



June 21, 2023

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC, 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC, 20510

The Honorable Kevin McCarthy
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker McCarthy, and Minority Leader Jeffries:

On behalf of the Credit Union National Association (CUNA), the American Association of Credit Union Leagues (AACUL), the state credit union leagues and associations (the leagues), America's credit unions, and their more than 135 million members, we vehemently oppose H.R. 3881 and S. 1838, the Credit Card Competition Act of 2023.

Far from increasing competition in the credit card marketplace, this legislation will only hurt consumers and small businesses while benefiting the big box retailers. It would reduce the number of credit card issuers competing for consumers' business, remove a consumer's choice of preferred card network, wring out the competitive differences among card products, limit popular credit card rewards programs, and put the nation's private-sector payments system under the micromanagement of the Federal Reserve Board.

The federal government's previous attempts to impose price controls by regulating interchange through Section 1075¹ (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 payment networks for every debit card transaction. If the goal was to reduce costs to consumers, then it failed. The federal government's requirement that credit unions and banks enter into contractual relations with many payment networks did exactly the opposite. The Durbin Amendment resulted in 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

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

Extending this failed policy to credit cards would be disastrous for consumers who 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 retailers pay to their financial institution and card processor for accepting credit cards. When retailers accept credit cards – it pays off in the form of higher sales, a larger customer base, reduced risk associated with handling cash, fewer 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.

Merchants and consumers derive significant benefit from the current card system. The moment that the card is used for payment, that 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 all 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 should not expect to 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.

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.

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.

³ *See Ohio v. American Express Co.*, 585 U.S. (2018).

⁴ 2018 Nilson Report.

⁵ *See* 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).

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 merchant 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 should be respected. In fact, 86% of consumers say they use credit cards because they feel their personal information is secure from data breaches, another 84% want a card that is widely accepted by all vendors, and 83% desire indemnification against fraudulent purchases.⁷ The consumer expects their choice to be honored, not for the government to override their choice and place it in the hands of the merchant, who bears no risk. The merchants are attempting 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. This puts consumers at greater risk as many of these alternative networks have underinvested in their platforms, with little concern for security innovations.

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 increase the cost of these low-cost loans, leading to less spending power for consumers and possible 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 make sales that might not otherwise have occurred. Financial institutions' card programs allow small businesses 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 provide 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 lead to further reduction in locally operated financial institutions while making the delivery of financial services more difficult.

⁶ CUNA/Frederick polling, July 2021.

⁷ *Id.* Percentage of respondents reporting factors that are “very important” in choosing a credit card.

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 imposing costly burdens on financial institutions could result in serious harm to consumers. In the last four years, credit unions’ credit card interest rates average three percentage points lower than banks. The annualized interest rate for a payday loan often exceeds ten 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 often rely on credit cards to build credit and gain access to funds that otherwise may not be available to them, something they cannot do with debit cards. The low-cost programs available at credit unions and other community financial institutions make this a reality for many.

The Impact of the Durbin Amendment

An analysis by the Federal Reserve Bank of Richmond clearly demonstrates why the Durbin Amendment is 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, it did not. In reality, only about 1 percent of merchants passed interchange savings on to consumers through reduced prices, and in fact, more than 20% increased prices.¹¹

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 increasing the costs of

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.

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).

checking accounts and decreasing the availability of noninterest checking accounts without monthly fees. When implemented, the NAACP raised concerns that debit card interchange limits would disproportionately affect at-risk communities by reducing the availability of banking services—a result we have seen play out since enactment.¹³ These negative effects would only be amplified by enacting the Credit Card Competition Act. Studies estimate that the Durbin Amendment resulted in \$1-\$3 billion annual transfers from low-income households to large retailers and their shareholders, which are the primary beneficiaries of interchange regulations.¹⁴

The more than 50% drop in interchange revenue due to the Durbin Amendment significantly impacts credit unions and their members. When half of interchange income disappears while other debit or credit card program costs continue to rise, financial institutions must shift resources from other programs to cover costs. This forced shift in resources has resulted in an industrywide reduction in low-cost banking services and free checking at a time when we are also seeing a dramatic reduction in the overall number of banks and credit unions.

Competitiveness of the Credit Card Market

This legislation attempts to solve a problem that does not exist—a payments system the bill sponsors claim is anticompetitive. The Supreme Court looked at this proposition in 2018 when it 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

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’s (CFPB) biennial consumer credit card market report found 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

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.*

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).

extensive and includes new payment systems for merchants such as Clover and Square.¹⁹ Retailers also embrace 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. It would force them to choose between funding vital programs that benefit their communities or operating card programs that provide lines of credit to members who would not be able to obtain them otherwise.

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 promoting financial health and wellbeing of their members and advancing the communities they serve. Credit unions provide needed financial services for members, with many programs running deficits that are addressed by interchange revenue. To counter the substantial decrease in interchange revenue this bill would bring, credit unions anticipate they will have to cut free checking, which is the most expensive program, and increase rates on credit cards.

Along with helping pay 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% 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.

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/>.

Conclusion

For the numerous reasons laid out above, and to protect credit unions and their members, we urge you to oppose H.R. 3881 and S. 1838, the misnamed Credit Card Competition Act of 2023. 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 135 million members, thank you for the opportunity to share our views on this important issue.

Sincerely,

Credit Union National Association

American Association of Credit Union Leagues