



Merchant Services

Frequently Asked Questions about Final rules on Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

July 26, 2011

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What is the Durbin Provision?

Section 1075, which contains the Durbin provision, is one section in the comprehensive financial services overhaul law called the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act was signed into law by President Obama on July 21, 2010.

The Durbin provision is named for Sen. Dick Durbin (D-Ill.), who sponsored a specific provision regarding debit card regulations and merchant acceptance of payments.

What are the statutory components of the Durbin provision?

- **Discounts for Payments:** Merchants are allowed to offer discounts to consumers to incentivize payment by an alternative method (i.e. cash/check or other), provided the discount/incentive does not differentiate on the basis of the card issuer or payment network and the discount/incentive is offered to all buyers and clearly disclosed.
- **Minimum & Maximum Amounts:** Merchants may establish up to a \$10 minimum for CREDIT CARD (not debit) transactions. Government agencies and institutions of higher education may establish maximum amounts for payment by CREDIT CARD (not debit).
- **Debit Card Interchange Fee Regulation:** Issuers must set interchange rates that are reasonable and proportional to their transaction costs. The Federal Reserve Board must finalize regulations establishing debit card interchange fee parameters.
- **Fraud Standards:** The Federal Reserve Board may make adjustments to an issuer's interchange fee allowance to account for fraud prevention costs. Federal Reserve Board must finalize regulations to establish fraud-related standards that an issuer must comply with in order to be eligible for fraud mitigation adjustments to interchange.
- **No Routing Restrictions:** Federal Reserve Board must finalize regulations to allow merchants to direct the routing of electronic debit transactions for processing over any payment network.
- **Circumvention:** Federal Reserve Board must finalize regulations to ensure that network fees are not used to directly or indirectly compensate issuers and circumvent/evade interchange fee controls.
- **No Exclusivity Arrangements:** Federal Reserve Board must finalize regulations to prohibit issuers/payment card networks from restricting participation in electronic debit transaction processing to only one network or two affiliated networks.

Have the final rules been released? Who will enforce and what are the penalties for non-compliance?

Have the final rules been released?

Yes. The Federal Reserve Board released its final regulations on the provisions of the Durbin amendment on June 29, 2011. A high-level summary of the final regulations is on the next two pages.

Who is the enforcement agency for the Durbin provision, and which agency is responsible for writing the regulations associated with it?

The Federal Reserve Board is the enforcement agency for Durbin and has sole authority to write the implementing regulations mandated in Section 1075 of the Wall Street Reform Act, which include the following:

- regulations to establish the debit interchange fee parameters
- regulations on fraud standards that may be incorporated into calculating the debit interchange rates
- regulations that prohibit network fees from being used to circumvent interchange restrictions
- regulations that prohibit exclusive network arrangements for debit processing
- regulations that allow merchants to direct the routing of payment transactions

What are the penalties for non-compliance?

In the final rule, the Federal Reserve Board did not establish specific penalties for non-compliance. The Federal Reserve Board clarified that penalties for Durbin violations will be assessed by the issuer's or network's primary regulatory supervisor. (That will be the Federal Trade Commission for networks, and depending on the issuers, it could be the Federal Reserve Board, the Office of the Comptroller of the Currency or the National Credit Union Administration.)

Summary of the Proposed and Final Rules for key provisions within Section 1075

PROVISION	PROPOSED REGULATIONS	FINAL RULES
<p>Debit interchange Fees</p> <p>Effective Date: 10/1/11</p>	<p>The FRB proposed two alternatives – both apply only to card issuers with \$10B and above in assets:</p> <p>Alternative 1: An issuer would be permitted to determine a maximum interchange fee by calculating the average variable cost for authorization, clearing and settlement of a debit transaction with a safe harbor for interchange Fees up to \$.07 per transaction, not to exceed the interchange rate cap of \$.12 per transaction.</p> <p>Alternative 2: An issuer would be permitted to set the debit interchange rate not to exceed \$.12 per transaction.</p> <p><u>Exemptions:</u></p> <ul style="list-style-type: none"> •Small issues with assets and affiliates less than \$10 billion dollars world wide •Debit transaction made using debit or prepaid cards provided pursuant to a Government administered program •Certain types of general use pre-paid cards 	<p>The FRB adopted a modified version of proposed Alternative 2: A cap composed of A stand-alone cap of a base component of \$.21 per transaction and an <i>ad valorem</i> base cap of 5 basis points for each transaction.</p> <p><u>Exemptions:</u></p> <ul style="list-style-type: none"> •Small issues with assets and affiliates less than \$10 billion dollars world wide •Debit transaction made using debit or prepaid cards provided pursuant to a Government administered program •Certain types of general use pre-paid cards
<p>Circumvention or evasion of debit interchange</p> <p>Effective Date: 10/1/11</p>	<p>Debit card issuers may not receive net compensation from a network for debit card transactions that exceeds total fees that an issuer pays to a network.</p>	<p>The FRB will review circumvention/evasion of debit interchange regulations on a case-by-case basis. Net compensation from a network to an issuer (excluding interchange fee revenue + other specific types of revenue) is prohibited, although that may not be the only determining factor in a finding of circumvention/evasion.</p>

Summary of the Proposed and Final Rules for key provisions within Section 1075 continued

PROVISION	PROPOSED REGULATIONS	FINAL RULES
<p>Fraud adjustment Effective Date: 10/1/11</p>	<p>The FRB has not issued proposed regulations on fraud standards or an adjustment to the interchange rate based on fraud prevention activities. We anticipate seeing proposed and final rules later this summer.</p>	<p>The FRB issued an interim final rule for public comment that allows a fraud prevention adjustment to the debit interchange fee of \$.01 per transaction, provided an issuer complies with the fraud standard established by the FRB</p>
<p>Network exclusivity Networks may not have exclusive arrangements beginning 10/1/11 Issuers must participate in two unaffiliated networks beginning 4/1/12.</p>	<p>The FRB proposed two alternatives – both of which would apply to all financial institutions, regardless of asset size:</p> <p>Alternative 1: Require debit card issuers to participate in two unaffiliated networks without regard to the authorization method (i.e., one signature network and one unaffiliated PIN network).</p> <p>Alternative 2: Require more than one unaffiliated network for each method of authorization (i.e., two unaffiliated signature networks and two unaffiliated PIN networks).</p>	<p>The FRB adopted Alternative 1, which requires each debit card issuer to participate in two unaffiliated networks without regard to the authorization method.</p>
<p>Limitation on routing restrictions Effective Date: 10/1/11</p>	<p>Issuers and payment card networks must not inhibit the ability of a merchant to direct debit card transactions, but routing is limited to the payment card networks enabled on the debit card.</p>	<p>The FRB adopted the merchant routing provisions as outlined in the proposed rule.</p>

What are the key effective dates?

- Interchange fee
- Circumvention of interchange
- Fraud adjustment to interchange fee
- Limitation on routing restrictions
- End of network-imposed exclusivity arrangements

Issuer compliance with two unaffiliated networks required

Network exclusivity compliance for certain prepaid, healthcare cards and government-administered cards

Effective dates contained in the 6/29/11 final rules from the Federal Reserve Board

October
2011

April
2012

April
2013

To whom does the Durbin provision apply? Are there any exceptions?

The Durbin provision in the Wall Street Reform Act and the Federal Reserve Board's final implementing regulations apply to debit networks, debit card issuers and merchants. For example, the law requires the Federal Reserve Board to establish parameters around PIN and signature debit interchange rates, and allows merchants to set a minimum amount for credit card acceptance, while also allowing merchants to establish discounts or incentives to steer their customers to particular payment methods. The law and the final regulations include some specific exceptions from the debit interchange rate setting provisions, including the following:

- Issuers with assets of less than \$10 billion (including their affiliates) are exempt from debit interchange rate regulation;
- Government electronic benefit transfer cards are exempt from debit interchange rate regulation;
- General-purpose reloadable open-loop prepaid cards are exempt from debit interchange regulation, provided they meet certain criteria, as follows:
 - The cards must be usable with multiple, unaffiliated merchants; reloadables; and not issued to debit an account for the cardholder (unless it's a subaccount)
 - No alternate payment methods can be associated with the card (unless the alternative method is simply to provide all funds to the cardholder in a single transaction)
 - The cards can't be marketed as a gift card (the marketing restrictions track the requirements in the CARD Act of 2009)
 - The cards may not have overdraft fees
 - The cards must provide for free the first monthly ATM withdrawal at an in-network ATM that is reasonable & convenient to the cardholder's home or place of employment

To whom does the Durbin provision apply?

Are issuers with less than \$10 billion exempt from all regulation?

No. Issuers with less than \$10 billion in assets are only exempt from debit interchange-related restrictions. The network exclusivity and routing provisions would apply to all banks, regardless of asset size.

How many issuers have under \$10 billion in assets?

There are more issuers below \$10 billion in asset than there are issuers with more than \$10 billion. However, those with more than \$10 billion in assets have a larger percentage of card transaction volume. Please see the website published by the Federal Reserve which list both exempt (issuers with \$10 million in assets and above) and non exempt issue (issuers with less \$10 million in assets):

<http://www.federalreserve.gov/paymentsystems/debitfees.htm>

For the card issuers below the \$10 billion dollar threshold what will be the interchange rates and or fees?

At this time we do not have information on rates or fees. Since the announcement of the final rule on June 29, the networks have been busy determining what type of fee structure will be in place and how fees may or may not differ based on whether or not an issuer is above or below the \$10 billion dollar threshold. We will provide information as soon as it is available.

What does the Durbin provision mean to me?

What does the merchant routing component of the final Durbin rules mean for merchants?

The regulations make it a violation of law for card issuers and networks to inhibit a merchant's ability to control the routing of debit card transactions. Additionally, the regulations impose restrictions on exclusive arrangements between a debit network and an issuer, meaning that there must be at least two unaffiliated network choices for routing on the card. This means that merchants will have at least two unaffiliated networks to choose from when routing debit card transactions.

Can I refuse to take certain debit cards so I only process debit cards that will offer me the best rate?

No. The Durbin provision allows merchants to provide discounts or incentives to steer customers toward alternative types of payment (like cash vs. debit), but in doing so, merchants are not allowed to discriminate based on a particular card's issuer or a particular card's payment brand. Thus, merchants are prohibited from refusing to accept some debit cards while taking others.

Will I still be paying network fees on top of the Durbin Regulated fees?

Yes. Dues and assessment imposed by a network on merchants were not impacted by the final rule. They must be paid in addition to the regulated interchange fees which are imposed by the issuers.

Do the regulations impact my funding for debit transactions?

No. Your merchant account will continue to be funded on the same basis as today.

Is the IRS 1099K compliance initiative related to Durbin?

No. The IRS 1099K initiative resulted from separate congressional legislation, and is not part of the Dodd-Frank Act or the Durbin provision.

Additional frequently asked questions

Do the regulations only apply at the point of sale?

No. The debit interchange rate cap on debit cards issued by financial institutions with \$10 billion or more in assets applies at the point of sale in the physical store as well as to card-not-present transactions such as those made at an online checkout or over the telephone. The regulation does not apply to ATM transactions.

Is it possible to have Visa® and MasterCard® on the same card as a network option?

Yes. It is possible at each issuers discretion.

Do the Exclusivity and Routing provisions impact merchants that do not accept PIN debit?

Yes, as long as they accept signature debit, it is applicable.

Will there be a difference in interchange rates between PIN and signature Debit cards issued by regulated issuers?

The same interchange fee cap applies to both; however, at this time the payment networks have not disclosed actual interchange rates.

Will my store specific gift card be subject to these regulations?

If it is a closed-loop gift card, only redeemable with a particular merchant, then it is not subject to the regulation.

Reminder: Questions about setting transaction limits

Is there any guidance on the minimum amount a merchant can set for credit card transactions?

Yes. The law prohibits payment card networks from restricting a merchant from establishing a minimum amount for credit card acceptance, as long as (i) the minimum amount does not exceed \$10 and (ii) the minimum applies to all customers and (iii) applies all types of credit cards, regardless of brand or issuer.

What are the rules on setting maximum amounts that government agencies and higher education can set on credit card acceptance?

The law prohibits payment card networks from restricting any federal governmental entities or institutions of higher learning from establishing maximum credit card transaction amounts.

What are the rules around communications to the consumer of discounts and incentives available?

To provide an incentive for a consumer to pay with cash, check or debit, the merchant must clearly and conspicuously disclose the discount to consumers, the merchant must offer the discount to all consumers, and the merchant cannot discriminate based on card brand or card issuer.

For example, if you were to offer a 5% discount for customers who pay with debit, you would have to clearly and conspicuously disclose the discount, offer the discount to all customers, offer the discount regardless of the debit card brand, and offer the discount regardless of the debit card issuer.

Please note: The law continues to allow payment card networks to prohibit merchants from applying a surcharge for payment with credit or debit cards.

Select definitions contained in final rules

Interchange transaction fee

Any fee established, charged or received by a payment card network and paid by a merchant or an acquirer for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

Payment card network

- Any entity that directly or indirectly provides the proprietary services, infrastructure, and software for authorization, clearance and settlement of electronic debit transactions
- And that a merchant uses, in order to accept as a form of payment, a brand of debit card or other device that may be used to carry out electronic debit transactions.

Debit card

Any card or other payment code or device issued or approved for use through a payment card network to debit an asset account, regardless of whether authorization is based on signature, PIN or other means and regardless of whether the issuer holds the account.

- Includes any general use prepaid card.
- Does not include:
 - Any card or other payment code or device that is redeemable upon presentation at only a single merchant or an affiliated group of merchants for goods or services
 - A check, draft or similar paper instrument or an electronic representation thereof
 - An account number when used to initiate an ACH transaction to debit a person's account

Unaffiliated

The term unaffiliated refers to a company that does not control, is not controlled or is not under common control with another company. The term applies when evaluating general use prepaid cards that are usable with unaffiliated merchants, as well as when determining whether networks are affiliated for purposes of complying with the multiple, unaffiliated network requirement.

Where can I find more information?

You can access the FRB's press release containing links to the full text of the regulations and the interim final rule on the fraud adjustment through this URL:

<http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm>

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