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BEFORE THE

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HEARING ON

"UNDERSTANDING THE FEDERAL RESERVE'S PROPOSED RULE ON INTERCHANGE FEES: IMPLICATIONS AND CONSEQUENCES OF THE DURBIN AMENDMENT"

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Chairwoman Capito, Ranking Member Maloney and Members of the Subcommittee, I am honored to appear before you today and appreciate the opportunity to share my views on debit card regulations. My name is Doug Kantor. I am a partner in a private law firm and am counsel to the National Association of Convenience Stores ("NACS"), the Society of Independent Gasoline Marketers of America ("SIGMA"), and the Merchants Payments Coalition ("MPC").

NACS is an international trade association representing the convenience store industry. The industry as a whole includes about 145,000 stores in the United States, sells nearly 80 percent of the gasoline in the nation, and employs about 1.7 million workers. It is truly an industry for small businesses; more than 60 percent of convenience stores are owned by one-store operators.

NACS and SIGMA are both members of the MPC. The MPC is a group of more than 20 national and 80 state trade associations representing retailers, restaurants, supermarkets, drug stores, convenience stores, gasoline stations, theater owners, on-line merchants and other businesses that accept debit and credit cards. MPC 's sole mission is securing a more competitive and transparent card system that works better for consumers and merchants alike. The coalition's member associations collectively represent about 2.7 million locations and 50 million employees. These merchant associations account for more than 60 percent of the non-automotive card based transaction volume in the United States.

The Durbin amendment which became law last year as part of the Dodd-Frank Wall Street Reform Act represents a dramatic improvement over the centralized price-fixing among competing banks that has characterized the debit card swipe fee market to date. The Federal Reserve's proposed rules to implement the amendment have the potential to move us significantly in the direction of the MPC's mission of a more competitive and transparent card system.

In my testimony today, I would like to cover a few areas: first, the background on clearance and fees associated with checks and debit cards; second, the problems with debit card swipe fees for businesses and consumers; third, how the Durbin amendment addresses these problems and fosters competition; fourth, how the amendment and the Fed's rule will level the playing field for small and large banks; and fifth, I will address some of the arguments being thrown around in this debate that are not supported by the facts.

I. Background on Checks and Debit Cards

In order to properly evaluate debit card policies, it is important to understand the history of the products that we are considering and the policy in this area. It should be recognized that neither checks nor debit cards are products in and of themselves. The relevant product is the demand deposit account that a consumer has at a bank. This is a point of agreement in this discussion. Bill Cooper, for example, CEO of TCF Bank which has sued to block implementation of the Durbin amendment described the situation in just this way late last year saying, “Debit cards are not a product in and of itself. It's a delivery system for the checking account in a similar way that the checks are.”[1]

The deposit account is a vehicle by which consumers give their own money to banks. Those banks hold the money for consumers’ future use. Demand deposit accounts were traditionally a central part of banks’ business model because it provided the bank with capital that it could use to make loans. By lending money at a higher interest rate than it paid to accountholders, banks made money. And by moving that money to uses that produced economic value, this system benefited everyone.

Checks, withdrawal slips and debit cards are simply access devices. They give accountholders a way to get their own money out of the bank so that they can use it. For centuries, checks were a very efficient way for people to have the use of their own money without having to actually get cash from a financial institution prior to entering into a transaction. One hundred years ago in this country there were exchange fees on checks – just like interchange or swipe fees – by which the bank receiving a check paid a fee to the bank on which the check was written. But this fee added inefficiency to our transactions because the recipient of the check, whether a merchant or an individual, did not get the full value of what was paid. The idea of currency is that it should reduce the costs of transactions to make them more efficient and easy. The exchange fee on checks worked in the opposite direction. As Tim Kelly, attorney for TCF Bank, put it during an ABA panel last year: “And the truth of the matter is that checks clear at par bank to bank, and if you think about it, it can't work any other way. Banks can't be charging each other for checks, and it would -- to add friction to this system would be a bad thing.”[2]

So, the Federal Reserve, acting on the authority that Congress provided in the Federal Reserve Act of 1913, abolished exchange fees on checks. This made checks an even more efficient mechanism for consumers to access their own money that they kept in banks. It is worth noting, however, that this did not make the checking system completely free. Merchants, banks and consumers have faced costs relating to checks throughout the last hundred years. Merchants often pay their bank a flat fee – today it is often about a nickel – for each check they deposit. There is a cost to banks for handling a check. Likewise, consumers have had a number of fees associated with checks and their accounts. But all of these fees were determined transparently in direct business relationships between merchants or consumers and their own banks with which they chose to do business. That competition kept the fees as low as possible.

The first debit cards appeared in the United States in the late 1970s. For most consumers, these first cards weren’t referred to as debit cards. They were “ATM cards.” These cards could

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[1] William Cooper, Comments, TCF National Bank Financial Earnings Conference Call, Transcript, Oct. 12, 2010, at 5.

[2] Timothy Kelly, Comments, *A Challenge to the Durbin Amendment: Is the Fed’s Power to Write Rules Regarding Interchange Fees Unconstitutional?*, American Bar Association Section of Antitrust Law Insurance and Financial Services Committee, Conference Call Transcript, Dec. 14, 2010, at 38.

not be used at a point of sale to purchase goods. Instead, they allowed consumers to go to an automated teller machine and withdraw cash from their own accounts that those consumers, in turn, could use to make purchases. The cards were introduced because they created tremendous efficiencies for banks. When ATMs were used to make withdrawals, banks saved money on tellers and the extended hours and convenience allowed people to leave their funds in the bank longer – giving the banks greater use of those funds. And, processing these transactions electronically was much cheaper than processing checks, so the banks saved on those processing costs as well.

Banks and networks realized that the benefits of electronic banking would be multiplied if merchants would accept the cards at their establishments. This would further reduce the reliance on tellers, would give the banks control over accountholders' money longer (because they would only spend it when needed and not withdraw it in advance of expected purchases), and would begin to replace checks and save on processing costs. Initially, the interchange fee system mirrored ATMs. Fees were paid by banks to merchants to compensate them for the cost of deploying a PIN debit machine. PIN debit transactions were more secure and prompt than checks and the banks also realized merchants were saving them money by deploying PIN pads. For the most part, there were no swipe fees associated with debit cards at the point of sale. By sharing the savings of debit, everyone benefited. Consumers had a more convenient way to spend, banks saved on every transaction and had use of consumers' money longer, and merchants had some revenue, knew the transaction was good and another way for their customers to choose to pay.

The ATM comparison is interesting. It is widely recognized that ATMs provide value to banks by allowing the banks' accountholders to access their funds. ATM owners spend money to do this – and collect money from accountholders' banks to make up for it. Similarly, merchants invest funds in PIN pads and other hardware and software to allow consumers to use debit cards in their stores and access their money in the banks. And at first it operated in a similar way to ATMs with some merchants getting funds back on each transaction.

Somewhere along the way, however, that situation changed. That change and the repercussions of it are central to the hearing today. The New York Times chronicled much of this change in January of 2010.[3] During the 1980s and 1990s, ATM and debit transactions were handled by a number of different regional networks such as Star, Pulse, NYCE, and Shazam. In the early 1990s, Visa acquired its own debit network, Interlink, and began to change the equation.

Visa and its member banks recognized that as debit cards were becoming more prevalent in the early 1990s, so were credit cards. And Visa decided that debit cards weren't competing with checks – they were competing with credit cards. The banks controlling Visa collectively set interchange fees in order to maximize their revenue. Rather than gaining market share by cutting prices as happens in other markets, Visa and its banks were able to get more banks to issue its cards by raising fees; not the fees it charged, but the fees its bank issuers charged. Visa (again,

[3] Andrew Martin, *The Card Game; How Visa, Using Card Fees, Dominates a Market*, N.Y. TIMES, Jan. 5, 2010, at A1.

along with its banks) applied this logic to the debit card market and began aggressively raising interchange fees. In turn, more and more banks chose to use Visa and Interlink on their cards in order to collect this extra revenue. Interlink also created incentives to try to push banks to withdraw from the lower cost regional networks. That drove more transactions to Visa's Interlink network, increased its revenue and dramatically cut into the market share of the other networks.

As noted by the New York Times, by 1999, Visa's debit interchange fees reached $1.35 on a $100 transaction while the interchange on Maestro and other debit networks was less than 10 cents on the same transaction.[4] As Visa gained market share, its rivals eventually copied its strategy. MasterCard followed suit with its Maestro debit network, and the trend of aggressive debit interchange increases continues today. Fees continue to rise at a rapid rate and Visa/Interlink and MasterCard/Maestro have an ever-increasing stranglehold on the debit market. The former chief executive of the Star network summed up this history well when he said, "What we witnessed was truly a perverse form of competition. They competed on the basis of raising prices. What other industry do you know that gets away with that?"[5]

It is important to remember that debit cards are essentially plastic checks. That means the banks aren't extending credit to anyone. People are simply using the cards to access their own money that they have given to the banks. The history is telling here because it shows that there is no need for interchange. Banks need to attract consumers to give them money. It is a way for banks to get capital so they can lend – and make money on their loans. Of course, these banks would have a very difficult time convincing consumers to give them money if they didn't allow those consumers to get access to their money. Debit cards save the banks money every time they are used because they are cheaper than other ways that consumers get their funds. The economics work without interchange. That has been proven as at least eight countries around the world, including Canada, operate very efficient debit systems without interchange.[6]

This doesn't mean, however, that merchants would pay nothing with interchange reform any more than merchants pay nothing when they accept checks. Merchants still pay their banks for every transaction. But centrally set interchange is not necessary to return customers' own money to them and is inefficient. The debit system in the United States didn't have interchange for years and there are debit systems in a number of other countries that do not have interchange and operate extremely well.

[4] *Id.*

[5] *Id.*

[6] Dennis W. Carlton, *Externalities in Payment Card Networks: Theory and Evidence*, Federal Reserve Bank of Kansas City, 2010, at 130.

II. The Problem with Swipe Fees for Businesses and Consumers

A. The Impact on Business

Having interchange causes a number of problems. The fact that the card networks and their banks centrally set prices and that banks which should be competing against one another agree to charge the same fees results in dramatically inflated fee levels. We know that anytime competitors agree on a set price it is set high. The American economic system, however, depends upon businesses competing with each other on the basis of price and quality. The swipe fee system, unfortunately, does not allow that to happen. Huge banks such as Citi, Chase, Bank of America, Wells Fargo and others all agree to charge the same schedule of swipe fees when they offer cards under the Visa umbrella, for example. There is no price competition. These banks compete on price in every other aspect of their businesses – from interest they pay on customers' accounts, to rates on loans and many fees – but not on swipe fees.

The fees, not surprisingly, have been rising rapidly. In less than a decade between 2001 and 2010 the fees more than tripled from $16 billion to $50 billion per year. On debit alone, the fees grew 234 percent from 1998 to 2006.[7] For most merchants these fees are now the second highest operating cost they have – less than labor but more than items like rent and utilities. And this is the fastest-growing cost these businesses face. Interchange has risen far faster than, for example, health care.

What is particularly troubling for many businesses, however, is that they are powerless to plan for or deal with these rising costs. They can take measures to keep other costs in check – installing more energy-efficient equipment, using a different supplier, and the like. But there is no dealing with interchange because all of the thousands of banks under the Visa umbrella (or, separately, the MasterCard umbrella) charge precisely the same schedule of fees. And the increases are unpredictable. Businesses don't know how much they will go up. Even after new rates are announced it is difficult to predict how those rates will impact a merchant's fees because the card networks have made the system so complex. GAO reported that Visa and MasterCard each had four credit card rate categories in 1991, but by 2009 Visa had 60 rate categories and MasterCard had 243. That complexity helps obscure the consistent, large fee increases that merchants must bear.

Merchants small and large have reported that these unpredictable, uncontrollable cost increases have stopped them from hiring new employees and opening new locations. In some cases, the fees have contributed to merchants closing stores and laying off employees.

These fees are stunting business growth and hurting efforts to hire more workers and expand operations. Robert Shapiro, former UnderSecretary of Commerce for Economic Development, issued a study last year of this impact and concluded that without the higher prices

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[7] Stephen Mott, *Industry Facts Concerning Debit Card Regulation Under Section 920*, Oct. 27, 2010, at 14, *available at* http://www.federalreserve.gov/newsevents/files/merchants_payment_coalition_meeting_20101102.pdf.

caused by fees above and beyond costs plus a reasonable rate of return, consumers would have an additional $26.9 billion to spend and the economy could add 242,000 jobs.[8] That study took into account both debit and credit interchange. Debit accounts for about 40 percent of interchange in the United States. So, according to Shapiro's findings, the Fed's rule may result in more than 95,000 jobs as consumers spend the more than $10 billion in additional money in their pockets each year.

Retail profit margins are very, very narrow. The retail sector of the economy is highly competitive and if costs go down for those businesses, then their prices go down. Exhibit 1 to this testimony includes charts from Fortune magazine comparing the profitability of different U.S. industries for each year from 2006 through 2009. There isn't a single category for retail, but they have numbers for "Specialty retail," "Food and Drug Stores" and "Automotive retailing" -- these cover large parts of the retail industry. The numbers show that each of these retail categories consistently rank near the bottom of all industries in terms of profitability and have very stable profit margins each year (many other industries are lower in particular years but fluctuate more). Specialty retail, for example, is between 3.2 and 4.0 percent profitability every year since '06. Specialty retail is about the most profitable sector of the retail industry. Food and drug stores are between 1.5 and 2.6 percent profitability each year. Automotive is less than that. This means that regardless of conditions in the economy the competition across retail businesses is such that revenues can never exceed costs by much – whether costs are rising or falling.

The inability of merchants to go to a competitor bank to get a better deal on swipe fees is simply devastating. In fact, economists with the Kansas City Federal Reserve have found that merchants cannot realistically refuse to accept Visa and MasterCard even though interchange costs far exceed any benefits those merchants receive by accepting cards.[9] While the card companies sometimes argue that merchants could stop accepting cards, the cards are so dominant now that that is not realistic. Visa, in fact, is promoting itself as "currency" in its marketing. Telling merchants they don't have to take cards, then, is like telling them they can refuse to take cash. While theoretically possible in some niche businesses, it is generally not a realistic option.

The dramatic jump in card rates – both in dollar terms and in terms of the rates charged – takes its toll on merchants. According to the GAO this is not just due to more people using cards but is the result of Visa and MasterCard increasing their fees. GAO wrote, "Visa and MasterCard officials told us that their average effective interchange rates applied to transactions have remained fairly constant in recent years when transactions on debit cards, which have lower interchange fee rates, are included. **However, our own analysis of Visa and MasterCard interchange rate schedules shows that the interchange rates for credit cards have been increasing and their structures have become more complex,** as hundreds of different

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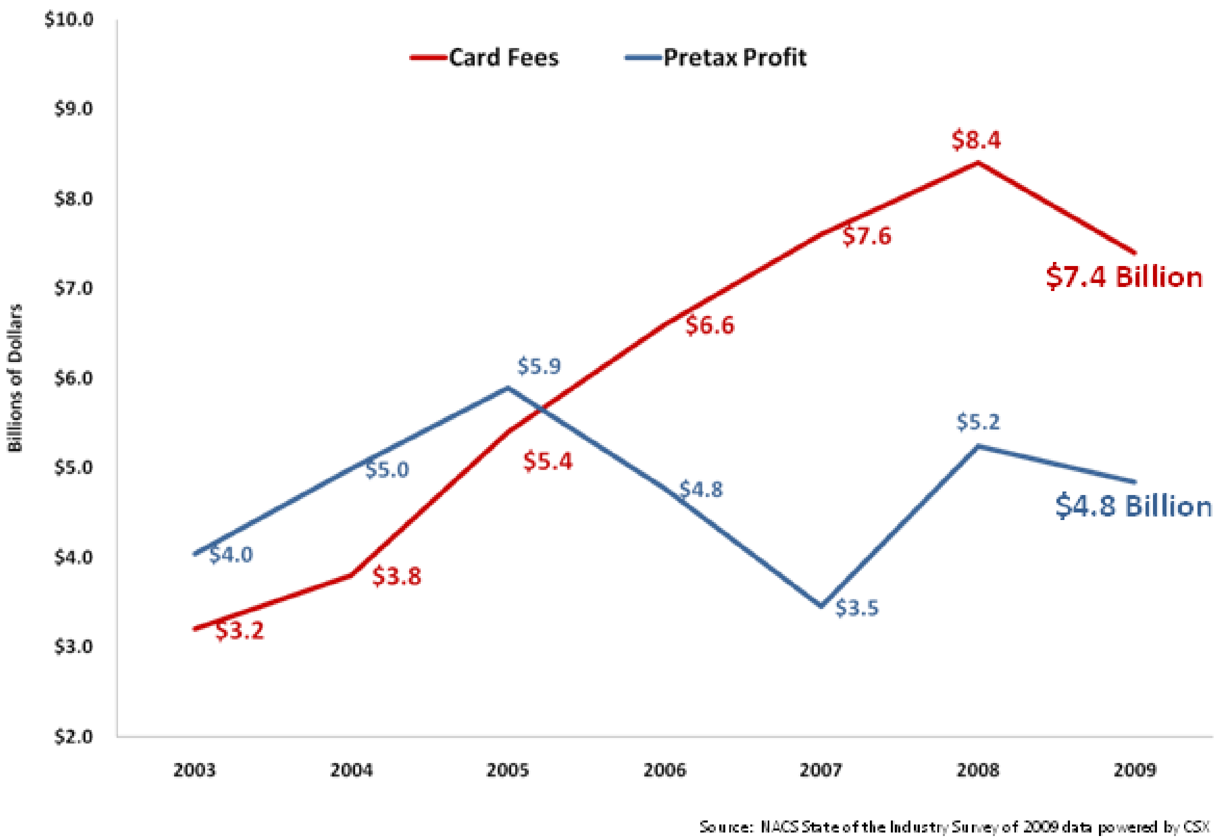
[8] Robert J. Shapiro and Jiwon Vellucci, *The Costs of Charging It in America: Assessing the Economic Impact of Interchange Fees for Credit Card and Debit Card Transactions*, Feb. 2010, at 2.

[9] Fumiko Hayashi, *A Puzzle of Card Payment Pricing: Why are Merchants Still Accepting Card Payments?*, Federal Reserve Bank of Kansas City, Dec. 2004.

interchange fee rate categories for accepting credit cards now exist."[10] Let's be clear about this, GAO concluded that what Visa and MasterCard told them about their rates remaining flat was false.

The increases in the rates set by Visa, MasterCard and their banks, along with increased card usage, has led to a huge increase in fees paid by merchants. The chart below shows how those fees have grown over time for the convenience store industry and shows industry profits per year as well. It is not a coincidence that as the amount of card fees jumped past the amount of profits the industry made, industry profits fell. The fact that fees exceeded profits for 4 years in a row demonstrates the difficulties these fees cause for businesses. With the recession there was also a shift to more debit usage. The card companies must have seen that shift, because on April 16 of last year, they put into effect a 30 percent increase in debit fees. While we don't have final numbers for 2010 yet, our preliminary data, which covers most of the year, indicates that interchange fees paid by the industry jumped 20 percent.

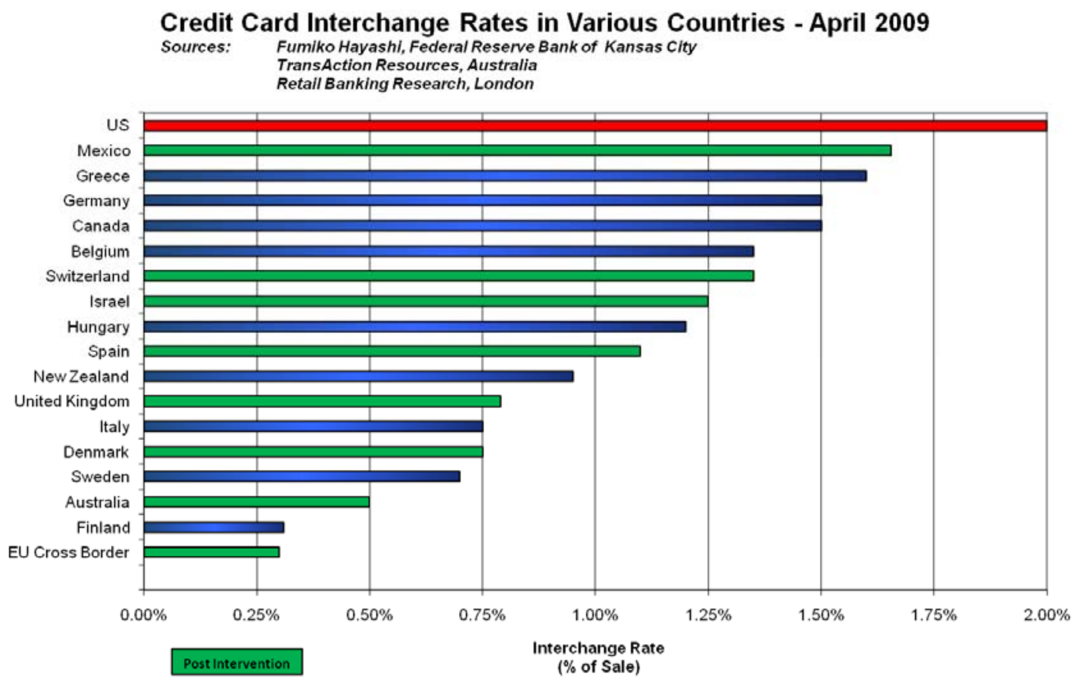
Card Fees and Pre-Tax Profits in the Convenience Store



[10] *Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges*, GAO-10-45, Nov. 19, 2009, at 14 (emphasis added).

And these fees hit small businesses the hardest.[11] That simply should not be. Unlike situations in which product needs to be manufactured and delivered to stores, there are no cost savings that justify better deals for large merchants.

These out of control fees disadvantage the U.S. economy. Interchange fees in this country are among the highest in the industrialized world, as shown by the chart below.



No one could contend that the U.S. card system is less efficient, has lower economies of scale, or is more fraud prone than systems in Italy, Hungary and other nations paying far lower fees. And it is worth noting that while some countries with lower interchange rates have taken action to deal with these fees, several countries that have done nothing pay lower rates than Americans do. The reason for that is straightforward. The two major card companies have such dominant market power here that they can engage in the anticompetitive practices that I have described without fear of too many merchants leaving the network.

B. The Impact on Consumers

The impact of anticompetitive swipe fees and the card industry's calculated lack of transparency on consumers is dramatic. American consumers pay inflated prices for virtually everything they buy because of these fees. And they pay these funds without even knowing it. Consumers never get a disclosure from their bank telling them any swipe fees are charged – not to mention how much they are. This is the card companies' model. By hiding their fees they can keep charging more and consumers won't notice. In 2009, the Hispanic Institute studied this phenomenon. They found that the business model by which fees are embedded in retail prices

[11] *Id.* at 10.

without disclosure, combined with the rewards that some affluent cardholders get, leads to a regressive transfer of wealth from low income consumers to high income consumers. This regressive wealth transfer is more than $1 billion every year.[12] The study did not even take into account the 27 percent of U.S. families who do not have credit cards – but are still paying inflated prices due to interchange.[13] The Boston Federal Reserve performed a similar study last year and found the same regressive result.[14] They concluded, "What most consumers do not know is that their decision to pay by credit card involves merchant fees, retail price increases, a nontrivial transfer of income from cash to card payers, and consequently a transfer from low-income to high-income consumers."[15]

Retailers are not the only ones who have come to the conclusion that swipe fees hurt consumers. John Blum, who testified on behalf of the National Association of Federal Credit Unions (NAFCU) before the House Judiciary Committee last year and in 2008 said in his previous written testimony, "Further, interchange is a cost that retailers can and do pass onto their customers in the final price of the goods and services they sell."[16] It appears then that NAFCU agrees with the Boston Federal Reserve and the Hispanic Institute – consumers are paying interchange fees right now, but the fees are hidden in the price of goods and services those consumers buy.

The card companies have strenuously argued that if anything at all happens to reduce swipe fees, then other fees paid by consumers will increase and consumers will be in a worse position than they are today. This is false. In fact, the European Commission's Directorates for Competition and Financial Services jointly conducted a comprehensive study into the European payment card industry in general, and Visa and MasterCard in particular. The Commission found no evidence to support the card systems' arguments that the high fee levels associated with the existing interchange system benefit consumers. In particular, the Commission rejected arguments that lower interchange fees to merchants would result in higher fees to consumers:

> There is no economic evidence for such a claim. Firstly, the inquiry's data suggests that in most cases card issuers would remain profitable with very low levels of interchange fees or

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[12] Efraim Berkovich, *Trickle-Up Wealth Transfer: Cross-Subsidization in the payment card market*, The Hispanic Institute, Nov. 19, 2009, at 5.

[13] *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin, Feb. 2009, at 46.

[14] Scott Schuh, Oz Shy, and Joanna Stavins**,** *Who Gains and Who Loses from Credit Card Payments? Theory and Calibrations*, Federal Reserve Bank of Boston, Public Policy Discussion Paper No. 10-03, Aug. 31, 2010.

[15] *Id.* at 1.

[16] John Blum, Hearing before the Task Force on Competition Policy and Antitrust Laws, House Judiciary Committee, May 15, 2008, House Report No. 110-179, at 89.

> even without any interchange fees at all. Secondly, the international card networks have failed to substantiate the argument that lower interchange fee would have to be compensated with higher cardholder fees. The evidence gathered during the inquiry rather suggests that the pass-through of higher interchange fees to lower cardholder fees is small. Consumers already pay the cost of the interchange fee without knowing it. This cost is now hidden in the final retail price and is therefore non-transparent.[17]

Similarly, the Australian experience has refuted claims that decreases in interchange fees would undercut the viability of card systems. In fact, after several years' experience with reduced interchange fees, the Australian central bank has concluded that card issuers have responded to lower merchant fees by offering consumers a choice: Low cost cards with low interest rates, low fees and no rewards, or rewards cards with higher interest rates and annual fees.

Indeed, this resulting *price competition* is precisely the outcome the card systems feared: For example, MasterCard had complained to the Australian Reserve Bank about having its members forced to compete on price:

> MasterCard does not disagree that there is, at present, strong competition amongst issuers of credit cards. Such competition has been enhanced by the fact that, at present, issuers have been able to recover eligible costs…. One distinct characteristic of the product offerings in recent times, however, has been the increase in the number of "low cost" credit card offerings. While MasterCard believes that it is beneficial for there to be "low cost" credit card products being offered, it also believes that, with the common benchmark interchange fee, in the future there will be fewer "fully featured" credit card offerings and the competition between issuers will be based on increasingly homogeneous "low cost" credit card offerings.

That is precisely the result that would be best for consumers. Once the card companies in Australia stopped competing for market share by raising the fees their banks would earn (which the bank could in some small measure plow back into enticing rewards for consumers), they had to compete on interest rates in order to attract consumers directly. That is what Australian consumers really wanted and what they have been getting since their system was reformed. Interest rates on credit cards fell precipitously after the reforms and even though the overall rates in that country have fluctuated over time, the spread between their benchmark rates and the rates consumers get on their credit cards is consistently narrower than it was prior to Australia's reforms. U.S. PIRG and other consumers groups educate consumers that the most important thing to look at when evaluating cards is the interest rate. Once Australia took some of the confusing subterfuge out of the system by reducing the hidden fee-reward cycle, consumers there were able to focus on interest rates and get better rates.

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[17] European Commission, Directorates on Competition and Financial Services, *Competition: Final report on retail banking inquiry – frequently asked questions*, Jan. 31, 2007, *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/40&format=HTML&aged=0&language=EN&guiLanguage=en.

The number of times that banks have tried to end free checking, raise fees and put the blame elsewhere should raise real questions about their veracity today. Exhibit 2 to this testimony is simply a list of news articles on this subject. It shows that banks proclaimed the end of free checking and increased consumer fees in 2008. At that time they blamed it on the financial crisis. Then, the banks said the same thing in 2009, but they started blaming the Credit CARD Act for their fee increases. Later in 2009, the banks apparently ended free checking for the third time and decided to claim that they were increasing consumer fees due to overdraft regulations. That continued into 2010. Following passage of the Durbin amendment, however, the banks had a new source of blame for their fees – ignoring, of course, that even today the Durbin amendment is not in effect and hasn't yet reduced a single swipe fee. We can only wonder what they will blame next.

What this history of casting blame demonstrates is that whether the Durbin amendment had ever been conceived or not, the banks would do whatever they could to raise fees on their customers. The only thing that holds them back is competition. They need consumers to put money in their banks. If they raise fees too much then consumers might go to another bank. It is that simple. There is no magic revenue number at which the banks stop trying to find ways to make more money. They will keep trying regardless of what happens on the issue before the Committee today.

The last decade proved this point beyond any doubt. Interchange tripled. Consumer fees were not cut to a third of their previous level. In fact, they weren't cut at all – they went up. Greg McBride, a senior analyst at Bankrate.com noted in 2008, "[B]ank fees have been going up consistently for 10 years." [18] Consumer fees for overdrafts and a host of other charges on their checking accounts exploded right along with swipe fees. Overdraft fees, for example, hit a record $38 billion in 2009 which was double what they were in 2000. [19] It is simply false that allowing high interchange results in lower consumer fees.

What is clear is that consumers are paying interchange fees now in the form of higher prices and they are paying high fees directly to their banks – as high as those banks can charge without losing business. Swipe fee reform can't do anything about the direct consumer fees and won't change them either way, but it can reduce the hidden fees that inflate prices, and that is a win for consumers.

III. The Durbin Amendment and Federal Reserve Rule

A. Putting Limits on Price-Fixing by the Card Industry

The Durbin amendment and the Federal Reserve's proposed rule to implement it are properly directed toward the heart of the problem with debit swipe fees. The law is narrowly

[18] Kathy Chu, *Rising Bank Fees Are Setting Records*, USA TODAY, Oct. 27, 2008.

[19] Saskia Scholtes and Francesco Guerrera, *Banks Make $38bn from Overdraft Fees*, FINANCIAL TIMES, Aug. 9, 2009.

targeted to apply only to centrally fixed fees on which the banks do not compete. This is done through the definitions set forth in the law. The Durbin amendment defines an interchange fee to be "any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction."[20] If banks would simply set their own fees and compete with one another, then, the Durbin amendment would not apply to those fees at all and banks would be completely free to choose how much they charge. If all banks did this, then the Durbin amendment and the Fed's rule would be dead letters – adding only a cautionary limitation should the banks decide to centrally fix fees again.

It is unfortunate that banks have been unwilling to do this. Centralized price-fixing undercuts the basis of our free market system which relies upon price competition. The scope of the Durbin amendment demonstrates the hollowness of the arguments against it. While banks and card companies are eager to insist that the law results in price controls, it does not. It allows the banks full discretion to charge anything they wish – as long as they compete with one another. If the banks continue to insist on fixing prices, however, the law puts some reasonable limits on the prices that can be fixed.

The comparison to the paper check system is telling. As noted earlier, exchange fees on checks (the equivalent of interchange) were prohibited by the Federal Reserve in the early part of the last century. This change helped the checking system thrive as an efficient way for people to make purchases. Debit cards were an innovation to save banks the money it costs to process paper checks. Every time someone uses a debit card, the bank makes money because the use of that card is cheaper for the bank than it would be for that consumer to use a check or go to a teller to withdraw cash. That is true even if there are no swipe fees and no consumer fees associated with use of the card.

The Federal Reserve's rule, in fact, is more generous to the banks than it ought to be. The Fed had discretion to do just what it did for checks – prohibit these fees altogether. Instead, the Fed has written a rule that allows the banks to charge for the costs of authorizing, clearing and settling debit transactions, plus a rate of return. While this is more money than the MPC believes makes economic or policy sense, it is still movement in the right direction. The banks, however, have made a series of strident claims about the additional costs that they think ought to be recovered through debit interchange. It may be helpful to examine each of these claims to determine whether the fees taken into account by the Fed are sufficient.

The Financial Services Roundtable sent to Congressional offices a list of additional costs it believes should be included in the Fed's analysis. The Roundtable wrote, "The proposal does not take into account funding costs, overdraft losses, billing and collection, customer service, data processing, protection of customer data and fraud losses that relate to supporting debit services – nor does it take into account the investment and development costs borne by financial institutions to create these electronic payment networks."

Why shouldn't funding costs be included in the Fed's analysis? Because those aren't debit costs. Debit cards are used when people want to access their own money. While that is

[20] Pub. L. No. 111-203, § 1075(c)(8), 124 Stat. 2068, 2074 (2010).

money customers have given the banks to hold for them, it is still the customers' money. The banks should not be able to claim a cost for letting people get their own money.

Why shouldn't overdraft losses be included? Because banks make money on overdrafts. The fees banks charge for overdrafts are so high that this is a profit center for banks, not a cost. In 2009, banks made $38.5 billion in overdraft fees and more than $20 billion of that was from debit overdrafts alone. The banks simply cannot credibly claim that a profit center is a cost, allowing them to double-dip and charge both consumers and merchants for overdrafts.

Why shouldn't billing and collection costs be included? Because these aren't debit costs. Consumers accessing their own money aren't billed and nothing needs to be collected. There are costs like these for credit cards, but credit interchange isn't touched by the Fed's rule.

Why shouldn't customer service costs be included? Because these aren't costs of debit, these are costs of having customers. If banks want to have customers who give them money, then they need to provide some service to those customers. The money the banks get on deposit allows the banks to make loans and earn money. The deposit accounts provide multiple revenue streams for banks as noted by TCF Chief Executive Bill Cooper when he said last year, "There are a lot of revenues associated with retail banking. There's the checking fees, there's the debit card fees, et cetera. There's a lot of revenues, plus the margin we collect from the money that we bring in from checking accounts and so forth."[21] There is no reason for banks to charge merchants for what every other business provides as a consequence of having customers without charging a third party for it.

Why doesn't the Fed rule take data processing costs into account? Well, as a matter of fact, it does. The costs of processing data through the system, checking that sufficient funds are in an account, and transferring those funds are precisely the costs contemplated and used by the Fed in coming up with its rule.

Why didn't the Fed include the protection of customer data and fraud losses in its analysis? Fraud losses weren't included because paying banks for having fraud losses creates a perverse incentive for banks to allow fraud-prone systems to proliferate. In fact, that is why "signature" debit – which is seven times more prone to fraud than PIN debit – has been able to grow even though it is far worse for consumers and the economy to have more fraud. Rather than compounding these problems, the law and the rule properly provide for ways that interchange can be adjusted when banks make expenditures that prevent fraud. This may include expenditures to protect data – which the Roundtable complains about without noting that this may be contemplated by the fraud prevention provisions in the rule.

The Roundtable also conveniently ignores that merchants spend billions of dollars on fraud prevention and data protection for the debit and credit systems. Just one subset of these expenditures by merchants (those necessary to comply with the network's PCI requirements) are

[21] William Cooper, Comments, TCF National Bank Financial Earnings Conference Call, Transcript, Oct. 12, 2010, at 16.

estimated to be $10 billion to date.[22] Many of these expenditures are necessary because banks have pushed signature debit transactions which are far more fraud-prone than PIN debit transactions. Given that banks are already pushing higher fraud prevention costs onto merchants through their behavior, the fed should cast a skeptical eye on bank attempts to recover their own, similar costs.

The magnitude of these costs may be surprising to people not familiar with how the payments system works. An average convenience store, for example, loses $930 each year to chargebacks and 86 percent of those chargebacks are in the category of "fraud" chargebacks. That means the store, not the bank, is picking up the tab for fraud. An average store also pays $9,200 each year to secure the payments system and protect data. That amounts to $1.3 billion for the industry as a whole – or 25 percent of the entire industry's pre-tax profits. The size of those numbers should make clear that merchants are more than paying their own share for fraud and data security and should not be paying more to subsidize the banks.

The card industry likes to claim that debit cards give merchants a payment guarantee. That is simply false. A merchant can do everything right to ensure a transaction is properly authorized and still be stuck with the loss if the transaction turns out to be fraud. I have included another all-too-common example at Exhibit 3 to my testimony. It is a letter from the owner of the Catch Seafood Tavern in New York. The letter explains how the banks refused to give him the money for five transactions amounting to $78. The claim was that they were duplicate transactions. After fighting his way through a lengthy dispute resolution process, the owner established that the transactions were legitimate and simply a case of the same cardholder ordering the same round of drinks more than once – a common occurrence in his establishment. He managed to win his dispute, but was charged a dispute resolution fee by the network of $15.50 per transaction. The fees came to $77.50 and he walked away from the abusive process with 50 cents for his efforts. Many merchants have simply given up challenging unfair decisions like this because the networks find other ways to discourage them from doing it – such as with this fee. And remember, his transactions weren't even fraudulent. But he lost the money anyway.

This happens with depressing frequency. The card industry comes up with any excuse it can to push fraud losses onto merchants. The Federal Reserve study found that 43 percent of the time on signature debit transactions merchants footed the bill for fraud. Other analyses show merchants absorb more of the fraud losses than banks. In 2009, merchants suffered debit fraud losses of $689 million while bank issuers had debit fraud losses of $499 million.[23]

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[22] Stephen Mott, *Industry Facts Concerning Debit Card Regulation Under Section 920,* Oct. 27, 2010, at 28, *available at* http://www.federalreserve.gov/newsevents/files/merchants_payment_coalition_meeting_20101102.pdf.

[23] *Id.* at 25.

If you include credit cards and look at the numbers, merchants pay an even higher majority of fraud losses.[24] The card industry simply cannot legitimately maintain that it should be able to make merchants pay for fraud whenever it wants, not guarantee payment, and make merchants pay more interchange for fraud. As Mr. Prentzas said in his testimony, this would not only be wrong, it would be offensive. The real question is whether banks should be reducing swipe fees by the amount of fraud that merchants are forced to take.

Why shouldn't the costs to create the payment networks be included in the rule? There are many reasons for this. First, current network costs are borne by the networks – and their fees are not regulated by the Durbin amendment or Fed rule. Second, any initial capital costs that were spent by banks to start the networks have been recovered many, many times over through decades of inflated interchange fees and the huge investment gains the banks made when the major networks had initial public offerings of stock. The banks made investments and those investments paid off as Visa and MasterCard became very valuable. The banks should not be paid by merchants when they already made a killing off of these investments. Third, credit swipe fees are still vastly over-inflated and more than cover any and all costs that the banks might have put into the networks. There is simply no reason for banks to get debit swipe fees for investments that are borne by others, on which the banks have already recovered and for which the banks continue to receive an outsize revenue stream with huge profit margins.

In short, none of the costs that banks claim should be part of the Fed's analysis belong there. The costs of authorizing, clearing and settling transactions are more than banks receive on check transactions and the Fed built in a rate of return on these costs. The Fed's survey of banks found that these costs amounted to 4 cents per transaction, but the Fed's rule allows for either 7 or 12 cents to be charged. That makes for average profit margins of 75 to 300 percent. Those are margins that no retailer would dare dream of making.

B. Introducing Competition

While most of the attention to date has been on the fees that banks will charge, the Durbin amendment made changes to help promote competition in important ways that should not be overlooked. First, the amendment allows merchants to give customers discounts. These discounts can be based upon the form of payment that a customer chooses so they could be discounts for the use of cash, checks, debit cards or credit cards. These discounts would not differentiate between the type of debit or credit card – they would just be for that generic type of payment. The Justice Department has taken action to add an additional layer of competition to this mix. They settled antitrust claims against Visa and MasterCard that allow merchants to give customers discounts based upon the brand of card they use (Visa/MasterCard/Discover). Unfortunately, this added competition is being held up by American Express which has chosen to litigate against the Justice Department. Until that matter is resolved, American Express is preventing customers at the vast majority of stores across the country from getting discounts when they use cheaper card brands.

[24] Javelin Strategy and Research, *True Cost of Fraud Study,* Lexis Nexis (2009).

While discounts for cash have technically been allowed for years under federal law, the card networks have made it very hard for merchants to offer them. Since passage of the Durbin amendment, however, we have seen merchants become more emboldened and cash discounts have proliferated at the gas pump in particular. This is a very beneficial change from the recent past when Visa was aggressive in fighting against cash discounts. Exhibit 4 includes just one news story demonstrating the types of tactics that Visa used to intimidate merchants.

Giving consumers discounts for using cheaper payment methods is a win for everyone. Consumers and merchants save money on the transaction. And, the discounts allow for consumers to see the cost implications of their payment choices. That brings market pressure to bear on swipe fees that are normally hidden and isolated from such pressures. Transparency and choice are essential ingredients to price competition and the Durbin amendment is a key first step toward that competition.

The Durbin amendment also includes a provision to facilitate competition among the networks. As noted earlier, Visa used its strategy of aggressively raising swipe fees to gain a dominant share in the debit market. Some of this backwards price competition can be avoided through the provision of the new law that gives merchants the ability to select the network over which debit transactions are processed.

Merchants have a role in network routing decisions today but are limited in what they can do. Visa and MasterCard have entered into a number of exclusive deals with banks to prevent those banks from allowing their cards to be processed over other networks. It used to be commonplace for debit cards to be interoperable with four, five or more debit networks. But now smaller networks like Star, PULSE, NYCE, Shazam and others are being shut out of large parts of the market. That hurts competition and should not happen.

But Visa and MasterCard have kept the smaller networks completely barred from so-called “signature” debit transactions. These transactions traditionally have been those initiated by someone signing a receipt rather then entering a PIN number. The name, however, is a misnomer. Today a large volume of “signature” transactions take place in which no one signs anything. This happens, for example, on Internet transactions, pay-at-the-pump transactions, and low dollar amount transactions. There are also PIN transactions in which no one enters a PIN number. Despite this blurring of the lines, Visa and MasterCard do not allow “signature” transactions to be run across any other network. That is anti-competitive and unfair.

The result of Visa and MasterCard restricting the networks that can carry “signature” transactions is that they control growing pieces of the market and have been able to raise their network fees without concern about competition. These network fees are fees that merchants pay in addition to interchange. While interchange is the majority of merchants’ costs, the network fees have become a real issue as well and should not be ignored. The fees went up 30 percent last year alone. The Durbin amendment does not regulate network fees. In order to ensure that they do not continue to grow out of control, the amendment requires that every transaction – whether initiated by a PIN, a signature, or neither – should have the option of running over at least two unaffiliated networks. Then merchants can make a competitive choice among networks based on price and quality – the way that purchasers of other goods and services do in a market economy.

This happens in Australia and New Zealand today. PIN debit networks in those countries are able to carry signature debit transactions, allowing for competition and choice. And, contrary to the card industry's protestations, the change to allow this to happen was easy, fast and cheap. The only reason it hasn't yet happened here is that Visa and MasterCard won't let it happen. Why would they when they have been able to exclude competitors from that part of the market?

IV. Leveling the Playing Field for Small Banks and Credit Unions

Currently, the way that swipe fees are fixed disadvantages small banks and credit unions. Those institutions typically have higher costs than do large institutions. Witnesses in hearings on this topic last year confirmed this. John Blum, for example, told the House Judiciary Committee: "Credit unions have a higher per-transaction cost for processing card payments."[25] Community banks have similar disadvantages because of their relatively small size resulting, in many instances, in the need to outsource card operations.[26] By fixing fees for all banks at the same level, however, large banks have for years been guaranteed higher profit margins than their smaller competitors. Those large banks have used their advantage to aggressively market themselves to consumers. That is one of the reasons why the credit card market is more concentrated than the debit card market. Many consumers who have accounts and debit cards at small banks and credit unions receive credit card and other offers from large banks. The large banks take the small banks customers in this way on a regular basis – paid for by their excess interchange earnings. The result is that large banks have a bigger share of both the credit and debit card markets than their share of deposits.[27]

The Durbin amendment, however, will level the playing field. It exempts banks with less than $10 billion in assets from its restrictions on swipe fees. As Georgetown Law Professor Adam Levitin has noted, "Credit unions are already at a disadvantage when attempting to compete with large banks and finance companies on business models that require economies of scale, and this disadvantage is likely to become more pronounced. . . . If a two- tiered interchange structure emerges from the Durbin Amendment's implementation, it will help make credit unions more competitive in the card issuance market."[28]

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[25] John Blum, Hearing before the Task Force on Competition Policy and Antitrust Laws, House Judiciary Committee, May 15, 2008, House Report No. 110-179, at 80.

[26] Dave Carpenter, Hearing before the House Judiciary Committee on the Credit Card Fair Fee Act of 2009, Apr. 28, 2010.

[27] *See* Adam J. Levitin, *Interchange Regulation: Implications for Credit Unions*, 2010, at 39 (noting that 10 banks alone account for almost 90 percent of the credit card market and 51 percent of the debit card market, even though those 10 banks hold only 36 percent of insured deposits), *available at* http://www.federalreserve.gov/newsevents/files/levitin_filene_paper.pdf.

[28] *Id*. at 39-40.

Visa has already publicly announced that it will allow unregulated banks to charge higher swipe fees than regulated banks. MasterCard will surely follow suit. Why is that? Because the only competition in this market is that between the networks as they try to convince banks to issue their cards rather than the other network's cards. That dynamic has driven up swipe fees for years. If MasterCard does not allow unregulated banks to charge higher fees than the Federal Reserve allows, those banks will do business with Visa. The opposite is true as well – which is why Visa finally confirmed that they would allow small banks to charge more. The same dynamic exists for other networks. All of them need to make themselves attractive to issuing banks so that those banks make it possible to use their networks. The result over time has been that networks compete to raise interchange and, unfortunately, that won't change.

This simple truth is clear to close observers of the industry. Eric Grover, who has a payments consulting firm, said that higher interchange for small banks and credit unions "makes total sense." While initially some were saying that a two-tiered system wasn't possible, Grover identified these claims for what they were and said, "That was simply intended to scare credit unions and small banks to keep them lobbying."[29]

Christopher Leonard, a consultant who works with banks on payments strategies recently authored an article in the American Banker in which he concluded that banks with less than $10 billion in assets are "winners" under the Durbin amendment.[30] Leonard wrote that the amendment may allow these institutions to "have their cake and eat it too."

It is odd, then, that small banks and credit unions continue to lobby against the Fed's rules. Perhaps the scare tactics noted by Grover were effective enough to continue to cloud the issue. The small banks have argued that market forces will force them to reduce their swipe fees to match the fees of larger banks. Unfortunately, there are no such market forces. Consumers don't see the fees and the network rules prohibit merchants from differentiating between different bank issuers. Neither the Durbin amendment nor the Justice Department's settlement with Visa and MasterCard altered that aspect of the rules. Merchants cannot refuse to accept a card based on which bank issued it, nor can they set different prices based on which bank issued a card. In fact, even if the rules allowed it, there is no practical way for merchants to make these distinctions. There are no electronic markers to inform the merchant as to who the issuer is – which would be required in many settings like self-checkout, pay-at-the-pump, and Internet transactions – and making distinctions manually by store clerks at the point of sale simply isn't feasible. Market forces do not exist to push interchange for unregulated banks down to the level of regulated banks.

Frankly, the irony of the banks making this argument is remarkable. They have claimed countless times that market forces don't exist for merchants to lower their own prices in spite of

[29] Sean Sposito, *Visa Plans Two-Tiered Interchange Rates After Fed Rules*, AMERICAN BANKER, Jan. 10, 2011.

[30] Christopher J. Leonard, *Durbin Amendment Winners and Losers*, AMERICAN BANKER, Feb. 4, 2011.

a large body of evidence that there is robust price competition in retail markets. But when it comes to a market that demonstrably does not have market forces to reduce prices and which has led to policy interventions in countries around the world, the banks suddenly believe in the principals of economics enough to overcome clear market failures. Their arguments ignore the facts.

V. Setting the Record Straight

A. Consumers Will Save

Consumers pay swipe fees right now. They are simply hidden in the price of goods. As noted previously, NAFCU's representatives have agreed with this in past testimony.[31] Advocates for consumers understand this and that is why they have advocated for swipe fee reform. Exhibit 5 to this testimony is a letter from Americans for Financial Reform in support of the Durbin amendment. They and groups including U.S. PIRG and the Hispanic Institute wrote a joint statement for this hearing supporting the Fed's rule because it will benefit consumers.

In spite of these clear statements from people whose job it is to advocate for consumers' interests, some banks claim that merchants will have a mysterious way of keeping savings from consumers who are paying these fees today. That just isn't consistent with the facts.

It may be instructive to look at how fees flow through this system to understand how wrong – and cynical – the banks' arguments are. Swipe fees are paid from a bank at which a merchant has an account (the acquiring bank) to the bank that gave a consumer a debit card (the issuing bank). In order for merchants to see a single penny of savings from reduced interchange, acquiring banks must pass these savings through to merchants. Recognize that merchants don't complain about this and claim that acquiring banks will pocket the savings. The acquiring market is a competitive one and merchants believe that competitive market economics work – they live it every day. Oddly, we don't hear banks arguing that consumers and merchants won't save because acquiring banks will simply pocket the savings and pad their profits. But if market economics did not work – as the banks contend they don't work at retail – then that is precisely what would happen and the only result of the Durbin amendment would be to redistribute funds among the banks.

That will not happen because merchants can take their business to another acquiring bank and get a better deal. The result is that acquirers will compete with each other to reduce prices to merchants and merchants will save. The same will be true in retail markets, which will result in consumer savings. In fact, retail may be the most price competitive sector of the U.S. economy. Retail profit margins are consistently and notoriously thin – even as business costs go up and down those profit margins remain thin. That means merchants are cutting prices to compete when they save costs. As noted previously, Exhibit 1 demonstrates the profit margins for retailers during the past few years. Regardless of conditions in the economy the competition

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[31] John Blum, Hearing before the Task Force on Competition Policy and Antitrust Laws, House Judiciary Committee, May 15, 2008, House Report No. 110-179, at 89.

across retail businesses is such that revenues can never exceed costs by much – whether costs are rising or falling.

The Hispanic Institute, along with a University of Pennsylvania economist, studied swipe fees in late 2009. The study not only found that consumers pay swipe fees today, but it concluded that lower interchange translates into lower retail costs and higher interchange translates to higher retail costs. [32]

This is consistent with other studies. The Department of Energy, for example, has studied how retailers that sell gasoline do or do not pass through costs into retail prices. They found that for both cost increases and cost decreases there is 100 percent pass through of costs into retail prices.[33] That means, without question, whether interchange fees increase or decrease, those changes are reflected in the cost of gasoline paid at the pump by consumers – and that has been true for years.

In fact, consumers are already saving due to the Durbin amendment. The provision allowing for cash discounts helped embolden merchants to offer them in spite of the aggressive restraints that the card networks had put on them in the past. We have seen such discounts multiply at the gas pump and at restaurants as merchants begin to experiment more with trying to incentivize their customers this way.[34] Discounts for cash and other forms of payment means more freedom, choices and transparency for consumers – which is just what the card companies have fought against for years as they try to keep their fees hidden.

B. The Durbin Amendment Will Not Increase Checking Fees

Banks have for years looked to find excuses for raising checking fees on consumers. Today it just happens to be the Durbin amendment's turn to join this hit parade. Exhibit 2 to this testimony lists dozens of news articles proclaiming that banks are ending free checking and charging consumers more fees. Of course, the list starts in 2008 when no one had conceived of or proposed the Durbin amendment. At first, banks blamed the financial crisis and said free checking was ending. Then, in 2009, banks blamed the Credit CARD Act and said free checking was ending. Then, the banks blamed overdraft regulations for their plans to end free checking for the third time in two years. Now the banks tell us that they will end free checking for the fourth time due to the Durbin amendment. They are no longer credible on this question.

And in spite of the banks' hysteria about raising checking fees, there is ample evidence that they will do no such thing because they want to attract consumers to give them money to

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[32] Efraim Berkovich, *Trickle-Up Wealth Transfer: Cross-Subsidization in the payment card market*, The Hispanic Institute, Nov. 19, 2009.

[33] Michael Burdette and John Zyren, *Gasoline Price Pass-through*, U.S. Department of Energy, Jan. 2003.

[34] *See* Eric Dash, *Fed Proposes Rules to Cut Debit Card Fees*, NY TIMES, Dec. 16, 2010, at B1; Tom Sietsema, Review of Noodles on 11, *Going Out Guide*, WA POST, Jan. 26, 2011.

lend. Just this week, the Wall Street Journal reported that "Historically low interest rates, tough new capital requirements and heightened competition from brokerage firms are prompting banks to dangle juicy incentives to a group of customers that not long ago were considered wallflowers: depositors."[35] What the Journal story shows is that checking fees depend on the competitive dynamics of luring deposits to the bank – not on the separate revenue stream associate with a device for customers to access their funds.

The Banks claims about the relationship between checking fees and swipe fees don't have factual support. As noted previously, the European Commission's Directorates for Competition and Financial Services looked at the banks' claims and found no evidence to support the banks' arguments that consumers benefit from the existing high interchange fee levels. In Europe, the card networks have agreed to reduce debit interchange to 0.2 percent. The Fed's rules would reach about the same result (though it would be a bit more generous to the banks).

The evidence in the United States is consistent with this. If the banks were right that reducing interchange would result in higher bank fees on consumers, then the dramatic increases which led to a tripling in interchange over the past decade would have reduced consumer fees charged by banks. That has not happened. Banks have increased consumer fees over the last decade as well. Overdraft fees alone, for example, doubled from $19 billion to $38 billion from 2000 to 2009.[36] Clearly, increased interchange fees had no impact on keeping banks from charging their customers higher fees.

Bank of America spokesperson Anne Pace was at least honest in her comment to the Christian Science Monitor last October when she said, "Customers never had free checking accounts. They always paid for it in other ways, sometimes with penalty fees."[37] Banks are constantly trying to find new ways to generate fee revenue from their customers. If the Durbin amendment magically disappeared tomorrow, that wouldn't change. Banks would still be looking to charge more fees – they would just find another scapegoat to blame for it.

It should be recognized that the drive for more fees is a relatively recent change to banks' business models. For decades, the way that banks made money was by attracting deposits from their customers. Recall, for example, the days of the free toaster when people opened accounts. The bank would take those deposits and lend that money. Banks then made money on the spread between the interest rates they charged on loans and the interest rates they paid to accountholders. It was a model that worked and it tied the success of the bank to the success of

[35] Jessica Silver-Greenberg and Mary Pilon, *The Great Customer Courtship*, WALL STREET JOURNAL, Feb. 14, 2011.

[36] Julianne Pepitone, *Bank Overdraft Fees to Total $38.5 Billion*, CNNMoney.com, Aug. 10, 2009, *available at* http://money.cnn.com/2009/08/10/news/companies/bank_overdraft_fees_Moebs/index.htm.

[37] Associated Press, *Bank Accounts: Free Checking Fading Fast*, CHRISTIAN SCIENCE MONITOR, Oct. 19, 2010.

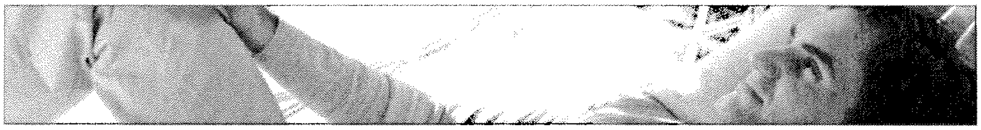
their customers. As long as customers did well they paid back their loans and put more money into the bank.

A little over a decade ago, however, that model changed as banks and their consultants decided fees could be a source of major revenue. Banks have aggressively raised fees ever since. That includes everything from overdraft fees to fees imposed based on the way that customers pay the bank. The aggressive drive for fees has been true when the banks deal with both individual consumers and merchants. Charging fees doesn't benefit everyone in the way that the loan model did. In fact, the fee grabs by banks often hurt the finances of customers and erode their ability to pay back loans and put more money into the bank. The interests of banks and their customers are no longer aligned in the way they once were. Members of this Committee have raised concerns that banks aren't lending money as often as they should. Part of the reason for this is that loans have diminished in importance under the banks' fee-driven business model. The larger percentage of banks' revenues that come from fees as compared to interest on loans, the less important it is for banks to make loans. This is a negative cycle. We would all be better off if banks made more loans and charged fewer fees.

VI. Conclusion

Debit card swipe fees as they exist today cannot be justified. Banks benefit every time a debit card is used. Banks benefit by getting consumers' money so the bank can lend it. Merchants and consumers benefit too, and when debit cards were introduced without swipe fees (or with payments to merchants), everyone was better off. Now, the way that banks agree to charge the same fees and the networks restrain competition undercuts any semblance of a competitive market and merchants and consumers lose. The Durbin amendment and the Federal Reserve's rule will help. The choice these new policies present to banks is straightforward – compete on your fees or they will be limited. Whichever choice the banks make, the rest of us will be better off for it.

Exhibit 1



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Top industries

Most Profitable Industries: Return on Revenues

Industry Rank	Industry	2005 Profits as % of Revenues
1	Mining, Crude-Oil Production	29.9
2	Internet Services and Retailing	23.8
3	Commercial Banks	18.3
4	Network and Other Communications Equipment	15.8
5	Pharmaceuticals	15.7
6	Medical Products & Equipment	13.2
7	Securities	12.7
8	Railroads	12.5
9	Diversified Financials	12.4
10	Publishing, Printing	11.8
11	Household and Personal Products	11.1
12	Insurance: Life, Health (stock)	10.3
13	Homebuilders	9.9
14	Insurance: P & C (stock)	9.0
15	Oil and Gas Equipment, Services	8.7
16	Entertainment	8.4
17	Food Consumer Products	8.4
18	Electronics, Electrical Equipment	8.2
19	Food Services	8.0
20	Computers, Office Equipment	7.5
21	Health Care: Insurance & Managed Care	7.1
22	Hotels, Casinos, Resorts	6.8
23	Industrial & Farm Equipment	6.6
24	Apparel	6.5
25	Petroleum Refining	6.1
26	Utilities: Gas & Electric	6.0
27	Chemicals	5.8
28	Metals	5.6
29	Beverages	5.3
30	Information Technology Services	5.1

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33	Telecommunications	4.2
34	General Merchandisers	4.1
35	Specialty Retailers	4.0
36	Semiconductors and Other Electronic Components	3.9
37	Energy	3.0
38	Food Production	2.8
39	Health Care: Pharmacy and Other Services	2.8
40	Wholesalers: Diversified	2.3
41	Engineering, Construction	2.2
42	Wholesalers: Food and Grocery	2.1
43	Food & Drug Stores	1.6
44	Pipelines	1.4
45	Wholesalers: Electronics and Office Equipment	1.4
46	Wholesalers: Health Care	1.3
47	Automotive Retailing, Services	1.1
48	Motor Vehicles & Parts	1.1
49	Packaging, Containers	0.4
50	Airlines	-10.6

From the April 17th, 2006 issue

Company	Number of Employees
FedEx	212,241
Intel	48,655
Starbucks	91,056

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Company	2005 Profits ($ millions)
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Citigroup	24,589.0
Bank of America Corp.	16,465.0

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Most Profitable Industries: Return on Revenues

Revenues Assets Shareholder equity

Industry Rank	Industry	2006 Profits as % of Revenues
1	Mining, Crude-Oil Production	26.6
2	Pharmaceuticals	19.6
3	Commercial Banks	16.2
4	Financial Data Services	15.2
5	Network and Other Communications Equipment	14.0
6	Medical Products & Equipment	13.5
7	Railroads	13.1
8	Securities	12.4
9	Publishing, Printing	12.4
10	Insurance: P & C (stock)	11.8
11	Diversified Financials	10.9
12	Insurance: Life, Health (stock)	10.7
13	Entertainment	10.7
14	Internet Services and Retailing	10.5
15	Oil and Gas Equipment, Services	10.4
16	Household and Personal Products	9.2
17	Metals	8.0
18	Food Services	7.9
19	Semiconductors and Other Electronic Components	7.7
20	Petroleum Refining	7.3
21	Industrial & Farm Equipment	7.2
22	Homebuilders	7.1
23	Hotels, Casinos, Resorts	7.0
24	Utilities: Gas & Electric	6.8
25	Beverages	6.6

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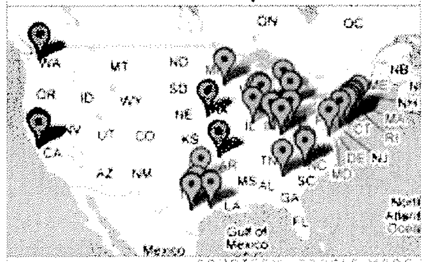

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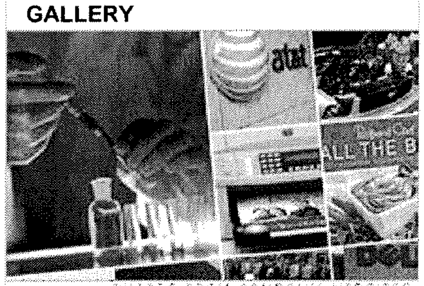


PHOTOS FROM COMPANY WEBSITES

Top 50

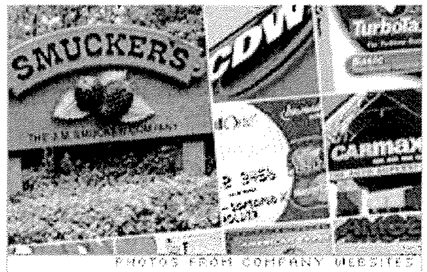
Wal-Mart retakes the No. 1 slot on the Fortune 500 this year. See where America's largest companies rank, and why.
See them all

GALLERY

26	Chemicals	6.6
27	Computers, Office Equipment	6.5
28	Electronics, Electrical Equipment	6.4
29	Apparel	6.3
30	Telecommunications	6.2
31	Food Consumer Products	5.9
32	Aerospace and Defense	5.9
33	Health Care: Insurance & Managed Care	5.8
34	Packaging, Containers	4.3
35	Wholesalers: Diversified	4.1
36	Health Care: Medical Facilities	3.9
37	Specialty Retailers	3.6
38	General Merchandisers	3.3
39	Health Care: Pharmacy and Other Services	2.8
40	Food & Drug Stores	2.6
41	Airlines	2.6
42	Energy	2.6
43	Information Technology Services	2.2
44	Engineering, Construction	1.7
45	Pipelines	1.7
46	Wholesalers: Food and Grocery	1.7
47	Wholesalers: Electronics and Office Equipment	1.4
48	Automotive Retailing, Services	1.2
49	Wholesalers: Health Care	0.9
50	Food Production	-0.7
51	Motor Vehicles & Parts	-1.4

From the April 30th, 2007 issue

Note:
Due to slight differences in rounding, industry data online may not exactly match the FORTUNE 500 magazine version.



PHOTOS FROM COMPANY WEBSITES

Best employers

More than 35 companies are on both the 2007 Fortune 1000 and 100 Best Companies to Work For lists.
See them all

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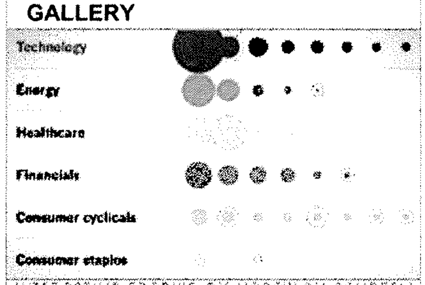


INTERACTIVE GRAPHIC BY MACAULAY CAMPBELL

Big deals

Last year saw the biggest buyout frenzy since 2000, as 42 Fortune 1,000 corporations were acquired. Who was part of the buyout binge?
See them all

FORTUNE 500

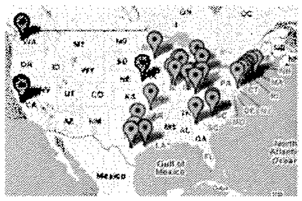
Our annual ranking of America's largest corporations 2008

Top industries: Most profitable

RETURN ON REVENUES | RETURN ON ASSETS | RETURN ON SHAREHOLDERS' EQUITY

Industry Rank	Industry	2007 Profits as % of Revenues
1	Network and Other Communications Equipment	28.8
2	Mining, Crude-Oil Production	23.8
3	Pharmaceuticals	15.8
4	Medical Products and Equipment	15.2
5	Oil and Gas Equipment, Services	13.7
6	Commercial Banks	12.6
7	Railroads	12.4
8	Entertainment	12.4
9	Insurance: Life, Health (stock)	10.6
10	Household and Personal Products	10.2
11	Securities	10.1
12	Insurance: Property and Casualty (stock)	9.9
13	Real Estate	9.9
14	Scientific, Photographic, and Control Equipment	9.8
15	Financial Data Services	8.7
16	Food Services	7.9
17	Publishing, Printing	7.9
18	Utilities: Gas and Electric	7.9
19	Industrial and Farm Equipment	7.6
20	Electronics, Electrical Equipment	7.6
21	Hotels, Casinos, Resorts	7.3
22	Aerospace and Defense	7.2
23	Beverages	7.2
24	Chemicals	7.0
25	Internet Services and Retailing	7.0
26	Food Consumer Products	6.5

Top 50 Headquarters



Show: Top 50 | 25 Most Profitable | Fortune 500

What Readers Say

They speak out on Wal-Mart and other 500 companies...

And to tell me government doesn't subsuide oil. But wait it's not j...

The worst company to work for is Lockheed Martin, Moorestown NJ

This company was bailed in 2005 already

Have your say

Find your top companies

- High revenue growth
- High profit growth
- High EPS growth
- High return to investors
- Top 5 in its industry
- Best company to work for
- Big employer
- Small employer

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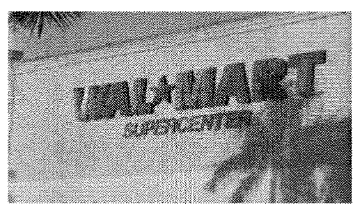

27	Telecommunications	6.4
28	Health Care: Insurance and Managed Care	6.2
29	Petroleum Refining	6.2
30	Computers, Office Equipment	6.0
31	Metals	5.5
32	Packaging, Containers	5.5
33	Home Equipment, Furnishings	5.3
34	Wholesalers: Diversified	4.3
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46	Automotive Retailing, Services	1.1
47	Wholesalers: Health Care	1.1
48	Motor Vehicles and Parts	1.1
49	Food Production	1.0
50	Semiconductors and Other Electronic Components	0.6
51	Diversified Financials	-0.9
52	Homebuilders	-9.5

From the May 5, 2008 issue

Wal-Mart by the numbers
A look inside the retail giant, the No. 1 company on the Fortune 500 list - from salaries to its biggest-selling product. **Watch**

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AES's powerful comeback
Fortune 500's top stock: Freddie Mac
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Pfizer's home remedy

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Top 3

HOW STATES STACK UP | BEST EMPLOYERS

Rank	# of Fortune 500 Companies
Texas	58
New York	55
California	52

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FAQ and methodology

Included in the survey are U.S. incorporated companies filing financial statements with a government agency. This includes private companies... More

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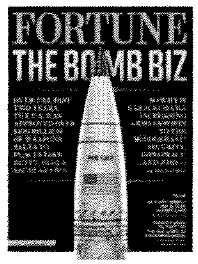

America's hottest export: Weapons

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Top industries: Most profitable

RETURN ON REVENUES | RETURN ON ASSETS | RETURN ON SHAREHOLDERS' EQUITY

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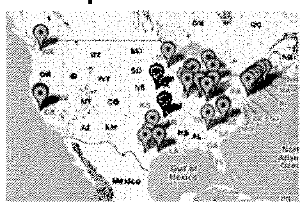
Top 50 Headquarters



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What Readers Say

They speak out on Exxon Mobil and other 500 companies...

National average for taxes on Gasoline is 47.7 cents per gallon. ht...

After the sound. In the air, with the voice of a clarinet, I he...

I just don't understand how the oil companies can make so much in p...

Have your say

Find your top companies

- High revenue growth
- High profit growth
- High EPS growth
- High return to investors
- Top 5 in its industry
- Best company to work for

27	Insurance: Property and Casualty (stock)	3.3
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46	Motor Vehicles and Parts	-0.7
47	Insurance: Life, Health (mutual)	-3.0
48	Hotels, Casinos, Resorts	-4.5
49	Automotive Retailing, Services	-7.9
50	Forest and Paper Products	-9.6
51	Entertainment	-10.0
52	Real Estate	-13.4
53	Airlines	-13.5

Issue date: May 4, 2009

Big employer Small employer

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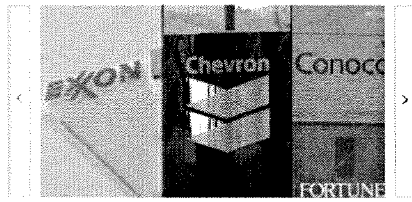

Big oil tops the 500
Exxon Mobil shoved aside Wal-Mart to retake the No. 1 slot. But the Fortune 500 had its worst slump ever.
Watch

Top 3

HOW STATES STACK UP | BEST EMPLOYERS | MOST PROFITABLE

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FAQ and methodology

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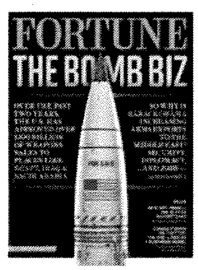

America's hottest export: Weapons

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Exhibit 2

Banks' Excuses for Adding Checking Fees

Banks have been determined to kill free checking for years. During the past few years alone, banks have seized upon one excuse after another for adding fees. This document simply lays out the articles showing these excuses and how they have changed over time. The inevitable conclusion must be that banks will increase fees whenever they can and find any convenient reason to blame someone or something else for their actions.

Articles

Rising Bank Fees are Setting Records, USA Today (Oct. 27, 2008), available at http://www.usatoday.com/money/industries/banking/2008-10-26-atms-fees-checks-banks_N.htm.

- "The high fees come at a time when banks are struggling to unload bad mortgage loans."

Banks Boost Customer Fees to Record Highs, Wall Street Journal (Nov. 12, 2008), available at http://online.wsj.com/article/SB122645109077719219.html:

- "Banks are responding to the troubled economy by jacking up fees on their checking accounts to record amounts."
- "[A]nother factor prompting banks to cut costs and raise fees and loan rates is a Federal Deposit Insurance Corp. proposal to increase the rates banks pay for deposit insurance starting next year."
- "Industry consolidation is also likely to result in higher fees."
- "[A]ll banks have to be looking for ways to meet the requirements of shareholders. . . . That naturally has them looking for alternative sources of revenue." – Thomas Dyck, Executive VP at TD Bank

Banks Find Ways to Boost Fees; Checking Accounts Latest Target, USA Today (May 28, 2009), available at http://www.usatoday.com/money/industries/banking/2009-05-27-checks-fees-banks_N.htm:

- "Banks defend their policies, saying that as unemployment rises, consumers have become riskier, and the higher fees reflect that risk. Banks may also be raising some account fees to compensate for higher borrowing costs and to keep prices in line with other financial institutions, says Scott Talbott of the Financial Services Roundtable, which represents the nation's largest banks."

Bank Fees Rise as Lenders Try to Offset Losses, New York Times (July 2, 2009), available at http://www.nytimes.com/2009/07/02/business/02fees.html?_r=1:

- "Scott E. Talbott, a lobbyist for the Financial Services Roundtable, said that the banks' fees reflect the cost of providing those services and the rise in overdraft charges reflects increased risk. 'There is an increased riskiness around repayment because of the recession, he added.'"

- "We've never seen a price increase during a recession. . . . What the bankers are saying is that I want to maintain my revenue." - Micheal Moebs, economist

Is Free Checking on its Way Out? CNNMoney.com (July 2, 2009), available at http://moremoney.blogs.money.cnn.com/2009/07/02/is-free-checking-on-its-way-out/.

- "Bank customers used to the perks of free checking accounts -- unlimited check writing, online banking, debit card use and ATM access, to name a few -- might have to recalibrate their expectations soon. That's because overdraft fees, which banks use to subsidize the expense of free checking accounts, have been under fire by consumer advocacy groups."

Banking Expert: Free Checking Accounts aren't Long for this World, WalletPop.com (Aug. 31, 2009), available at http://www.walletpop.com/2009/08/31/banking-expert-free-checking-accounts-arent-long-for-this-worl/:

- Following the Credit Card Accountability Responsibility and Disclosure Act and overdraft regulations, "banks are already trying to think of new ways to make their profits."

Is this the End of Free Checking? SmartMoney (Aug. 31, 2009), available at http://www.smartmoney.com/spending/deals/is-this-the-end-of-free-checking/.

- "Changes to federal regulations have triggered the cascade of new fees. Already cash-strapped banks anticipate declining revenue from credit cards as rules from the CARD Act take effect . . ."

The End of Free Checking? FierceFinance (Sep. 20, 2009), available at http://www.fiercefinance.com/story/end-free-checking/2009-09-02.

- "We noted recently that some banks, in the face of credit card legislation, were toying with the idea of hiking fees somehow. At many places, there's discussion of whether free checking has come to the end."

Banks' Struggle May Mean End of Free Checking, msnbc.com (Nov. 10, 2009), available at http://www.msnbc.msn.com/id/33840681/ns/business-consumer_news/.

- "The change by Citi comes as Congress considers legislation that would limit banks' ability to levy overdraft fees on checking accounts."

Checking Account Fees are Making a Comeback, SmartMoney (Nov. 19, 2009), available at http://www.smartmoney.com/personal-finance/debt/checking-account-fees-are-making-a-comeback/:

- "Account maintenance fees increased by 15% between the first and third quarter of 2009, according to Money-Rates.com."

The End of Free Checking? MoneyTalksNews.com (Dec. 30, 2009), available at http://www.moneytalksnews.com/2009/12/30/the-end-of-free-checking/.

- "[N]ew Congressional regulations like the CARD Act have limited the amount of money banks can make from credit cards. The Federal Reserve also has plans to address the highly lucrative "overdraft fee industry", estimated to be worth $38.5 billion in 2009 by industry consultants Moebs Services. In other words, free checking accounts may soon be going the way of the dinosaur."

End is Seen to Free Checking, WSJ (June 16, 2010), available at http://online.wsj.com/article/SB10001424052748703513604575311093932315142.html

- "Bank of America Corp. and other banks are preparing new fees on basic banking services as they try to replace revenue lost to regulatory rules, in a push that is expected to spell an end to free checking accounts for many Americans."

Biz Brief: The End of Free Checking? AOL Daily Finance (June 17, 2010), available at http://www.dailyfinance.com/story/investing/free-checking/19519855/.

- "Free checking accounts have been around so long they have become an American institution. The financial reform act that is now making its way through Congress includes some consumer provisions that may cut some bank fees. In order to make up for lost income, banks could cut free checking on many accounts."

The End of Free Checking, NPR Planet Money (June 17, 2010), available at http://www.npr.org/blogs/money/2010/06/17/127899418/you-may-have-to-pay-for-that-checking-account.

- "It costs banks a few hundred bucks a year to maintain a customer's checking account. Banks have been able to make that up (and more) largely by charging overdraft fees. But new federal rules mean banks can only charge those fees to customers who sign up for overdraft protection."

The End of Free Checking? Not at Credit Unions! Credit Unions Online (June 17, 2010), available at http://www.creditunionsonline.com/news/2010/The-End-of-Free-Checking-Not-at-Credit-Unions.html.

- "Since banks can no longer charge many credit card fees of the past and high risk (high fee) mortgages are gone, banks are finding themselves short of revenue. . . . Now the banks are coming after your checking account to make up the difference."

The End of Free Checking, The Atlantic (June 21, 2010), available at http://www.theatlantic.com/business/archive/2010/06/the-end-of-free-checking/58444/.

- "Free checking is on life support. . . . The main reason why, of course, is the imminent prohibition of overdraft fees, which had been a boon for banks."

End of Free Checking a Financial Squeeze: How Employers Can Help, The Huffington Post (June 28, 2010), available at http://www.huffingtonpost.com/clare-j-morgan/end-of-free-checking-a-fi_b_627540.html.

- "The free checking accounts many Americans enjoy will soon be a thing of the past as banks scramble to find new ways to recoup overdraft charges and other fees they're no longer allowed to impose."

U.S. Banks May End Free Checking, Reuters (June 17, 2010), available at http://in.reuters.com/article/idUSTRE65G0I920100617.

- "Bank of America Corp and other U.S. banks may introduce new fees on basic services and eliminate free checking to replace revenue lost to new banking regulations . . . ."

Free Checking: Will it Survive New Bank Regulations? iStockAnalyst.com (July 5, 2010), available at http://www.istockanalyst.com/article/viewiStockNews/articleid/4278660.

- "The free checking account, a common and widely available quirk of the 21st Century banker, could be in limbo. New regulations that are costing banks revenue may lead to new fees on basic services as new rules have been created after sub-prime lending in the U.S. real estate market resulted in mass foreclosures."

Pandit Says Citigroup Can Absorb Curbs on Fees, New York Times (July 16, 2010), available at http://dealbook.nytimes.com/2010/07/16/pandit-says-citigroup-can-absorb-curbs-on-fees/:

- "Mr. Pandit said Citigroup, which is one of the top issuers of debit and credit cards in the nation, would not experience such a big drop in its revenue due to the new rules on the debit interchange. 'Debit purchase is not a significant business for us,' Mr. Pandit said."

Overdraft Fee Rule May End Free Checking, Augusta Chronicle (Aug. 16, 2010), available at http://chronicle.augusta.com/news/business/2010-08-16/overdraft-fee-rule-may-end-free-checking.

- In the future, your free checking account might not be free anymore. Some banks are considering charging fees on their free checking accounts. One local banker said these fees result from changes in rules by the Federal Reserve Board.

Bank Accounts: Free Checking Fading Fast, The Christian Science Monitor (Oct. 19, 2010), available at http://www.csmonitor.com/Business/Latest-News-Wires/2010/1019/Bank-accounts-Free-checking-fading-fast:

- "Customers never had free checking accounts. They always paid for it in other ways, sometimes with penalty fees." - Bank of America spokeswoman, Anne Pace

Free Checking is Disappearing, The Huffington Post (Oct. 19, 2010), available at http://www.huffingtonpost.com/2010/10/20/free-checking-is-disappea_n_769298.html.

- "Almost all of the largest U.S. banks are either already making free checking much more difficult to get or expected to do so soon, with fees on even basic banking services. It's happening because a raft of new laws enacted in the past year, including the financial overhaul package, have led to an acute shrinking of revenue for the banks. So they are scraping together money however they can."

Another Sign of the End of Free Checking, New York Times (Oct. 26, 2010), available at http://bucks.blogs.nytimes.com/2010/10/26/another-sign-of-the-end-of-free-checking/.

- "A new study released by Bankrate.com on Monday offers another sign that many banks are turning away from free checking as they seek to make up for the end of lucrative automatic overdraft fees and the upcoming limits on the fees that merchants pay for debit card transactions."

Region Banks Refrain from Raising Checking Account Fees, Nwi.com (Nov. 9, 2010), available at http://www.nwitimes.com/business/local/article_337b378b-3f74-5a00-9d86-b9e6b3d58799.html:

- "Bucking a national trend, the region's community banks aren't raising fees or putting the breaks on free, non-minimum-balance checking accounts, yet. A recent Bankrate.com national survey on checking accounts indicates the percentage of checking accounts with no monthly service charges and no minimum balance fell to 65 percent in 2010 from 76 percent in the 2009 study."

Is the End of Free Checking Overblown? GoBankingRates.com (Nov. 19, 2010), available at http://www.gobankingrates.com/banking/checking-accounts/end-of-free-checking-overblown/.

- "With the financial crisis of 2007 hammering banks and increased regulations in the industry hampering their revenue streams, banks are readjusting their strategies and free checking accounts may soon come to an end."

U.S. Bancorp Ends Its Waiting Game with Durbin Debit Rule, American Banker (Jan. 20, 2011), available at http://www.americanbanker.com/issues/176_13/us-bancorp-1031521-1.html:

- "U.S. Bancorp no longer plans to bide its time as competitors figure out how to recoup fee income regulated away by the Durbin amendment. Now it will be piling on with everyone else."

- Jamie Dimon, Chairman and CEO of JPMorgan Chase, "said the company wants to recoup some of the cost of the new regulations in a way that is 'consumer-friendly and fair, but of course the consumer has got to pay, and they weren't paying for debit before.'"

Free Checking Accounts Falling by Wayside, Yakima Herald-Republic (Jan. 23, 2011), available at http://www.yakima-herald.com/stories/2011/01/23/free-checking-accounts-falling-by-wayside:

- "As of Feb. 8, JPMorgan Chase will begin charging most of its new checking account customers."

- "We're taking a fresh look at our checking accounts as a result of changes in our competition, regulations and customer behavior. …We want to offer customers the best accounts in our industry, while at the same time run a sustainable business." - Darcy Donahoe-Wilmot, a spokeswoman for JPMorgan Chase in Seattle

- "We don't want to raise fees for our customers, but unfortunately, with new regulations, we're losing money on debit card transactions." - Darcy Donahoe-Wilmot, a spokeswoman for JPMorgan Chase in Seattle

U.S. Bank May End Free Checking, CNNMoney.com (Jan. 24, 2011), available at http://chicagobreakingbusiness.com/2011/01/u-s-bank-may-end-free-checking.html.

- "U.S. Bank is one of the last of the megabanks to offer free checking. But that may be about to end. The Minneapolis-based bank recently hinted that it will add fees to its checking accounts — and even possibly to its debit cards — as it attempts to recoup revenue lost under new regulations. "We're not going to be a late follower anymore, we're going to be right in the game … we no longer have the luxury of waiting," said U.S. Bank CEO Richard Davis…"

Exhibit 3

January 15, 2010

The Honorable Charles Schumer
The Honorable Kirsten Gillibrand
The Honorable Tim Bishop

To my Representatives in Congress:

I'm writing as a small business owner who has an opinion on almost everything. But, to avoid writing a book, the subject today is credit card fees being charged by the big banks to the small merchant. I know there's legislation pending on this issue. And I know there is a lot of negative consumer sentiment regarding banks. Perhaps my situation will help sway a few votes to the side of right.

In the past month there have been five occasions where banks have initiated charge backs against my account. Three of the incidents were because the cardholder claimed the card was stolen. The other two were initiated by the Bank of America because they *suspected* fraud... two transactions of identical amounts on the same day. (Not unusual in a bar when a customer orders the same round of drinks.) In all five transactions the money was deducted from my account before I had any communication from my card processor requesting verification of the charges. *The big banks took the money of the small merchant assuming guilt before innocence.*

Since I check my account on a daily basis, I notice the debits. I called to ask about the deductions and was told of the claims against me. In all cases, I immediately faxed the proof that all five transactions were approved by the banks and that I did nothing wrong. I have so far been credited for the first three; I'm waiting for the last two. They're very fast to take my funds, very slow to return them. I should also note that had I not called I would have to wait until I got the letters requesting my response. In three cases the letters arrived on December 24th requiring a response by December 23rd. Even I'm not that good that I can respond 24 hours ago to a request.

Now, you'd think it couldn't get any worse... but it does. I've lost the use of the money for a period of time. I've proved that I did nothing wrong and that all the charges were legitimate. I've been credited the money for three of the five transactions and am waiting for the last two. I am now charged $15.50 for each charge back as a fee. A total of $77.50 in fees for $78.00 in charges that I processed correctly and within the letter of agreement with the card processors!!! Mr. Schumer, Ms. Gillibrand, Mr. Bishop – this is ridiculous. I lose the use of my money for weeks, then I have to pay a fee of 100% to get it back.

I write to you today in the hopes that you can appreciate both my frustration with the situation and that you can see just how ludicrous it is. I am a small merchant who is trying to get by, trying to provide employment, trying to pay my bills. I feel that I'm being nickel and dimed and $77.50'd by companies that are trying to shore up their revenues before the new credit card legislation takes effect. I ask your help if you too see the inherent wrong in this situation.

Sincerely,

Marc Miller
Owner

111 West Broadway Port Jefferson, NY 11777 631.642.2824 info@thecatchtavern.com

Exhibit 4

State won't intervene in dispute between Visa and marketers

Visa to marketers: If you don't like our rules, don't offer discount-for-cash

State regulators in California won't come to the rescue of marketers caught between obeying state standards on discount-for-cash pricing and demands by Visa that they drop the word 'credit' from price signs.

"As far as we're concerned, putting the word 'credit' on a price sign is appropriate, but as far as Visa telling marketers they can't do it, that's a civil matter between Visa and the marketers," says Dennis Johannes, the state's Weights and Measures director. "We have no authority to regulate Visa."

The state's posture leaves marketers in a Catch 22 situation. If they use the word 'credit,' Visa has said it may fine them and strip them of their right to take Visa cards. But if they adopt some of Visa's suggestions, such as leaving the 'credit' sign blank, they will be violating state standards, says Johannes.

Johannes believes that Visa is being "a little heavy-handed" on the issue. "They probably don't want dual pricing because it discourages the use of their credit card," he says. His only suggestion for marketers is that they seek a legislative change that will specifically require the use of the word 'credit' on signage.

Johannes is not alone in his suspicions of Visa's motives.

"Visa's goal is to get everyone to pay the higher, credit card price for fuel and they will twist and torture their rules if necessary to force consumers to do so," says Mallory Duncan, chairman of the Merchants Payments Coalition, a business group dedicated to fighting for lower card interchange rates.

Visa is not particularly sympathetic to the plight of marketers – the credit card giant says it is the marketers' fault for offering discount-for-cash in the first place.

"If the merchant wants to steer the consumer to discount for cash, then they have to do it within the context of Visa's rules," said Visa spokeswoman Rhonda Bentz. "It's great if they have a contract with the state, but they don't. They have a contract with Visa and if they don't want to abide by that contract, they shouldn't have signed it," she said.

"These merchants clearly want the consumer to pay with cash. Okay, then, they should just accept cash and not credit cards. But they want access to our 1 billion cardholders, and they want the reduced risk that comes with taking Visa, and they want the guaranteed payments. They just don't want to pay for it."

Visa threatened to fine Mom and Pop operator Mike Gharib's credit card processor $5,000 because he was using the word 'credit' on his price sign, as exclusively reported (OE 04/16). The processor, Petroleum Card Services, planned to pass the fine through to Gharib. Visa withdrew the threat after Oil Express raised questions on the issue. The company says Gharib is now "compliant" with its rules. Gharib has removed the word 'credit' and that part of his price sign is now blank, Oil Express sources say.

Visa's position is that the higher price next to the word 'credit' on signs implies that the customer is paying a surcharge for credit, which is against Visa rules. It wants marketers to substitute other terms, such as 'regular' or 'standard,' or just leave that part of the sign blank. Additionally, Visa says the word 'credit' does not take into account debit cards, which must be treated the same as cash sales under state regulations. Therefore, the signs are misleading to debit customers, too, says Bentz.

Asked why Visa should start objecting to the word 'credit' after its use on station signs for 26 years, Bentz says Visa received complaints from consumers who thought they were being surcharged for credit.

Johannes says consumers know debit transactions are the same as cash, and that the difference between the two forms of payment – cash and credit – is well-understood. Using the term 'standard' or 'regular' would confuse customers, and leaving the sign blank would violate state rules. Visa's other suggestions – 'non-cash' and 'base price' – would have to be studied, he says.

"'Non-cash' is probably something we would not pursue as being illegal but there are a lot of other enforcement people in this state, such as the district attorney, county officials, and state attorney general's office, and we don't speak for them."

Visa has also objected to the way some marketers handle debit card sales at the pump and there is a suspicion among some marketer groups that the company would like to force consumers to go into the station to sign for a debit card transaction. Visa receives higher fees for debit signature sales than it does for Personal Identification Number transactions, sources say.

Visa has told Auburn, Calif.-based marketer Nella Oil that its debit card sales at the pump violate Visa rules because those customers are not getting the cash or discount price.

When customers use a Visa debit card at the pump, they are required to enter a PIN. If they do not do so, the card processor treats the sale as a credit card transaction and the customer will pay the higher, credit price for fuel. Likewise, the marketer will pay the higher fees associated with credit card transactions, although the money will ultimately be debited from the customer's bank account.

Nella has decals on its pumps clearly warning customers that they must key in their PIN to get the debit price, and the state has approved that decal, a Nella exec says. Visa says that's not enough to ensure that customers receive their cash discounts. Nella had hoped to get its bank to segregate PIN debit purchases and block them at the pump, but has been told that is not possible. "So, we're back to square one," says Nella.

Actually, not quite – under the landmark Wal-Mart-Visa lawsuit settlement, Visa and MasterCard were barred from bundling their debit and credit cards together, so forcing merchants to accept debit cards whether they wanted to or not.

Nella can write to its card processor or bank and tell them that it no longer wishes to accept Visa debit cards, says an industry lawyer. This will cause the bank to shut off Nella's access to the Visa debit network. As a result, when a customer swipes his debit card the sale will be routed automatically to the regional debit network whose logo appears on the back of the Visa card – the Star network would be one such example. The Star system will not process the customer's sale until he inputs his PIN, so avoiding charging him the credit card price for fuel.

"What's so frustrating is that Visa and MasterCard have a duopoly in the market place and they're trying to put retailers in an untenable position in order to increase their leverage and revenues," says Duncan, with the Merchants Payments Coalition.

Exhibit 5

AMERICANS
FOR FINANCIAL REFORM
ACCOUNTABILITY • FAIRNESS • SECURITY

Americans for Financial Reform
1825 K St NW, Suite 210, Washington, DC, 20006
202.263.4533

SUPPORT DURBIN REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS AMENDMENT #3989

Senator Durbin
United States Senate
Washington, DC 20510

May 13, 2010

Dear Senator Durbin:

We write on behalf of Americans for Financial Reform, an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists. We support a strong Consumer Financial Protection Bureau and oppose weakening amendments to the Restoring American Financial Stability Act, S. 3217.

Durbin Amendment #3989 is a move towards helping Main Street.

Americans for Financial Reform supports the Durbin Reasonable Fees and Rules for Payment Card Transactions Amendment #3989 because it is good for merchants and good for consumers. The bank payment networks, Visa and MC, impose high, non-negotiable interchange fees for accepting credit and debit cards and use other unfair contractual practices that mean all consumers pay more at the store and more at the pump, whether they pay with cash or plastic. The bulk of the $48 billion estimated yearly take from interchange fees flows to the largest Goliath banks. Giving merchants more flexibility against unfair bank and card network practices will result in more payment choices for consumers and lower merchant costs.

For information, please contact Ed Mierzwinski, edm@pirg.org 202-546-9707 ext. 314

Sincerely,

Americans for Financial Reform
Our 250 member groups: http://ourfinancialsecurity.org/about/our-coalition/

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Douglas S. Kantor	Merchants Payments Coalition

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:

Please attach a copy of this form to your written testimony.