
The Trouble With Bright Lines in Financial Regulation

TL;DR

Background: U.S. financial regulation increasingly uses numerical thresholds, such as asset-size cutoffs, to trigger heightened oversight. The Dodd-Frank Act expanded this approach with \$10 billion thresholds for CFPB supervision and debit-interchange price controls, as well as systemic-risk standards at \$50 billion, \$100 billion, and \$250 billion.

But... Asset size is only a rough proxy for complexity, interconnectedness, and operational risk, as the 2023 failures of Silvergate Bank, Silicon Valley Bank, and Signature Bank showed. Thresholds also create compliance cliffs. A bank that grows from \$10 billion to \$10.1 billion in assets suddenly faces new supervision, price controls, and fixed costs. Banks respond by clustering below thresholds, restructuring, or growing through mergers.

Moreover... Thresholds invite rent-seeking. Once Congress draws a line, firms lobby to move, preserve, or evade it. Because thresholds are rarely indexed or reviewed, their reach expands over time. The Durbin Amendment now applies to roughly 130 banks, up from about 80 at enactment. The answer is better regulation, not less regulation: graduated supervisory bands, indexed thresholds, risk-based prioritization, and data systems that let oversight follow risk rather than arbitrary cliffs.

KEY TAKEAWAYS

The Trouble With Bright Lines

Asset-based thresholds rest on the intuition that larger institutions pose greater risks. Sometimes they do. Often, they do not.

In March 2023, Silvergate Bank, Silicon Valley Bank, and Signature Bank [all failed](#) because of concentrated deposits, liquidity weaknesses, and poor risk

management, despite falling well short of such thresholds. Indeed, Dodd-Frank itself recognized the problem, as Section 113 set out multiple qualitative risk factors for nonbank firms to be designated systemically significant.

Bright-line thresholds can also be both overinclusive and underinclusive, labeling regional lenders systemically important while missing firms with obvious concentration risks. Research [finds](#) that crossing the \$50 billion threshold increases annual compliance costs by about \$4.16 million—the equivalent of roughly 52 compliance officers—and slows growth among banks near the line.

The Threshold That Backfired

The Durbin Amendment shows what happens when threshold-based regulation rests on a weak theory. Section 1075 of Dodd-Frank imposed price controls on debit-card interchange fees charged by banks with more than \$10 billion in assets, on the premise that lower merchant costs would become lower consumer prices.

They did not. Covered banks' interchange revenue fell roughly 52%, [reducing](#) annual revenue by an estimated \$6.5 billion to \$9.4 billion. Free checking also collapsed: After rising from 7.5% of accounts in 2001 to 76% in 2009, it fell to [about 38%](#) by 2013 and has not recovered.

A Federal Reserve Bank of Richmond [study](#) found that 75% to 77% of merchants did not change prices. In fact, more raised prices than lowered them. Consumers instead faced higher monthly fees and minimum-balance requirements, while [one estimate](#) suggests roughly one million lower-income consumers left the traditional banking system.

The Durbin Amendment redistributed billions across a two-sided payment platform without delivering its promised consumer benefits. Its unindexed \$10

billion threshold now applies to roughly [130 institutions](#), up from about 80 when enacted.

Regulation by Detour

The Durbin Amendment’s \$10 billion line has become a defining feature of the U.S. fintech ecosystem. Banking-as-a-service has flourished, in part, because fintechs and partner banks can preserve below-threshold interchange revenue so long as no partner exceeds \$10 billion in assets.

The result is unequal treatment of identical activity. A chartered bank serving the same customers faces Durbin’s price controls, while a fintech spreading deposits across smaller partners can avoid them. This has produced real benefits, including low-fee accounts for consumers priced out of traditional banking, but the driver is regulatory arbitrage, not efficiency.

The same incentives are reshaping community banking. As banks approach \$10 billion, they must absorb the Durbin and CFPB compliance cliffs, stop growing, or shift toward business models that benefit from staying below the threshold. Many now pursue fintech partnerships rather than relationship lending, producing “zombie” community banks: healthy institutions that underinvest in technology and local lending.

The Politics of Round Numbers

Bright lines invite political bargaining. The Durbin Amendment’s \$10 billion threshold was [reportedly](#) raised from an initial \$1 billion to secure passage. No economic principle justified the number.

The Bank Secrecy Act’s \$10,000 currency-reporting threshold offers a similar story. It has not been adjusted since 1972, even though inflation would put the equivalent figure above \$75,000 today. The result is a flood of low-value reports that can obscure genuine money-laundering risks.

Once a threshold exists, firms that benefit lobby to preserve it, while those harmed by it lobby to move

it. Either way, the fight is over the line—not the policy.

The proposed [Credit Card Competition Act](#) would repeat the mistake with a new \$100 billion threshold, without explaining why credit cards warrant a cutoff 10 times larger than debit cards, why a supposedly tighter regime should cover fewer institutions, or why American Express and Discover should remain exempt despite economically similar merchant-side prices.

Follow the Risk

The answer is not less regulation, but better-targeted regulation. Graduated supervisory bands and phased compliance requirements would reduce cliff effects. Where thresholds remain, policymakers should index them for inflation, review them regularly, and assess whether they achieve their goals.

Supervision should focus on risk. Frameworks that account for interconnectedness, liquidity, operational complexity, and concentration risk can allocate scarce resources better than asset size alone. Real-time reporting, transaction-level analytics, and continuous monitoring can replace the static quarterly snapshots that left regulators relying on stale information during the March 2023 banking turmoil.

None of this requires sweeping deregulation. It requires policymakers to define their objectives, make tradeoffs deliberately, and evaluate whether their tools work. Regulation should follow risk and consumer harm—not arbitrary thresholds that markets spend resources trying to avoid.

For more on this topic, see the ICLE white paper “[Regulatory Tripwires: How Arbitrary Thresholds Distort Financial Markets](#)” by Todd J. Zywicki.

CONTACT US



Todd J. Zywicki
Nonresident Scholar
todd_zywicki@yahoo.com

