

**The Durbin Interchange Amendment
As Modified for the Wall Street Reform and Consumer Protection Act Conference
Section-by-Section**

Section 1076: Reasonable Fees and Rules for Payment Card Transactions

The amendment creates a new section 920 of the Electronic Fund Transfer Act

- **Section 920. Reasonable Fees and Rules for Payment Card Transactions**

(a) Reasonable Interchange Transaction Fees for Electronic Debit Transactions

(1) Regulatory Authority over Interchange Transaction Fees

This paragraph provides that the Federal Reserve Board (“Board”) has the authority to prescribe regulations regarding interchange transaction fees charged or received with respect to an electronic debit transaction. The paragraph also authorizes the Board to prescribe regulations to implement the subsection and to prevent circumvention or evasion of the subsection.

(2) Reasonable Interchange Transaction Fees

This paragraph provides that the amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(3) Rulemaking Required

Subparagraph (A) directs the Board to prescribe regulations that establish standards for assessing whether an interchange fee is reasonable and proportional under paragraph (2). The regulations must be issued within 9 months of enactment. Subparagraph (B) gives the Board the authority to require issuers or card networks to provide the Board with information it needs to carry out this subsection. It also directs the Board to issue a report, at least every two years, providing summary information on interchange fees charged and costs incurred in connection with electronic debit transactions.

(4) Considerations

This paragraph directs to the Board, when the Board is issuing regulations under paragraph 3, to (A) consider the functional similarity between electronic debit transactions and paper check transactions which are required within the Federal Reserve System to clear at par (that is, with no transaction fees deducted as the money passes between banks); (B) distinguish between incremental costs incurred by an issuer when conducting an electronic debit transaction vs. other costs which are not specific to a particular transaction, and to not consider such other costs when performing the assessment under paragraph (2); and (C) consult as appropriate with various regulators.

(5) Adjustments to Interchange Transaction Fees for Fraud Prevention Costs

Subparagraph (A) provides that the Board may allow for an adjustment of an interchange fee amount received by an issuer if the adjustment is reasonably necessary to make allowance for the fraud prevention costs incurred by the issuer in relation to its electronic debit transactions, and if the issuer complies with fraud-related standards established by the Board. The standards established by the Board will ensure that any adjustments to the fee shall be limited to reasonably necessary costs and shall take into account fraud-related reimbursements that the issuer receives from consumers, merchants or networks. The standards shall also require issuers to take effective steps to reduce the occurrence of and costs from fraud in electronic debit transactions, including through the development of cost-effective fraud prevention technology.

Subparagraph (B) provides that the Board shall issue these final regulations within 9 months, and in issuing the regulations shall consider a number of factors relating to how much electronic debit fraud occurs, which types of debit transactions are associated with fraud, the available and economical means by which fraud may be reduced, who bears the costs of fraud prevention and fraudulent transactions, and the extent to which interchange transaction fees have in the past affected incentives to reduce fraud.

(6) Exemption for Small Issuers

This paragraph exempts issuers with assets of less than \$10 billion from debit interchange fee regulation. It also provides that in this paragraph the term “issuer” is limited to the holder of the asset account that is debited.

(7) Exemption for Government Administered Payment Programs and Reloadable Prepaid Cards

Subparagraph (A) exempts from interchange fee regulation electronic debit transactions involving (i) debit cards or prepaid cards that are provided to persons as part of a federal, state or local government-administered payment program in which the person uses the card to debit assets provided under the program; and (ii) reloadable general use prepaid debit cards.

Subparagraph (B) provides that government program prepaid cards and reloadable prepaid cards will no longer be exempt from debit fee interchange regulation if, two years after enactment, the holder of such cards may be charged by the issuing bank with an overdraft fee or a fee imposed for the first in-network ATM withdrawal per month.

Subparagraph (C) provides a definition for the term “designated automated teller machine network.”

Subparagraph (D) directs the Board to issue an annual report on government prepaid cards and the fees charged with respect to such cards.

(8) Regulatory Authority Over Network Fees

This paragraph provides that the Board has authority to prescribe regulations regarding network fees, with such authority limited to ensuring that a network fee is not used to compensate an issuer with respect to an electronic debit transaction and ensuring that a network fee is not used to circumvent the requirements of this subsection. These regulations shall be issued within 9 months after enactment.

(9) Effective Date

This paragraph sets the effective date of paragraph (2) at 12 months after enactment.

(b) Limitation on Payment Card Network Restrictions

(1) Prohibitions Against Exclusivity Arrangements

Subparagraph (A) directs the Board to prescribe regulations within 12 months providing that issuers and card networks shall not restrict the number of networks on which an electronic debit transaction may be processed to just one network, or to just two networks that are affiliated with each other.

Subparagraph (B) directs the Board to issue regulations within 12 months providing that issuers and card networks shall not restrict a person who accepts debit cards from directing the routing of electronic debit transactions for processing over any network that can process the transactions.

(2) Limitation on Restrictions on Offering Discounts for Use of a Form of Payment

This paragraph provides that a card network shall not inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards or credit cards, provided that discounts for debit cards and credit cards do not differentiate on the basis of the issuer or the card network, and provided that the discount is offered to all buyers and disclosed clearly to the extent required by federal and applicable state law. Subparagraph (B) provides that a network may not penalize a person for providing a discount that is in compliance with federal and applicable state law.

(3) Limitation on Restrictions on Setting Transaction Minimums or Maximums

This paragraph provides that a card network shall not inhibit the ability of any person to set a minimum dollar value for acceptance of credit cards, provided that the minimum does not differentiate between issuers or card networks, and provided that the minimum does not exceed \$10. Subparagraph (B) authorizes the Board to increase by this dollar amount by regulation. This paragraph also provides that card networks shall not inhibit the ability of a federal agency or an institution of higher education to set a maximum dollar value for acceptance of credit cards, provided that the maximum does not differentiate between issuers or card networks.

(4) Rule of Construction

This paragraph provides that nothing in this subsection shall be construed to authorize any person to discriminate between debit cards within a card network or to discriminate between credit cards within a card network on the basis of the issuer that issued the card.

(c) Definitions

This subsection contains definitions.

(d) Enforcement

This subsection provides that the enforcement of this section 920 shall be pursuant to the administrative enforcement provision of the Electronic Fund Transfer Act (section 918) and not the criminal or civil enforcement provisions (Sections 916 and 917).

There will also be two other provisions relating to interchange elsewhere in the House offer.

- **One provision will make clear that nothing in the amendment shall apply to the USDA's nutrition assistance programs (interchange fees are not charged for electronic benefit transfer (EBT) transactions for these programs).**
- **The other provision makes various changes that have the effect of preserving the Board's authority over this section 920 of the Electronic Fund Transfer Act, notwithstanding the migration of the rest of the Electronic Fund Transfer Act to the authority of the CFPA/B.**