



February 9, 2024

The Honorable Jerome H. Powell  
Chair  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**Re: Comments on Docket No. R-1818. RIN 7100-AG67: Debit Card Interchange Fees and Routing**

Dear Chair Powell:

My name is Brian Garst, and I am the vice president of the Center for Freedom and Prosperity, a non-profit organization dedicated to promoting policies conducive to economic liberty and growth. I write in opposition to the Federal Reserve Board's ("Board") proposed rule on debit card interchange fees.

On Oct. 25, 2023, the Board proposed a rule lowering the already controlled interchange fee cap for debit card transactions. The proposed rule compounds a policy error that has been in effect since the passage of the Dodd-Frank Financial Reform Bill of 2010, which contained a provision—the Durbin Amendment—which the Board understood to require price controls on interchange fees for debit card transactions. The promises of the Durbin Amendment's implementation never materialized, but the warnings, including some from Federal Reserve Governors, proved correct.

Sen. Durbin promised that instituting a price cap on interchange fees would save businesses billions of dollars and that those savings would be passed to consumers. The Senator was half right. Big box retailers saved billions of dollars, but consumers have seen little benefit.<sup>1</sup> It has been estimated that retailers have saved over \$100 billion since the enactment of the Durbin Amendment, but as a Richmond Federal Reserve Study confirmed, more than 75% of retailers did not "pass along" any savings, and some admit to raising prices on customers.<sup>2</sup>

Consumers were also harmed when financial institutions responded to sudden revenue losses by increasing fees elsewhere. The availability of free checking accounts plummeted post-Durbin Amendment, contributing to an increase of more than one million "unbanked" Americans following its implementation.<sup>3</sup>

Today, retailers argue that regulators are legally obligated to lower the current debit card interchange

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<sup>1</sup> Vladimir Mukharlyamov and Natasha Sarin, "The Impact of the Durbin Amendment on Banks, Merchants, and Consumers" (2019). Faculty Scholarship at Penn Carey Law. 2046

<sup>2</sup> Zhu Wang, Scarlett Schwartz, and Neil Mitchell, "The Impact of the Durbin Amendment on Merchants: A Survey Study" (2014) *Economic Quarterly*, Federal Reserve Bank of Richmond, Volume 100, Number 3, pages 183-208.

<sup>3</sup> Todd J. Zywicki, Geoffrey Manne, and Julian Morris, "Price Controls on Payment Card Interchange Fees: The U.S. Experience" (2014). George Mason Law & Economics Research Paper No. 14-18.

fee cap based on claims of declining issuer costs. They cite the Durbin Amendment's requirement that the Board "establish standards for assessing whether the amount of any interchange transaction fee ... is reasonable and proportional to the cost incurred by the issuer with respect to the transaction." 15 U.S.C. § 1693o-2(a)(3)(A), along with the Board's promise to "reexamine and potentially reset the fee standard."

The good news for the Board is that, properly understood, and regardless of Senator Durbin's intentions, satisfying the Durbin Amendment requirement is far easier than regulators initially understood. In a free market, any price which is reached by willing participants is "reasonable and proportional" *by definition*. Only market participants are qualified to make such a determination, and so any centralized method that attempts to supplant a market equilibrium with the preferences of bureaucrats cannot help but be arbitrary and capricious.

A standard for measuring the reasonableness of current prices to satisfy the Durbin Amendment thus need only determine whether said market is indeed free of fraud or undue government intervention, which is a far cry from the convoluted process now petitioned for or initially undertaken. If prices are currently unreasonable, it is likely only because the government has short-circuited the market system of price discovery.

Unfortunately, this proposed rule does not correct past mistakes. It takes a significant policy error and compounds it. The regulation does not eliminate price controls; it tightens them. It does not promote competition and innovation; it stifles it. It does not help consumers; it imposes further harm.

Both at a conceptional level and on an evidentiary basis, the record is clear that the Durbin Amendment and its implementation resulted in a policy error. It makes absolutely no sense to supercharge it with even tighter price caps and controls. This rule will make things even worse for consumers and should be withdrawn.

Sincerely,

A handwritten signature in cursive script that reads "Brian Garst".

Brian Garst  
Vice President  
Center for Freedom and Prosperity