

Congress of the United States
Washington, DC 20510

August 16, 2021

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell:

As a Member of Congress serving on the Committee on Financial Services, I write to you to express my concern with the Board of Governors' plan to expand Regulation II beyond the scope given by Congress in the Durbin Amendment.

The legacy of the Durbin Amendment is one of divisiveness and confusion, which was inevitable given the hastily passed nature of that law. In light of the vagueness and contradictions of the Durbin Amendment, there is no doubt that the Federal Reserve faced significant challenges in implementing it, and the current rule attracted significant controversy and litigation nearly a decade ago.

However, when a law is vague, the wrong response from an agency is to extend its reach and expand its burden beyond accomplishing those elements which are clearly evident in the statute. I am concerned that the sweeping substantive rule change that has been proposed represents administrative overreach.

For instance, there is no compelling evidence that Congress empowered the Federal Reserve to force card-issuing financial institutions to essentially transfer technology to vendors and retailers as part of providing *routing choice*. Yet the proposed rule makes it functionally impossible for anything else to occur, as it effectively mandates that authentication and other proprietary technologies be provided without compensation in order to effect the rule's primary goal on transaction routing. This regulatory logrolling amounts to the forced transfer of tangible value from one party to another, without mandate of law.

Additionally, the Federal Reserve failed to provide virtually any analysis of the proposed rule's impact, under the guise of being a mere "clarification." Among the issues not considered are the high compliance costs to community financial institutions and their relatively higher cost of replacing debit cards (likely necessitated by the proposed rule) at a time when a global microchip shortage is driving up the cost of these cards. Nor are service interruptions or transaction problems for small businesses considered. That these costs may be in pursuit of a rule change not required by statute is concerning and is reason enough for the proposal to be withdrawn.

At this time, it is important that we do everything possible to support small businesses in our communities, be they small retailers or banks or credit unions. This new mandate, however, does them no favors and I am concerned that ultimately all parties will be made worse off. The Reserve can prevent this harm by withdrawing the proposal and thoroughly reconsidering future activity in this space, taking only actions with the remit provided by Congress.

Sincerely,



Rep. Ted Budd
Member of Congress