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April 28, 2011

Frank Keating
President and CEO
American Bankers Association
1120 Connecticut Ave. NW
Washington, DC 20036

Dear Mr. Keating:

I received your April 21 letter in which you reiterate many of your industry's arguments against the law Congress enacted last year that would bring reasonable regulation to the debit swipe fee system. You and I have covered much of this ground already in our correspondence this past February, and in an effort to "cut to the chase" I would like to make two observations.

1. You say in your letter that your members are concerned about the Federal Reserve's draft interchange rulemaking and that Congress should stop and study the Fed's proposed rule before the rule goes forward. However, the interchange "Position Statement" currently on the American Bankers Association's website makes clear that your association opposes any effort by state or federal governments to regulate interchange rates.¹ Given that your association has unambiguously stated its opposition to any government regulation, it is difficult for me to believe that your efforts to have Congress stop and study this rule are anything other than an effort to prevent regulation from ever occurring.
2. You say in your letter that the amendment Congress enacted last year will have "negative effects" on "banks of all sizes, on consumers and on the broader economy." This claim sounds alarming, but your industry seems to make this claim in response to any and all efforts to reform the interchange fee system. For example, on Friday May 8, 2009, my staff shared with your industry a draft amendment that Senator Kit Bond and I were considering filing during Senate floor consideration of the Credit CARD Act. This amendment would have simply directed the Federal Reserve to annually collect information about interchange fees and make this information transparent for the public, and it also would have permitted merchants to offer more types of discounts for their consumers. My staff invited your industry's feedback regarding this draft proposal. On Monday May 11, 2009, before responding to my staff, your association and several other financial industry associations sent a letter to the entire U.S. Senate claiming that "If the Durbin amendment is adopted, the economics of offering card products will dramatically change and many credit unions and community banks would be likely to leave the business – and consumers and our overall economy would suffer." A copy of that letter is attached.

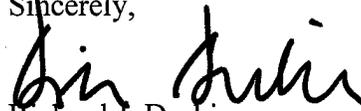
¹ "Position Statement: ABA believes that interchange rates and governance should be set by the free operation of the market forces in the private sector. ABA opposes policies that direct state or federal governments set price controls or otherwise regulate interchange rates, which currently are set by the private market through contractual relationships." (emphasis added). http://www.aba.com/Issues/Issues_Interchange.htm

I learned much on that day about the talking points and the tactics your industry uses in opposing honest efforts to reform the interchange system. Indeed, in 2009 your industry's massive lobbying effort was able to succeed in preventing the Durbin-Bond consumer discount and transparency amendment from coming up for a vote on the Credit CARD Act, and in the place of interchange reform your industry supported a request for a study. Not surprisingly, your industry is making the same request for more study today.

While I do not expect your association to ever change its position of outright opposition to interchange reform, I will conclude by sharing with you the same words that I recently wrote to the CEO of one of your largest member institutions: interchange reform is necessary and it is long overdue. Reasonable regulation of the interchange fee system is supported by a broad and diverse array of consumer, business, university, labor and community groups. These voices should not be drowned out by the lobbying might of the financial industry.

Currently, the Federal Reserve is working to craft a set of final regulations that will reflect the comprehensive information it has gathered and that will respond to the comments it has received from stakeholders on its draft proposals. In the coming weeks I am confident that the Federal Reserve will put forth a reasonable set of regulations that will enhance the efficiency, competitiveness and fairness of the debit system. In the meantime I urge your association to stand down your massive misleading lobbying effort which is aimed at preventing the Federal Reserve from ever coming forward with reasonable final regulations, and instead to let the regulatory process continue as Congress directed. I think we all owe that to consumers and to the American public.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Durbin", written in a cursive style.

Richard J. Durbin
United States Senator