



## FTC's Year-End Report to Congress on Debit Card Transaction Rules Outlines Agency's Enforcement and Education Initiatives

As 2012 came to a close, the Federal Trade Commission updated Congress on its enforcement and other efforts in connection with the new rules regulating debit card transactions implemented last year by the Federal Reserve Board under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The [agency's report](#) highlighted the FTC's investigation and enforcement actions related to payment card network exclusivity and routing regulations, as well as educational and outreach efforts with businesses and consumers.

### Investigations and Enforcement

The FTC reported it initiated an investigation into whether new rules and fees implemented in fall 2011 by certain payment card networks may violate Section 1075 of the Federal Reserve's new Regulation II. Regulation II sets the maximum allowable swipe fees and prohibits network exclusivity arrangements and routing restrictions, and it prohibits payment card networks from denying merchants the ability to offer consumers discounts for paying in specific ways (using a debit card rather than a credit card, for example) or setting minimum dollar amounts for credit card purchases. (Read our alert on Regulation II [here](#).) The FTC also reported that it issued a request for information to a specific (unidentified) payment card network based on information received from meetings with merchants and trade association representatives, public and industry participants, and regulators at the Federal Reserve Board and the Antitrust Division of the Department of Justice.

With respect to the effect on small banks and credit unions, which are exempt from the cap on interchange fees, the FTC reported that it had not uncovered any evidence of conduct by payment card networks to diminish the ability of small banks and credit unions to successfully compete with

large financial institutions in the debit card issuance market, and that it would continue to collect and evaluate information related to this concern.

Besides describing its investigation related to Regulation II, the FTC also highlighted enforcement actions it brought under Section 5 of the FTC Act, Electronic Funds Transfer Act (EFTA) and Regulation E, related to entities that process payments made with credit, debit, and other payment cards. The report describes, by way of example, an enforcement action, *FTC v. Jeremy Johnson*, the agency brought against a "massive enterprise involving scores of companies, including payment processors and others" that allegedly lured consumers into deceptive "trial" memberships and bogus government-grant and money-making schemes through an Internet scam. The complaint in *Jeremy Johnson* also alleged that defendants failed to disclose that consumers who provided their credit or debit card numbers to pay a small shipping and handling fee would be enrolled in other plans with hefty recurring and other fees.

The report also notes a recent enforcement against payment processors in which the FTC obtained a court order banning a payment processor and two of its principals from using a new payment method called "remotely created payment orders," which gave merchants unauthorized access to consumer bank accounts. In the \$1.5 million settlement in *FTC v. Landmark Clearing Inc.*, the defendants agreed to stop the practice permanently. A third settlement highlighted in the report, *FTC v. Merchant Processing Inc.*, resulted from an enforcement action against an operation providing debit and credit card processing services that allegedly defrauded approximately 100 merchants by falsely promising to save

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small businesses hundreds to thousands of dollars a year in processing fees by offering lower rates than their current credit card processing service offered. The defendants also allegedly falsely promised that they would buy out merchants' equipment leases if they accepted the offer, failed to disclose fees, and concealed pages of fine print with important contract provisions until after merchants had signed contracts.

### **Education and Outreach**

The FTC also reported that it met with retailers, representatives of merchants trade associations, and others to hear and address concerns relating to the new rules. The report notes that the Commission also undertook educational and outreach efforts to make businesses aware of Section 1075 and Regulation II, including issuing a publication explaining the new rules and informing merchants about new options available for processing debit and credit transactions, as well as other communications on the subject, and publicized a new electronic mailbox for merchants to submit complaints. The Commission also noted in the report its ongoing efforts to educate consumers, including publishing numerous consumer education pieces on electronic payments.

For more information about the content of this alert, please contact [Michael Mallow](#), [Michael Thurman](#) or [Patrick Downes](#).

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