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Credit Card Insider: The More You Know, the Less You Like the Durbin Amendment

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A group of conservative and libertarian groups have sent Congress **a letter urging lawmakers** to delay the implementation of the Durbin Amendment, a provision which would cap so-called "interchange" fees financial companies can charge on debit card transactions.

Visa and Mastercard together control around 90 percent of the market for debit card purchases. The Durbin Amendment would limit the amounts that retailers pay to Visa, Mastercard, and major banks. It was heavily supported by many of the biggest retail chains, including Walmart .

Some lawmakers have attempted to stall implementation, citing fears that the fee caps could result in higher charges for consumers. Some banks have reacted to the change by limiting the amount of debit card purchases, ending rewards programs or raising ATM fees.

Federal Reserve Chairman Ben Bernanke is reviewing 11,000 letters filled with comments and issues about the swipe fee legislation.

Bernanke said because of the response, the Fed will not make its final rule to regulate interchange fees by Congress' imposed April 21st deadline.

This topic is so heated, that my sources within the credit card industry do not want to be named for fear of retaliation. I asked one of them what was their latest impressions on this delay and will it help their efforts in getting the word out on the impact of this bill.

LL: While the financial industry and its allies have certainly gained traction over the past couple of months, do you really believe you will convince Congress to delay and study the Durbin amendment? Can you overcome Senator Durbin's strong objections?

INSIDER: Momentum certainly has shifted. A large, growing and diverse group of allies interested in consumer, small bank and credit union protections are pressing Congress to delay and study the Durbin amendment.

We are encouraged that Congress is taking a closer look at the regulation and examining the unintended consequences. More importantly, this issue is receiving bipartisan attention as Senator Jon Tester, a Montana Democrat, has introduced a Senate bill to delay implementation and study the regulation. The House companion bill also has bipartisan support, with more than 40 co-sponsors.

Top federal officials, such as Fed Chairman Ben Bernanke, FDIC Chairman Sheila Bair and Acting Comptroller of the Currency John Walsh have all expressed concerns about the negative impact the regulation will have on consumers and small financial institutions.

They have been joined by a diverse group of individuals and organizations, including the NAACP, the National Education Association, the Hispanic Chamber of Commerce, the Cato Institute and many others, who worry about the unintended consequences of debit price controls.

Given the broad based and intense opposition to the Durbin bill, we believe delaying studying its impact is a reasonable and rational course of action.

LL: What has helped the industry gain momentum?

INSIDER: The more you know, the less you like the Durbin Amendment. And the more the language is discussed, the more allies we gain in our efforts to delay and study the impact of debit price controls.

Remember, the Durbin Amendment was never debated publicly or the subject of a hearing before being adopted as part of the Dodd-Frank bill. As a result, the potential harm to consumers, small banks and credit unions is not known.

If the regulation is implemented as written, consumers will likely see higher costs, fewer choices and reduced benefits—as consumers in Australia have experienced after similar regulations were imposed there.

And, despite the so called "carve out" for small banks, there is compelling evidence that small financial institutions will be harmed by the regulation. The provisions will not adequately compensate smaller financial institutions for their reasonable costs; these institutions may be compelled to offset losses by raising consumer prices. That's not just the industry view, that's the view of the credit unions, small banks, Chairman Bernanke, and FDIC Chairman Bair.

In addition to price fixing, the last-minute routing and exclusivity requirements added to the Durbin Amendment will eliminate consumer choice and the ability to deliver secure, reliable and innovative debit services to the consumer.

These provisions impose costly requirements on issuers to do business with multiple networks and take away from the consumer the choice of which payment network will carry their transactions. They undermine data security, innovation and customization, all in an effort to artificially drive down retailer costs and issuer revenue.

Many low-income Americans will not be able or willing to pay for higher cost banking services, and may well be forced out of the mainstream banking system. These customers likely will also be forced to resort to check cashers and payday lenders for banking services.

LL: Fed Chairman Bernanke has said the industry will not make the congressionally mandated deadline to issue final rules on debit regulation. The retailers say that proves the Fed is taking time to get the process right and that Congressional action on the Tester bill is not needed. Are they right?

INSIDER: No. The Federal Reserve neither has the data nor the authority to make the informed decision required to address the concerns of consumers, small financial institutions and a growing list of allies including the NAACP, National Hispanic Chamber of Commerce and others.

By its own admission, the Fed never surveyed small banks or credit unions. So, clearly they don't have the data they need on that point.

Further on the issue of the small bank carve out for banks with assets under $10 billion, the Fed doesn't have the authority under the Durbin bill to ensure that small banks are absolutely protected.

That's one of the major flaws with the Durbin bill. And that's why small banks and credit unions are so vocal in their opposition.

LL: Retail lobbyists argue that the cost of accepting debit cards should be the same as accepting checks. How do you respond?

INSIDER: Despite the retailers' claims, checks are not free and debit cards are not electronic checks. Debit cards provide consumers and retailers with tremendous benefits. Unlike checks, debit cards provide consumers and retailers with the ability to make and receive instantaneous payments.

They also provide retailers guaranteed payment, enhanced security, faster transactions and potentially increased sales. Moreover, debit card payments are processed over state-of-the-art networks that provide consumers and merchants with robust security for transactions and secure access to funds at anytime and anywhere the card is accepted.

Retailers know that paper checks are antiquated and costly because so many of them refuse to accept them as payment. Additionally, check processing and clearance isn't free. As news reports have stated, banks can pay the Federal Reserve up to 15 cents to process a paper check and about 1.5 cents to truncate and clear the check electronically.

LL: Retailers say this legislation is a win for businesses of all sizes. Do you agree?

INSIDER: The Durbin Amendment represents a huge windfall for the nation's largest retailers. According to the respected industry analyst firm First Annapolis, 81% of debit spending is at only the top 1.5 percent of retailers. This means the largest merchants will see hundreds of millions of dollars per year.

Furthermore, the law does not require, and retailers will not commit to, passing any savings realized from lower interchange on to consumers. There's no better proof point that illustrates the big retailer benefits than Home Depot's admission that the company stands to make $35 million a year from debit regulation.

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