



3138 10th Street North
Arlington, VA 22201-2149
703.842.2234 | 800.336.4644
gmesack@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

Greg Mesack
Senior Vice President, Government Affairs

September 20, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Committee Hearing: "Holding Megabanks Accountable: Oversight of America's Largest Consumer Facing Banks"

Dear Chairwoman Waters and Ranking Member McHenry:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on important topics surrounding tomorrow's Committee hearing, "Holding Megabanks Accountable: Oversight of America's Largest Consumer Facing Banks." As you seek to bring greater transparency and accountability for the actions of these major industry players, we intend to highlight the importance of credit unions as a solution to problems created and exacerbated by megabanks, including the importance of enacting the Expanding Access for Underserved Communities Act. We hope that the hearing tomorrow can help provide a spotlight on how credit unions help meet the needs of small businesses and consumers that have been left behind and underserved by these megabanks.

Credit Unions Want to Do More to Serve Underserved Areas and Banking Deserts

NAFCU is strongly supportive of the Expanding Financial Access for Underserved Communities Act. This legislation, offered by House Financial Services Committee Chairwoman Maxine Waters and Consumer Protection and Financial Institutions Subcommittee Chairman Ed Perlmutter, takes important steps to help credit unions aid those who other financial service providers have left behind. Credit unions have long been a critical provider of financial services to rural and underserved areas. As large and community banks have been shutting down branches and moving out of these areas, credit unions have been stepping up. It is unfortunate that banking groups continue to actively oppose this effort, attacking efforts by credit unions to do more to help the underserved, rather than focusing on ensuring people who live in banking deserts—areas that banks have abandoned—have access to basic financial services. Many credit unions want to do more to help underserved areas as banks abandon them and passing this provision to help credit unions fill the void would be a commonsense first step. It is important to note that this legislation does not directly grant underserved areas to credit unions, rather it allows them to apply to the National Credit Union Administration (NCUA) to add these areas should they meet the necessary criteria.

Banks have closed more than 4,000 branches since March 2020, according to an independent National Community Reinvestment Coalition study. This is a pace of over 100 bank branch closures a month.

The number of bank branches in rural and underserved areas has declined by 10.8 percent since 2012 while the number of credit union branches in those areas has grown by 2.4 percent. Currently, only credit unions that are chartered as multiple common bond credit unions can add underserved areas. The Expanding Financial Access for Underserved Communities Act will knock down this harmful barrier by allowing all types of federal credit unions to add underserved areas to their field of membership.

The Expanding Financial Access for Underserved Communities Act will also build on the support provided by credit unions to small businesses during the pandemic and exempt business loans made by credit unions in low-income areas from the credit union member business lending (MBL) cap. The MBL cap serves as a disincentive for many credit unions to focus on small business programs, as successful small business efforts could reach the cap and run into limitations. If banks were serious about helping small businesses and underserved areas, they would not have turned so many customers away during the pandemic that then went to credit unions for help. It was credit unions that stepped up to ensure small businesses in their communities were taken care of during the initial days of the pandemic, and their response through the Paycheck Protection Program (PPP) was tremendous. According to a NAFCU survey, 87 percent of NAFCU members reported providing PPP loans to new members and businesses that were turned away by banks and came to their credit union to apply for a PPP loan. Furthermore, according to NAFCU's analysis of the Small Business Administration's PPP data, a full 75 percent of credit union PPP loans went to businesses with fewer than five employees. Many of these are the same businesses that have been underserved by banking institutions and would benefit from the legislation's provision granting relief from the arbitrary MBL cap for loans in underserved areas.

The numbers show that credit unions stand ready to do more and help those who have been left behind by banks. The recent efforts from banking trade associations in opposition to this commonsense reform is incredibly disappointing and stunningly hypocritical. It is the height of cynicism that the banking trade associations are essentially saying that even though their members have left these communities, they do not want credit unions to step in to fill the void as banks pull out. It seems that they would rather underserved communities have no financial institutions than have a credit union serve them. We urge you to help enact the Expanding Financial Access for Underserved Communities Act into law and allow credit unions to do more to help the underserved in banking deserts.

Regulation E and Fraud Concerns

Credit unions invest significantly in both security and compliance management systems to prevent unauthorized electronic fund transfers (EFTs) and support faster, innovative payment options for their members. The credit union industry's commitment to relationship banking also gives members confidence that if they have a problem with a particular payment, they can count on their credit union to make every effort to resolve the issue. This emphasis on high touch service means that members will often seek and receive the help of their credit union even when a transaction primarily implicates the services of a third party with which the credit union has no formal, direct relationship. Member interaction with such services, particularly nonbank payment platforms, can complicate error resolution procedures, place strains on a credit union's compliance resources, and magnify exposure to fraud.

These relationships are also important and necessary because credit unions are committed to supporting consumer payment choice. Credit unions provide their members with peer-to-peer (P2P) payment services as a value-added service for which their members incur no additional cost and to adapt to changing consumer financial habits. Credit unions are eager to embrace seamless payment technologies, but to compete effectively against larger banks and nonbank financial giants with similar service offerings requires a fair regulatory environment. The costs borne by credit unions stemming from payments related fraud cannot be sustained without limit and we strongly caution against legislation or new regulation that puts the burden of fraud on financial institutions. Credit unions are significantly smaller than banks and are particularly sensitive to new regulatory expectations that alter financial institution liability under Regulation E. We believe legislative efforts are better directed at steps to prevent fraud before it occurs, educate consumers about fraud and risks associated with unregulated technologies, and creating a level playing field for currently underregulated fintech companies and insured depository institutions.

The Negative Impacts that H.R. 8874, the Credit Card Competition Act of 2022, Would Have on Credit Unions and Their 135 Million Members

While not a subject of this hearing, we want to flag this important issue as proponents will say that H.R. 8874, the Credit Card Competition Act of 2022, is targeted at big banks and will not hurt others. They are wrong. The reality is that it will hurt community institutions such as credit unions and consumers. This bill is not about competition. It is about increasing the profits of big box retailers at the expense of consumers and financial institutions by creating government intervention in a free market and establishing a back-door price control on the credit card system. The requirements in the legislation for multiple networks on credit cards mean that consumers will lose choice when it comes to credit cards, as big box retailers could now pick which network will process transactions and go with the cheapest and potentially less secure option. Card rewards that consumers expect to receive for a transaction could disappear depending on the retailer's choice, as could critical consumer protections such as fraud protection.

We have seen the negative impacts of government intervention in the payments space already through Section 1075 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010. This section, commonly referred to as the Durbin Amendment, imposed a cap on debit interchange fees for covered banks and credit unions, defined as those with assets of more than \$10 billion, and established new routing network requirements for debit cards. **Notwithstanding the fact that the vast majority of credit unions fall well below this \$10 billion exemption threshold, many have seen a precipitous erosion of per-transaction debit interchange income despite being told that they were “exempted” by Durbin Amendment supporters.**

Advocates argued the \$10 billion threshold would protect the smallest institutions from the negative impacts of this amendment. They were wrong. This is now demonstrably false as shown by multiple governmental studies and surveys on the issue. For example, an annual survey for the Federal Reserve found that since 2016, more than 50 percent of credit unions with assets below the \$10 billion threshold have seen their per-transaction interchange rates decrease. **This is a prime example of why the**

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“exemption” for institutions under \$100 billion in assets in the Credit Card Competition Act of 2022 will not work for community financial institutions such as credit unions.

While the stated intent of the Durbin Amendment was to prevent card-issuers and networks from unfairly charging merchants higher rates and thus passing higher costs along to consumers, the evidence overwhelmingly suggests that it has not helped everyday Americans. According to Federal Reserve data, this amendment has taken away \$6-8 billion per year from the revenue that banks and credit unions use to serve their customers and members. The erosion of interchange fees is particularly hard on credit unions, which are statutorily limited in what products they may offer and investments they can make. While a bank may be able to turn to capital markets or choose other investments, credit unions have very few options to replace this lost income. As not-for-profits, this ultimately hurts what they can do for their members. There is no evidence that merchants have passed along their savings to consumers in the form of price cuts, and the regulatory burden and loss of revenue for banks and credit unions has led to industry consolidation and the difficult choice to charge for services that were once free, such as checking accounts.

Efforts to extend new routing requirements to credit cards would create significant disruption to credit-issuing credit unions, specifically how they manage operational risk and the extension of credit, making the availability of credit for consumers and small business less certain. Credit unions are committed to serving their members and, as such, must be able to make a reasonable return on payment card programs in order to continue to provide important consumer financial services, such as free checking accounts and member help lines when data breaches occur. It is why I write you today, on behalf of the 133 million member-owners of credit unions around the country who would be harmed if this legislation were enacted, to urge you to reject H.R. 8874, the Credit Card Competition Act of 2022.

In conclusion, we thank you for the opportunity to share our thoughts on these important financial services issues as you seek to hold megabanks accountable. Should you have any questions or require any additional information, please contact me or Jake Plevelich, NAFCU’s Associate Director of Legislative Affairs, at jplevelich@nafcuhq.org.

Sincerely,



Greg Mesack

cc: Members of the House Committee on Financial Services