Banking and Finance Law Daily Wrap Up, CREDIT, DEBIT AND GIFT CARDS—D.N.D.: Court vacates, but stays, Fed's debit-interchange cap under Durbin Amendment, (Aug. 8, 2025)

Banking and Finance Law Daily Wrap Up

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By Shashi Kant, BALLB, LLM.

The court found the Fed unlawfully expanded allowable cost categories beyond Durbin's limits, including fixed and fraud-related costs outside transaction-specific expenses.

The U.S. District Court for the District of North Dakota struck down the Federal Reserve Board's (Fed's) Regulation II, which caps debit card "interchange" or swipe fees under the Durbin Amendment to the Electronic Fund Transfer Act. The law requires the Fed to ensure such fees are "reasonable and proportional" to the issuer's transaction-specific costs, with a separate provision for fraud-prevention adjustments. After hearing argument from the parties and several *amici*, including the Retail Litigation Center, NFIB Small Business Legal Center, Merchant Advisory Group, Bank Policy Institute, and The Clearing House, the court granted Corner Post, Inc.'s motion for summary judgment and found the rule "contrary to law" and beyond the Fed's authority. It ordered vacatur but stayed that remedy pending appeal to avoid leaving the market without any cap and confirmed the stay does not block the Fed's pending 2023 fee-cap update (*Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, No. 1:21-cv-00095-DMT-CRH (D.N.D. Aug. 6, 2025)).

Procedural history. The case returned to the district court after the Supreme Court's 2024 ruling that Corner Post's Administrative Procedure Act challenge accrued when it first suffered injury from the rule, rather than when the rule was issued. That holding overturned prior Eighth Circuit precedent and prompted a remand for merits consideration. In August 2024, the Eighth Circuit issued a two-page *per curiam* opinion-order remanding the case to the district court for further proceedings (see *Banking and Finance Law Daily*, Aug. 23, 2024). In October 2024, The Bank Policy Institute (BPI) and The Clearing House Association have jointly filed a motion to intervene (see *Banking and Finance Law Daily*, Oct. 18, 2024). A hearing was held on July 23, 2025, with amici Bank Policy Institute and The Clearing House permitted to present oral argument alongside the parties.

Post-Loper Bright review standard. Citing the Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, (603 U.S. 369 (2024)), the court emphasized that it owed no Chevron deference to the Fed's interpretation of the Durbin Amendment. Under Loper Bright, it is for courts, not agencies, to determine the meaning of statutory text. Agency expertise may be consulted, but statutory "ambiguity" no longer triggers a presumption in favor of the agency's view.

Statutory limits on costs considered. The central dispute concerned which issuer costs Congress allowed the Fed to consider in setting the interchange-fee standard. Corner Post argued that the statute permits inclusion only of incremental authorization, clearance, and settlement (ACS) costs that are specific to a particular transaction and expressly forbids "other costs." The court agreed, finding that the Fed's 2011 final rule unlawfully expanded the permissible cost base from the proposal's narrow incremental focus to "any cost related to a particular transaction." That broader approach brought in categories that the statute excluded.

Four unlawful cost categories. The court held that: (i) fixed ACS costs are not incremental and thus outside the statutory limit; (ii) transaction-monitoring costs are fraud-prevention costs that may be addressed only through the separate fraud-adjustment provision, not built into the base cap; (iii) network processing fees are not issuer-incurred ACS costs within the meaning of the statute; and (iv) fraud losses are not "costs" as contemplated by the statute and are not necessarily caused by the issuer's role in a specific transaction. Including any of these categories, the court concluded, "runs afoul of the Durbin Amendment."

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Remedy. Finding Regulation II "contrary to law" and adopted "in excess of the Fed's authority," the court vacated the rule. However, it stayed vacatur through the Eighth Circuit appeal to prevent market disruption. The court underscored that its stay does not affect the Fed's pending amendments from the 2023 notice of proposed rulemaking, which aim to lower the cap based on updated cost data.

Other arguments. The court found it unnecessary to address Corner Post's "major questions" argument or bank amici's assertions that lower caps would be confiscatory, noting that existing precedent and Regulation II itself exclude profit or rate-of-return from allowable costs.

Background and context. Regulation II emerged from the Fed's 2010 proposal, which contemplated a 12-cent cap and inclusion only of narrow incremental ACS costs. In the 2011 final rule, the Fed set a cap of 21 cents plus a 5-basis-point ad valorem component and expanded the cost categories to include the disputed items. In *NACS v. Board of Governors* (746 F.3d 474, 477 (D.C. Cir. 2014), the D.C. Circuit upheld that approach under Chevron but remanded for clarification on transaction-monitoring costs, which the Fed provided in 2015. The North Dakota court's decision marks a departure from that permissive view, applying Loper Bright to scrutinize agency overreach.

Industry reaction. The American Bankers Association called it "deeply disappointing," warning it will block interchange from funding fraud prevention and data security and urging a vigorous Fed appeal. The Consumer Bankers Association said a "single federal court" risk limiting access to banking, citing evidence that prior merchant savings were not passed through to consumers and that lower caps mean fewer free checking options and higher fraud exposure. Community banks echoed those concerns: The Independent Community Bankers of America (ICBA) said excluding fraud losses from Reg II strips community banks of cost recovery and "puts consumers' debit card security at risk." And the Bank Policy Institute and The Clearing House argued the court's interpretation of Durbin Amendment would undermine investment, innovation, and the reliability of the payments system. On the other hand, The National Retail Federation celebrated the ruling, stating, "As merchants have argued for 14 years, the Fed's broad attempt to allow big banks to essentially charge rent-seeking fees for debit card transactions is illegal. That question is now settled."

The case is No. 1:21-cv-00095.

Judge: Traynor, D.

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Companies: American Bankers Association; Bank Policy Institute; Consumer Bankers Association; Corner Post, Inc.; Independent Community Bankers of America; Merchant Advisory Group; NFIB Small Business Legal Center; Retail Litigation Center; The Clearing House; The National Retailers Association

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