My name is Steve Pociask, and I serve as president and chief executive officer for the American Consumer Institute, a 501(c)(3) nonprofit educational and research institute founded to protect consumers' interests. Please accept these comments in opposition to Regulation II, a proposal to implement further price controls on "swipe fees" for debit card transactions.[1]

To their credit, some members of the Federal Reserve's Board of Governors understood as soon as Congress passed the Durbin Amendment requiring the Federal Reserve to implement the first iteration of swipe fee price controls that it would have a detrimental effect on consumers. Then Governor Elizabeth Duke commented:

> *I'd like to comment on the one seemingly unavoidable impact of this rule, higher fees on checking accounts. One of my first projects in banking was the study of checking account products and specifically the elimination of free checking. At that time, I was working for a community bank that was contemplating service charges on checking accounts to offset the likely interest expense associated with now accounts which were expected to be authorized in coming legislation. What I discovered in that study was that low balance high activity checking accounts were very expensive to process as we impose service charges. We saw a reduction in the number of those smaller accounts and a corresponding reduction in expense that was significant enough to improve profitability even if we generated no additional revenue from fees years later, as more and more banks brought back free checking, it took me a while to figure out what had changed until I discovered that debit interchange fees had changed the dynamic and made the low balance high transaction account profitable…But the restoration of bank profitability is likely to come at the expense of less availability of low-cost checking accounts offered to consumers. The experience of other countries would suggest that overall usage of debit cards for payments will not decline significantly as a result of this regulation.*

[1] "Regulation II – Debit Card Interchange Fees and Routing," *Board of Governors of the Federal Reserve System*, October 25, 2023, https://www.federalreserve.gov/paymentsystems/regii-about.htm.

But as fees for checking accounts rise, I would expect more consumers to turn to prepaid debit cards or even cash as a lower cost alternative.[2]

That's exactly what happened. Since the Durbin Amendment was executed, consumers have been harmed on both sides of the equation. First, consumers were promised that retailers would "pass along" savings to consumers. Those savings never came to fruition. Several studies show that many retailers did not pass through these savings, and even raised prices after pocketing the savings from the lower interchange fees.[3] Second, consumers suffered when banks were forced to increase fees on primary consumer financial products like ATMs and checking accounts.

Rather than loosen, or better yet, reject this failed price cap, the Federal Reserve is now considering implementing a second, more onerous round of them. Reg II would lower the current cap from $0.21 (plus 0.05% of the transaction amount) to just $0.14 (plus 0.04% of the transaction amount). In real dollars, this would be less than a cap proposal the Fed rejected in 2011.

If consumers were harmed by the first round of price controls, is there any debate whether a second and more arduous version would cause them further harm?

In summary, since the Durbin Amendment and subsequent regulations were implemented:

- Consumers paid more for ATM fees;
- Consumers saw reward programs restricted or eliminated;
- Consumers saw free checking accounts reduced or eliminated; and
- Consumers saw retail prices increase, not decrease as was promised.

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[2] "Debit Card Fee Regulations," *C-SPAN*, June 29, 2011, https://www.c-span.org/video/?300269-1/debit-card-fee-regulations.

[3] For example, here are three such studies: Zhu Wang, Scarlett Schwartz, and Neil Mitchell, "The Impact of the Durbin Amendment on Merchants: A Survey," *Federal Reserve Bank of Richmond Economic Quarterly*, Volume 100, Number 3, 2014; Todd Zywicki, Geoffrey Manne, and Julian Morris, Julian, "Price Controls on Payment Card Interchange Fees: The U.S. Experience," George Mason Law & Economics Research Paper No. 14-18, 2014; and V. Mukharlyamov and N. Sarin, "The impact of the Durbin Amendment on Banks, Merchants, and Consumers," University of Pennsylvania, Institute for Law and Economics, January 30, 2019.

Make no mistake about it: this new rule will create further harm to consumers.

A recent paper by the former consumer finance director of the Pew Charitable Trusts warned that the new Fed proposal could cost consumers up to $2 billion.[4] If the current proposal to reduce the debit interchange fee cap is finalized, the research suggests that consumers will pay an extra $1.3 billion to $2 billion annually in higher bank account fees. Consumers will find it harder to avoid fees, as “free” bank accounts with no maintenance fees become less common and the average minimum deposit required to qualify for fee waivers increases – which may disproportionately affect lower-income consumers.

The Federal Reserve should be asking Congress to repeal the Durbin Amendment rather than create a new, more onerous version of it. On behalf of millions of consumers who have been forced to pay more both at their banks and their retail stores due to the first iteration of this policy, we urge the rejection of the Regulation II proposal.

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[4] Dave Kovaleski, “New White Paper Examines Impact of Interchange Fee Cap on Consumers,” *Financial Regulation News*, January 30, 2024, https://financialregnews.com/new-white-paper-examines-impact-of-interchange-fee-cap-on-consumers/.