

# A New Durbin Amendment Would Spell Trouble for U.S. Credit Card Customers

Congress Should Learn Its Lesson and Leave Well Enough Alone

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**There are times when we are uncertain what will happen if a particular public policy is implemented. A proposal in Congress about cuts in interchange fees on credit cards is not one of them.**

We can be pretty certain that customer services and security for anyone with a credit card will be impacted, and low-income consumers will bear the brunt of this change.

How do we know this? We have been here before and the data is clear.

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which included a federal price control strategy that capped debit card interchange fees for banks with assets of \$10 billion. Interchange fees are charged to merchants by card networks for processing a debit or credit payment.

The Durbin Amendment—named after its primary sponsor, Senator Richard Durbin—altered the structure of the debit card payment processing industry by allowing only incremental costs related to debit card transactions, restricting recovery for many other costs related to card operations, such as customer service, data services, and fraud and loss protection. Unsurprisingly, this effectively transformed debit card operations.<sup>1</sup>

Supporters of the amendment argued that costs to consumers would be lowered by retailers passing on their savings to consumers; however, the Federal Reserve found that most retailers either maintained or raised their prices following the passage of the Durbin Amendment.<sup>2</sup>

So where was the impact of the Durbin amendment felt? Look to the low-income households who were squeezed out of the banking system when decisions on how to offset the billions lost annually due to the regulation were made.<sup>3</sup>

The lost revenue led to reduced access to free banking accounts and increases in fees, as well as reduction in debit card rewards programs and higher minimum balance requirements.<sup>4</sup> In 2009, the year before Dodd-Frank, 76 percent of checking accounts were free of charge. In 2011, right after Dodd-Frank, just 45 percent were still free. Within three years, the total number of banks offering free accounts fell by 50 percent and the minimum monthly holding required and fees doubled for accounts.<sup>5</sup>

<sup>1</sup> George Mason Law & Economic Research Paper No. 14-18, Price Controls on Payment Card Interchange Fees: The U.S. Experience, June 2014

<sup>2</sup> What Two Billion Retail Transactions Reveal about Consumers' Choice of Payments, April 2017

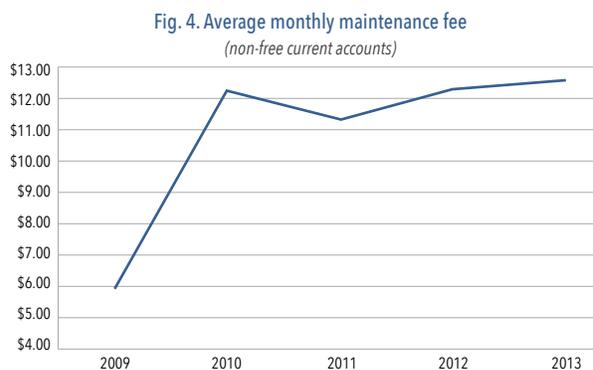
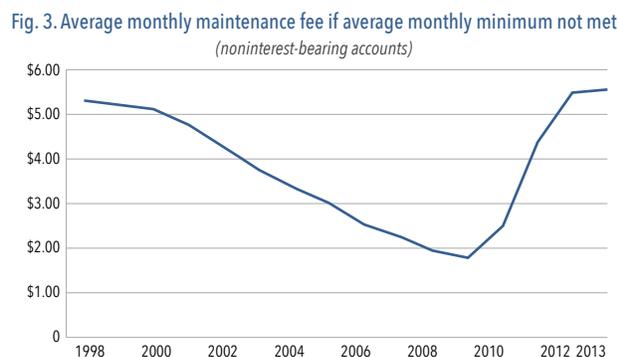
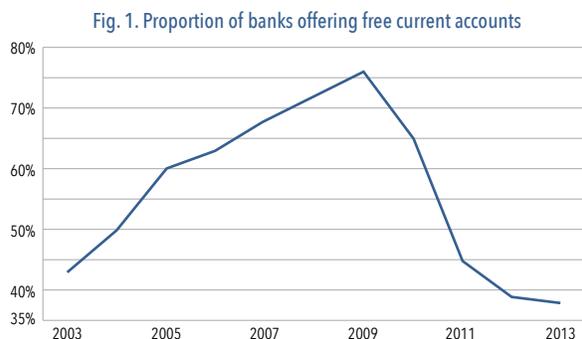
<sup>3</sup> George Mason Law & Economic Research Paper No. 14-18, Price Controls on Payment Card Interchange Fees: The U.S. Experience, June 2014. Also see: Federal Reserve Board Divisions of Research & Statistics and Monetary Affairs Finance and Economics Discussion Series, "Bank Profitability and Debit Card Interchange Regulation: Bank Responses to the Durbin Amendment," 2014

<sup>4</sup> Review of Banking and Financial Law, "The Durbin Amendment: Summary, Impact, and Reform," 2018

<sup>5</sup> George Mason Law & Economic Research Paper No. 14-18, Price Controls on Payment Card Interchange Fees: The U.S. Experience, June 2014

Notably, it wasn't just institutions covered directly by the Durbin Amendment that changed their operations. Banks exempt from the cap also adjusted prices and practices as a competitive response to changes made by regulated banks.<sup>6</sup>

The following four figures<sup>7</sup> clearly show the experience before and after the 2010 Durbin Amendment:



The evidence is clear. The 2010 Durbin Amendment had unintended consequences, disproportionately burdening the lower-income populations least able to handle the fees and higher minimums.<sup>8</sup> The impact was immediate and profound. The Federal Deposit Insurance Corporation (FDIC) estimated that the number of unbanked households increased by a million from 2009 to 2011,<sup>9</sup> and by moving low-income consumers out of the mainstream banking system, the Durbin Amendment forced vulnerable consumers to make greater use of alternative financial services providers, such as check-cashers, pawn shops, payday lenders, and other high-cost financial services that cater to the unbanked.<sup>10</sup>

6 Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C. The Impact of Price Controls in Two-sided Markets: Evidence from US Debit Card Interchange Fee Regulation, 2017

7 George Mason Law & Economic Research Paper No. 14-18, Price Controls on Payment Card Interchange Fees: The U.S. Experience, June 2014

8 The Impact of the Durbin Amendment on Banks, Merchants, and Consumers, 2019

9 Review of Banking and Financial Law, "The Durbin Amendment: Summary, Impact, and Reform," 2018

10 George Mason Law & Economic Research Paper No. 14-18, Price Controls on Payment Card Interchange Fees: The U.S. Experience, June 2014

## The Past is Prologue

The evidence from 2010 seems clear, and yet, Congress is looking at this issue again. There seems little doubt that a "Durbin 2" will have similar outcomes. If interchange fees on credit cards are subject to the same market control strategies debit cards faced, the market will likely respond with reduction in customer services, like discount and reward programs, as well as new fees and limits which will likely close out the credit markets to the marginalized in our economy. Additionally, the lost revenue will likely hamper security and fraud services as the resources normally available to invest in new and improved networks and technology will be lost.

Such reductions in access to credit and debit cards could not come at a worse time. Online and contactless transactions, which require card services, have dramatically accelerated, especially after COVID.<sup>11</sup> Any actions that limit access will have an impact on all types of consumers growing increasingly dependent on non-cash purchases,<sup>12</sup> but especially the marginalized among us.

Why ignore data and experience? Now is not the time to compromise the features and security that come with our current payment structure, and we should not close the door on consumers, especially as we enter an increasingly digital and contactless world.

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<sup>11</sup> CNBC, "The coronavirus pandemic has caused a surge in demand for contactless payments, accelerating the shift from cash to digital options," 2020

<sup>12</sup> Pew Research Center notes that nearly a third of U.S. adults now make no-cash purchases during an average week and about 34% of adults under the age of 50 make no purchases in a typical week using cash, <https://www.pewresearch.org/fact-tank/2018/12/12/more-americans-are-making-no-weekly-purchases-with-cash>. Last accessed 10/21/21

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