May 2, 2022

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

We are writing to express our strong opposition to any expansion of the Durbin Amendment through either antitrust or any other body of law. The Durbin Amendment, passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, imposed a cap on interchange fees for covered banks and credit unions, defined as those with assets of more than $10 billion. Most, though not all, community banks and credit unions fall below this threshold. However, even for banks and credit unions below the $10 billion threshold, the Durbin Amendment forbid exclusivity arrangements and routing restrictions, imposed limitations on restrictions on offering discounts for the use of a form of payment, and imposed limitations on restrictions on setting transaction minimums or maximums. Though the restrictions for "exempt" issuers are not explicit price controls, they have the same practical effect.

Support for any legislation on this topic would undermine the overall health and security of the U.S. payments ecosystem and have significant negative implications for consumers and small businesses at a time when the U.S. economy is just starting to recover from a global pandemic.

Last June, organizations representing large retailers called for the failed Durbin Amendment on debit cards to be extended to credit cards. While positioned as a way to increase competition in the payments space, this is a clear attempt to secure yet another windfall for the largest multinational retailers and e-commerce giants at the expense of the security of the payments ecosystem and the financial health of everyday Americans. Already, the COVID-19 pandemic and resulting regulations created a $250 billion wealth transfer from small businesses to big-box retailers—and an expansion of the Durbin Amendment would only further widen that gap.

Not only would this be harmful public policy, but the merchant lobby is choosing to ignore the fundamental differences between debit cards and credit cards, which operate completely differently. For the reasons discussed below, we call on Congress to reject this special interest giveaway.

Competition and innovation in payments are thriving
Legislation in this space is unnecessary because the payments industry is more competitive than ever, with new players entering all the time, giving consumers and merchants a range of options[1]. For example, retailers have rushed to offer Buy Now Pay Later (BNPL) products for which they pay

[1] . 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 as well as bank and credit union led person-to-person payment capabilities; additionally, European account to account (a2A) payments firms are in the process of entering the U.S. market.

substantially more (as much as 6 percent) than for payment cards[2]. The free market is working, and suggestions that government intervention is needed do not stand up to scrutiny.

The fundamental difference of credit

Credit cards represent an extension of unsecured credit to a consumer, meaning that 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.

The merchant lobby is seeking to undermine security and innovation

This effort by merchant groups to shift billions of dollars of consumer credit card spending to less secure, less innovative, and higher-risk transactions would make America's payment system worse and put consumers in a vulnerable position.

At a time when fraud prevention, cybersecurity, and digital innovation are more critical than ever, merchant groups are seeking to undermine the significant protections and security that exist today to protect credit card payments. Merchant groups want the ability to route credit transactions to the cheapest networks— many of whom have underinvested in their platforms with little concern for security innovations-- leaving the burden on consumers, small businesses, and financial institutions to clean up when things go wrong.

Consumer choice goes away

Consumers exercise their choice to pick their credit card in a free market based, in large part, on the trust, security, benefits, and protections that the card offers. The consumer expects that their choice will be honored. Having the government take the choice away from consumers, and give it to large merchants, is fundamentally wrong. This is the ultimate bait and switch, placing the risk of fraud and associated costs on consumers, their families, and their financial institutions. Payment networks and financial institutions, which invest billions of dollars annually in security and fraud prevention to protect consumers, will lose the incentive that competition provides to invest in security and innovation. Consumers will pay the price, while many small issuers will be forced to exit the credit card business altogether.

The Durbin Amendment is a failed government policy

Government price controls imposed by the Durbin Amendment artificially capped debit interchange rates, leading to a precipitous drop in the availability of low-cost banking services and free checking

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[2] https://www.mercatoradvisorygroup.com/the-buy-now-pay-later-merchant-proposition-credit-card-interchange-is-cheaper/

accounts for consumers a new GAO report found that the Durbin amendment was "among the top five laws and regulations most cited…as having significantly affected the cost and availability of basic banking services."[3] Further, the merchant lobby's promise that this regulation would result in savings for consumers never happened – the merchants pocketed the savings. According to the Federal Reserve Bank of Richmond, 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.

Since the Durbin Amendment was enacted, we have seen consumer prices increase, far fewer community banks and credit unions across the country, and several small debit networks have gone out of business. Big-box retailers – and ever-expanding e-commerce giants – have been the beneficiaries of a massive financial windfall. The top retailers in the U.S. diverted an estimated $250 billion in sales away from millions of small businesses, and are now calling for government intervention in the competitive payments marketplace to increase their advantage.

The merchant proposal would reduce availability of credit to U.S. consumers and small businesses
Just as the economy is beginning a long recovery from the pandemic, merchant groups would put consumer spending at risk by interfering with the efficient way credit cards work today. This will be bad for everyone. Credit cards provide the lifeblood of credit availability for consumers and small businesses. Over 70% of U.S. GDP depends on consumer spending, and credit cards are what drive that. The legislation will create significant disruption to credit-issuing banks and 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.

Congress should not undermine small businesses
Small businesses derive significant value through critical benefits that are supported by credit cards. Secure and reliable digital payments provide a level playing field, allowing businesses of all sizes to compete with global retail giants by enabling e-commerce and cross-border transactions. They also support small business resiliency, something that was especially critical during the pandemic. In fact, e-commerce and contactless payments served as lifelines to small merchants, enabling them to stay in business by pivoting to meet customer demands for safer ways to shop, buy, and pay.

Small banks and credit unions, which themselves are small businesses, are vital to our communities. These community-based institutions have increased their lending by more than $236 billion, which directly supports small businesses and consumers. Interchange price controls would devastate small financial intuitions' ability to continue to serve small businesses. In short, their work is far too essential to jeopardize by substituting government price-setting in place of dynamic market competition.

Congress should not require the reengineering of the entire payments system just to benefit a small group of the largest retailers while causing small businesses to suffer.

Do not expand the Durbin Amendment
We've seen the disastrous results of what government price-setting regulation does to a competitive free market, and we must avoid making the same mistake again. The Durbin Amendment has inflicted enough harm on consumers and small businesses over the last ten years. Extending highly unsuccessful

[3] For more information on the harmful effects of the Durbin Amendment: https://www.realclearmarkets.com/articles/2022/04/13/why_the_harmful_to_households_durbin_amendment_has_to_go_826725.html

regulation to a completely different form of payment serves no public policy goal and will irreparably harm consumers, small businesses, and small financial institutions, and create new and unpredictable risks to the safety and soundness of the U.S. payments ecosystem.

Sincerely,

American Bankers Association

Bank Policy Institute

Consumer Bankers Association

Credit Union National Association

Electronic Payments Coalition

Independent Community Bankers of America

Mid-Sized Bank Coalition of America

National Association of Federally-Insured Credit Unions

CC:
Senator Patrick Leahy
Senator Dianne Feinstein
Senator Sheldon Whitehouse
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Senator Richard Blumenthal
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