SQUIRE PATTON BOGGS

The future of debit-card processing fees and Regulation II

November 2026

On October 26, 2026, the Eighth Circuit's opinion in *Corner Post* affirmed a federal district court's decision on vacating the Federal Reserve Board's (FRB) debit card interchange caps implemented under Regulation II.

The FRB's interchange caps, known as the "Durbin Rule," limits how much a bank can charge a merchant for processing the merchant's debit card transactions. The interchange costs are frequently referred to as swipe fees. The Eighth Circuit held that the cap on debit card swipe fees implemented under the FRB's Durbin Rule violates the Dodd-Frank Act by allowing banks to pass through certain impermissible costs associated with debit card processing to merchants.

Swipe fees are paid within the card payment networks and ultimately imposed on merchants that accept payment cards. Swipe fees for payment card transactions have generated significant litigation over the years, including a class action by merchants against Mastercard and an antitrust action by the federal government, as well as several states against American Express. In the 2010 Durbin Amendment in the Dodd-Frank Act, Congress instructed the FRB to impose, by regulation, a cap on the fees a bank can charge for debit card processing. In 2011, the FRB implemented Regulation II and capped a bank's swipe fees for processing debit card transactions to approximately US$0.21 plus 0.05% of the transaction amount.

It might have rested there. But Corner Post, a convenience store in North Dakota, founded some years after the FRB implemented Regulation II, renewed the fight. Its first battle went to the Supreme Court, which held that even though the Durbin Rule had been settled years before, Corner Post did not exist at the time and therefore has been freshly harmed by the FRB's Regulation II. On remand from the Supreme Court, a federal district court agreed with Corner Post that the FRB's caps on swipe fees are too high. The district court vacated the Durbin Rule, but it stayed its ruling pending the appeal to the Eighth Circuit.

The core question under the Durbin Amendment is what qualifies as an "incremental cost" resulting from a particular debit card transaction.

Regulation II was intended to cap debit card swipe fees that include "incremental costs," but not other costs that are unrelated to a specific debit card transaction.

The Eighth Circuit opinion gave no deference to the FRB's interpretation of the Durbin Amendment, and instead concluded that "incremental costs" means the marginal cost of processing a debit card transaction. The upshot is that the cap can only account for the banking system's variable costs, but not any fixed costs.

Some of the fixed costs that the Eight Circuit thought the FRB improperly included in the cap were: (i) fixed costs associated with authorizing, clearing and settling a transaction such as equipment, hardware, software and associated personnel costs; (ii) network processing fees; (iii) transaction-monitoring costs for fraud prevention and (iv) fraud losses.

Although the court vacated the FRB's current Regulation II and instructed the FRB to come up with a new structure that complies with the Durbin Amendment guidelines, the current cap remains in place for the time being pending the filing of a petition for rehearing or an order denying one (possibly a matter of less than two months). The court's ruling could also be stayed pending a petition for certiorari to the Supreme Court.

If the ruling ultimately takes effect without an FRB replacement rule, the market will revert to a pre-Durbin framework in which payment networks and banks freely negotiated swipe fees. That system saw substantial increases in swipe fees between 2004 and 2010. For example, during that time period, the average debit card processing fees charged to merchants rose from 0.61% of the transaction amount to 0.72% for single-message networks and from 1.39% of the transaction amount to 1.85% for dual-message networks.[1] Prior to Regulation II, merchants were charged an average fee of US$0.44 per transaction, far in excess of the Regulation II cap.[2]

1 Hayashi, Fumiko. 2025. "Debit Card Interchange Fees Charged to Small Merchants After Regulation II." Federal Reserve Bank of Kansas City, *Economic Review*, vol. 110, no. 2. Available at https://doi.org/10.18651/ER/v110n2Hayashi

2 https://www.forbes.com/sites/halahtouryalai/2011/10/13/new-bill-could-kill-durbins-debit-card-fees/

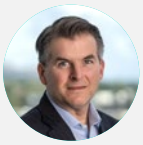
Reverting to a pre-Durbin Rule marketplace without a cap may lead to increased prices for consumers as more and more merchants have passed along swipe fees to consumers through surcharges.

Given the current economic and political uncertainty, it is unclear how quickly the FRB will want to establish a new interchange fee cap that complies with *Corner Post*. On the one hand, the current cap has been unpopular with leading banking industry groups and is cited as one of the reasons why large banks have increased fees that they charge consumers for basic banking services.[3] Given the Trump administration's broad distaste for regulations that restrict business, it is possible that the FRB may delay adoption of a replacement rule. On the other hand, President Donald J. Trump has endorsed legislation that purports to reduce credit card swipe fees.[4] Furthermore, merchants who accepted Visa or Mastercard debit or credit cards recently reached a landmark antitrust class action settlement with those networks; in the settlement, the networks agreed to temporarily reduce swipe fees and to refrain from increasing swipe fees for a period of five years.[5] Although the Visa and Mastercard settlement and the proposed legislation on credit card swipe fees do not directly implicate the Durbin Rule, this landscape of interchange fee uncertainty and instability may incentivize the FRB to act more quickly to settle the appropriate caps for banks processing debit card transactions.

Contacts



Keith Bradley
Partner, Denver
T +1 303 894 6156
keith.bradley@squirepb.com



Steve Conigliaro
Partner, Phoenix
T +1 602 528 4009
steven.conigliaro@squirepb.com



Ilian Valev
Senior Associate, Phoenix
T +1 602 528 4001
ilian.valev@squirepb.com

3 *Forbes*, supra note 2.

4 https://www.marshall.senate.gov/newsroom/press-releases/marshall-durbin-reintroduce-credit-card-competition-act-backed-by-president-trump/

5 https://www.prnewswire.com/news-releases/us-merchants-enter-into-landmark-class-action-settlement-with-visa-and-mastercard-to-eliminate-anti-competitive-restraints-and-reduce-swipe-fees-302099552.html

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72740/11/26