for panel or en banc rehearing, or a certiorari petition remains possible, as does a Board rulemaking response. Institutions should also monitor parallel litigation, including *Linney's Pizza*, currently pending in the U.S. Court of Appeals for the Sixth Circuit.[6]

1 Corner Post, Inc. v. Bd. of Governors of the Fed. Res. Sys., No. 25-3000 (8th Cir. Oct. 26, 2026).
2 *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).
3 15 U.S.C. § 1693o-2.
4 12 CFR 235.3.
5 *Debit Card Interchange Fees and Routing*, 88 Fed. Reg. 78100 (Fed. Res. Sys. Nov. 14, 2023).
6 *Linney's Pizza, LLC v. Bd. of Governors of the Fed. Res. Sys.*, No. 25-6038 (6th Cir.).

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