



March 21, 2016

The Honorable Janet Yellen  
Chairman  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue N.W.  
Washington, D.C. 20551

Re: EGRPRA Comments Regarding the Durbin Amendment, Docket ID FFIEC-2014-0001

Dear Chairman Yellen:

We appreciate the opportunity to submit comments regarding the Durbin Amendment pursuant to the regulatory review being conducted under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). While the Durbin Amendment's market distorting price controls have been detrimental to financial institutions, we want to take this opportunity to focus on the most important party to a financial transaction – the consumer. Even though Regulation II, which implemented the Durbin Amendment's price controls, has been effective in transferring approximately \$8 billion per year from financial institutions to retailers, they have failed to fulfill the primary promise of the Amendment, which was to lower costs at checkout. Furthermore, recent scholarship indicates that the artificial burden placed on the financial services sector by these price controls have negatively impacted consumers in myriad ways, including increasing the costs of banking and significantly increasing the population of the unbanked and underbanked. It is as unfortunate as it is ironic that the very people who were supposed to benefit from the Durbin Amendment have born the economic harm.

#### Merchants Have Failed to Lower Prices

As a result of the Durbin Amendment and Regulation II, merchants receive an approximately \$8 billion per year windfall which totals nearly \$36 billion since adoption of the regulations in October 2011. However, a recent August 2015 Federal Reserve Bank of Richmond study confirms what common sense and economic theory tell us – that is, retailers never had any intention or economic incentive to pass their windfall on to consumers.

Specifically, the report noted "few merchants are found to reduce prices or debit restrictions as debit costs decrease." A September 2015 market study conducted by Phoenix Marketing International offers confirmation through its finding that the vast majority of shoppers have not experienced a price drop at the point of sale. Its fourth annual survey of nearly 2,000 consumers found that the vast majority of shoppers have not experienced a price drop at the point of sale. In fact, in each of the 15 categories measured, at least 92% of shoppers reported that prices rose or stayed the same over the previous year. None of this should be any surprise, and consumers should not hold their breath for retailers to pass their Durbin windfall onto consumers through lower prices.

#### Durbin Amendment's Disproportionate Harm to Consumers

Not only have consumers seen no direct benefit from the Durbin Amendment in the form of lower prices, low income Americans have been disproportionately and adversely impacted by the Durbin Amendment. In their paper titled "Price Controls on Payment Card Interchange Fees: The U.S.

Experience,” Todd Zywicki, Geoffrey Manne, and Julian Morris concluded that “it is unambiguous that banking fees and other fees rose after the passage of the Durbin Amendment and that eligibility for free accounts declined.” Any increase in banking fees resulting from the Durbin Amendment’s price controls hurts those at the margins most. Thus, they found as a result of the Durbin Amendment, there will be a transfer of \$1 to \$3 billion annually from low-income households to large merchants and their shareholders, which have been the primary beneficiaries of the Durbin Amendment to date.

For many of the same reasons cited by Zywicki et. al, Scott Stockoz, Deputy Regional Director of the Federal Deposit Insurance Corporation, concluded that “[i]t is unlikely consumers will see any tangible benefits from the Durbin Amendment.”<sup>1</sup>

### Conclusion

It has long been a bipartisan policy goal to foster a regulatory environment that encourages low-income individuals and families to have access to basic banking services, including electronic transaction services. We agree and work hard to encourage as many people as possible to participate in the banking system. Regulators and policy makers should consider the economic consequences on the most vulnerable when promulgating new regulations and recognize that the Durbin Amendment, rather than helping with this worthwhile goal, merely aided retailers to pocket approximately \$36 billion to date.

We appreciate the opportunity to submit this comment pursuant to EGRPRA.

Sincerely,



Molly Wilkinson  
Executive Director  
Electronic Payments Coalition<sup>2</sup>

<sup>1</sup> Scott D. Stockoz, *Dodd-Frank and the Durbin Amendment – Is It Working as Intended?*, at ii (Capstone Strategic Project for the American Bankers Association Stonier Graduate School of Banking (2012), available at <http://www.abastonier.com/stonier/wp-content/uploads/2012-Capstone-Stockoz.pdf>). See also, Meghan Milloy, *From Free Checking to the Financial Fringe: A Tale of Two Regulations and Low-Income Families* (July 8, 2015), available at <http://americanactionforum.org/research/from-free-checking-to-the-financial-fringe-a-tale-of-two-regulations-and-lo> (concluding that “The Durbin Amendment to the Dodd-Frank Act raised the cost of checking accounts and associated debit cards which led to the unintended consequence of dramatically limiting free checking in the United States”).

<sup>2</sup> The Electronic Payments Coalition (EPC) is a coalition of payments industry stakeholders, such as credit unions, community banks, trade associations, payment card networks and banks that speaks on behalf of the payments industry to protect the value, innovation, convenience, security and competition that exists in the modern electronic payments system. The EPC educates policymakers, consumers and the media on the system’s role in economic growth and the importance of consumer choice, security, innovation and stability for the continued growth of global commerce.