May 20, 2021

The Honorable Sherrod Brown, Chairman
The Honorable Patrick Toomey, Ranking Member
Senate Committee on Banking, Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Maxine Waters, Chairwoman
The Honorable Patrick McHenry, Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Brown, Ranking Member Toomey, Chairwoman Waters and Ranking Member McHenry,

On behalf of the undersigned organizations representing millions of consumers, we write to express our opposition toward legislative and Federal Reserve efforts that expand the Durbin Amendment routing mandate, both of which would limit competition and choice in the debit and credit card marketplace. Retail trade associations have consistently lobbied for greater intervention from the Federal Reserve, including forcing market participants to allow competitors to free ride on their innovative technology, a clear and uncompensated governmental taking, given the misleading title of “interoperability.” Additionally, the harm demonstrated from the Durbin Amendment is shown in the Federal Reserve’s own data, and we oppose further attempts to expand the Durbin Amendment to credit cards.

As organizations working to advance free-market policies to benefit every part of the American economy, we sympathize with businesses that have struggled due to the COVID-19 pandemic, and support policies to bring them regulatory and tax relief. We object, however, to policy actions proposed in the name of “relief” that benefit some businesses by massively raising costs on other businesses and consumers.

The Durbin Amendment was a last minute provision included in the Dodd-Frank Wall Street Reform and Consumer Protection Act which mandated price controls on interchange fees for transactions using debit cards. Since its passage, retail trade associations and some in Congress have searched for opportunities to expand the Durbin Amendment’s reach to credit cards. Last year, the National Restaurant Association pushed for an unrelated expansion of the Durbin Amendment in any Covid-19 relief bill to cap credit card interchange fees. At the start of this year, Sen. Durbin (D-Ill.) supported antitrust measures to limit competition amongst payment providers and the services they offer.

The expansion of the Durbin Amendment is highly concerning and would directly harm consumers during the check-out process online and in-person. Any Durbin Amendment expansion to credit cards and the costs associated with such a policy will only serve to further limit consumer’s financial choices and could threaten $50 billion in rewards enjoyed by millions of consumers and retailers who use and accept rewards credit cards.

Retailer trade groups have continued to pressure Sen. Durbin and his Democrat colleagues to call for antitrust intervention by the Federal Reserve and Department of
Justice to exercise greater control over the routing of transactions. Their calls are
concerningly anti-competitive and misguided.

There are currently many options for retailers to choose for the routing of debit card
payments. STAR, Accel, and Interac are some of the regional routing networks that
retailers may choose to use to route debit card transactions if they do not wish to use
debit card firms’ own networks. Retailers, however, have asked for the Federal Reserve
to mandate that debit card firms allow the payment infrastructure of their proprietary
networks to be used by these regional competitors. This request would allow some
routing networks to free ride on the innovation of others while possibly comprising
customer’s security at check-out.

Retailers clearly have choices and may also opt to create their own co-branded credit
cards that use the payment networks of their choice. To do so, retailers may partner with
a bank to issue the credit card, allowing the partnering bank to process the transaction,
rather than a specific card network.

In both debit and credit card availability, competition already exists, with consumers
continuing to benefit from choice in the marketplace.

Unsatisfied, retail trade groups have now initiated a lawsuit against the Federal Reserve
itself for supposedly not instituting a “reasonable and proportional” interchange fee to
process a debit card transaction.

Purposefully left out of the retailers’ latest complaint is the retailer’s failure to live up to
their promises to reduce the cost of items in exchange for the Durbin Amendment’s
addition to Dodd-Frank. The retail groups also omit in their complaint the security
protections and innovation interchange fees help facilitate. A 2017 study published by
the International Center of Law and Economics found that “the overall adverse effect of
the Durbin Amendment on lower-income consumers was approximately $1-3 billion per
year.” Interchange fees help fund security technology services, anti-fraud programs,
customer service help lines and infrastructure needed by banks to process thousands of
transactions a day.

Retail trade associations have proven themselves relentless in their justification of
shifting billions of dollars away from consumers and limit choice within the
marketplace. Consumers stand to lose the most with further government intervention
and can expect to see a loss of rewards points, transaction security, and higher costs at
check-out. We, the undersigned organizations, oppose any further intervention in
the debit and credit card marketplace and encourage all members of Congress to
vote against future expansions of the Durbin Amendment, either by legislation or
misguided Federal Reserve policymaking.

Sincerely,

Grover Norquist
President, Americans for Tax Reform

Brent Wm. Gardner
Chief Government Affairs Officer, Americans for Prosperity

Robert Romano
Vice President of Public Policy, Americans for Limited Government
Heather R. Higgins  
CEO, Independent Women’s Voice

Jerry Theodorou,  
Director, Finance, Insurance and Trade, R Street Institute

Adam Brandon  
President, FreedomWorks

Pete Sepp  
President, National Taxpayers Union

Andrew F. Quinlan  
President, Center for Freedom and Prosperity

Phil Kerpen  
President, American Commitment

John Berlau  
Senior Fellow, Competitive Enterprise Institute

Maureen Blum  
Executive Director, USA Workforce

Matthew Kandrach  
President, Consumer Action for a Strong Economy

Ryan Ellis  
President, Center for a Free Economy

George Landrith  
President, Frontiers of Freedom

Tom Schatz  
President, Council for Citizens Against Government Waste

Garrett Bess  
Vice President, Heritage Action for America