

**Supporting Statement for the
Interchange Transaction Fees Surveys
(FR 3062; OMB No. 7100-new)**

Summary

The Board of Governors of the Federal Reserve System (the Board), requests approval from the Office of Management and Budget (OMB) to conduct the new Interchange Transaction Fees Surveys (FR 3062; OMB No. 7100-new) under the emergency clearance provisions of Office of Management and Budget's (OMB's) regulations. This survey is necessary in order to implement Section 920 of the Electronic Fund Transfer Act (EFTA), as added by Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹

The Paperwork Reduction Act (PRA) generally requires the Board to seek public comment on proposed information collections prior to approval.² The PRA, however, permits OMB to temporarily approve information collections without seeking comment if providing an opportunity for public comment would substantially interfere with the Board's ability to perform its statutory obligation. This emergency clearance would be valid for up to 6 months.³ The Dodd-Frank Act requires the Board to publish final rules by April 21, 2011. Therefore, complying with the normal information collection approval procedures would substantially interfere with the Board's ability to issue final rules within the statutory timeframe.

In publishing the final rules related to interchange fees, the Board must disclose "aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received" by issuers and payment card networks (PCNs), if the Board determines that disclosing such information is appropriate and in the public interest. The Board must disclose such aggregate or summary information every other year going forward. Future information collections that are necessary to comply with the Board's obligation to disclose summary and aggregate data every two years will be reviewed in accordance with the usual clearance procedures at a later date.

The FR 3062 would comprise two surveys: (1) the issuer survey that would collect data on interchange fees and costs from issuers of debit or prepaid cards that, together with affiliates, have assets of \$10 billion or more and (2) the network survey that would collect data from PCNs on interchange fees and network restrictions. Data from these surveys would be used to prescribe regulations that implement provisions of the Dodd-Frank Act with respect to interchange fees and network restrictions. The total burden for the FR 3062 is estimated to be 34,250 hours.

¹ Pub. L. 111-203, § 1075, 124 Stat. 1376 (2010).

² 44 U.S.C. § 3501 *et seq.*

³ 44 U.S.C. § 3507(j); 5 C.F.R. § 1320.13 and Appendix A.

Background and Justification

Section 1075 of the Dodd-Frank Act provides that, effective July 21, 2011, the amount of any interchange fee an issuer⁴ may receive or charge with respect to a particular electronic debit transaction would be limited to an amount that is “reasonable and proportional” to the cost incurred by the issuer with respect to the transaction.⁵ Additionally, issuers and PCNs would be prohibited from (1) restricting the number of PCNs on which an electronic debit transaction may be processed to one such network (or two or more networks with common ownership) and (2) inhibiting the ability of any person accepting debit cards to direct the routing of electronic debit transactions for processing.⁶ The Dodd-Frank Act requires the Board to prescribe regulations that implement the provisions on interchange fees and network restrictions by April 21, 2011 and July 21, 2011, respectively. The Dodd-Frank Act also requires the Board to report to the Congress about general-use prepaid cards issued pursuant to government-administered payment programs⁷ beginning in July 2011 and annually thereafter.

Subsection (a) - Interchange fee rulemaking

The Dodd-Frank Act requires the Board to issue rules in three areas related to interchange fees. First, the Board must prescribe regulations establishing standards for assessing whether the amount of an interchange fee is reasonable and proportional to the cost incurred by the issuer.⁸ In establishing such standards, the Board must distinguish between the incremental cost incurred by the issuer for authorizing, clearing, and settling an electronic debit transaction and other costs incurred by an issuer that are not specific to an electronic debit transaction.⁹ Thus, in order to set standards for determining whether the amount of an interchange fee is reasonable and proportional to the cost incurred by an issuer with respect to an electronic debit transaction, information is needed on the costs that an issuer incurs for authorizing, clearing, and settling a particular electronic debit transaction. Collecting information about interchange fees also is necessary because, in issuing final rules, the Board must publish summary information about interchange fees, if appropriate and in the public interest to do so. In addition to collecting information about current interchange fees, collecting information from PCNs about historical interchange fees provides the Board with valuable information regarding the evolution of market-determined interchange fees.

Second, the Board may permit an adjustment to the amount of a reasonable and proportional interchange fee to account for the issuer’s costs of preventing fraud related to its electronic debit transactions. In order to do so, the Board must set forth standards for the

⁴ An “issuer” is any person that issues a debit card, or the agent of such person. Sec. 920(c)(9).

⁵ Pub. L. 111-203, § 1075, 124 Stat. 1376 (2010). The provisions related to reasonable fees will be set forth in subsection (a) of a new section 920 of the EFTA. This subsection of the Dodd-Frank Act is effective July 21, 2011.

⁶ *Id.* The provisions related to network exclusivity are set forth in subsection (b) of the new section 920. The Dodd-Frank Act does not stipulate an effective date for the provisions related to network restrictions.

⁷ These programs include, but are not limited to, unemployment insurance, temporary assistance for needy families, and child support.

⁸ Sec. 920(a)(3).

⁹ Sec. 920(a)(4).

fraud-related adjustment. In addition to the issuer-specific fraud prevention costs, the fraud-related standards must take into account fraud-related reimbursements received by the issuer from consumers, merchants, or PCNs, as well as certain other factors.¹⁰ The fraud-related standards must require issuers to take effective steps to reduce both the occurrence and costs from fraud in relation to electronic debit transactions. Therefore, collecting information about the ultimate allocation of fraud losses among the parties, as well as the costs associated with fraud prevention, is necessary to implement standards for the fraud-related adjustment.

Finally, the Board must prescribe regulations to ensure that network fees other than interchange fees are not used to indirectly compensate an issuer with respect to an electronic debit transaction, or to otherwise evade the restrictions on interchange fees.¹¹ Information about current fee structures is necessary to determine which current variables are or are not related to the cost of a particular electronic debit transaction. Collecting information regarding the fees that currently are transferred between participants in an electronic debit transaction, and for what purposes, is necessary to develop a framework for rules that would prevent evasion of the new interchange transaction fee restrictions.

The Dodd-Frank Act exempts from the restriction on the amount of an interchange fee any issuer that, together with its affiliates, has assets of less than \$10 billion. Accordingly, this information collection would target those issuers that, together with affiliates, have assets of \$10 billion or more. The Dodd-Frank Act also exempts electronic debit transactions where a person uses a reloadable, general-use prepaid card, or a debit card or a general-use prepaid card issued pursuant to a government administered payment program.

Subsection (b) - Network restrictions rulemaking

In addition to prescribing regulations related to the amount of interchange fees, the Board must also prescribe regulations that prohibit both network exclusivity—the practice of restricting the number of PCNs on which an electronic debit transaction may be processed—and restrictions on the routing of electronic debit transactions.¹² Therefore, information is necessary to determine the methods by which issuers and PCNs restrict the number of PCNs on which an electronic debit transaction may be processed and the methods by which issuers and PCNs restrict the ability of a person accepting debit cards to route the electronic debit transaction for processing over any payment card network that may process such transactions. Because the debit card industry has undergone substantial changes in the past 10 years, historical information is necessary to assist the Board in determining what methods have been employed previously to

¹⁰ The factors the Board must consider include: (1) the nature, type, and occurrence of fraud in electronic debit transactions; (2) the extent to which the fraud depends on the type of authorization; (3) the available and economical means by which fraud may be reduced; (4) fraud prevention and data security costs of each party involved in an electronic debit transaction; (5) the costs of fraudulent transactions absorbed by each party involved in an electronic debit transaction; (6) the extent to which interchange fees reduce or increase incentives to reduce fraud, and (7) any other factors the Board considers appropriate. Sec. 920(a)(5).

¹¹ Sec. 920(a)(8).

¹² Sec. 920(b)(1).

inhibit issuers from issuing cards capable of processing transactions on multiple networks or to inhibit merchants' routing choice.

Description of Information Collection

The FR 3062 comprises two surveys: (1) Issuer survey and (2) Network survey. A general description of these surveys is provided below.

Issuer survey

The issuer survey would be sent to organizations with assets of \$10 billion or more and that issue, or have affiliates that issue, debit or prepaid cards. If sent to an organization with affiliates that issue cards, that organization would be asked to submit one response form that consolidates the information of all its affiliated issuers; the Board would provide the organization with a list of affiliated issuers. The issuers would be asked to provide the information on accounts and cards associated with accounts domiciled in the United States or U.S. territories.

The issuer survey would comprise seven sections. In general, the survey would collect information on three card programs: signature debit, Personal Identification Number (PIN) debit, and prepaid. Signature debit transactions typically are authorized based on a signature. PIN debit transactions typically are authorized based on a PIN. Prepaid card transactions use either authorization method (although signature is more common) and prepaid cards can be reloadable or non-reloadable. The reporting period is calendar year 2009, unless otherwise noted. If certain costs for a card program are shared with other card programs, respondents are asked to allocate costs to a particular card program based on transaction volume.

- I. Card program information:** Respondents are asked to report summary information of their debit and prepaid card programs.
- II. Card program activity:** For each card program, respondents are asked to report information about the number and value of transactions and revenue associated with electronic debit transactions. Within each card program, activity information is segregated based on certain characteristics of the transaction (e.g., domestic/international or purchase or return).
- III. Processing costs:** For each card program, respondents are asked to report costs of processing electronic debit transactions, including routine transaction processing costs for authorization, clearing, and settlement (such as posting to a customer's account) and chargeback processing costs. Information requested includes (1) fixed and variable components of the costs and (2) whether the cost is from an in-house activity or a fee charged to this issuer for third-party services.
- IV. Card program costs:** For each card program, respondents are asked to report costs associated with card programs that are not transaction-processing costs. Such costs include card production, cardholder inquiries, rewards and other incentives, and network fees. Information requested includes whether the cost is from an in-house activity or a fee charged to the issuer for third-party services.

- V. **Fraud prevention activity costs and data security costs:** For each card program, respondents are asked to report costs incurred by the organization in its role as issuer for fraud prevention and data security and asked to provide a brief description of each activity.
- VI. **Fraud activity and losses:** For each card program, respondents are asked to report information about the activity and loss associated with that card program. Within each card program, for each type of fraud, respondents are asked to submit information regarding the number of fraudulent transactions, the value of fraudulent transactions, and the percentage of fraud value borne by the issuer and the cardholder. Information reported is segregated based on the gross volume/value, volume/value charged back, and the volume/value for which the issuer had recoveries.
- VII. **Exclusivity arrangements and routing procedures:** Respondents are asked to report information regarding network rules, guidelines, policies, interpretations, or other agreements or incentives that restrict the issuer's ability to participate in, or issue debit or prepaid cards that can operate on, multiple, unaffiliated PCNs. Information also includes network rules, guidelines, policies, interpretations, or other agreements or incentives whereby transactions involving cards issued on one network may be processed exclusively on that network. Respondents are asked to describe any material changes to such agreements or procedures over the last 10 years.

Network survey

The network survey would be sent to PCNs to collect information about fees charged or set by payment card networks (including interchange fees), fraud losses and prevention costs, and network routing and participation restrictions for certain debit card and prepaid card transactions. The network survey would comprise seven sections. Similarly to the issuer survey, the network survey would collect information about signature debit, PIN debit and prepaid card programs. The reporting period is for calendar year 2009 unless otherwise noted.

- I. **Payment card network information:** Respondents are asked to report the number of value and transactions associated with each card program, as well as information related to merchant acceptance, cardholders, and geographic coverage.
- II. **2009 Fees:** Respondents are asked to provide information on seven types of fees: (1) interchange fees; (2) other network fees charged to issuers on a per-transaction basis; (3) network fees charged to issuers but not on a per-transaction basis; (4) program fees or discounts paid to issuers; (5) network fees charged to acquirers or merchants on a per-transaction basis; (6) network fees charged to acquirers or merchants but not assessed on a per-transaction basis, and (7) program fees or discounts paid to acquirers or merchants. In general, for each type of fee respondents are asked to provide the following information: program name, description, use environment, effective dates, the methodology for determining the fee (i.e., fixed and variable components and any minimum and maximums), total number, value and volume of transactions under the fee program, and the total dollar amount of fees of that type charged to issuers.

- III. **Historical interchange fees:** For each card program, respondents are asked to report the following information related to interchange fees: interchange fees reimbursed to issuers, total number of transactions, total value of transactions, and the average interchange fee. The years for which respondents should report are 1990, 1995, 2000, 2005 and 2009.
- IV. **Fraud Prevention and Data Security Costs:** For each card program, respondents are asked to report costs incurred by the organization in its role as network that are associated with fraud prevention or data security activity undertaken by the network. If certain costs for a card program are shared with other card programs, respondents are asked to allocate costs to a particular card program based on the number of transactions.
- V. **Fraud Losses:** For each card program, respondents are asked to report information about the activity and loss associated that card program. Within each card program, for each type of fraud, respondents are asked to submit information regarding the number of fraudulent transactions, value of fraudulent transactions, and the percentage of fraud value borne by (1) the issuers and cardholders, (2) the network, and (3) the acquirers and merchants. Information reported is segregated based on the gross volume/value, volume/value charged back, and the volume/value for which the issuer had recoveries.
- VI. **Fraud occurrence and mitigation:** Respondents are asked to explain the extent to which the level and/or incidence of fraud is influenced by the electronic debit transaction authorization method or environment. Respondents also are asked to provide information regarding fraud prevention and the availability of information on the costs of fraud prevention and losses.
- VII. **Exclusivity arrangements and routing procedures:** Respondents are asked to report information regarding network rules, guidelines, policies, interpretations, or other agreements or incentives that restrict an issuer's ability to participate in, or issue debit or prepaid cards that can operate on, multiple, unaffiliated PCNs. Information also includes network rules, guidelines, policies, interpretations, or other agreements or incentives whereby transactions involving cards issued on one network may be processed exclusively on that network. Respondents are asked to describe any material changes to such agreements over the past 10 years.

Reporting Panel

The Board estimates that there are 128 issuer-organizations (i.e., those organizations that issue cards or have affiliates that issue cards) that, together with affiliates, have assets of \$10 billion or more.¹³ An organization with affiliates that issues cards would submit one response

¹³ This estimate includes bank and thrift holding companies; independent commercial banks, thrifts, and credit unions; and FDIC-insured U.S. branches and agencies of foreign banking organizations not held by a depository institution headquartered in the United States. The number of issuers was estimated using the FFIEC's National Information Center structure database, the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C; OMB No. 7100-0128), the Consolidated Reports of Condition and Income (Call Reports) for independent commercial banks (FFIEC 031 & 041; OMB No. 7100-0036) and for U.S. branches and agencies of foreign banks not held by a U.S.-headquartered depository institution (FFIEC 002; OMB No. 7100-0032), the Thrift

that consolidates the information for each of its affiliated issuers. Information would also be collected from PCNs that process electronic debit transactions. The Board estimates that there are 15 such networks.¹⁴

Time Schedule for Information Collection and Publication

The Board must publish the final rules related to interchange fees no later than April 21, 2011 and must publish the final rules related to exclusivity arrangements and routing restrictions no later than July 21, 2011. Therefore, in order to provide time to analyze the information collected, develop proposed rules and provide the public with a meaningful opportunity to comment on the proposed rules, the survey would be distributed in early September 2010. The Board would request that the surveys be completed and returned to the Board within 30 days of distribution. As mentioned above, the Dodd-Frank Act also requires the Board to report to the Congress about general use prepaid cards issued¹⁵ pursuant to government administered payment programs beginning in July 2011.

Legal Status

The Dodd-Frank Act requires the Board to issue rules related to the limitation on interchange fees by April 21, 2011 and rules related to network exclusivity and routing restrictions by July 21, 2011.¹⁶ In issuing rules related to interchange transaction fees, the Board is authorized to require issuers and networks to respond to information requests. This information collection is necessary for the Board to issue rules required by the Dodd-Frank Act. Responding to the survey sections related to (1) the costs associated with electronic debit card transactions, (2) fraud prevention and losses, and (3) interchange fees and other network fees is mandatory. Responding to the survey sections related to network exclusivity and routing restrictions is voluntary.

The Board would treat the institution-level data included in each response as confidential. The responses would be agency records subject to the Freedom of Information Act (FOIA). Because the responses would contain information relating to an organization's cost accounting, revenue structure, and other proprietary and commercial information, the responses would be exempt from disclosure under subsection (b)(4) of the FOIA, to the extent permissible by law.¹⁷ The Board, however, is required, if appropriate and in the public interest, to disclose aggregate or summary information related to costs and interchange fees. Therefore, responses would be used in compiling such aggregate or summary information.

Sensitive Questions

Financial Reports (OTS 1313; OMB No. 1550-0023) for Thrift Holding Companies and thrift institutions, and the Credit Union Reports of Condition and Income (NCUA 5300/5300S; OMB No. 3133-0004) for credit unions.

¹⁴ This estimate is based on payment card networks known to process electronic debit transactions.

¹⁵ Some information on government-administered payment programs would be collected via the issuer survey.

¹⁶ Pub. L. 111-203, § 1075, 124 Stat. 1376 (2010).

¹⁷ 5 U.S.C. § 552(b)(4) (disclosure exemption related to "trade secrets and commercial or financial information obtained from a person and privileged and confidential.")

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Consultation Outside the Agency

The Board distributed draft surveys to several outside parties that included issuers and PCNs, merchant acquirers/processors, merchants and their respective trade associations, and consumer organizations. In obtaining input from the outside parties, the Board did not ask identical questions to each party. Rather, the Board organized drop-in calls through which the parties viewing the survey could provide specific comments and provided interested parties with the option of submitting written comments.

The commenters provided both substantive and technical comments. The most significant substantive comment incorporated into the final survey instrument relates to historic information. Many commenters suggested that the Board request historical information related to interchange fees, network exclusivity and routing restrictions. Additionally, issuers and networks suggested that the Board request information on more categories of costs than initially proposed. Accordingly, as discussed above, the surveys would ask for information for years prior to 2009. Summaries of substantive contact between the Board and the public are in the public file.

The Board did not consult with outside agencies in developing the survey.

Estimate of Respondent Burden

As shown in the following table, the annual reporting burden for the proposed survey is estimated to be 34,250 hours. The Board estimates that the 128 issuer organizations would take on average 250 hours to complete the proposed issuer survey and 15 PCNs would take on average 150 hours to complete the proposed network survey. The proposed surveys represent less than 1 percent of the total Federal Reserve System paperwork burden.

	<i>Number of respondents</i>	<i>Annual Frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Issuer survey	128	1	250 hours	32,000
Network survey to PCNs	15	1	150 hours	<u>2,250</u>
<i>Total</i>				34,250

The total one-time reporting cost to the public for these surveys is estimated to be \$1,770,725.¹⁸

Estimate of Cost to the Federal Reserve System

The current cost to the Federal Reserve System for contacting the respondents and compiling the information is estimated to be \$250,000.

¹⁸ Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 75% Financial Managers @ \$48, 15% Legal Counsel @ \$54, and 10% Chief Executives @ \$76. Hourly rate for each occupational group are the median hourly wages (rounded up) from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages 2008*, www.bls.gov/news.release/ocwage.nr0.htm Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.