

Federal Banking Law Reporter Regulations, Regulation, 12 CFR §235.7, Limitations on payment card restrictions.

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(a) Prohibition on network exclusivity.—

(1) In general.— An issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks.

(2) Permitted arrangements.— An issuer satisfies the requirements of paragraph (a)(1) of this section only if the issuer allows an electronic debit transaction to be processed on at least two unaffiliated payment card networks, each of which does not, by rule or policy, restrict the operation of the network to a limited geographic area, specific merchant, or particular type of merchant or transaction, and each of which has taken steps reasonably designed to enable the network to process the electronic debit transactions that the network would reasonably expect will be routed to it, based on expected transaction volume.

(3) Prohibited exclusivity arrangements by networks.— For purposes of paragraph (a)(1) of this section, a payment card network may not restrict or otherwise limit an issuer's ability to contract with any other payment card network that may process an electronic debit transaction involving the issuer's debit cards.

(4) Subsequent affiliation.— If unaffiliated payment card networks become affiliated as a result of a merger or acquisition such that an issuer is no longer in compliance with paragraph (a) of this section, the issuer must add an unaffiliated payment card network through which electronic debit transactions on the relevant debit card may be processed no later than six months after the date on which the previously unaffiliated payment card networks consummate the affiliation.

(b) Prohibition on routing restrictions.— An issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

(c) Compliance dates.—

(1) General.— Except as otherwise provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, the compliance date of paragraph (a) of this section is April 1, 2012.

(2) Restrictions by payment card networks.— The compliance date of paragraphs (a)(1) and (a)(3) of this section for payment card networks is October 1, 2011.

(3) Debit cards that use transaction qualification or substantiation systems.— Issuers shall comply with the requirements of paragraph (a) of this section by April 1, 2013, for electronic debit transactions using debit cards that use point-of-sale transaction qualification or substantiation systems for verifying the eligibility of purchased goods or services.

(4) General-use prepaid cards.— Issuers shall comply with the requirements of paragraph (a) of this section with respect to general-use prepaid cards as set out below.

(i) With respect to non-reloadable general-use prepaid cards, the compliance date is April 1, 2013. Non-reloadable general-use prepaid cards sold prior to April 1, 2013 are not subject to paragraph (a) of this section.

(ii) With respect to reloadable general-use prepaid cards, the compliance date is April 1, 2013. Reloadable general-use prepaid cards sold prior to April 1, 2013 are not subject to paragraph (a) of this section unless and until they are reloaded, in which case the following compliance dates apply:

(A) With respect to reloadable general-use prepaid cards sold and reloaded prior to April 1, 2013, the compliance date is May 1, 2013.

(B) With respect to reloadable general-use prepaid cards sold prior to April 1, 2013, and reloaded on or after April 1, 2013, the compliance date is 30 days after the date of reloading.

History: Sec. 235.7 as added July 20, 2011, 76 FR 43394 (¶97-963); effective October 1, 2011. However, the mandatory compliance dates for Sec. 235.7(a) are as follows: For §235.7(a) the general compliance date is April 1, 2012, except as follows: Payment card networks must comply with §§235.7(a)(1) and (a)(3) on October 1, 2011. Issuers must comply with §235.7(a) on April 1, 2013, with respect to debit cards that use transaction qualification or substantiation systems and general-use prepaid cards sold on or after April 1, 2013. Issuers must comply with §235.7(a) with respect to reloadable general-use prepaid cards sold and reloaded prior to April 1, 2013 by May 1, 2013. Issuers must comply with §235.7(a) with respect to reloadable general-use prepaid cards sold prior to April 1, 2013 and reloaded after April 1, 2013 within 30 days of the reloading.

[COMMENTARY] Section 235.7 Limitations on Payment Card Restrictions

1. Application of small issuer, government administered payment program, and reloadable card exemptions to payment card network restrictions. The exemptions under §235.5 for small issuers, cards issued pursuant to government-administered payment programs, and certain reloadable prepaid cards do not apply to the limitations on payment card network restrictions. For example, debit cards for government administered payment programs, although exempt from the restrictions on interchange transaction fees, are subject to the requirement that electronic debit transactions made using such cards must be capable of being processed on at least two unaffiliated payment card networks and to the prohibition on inhibiting a merchant's ability to determine the routing for electronic debit transactions.

7(a) Prohibition on Network Exclusivity

1. Scope of restriction.— Section 235.7(a) requires a debit card subject to the regulation to be enabled on at least two unaffiliated payment card networks. This paragraph does not, however, require an issuer to have two or more unaffiliated networks available for each method of cardholder authentication. For example, it is sufficient for an issuer to issue a debit card that operates on one signature-based card network and on one PIN-based card network, as long as the two card networks are not affiliated. Alternatively, an issuer may issue a debit card that is accepted on two unaffiliated signature-based card networks or on two unaffiliated PIN-based card networks. See *also*, comment 7(a)-7.

2. Permitted networks.

i. A smaller payment card network could be used to help satisfy the requirement that an issuer enable two unaffiliated networks if the network was willing to expand its coverage in response to increased merchant demand for access to its network and it meets the other requirements for a permitted arrangement, including taking steps reasonably designed to enable it to process the electronic debit transactions that it would reasonably expect to be routed to it. If, however, the network's policy or practice is to limit such expansion, it would not qualify as one of the two unaffiliated networks.

ii. A payment card network that is accepted only at a limited category of merchants (such as a particular grocery store chain, merchants located in a particular shopping mall, or a single class of merchants, such as grocery stores or gas stations) would not satisfy the rule.

iii. One of the steps a network can take to form a reasonable expectation of transaction volume is to consider factors such as the number of cards expected to be issued that are enabled on the network and expected card usage patterns.

3. Examples of prohibited network restrictions on an issuer's ability to contract.— The following are examples of prohibited network restrictions on an issuer's ability to contract with other payment card networks:

i. Network rules or contract provisions limiting or otherwise restricting the other payment card networks that may be enabled on a particular debit card, or network rules or contract provisions that specify the other networks that may be enabled on a particular debit card.

ii. Network rules or guidelines that allow only that network's (or its affiliated network's) brand, mark, or logo to be displayed on a particular debit card, or that otherwise limit the ability of brands, marks, or logos of other payment card networks to appear on the debit card.

4. Network logos or symbols on card not required.— Section 235.7(a) does not require that a debit card display the brand, mark, or logo of each payment card network over which an electronic debit transaction may be processed. For example, this rule does not require a debit card that is enabled for two or more unaffiliated payment card networks to bear the brand, mark, or logo for each card network.

5. Voluntary exclusivity arrangements prohibited.— Section 235.7(a) requires the issuance of debit cards that are enabled on at least two unaffiliated payment card networks, even if the issuer is not subject to any rule of, or contract or other agreement with, a payment card network requiring that all or a specified minimum percentage of electronic debit transactions be processed on the network or its affiliated networks.

6. Affiliated payment card networks.— Section 235.7(a) does not prohibit an issuer from including an affiliated payment card network among the networks that may process an electronic debit transaction with respect to a particular debit card, as long as at least two of the networks that are enabled on the card are unaffiliated. For example, an issuer may offer debit cards that are accepted on a payment card network for signature debit transactions and on an affiliated payment card network for PIN debit transactions as long as those debit cards may also be accepted on another unaffiliated payment card network.

7. Application of rule regardless of form factor.— The network exclusivity provisions in §235.7(a) require that all debit cards be enabled on at least two unaffiliated payment card networks for electronic debit transactions, regardless of whether the debit card is issued in card form. This applies to any supplemental device, such as a fob or token, or chip or application in a mobile phone, that is issued in connection with a plastic card, even if that plastic card fully complies with the rule.

7(b) Prohibition on Routing Restrictions

1. Relationship to the network exclusivity restrictions.— An issuer or payment card network is prohibited from inhibiting a merchant's ability to route or direct an electronic debit transaction over any of the payment card networks that the issuer has enabled to process an electronic debit transaction for that particular debit card. This rule does not permit a merchant to route the transaction over a network that the issuer did not enable to process transactions using that debit card.

2. Examples of prohibited merchant restrictions.— The following are examples of issuer or network practices that would inhibit a merchant's ability to direct the routing of an electronic debit transaction that are prohibited under §235.7(b):

- i. Prohibiting a merchant from encouraging or discouraging a cardholder's use of a particular method of debit card authorization, such as rules prohibiting merchants from favoring a cardholder's use of PIN debit over signature debit, or from discouraging the cardholder's use of signature debit.
- ii. Establishing network rules or designating issuer priorities directing the processing of an electronic debit transaction on a specified payment card network or its affiliated networks, or directing the processing of the transaction away from a specified network or its affiliates, except as a default rule in the event the merchant, or its acquirer or processor, does not designate a routing preference, or if required by state law.
- iii. Requiring a specific payment card network based on the type of access device provided to the cardholder by the issuer.

3. Merchant payments not prohibited.— A payment card network does not restrict a merchant's ability to route transactions over available payment card networks in violation of §235.7(b) by offering payments or other incentives to encourage the merchant to route electronic debit card transactions to the network for processing.

4. Real-time routing decision not required.— A merchant need not make network routing decisions on a transaction-by-transaction basis. A merchant and its acquirer or processor may agree to a pre-determined set of routing choices that apply to all electronic debit transactions that are processed by the acquirer or processor on behalf of the merchant.

5. No effect on network rules governing the routing of subsequent transactions.— Section 235.7 does not supersede a network rule that requires a charge-back or return of an electronic debit transaction to be processed on the same network that processed the original transaction.

7(c) Effective Date

1. Health care and employee benefit cards.— Section 235.7(c)(1) delays the effective date of the network exclusivity provisions for certain debit cards issued in connection with a health care or employee benefit account to the extent such cards use (even if not required) transaction substantiation or qualification authorization systems at point of sale to verify that the card is only used for eligible goods and services for purposes of qualifying for favorable tax treatment under Internal Revenue Code requirements. Debit cards that may qualify for the delayed effective date include, but may not be limited to, cards issued in connection with flexible spending accounts established under section 125 of the Internal Revenue Code for health care related expenses and health reimbursement accounts established under section 105 of the Internal Revenue Code.

History: Section 235.7 of Supplement I as added July 20, 2011, 76 FR 43394 ([197-963](#)); effective October 1, 2011.