

To: EFTA Members

From: Dennis Ambach, Legislative & Regulatory Council Chairman

Date: June 22, 2010

Re: Legislative Update — Interchange (Durbin Amendment)

House and Senate negotiators on the Wall Street Reform legislation (H.R. 4173) announced a compromise yesterday on the interchange provision (Section 1076 – Durbin Amendment). The Conference Committee should formally approve the compromise this week.

The revised interchange amendment's key provisions are as follows:

- Retains the Federal Reserve Board's (Board) rule-making authority to establish standards whether an interchange fee for an electronic debit transaction is reasonable and proportional to the cost incurred by the issuer.
- Adds new language regarding fraud prevention costs. The Board is required to issue rules on fraud-prevention standards and may allow for adjustments to interchange fees to make allowance for increases in debit card transaction fraud.
- Adds new language to clarify that the Board will retain authority of interchange regulation even though the remainder of the Electronic Funds Transfer Act will migrate to the new Consumer Financial Protection Bureau/Agency.
- Exempts from interchange regulation any government administered payment card (e.g., unemployment benefits, TANF, social security) and reloadable general use prepaid cards. (See related EFTA June 16 memo [here](#).) The exemption would be terminated after two years for these cards if any holder may be charged an overdraft or imposed a first ATM withdrawal fee.
- Adds new language instructing the Board to prescribe regulations on "network fees" so that payment card networks may not circumvent the general requirements of the section.
- Retains the small issuer exemption for those institutions with assets of less than \$10 billion.
- Largely retains the "merchant rights" provisions in the original Durbin Amendment. These include setting transaction minimum (\$10.00) and maximum amounts, offering discounts of use of a form of payment and prohibitions against exclusivity agreements.

EFTA will provide greater detail and analysis on the revised interchange provision and the impact that compliance will have on the payments industry during its June 30 webinar titled ["The Durbin Interchange Amendment: What it May Mean for Your Customer, Your Business, and Your Industry"](#).