November 18, 2024

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

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

Dear Chairman Durbin and Ranking Member Graham:

We are writing to express our strong opposition to the *Credit Card Competition Act* (S. 1838 Durbin-Marshall bill) or any other expansion of the Durbin amendment.[1] Any legislative initiatives to expand the power of the federal government to intervene in the U.S. credit card market would not only harm our members, but also small businesses and consumers across the country.

We also want to share our deep disappointment with the committee's decision to schedule a lame duck hearing promoting this misguided legislation without hearing testimony from a community bank or credit union. If the Committee's goal is to educate lawmakers and the public, these financial institutions could detail the real harm CCCA will bring to the customers and communities they serve. They could have also explained how the bill fails to effectively exempt them from the bill's requirements despite claims to the contrary.

Background

The Durbin amendment and subsequent rules issued by the Federal Reserve (Regulation II) imposed both a cap on debit card interchange fees and required debit cards issued in the U.S. to enable the use of at least two unaffiliated payment networks.[2] Amendments to Regulation II also

[1] The Durbin amendment was enacted as a part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (P.L. 111-203).
[2] https://www.federalreserve.gov/paymentsystems/regii-about.htm.

applied the routing requirements to card-not-present transactions in addition to point-of-sale transactions.[3]

The negative repercussions of the Durbin amendment are still being felt nearly 15 years after it was signed into law. A 2022 report from the Government Accountability Office found that if the Durbin amendment "had not been implemented, 65 percent of noninterest checking accounts offered by covered banks would have been free."[4] After the Durbin amendment went into effect, the Federal Reserve Bank of Richmond found 98 percent of merchants either raised prices or kept them the same—despite repeated promises from retailers that any savings would be passed on to consumers through lower prices.[5] The Federal Reserve Board has declined to sufficiently assess the consumer impact of its currently-proposed amendments to Regulation II, but recent research estimates that the proposal would raise the cost of checking account services to consumers by $1.3 to $2 billion a year, with low-balance consumers bearing a disproportionate amount of such costs.[6]

Imposing regulations on credit card interchange fees will lead to similar consumer harm. The Durbin-Marshall bill would expand the routing requirements imposed by the Durbin amendment to credit cards issued in the U.S. This will open the door to fraud, hamper rewards programs, and limit the allocation of credit to individuals and small businesses. This is why small community banks and credit unions in all 50 states have voiced their opposition to the Durbin-Marshall bill.[7]

These proposed mandates would impact every card-issuing financial institution in the country, even the community banks and credit unions its supporters claim are exempt. In reality, a change this monumental cannot be walled off by some legislative carve out. As we saw with the original Durbin Amendment, interchange revenue for supposedly exempt institutions declined by 30 percent[8], which makes it more difficult for these community banks and credit unions to serve their customers. That is why it is so unfortunate the Committee did not allow one of these institutions to testify.

Consumers

American consumers value their cards and oppose the federal government reaching into their wallets.[9] According to an October 2024 survey conducted by Morning Consult:

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[3] https://www.icba.org/newsroom/blogs/main-street-matters/2023/06/27/unpacking-the-path-to-instant-payments.
[4] https://www.gao.gov/assets/gao-22-104468.pdf.
[5] https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_quarterly/2014/q3/pdf/wang.pdf.
[6] Bourke, Nick, How Proposed Interchange Caps Will Affect Consumer Costs (January 24, 2024). Available at SSRN: https://ssrn.com/abstract=4705853 or http://dx.doi.org/10.2139/ssrn.4705853
[7] https://electronicpaymentscoalition.org/2024/01/03/every-credit-union-community-bank-in-america-opposes-the-durbin-marshall-credit-card-bill/?dclid=CPPjmaW714kDFTQ4iAkdXTMR_w.
[8] https://electronicpaymentscoalition.org/resources/what-exemption-community-banks-credit-unions-lose-under-the-durbin-amendment/
[9] https://www.aba.com/about-us/press-room/press-releases/national-survey-on-major-bank-policy-issues.

- 95% percent of consumers said that they value the convenience of using their credit cards.
- 79% of consumers have at least one credit card that offers rewards.
- 88% of consumers said they value the rewards program on their credit cards.
- By a 3-to-1 margin, consumers say they would be disappointed to lose the rewards program on their credit cards due to government regulatory changes.
- 76% of consumers believe merchants and retailers get significant benefit from being able to accept credit cards for payment[10]

To say that consumers will benefit from the Durbin-Marshall bill is inaccurate. A reduction in rewards and cash back opportunities would significantly harm minority and lower-income consumers.[11] The International Center for Law and Economics found that "77% of cardholders with a household income of less than $50,000" have an active rewards card.[12] Despite false claims espoused by some individuals to the contrary, the Durbin-Marshall bill would take away rewards options from lower-income Americans who value those rewards benefits, not just wealthy individuals. In addition, the Congressional Research Service released a report stating, "it is not clear whether retailers would pass interchange savings on to consumers" and "might face higher incidences of fraud."[13]

Small Community Based Financial Institutions

Small community banks and credit unions themselves are small businesses. But they also play a vital role in our communities. These community-based financial institutions understand the needs of their communities and directly support small businesses and consumers, providing billions of dollars in loans and assistance to those that need it most.

As we saw with the Durbin Amendment, interchange price controls would increase profits of corporate megastores while impairing small financial institutions' ability to provide competitive products and services to consumers and small businesses by decreasing revenue used for lending and data security while increasing operational costs. Federal Reserve data shows that the Durbin Amendment harmed "exempted" community-based institutions.[14] In short, their work is far too essential in supporting small businesses to jeopardize by substituting government price-setting in place of dynamic market competition.

Small Businesses

Government intervention in the credit card market would disadvantage small businesses.

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[10] https://www.linkedin.com/posts/thomas-rosenkoetter_in-a-new-american-bankers-association-survey-activity-7258179554731593729-2JSI?utm_source=share&utm_medium=member_desktop.
[11] https://mshale.com/2023/04/19/interchange-fee-regulation-step-financial-inclusion-black-community/.
[12] https://laweconcenter.org/wp-content/uploads/2021/11/Reverse-Robin-Hood-1.pdf.
[13] https://electronicpaymentscoalition.org/resources/crs-report-unclear-who-would-benefit-from-durbin-marshall-credit-card-bill/.
[14] What Exemption? - Community Banks & Credit Unions Lose Under the Durbin Amendment - Electronic Payments Coalition

A recent paper by a University of Miami finance professor found small businesses would be put "at a further competitive disadvantage" to large corporate megastores if the Durbin-Marshall bill were to become law estimating that almost all of those savings will accrue to retailers with $500 million or more in annual sales, with little going to small businesses.[15] Additionally, according to the paper, if the Durbin-Marshall bill were to be enacted, it could cost small businesses up to $1 billion in rewards, because small businesses are large users of payment cards to make purchases, and reduced access to $700 billion in revolving lines of credit.[16]

The Durbin-Marshall bill is a solution in search of a problem. According to the National Federation of Independent Business's own "small business problems and priorities" survey, credit card processing costs failed to rank among their top 20 list of concerns.[17] Effective reforms that would help small businesses ride the waves of macroeconomic turbulence include tax cuts and reducing red tape. The Durbin-Marshall bill will do nothing to help small businesses—it will only entrench large merchants that already have a stranglehold on the retail market.[18] Congress should not mandate the reengineering of the entire credit card payments system just to benefit a small group of the largest merchants while causing small businesses to suffer.

Competition

The U.S. payments ecosystem is rife with competition.[19] Credit cards, debit cards, buy-now-pay later, checks, cash, ACH transactions, wire transfers, and real time payment rails provide businesses and individuals with a multitude of payment options. There is no evidence of significant concentration in the credit card market.[20] In fact, the market for consumer cards concentration is far below the DOJ threshold and is far less concentrated than other industries.[21]

Another paper from the same finance professor at the University of Miami shows that the credit card market is so competitive that profit margins on transactions have been negative for years.[22] The paper finds that in recent years, the net profit per dollar for credit cards is "–0.5 cents per dollar."[23] Rewards programs, which are an expense for banks and credit unions, have been larger than the "profitability of processing transactions since 2016."[24] The differential shows that the credit card market is "extremely competitive and provides consumers with the convenience of conducting transactions at millions of stores."[25] In the last two years, "profitability net of

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[15] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4714752.
[16] *Id.*
[17] 2024 Small Business Problems & Priorities.indd
[18] https://smallbusinesspaymentsalliance.com/national-small-business-week-2024-electronic-payments-survey/.
[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 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.
[20] https://bpi.com/the-credit-card-market-is-not-even-close-to-being-overly-concentrated/.
[21] *Id.*
[22] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4912154.
[23] *Id.*
[24] *Id.*
[25] *Id.*

rewards has been between -0.2% and -0.3%."[26] The fact that financial institutions are losing money on transactions is evidence that competition already exists in the payment market.[27]

Conclusion

The payment card system is convenient, secure, and hassle-free. It protects consumers against fraud, guarantees businesses receive timely payments, funds reward programs like cash back and powers the American economy, from brick-and-mortar establishments to innovative e-commerce platforms 24 hours a day, seven days a week, 365 days a year. The Durbin-Marshall bill, and any other legislation that intervenes in the credit card market, puts all that in jeopardy.

Sincerely,

American Bankers Association
America's Credit Unions
Bank Policy Institute
Consumer Bankers Association
Electronic Payments Coalition
Independent Community Bankers of America
Mid-Size Bank Coalition of America
National Bankers Association

CC: Members of the Senate Committee on the Judiciary

[26] *Id.*
[27] *Id*.