

# AFP<sup>®</sup> Annual Conference



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## Perspectives on Interchange and Card Acceptance in the Post-FinReg Era

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# Agenda

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- Overview of the Dodd-Frank Act (DFA) Card Provisions (The Durbin Amendment)
- Brief Review of Recent, Related Developments
  - DOJ action against networks regarding credit cards
  - Lawsuit challenging DFA debit interchange provisions on U.S. Constitutional grounds
- Open Discussion



# DFA-Durbin Timeline

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- **7/21/2010** – DFA Passed; Durbin provisions allowing discounts, minimums effective immediately
- **9/13/2010** – Issuer/Network/Acquirer surveys distributed by the Fed
- **10/12/2010** – Surveys returned to the Fed (100+ issuers, over dozen card networks, Top 9 acquirers)
- ~~11/9/2010~~ “By end of year” – Proposed regulatory language will be released by the Fed; 90-day comment period to follow
- **4/21/2011** – DFA deadline for Fed to issue final Durbin Amendment regulatory requirements
- **7/21/2011** – DFA deadline for Durbin implementation



# Durbin Amendment Provisions

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## 1. Debit interchange fees

- Fed must establish standards to restrict interchange fees for a debit card transaction to an amount that is “reasonable and proportional” to the cost incurred by the issuer for that transaction
  - There are exemptions for small bank and credit union debit card issuers (<\$10B in assets); federal, state, and local government program debit and prepaid cards; and reloadable prepaid cards
  - Congress has directed the Fed to give particular consideration to the fact that debit cards function similarly to paper checks, which clear through the Fed at par



# Durbin Amendment Provisions

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- Fed also tasked with establishing two related rules:
  1. Prevent other “network fees” from becoming back-door interchange fees
  2. Allow for ad hoc adjustments to debit interchange fees reasonably necessary to cover the cost of an issuer preventing fraud within its own system, provided that:
    - The issuer takes effective steps to reduce the occurrence of, and costs from, fraud and is using cost-effective fraud prevention technology
    - The adjustments are reduced by the amount the issuer receives for fraud-related debit chargebacks and other reimbursements





# Durbin Amendment Provisions

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2. Network exclusivity and routing
  - Fed must establish rules preventing issuers and payment networks from restricting the payment card networks on which a debit card can be processed
    - Merchants (including online merchants) will be able to route a debit transaction over any payment network that can process the transaction (lowest cost routing)



# Durbin Amendment Provisions

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## 3. Transaction discounts

- Effective 7/21/10 merchants can offer discounts or other incentives for payment by cash, check, debit card, or even credit card...but all cards within a payment type (e.g. debit) must be treated equally (no bias based on issuer or type of card)
  - The implication is that merchants can influence the types of payments used by consumers and, in the long term, alter the mix of payments



# Durbin Amendment Provisions

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## 4. Credit card minimums

- Effective 7/21/10 merchants can set a minimum transaction amount for credit transactions up to \$10 but cannot distinguish between card issuers and payment networks (i.e. the minimum must apply to all credit card transactions)
- Federal agencies or institutions of higher education may also set a maximum dollar value for acceptance of credit cards (but cannot differentiate by issuer or payment card network)





# Durbin Amendment Provisions

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## 5. Related Provisions

- Dodd-Frank allows for the Fed to regulate entity engaged in “payment, clearing, settlement activities”
  - This is very broad and might include issuers, networks, acquirers, or even other stakeholders
- Dodd-Frank also establishes the Consumer Financial Protection Bureau housed under the Federal Reserve
  - Agenda will focus on ‘reining in big banks,’ blocking rate hikes on credit cards, and targeting ‘unfair’ practices
  - Required reporting on government-sponsored and GPR prepaid



# Related Developments

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- The 10/4/10 DOJ settlement with Visa & MasterCard will allow merchants to discriminate based on the card brand or the card type:
    - Merchants will be able to use pricing discounts or other incentives to steer customers toward preferred card brands or card types
    - Merchants will also be able to offer discounts for card brands that carry lower fees than Visa or MasterCard
    - Note: AMEX has chosen not to settle with DOJ. Discover was not a party to the suit (DOJ deemed their rules not as restrictive as V/MA/AXP)
    - Note: Specific rules to be finalized after judicial review & possible comment period
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## Related Developments

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- 10/12/10 TCF National Bank, a large debit card issuer, filed suit to block implementation of the Durbin Amendment
  - Suit asserts that the Fed mandate does not cover all the elements necessary to fully contemplate the costs required to “manage the debit card system and deliver the [debit] product”
  - Suit also claims that the <\$10B issuer exemption would “result in an irrational competitive disadvantage” for banks with \$10B+ in assets

# Time to Share Our Thoughts

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# Considerations for Implementing Durbin

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1. Reaction from: Merchants, Issuers, Acquirers, Networks, Consumers
  2. Potential for Steering
  3. Price/Cost Change Implications
  4. Will Interchange savings pass to consumers?
  5. Impact due to carve-out for Fraud
  6. Impact on ongoing investment in network/new services (NFC, EMV, mobile)
  7. PIN vs. Signature
  8. Big vs. Small Issuers/Banks
  9. An end to the lawsuits?
  10. Potential Unintended Consequences
  11. Credit Card Interchange Implications
  12. Competitive effect/Impact on use of debit vs. other payments
  13. Regulatory “Cap” vs. Competition
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