

# United States Senate

WASHINGTON, DC 20510-1304

May 10, 2024

The Honorable Jerome H. Powell  
Chair  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

RE: Docket No. R-1818, RIN 7100-AG67

Dear Chair Powell:

As primary author of Section 1075 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (commonly known as the “Durbin Amendment”), I respectfully submit the following comments in response to the November 14, 2023, notice of proposed rulemaking (“NPRM”) on Debit Card Interchange Fees and Routing published by the Board of Governors of the Federal Reserve System (“Board”) in the Federal Register (88 Fed. Reg. 78100 et seq.).

I support the Board’s proposal to reduce the cap on debit card interchange fees and codify a regular process for updating this cap on a biennial basis based on the latest available data reported by large debit card issuers. This is an important and long overdue step in maintaining the proper regulation of debit card interchange fees. However, I believe there is more that can be done to ensure the biggest banks and card networks fulfill their obligations to charge reasonable and proportional interchange fees—and protect consumers, who pay these hidden fees in the form of higher retail prices, and merchants, who face a “take or leave it” proposition from the dominant card networks.

The Durbin Amendment directs the Board to place “reasonable and proportional” constraints on the interchange fees that card networks like Visa and Mastercard set on behalf of their issuing banks. In 2011, the Board adopted Regulation II to implement a base component of 21 cents for debit interchange fees. However, this was almost three times the average base per-transaction cost of 7.7 cents for large debit card issuers at the time. The intent of the Durbin Amendment was not to allow covered issuers to maintain a sizable profit margin; yet, the Board’s final rule did just that. As the Board noted in its current proposal, that previous average of 7.7 cents fell to 3.9 cents in 2021. Mitigating this discrepancy is vital to upholding the statutory text and legislative intent of the Durbin Amendment, and I appreciate the Board’s acknowledgement of this. However, the proposed interchange fee base component of 14.4 cents hardly closes this gap. Rather, it maintains a status quo that allows large banks and issuers to collect windfall profits from debit interchange at the expense of merchants and consumers. I urge the Board to further lower the proposed base component of 14.4 cents to a number that accurately reflects the significant decline in average base per-transaction costs incurred by banks and issuers.

The Durbin Amendment also allows the Board to adjust the interchange fee amount received by a particular regulated issuer if the issuer complies with standards established by the Board that demonstrate the issuer is taking effective steps to reduce the occurrence and cost of debit fraud. Importantly, the Durbin Amendment allows an issuer to take advantage of this adjustment only if the issuer demonstrates that the adjustment is limited to those costs reasonably necessary to prevent fraud. The NPRM calls for an increase in the current issuer fraud-prevention adjustment from 1.0 cent to 1.3 cents per transaction for all covered issuers. Rather than implementing an across-the-board increase, the Board should exercise a high degree of discernment in determining which issuers qualify for the increased adjustment. Only by limiting the adjustment to issuing banks that demonstrate successful fraud prevention does the adjustment provide the incentive to actively reduce fraud as intended by the Durbin Amendment.

Further, the Durbin Amendment required that all issuers or payment card networks report their aggregate data with regard to costs incurred, as well as interchange transaction fees charged or received, in connection with the authorization, clearance, or settlement of electronic debit transactions, on at least a biennial basis. Yet, in the 12 years since Regulation II was finalized, the maximum debit interchange fee has not once been revised in accordance with this regularly reported data. The NPRM's proposed implementation of a regular biennial update of the interchange fee cap is long overdue, and should prove effective with proper execution. As the Board notes in its NPRM, "this approach would create predictability for the debit card industry regarding how and when updates to the interchange fee cap would occur." However, the effectiveness of the provision is dependent upon the Board's ability to ensure the submission of accurate data by covered issuers. Big banks and card networks have long been in fierce opposition to the Durbin Amendment, so it is no surprise that, when faced with regulation, they have actively sought out ways to manipulate the system to maximize their interchange fee revenue. It is imperative that the Board be highly attentive to this when implementing this new mechanism.

Thank you for your attention to this important issue. Should you need any further information please feel free to contact my office.

Sincerely,



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Richard J. Durbin  
United States Senator