

## Durbin Amendment

to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

### SEC. 1077. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended--

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

#### SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

(a) Reasonable Interchange Transaction Fees for Electronic Debit Transactions.--

(1) REGULATORY AUTHORITY.--The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

(2) REASONABLE FEES.--The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

(3) RULEMAKING REQUIRED.--The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

(4) CONSIDERATIONS.--In issuing rules required by this section, the Board shall--

(A) consider the functional similarity between--

(i) electronic debit transactions; and

(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

(B) distinguish between--

(i) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

(ii) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

“(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

“(5) EXEMPTION FOR SMALL ISSUERS.--This subsection shall not apply to issuers that, together with affiliates, have assets of less than \$10,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

“(6) EFFECTIVE DATE.--Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

“(b) Limitation on Anti-competitive Payment Card Network Restrictions.--

“(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.--A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network.

“(2) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.--A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

“(3) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.--A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of any form of payment.

“(c) Definitions.--For purposes of this section, the following definitions shall apply:

“(1) DEBIT CARD.--The term ‘debit card’--

“(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

“(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l-1(a)(2)(A)); and

“(C) does not include paper checks.

“(2) CREDIT CARD.--The term ‘credit card’ has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

“(3) DISCOUNT.--The term ‘discount’--

“(A) means a reduction made from the price that customers are informed is the regular price; and

“(B) does not include any means of increasing the price that customers are informed is the regular price.

``(4) ELECTRONIC DEBIT TRANSACTION.--The term `electronic debit transaction' means a transaction in which a person uses a debit card to debit an asset account.

``(5) INTERCHANGE TRANSACTION FEE.--The term `interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

``(6) ISSUER.--The term `issuer' means any person who issues a debit card, or the agent of such person with respect to such card.

``(7) PAYMENT CARD NETWORK.--The term `payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.".