Senate to Debate Postponement of Bank Swipe Fee Rule

June 8, 2011 - Today, the US Senate is set to debate a measure to delay the implementation of FED rules on swipe fees. These are the fees that merchants get charged when a bank processes a debit card transaction. While we do think that these fees have grown to excessive levels, we've also said that the proposal from the FED to cut the fees by roughly 80% is excessive. The truth of the matter is that there is a much simpler solution than the proposed FED rules. A solution that entails less regulation and puts power back into the hands of consumers; where it belongs in the first place. A solution that has been totally overlooked by Congress, the FED, the media and most consumer advocates.

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The proposal to regulate swipe fees was sold to the public as a consumer protection. And, by and large, it has been backed by a lot of consumer advocacy groups. In reality, it is a pissing match between businesses. Specifically, between banks and retailers. And regardless of which way the debate goes, consumers are likely to be left with fewer choices when making a purchase, and higher bank fees as a result of the outcome; many of which are likely to be charged on things that were previously free.

When Congress passed its financial reform legislation last year, one of the things that it mandated was that the FED should come up with new rules to cap debit card swipe fees. Merchants have been screaming about these fees for years because they have risen much faster than inflation. And many merchant organizations have effectively made the argument that consumers wind up paying for these fees because they need to be covered in the sales price of the goods that they sell.

Most analysts expected the FED to propose rules to cut the fees in half. Instead, the FED chose to cut them by around 80%. Since the fees are worth Billions of dollars annually to banks, there is no doubt that they will look for other sources of replacement revenue. And that means increasing fees on other services.

Now the Senate has decided to take up the matter at the behest of the banks; some of their largest campaign donors. The debate is over postponing the implementation of the FED rules by six months and having the FED go through a brand new review process. We think the debate should be about something else entirely though.

Right now, most debit card transactions take place on cards that use the logos of Visa or MasterCard. And both Visa and MasterCard prohibit merchants from setting a different price for cash purchases even though merchants obviously have lower costs in cash transactions. For very apparent reasons, debit card companies don't want merchants to have pricing policies that discourage the use of their cards. But is that really in the best interest of consumers?

The simplest approach to dealing with the issue of swipe card fees is also the approach that that has been completely ignored. Simply put in place a rule or law that says it is up to the merchants, not the banks or debit card companies, to set their own pricing policies. Allow merchants to offer a lower price for cash or checking transactions. At the same time, drop any artificial caps on swipe fees.

This would do a couple of things. First, it would force both the banks and the credit card companies to compete against cash. Swipe fees would almost certainly drop overnight; no additional regulation needed. No additional taxpayer dollars spent on enforcement.

Second, it would give consumers the power to decide which type of purchase was in their best interest. Is the convenience of a debit card purchase worth the extra charge? We think that consumers are smart enough to figure that out on their own. No government intervention required.

One thing we know for sure is that Congress is not really the place to turn for consumer financial protection. In fact, the congressional legislative history on financial protection over the past twenty years is littered with the corpses of consumers who have faced financial ruin as a result.

Thanks to Congress, state usury laws are no longer in effect, states no longer have the power to enforce their lending laws on federally chartered banks and states can't enforce their privacy laws on federally chartered banks. Thanks to Congress, bank competition has all but dried up as the large banks have gobbled up most of the smaller ones. In the process, services like free checking have all but disappeared and ATM fees have gone through the roof. Thanks to Congress, we wound up with financial institutions that were "too big to fail" and taxpayers got stuck with the bill.

Of course, in return for all of these negative things we did wind up with the ability to deposit a check in a bank branch outside the state in which we live! What a convenience!

The issue of bank swipe charges should be determined by the market. The best way to accomplish that is to prohibit contracts limiting merchants' ability to offer discounts based on form of payment and their associated costs. The debate going on today has nothing to do with consumers or consumer interests. Regardless of the way it turns out, consumers are going to pay a price.

byJim Malmberg
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