



**The Changing Legal Landscape:
Durbin and Other Recent Developments**
Northeast Acquirer's Association

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Today's Agenda

I. The Durbin Amendment

- The Process of Turning an Idea into Law
- The Statutory Law
- Scope of the Regulation
- Debit Interchange Fee Standards
- Limits on Payment Card Restrictions
- How to Influence Your Future

II. TCF Bank v. Federal Reserve Board

III. U.S. v. American Express, MasterCard, Visa

The Process

The Process

- Law Passed
- Proposed Regulation Published
- Comments Requested
- Final Regulations Published
- Effective Date

The Durbin Amendment

The Durbin Amendment

- The Dodd-Frank Wall Street Reform and Consumer Protection Act
 - Enacted July 21, 2010
- Regulation of Debit Interchange
 - Reasonable and Proportional Debit Interchange Fees
 - Adjustment for Fraud

The Durbin Amendment

– Considerations

- Similarity Between Debit and Check Clearing
- Incremental Costs of Authorization, Clearing, Settlement

– Exemptions

- Small Issuers
- Government Administered Programs
- Reloadable Prepaid Cards

The Durbin Amendment

- Limitations on Payment Card Network Restrictions
 - Network Exclusivity
 - Merchant Routing
 - Discounts
 - Minimum Amounts
 - Maximum Amounts
 - Federal Agencies
 - Higher Education

Scope of Regulation

Scope of Regulation

- What the Proposed Rule Covers
 - Debit Cards – PIN and Signature
 - ATM Transactions
 - Closed Loop Transactions

Scope of Regulation

- Exemption From Interchange Fee Restrictions
 - Small Issuers – Less than \$10 Billion in Assets
 - Certain Electronic Debit Transactions
 - Government Administered Programs
 - Reloadable, General Use Prepaid Cards Not Marketed or Labeled as Gift Cards

Debit Interchange Fee Standards

Debit Interchange Fee Standards

- Reasonable and Proportional to the Cost Incurred by the Issuer
- Allowable Costs – Authorization, Clearing, Settlement
- Alternative 1
 - Issuer Specific Standard
 - 12 Cents Cap
 - 7 Cents Safe Harbor
 - Calculate Allowable Costs For Cap or Use Safe Harbor

Debit Interchange Fee Standards

- Alternative 2
 - 12 Cent Cap Applicable to All Issuers
 - No Calculation of Allowable Costs
 - No Safe Harbor
- Other Alternatives

Debit Interchange Fee Standards

- Fraud Prevention Adjustment
 - Technology Specific Approach
 - Non-Prescriptive Approach
- Prohibition on Circumvention or Evasion
 - General Prohibition
 - Net Compensation

Limits on Payment Card Restrictions

Limits on Payment Card Restrictions

- General
 - Network Exclusivity
 - Merchant Routing Restrictions
- Self Executing Provisions
 - Discounts for Paying by Another Method
 - Merchants Setting Minimums and Maximums—
Applies only to Credit Cards

Limits on Payment Card Restrictions

- Network Exclusivity

- Alternative A

- 2 Unaffiliated Networks of Any Authorization Method
 - 1 signature network and 1 unaffiliated PIN network

- Alternative B

- 2 Unaffiliated Networks for Each Authorization Method
 - 2 unaffiliated signature networks and 2 unaffiliated PIN networks

Limits on Payment Card Restrictions

- Merchant Routing Restrictions
 - Merchant Selects Authorization Network
 - Merchant Directs Routing in Advance with Acquirer
 - Unauthorized
 - Steering Prohibitions
 - Network Mandated Routing
 - Network Mandated Authorization Method

How to Influence Your Future

Areas For Comment

- Payment Card Network Definition
- Fraud Prevention Adjustment
- Circumvention
- Network Exclusivity
- Merchant Routing
- Timing

TCF Bank Lawsuit

United States
v.
American Express, MasterCard and Visa



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