



## ***The Impact of the Durbin Amendment and the Future of Interchange Fees***

*Written by Blair Thomas*

At around the same time I co-founded eMerchantBroker, the United States passed the Dodd-Frank Financial Regulatory Reform bill. It contained an important section called the Durbin Amendment that went into effect in 2011 and, ever since, has caused conflict and consternation, amongst stakeholders in the payments ecosystem.

The Durbin Amendment is the government's answer to years of consumer agitation over the cost of products they buy—it specifically targets the previously unregulated fees charged by financial institutions to process debit card transactions.

The Amendment capped the interchange rate charged to merchants at twenty-one cents plus 0.05 percent of the transaction value. Roughly speaking, that works out to about twenty-four cents per transaction—a big difference from the old average of forty-four cents per debit card swipe.

If the goal was to reduce costs and save consumers money, that sounds like it would have been a good start. Unfortunately the new rule left most stakeholders feeling worse off after the implementation than they had been before.

### **Current State of the Durbin Amendment?**

Small merchants have gone to court to fight the Amendment. Large financial institutions are lobbying to have the act repealed. Retailers are fighting to keep it. And consumers still pay high prices. All of this added up to a movement within the Republican Party, to repeal the Durbin Amendment as part of their proposed financial reforms in 2017. But the Amendment's complicated effects on the different stakeholders has made repeal a more difficult political proposition than anticipated.

The current Republican Congress initially wanted to include language in the new Financial CHOICE Act (intended to repeal 2010's Dodd-Frank reforms) that would call for a repeal of the Durbin Amendment. Ultimately they abandoned the Durbin Amendment language, citing lack of support and a real fear that the repeal would prevent the Financial CHOICE Act from passing.

Now the Financial CHOICE Act has passed—without provisions for the repeal of the Durbin Amendment. Which has led back to calls for Congress to circle back and finally deal with the Durbin problem once and for all. What that will mean in the coming two years is hard to predict.

First of all, Republicans need to find the unified political will to vote to repeal. Although they prefer the government to stay out of this kind of regulation, heavy lobbying from all stakeholders makes it hard for a consensus to form on such a complicated issue.

### **What Future Repeal Might Mean**

If we think back, although the Durbin Amendment was passed in 2010, it took until 2011 to craft and implement the actual regulations. A similar timeline is likely to unfold when it comes to



repeal, meaning it's unlikely we'd see changes to existing fee structures in the remainder of 2017.

If repeal did happen it could mean a return to pre-Amendment rates and rules. That means the government would stay out of the process of setting fees and regulations. Banks would be free to increase fees on a semi-annual basis. Large retailers will still be able to work with un-affiliated processors, but, as was the case pre-Durbin Amendment, if they want access to the largest customer bases—those connected to the big card networks—they will have to pay the increased fees. Small merchants may not be affected by a rate floor, but it's not clear that repealing Durbin would lead card networks to change back to pre-Amendment pricing.

When it comes to how changes will affect the consumer—the original would-be benefactor of the Amendment—the future is not clear. Both those who want repeal and those that oppose it claim that their solution would benefit the consumer. In either case, the key for the consumer will be whether the other stakeholders actually pass along any savings they accrue going forward.

### **What Impact has the Durbin Amendment had on the Stakeholders?**

There are four main groups affected by the implementation of the Durbin Amendment: large financial institutions, large retailers, small merchants and consumers. Of those four, for reasons that were not foreseen, only the large retailers can be said to have benefited from the new rules.

#### **The Rate Cap and the Banks**

Right off the bat financial institutions took a big hit when the Amendment was introduced. The language in the Amendment called for banks to charge interchange fees that are “reasonable and proportional to the actual cost.” Which seems like a sensible idea, except, when the rate cap of twenty-four cents per transaction became a reality, some estimates claimed it would cost banks as much [\\$8 billion a year](#) compared with years prior to regulation. In response the banks set out to raise account maintenance fees and lobby for the repeal of the Amendment.

#### **Competition and Large Retailers**

The problem it turns out, is not just with the interchange fee rate cap, but also with another element of the Amendment—language aimed at curbing anti-competitive practices and encouraging competition amongst transaction processors. By allowing companies other than the traditional financial institutions to bid for and ultimately win processing business, the Amendment opened up a new set of opportunities and threats. Once again the banks were on the losing side of the issue. The Amendment gave large retailers the ability to shop for the lowest cost processor. This drove the actual rates charged per transaction lower and lower. The Amendment actually changed the fundamental structure of control in the debit processing market. Previously, banks, without regulation, had controlled how transactions were processed and what merchants paid for the service. Now, control shifted to the retailers. Because they were able to use competing, unaffiliated processors, they saw large profits after the implementation of the Amendment. According to the [Electronic Payments Coalition, since 2011 the Amendment has saved merchants more than \\$8 billion per year.](#)



As the processing market has evolved in the years following 2010, large retailers have increasingly lobbied for the Durbin Amendment to remain in place.

### **The Floor and Small Merchants**

Another element of the Durbin Amendment that had unintended consequences was language that set not just a ceiling for interchange rates, but also a floor. Whereas in the past, the lack of regulation allowed small merchants to negotiate rate fees with the banks, now they had to pay at least a minimum fee. The result—small retailers often ended up paying more for debit transactions than they had in the past.

These merchants were so angry they filed suit against the Federal Reserve claiming the government had no right to implement such changes. The suit made it all the way to the Supreme Court before being struck down.

### **Lastly, the Unfulfilled Promise to the Consumer**

The stated goal of the Durbin Amendment was to save consumers money. But in the years since it came into law retailers have saved billions in interchange fees and [most consumers feel they are still paying just as much for the products they purchase](#). Because of the lower interchange rates banks claim they are less able to offer low-cost services or fee-free accounts to their clients. And small merchants are often passing on their higher transaction rates to their customers.

So the original intent of the agreement, simply to save shoppers money, has not been met.

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