Credit Union National Association
CUNA

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The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

On behalf of the Credit Union National Association (CUNA), I am writing in regard to the hearing entitled, "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems." CUNA represents America's credit unions and their more than 130 million members.

America's credit unions vehemently oppose any regulation or legislation that impacts the operation of debit or credit cards. The federal government's attempts to impose price controls by regulating interchange through Section 10753[1] (Durbin Amendment) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) are the purest example of a failed government policy. Government price controls imposed by the Durbin Amendment artificially capped debit interchange rates and, perhaps even more insidiously, extended the government's hand into the inner-workings of deposit accounts and required that financial institutions modify their debit card products by finding and contracting with additional payments networks for every debit card transaction. If the goal of the federal government's requirement that credit unions and banks enter into contractual relations with many payments networks was to reduce costs to consumers, then it failed. The result of the Durbin Amendment has been additional compliance burdens and related business costs to credit unions and banks, a reduction in interchange revenue from debit transactions, and a massive transfer of money to the largest retailers.[2]

Consumers across the country rely on credit cards to make life happen, from paying for groceries and school supplies to covering emergency car repairs or medical expenses. Accepted nearly everywhere, credit cards offer robust security, fraud protection, and access to credit that may not otherwise be available. Interchange fees, which are only a fraction of a cent per dollar transacted, make this possible. Interchange keeps consumers, merchants, and financial institutions safe.

**Interchange is the Cost Merchants Pay for Services Provided**

The merchant discount fee (MDF) is the cost that retailers pay to their financial institution or card processor for the opportunity for higher sales, a larger customer base, reduced risk associated with handling cash, reduced bounced checks, and guaranteed payment. The interchange fee is the portion of the MDF that the retailer's financial institution pays to the cardholder's credit union or bank for the service of utilizing the card system.

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[1] Section 1075 of the Dodd- Frank Act amends the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 et seq.) to add a new section 920 regarding interchange transaction fees for electronic debit transactions and rules for payment card transactions.

[2] *See* Wang, Z., Schwartz, S., and Mitchell, N. (2014). The Impact of the Durbin Amendment on Merchants: A Survey Study. Federal Reserve Bank of Richmond and Javelin Strategy & Research ("FRB Richmond Study"). *Also See* Haltom, R. and Wang, Z. (2015). Did the Durbin Amendment Reduce Merchant Costs? *Richmond Fed Economic Brief.* Retrieved from: https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2015/pdf/eb_15-12.pdf. Stating that after the Durbin Amendment was implemented, 98.8% of merchants did not pass-through savings realized from debit regulation to consumers, and over 20% increased prices.

Merchants and consumers derive significant benefit from the current card system. In the moment that the card is run for payment, the transaction is instantaneously authorized, cleared and settled — but to make that possible, financial institutions incur operational costs for software, hardware, equipment, labor, network processing fees, and transaction monitoring. These costs as well as billing and collection, data processing, fraud prevention, card replacement, customer inquiries, and customer service are borne by the card issuers. The card-issuing financial institution ultimately bears responsibility for fraud and insufficient funds, while the merchant receives full, guaranteed payment for the goods or services rendered.

Merchants cannot receive these benefits for free. The interchange fee is the cost of participating in the card system. The credit card network allows merchants to avoid the cost of processing transactions and offers them quick guaranteed payment. This saves merchants the trouble and risk of extending credit to customers, and it increases the number and value of sales that they can make.[3] The robust security features that make credit cards so appealing to consumers come at a cost. Interchange fees cover those costs but increasing fraud and the possibility of reduced interchange fees pose a real threat to data security.

**The Cost of Fraud**

From data breaches to skimmed cards, electronic payments are a prime target for bad actors. Every year, consumers spend $6.7 trillion using credit and debit cards.[4] Meanwhile, the rate—and cost—of criminal activity is on the rise:

- 15 billion consumer records are available for purchase for sale to thieves.
- 300+ million individuals were affected by data breaches in 2020.[5]
- Fraud rates have doubled since 2011.
- The average cost credit unions assume to protect consumers from a data breach is $0.86 per transaction.

Interchange fees cover the costs of fraud detection, credit monitoring, and fraudulent purchase protection that make consumers and merchants whole when bad actors attack. When a merchant's systems are breached, or a card is otherwise compromised, financial institutions absorb a significant portion of the costs:

- $1,600/card—The average fraud payout in 2020.
- $6.50—Average cost to replace contactless cards.
- 36%—Number of credit unions reporting greater fraud losses, from 2019-2020. [6]

Consumers have a wide variety of cards, processors, and issuing institutions to choose from when selecting a card, and so their choice must be respected. 86% of people say they use credit cards because they feel their personal information is secure from data breaches, 84% want a card that is widely accepted by all vendors, and 83% desire indemnification against fraudulent purchases.[7] The consumer expects that their choice will be honored, not that the government will override their choice and place it in the hands of the merchant, who bears no risk. The merchants are looking to undermine the will of the consumer and disregard the significant protections and security that exist today to protect credit cards by routing the credit transactions to the cheapest networks. Many of these alternative networks have underinvested in their platforms with little concern for security innovations.

As credit unions devote more money to fighting fraud, they also must replace member cards as technology advances. For example, all MasterCard credit cards will no longer have a magnetic strip in 2023, requiring issuers to reissue chip and pin cards to all members.  This is a significant cost to financial institutions that is made possible by interchange fee revenue.

[3] *See Ohio v. American Express Co.,* 585 U.S. (2018).
[4] 2018 Nilson Report.
[5] Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions. Board of Governors of the Federal Reserve System (May 2021).
[6] CUNA/Frederick polling, July 2021.
[7] CUNA/Frederick polling, July 2021. Percentage of respondents reporting factors that are "Very Important" in choosing a credit card.

**Fundamental Difference of Credit**

It is imperative to recognize the fundamental difference between credit cards and debit cards. Credit cards represent an extension of unsecured credit to a consumer, meaning financial institutions make a loan to a consumer every time a credit card is used to purchase goods or services from a retailer or merchant. The consumer then has the option to pay the credit card balance off when a bill is received or to make payments subject to the terms of the agreement and a plethora of Federal lending regulations. Although many view debit and credit cards as virtually indistinguishable, they are very different products utilizing different networks. A credit card allows for instant access to a loan and does so over a network that was singularly developed for this purpose. Consumers have come to rely on credit cards from their community financial institutions to build credit and gain access to funds that otherwise may not be available to them. Expansion of the Durbin Amendment to the credit market will cause the cost of these low-cost loans to increase, leading to less spending power for consumers and possibly the reduction in important credit building and educational programs offered by financial institutions.

This extension of credit benefits both consumers and merchants—consumers are not limited in making purchases by the amount of money in their wallet or account and merchants are able to make sales that might not otherwise have occurred. Financial institutions' card programs allow small business to outsource credit risk to financial institutions and compete with large retailers without having to run their own card programs.

Limiting the ability of the electronic payments system to charge a market rate for the services they are providing to merchants will result in a loss of small community financial institutions providing card services or force them shift resources from vital products and services to fund the programs. Although credit unions are laser focused on providing the best and lowest cost financial services to all Americans, especially those who need it most, we fear the continued government forced reduction in revenue and increased compliance costs will further lead to the reduction in locally operated financial institutions while making the delivery of financial services more difficult.

**The Cost of Credit**

Consumers rely on low-interest rate credit cards from their community financial institutions to provide short-term loans when they need them. Driving up the cost of credit by capping interchange rates or imposing costly burdens on financial institutions could result in serious harm to consumers. Over the last four years, credit unions' credit card interest rates have been, on average, 3 percentage points lower than banks. The annualized interest rate for a payday loan often exceeds 10 times that of a typical credit card, a 2013 Federal Reserve study puts the range for a two-week loan at an annualized rate of 360%-780%.[8]

**Comparing Average Credit Card Interest Rate Percentages at Banks and Credit Unions 2017-2021.[9]**

| | **2021** | | **2020** | | **2019** | | **2018** | | **2017** | |
|---|---|---|---|---|---|---|---|---|---|---|
| | **CU** | **Bank** | **CU** | **Bank** | **CU** | **Bank** | **CU** | **Bank** | **CU** | **Bank** |
| **Platinum Credit Card** | 10.38 | 13.33 | 10.26 | 13.29 | 9.95 | 13.30 | 10.12 | 13.33 | 9.41 | 11.72 |
| **Rewards Credit Card** | 9.32 | 12.45 | 9.14 | 12.60 | 11.14 | 14.51 | 11.29 | 14.74 | 10.55 | 13.25 |

Members have come to rely on credit cards to build credit and gain access to funds that otherwise may not be available to them, something not available with debit cards, and the low-cost programs available at credit unions and other community financial institutions make this a reality for many.

[8] *See*, Bhutta, N. (2013). Payday Loans and Consumer Financial Health. Federal Reserve Board. https://www.federalreserve.gov/pubs/feds/2013/201381/index.html.

[9] CUNA Policy Analysis, 2022.

## The Impact of the Durbin Amendment

An analysis by the Federal Reserve Bank of Richmond clearly demonstrates why the Durbin Amendment has been such a dismal failure and should give pause to any consideration of extending the Durbin Amendment's routing requirements to lending products accessed by credit cards. In discussing the impact of the Durbin Amendment, the Richmond Fed wrote: "For merchants in the sample who reported that their costs decreased after the Durbin regulation, few of them reduced prices or debit restrictions. . .. On the other hand, if a merchant reported increased costs after the Durbin regulation—as a sizeable fraction of them did—it tended to raise prices and increase debit restrictions, especially in terms of setting a minimum transaction amount requirement."[10] In fact, although the regulation was enacted to save consumers money by lowering the overhead cost of debit card acceptance by merchants; however, in reality, only about 1 percent of merchants have passed their savings on to consumers through reduced prices, and in fact, over 20% increased prices. [11] Taken together, one could easily conclude that the Richmond Fed found that merchants and retailers will keep for themselves any savings when interchange is reduced, and conversely pass along to their customers any increase in interchange costs.

A recent Government Accountability Office (GAO) study ranked the Durbin Amendment "among the top five laws and regulations most cited…as having significantly affected the cost and availability of basic banking services."[12] It further concluded that the regulation was associated with increases in the costs of checking accounts and a decrease in the availability of noninterest checking accounts without monthly fees. Concerns were raised by the NAACP at the time of implementation that debit card interchange would disproportionately affect at-risk communities by limiting the availability of banking services, and we have seen that play out since enactment.[13] These negative effects could only be amplified by an extension of interchange regulations to credit cards. Studies estimate that as a result of the Durbin Amendment, there was a transfer of $1-$3 billion annually from low-income households to large retailers and their shareholders, the primary beneficiaries of interchange regulations.[14]

The drop in interchange revenue due to the Durbin Amendment has impacted credit unions and their members by decreasing interchange revenue by over 50%. Interchange revenue is used to support the payments system, which is an electronic method of delivery of funds from a financial institution to a retailer or merchant. A drop in interchange income causes financial institutions to shift resources from other programs to pay for the cost of running a debit or credit card program. This shift in resources has led to an industrywide reduction in low-cost banking services and free checking along with a dramatic reduction in the overall number of banks and credit unions. Although credit unions are laser focused on providing the best and lowest cost financial services to all Americans, especially those who need it most, we fear the continued government forced reduction in revenue and increased compliance costs will further lead to the reduction in locally operated credit unions while making the delivery of financial services more difficult.

## Competitiveness of the Credit Card Market

This hearing is investigating a problem that doesn't exist—an anticompetitive payments system. The Supreme Court looked at this proposition in 2018 when they examined American Express for possible antitrust violations in their card program.[15] The Court found no evidence or indicators that the credit card market was an anticompetitive marketplace. The Court affirmed that the credit card system is a "two-sided platform" in which no credit card transaction can occur unless both the merchant and the cardholder agree to use to the same network and thus, they "cannot raise prices on one side without risking a feedback loop of declining demand."[16]

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[10] *See* Wang, Z., Schwartz, S., and Mitchell, N. (2014). The Impact of the Durbin Amendment on Merchants: A Survey Study. Federal Reserve Bank of Richmond and Javelin Strategy & Research ("FRB Richmond Study").
[11] *Id*.
[12] *See* U.S. Govt Accountability Office, *GAO-22-104468, Regulators Have Taken Actions to Increase Access, but Measurements of Actions' Effectiveness Could Be Improved* (2022).
[13] *See Shelton, H.* (2011). NAACP to Speaker John Boehner.
[14] *See* Manne, G., Zywicki, T., and Morris, J. Price Controls on Payment Card Interchange Fees: The U.S. Experience. George Mason University School of Law.
[15] *See Ohio v. American Express Co.,* 585 U.S. (2018).
[16] *See id.*

The Supreme Court's finding is reinforced by calculating the Herfindahl-Hirschman Market Concentration Index (HHI) for credit card issuance, a measure of market concentration utilized by the U.S. Department of Justice (DOJ) to analyze market concentration when a merger might affect industry competition. According to the DOJ, an HHI below 1,000 points is considered competitive. Both the credit card issuing industry and the financial transactions processing, reserve, and clearinghouse activities industry fall well within the "concentrated" and "competitive" category.[17]

Furthermore, the Consumer Financial Protection Bureau (CFPB) found in their biennial consumer credit card market report that "In 2019 and 2020, innovation continued to reshape the credit card market for both users and providers. New providers, including large and small financial institutions as well as startup and mainstream technology companies have entered—or are in the process of entering—the market with competing products, features, and methods for issuing credit cards."[18] The list of market participants is extensive and includes new payment systems for merchants such as Clover and Square.[19] Retailers have also embraced Buy Now Pay Later (BNPL) products where they are charged as much as 6% more than they would pay under the current payment card system.[20]

**The Consequences of Extending the Durbin Amendment to Credit**

The largest retailers are asking Congress to extend a failed government regulation to credit cards in an effort to limit their costs and add to the growth they have achieved amidst the global pandemic while so many small businesses were forced to close. Restrictions on credit card interchange would take critical resources away from small financial institutions that work day in and day out to serve their communities and force them to choose between funding vital programs that benefit their communities or continuing to operate card programs that provide lines of credit to members who would not be able to obtain them otherwise.

CUNA members' analysis finds extending debit card interchange regulations to credit card transactions will decrease revenue by over 50%, doubling the percentage of credit unions with net-negative margin credit card programs and particularly harming credit unions under $100 million in assets that disproportionately serve poorer and socio-economically disadvantaged populations.[21] In real terms, 73% of credit unions would have to raise credit card rates, 61% would have to implement or raise credit card program fees, and 15% would have to reduce or eliminate credit card programs altogether.[22]

Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike for-profit financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings – including fee income – are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees, as demonstrated by the credit card interest rates laid out above. Credit unions are dedicated to financial health and wellbeing of their members and advancing the communities they serve. Credit unions provide financial services for members, with many programs running deficits that are addressed by interchange revenue. Credit unions report they will have to cut the most expensive program, free checking, as well as increase rates on credit cards to account for any substantial loss in interchange revenue.

[17] *See* How Competitive is the Credit Card Market? (2022). https://bankingjournal.aba.com/2022/03/how-competitive-is-the-credit-card-market/
[18] *See* Bureau of Consumer Financial Protection, *The Consumer Credit Card Market* (2021).
[19] The list of market participants is extensive: Visa, MasterCard, American Express, Discover, PayPal, Venmo, Zelle, Square, Apple Pay, Amazon Pay, Samsung Pay, Kroger Pay, Walmart Pay, Target RedCard, Affirm, Klarna, AfterPay, Google Pay; in addition to bank and credit union led person-to-person payment capabilities; also, European account to account (a2A) payments firms are in the process of entering the U.S. market.
[20] *See Riley, B.* (2021). *The Buy Now Pay Later Merchant Proposition: Credit Card Interchange is Cheaper.* https://www.mercatoradvisorygroup.com/the-buy-now-pay-later-merchant-proposition-credit-card-interchange-is-cheaper/
[21] CUNA polling, August 2021.
[22] CUNA/Frederick polling, July 2021.

Along with paying for the various direct costs associated with offering payments by debit and credit cards, interchange revenue at America's credit unions supports the following programs:

- Secured credit offered by 79% of credit unions;
- Credit builder programs offered by 46% of credit unions;
- Free checking without minimum balance requirements offered by 85% of credit unions; and
- Financial literacy and counseling programs offered by 77% of credit unions.

The risk for credit unions is far higher on credit transactions, as each is quite literally a loan to a consumer must be repaid to the credit union. In these transactions the lender assumes substantial risk and facilitates the merchant's sale by providing unsecured credit to a customer. Changes to the interchange system would force regulators to tell financial institutions the terms for which they are allowed to extend credit, adding substantial burdens to lenders while they continue to assume 100-percent of the risk. Placing arbitrary caps on fees and requiring multiple routing options eliminates control credit unions have over the terms of the structure of the loans extended to members to use that loaned money to purchase the merchant's products.

Currently, the average limit per credit card is approximately $7,700, for a net return of 1.3% for money for credit card loans by credit unions. At this time, 5.2% of credit unions lose money on their credit card programs, with this burden disproportionately distributed amongst small credit unions.[23] That percentage will only increase with additional regulation on the interchange system, with consumers losing the most.

**Conclusion**

As you consider policy changes impacting credit unions and their members, we urge you to consider the impact any changes would have on that mission. The current interchange system works. Consumers win with access to easy-to-use credit, merchants win with guaranteed payments, and financial institutions win with a safe product for consumers.

On behalf of America's credit unions and their more than 130 million members, thank you for the opportunity to share our views on this important issue.

Sincerely,

Jim Nussle
President & CEO

[23] CUNA polling, August 2021.