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EXCESSIVE SWIPE FEES AND BARRIERS TO COMPETITION IN THE CREDIT AND DEBIT CARD SYSTEMS

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CONTENTS

OPENING STATEMENTS

	Page
Durbin, Hon. Richard J.	1
Grassley, Hon. Charles E.	3

WITNESSES

Kantor, Doug	13
Prepared statement	38
Responses to written questions	108
Karet, Laura Shapira	6
Prepared statement	65
Responses to written questions	120
Kim, Charles	12
Prepared statement	70
Responses to written questions	122
Kirkpatrick, Linda	9
Prepared statement	76
Responses to written questions	128
Mierzwinski, Ed	10
Prepared statement	88
Sheedy, Bill	7
Prepared statement	98
Responses to written questions	131

APPENDIX

Items submitted for the record	37
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EXCESSIVE SWIPE FEES AND BARRIERS TO COMPETITION IN THE CREDIT AND DEBIT CARD SYSTEMS

WEDNESDAY, MAY 4, 2022

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice at 10 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Ossoff, Grassley, Cornyn, Lee, Hawley, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. Good morning. This hearing will come to order. American consumers today are rightly worried about inflation and rising prices for the goods they buy. Today, we're going to talk about a hidden fee that fuels the fires of inflation across America every day. What they may not know is that the swipe fee is contributing to the problem of inflation. When swipe fees on credit and debit cards go up, as they just recently did, it increases inflation and consumers ultimately pay the price.

Ironically, this journey for me started in this very room 16 years ago. Arlen Specter was the Chairman of the Senate Judiciary Committee. He called a hearing on swipe fees and interchange fees. I attended because I was not familiar with those terms, and I heard for the first time what a swipe fee was. The fact that when I use my debit card and credit card, a swipe fee was being charged to the retailer that I was ultimately paying. Then I learned that there was virtually no negotiation in those fees. Retailers were at the mercy of the credit cards and banks in terms of what those fees will be.

There was no competition because we have a duopoly here well-represented at this table, and that created a situation where the market forces really don't work. They're not supposed to work. They're not designed to work. And what's happened in America, we all know. The statistics on the amount of Americans paying with plastic tell the story. These are from 2020. I'm sure after the pandemic and our change in lifestyle, they're even greater.

The number of 2020 transactions involving debit cards, 86 billion. The amount involving credit cards, 41 billion. Between the

two, credit and debit cards, in 2020, 127 billion transactions in America. How are we doing with cash transactions? Thirty-two point eight billion. How about the use of a check? Five. Five billion. We're becoming a nation that clearly, maybe even a world, that pays with plastic. Today, we're going to ask a few questions about how those payments are made and the charges that are imposed. This Committee held a hearing with witnesses from Visa and Mastercard 16 years ago to discuss anticompetitive fees. We're back. Here's what I've learned.

Visa and Mastercard control about 80 percent of the credit and debit card market. They've established a system of fees and rules that apply to every transaction of the billions I just mentioned involving cards used by thousands of banks. Each time a credit or debit card is used, Visa and Mastercard charge fees that take a cut out of the transaction. You don't see it on the check at the restaurant. It's there. Some of that cut they keep for themselves. Most of it's given to the bank that issued the card.

The fee that Visa and Mastercard require the merchant to pay to the card issuing bank is called an "interchange fee." It's usually charged as a percentage of the transaction plus a flat fee, for example, 2 percent plus \$0.10 per transaction. That means when a card transaction of \$100 is made, the merchant gets less than \$98 after the fees are deducted, and merchants end up raising the prices of their products to make up for the deducted fees.

You might ask, "How much have Americans been charged in interchange—interchange fees by Visa and Mastercard since that hearing 16 years ago in 2006?" According to payment consultant CMSPI, it's \$794 billion all built into the prices retailers have to charge and consumers have to pay. Interchange fees are designed to avoid competitive market pressures. Banks get the fees, but banks do not set the fees. Instead, the banks let Visa and Mastercard set the fees on their behalf. So, the same schedule of fee rates applies for all banks in the network. This means that all banks in the network are guaranteed the same interchange fee, regardless of how efficient or inefficient the bank is in running a card operation or preventing fraud. It's a gravy train.

When Visa and Mastercard raise interchange fees, banks want to issue more cards because they make more on each swipe. Visa and Mastercard profit when there are more swipes because they take their own cut, called a "network fee", from the merchant on each swipe. Merchants and their customers take it on the chin. We're going to hear that firsthand today. What can merchants do to try to keep the fee rates down? Not much. Visa and Mastercard are the negotiating agents for thousands of banks. If a merchant wants to be able to accept payment from those bank's customers, they have to agree to Visa and Mastercard's fees and terms.

I remember at that hearing 16 years ago, at that table, one of the customers or one of the retailers had a stack about 3 inches tall. They had asked for a copy of the contractual agreement with Visa and Mastercard when it came to imposing fees. They quickly said this isn't the complete contract. They would only give us part of it. Three or four inches tall. You expect a grocery store, a restaurant to go through all this? Bottom line, when fees go up, it cost more to use money. That cost gets built into prices consumers pay.

Visa and Mastercard raised their swipe fees 2 weeks ago, despite bipartisan opposition from Congress. It was obvious. We're suffering from inflation. Don't raise these hidden fees again. They did it anyway. Senator Marshall and I, Representatives Welch and Van Duyne urged them not to do it. They didn't listen, and we'll talk about it today. The credit and debit card systems are not competitive marketplaces. When you don't have real competition, what happens? You get higher costs, less innovation, weaker security, and new potential competitors get stifled.

It's a sweetheart deal for the dominant networks, for the biggest banks, and for certain cardholders who have ritzy rewards programs. The average small business and the consumer, they pay the price. Other countries have figured this out, incidentally. You can't have a fair system when you let networks fix the swipe fees without competition or regulation. The European Union, Australia, China, India, Israel, South Korea, and more have stepped up to create reasonable swipe fee limits. We have the Durbin Amendment that applies only to debit cards.

In 2010, I wrote that law that placed reasonable limits on debit interchange fees that Visa and Mastercard fixed on behalf of big banks. It has generated a lot of talk over the last few years and a lot of TV commercials. Boy, the big banks hate the Durbin Amendment like the devil hates holy water. In the absence of competitive marketplace, there needs to be some limit on Visa and Mastercard's fee fixing. Here's a few steps I'd like to suggest.

Let's have transparency and make it clear to consumers in their monthly statements how much of their card purchases are being deducted as interchange fees. You know you have the information, and you know you can provide it. Maybe if consumers knew how much of their cards were costing their favorite restaurants and retailers, they'd use less costly cards. Second, let's stop the practice of charging swipe fees on the part of the transaction amount that is sales tax. That's a swipe tax on top of a sales tax. Give the consumers a break.

Let's stop the exclusivity deals where Visa and Mastercard tell banks they can't use any other network on their cards. Let's give merchants a choice of card network options on each swipe and each online sale. Let's make sure that someone besides the dominant network plays a role in setting security standards for cards. Security innovators and startups are being shut out of the current system. Let's reduce inflationary pressure by preventing network-fixed swipe fees from being jacked up to unreasonable levels.

We've got a lot to talk about today. We're joined by a distinguished panel. I thank them for joining this spirited discussion. Let me turn to Senator Grassley.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. First of all, Mr. Chairman, thank you for holding this hearing. Thank you for working with us on this side of the aisle to make sure that the interests of all stakeholders are taken into consideration. I particularly want to thank you for including financial institutions in the panel.

Interstate and swipe fees is the amount of money that merchants pay for accepting a debit or credit card. These fees vary depending on many factors, but in general, end up being between 1 to 3 percent of purchases and I just learned including sales tax. A great focus has been paid to these fees as more and more consumers use credit and debit cards to make their purchases. As many of my colleagues know, this is an issue that has passionate voices on both sides.

Many Iowa businesses have complained that it seems that these fees are high for accepting credit and debit cards for purchases. These businesses want to give their customers the option to pay using different methods, but that can be difficult if fees are eating into already tight margins, especially for small business owners. These may have to—they may have to then pass along these costs to the consumer.

On the other hand, there are a number of benefits to card usage for both consumers and businesses, including convenience, security, and increased purchasing power. Consumers may spend more money on cards than if they use cash. Consumers may also benefit through rewards or cashback on their cards. There is a balancing act here that we need to acknowledge and that any future action should be carefully considered for possible impact. I look forward to hearing from all of you on this subject.

As this is a Judiciary Committee hearing, we're looking at competition and whether interchange fees are set above rates that would be found in the competitive market. Two witnesses here today represent Visa, Mastercard, the two largest payment networks in the United States, with over 80 percent share of credit card market. I look forward from hearing whether these rates reflect market forces. I think though that when a subject like this comes up, particularly at the time, high inflation, that's a factor that brings attention to a lot of expenditures that people might feel are unnecessary.

It seems like every industry, including merchants and banks, have been blamed by the President for inflation. That blame game doesn't work as President Biden spends trillions of dollars of money as fast as could be spent on a Liberal wish list even when economists were warning—warning about inflation. Earlier this month, Bureau of Labor Statistics reported the 12-month increase of inflation for March was $8\frac{5}{10}$ percent year over year. This is the largest increase in over 40 years. All of this obscures the actual rising costs that Iowans have been hit with in the Midwest.

The price of ground beef, $24\frac{1}{2}$ percent up; bacon, 26 percent up; pork chops, 23 percent; chicken, 31 percent; eggs, 22 percent. These are not luxury items, but absolute necessities for family's dinner table. These staggering increases are negatively impacting all Americans and must get under control, and that's not by spending trillions more that are being proposed. I yield.

Chair DURBIN. Thanks, Senator Grassley. We have six witnesses. Thank them for joining us. I'm going to give a short introduction to each before they're recognized. First witness is Laura Shapira Karet. She's Chair and CEO of Giant Eagle, a supermarket chain headquartered in Pittsburgh, 470 locations throughout Pennsylvania, Ohio, West Virginia, Maryland, and Indiana. She has served

as CEO of Giant Eagle since 2012, previously served as the senior executive vice president, chief strategy officer, and senior vice president of marketing. She's worked for Giant Eagle since the year 2000. Has a bachelor's degree from Amherst. Glad to have you here.

Second witness, Bill Sheedy. Senior advisor to Visa's chair and CEO, position he's held since 2020. He's responsible for strategic initiatives. Previously served as Visa's president of Europe, North America, and Latin America. He helped lead the company's restructuring in 2007 and its IPO in 2008. Undergraduate degree from West Virginia University and an MBA from Notre Dame. Thank you for being here.

Next witness is Linda Kirkpatrick, president of North America for Mastercard. She's responsible for overseeing Mastercard's operations and customer facing activities in the U.S. and Canada. She's been with Mastercard since 1997, and she previously served in a leadership role involving investor relations, U.S. strategy and communication, U.S. issuers, global rules and standards, compliance programs, and dispute resolution management. She has a degree from Manhattanville College. Thank you for joining us.

Next witness is Ed Mierzwinski. Close to it? Did I get it right? Mr. MIERZWINSKI. That's right.

Chair DURBIN. That's because I represent Chicago. He's the senior director of the Federal Consumer Program at the U.S. Public Interest Research Group known as PIRG. Mr. Mierzwinski has worked for U.S. PIRG since 1989, oversees the Federal consumer program, helps to lead national efforts to improve consumer credit reporting laws, identity theft protection, product safety regulation, and more. Co-founder of the Americans for Financial Reform. Received his undergraduate degree and master's degrees from the University of Connecticut. Senator Blumenthal, take notice.

Our next witness is Charles Kim, executive vice president, chief financial officer of Commerce Bancshares, responsible for all financial functions of the company as well as for the company's strategic planning, marketing, technology, enterprise operations, and consumer card business. He's been with Commerce Bank. He received his undergraduate and MBA degrees from Washington University in Saint Louis, the Hilltop.

Final witnesses is Doug Kantor. Since 2021, Mr. Kantor has served as general counsel for the National Association of Convenience Stores, previously practiced law at Steptoe & Johnson, where he was general counsel to the Merchant Payments Coalition among other organizations. In his career, he worked as deputy chief of staff at the U.S. Department of Housing and Urban Development and as a public-school teacher. Received his B.A. from the University of Virginia, his J.D. from Yale Law School. Again, thanks to all of the witnesses for being here.

It is customary in this Committee for us to ask you to take an oath to tell the truth. If you'd all please stand and raise your right hand.

[Witnesses are sworn in.]

Let the record reflect that all the witnesses answered in the affirmative, which now gives them permission to proceed. We're going to start with Ms. Karet.

**STATEMENT OF LAURA SHAPIRA KARET, CHAIR AND CEO,
GIANT EAGLE, INC., PITTSBURGH, PENNSYLVANIA**

Ms. KARET. Chairman Durbin, Ranking Member Grassley, and Members of the Committee, I'm Laura Karet, CEO, president, and executive chair of Giant Eagle, one of the Nation's largest multi-format food, fuel, and convenience retailers with approximately 34,000 team members operating more than 470 corporate and independently owned and operated store locations throughout five Midwest states, including Pennsylvania and Ohio. On April 22 of this year, with no negotiation or threat of competition constraining them, Visa and Mastercard imposed a fee increase that will cost Giant Eagle \$1.3 million annually.

I appreciate the opportunity to talk to you today about the impact of swipe fees on our business. I'm also proud to serve as vice chair of FMI, The Food Industry Association. FMI works with and on behalf of the entire food industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI's membership includes nearly a thousand supermarket member companies that collectively operate almost 33,000 food retail outlets and employ approximately 6 million workers. Our industry historically operates on razor thin margins of one to 2 percent.

We operate in a highly competitive market. As inflation has driven prices higher, our customers have become even more conscious of how they are spending their money, driving down profits. There are three points I'd like to make today. First, Giant Eagle's swipe fees have materially increased over time, and the April 22 unilateral increase will only exacerbate this problem. Visa and Mastercard together control 85 percent of the market. On April 22 of this year, both Visa and Mastercard increased the fees retailers pay, and they also created new categories of fees. Every bank that issues credit and debit cards adopted these fee increases without deviation or exception.

In my estimation, this cannot possibly comply with either the letter or the spirit of our Nation's antitrust laws. This latest price increase fits the pattern we've seen for years. Giant Eagle's been paying higher and higher payment fee costs. Electronic tender sales make up about 82 percent of our sales transactions for our company. Of the 82 percent that are electronic tender, about 37 percent of the total sales are Visa and Mastercard. When you look at the total card processing fees, Visa and Mastercard make up over 62 percent of those fees.

Over the past 4 years, our Visa and Mastercard fees have grown from 57 percent of our total fees to 62 percent of our total fees, while, at the same time, Visa and Mastercard sales as a percentage of total sales have declined by almost 2 percent.

In stark contrast, during the pandemic, my company and others like it were authorized by the USDA to accept online payments from our customers using the Supplemental Nutrition Assistance, SNAP, EBT cards. It's interesting to note that those SNAP electronic transactions are completed securely without Visa or Mastercard and without incurring any swipe fees. It's hard for us to understand why SNAP EBT cards could accommodate the changes necessitated by the pandemic, but Visa and Mastercard used it as an avenue to raise prices.

Second, millions of customers suffer when swipe fees increase. Because of the unilateral fee increases, Visa and Mastercard, that they announced on April 22, my company and my customers will be paying an additional \$1.3 million in swipe fees. This fee increase came on the heels of Visa reporting in its March 22, 2022 quarterly financials that its profit margin was just above 50 percent.

Third, there must be competition in the debit and credit card markets. Visa and Mastercard's are the only vendors that Giant Eagle cannot negotiate with. When Giant Eagle buys ketchup or paper towels, its suppliers compete to give Giant Eagle the best price. Ultimately, our customers benefit from a competitive market. In contrast, Visa and Mastercard do not compete for merchant business. The fees associated with accepting any type of payment for a particular good should be incidental to their transaction and certainly should not be among our highest expenses.

This expense, swipe fees, is third only to labor and rent that we face. I applaud this Committee for looking at ways to achieve robust competition in the use of credit and debit cards, similar to the robust competition we must take part in every day. I would be pleased to answer your questions.

[The prepared statement of Ms. Karet appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Karet. Mr. Sheedy of Visa? Make sure that button—

Mr. SHEEDY. I'm sorry.

Chair DURBIN. Good.

**STATEMENT OF BILL SHEEDY, SENIOR
ADVISOR TO CHAIRMAN AND CEO, VISA INC.,
SAN FRANCISCO, CALIFORNIA**

Mr. SHEEDY. Good morning, Chairman Durbin, Ranking Member Grassley, Members of the Committee. Thank you for the opportunity to testify today.

For more than 60 years, Visa has enabled people, businesses, and governments to make and receive payments through its secure transaction processing network. I am pleased to be able to share with the Committee the many ways in which Visa works to promote safety, security, innovation, and competition to drive economic growth and financial inclusion. Recently, we have taken a number of important steps to support the economy and to maintain the security, reliability, and stability of our network. These steps are intended to help businesses of all sizes, including those that may be struggling due to the effects of the pandemic and consumers across the country.

At the outset of the pandemic, we lowered interchange rates for certain key segments, including grocery stores, restaurants, and education. In April, we lowered interchange rates for the majority of U.S. businesses. Visa is also taking steps to make online payments more secure by encouraging the use of secure digital tokens so that transactions can be processed without sharing a cardholder's sensitive account information and implementing changes designed to promote accurate transaction processing.

As a payments network, Visa takes its role in setting interchange rates very seriously, with the goal of fostering balance, security,

and stability while growing the overall payments ecosystem. It is important to note that Visa does not earn revenue from interchange fees. Our brand promise has always been rooted in being the best way to pay and be paid. We remain steadfast in our focus to deliver on this commitment. Our success is based heavily on investing in and continuously enhancing the security of our network, more so than any other part of our business. Trust and security are the foundation of everything we do.

In the last 5 years, we have spent over \$9 billion on fraud protection and security. In 2021 alone, our fraud prevention programs helped merchants and financial institutions prevent nearly \$26 billion in fraud. Cardholders choosing Visa can count on our zero liability protections on unauthorized transactions. Visa stands behind every transaction with programs such as zero liability and efficient dispute resolution. Merchants who choose to accept Visa—excuse me. Merchants who choose to accept Visa are guaranteed payment when a transaction is properly authorized on our network.

Competitive pressures on Visa to maintain and improve upon its reliability, innovation, and security have never been more pressing. New competitors, new ways of paying, advances in security, as well as cyber risks are emerging at a dizzying pace. As consumers and merchants pay digitally more often, getting into payments has become as easy as developing and marketing an attractive app. The growing number of payment options now available at checkout, especially online, is a reflection of this competitive environment and the continued expansion of consumer and merchant choice in payments.

In addition to cash, checks, and traditional U.S. payment networks, we also compete today with digital wallets, buy now, pay later solutions, Fintech and Big Tech, real time payment systems, and cryptocurrencies. With the majority—with this massively changing competitive environment, Visa's even more clear about our first order priority. Our success depends on our ability to deliver innovative, safer, more secure payments, and a strong value proposition to consumers and merchants alike. Payments will continue to evolve through new payment uses, new business models, new frictionless commerce.

However, regulatory interventions focusing exclusively on card networks could shift consumer spending away from networks like Visa and to more expensive payment methods with more risk, less reliability, and fewer protections in security. Visa is proud of our security and fraud fighting tools. Another truly important benefit of our network is that we level the playing field between large and small players. The investments that we've made have enabled small retailers and community banks and credit unions to compete with larger merchants and larger banks to deliver robust capabilities, positive customer experiences, and security protections.

This has created a vibrant, competitive environment that allows the American and global economy to thrive and grow. We appreciate the opportunity to address the Committee on these important issues, and I look forward to taking your questions.

[The prepared statement of Mr. Sheedy appears as a submission for the record.]

Chair DURBIN. Thank you very much, Mr. Sheedy. Ms. Kirkpatrick from Mastercard.

**STATEMENT OF LINDA KIRKPATRICK, PRESIDENT,
NORTH AMERICA, MASTERCARD, PURCHASE, NEW YORK**

Ms. KIRKPATRICK. Good morning, Chairman Durbin, Ranking Member Grassley, and Members of the Committee. I'm Linda Kirkpatrick, and I'm the president of North America at Mastercard.

It is my pleasure to appear before you this morning to discuss three things: first, the value that Mastercard brings to merchants, banks, consumers, and governments; second, recent interchange adjustments; and third, the robust competitive environment in which we operate.

Having worked at Mastercard for 25 years, I can personally attest to the value that we bring to our stakeholders. Our role is to enable commerce in a safe and secure way. For banks, we provide products that support their customer base, allowing them to deepen relationships and extend financial tools to consumers. For credit unions who help people buy homes and start businesses, our products allow them to more effectively support their communities. The value we bring to banks is evidenced by the greater than 45 percent growth in cards in the U.S. over the past 5 years.

For merchants, electronic payments provide them with benefits and protections they don't receive from cash and check. In addition to increased sales and operational savings, merchants receive guaranteed payments even when consumers don't pay their bills. Banks absorb these costs, which are, on average, higher than the average merchant cost of acceptance.

Mastercard is deeply committed to small merchants. Within the first weeks of the pandemic, we announced a \$250 million financial package to support them through this crisis. The value we bring to merchants is clearly demonstrated by the growth in global locations where our products are accepted, which has nearly doubled over the last 5 years. This includes an incremental 24 million small businesses since 2020.

For consumers, Mastercard products provide access, convenience, and peace of mind. Consumers are never responsible for fraudulent activity that may occur on their accounts. Further, electronic payments kept commerce alive for consumers and small businesses during the pandemic. In fact, the U.S. Government used our products to quickly deliver critical aid to vulnerable Americans. This value is clearly demonstrated by the spend on our products in the U.S., which has grown by nearly 60 percent over the past 5 years.

To be clear, banks, merchants, and consumers are all critical stakeholders for Mastercard. Their success is our success, which is why we work so hard to find balance in the system. In particular, I have personally spent many years supporting and partnering with merchants across their co-brand portfolios and other services. As part of balancing the interests of all stakeholder groups, Mastercard sets default interchange rates or the fees charged by cardholder banks to merchant banks for the benefit of guaranteed payments, transaction processing, and account servicing.

Mastercard does not earn revenue from interchange, nor do we set the fee charged directly to the merchants. Our rates seek to

incentivize both card issuance by banks and card acceptance by merchants. Without these rates, more than 90 million merchants would need individual contracts with thousands of banks, which would be impractical.

In 2020, we announced our intent to adjust rates to reflect current market conditions and investments. These adjustments represented the first significant changes in over a decade. After a 2-year delay resulting from the pandemic, we implemented changes to our default rates, which included some increases and some decreases, including for small merchants. Based on our modeling, the net impact of these and other recent changes is virtually neutral to the ecosystem.

Finally, I'd like to note that the payment industry has never been more competitive than it is today. In addition to cash and check, we aggressively compete with several global and regional networks, and increasingly with buy now pay later providers, person-to-person, and account-to-account services, real time payment platforms, digital currencies, wallet providers, and other forms of payment. There is no question that the variety of payment options available to consumers is robust. Mastercard does not hold or exercise market power. We embrace consumer choice and have embedded this concept into our business strategy.

In summary, we are deeply committed to supporting all of our stakeholders, including merchants, banks, governments, and consumers. We are extremely proud of the way our products enable financial inclusion and choice to consumers and small businesses to help them thrive. I appreciate the Committee's time, and I look forward to your questions.

[The prepared statement of Ms. Kirkpatrick appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Kirkpatrick. Mr. Mierzwinski, please.

**STATEMENT OF ED MIERZWINSKI, SENIOR
DIRECTOR, FEDERAL CONSUMER PROGRAM,
U.S. PIRG, WASHINGTON, DC**

Mr. MIERZWINSKI. Thank you, Senator Durbin. Chair Durbin, Senator Grassley, Members of the Committee, I am Ed Mierzwinski. I'm with the U.S. Public Interest Research Group. We're a nonprofit consumer advocacy organization and serve as the National Office for the State PIRGs.

All consumers pay more at the store and more at the pump because of nonnegotiable, nontransparent fees that are set by the card networks, not by the banks themselves. I want to point out that, when I testified in 2010, Chair Durbin, before your Appropriations Committee, that was on the matter that even the Government couldn't negotiate the prices that it paid for buying and selling things on its Government platforms.

It's incredible to me that even the Government is not big enough to hold Visa and Mastercard accountable. The worst problem occurs if you're a small—small merchant having to pay, your probably second highest price of—cost of goods sold might be higher, rent might be higher, but probably bank fees are the next price—are the next highest fee that you pay. What do you have to do because of the

complicated rules that you discussed in your opening statement, Senator Durbin, the inches thick contracts, etc., etc.? They forbid the merchant from doing anything to lower the costs in his store.

He's got no choice but to bake the price of these overpriced swipe fees into the costs that everybody pays, including—including the cash customers who might be low income and they're probably subsidizing. Despite what all the associations and the networks will say today, the bulk of the interchange fee goes to pay for affluent consumer rewards cards. It does not go to the other important issues of security. Those are small items compared to rewards. I'm very happy that you're holding this hearing.

I want to point out that there's really nothing to restrain these networks in this—in this market failure that we have in the card network ecosystem. When talking about percentage-based fees, when prices go up because of inflation, the bank earns more money without doing anything or without making anything. Visa, I believe, has been quoted recently in earnings calls in the press, "Inflation is a net-net win for us." It is—it is a market failure.

I want to commend the Durbin Amendment for going after some of the key aspects in the debit part of the system. First, you narrowly and proportionally—you capped fees to a reasonable proportional basis on some debit cards but not all. Second, you went after debit card routing, an important area that needs to be fixed. The Federal Reserve is also working on a debit card update to Rule II, which implemented the Durbin Amendment. That would make it easier for merchants to pick and choose different networks that are not owned by the incumbent players.

I want to point out that Europe and Canada are examples, many other examples around the world, of places that regulate these fees much more aggressively across debit and credit networks. The fact is their interchange rates are lower and lower. I believe Europe's rates under the interchange—interchange fee regulation, IFR, I believe their rates are about 10 percent of U.S. rates. U.S. rates are not really restrained, and that's why we needed the Durbin Amendment. That's why we need to expand the Durbin Amendment.

There have been some important actions taken by the Department of Justice and the Federal Trade Commission. The Federal Trade Commission doesn't have jurisdiction over banks, but it does have jurisdiction over the card networks. And the Federal Trade Commission has forced Visa to change the way that consumers are told about their choices in using swipe card machines. The Department of Justice in particular went after Visa's acquisition of Plaid, a nascent competitor that does a lot of important work.

I look forward to working with the Committee on other solutions, and I strongly support your talking about having a disclosure on your bank and credit card statement that says how many swipe fees you've paid. Consumers don't know what a swipe fee is. Then they would know. Thank you.

[The prepared statement of Mr. Mierzwinski appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Mierzwinski. Mr. Kim from Commerce Bank.

**STATEMENT OF CHARLES KIM, EXECUTIVE VICE
PRESIDENT AND CHIEF FINANCIAL OFFICER, COMMERCE
BANCSHARES, INC., KANSAS CITY, MISSOURI**

Mr. KIM. Good morning, Chairman Durbin, Ranking Member Grassley, and Members of the Committee. I'm pleased to testify before you today on behalf of Commerce Bank team members who serve communities up and down America's heartland.

Commerce is a midsize bank founded in Kansas City in 1865. We're honored to employ talented people in almost every State represented on this Committee. We offer a full suite of payment services, including debit and credit cards for consumers and businesses, and merchant card acceptance services that keep money moving in those communities we're privileged to serve, as well as all over the world 7 by 24, wherever our customers are traveling or shopping, something that would be impossible without interchange and the networks.

The views expressed in my testimony are broadly held among my colleagues at the thousands of midsize and community banks across the country. Just this week, letters have come to this Committee signed by state banker associations, community banker associations, credit union leagues, and minority-owned banks from small to large, from public to nonprofit mutual banks, and cooperative credit unions owned by their depositors, urban, rural, and suburban. We're united in our view. Price controls in the form of interchange regulation, like the Durbin Amendment, harm consumers, harm small businesses, harm competition, and harm communities.

What is interchange, and is there a competition problem around it? Simply put, our payment system requires constant investment and protection, and we need a fair way to pay for it. I believe both banks and merchants should share in the costs of the payment system. Banks and credit unions invest billions into building and securing the payment system before, during, and after the sale. Merchants contribute to those costs by paying a small fee when they use the system to make a sale. That's interchange. As a fee, it's just a convenient and proportional way to pay their share.

When we compete for merchants' card business, it's extremely competitive. We're up against many players trying to give the merchant a slightly better deal. That used to mean just other banks selling a card terminal. Today, there are many independent providers competing. I think the average merchant probably gets tired of hearing from people trying to sell them merchant services.

Cards aren't the only choices today. There's Venmo, PayPal, Square, Cash App, Clover, Toast, RTP, FedNow, same-day ACH, buy now, pay later, new payment rails and merchant payment solutions at all price points, including free and so more costly than credit.

A decade ago, my bank's executive chairman testified in the House and predicted that the Durbin Amendment would cause great harm to consumers and will affect banks of all sizes. Now, the data is in, and we can quantify the size of the harm and how the promises made about protecting community banks and lowering prices turned out to be empty.

Many consumers have lost access to free checking, minimum balance and monthly fees are up, debit card rewards are scarcer or

nonexistent, and small merchants have seen their cost of accepting cards rise. These are findings of the Federal banking regulators and respected academics. Per research from the Federal Reserve Board and Dr. Natasha Sarin, a University of Pennsylvania law professor who is now a senior economic policymaker in the Biden Treasury Department, banks were 35 to 40 percent less likely to offer free checking accounts following the passage of the amendment.

For the largest merchants, this law has been a windfall, and it's helped some get more market share. For smaller businesses and financial institutions that can't tap into a law that encourages consolidation and scale, the costs have been steep. In fact, small banks and credit unions, which were prominently proclaimed as exempt from the price caps, we've seen their interchange revenue drop 30 percent per swipe on PIN debit transactions.

This is a direct result of small issuers being covered by the law's backdoor price controls known as routing mandates. Merchants promised Congress they would reduce retail prices after the law passed, but the FED found that nearly 99 percent of merchants did not pass on any savings to their customers. At the very least, this should make us skeptical about the current demands and the debit routing rules, and that debit routing rules should be expanded and extended to credit cards.

Our nation needs to keep up when it comes to payments, technology, and security. That won't happen if we cut the investment out of our own infrastructure. Countries like China and Russia are investing heavily in innovating their payment systems and will present a challenge to America's leadership in this key area of national and economic security, yet policies like the Durbin Amendment create rigid rules and investment caps that limit our potential to do the same.

The payments world is rapidly evolving, and smaller financial institutions are facing enormous costs to upgrade, offer new products, and just stay in the game. Interchange is an investment in American commerce, not a junk fee. I urge the Committee to look at both sides of this story and put the consumer first. Thank you again for having me.

[The prepared statement of Mr. Kim appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Kim. Mr. Kantor.

**STATEMENT OF DOUG KANTOR, GENERAL COUNSEL,
NATIONAL ASSOCIATION OF CONVENIENCE STORES,
ALEXANDRIA, VIRGINIA**

Mr. KANTOR. Thank you, Chairman Durbin, Ranking Member Grassley, Members of the Committee for having me here today and for having this hearing. We really appreciate the opportunity because we think this is an incredibly important issue.

The credit card market is broken. Visa and Mastercard centrally set the fees that the banks that issue consumers' cards charge. Those banks compete on every other price they set, every other interest rate they set, every other part of their business, but not here. They could do it here. There are very big institutions. This is an incredibly concentrated market with large institutions like

JPMorgan Chase, Bank of America, Wells Fargo. None of them are setting their own prices. That doesn't make any sense. Then on top of that, Visa and Mastercard set the terms by which cards are accepted, which makes sure to insulate those fees from any other competitive market pressure to make sure they can stay high.

They have an honor all cards rule that says to merchants, "If you want to take any single Visa or Mastercard, you must take every single one." The prices on these cards can be incredibly different for these businesses. They can be factors of twice or three times as high. By doing that and then restraining merchants' prices and the price signals that they can send to their consumers, they make sure there's no market pressures here. That's why we have a market failure. It doesn't have to be this way, and it shouldn't be this way. We need competition in this market. That's the bottom line.

There's lots of discussion on this panel and has been already this morning about how many other forms of payment there are. This isn't about the other forms of payment. This is about credit cards because, thankfully, we've had some reform of debit cards, which has been quite good. On credit cards, we have not. The interesting thing is, as folks on the panel talk about, well, there's buy now pay later and there's cryptocurrencies, there's all these other things. Yes, there are. But installment loans and other things are not credit cards. They're conflating these different markets.

Senator Grassley this morning talked about the rise in prices in different markets, beef, chicken, other products. Nobody on this Committee would think it acceptable if there was a price fixing scheme going on in the beef market that caused prices to be high, and someone else came in and said, "Well, don't worry. Everyone can just eat chicken. It's okay. It's very competitive." That's not okay. We need to deal with the competition problem and credit cards to have a fair deal for merchants and consumers and, frankly, for the U.S. economy because the \$138 billion just last year that were charged in fees that consumers don't see we all end up paying.

It does create this inflationary cycle particularly because it is a percentage, most of it, a percentage of the transaction. When there is inflation, that drives up prices. And look. We're not saying Visa and Mastercard caused inflation. They did not. Everybody can have their own opinions there, but it does exacerbate it both because the fees are very high and because the percentage way that their charge creates this inflation. Look. That's what we would all expect when there's no competition. It's very predictable.

One other thing I would like to say on this is we've heard a couple things this morning about how there is a payment guarantee for merchants. There is not. The Federal Reserve every couple of years looks at debit fees in particular, and they have found that merchants pay 56 percent of the fraud on debit cards. Fifty-six percent. Now, look. I don't know what everyone means by guarantee when they hear that word; but my gosh, paying 56 percent does not say to me that our members are getting a guarantee of payment. They're losing most of it when there's fraud being committed. We need to have our facts straight when we talk about this, and we need to have competition in this market.

We all know that competition does work. It works throughout our economy. We don't let folks set other people's prices in a centralized way in other parts of the economy. When we have that type of competition, prices are lower. We have more innovation. Frankly, we've seen more innovation since the Durbin Amendment on debit cards with more encryption and other security types of innovations that came right afterward. People have more money in their pockets when there's competition and lower prices. They can spend more, and that consumer spending helps drive the economy.

I really appreciate the Committee looking at this important issue and look forward to the conversation.

[The prepared statement of Mr. Kantor appears as a submission for the record.]

Chair DURBIN. Thanks, Mr. Kantor. We'll have 5-minute rounds of questions. I'll start. It turns out that the issue of inflation was addressed directly by the chief financial officer of Visa—I hope I pronounce his name correctly—Vasant Prabhu. On the January 27th earnings call, he was asked how inflation impacts Visa. His answer and I quote, “Net-net. I mean, we are a beneficiary of inflation.” He also said, quote, “To the extent that there's inflation driving up ticket size, clearly, it's beneficial to us.” Let's put to rest the theory that this has nothing to do with inflation. It appears to have some relevance.

Can I ask you, Mr. Sheedy, incidentally, Ms. Karet told us that coincidentally April 22 was chosen by both Visa and Mastercard as the day to raise the fees. Was that just a coincidence or coordination?

Mr. SHEEDY. Senator, we did not—

Chair DURBIN. You need to turn on your feed. Turn on your mic, please. Thank you.

Mr. SHEEDY. I apologize. Senator, we did not raise the fees in April. In fact, 90 percent of businesses in the United States see a change in their rates that were down by 10 percent effective with the April changes.

Chair DURBIN. Ms. Karet, were you wrong?

Ms. KARET. No. We got a 300-page amendment or a fee schedule. We calculated exactly the fee increases for us. While some fees went down, others went up significantly. The net effect is our fees went up.

Chair DURBIN. Both companies the same day?

Ms. KARET. Yes.

Chair DURBIN. Mr. Sheedy, here's a customer who has some evidence otherwise.

May I ask you, Ms. Kirkpatrick, you're in charge of Mastercard North America. I want to ask you about these crazy Canadians. How in the world can you explain this? In Canada, there's a debit card system called Interac. It is the most widely used debit card system in Canada. It reports it has one of the lowest rates of fraud globally. The website for Interac says and I quote, “Interchange for Interac debit is currently set at zero.” How is it possible these crazy Canadians are getting no charge of interchange fees on debit and have less fraud? How can that possibly be?

Ms. KIRKPATRICK. Senator, it's not the case that Canadian merchants don't have interchange fees. There's value—

Chair DURBIN. In the debit cards.

Ms. KIRKPATRICK. There is value in the debit space that consumers derive from transacting at merchants. There is value that the merchants—

Chair DURBIN. What do you mean by—

Ms. KIRKPATRICK [continuing]. Receive.

Chair DURBIN [continuing]. Value? You're going to have to define terms.

Ms. KIRKPATRICK. When merchants shop at a Canadian—when consumers shop at Canadian merchants, they receive value through the form of guaranteed payment, lower risk, purchasing power. Therefore, there are interchange fees on debit transactions in Canada, and it's a direct result of the value that those merchants are delivering and that consumers are driving.

Chair DURBIN. Mr. Mierzwinski noted what's happening in Europe. Let's stick with the program for a minute. Try to explain to me the difference in debit and credit card interchange fees in Europe where the European Union has set a standard of 0.2 percent and 0.3 percent respectively, one-eighth or one-tenth of which is charged in the United States. Clearly, their system is much different than ours, and we have no regulation. Other countries like Australia, Brazil, China, India, Israel, Malaysia, and South Korea also limit interchange fees.

What lessons can we learn from all of these countries who decided that interchange fees are way too high in the United States?

Mr. MIERZWINSKI. I think those countries know that the credit card system is a market failure. The ways that the banks are forced to accept all of the fees from the networks and the consumers are forced to pay increased prices, they're not going to have it. They're not going to have it. They said no. U.S. Congress should strengthen the Durbin Amendment, expand it to credit cards, and lower interchange across the board.

Chair DURBIN. Make sure I understand the scope of interchange fees. If I decided that I wanted to give money to Catholic Charities for the people—Ukrainian refugees in Poland, and I use my credit card or debit card to make that donation, would you be collecting an interchange fee on that transaction, Ms. Kirkpatrick?

Ms. KIRKPATRICK. The interchange fees for—Mastercard does have interchange fees or the banks do charge interchange fees to consumers—or rather to merchants across all transactions for the benefit that the consumers are receiving from that transaction. There's a cost associated with servicing that transaction and servicing that account.

Chair DURBIN. The interchange fees also apply to sales tax I'm paying on my restaurant bill?

Ms. KIRKPATRICK. It does.

Chair DURBIN. Why?

Ms. KIRKPATRICK. It's the—again, it's the total value that the consumers are deriving when they shop at a merchant.

Chair DURBIN. Of tax on a tax?

Ms. KIRKPATRICK. It's the total value. You can't just look at interchange as one—

Chair DURBIN. More than a total value.

Ms. KIRKPATRICK [continuing]. As one element. You're looking at the total cost of servicing that account, which includes fraud, guaranteed payment, increased purchasing power, and the ability to use that product anywhere Mastercard is accepted.

Chair DURBIN. We look at it across the world where interchange fees are regulated and restrained, and we don't see this rampant fraud.

Ms. KIRKPATRICK. And—

Chair DURBIN. Senator Grassley.

Senator GRASSLEY. Yes. Before my 5 minutes starts, I'd ask unanimous consent to add several letters from stakeholders into the record.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator GRASSLEY. As of 2020, statistics show that Visa and Mastercard combined for 84 percent of all-purpose—general purpose credit cards within the United States. Some would characterize this as a duopoly, able to extract above market payments for their services. To Mr. Sheedy and Ms. Kirkpatrick, what would be your response to these concerns? Do Visa and Mastercard abuse market power? Then I'd like to have Mr. Kantor and Ms. Karet listen and then respond. Mr. Sheedy, you want to start out?

Mr. SHEEDY. Yes, Senator. Thank you. Senator, we operate in a highly competitive market. Merchants have never had more choice at the checkout. Consumers have never had more choices to be able to pay. And one of the things that I think is important to understand about our payments network and the level playing field that we set with interchange is the same interchange flows through our network and gets passed to, in the same exact manner, to thousands of financial institutions across the United States, small banks and small credit unions to larger players.

They all compete with one another and innovate in that complex, very dynamic marketplace. Ultimately, the consumer wins from that competition. When the consumer is empowered to transact with products that are tailored for them and investments are made in the system to manage risk and keep the system secure with a high integrity and that consumer is empowered to shop at the point of sale, the merchant benefits from that flow. It's that balance that we're trying to accomplish. Any notion that we're not operating in a highly competitive market we fundamentally disagree with.

Senator GRASSLEY. You have anything to add, Ms. Kirkpatrick?

Ms. KIRKPATRICK. Yes. I'd say the payments ecosystem has never been more competitive than it is today. In addition to the networks, as I discussed earlier, there are competition that comes from buy now pay later providers, wallet providers, digital currencies, regional debit networks. You know, the definition of market power is really an institution that can raise prices while also reducing consumption, and Mastercard's motivations are the exact opposite.

We are motivated to drive more transactions through our network. That is how we generate revenue. That is how we win. By virtue of that, we are incentivized to create balance across all stakeholders, both merchants and banks. If we set interchange rates too high, merchants won't accept. If we set interchange rates

too low, banks won't issue. Therefore, our goal is balance, and our goal is consumer value.

Senator GRASSLEY. Mr. Kantor and then Ms. Karet.

Mr. KANTOR. Thank you, Senator. Yes. That's not the way it works. This is not a balancing of the marketplace because, look, economists at the Kansas City Federal Reserve have looked at this. They've said because merchants and retail in the United States are so competitive, these fees can get set well beyond any semblance of value up until the only break point is where the retailers would actually lose money and go under for accepting the cards. That's the one break point.

Look. In other markets, we don't say because something has great value we allow price settings centrally rather than competitive market prices to rule the day. As you talked about in your opening statement with beef prices and chicken prices and others, just because those are valuable products, we—many of us need to eat them, right? To survive. Really important. We wouldn't say, "Oh, then they can just centrally fix the prices and that's okay." There needs to be a market system to discipline those prices. We don't have that here.

Frankly, the innovation in other kinds of technologies and payments does not make up for the lack of innovation and the anti-trust problem in credit cards. In fact, it really shines an incredible spotlight on the fact that we have not had that type of innovation in credit cards, and those haven't advanced. The market power of Visa and Mastercard have been incredibly stubborn, and they've held on to that market, including ever since the Department of Justice won a second circuit decision finding, cert. denied in the Supreme Court, that both Visa and Mastercard have market power in this market.

Senator GRASSLEY. Ms. Karet, add but don't repeat.

Ms. KARET. I'll do my best. Thank you. I'd like to come at this from a slightly different angle. Our average store carries over 50,000 items, every single one of which is negotiated in terms of price, how we market it, how we merchandise it.

When Procter & Gamble comes to talk to us about selling Tide, of which there are, let's say, 50 different sizes and flavors of it, they don't come in and say, "You have to take all 50." They don't come in and say, "Take it or leave it." They don't come in and say, "You can't promote it. You can't incent people to do one thing versus the other." Visa and Mastercard effectively control over 80 percent of the credit market, and they are the only vendor which we cannot negotiate with. It's a take it or leave it proposition. Again, I'm not an economist, so I don't know what technically qualifies as a duopoly. That said, to me, if it walks like a duck and talks like a duck.

Senator GRASSLEY. I have two questions I'll submit for answer in writing.

Chair DURBIN. Thank you. On the Democratic side, the order on early bird rules Blumenthal, Whitehouse, Coons, and Hirono. I note the presence of Senator Tillis. At this point, that'd be Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thanks to Senator Durbin for his leadership on this issue over many years and

all of us who have served at the State level—I served as State attorney general for a number of years, as Mr. Mierzwinski knows—are deeply grateful to you for your leadership. I’m just a country lawyer from Connecticut. Ms. Karet, I spent a lot of time on the road in Connecticut. I spent a lot of time in convenience stores and pumping gas. I hear and see the anger of consumers when they go to pay for what they buy. I know that the credit card companies are not the only ones responsible for the skyrocketing prices at the pump or any of the other commodities.

There are big oil companies, and we’re gripped by their greed. They prioritize shareholder profits and keep supply constrained and drive prices higher. That’s one of the reasons that I’ve helped to spearhead, with Senator Whitehouse, a measure called the Big Oil Windfall Profits Tax Act, which would establish a tax on industry profiteering and lower consumer costs with relief rebates.

I am struck in your testimony that the vast majority of gas for American consumers has seen its fees rise by as much as 26.5 percent. Consumers in Connecticut are hit by that increase in fees. Twenty-six point five percent increase in a single year as they are struggling with these higher prices.

I understand that the card industry says that they’ve imposed a cap on those fees at a \$1.10. That doesn’t adequately protect consumers, does it?

Ms. KARET. Senator, it’s a wonderful question and you’ve asked a—it’s a very complex subject, as you know, because we’re dealing with global economy issues. Specifically, what would you like me to respond to?

Senator BLUMENTHAL. What I would like to know is how are consumers impacted by that 26.5 percent increase?

Ms. KARET. As we all know, the retail price of gas is at historical highs right now. That’s directly related to the commodity market where the price of a barrel of oil is also at historical highs. It wasn’t so long ago that oil was a, you know, between \$60 and \$70 a barrel. At some point early on in the Ukraine war, oil hit \$140 a barrel. Retail pricing in gasoline is one of the most competitively—competitively dynamic markets that I am aware of. We follow street pricing, and the margins are impacted as the cost of goods go up, so do the retail prices.

Senator BLUMENTHAL. Let me ask Mr. Kantor the same question.

Mr. KANTOR. Yes. Thank you, Senator. I think it’s a really important question. Our members sell about 80 percent of all the gasoline across the country, including in Connecticut. We have some wonderful members doing that there. The Energy Information Administration has looked specifically at gasoline pricing, and they divided up the country into the different regions and found that there is 100 percent pass-through of both cost increases and cost decreases into the retail price of gasoline in every region of the country. These fees, without question, get paid by consumers every day.

I will tell you, 26½ percent, it’s an unbelievably high increase. Our members are reporting to us that this year their fees are up much more than that. We had a member we talked to this week. Their fees are up 49 percent this year. This is completely unsustainable in an industry where we know people are upset about gas prices. Just, by the way, for the retailers themselves, as

gas prices go higher, their margins get smaller. The FTC has documented this, but the fees get higher. At the same time, we have members literally some during the past few months who have sold at no margin just to try to keep some market share.

Senator BLUMENTHAL. The term has been used by the two officials from Visa and Mastercard that this market has never been more competitive. That it's highly competitive. They're including in the market different companies like apples and oranges, correct?

Mr. KANTOR. That's exactly right.

Senator BLUMENTHAL. Let me ask you. What can the FTC do in the absence of legislation? Can it act to try to foster competition?

Mr. KANTOR. The FTC has investigated and done some good things, for example, when there were problems with the way Visa and Mastercard controlled what was happening with the payment card terminals that accepted EMV chip cards. They've had some other open investigations about actions by Visa and Mastercard to try to block the competition on debit cards. There are some things they can do, but they are limited because they don't have jurisdiction over the banking industry.

The Department of Justice had taken some action as well. In fact, their Antitrust Division has perhaps brought more cases in the payments area than any other area over time. As you know, litigation is hard. It takes a very long time, and it's really best at finding compensation for past problems. Really, Congress is best at designing, well, "What's the way for the future to look in terms of having a competitive market that functions?"

Senator BLUMENTHAL. Thank you. Thanks.

Chair DURBIN. Thanks, Senator Blumenthal. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Anytime we're looking at a competition issue, I'm always interested in how it affects consumers and representing my State as I do, I'm always concerned about how things affect Utahans. Utahans have suffered through a particularly acute degree as a result of the rampant inflation that has resulted from excessive Federal spending. Since the beginning of last year, Utahans have seen their monthly expenses go up more than \$700 a month. Just their ordinary monthly expenses. Talking \$8,400 plus per year just to buy the same basket of goods and services that they were purchasing before. It's all more expensive now.

Whenever approaching this or any other topic in the competition face, I'm looking at how this would affect them, how it does affect them, and what, if anything, we ought to do about it. With that in mind, Mr. Sheedy, let's start with you. There are those who have argued that it's anticompetitive—it's anticompetitive cartel behavior for banks through the Visa and Mastercard networks to get together and collectively agree that they're all going to change—charge the same interchange fees to merchants. What's your response to that?

Mr. SHEEDY. Senator, Visa sets the interchange fees, these default interchange fees that pass from merchants, acquiring banks to issuing banks. We do that on our own. We don't do that with—we certainly do it with input from the marketplace. The impact that the pandemic has had on merchants has been really important to us. At the front end of the pandemic, we lowered rates for super-markets, restaurants, and education merchants.

More recently, 90 percent of the merchants in the system will receive a 10 percent reduction in the rates that they process. What's really important, I think, I'd like to stress is we are not raising rates. The average rate in our system for Visa credit has been flat since 2015.

Senator LEE. No, I get that, and I've got a limited time. I just want to be clear what I'm asking. I'm asking you to respond specifically to the charge that it amounts to cartel behavior to agree to charge the same interchange fees.

Mr. SHEEDY. We disagree, Senator. The setting of a default interchange fee we feel is highly competitive in the ways in which it delivers the same interchange fee to thousands of financial institutions that then go into the marketplace on behalf of consumers and merchants and compete and innovate. We feel that the model works very well. In a system where you need tens of thousands of banks supporting millions of cardholders and millions of merchants, there's no way to operate the system other than setting a default interchange fee.

Senator LEE. For there to be a network effect, in other words. You need the network effect in order for your system to work?

Mr. SHEEDY. In order for there to be a coordination of activity where consumers can transact from a card that's issued by a credit union in Utah with a merchant in New York, online or in person, you need to have a default interchange fee so that you know how the economic flows are going to work. And having that be the same interchange fee, irrespective of the size of the financial institution, promotes competition.

Senator LEE. Mr. Kantor, what's your response to that?

Mr. KANTOR. Yes. My response is, one, they don't need to do that. I submitted with my testimony an article from NYU economist Nicholas Economides, who has pointed out that because of the concentration in the market, both on the issuing side and on the acquiring merchant side, that just 90 contracts would cover 72 percent of all the credit card volume. Those big banks could easily set their own prices. You don't need that going on. And there's been much more concentration since then.

The other thing I would note is that having the same fees does not promote level playing field competition on the bank side either. John Blum from the Community Bankers testified previously before Congress in hearings, that their costs per transaction, because they're a smaller institution, were much higher than the largest banks. If you lock them in to the same prices on higher costs, of course, they're not going to be able to compete in the same way. Those large banks have won over a lot of those small bank customers into the credit card market, which is why credit cards is so much more concentrated than debit cards as a result of that.

Senator LEE. Mr. Kim, go with me. If you want to respond to this, that's great, too. I was also going to ask you separately. What would happen to credit card rewards in a universe in which you imagine that there's suddenly an alternative network through which merchants could process transactions?

Mr. KIM. The interchange pays for—I think roughly 60 percent of interchange revenue goes out in the form of rewards. I do believe it goes, you know, not just to the wealthy. Everybody loves the re-

wards. I think it's a much more broadly distributed value that people of all socioeconomic classes find. You know, in debit, there were debit rewards before the laws changed. Those debit rewards largely went away because interchange helped subsidize those things. You would see those rewards go away.

Furthermore, you would see banks of my size and smaller and maybe even somewhat larger—the economics of issuing credit cards, it's not what it once was. There's lots of competition. It's harder to do the big banks. I mean, it's interesting to come back to the last question. Yes. Maybe you could cover. Maybe. I don't even know that I agree that the largest banks could negotiate with all the millions of merchants and set the interchange. If they could, that would just put me out because I can't.

Senator LEE. Mr. Chairman, I see my time has expired. I've got one follow-up question I want to ask him that. Okay. If I'm understanding you correctly, you're saying the banks would still get paid for that transaction but get paid less and likely rewards programs would be the, you know, a casualty of them. There might be something left of them. There might not.

Mr. KIM. Yes. You know, depending on the rate, I assume we'd get paid. Yes.

Senator LEE. Okay. If that's the case, couldn't one argue that this is a manifestation of lack of competition and that the price is being artificially inflated by lack of competition, that consumer rewards provide a means of sharing in the monopoly—in the rents, you might say, in order to inflate demand and squeeze merchants. What's your response to that?

Mr. KIM. You know, the purpose of rewards is not to squeeze merchants. The purpose of rewards is so that you have a value proposition that makes people want to use your card. The competition—you know, the reward space is, is an intensely competitive space. Again, it's hard for a bank my size to compete with the likes of Chase that strikes a deal with Southwest Airlines. Perhaps that continues. It wouldn't be as rich. Again, it kind of puts me out.

Senator LEE. Thanks, Mr. Chairman.

Chair DURBIN. Thanks, Senator Lee. Senator Coons.

Senator COONS. Thank you, Mr. Chairman. Thank you to you and the Ranking Member for convening this conversation today. I am glad to see that on this panel we have represented the whole range of potential input, consumers, consumer advocates, networks, merchants, and a bank that is a credit card issuer. Clearly, I think we have to look at all of these four different sides of the credit card transaction universe when attempting to assess whether or not there's sufficient competition, what capping fees would do, and what the consequences might be.

Mr. Kim, I'm glad you're able to testify today and provide a bank issuer's perspective. I've heard from credit unions, community banks, large banks in my State that are credit card issuers, and they depend on interchange fees in order to be able to support the credit cards that they offer to consumers. Credit unions and community banks in particular are concerned that a substantial decrease in interchange would mean they could no longer sustain card programs that extend credit to individuals who might otherwise not be able to access credit cards.

I think the issue here isn't just losing rewards programs but losing access to credit and losing the ability of smaller issuers to participate and compete at rates that are lower than you might get from major cards. How do issuing banks rely on interchange to offer credit services, and what impact would it be if that revenue substantially declined for your bank?

Mr. KIM. Okay. I think you're on the nose there with your comments. You know, interchange is one source of revenue. Interest and fees on the credit card are another source of revenue. If that—one of the things that makes this lending—making small loans is very expensive. That's why you don't see a lot of people doing it. That's why it moves online where the costs are lower. We've been pushed—a lot of banks have been pushed out of the business because the revenue stream's just not there. In fact, you know, the interchange used to make it a more profitable business.

In fact, now that we pay the rewards out to the consumers, it's squeezed that as well. I think what you would see—so the very smallest of banks, they depend on larger banks like us to help them issue credit cards. The margins there are even thinner. I think you would just see that element of competition of issuing cards from the smallest institutions, from credit unions, from midsize banks, I think you'd see that just go away. It would be the larger banks that have the scale that can still do business in a profitable way.

Senator COONS. I mean, one of the challenges—I've also heard from retailers in my State, a family-owned grocery store, that their margins are so small that for them to pay an increase in interchange or swipe fees, this is a—you know, where you sit depends on where you're listening to.

On fraud and data breach, one of the concerns I've heard from a credit union in Dover, Delaware is that covering the costs of re-issuing cards, of investigating, of paying off the costs associated with a major data breach are not sustainable for a credit union or a small bank without interchange. Mr. Sheedy, is that something you've seen in your experience? Ms. Kirkpatrick?

Mr. SHEEDY. I'll start. Senator, the situation with fraud and cyber risk and the risks associated with merchants and consumers transacting online is an enormous issue. A decade or so, we had a similar magnitude of risk at the point of sale with counterfeit cards that had been generated primarily on the part of data that had been breached by merchants and cybercriminals. We addressed that with rolling out chip cards and chip terminals.

We have the same issue facing us now online, and there's roughly \$10 billion of fraud annually online with merchants and consumers transacting in a way that generates fraud. And among the changes that we're making in—have made in April is to encourage the adoption of secure digital tokens that will authenticate the consumer and provide more guarantees and more assurance to the merchants so that we can address that fraud. It will require the merchants to do their part.

We have invested \$9 billion, as I've mentioned, the last 5 years in fraud and security protections. Issuers are also investing. We have to make the same type of push to address this fraud online that we did in the physical point of sale with chip cards.

Senator COONS. Thank you. I'm sorry. Mr. Kantor wants to address that before I—

Mr. KANTOR. Senator, if I could. Actually, you raised some really important points, I think, in your earlier comments that I thought would be helpful because we do have a track record around the world of some reforms, and we haven't found in other parts of the world the parade of problems that Mr. Kim and some of his brethren talk about. In other parts of the world, credit has still been available. Credit cards have still been used very frequently, and there's still rewards and all those sorts of things.

I also did just want to clarify that we as merchants—and Laura Karet was clear about this in her testimony—we've not asked for a cap on credit card fees. There's a different market where we think there needs to be competition. Competition and market prices will help us here in ways that get at the types of problems you're worried about.

Senator COONS. Could I ask a closing question, Mr. Chairman? I just would be interested, Mr. Mierzwinski, Mr. Kim, Mr. Kantor, if you could just briefly speak to this question. Now, that we have a decade of experience and what happened with capping fees for a debit, do we know whether the imposition of interchange fee caps led to lower prices for consumers and better access for lower income borrowers, consumers in terms of low-cost banking services? Mr. Mierzwinski, if I might, Mr. Chairman.

Mr. MIERZWINSKI. Thank you for the question, Senator. I think that there are a lot of pressures on banks to lower the prices and to provide better services to lower-income consumers. A lot of that is being done through partnerships between banks and consumer advocates.

On the issue of bank fees and the price of banking, I think the banks always look to figure out a way to blame the latest regulation. They love to blame the Durbin Amendment. I can't believe that the numbers are there to say that the Durbin Amendment has hurt lower income or all Americans. I don't see it.

Senator COONS. Chairman Durbin, my hunch is, I should probably conclude this question at this point. I'd be grateful if Mr. Kim, Mr. Kantor could briefly speak to it.

Chair DUBIN. Sure. Let them.

Senator COONS. Briefly.

Mr. KIM. Yes. I would just say debit interchange is part of a checking account, and checking accounts have become more expensive for consumers. When that income went away, we had to look harder at how we did business and how we price things in order to make up for that. I would say last, in terms of like access to rewards and things, people with debit cards frequently are the more credit challenged folks. They can't get a credit card. Their rewards went away that they got on debit cards. I would say that's got to be limiting access.

Senator COONS. Mr. Kantor.

Mr. KANTOR. Thank you, Senator Coons. Yes. Consumers have saved tremendously. If you look at over the first 5 years of the Durbin Amendment being implemented, the producer price index that tracks wholesale costs that retailers pay was up 9.4 percent. The consumer price index that retailers charge to consumers was only

up 4.3 percent. There was still inflation, small amounts, but it was—there was tremendous consumer savings in that spread. Retail profit margins did not budge or go up in the slightest. You know, this is something we should put to rest here because it's a really good question.

Retail, in the United States, is one of the most competitive markets there is in the United States or around the world. Those profit margins—Laura's industry survives on 1.11 percent profit margins. The banking profit margins are over 30 percent, the highest industry sector that's tracked that way. It's remarkable. Either—one of two things is happening when the credit card industry argues that prices—consumer prices don't flow through and costs don't flow through. Either they don't believe competitive markets work, or they've been living so long with centrally setting the fees that they've forgotten how competitive markets actually work. Retail is unbelievably competitive.

Senator COONS. Mr. Chairman, thank you for your forbearance and for the broad range of testimony at today's hearing.

Chair DURBIN. Thanks, Senator Coons. Let me add for the record—I'm sure you're well aware—the infamous Durbin Amendment did exempt banks with lower than \$10 billion in assets. That would not apply to Mr. Kim's bank. For those, the Federal Reserve reported in 2021 that small banks and credit unions receive 53.49 percent of total debit interchange fee revenue in 2019. \$13 billion even though they only conducted 35 percent of the total number of debit transactions. It turns out the infamous Durbin Amendment was a boon to the small banks and credit unions. Thank you. I believe Senator Tillis and Senator Blackburn have worked out an agreement.

Senator TILLIS. Senator Blackburn.

Chair DURBIN. Senator Blackburn.

Senator TILLIS. No, go ahead.

Senator BLACKBURN. You need to go.

Senator TILLIS. I'm going to stick around anyway.

Senator BLACKBURN. You're going to stick around. Well, thank you all. Thank you, Mr. Chairman. I want to stay. Mr. Kim, let me come to you on this. I saw you shaking your head about banking profits, and let's continue with that. Do you want to—

Mr. KIM. Sure. I think those statistics—a lot of times banks look at the revenue as net interest income. I think that 30 or 40 percent applies if you kind of—but if you go to—you think about the grocer pays a lot for their costs. It doesn't account for the cost of money. When you do that, the profit margin becomes lower.

Senator BLACKBURN. All right. Ms. Karet, let me come to you. I've talked to retailers and heard from some retailers that talk about they have to eat this cost and they say it's most harmful to smaller businesses, the mom and pops. When I talk to people who are in the grocery and convenience store business, they talk a good bit about this because this is something that drives up the overall cost of doing business and compliance, right?

Ms. KARET. Senator, yes. Thank you. Just to put this in perspective, picking up on what was said earlier, we operate on about a 1-percent profit margin.

Senator BLACKBURN. Okay. Talk to me a little bit about how this contributes to this out of control inflation that we have because, right now, inflation's at over a 40-year high. You've got the cost of milk and eggs and bacon and coffee. Coffee's up over 100 percent when you're buying a bag of beans. Talk a little bit about that added cost and the impact on the consumer, your consumer.

Ms. KARET. The way the credit card swipe fees work is their percentages.

Senator BLACKBURN. Right.

Ms. KARET. When the price of goods go up, what's happening is the credit card companies are getting a higher percentage on a higher sale.

Senator BLACKBURN. Right.

Ms. KARET. That means there's more costs that we have to bear and pass along to our customers.

Senator BLACKBURN. That means the price on the shelf for a package of Oreos is going to cost more this summer.

Ms. KARET. That is absolutely correct.

Senator BLACKBURN. They're packing lunches for kids to go to camp and making a peanut butter and jelly sandwich and putting a couple of cookies in there.

Ms. KARET. Yes, ma'am.

Senator BLACKBURN. Okay. All right. Mr. Kim, I want to talk with you. I had read the GAO study that talked about the harmful impact of the Durbin Amendment. The comment was that it was one of the most harmful laws and regulations in terms of its negative impact on the availability of fundamental banking services. Give me the explanation of how this has adversely impacted the unbanked, the underbanked.

Mr. KIM. Yes. I can kind of come back again to—in, you know, a lot of the underbanked and unbanked—but underbanked would use debit cards—oh, sorry. Would use debit cards. The underbanked would use debit cards. That contributed to the revenues associated with those checking accounts and those services that we offer them. Those revenues went away, and it made the—it made us—it forced us to increase the costs on those accounts. What you saw in the banking industry was a decline in the amount of free checking that was offered.

You know, the banking industry is resilient and, you know, we figure out how to overcome things. Over time, just like Ms. Karet probably can do the same thing in her business, you figure out ways to overcome challenges. Now, I think the banking industry has a good record of offering services to the underbanked. We've worked our way through that.

Senator BLACKBURN. How did this affect your total customer mix? Did your customer base grow—did it as people moved to debit cards?

Mr. KIM. You know, we probably saw sort of a, you know—just, just our own statistics, we probably saw sort of a—

Senator BLACKBURN. Sort of static?

Mr. KIM. Yes, yes. A stagnation there. There's not as much appeal at the lower end where the big numbers are.

Senator BLACKBURN. A change to the credit routing system, would—what kind of impact would that have?

Mr. KIM. You know, again, I would say what that would do is reduce the money available associated with offering credit cards. It's kind of an expensive proposition for somebody our size. It's been a declining profitability business for a number of years for a number of reasons, competition, regulation. It's, you know, one of the most—it's the most regulated business we're in. We spend the most money on compliance officers and responding to regulators in that business. There's a lot of—

Senator BLACKBURN. Okay. Let me—

Mr. KIM [continuing]. You can get in trouble if you do something wrong, and we get out.

Senator BLACKBURN. Right. My time is expiring. Ms. Kirkpatrick, I've got a question for you. As a courtesy, I will submit it because I want to know what your cost is because you accept the responsibility for loss, for fraud, for things of that nature. I'd like to know that percentage, what that means to Mastercard each year, how much that costs you.

Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blackburn. Before I recognize Senator Hirono, I'd ask consent to enter into the Record the report of the American Bankers Association that in 2010, the year the Durbin Amendment was enacted, 53 percent of Americans had free checking. Five years later, under the Durbin Amendment, the American Bankers Association reports that the majority of Americans, now 61 percent, have free checking. Free checking has gone up, not down. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. It's good to know that the Durbin Amendment had some very positive impacts. Thank you. Although I was told that I actually signed a letter when I was in the U.S. House that raised questions about your amendment. It's good to know that it all worked out. Oh, goodness gracious.

Okay. Mr. Mierzwinski, you described in your opening statement how credit card fees lead to higher prices for consumers. I saw an estimate that the average American family spends \$700 a year as a result of higher prices due to credit card fees. You said that the bulk of the interchange fees goes to rewards programs. I was looking at a chart that is 2019. The chart shows that based on household income, the lower the household income, the greater the use of cash for payments and debit cards.

For example, according to this chart in 2019, if you made under \$25,000 in household income, you generally paid with cash 55 percent of the time, 5 percent credit, and 31 percent debit. Then if you're making over \$200,000, then it would be 10 percent cash, 65 percent credit, 15 percent debit. Based on what you testified, most of these reward fees go to higher income people. That correct?

Mr. MIERZWINSKI. That's exactly right, Senator. The Federal Reserve economists at the Federal Reserve Bank of Boston have done studies that show the same thing. Essentially, the worst-off Americans, people that don't have credit or debit cards, pay these swipe fees, pay these increased swipe fees because merchants, due to the rules that are imposed on them by the dominant duopoly, Mastercard and Visa, they don't—can't do anything else but to

bake the fees into all of the costs that all consumers pay, including low-income Americans.

Senator HIRONO. Then while some of the really large companies like Amazon and Walmart may be able to negotiate for lower interchange fees, small businesses don't have that kind of power.

Mr. MIERZWINSKI. That's exactly right. Thank you for that.

Senator HIRONO. For Ms. Karet and Mr. Kantor, I have a series of questions relating to the honor all cards rule. First of all, can somebody just briefly tell me what that is? Then what impact does this rule have on the fees paid by merchants and often passed on to consumers, and would the elimination of this rule result in greater competition and lower fees?

Ms. KARET. The honor all card pretense is that if you take Mastercard or Visa, you have to take all of their products. There are lower fee products and higher fee products. As a just FYI, the higher fee products tend to be the reward cards that we're talking about. Something that I think you should know is that Visa and Mastercard are actively transferring customers into the higher rewards cards. We end up paying a higher fee overall.

Senator HIRONO. A merchant can't say, I'm only going to accept this type of Visa or Mastercard?

Ms. KARET. Correct. That's correct.

Senator HIRONO. Isn't that a tying case?

Mr. KANTOR. Senator—

Senator HIRONO. Somebody mentioned antitrust.

Mr. KANTOR. Yes. Senator, so, interestingly, there's two pieces to this honor all cards rule, both of which are a problem. One is that you have to take, if you're a merchant, every single type of card even if they're very expensive to take the least expensive one. That is destructive of competitive markets on the rates on those cards.

The second one also is you have to accept the cards from every banking institution under the Visa and Mastercard umbrellas if you want to take any of them. What that does is it tells these banking institutions, even the largest ones, that they no longer have any incentive to go to a merchant and say, "Hey, how about we come up with a deal to do business together because all the merchants are required to anyway?" That's what's so destructive of this competitive market and why it inflates fees to such a large degree.

Senator HIRONO. If you were to eliminate this rule, would that lead to—well, I think you just answered my question. Would lead to greater competition?

Mr. KANTOR. There's no question it would lead to more competition. There are quite a few other rules, including the setting of the prices that are problematic here that have to get dealt with. That is one of the central things getting in the way of real market competition.

Senator HIRONO. Did you want to add something, Ms. Karet? Okay. In a situation like that, I think there might have been a case that went before the Supreme Court where a merchant said, "I don't want to take all these. I have to take all these different kinds of cards from one entity." That might be an area for us to explore to eliminate this honor all cards rule. Wouldn't merchants like that, especially small merchants?

Mr. KANTOR. We think that would be a great area to explore to open up the market. Yes.

Senator HIRONO. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. I do not want to suggest that I would malign the Durbin Amendment. I think, like all policy around here, some of it worked. Some of it may not work. We always got to look at refreshing things based on the circumstances of the day.

Mr. Kim, just to go back to the GAO report, can you talk about—just a little bit more about the effect that the Durbin Amendment has had on banking in general, the things that you're most concerned with? Give me the top two if you have two.

Mr. KIM. The GAO report—you don't have to take my word for it; take the Government Accountability Office—found it was among the top five laws and regulations most cited as having significantly affected the cost and availability of basic banking services. That's a statement. There's other arguments about those things. That's a fact.

Senator TILLIS. As you're going through this, also, the Federal Reserve Bank of Richmond indicated that nearly 99 percent of the savings realized from the Durbin Amendment were not passed back to the consumer. I mean, I think we're here ostensibly. I'm not a cheerleader for businesses. I'm a cheerleader for consumers. I'm trying to figure out if we're considering policy here that's going to have a net benefit to the consumer. It would suggest that the Durbin Amendment didn't. Is that accurate?

Mr. KIM. That's what that study would say. That's what the facts in that study would say. You know, figuring out exactly how price changes are passed on is a complicated thing. The Durbin Amendment, it's been a long time ago, but that is the fact in the study.

Senator TILLIS. Mr. Kantor, if you want to briefly respond. Although I'm the last one here, so I may be able to indulge the Chairman a little bit, not too long, but.

Mr. KANTOR. Yes. There's two quick things. One, on the Federal Reserve Bank of Richmond, they made clear, actually it does not say what some of the credit card industry says. Their study was a survey, didn't look at any actual economics of pass-through. They just did a survey of folks. It could not be relied on to say whether it was pass-through or not. And they also had bias issues they flagged in their survey.

Senator TILLIS. Could it be fair to say though that if it's at 99 percent, there may have been an unhealthy amount that didn't go back to the consumers?

Mr. KANTOR. No, they also asked the question wrong. See, merchants don't set their prices by saying, "Hey, this cost went down. I'm lowering this price." What they say is, "What's the market? I got to compete with the guy down the street." Over time, their profit margins become very narrow, like Karet indicated, and it goes down to their cost. We all know that's how competitive markets work. Asking it was the wrong way to get at it.

Senator TILLIS. I want to get to something else. I just want to see if my first impression—you know, when we talk about the dollar amount increasing as the transaction amount increases, is it

also fair to say, Mr. Sheedy, Ms. Kirkpatrick, that there's also a proportionate amount of risk and potential default in payments involved? I mean, isn't a part of the rationale behind the percentage going up is that there's a risk of fraud in some of those that you've got to recapture it, right?

Ms. KIRKPATRICK. Yes. That assumption is correct. As volumes increase, the risk of fraud increases. We've seen—

Senator TILLIS. Talk a little bit about—so talk a little bit about card not present and additional rising costs in the area of the internet transactions and additional risk that you've got to recoup some of the cost or you can't have an operational business, something that's important for our consumers.

Ms. KIRKPATRICK. Yes. You know, Mastercard is spending billions of dollars to protect consumers against online fraud. Certainly, as volume increases, fraudsters get more sophisticated. That means that Mastercard has to invest more to protect against that fraud. We've spent billions of dollars to protect consumers against fraud. Just last year, one of our cyber and security tools prevented \$10 billion in fraud for consumers across the card not present environment.

Senator TILLIS. Mr. Sheedy. Then I'm going to come—Ms. Karet, I'm saving you for last.

Ms. KARET. Oh, great.

Mr. SHEEDY. Senator, thank you. The consumers want to transact online. They enjoy the convenience. Merchants find that they can reach new customers and lower their costs to provide services online. The difficulty is the way that the system works at the moment as safety and security has been our high priority. There's still too much fraud. There's still too much uncertainty. One of the changes that we're making in April and we created an incentive through interchange.

Interchange just isn't a pass-through. It's also a mechanism by which we can make the system more safe and more secure. With one of the changes that we made in April, we are seeing a rapid adoption of these secure digital tokens to better authenticate transactions online so that consumers and merchants can more safely and assuredly transact. That's good for everybody. It's good for merchants, good for consumers.

Senator TILLIS. Isn't it fair to say that if we were to go in and dramatically decrease what you could charge to recoup the cost of your operations that you'd have to take a look at the risk mix of people that you'd be even wanting to issue credit cards to? I mean, wouldn't some of the most credit-challenged people be hurt the most by this if you're having to make a business decision about the population you could serve?

Mr. SHEEDY. One way to answer your question, Senator, is when interchange has been price regulated by governments around the world in other markets, you see a narrowing of the issuance of credit cards in those countries.

Senator TILLIS. Yes. It's logical.

Mr. SHEEDY. Those fees to those consumers end up going up, and the features and the benefits they get from those cards go down. We think that that would be a horrible outcome.

Senator TILLIS. Ms. Karet, I'm very sensitive. We've got a lot of retailers in North Carolina, across the Nation, a lot of the recipients of Paycheck Protection Program, a number of other things that we implemented in response to the impact of COVID was to recognize that we've got a lot of businesses out there on the bubble. I know that your sector is struggling mightily with some of the shutdowns and other things that we've been dealing with. Let's assume that the fees were cut in half. Would that solve all your problems in your industry, or—the answer in the laugh is all I needed.

I mean, a part of what we need to do if we're talking about having a meaningful impact and a reduction in consumer prices, there's a lot of other policies that we have to talk about here. It's not going to make a big difference. You've got a lot of supply chain problems. You've got a lot of inflationary problems. Tell me a little bit about—if you could ask Congress to act on any policy matter that would help the retail industry, would this be on the top of the list, or are there other things that we should be looking at to fix the fundamental problems that businesses like yours are suffering through?

Ms. KARET. Senator, thank you so much for asking that question. If you will indulge me for 1 second, I'd like to—

Senator TILLIS. I'll indulge you as long as the Chair will.

Ms. KARET. Hopefully, the Chair will also indulge me. I'd like to go back to the fraud question because there's a very important fact that has not been stated, which is the merchant bears the cost of online fraud. When card is not present, the merchant bears the costs of that fraud. What has happened through COVID and through natural consumer behaviors is the mix of shopping has moved online.

Our costs are also going up from that perspective. We're talking about the cost and that these guys have invested, which I believe they have in terms of anti-fraud. I just think it's really important to remember we're paying the cost of online fraud.

That said, so to answer your question in terms of what I would want, the credit card swipe fee issue is one of the biggest issues that we have that I think that the Government has a role in. I don't know today what the Government could do related to our inability to source toilet paper. That's actually from old—that's the beginning of the pandemic. We have plenty of toilet paper now. Credit card fees, as I've said before, we operate on a 1-percent profit margin. Bank fees today are our third largest cost. We actually pay more in bank fees than we make.

What we are looking for is fair competition. Not asking for huge regulatory things and caps and decreases. Look. If you want to—if you want to have decreases, I'll take them. That's not what we're asking for. What we're asking for is to create a level playing field so that there's competition. What Doug said before is exactly right. Competition works. In this industry, there isn't any. I do believe that's the role of our Government is to create level and fair playing fields.

Senator TILLIS. I think, you know, I'm going to have a hearing this afternoon that's kind of loosely related to this subject. I also think it's something that we in our banking—in my capacity in Banking Committee, we should take a look at that. The—I believe

in hypercompetition. I think that it's incredibly important. If there is a basis for anticompetitive behavior, we've got a Division in the DOJ to deal with it. I think a lot of the things that we can do to kind of ease the burden and address these issues I look forward to taking up in the Banking Committee. Thank you all.

Chair DURBIN. Thanks, Senator Tillis. By virtue of the miracle of Zoom, I think we'll join the Senator from Minnesota. Are you on board?

Senator KLOBUCHAR. I am on board. Thank you very much, Chair Durbin. I want to first ask, as you know, Mr. Chair, one of my jobs is the Chair of the Subcommittee on Antitrust. I do a lot in that area. I thought I would take a little different approach and ask you about this, Mr. Kantor.

Today, a number of our witnesses have testified about a lack of competition in credit and debit card markets resulting in higher interchange fees that can harm consumers, merchants. Do you think that stronger antitrust enforcement could lead to more competitive credit and debit card markets?

Mr. KANTOR. Thank you, Senator. I do think more and better antitrust enforcement would be welcome here. It's needed. This is an area where the Antitrust Division of the Department of Justice has been active over time, as has the Federal Trade Commission. There's a lot more to be done. These litigations go on for a very long time, involve lots of economists. There are, as we pointed out, big pieces of the puzzle that are still unresolved, how the fees get set and the rules and restraints that go around protecting those fees from market forces. Absolutely. Some more enforcement would be welcome.

Senator KLOBUCHAR. Very, very good. In your opinion, and, you know, you've got an active Antitrust Division. You've got interest in going after cases. In your opinion, what's the impact of Supreme Court decisions like *Ohio v. American Express* on competition in credit markets?

Mr. KANTOR. We disagree with the opinion in *American Express v. Ohio*. We think it will cause problems not just in this area but, frankly, dealing with other technology platforms which have been a focus I know, Senator, of your Subcommittee and others in the Congress, and that could be problematic. What's important to note, though, is that even under the standard articulated in *American Express v. Ohio*, this credit card market is an antitrust problem. There is plenty of consumer harm in the record of cases that are going on right now to show that, in fact, it's an antitrust problem.

That said, as I mentioned earlier, there's an important role for Congress to play here to decide how competition should work going forward so that we have some. These antitrust cases, while very, very important, you know, courts really have a different role in this. We want to pay attention to the Congress's role here as well.

Senator KLOBUCHAR. Very good. Yes. I mean, the way I look at it—and this is off this topic. If you have monopolies, which we have in the tech area—Google has 90 percent market share—there's just no doubt. We have monopolies. That you have to at the same time—and maybe this is what you're getting at in a very different context. You have to ensure there's rules of the road in place by industry so that if there's not going to be a change through the

courts—in my case with tech, which will take years—you at least have to be able to make sure that they're not preferencing their own products and creating an anticompetitive marketplace. That's what this is about. Mr. Kim, I have a question of you.

Mr. KIM. Sure.

Senator KLOBUCHAR. You've testified that payment systems require constant investment and protection and that interchange fees cover much of that cost. We can all agree that card transactions have to be safe, that cybersecurity issues, threats, those things. Can you elaborate on the types of costs that interchange fees help cover from the perspective of midsize and community card issuers?

Mr. KIM. Sure. We have to have 7 by 24 customer service available to our customers wherever they're transacting, whatever time zone. When there are problems with transactions, if we have to—if we're going on networks around the world that are not as reliable, it's important for us to be able to choose our networks because all networks are not created equally. Sometimes we have to resolve problems there. We are constantly looking at data to try to assess fraud. We had a substantial fraud attempt with bots trying to open up accounts, open up credit card accounts, and then, in turn, extract money from the consumers and then ultimately us.

It's that kind of investment in data, investment in information so that we can collect cell phone numbers and tell people, "Hey, this transaction went through on your card. Was it really you?" Can we do that instantaneously? Those are just some examples of how we invest to make the transaction and payment business work.

Senator KLOBUCHAR. Okay. Very good. The question kind of along the same line, can you talk about how you see midsize and community card issuers fitting into the payment landscape now and into the future? That's my last question.

Mr. KIM. Sure. It's—that's a challenging thing. You know, we spend a lot of time looking at all the financial technology firms that are getting into the business and taking away parts of it from the traditional banking industry and how can we partner with them effectively and—or compete against them. Certainly, as many have said, you know, across may be apples and oranges. I think it's all payments, so maybe they're all apples. Lots of competition going on there. It's—and it's hard for us, but we have to be nimble. We have to partner with smart organizations that can help us with networks. You know, my ability to process transactions internationally at all times of the day depend on the networks and depend on the investment in the networks. That's going to be—we have to have good partners, and they have to be able to help us. That's how we'll continue to exist in the payments ecosystem.

Senator KLOBUCHAR. All right. Excellent. Thank you very much. Thank you, Senator Durbin.

Chair DURBIN. Thanks, Senator Klobuchar. I just have a few questions. Mr. Kim, first, let me say that we did a little research when you were added to the panel about Commerce Bank. I'm familiar with, of course, living in the region. I want to thank you for continuing to offer free checking even through the onslaught of the Durbin Amendment. You continued to offer free checking. It's note-

worthy, and I want to make sure it was part of the record. On your profitability, your bank's doing pretty well. Would you agree?

Mr. KIM. Yes.

Chair DURBIN. You're exempt—not exempt from the Durbin Amendment because your valuation is over \$10 billion?

Mr. KIM. That's correct. We are doing well, but we're resourceful and we're nimble and we figure out how to do things. I would say we did discontinue free checking for a period of time, and we re-introduced it recently in the last year.

Chair DURBIN. Glad you did that. When you talk about your profit margins, I won't repeat what we're reading here. I will say, Ms. Karet, what you're dealing with, 1½ percent, is about as thin as it gets in terms of vulnerability. The one thing that you said earlier that stuck with me, among other things, was that the change in fee came in a stack of papers 300 pages long?

Ms. KARET. It was a very large deck.

Chair DURBIN. Did you have to hire a lawyer, or did anyone go through this with you?

Ms. KARET. We're lucky enough that we have a good team of accountants and lawyers to go through that. It's a very complicated thing to understand, and I think purposely so to understand what the fees are and how they're changing.

Chair DURBIN. Mr. Cantor, Ms. Karet has said she has the staff—professional staff to do this. You're representing convenience stores. Some of them are large chains, but some are not. How do they cope with this 300-page fee change?

Mr. KANTOR. They can't. Sixty percent of them are single store operators, and they don't even get the hundreds of pages, frankly. They don't get any of this. They just take the increases, and it is very difficult for their businesses.

One quick thing I'd note too with respect to this free checking question I want to clear up because a couple of the questions today dealt with this GAO report. GAO got a couple of studies handed to it, at least one of which, I think maybe both of which, were cited by Mr. Kim. What those studies did was they looked at the decline of free checking starting in January 2009. The Durbin Amendment didn't go into effect until October 2011. There's actually almost 3 years of decline in free checking while this was going on. I cite many, many articles—I, I frankly ran out of the energy to continue citing them. This was during the time of the financial crisis.

Yes, free checking was going away before the Durbin Amendment ever happened. Mr. Kim properly cited the study for noting that free checking even continued to go away after passage of the Durbin Amendment, but it was over a year before any of that took effect. The study notes that, well, we're not going to look at other changes in Dodd-Frank because, you know, they didn't take effect for more than a year after passage. All of this is just a sideshow, frankly, one, to distract from anticompetitive activity in credit cards, but two, to try to discredit the reforms that occurred.

Losing free checking because of the financial crisis and the difficulties banks were in at that time is not the same as a reform that came into effect years later and that the ABA numbers you cited showed actually went up when you look at the right time period. Free checking has its own competitive market dynamics that

mostly has to do with interest rate environment and how banks are competing and want to compete to get more money in from depositors and the value they place on that. It's an unrelated thing there.

Chair DURBIN. Thank you very much.

Mr. MIERZWINSKI. Senator, could I add something on that GAO report that I—

Chair DURBIN. Sure.

Mr. MIERZWINSKI. The banks are relying heavily on this GAO report that claims the Durbin Amendment has caused the downfall of everything. It's not a study. It's largely based on a survey of a few stakeholders that the GAO interviewed. Some stakeholders said, "What's the worst thing you've seen? Was it the Credit CARD Act, or was it the Durbin Amendment, or was it the creation of the CFPB?" They'd simply—a small number of stakeholders said the Durbin Amendment was bad. I am unimpressed with the GAO study, the most recent one.

Chair DURBIN. I have been edged out by COVID-19 as one of the worst things we've ever faced.

[Laughter.]

Chair DURBIN. At least for now. Who knows? You know, it could get worse going forward. My bottom line is simple. It goes back to 16 years ago when I walked in this room and saw that stack of papers and had one of the customers of Visa and Mastercard say, "We can't even get the complete contract. They give us the summary of it, and we couldn't read it if we received it." It is so complex. It lacks any effort toward transparency or simplicity.

Second, there is no competition. They announced the fee changes, both companies, the same day. They're coming at you, Ms. Karet. You know they are. It's a dual engine force in this situation. I don't think that's healthy. I think if you believe in the market economy, competition is part of it, isn't it? Shouldn't it be? I mean, I think that's what most MBAs conclude. Maybe even Liberals. I would say that this conversation will continue. We're going to have a hearing on this subject at least every 16 years.

[Laughter.]

Chair DURBIN. I think the American people need to know the story about these fees that cost merchants and customers and why they're not disclosed. There's a reason. I think there'd be a revolt even more strongly against them. We're facing inflation, and the last thing the American people need is a higher swipe fee. I wish both companies had resisted the urge to make some money when they can.

The hearing record will remain open for a week. I have some letters and statements, whether they're for me or against me, or for or against the Durbin Amendment, all will be included in the record. At this point, the hearing stands adjourned. Thank you.

[Whereupon, at 11:57 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

Miscellaneous submissions:

American Bankers Association	158
American Beverage Licensees (ABL)	137
American Sale	182
Bettancort, Jessica, Letter	188
Big Y Foods, Inc.	180
Carlton's Men's & Women's Apparel	193
Credit Union National Association (CUNA), American Association of Credit Union League (AACUL)	141
Credit Union National Association (CUNA), Jim Nussle, President and CEO	144
Electronic Payments Coalition	151
Food Industry Association (FMI)	169
Heart 'n Home, Julie Wurr	186
International Franchise Association (IFA)	178
Iowa Grocery Industry	176
Kennedy, Sean, Letter	211
Kindship	195
Massachusetts Food Association (MFA)	181
Minnesota Grocers Association (MGA)	197
Miscellaneous Letters for the Record	150
National Association of Federally-Insured Credit Unions (NAFCU)	134
National Bankers Association (NBA)	198
National Grocers Association (NGA)	202
National Restaurant Association	210
National Retail Federation (NRF), May 3, 2022	174
National Retail Federation (NRF)	205
Nebraska Grocery Industry Association, Nebraska Retail Federation and Nebraska Hospitality Association	201
Retail Industry Leaders Association	208
Riceberg, Tara, Letter	190
United States Hispanic Chamber of Commerce (USHCC)	212
Yedi Houseware Appliances	192

TESTIMONY OF
DOUG KANTOR
GENERAL COUNSEL, NATIONAL ASSOCIATION OF CONVENIENCE STORES
BEFORE THE
U.S. SENATE COMMITTEE ON THE JUDICIARY
HEARING ON
“EXCESSIVE SWIPE FEES AND BARRIERS TO COMPETITION IN THE CREDIT
AND DEBIT CARD SYSTEMS”
MAY 4, 2022

Thank you for providing me with the opportunity to testify on the swipe fees that are imposed by the credit card industry on merchants. Most consumers are not aware of these fees and do not see the effects they create on the cost of goods and services and the U.S. economy, but those effects are dramatic. For merchants, the fees are a constant source of stress and financial difficulty, while for the economy the fees reduce economic efficiency and contribute significantly to inflation.

I am testifying today on behalf of my association, the National Association of Convenience Stores (NACS), as well as a coalition that we helped found to try to address these issues, the Merchants Payments Coalition (MPC). NACS is an international trade association representing the interests of the convenience industry. In the United States, the industry includes more than 148,000 stores employing 2.3 million people. It is truly an industry of small business with a full 60 percent of the industry comprised of single-store operators. The industry handles about 165 million transactions each day – a number equivalent to about half of the U.S. population. An efficient and competitive payment system is critical to the health of the industry and its employees.

The MPC is a group of retailers, supermarkets, restaurants, drug stores, convenience stores, gas stations, online merchants, and other businesses focused on reforming the U.S. payment system to make it more transparent and competitive.

I. Executive Summary

The credit and debit card systems in the United States are burdened by anti-competitive conduct that makes the systems less efficient and effective than they should be. Two payment card networks, Visa and Mastercard, dominate the market and bring together thousands of banks across the nation to wield market power in ways that harm competition in the marketplace. Merchants have no realistic options to the dominant networks. With very few exceptions, merchants must accept all credit and debit cards that run over those two networks no matter how high the fees the networks charge and no matter how onerous the rules and conditions they impose. The high fees that result from this exercise in market power inflate the costs of goods and services across the nation in a way that harms consumers.

Visa and Mastercard each separately set the fee rates for the swipe, or interchange, fees that all the banks that issue cards with those networks charge to merchants. Because the swipe fees are centrally set in this way, the banks don't compete on price. That leads to problems that are common for anti-competitive arrangements – high and escalating prices and neglect of key aspects of the service (such as protection against fraud). Visa and Mastercard also dictate a complex set of terms or rules that govern how credit card transactions happen. These terms further insulate swipe fees from competitive market pressures and, in most cases, keep the fees confusing for merchants and hidden from consumers.

In particular, by imposing a rule that requires a merchant to accept all cards issued with a Visa (or Mastercard) logo if the merchant wants to accept any cards carrying those networks, the two largest networks remove the incentives for banks to negotiate with merchants on price or acceptance of their cards – and remove almost all bargaining power that merchants otherwise

might have had. This is a central element of the credit and debit card systems in the United States today and creates additional competition policy problems.

The problems caused by all this for consumers, merchants and the economy are immense. Total card fees imposed on merchants were \$138 billion last year – up from \$64 billion in 2010. Of that total, \$77.5 billion are fees for Visa and Mastercard branded credit cards and \$28 billion are fees for Visa and Mastercard branded debit cards - \$105.5 billion on just those two networks. The size of the fees and the fact that they are set largely as a percentage of transaction amounts means that they are an inflation multiplier. The United States already pays the highest swipe fees in the industrialized world. The roles played by the two dominant card networks and the fees and terms they set cause other problems as well by reducing incentives for innovation in new payment products and improvements in services such as fraud protection. The United States should have the most efficient, effective and innovative payment system in the world, but we don't. This market desperately needs changes so that there are competitive market forces that improve payments for everyone.

This testimony will cover a few topics relating to swipe fees. First, it will lay out some background on how credit and debit card payments work. Second, it will address the competition policy problems created by those payment systems. Third, the testimony will discuss the negative impact these fees have on merchants. Fourth, the testimony will note the negative impact of the fees on consumers. Fifth, it will describe the negative impact of swipe fees on the U.S. economy. Sixth, it will walk through a number of the myths that the credit card industry regularly espouses in order to distract from the problems with these payments.

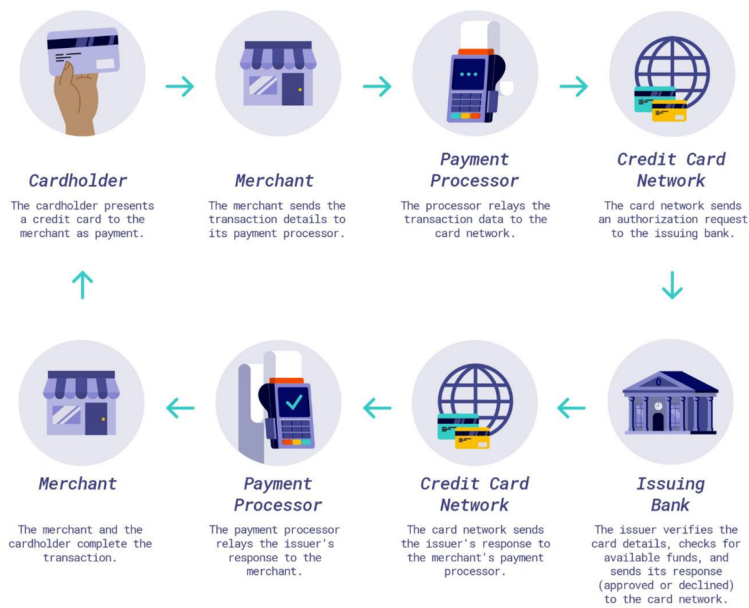
II. How Card Payments Work

In order to understand the competition problems with the credit and debit card markets, it helps to have some background on how these payments work. Neither Visa nor Mastercard, the two largest card networks, has a direct relationship with individual cardholders. Financial institutions such as banks and credit unions actually enter into agreements with individuals and issue cards to them. The structure is similar with merchants. The merchants contract with banks or payment processors to handle the merchants' acceptance of payment cards.

Visa and Mastercard actually started as associations of their bank members.¹ They do a few things to make card payments happen. They maintain data lines that connect the banks that issue cards to consumers with the banks that work with merchants. They also advertise their brands to make the cards more appealing to consumers and businesses. And, they set the prices that the card issuers charge to merchants as well as the rules that govern how cards are issued and processed. It is this price- and rule-setting role that raises antitrust issues to be addressed below.

¹ Both companies changed their structures in the 2000s in order to try to insulate themselves from antitrust liability after a court of appeals held in 2003 that Visa and Mastercard "are not single entities; they are consortiums of competitors" and that the rule then challenged by the DOJ was "a horizontal restraint adopted by 20,000 competitors." *United States v. Visa U.S.A. Inc.*, 344 F.3d 229, 242 (2d Cir. 2003). Some major banks still own billions in restricted shares in the companies that they cannot sell pending final outcomes of antitrust litigation.

A good explanation of the process of a card payment can be found at knowyourpayments.com.² In the simplest terms, when an individual dips or swipes a payment card at a store, the information necessary to process that payment goes to the merchant's bank (or processor) who sends the information to a card network (e.g., Visa or Mastercard) and that network sends the information to the card issuer (the bank that gave the consumer that card), then a message authorizing the transaction (or declining it) goes back through each of those entities to the merchant's payment terminal allowing the transaction to take place. The clearance and settlement of the funds takes place later through a similar process. The graphic below depicting this basic process can be found at corporatetools.com.



According to the Federal Reserve Bank of San Francisco's Diary of Consumer Payment Choice, credit cards accounted for 27 percent of consumer transactions in 2020, debit cards

² See [Know Your Payments » Transaction Basics](https://knowyourpayments.com/transaction-basics).

accounted for 28 percent, and cash was 19 percent.³ This represented a large jump in credit card payments, which had been 24 percent of payments in 2019.

There are fees that each player involved in the processing of the card takes out of the amount that the merchant gets paid in the transaction. By far the largest fee is the swipe fee, or interchange fee, which goes to the bank that issued the consumer the card. That fee alone can account for about 80-85 percent of all of the fees involved in the transaction. The networks, such as Visa and Mastercard, impose their own separate fees, called network fees, in addition to the swipe fees. And, the merchant's processor or bank receives a fee for its services. Processing is a reasonably competitive market. Merchants don't always like how much they pay in those processor fees, but they have options to do business with different processors (or negotiate new agreements) and that helps discipline that cost. Merchant concerns about network fees are different than concerns about swipe fees. Networks set their own fee amounts, which is appropriate. Unfortunately, the two major networks have structured and applied their network fees to have certain anti-competitive effects to protect and grow their market power. The networks' market share and the way the networks bring together the card-issuing banks has enabled them to do this. Those concerns are related to, but different than, the problem created by anti-competitive behavior in the setting of swipe fees by the two major networks on behalf of card-issuing banks, which is discussed below.

Credit card issuing is very concentrated among a small number of very large banks. The ten largest credit card issuers in the United States collectively have about 80 percent of the credit card issuance market.⁴ Those issuers compete to get consumers to get and use their cards. They do this through a complex set of pricing mechanisms that include interest rates, a variety of rewards offerings, and a number of potential penalty fees and related terms. These complex pricing mechanisms can be difficult for consumers to evaluate and may lead them to choose offers that are less favorable than other offers.⁵ And, the enticement of credit card offers can lead consumers to create financial problems for themselves that are challenging to fix.

Because credit card issuers receive fees from merchants every time one of their cards is used, they have a strong incentive to push for those cards to be used as many times as possible. They have been particularly aggressive in trying to get consumers to use their cards for small, everyday purchases. Using credit for everyday purchases, of course, can create financial problems for consumers if they are not careful. Unfortunately, card issuers can be less concerned about individuals' financial problems due to the revenue those issuers earn from merchants.

³ Kelsey Coyle, Laura Kim and Shaun O'Brien, "2021 Findings from the Diary of Consumer Payment Choice," Federal Reserve Bank of San Francisco (May 5, 2021) available at [2021 Findings from the Diary of Consumer Payment Choice – Cash \(frb.org\)](https://www.frb.org/consumer/2021/05/2021-findings-from-the-diary-of-consumer-payment-choice). Credit cards make up a larger percentage of payments in e-commerce.

⁴ Bianca Peter, "Credit Card Market Share by Issuer," (Feb. 24, 2022) available at <https://wallethub.com/edu/cc/market-share-by-credit-card-issuer/25530>.

⁵ For an explanation of some of these confusing prices and terms, see Consumer Reports, "What Credit Card Offers and Rewards are Best for you?" (November 2012) available at <https://www.consumerreports.org/cro/magazine/2012/11/the-best-credit-card-for-you/index.htm>; and Adam Levitin, "Testimony Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs," (July 19, 2011) available at <https://www.banking.senate.gov/imo/media/doc/LevitinTestimony71911.pdf>.

Though there are problems, consumers at least have the benefit of competition among different credit card issuers that try to get their business. That can lead to helpful offers. Merchants, however, do not have that benefit due to the way that the two dominant card networks bring together card issuers from across the country into their two networks.

III. The Credit Card Industry's Anti-Competitive Activity

The central problem with credit cards in the United States is that the two largest networks, Visa and Mastercard, set the amounts of the swipe fees that the card-issuing banks charge for each transaction and they set the terms governing how these transactions happen. All of those card-issuing banks – particularly the largest ones which have the vast majority of credit card market share – could set their own prices and compete with each other for merchants' business. Those card issuers all compete that way for consumers' business. But, they refuse to compete for merchants' business. One hundred percent of the banks that issue cards with Visa logos agree to charge merchants the same schedule of network-fixed fees. The same is true for the banks that issue cards with Mastercard logos on them.

There is no avoiding the destructiveness of these agreements not to compete on price. Merchants have no ability to refuse accepting payment from virtually all the banking institutions across the nation. That is in part because retail is incredibly competitive in the United States. There are many different types of merchants trying to out-compete each other on price and service for the business of the American consumer. If one of them stops taking these credit cards, the competitor across the street will take some of their business. So, merchants take the cards and the fees increase at dramatic rates. In fact, economists with the Kansas City Federal Reserve Bank have studied these fees and found that, in light of the central fee-setting structure and the competitiveness of U.S. retail, swipe fees will increase to the point that retailers may go out of business.⁶ That is the only effective brake on the steep rise on these fees.

It is also important to note that the swipe fees banks charge merchants to accept their cards (the ones set by Visa and Mastercard) are not the same every time. In fact, they can vary dramatically. Visa and Mastercard set complex schedules of fee rates, and the fees vary based on the level of rewards associated with the card, the type of merchant accepting the card, the manner in which the card is accepted (online versus in-person and other aspects of acceptance) as well as, in some sectors, the card network's view of the merchant's level of security.⁷ The fees for the most expensive cards can be about triple the amount of the fees for the least expensive cards for some merchants.

In addition to the fee-setting, however, Visa and Mastercard impose a set of terms that further insulate those prices from the possibility of any competitive market forces keeping the fees in check. There are hundreds of pages of these terms and problems with them are detailed

⁶ Fumiko Hayashi, "A Puzzle of Card Payment Pricing: Why Are Merchants Still Accepting Card Payments?" Federal Reserve Bank of Kansas City (2004) available at <https://ideas.repec.org/p/fip/fedkpw/psrwp04-02.html>.

⁷ There are other factors that can change the economics as well such as other services (including tokenization, fraud detection, and other services) that the networks have tried to control.

well in ongoing antitrust litigation that is pending in the U.S. District Court for the Eastern District of New York.⁸

There are a few of these terms that merit particular attention. One, of course, is the central price-setting engaged in by Visa and Mastercard noted above. Another is the so-called “honor all cards rule.” This “rule” is imposed by both Visa and Mastercard on merchants. It creates an all-or-nothing proposition for every merchant across the country and says that if a merchant wants to accept any Visa- (or Mastercard-) branded credit card, that merchant must take every credit card with that brand (and the same with debit cards). “Honor all cards” completely removes any possibility for a merchant to negotiate prices or terms with any bank – and completely removes the incentive for any bank to try to negotiate prices or terms with any merchant.

Removing those normal market incentives for price competition and negotiated deals is very significant. Because the fees are so much higher for some cards than for others, merchants very sensibly might want to accept some of them but not others (for fear of going out of business). But, they can’t make that choice. If they could, of course, banks issuing the most expensive cards might be inclined to cut their prices, but they don’t need to worry about that because Visa and Mastercard have removed the normal market dynamics from the playing field.

Visa and Mastercard also put restrictions on banks to stop competition from creeping into the picture. They both prohibit banks from making any network that competes with them active on those banks’ credit cards.⁹ That way, one hundred percent of the transactions on credit cards that have Visa enabled on them go through the Visa network (and the same is true for Mastercard).

These prohibitions are very similar to rules that were the subject of litigation the U.S. Department of Justice filed against Visa and Mastercard in 1998. The rule in question was known as the exclusionary rule. It prohibited banks that issued cards under Visa’s or Mastercard’s brands from issuing cards from any of their competitors (including companies such as American Express and Discover). The U.S. Circuit Court of Appeals for the Second Circuit ruled in favor of the Department of Justice in that case and the exclusionary rule is no longer permitted.¹⁰ NACS filed comments with the Federal Trade Commission last fall discussing how Visa and Mastercard’s prohibitions against banks issuing credit cards with other networks on them violates the antitrust laws and harms competition.¹¹

⁸ A redacted version of the complaint filed in the case by NACS and others can be found at: <https://constantinecannon.com/wp-content/uploads/2022/04/13-cv-5746-Doc.-183-6th-Amd.-Complaint-Redacted.pdf>.

⁹ Federal Reserve Regulation II prohibits these types of exclusivity requirements on debit cards.

¹⁰ *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003), cert denied, 543 U.S. 811 (2004), available at [Second Circuit Decision in U.S. v. Visa \(02-6074\) | ATR | Department of Justice](#). American Express and Discover each sued for the damages they suffered due to the rule and reached settlements with Visa and Mastercard. [Discover, Visa and MasterCard settle antitrust suit | Reuters](#).

¹¹ [NACS-Comments-to-FTC-on-Unfair-Contract-Clauses-Fi.pdf \(convenience.org\)](#).

Visa and Mastercard also have a long history of restricting how merchants price their products to their customers. These restrictions formed a veil of secrecy around swipe fees that further insulated the fees from competitive market pressures. Some of those restrictive terms have been eroded through legal challenges over time. For example, the Department of Justice and seventeen states entered into a consent decree with Visa and Mastercard that became final in 2011 which prohibited those two networks from preventing merchants from offering their customers discounts for using less expensive payments.¹² Prohibiting merchants from giving American customers discounts strikes directly at the heart of how competitive markets should work. But, that is just one in the long line of actions the two largest networks have taken to undercut competition in the credit card market.

In fact, Visa and Mastercard's fee- and term-setting have turned competition on its head. While competition normally causes businesses to try to keep prices low in order to attract market share, Visa and Mastercard don't compete for merchants' business. The honor all cards rule and lock-up of all the banks takes care of that. Instead, Visa and Mastercard only compete to attract banks to issue more of their cards. They do that by trying to push the swipe fees they set on behalf of those banks higher and higher.¹³ It is the opposite of what real competition does and demonstrates how the market is broken.

The major card networks have also taken actions that erode competition from smaller networks. One recent example of these anti-competitive activities was the subject of an opinion by the U.S. Fifth Circuit Court of Appeals in litigation brought by Pulse, a debit network, against Visa. In that case, the Fifth Circuit found that Pulse's claims that Visa had violated antitrust laws to squeeze Pulse out of the debit market should be decided by a jury, "And a reasonable jury could find that some of Visa's volume-based agreements amount to exclusive-dealing contracts designed to squeeze Pulse out of the PIN-less transaction market."¹⁴ That was just the latest legal action raising troubling concerns about what the largest payment networks do to harm competition.

Visa has also sought to bolster its hold on the market and keep out innovative competitors through acquisition. Its attempt to acquire Plaid – a potential competitor in the debit market – led to a lawsuit from the Department of Justice to block the deal.¹⁵ Plaid offers a potential alternative technology for consumers to access funds in their bank accounts to pay for things which "likely would drive down prices for online debit transactions, chipping away at Visa's monopoly and

¹² [Final Judgment as to Defendants Mastercard International Incorporated and Visa Inc. | ATR | Department of Justice](#). The states that joined the action and consent decree were: Arizona, Connecticut, Idaho, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, Tennessee, Texas, Utah, and Vermont.

¹³ Andrew Martin, "How Visa, Using Card Fees, Dominates a Market," New York Times (Jan. 4, 2010) available at <https://www.nytimes.com/2010/01/05/your-money/credit-and-debit-cards/05visa.html> ("Competition, of course, usually forces prices lower. But for payment networks like Visa and MasterCard, competition in the card business is more about winning over banks that actually issue the cards than consumers who use them. Visa and MasterCard set the fees that merchants must pay the cardholder's bank. And higher fees mean higher profits for banks, even if it means that merchants shift the cost to consumers.")

¹⁴ *Pulse Network, LLC v. Visa, Inc.*, No. 18-20669, 18 (5th Cir. Apr. 5, 2022).

¹⁵ Complaint, *U.S. v. Visa, Inc. and Plaid, Inc.* (Nov. 5, 2020).

resulting in substantial savings to consumers.”¹⁶ Visa wanted to block the innovation and cost savings that Plaid could bring to the market by acquiring it – similar to Visa’s past pattern of trying to block competition.¹⁷ Acquisitions, exclusivity contracts and other moves have been used by Visa to protect its market power and block potential competition. All of this, of course, has been a detriment to the market, merchants, consumers, and the economy.

IV. Swipe Fees Hurt Merchants

Credit and debit card swipe fees are huge business and are growing at an alarming rate. Collectively, U.S. merchants paid \$138 billion in fees to accept card payments last year.¹⁸ That was a huge jump from the \$110 billion that merchants paid in 2020.¹⁹ That is on top of the fees nearly doubling in the decade between 2010 (when the fees were \$64 billion) and 2020.²⁰ And, it followed the decade between 2001 and 2010 when the fees more than tripled from \$16 billion to \$64 billion.²¹ The huge multiples by which the fees have grown seem impossible, but that is what happens when there is price-fixing in place of competition.

In the convenience industry, recent fee increases have been even more dramatic. In 2021, the fees paid by convenience retailers to accept payment cards jumped by 26.5 percent.²² Not only that, but the rate of increase has been even higher thus far in 2022 – and that was even before Visa and Mastercard moved forward with rate increases in April that, combined with the rate increases that Visa publicly said it would delay last year amount to an additional \$1.2 billion per year in additional fees.²³ These increases are completely unsustainable.

Even before these dramatic jumps, swipe fees, on average, were convenience retailers’ second-largest operating cost after labor. In fact, that is true for retailers in every sector. That means swipe fees are more than the average retailer pays for rent or utilities or for any other operating cost. Some convenience retailers have even reported that the fees are approaching their labor costs.

One reason for these dramatic increases is the destructive interaction between swipe fees and inflation. The majority of the amount of credit card swipe fees are set as a percentage of the total amount of each transaction. That means swipe fees increase along with every dollar of

¹⁶ *Id.* at ¶ 8.

¹⁷ *Id.* at ¶¶ 44-45.

¹⁸ Nilson Report (March 2022) available at [Nilson Report | News and Statistics for Card and Mobile Payment Executives](#). As noted, \$77.5 billion of the total are Visa and Mastercard credit card fees and \$28 billion are Visa and Mastercard debit card fees.

¹⁹ Nilson Report (July 2021) available at [Nilson Report – Merchant Processing Fees in the United States—2020](#).

²⁰ Stephen Mott, “Industry Facts Concerning Debit Card Regulation Under Section 920,” (Oct. 27, 2010) at 14, available at http://www.federalreserve.gov/newsevents/files/merchants_payment_coalition_meeting_20101102.pdf.

²¹ *Id.*

²² NACS State of the Industry (April 2022).

²³ Lynne Marek, “There was no stopping credit card fee hikes this year,” Payments Dive (April 7, 2022) available at <https://www.paymentsdive.com/news/there-was-no-stopping-credit-card-fee-hikes-this-year/621741/>.

inflation. And, those swipe fees act as an inflation multiplier forcing retailers to try to increase their revenues to keep up with the spiraling fees.

During its last two earnings calls, in fact, Visa made clear that it is “a beneficiary of inflation,” and that inflation is “a positive for us.”²⁴ Most Americans and American businesses would not say the same of themselves.

An area that has among the largest impacts for the convenience industry and for American consumers are gas prices. This industry sells about 80 percent of the gasoline used across the nation. Retailers, similar to their customers, like an ample supply of gasoline and low prices. That is because as gas prices rise, the margins retailers make actually get smaller. Competition in the market means that retailers cannot pass along their own increased wholesale costs as quickly as they pay those costs. At the same time that retailers’ margins are getting squeezed, however, their credit card fees are rising because they are a percentage of the total transaction amount. That means there have been many times during the past few months when retailers were paying more in swipe fees (often about 10 cents per gallon) than they were ultimately making on those sales. That makes no sense given the costs retailers incur and risks they take to maintain a site with underground storage tanks, transport fuel, and sell it to customers (often staying open 24 hours per day in the midst of a labor shortage and, in the past two years, a pandemic). Processing those transactions should not cost more than the profits that can be made after all of that effort.

What is particularly troubling for many businesses, however, is that they are powerless to plan for or deal with these rising costs. They can take measures to keep other costs in check – installing more energy-efficient equipment, using a different supplier, and the like. But there is no dealing with swipe fees because of the competition problem noted above and the unpredictability of the increases. Businesses just don’t know how much the fees will go up. Even after new rates are announced it is difficult to predict how those rates will impact a merchant’s fees because the card networks have made the system so complex. GAO reported that Visa and MasterCard each had four credit card rate categories in 1991, but by 2009 Visa had 60 rate categories and MasterCard had 243.²⁵ The numbers have grown since that time and that complexity helps obscure the consistent, large fee increases that merchants must bear.

It is worth noting that the fees increase even when Visa and Mastercard do not “raise” them. As noted, inflation is one reason that happens. Another reason is that the banks issuing cards simply push higher fee cards into the market. That is true for their new and existing customers. Many cardholders receive notification from their bank that they now have a different level of rewards or other perks. It might not be clear to the cardholder why that is, but it is not a

²⁴ See Logan Kane, “Visa: A Great Business, But Wait for a Pullback,” Seeking Alpha (April 26, 2022) available at <https://seekingalpha.com/article/4503588-visa-great-business-wait-for-pullback>; “Visa (V) Q2 Earnings Call Transcript,” Motley Fool Transcribing (April 27, 2022) available at <https://www.fool.com/earnings/call-transcripts/2022/04/27/visa-v-q2-2022-earnings-call-transcript/>.

²⁵ Government Accountability Office, “Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges,” (2009) at [Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges | U.S. GAO.](#)

mystery to merchants – it means the merchant must pay higher swipe fees. By systematically moving cardholders to more expensive cards, banks can drive up swipe fees without Visa and Mastercard changing their rate schedules at all.

Of course, merchants do not have visibility into the card issuing decisions that drive up their fees. Frankly, merchants have very little visibility into the price-setting engaged in by Visa and Mastercard. Merchants don't receive direct communications of these changes from Visa and Mastercard. Those notifications go to banks and processors. Typically, when sent, those notifications are confidential so that they cannot be passed along to merchants. The price changes that can so dramatically impact merchants' bottom lines become rumors in the marketplace until they are sprung on merchants with very little notice. The price increases that both Visa and Mastercard instituted just a couple of weeks ago followed this pattern of poor communication and notice. The lack of clarity is just another sign of how broken this market is.

V. Swipe Fees Hurt Consumers

Ultimately, of course, all of us pay for these overinflated swipe fees in the prices of the goods and services we buy. The fierce price competition in retail ensures this. Retail profit margins are notoriously low. As of January of this year, for example, net profit margins for general retailers were 2.65 percent.²⁶ For convenience stores, those margins were 2.47 percent.²⁷ For grocers and other food retailers, those margins were even narrower – 1.11 percent.²⁸ With those margins, which are around or below the level of swipe fees these businesses pay, those fees must be passed on to consumers or retailers would go out of business.

It is worth noting that while retailers' margins are notoriously thin, banks' and credit card networks' margins are very large. The money center banks that dominate credit card issuing have net margins of 32.61 percent.²⁹ Visa's net profit margin as of the end of 2021 was 51.59 percent and Mastercard's was 46 percent.³⁰ All of those margins are instructive as to the relative competitiveness of these sectors. No other industry sector reported on by NYU had net profit margins as large as the money center banks, and it is likely that none would dare dream of margins at the level of Visa's and Mastercard's.

The current system fools consumers by hiding the large interchange fees that are built into the cost of their purchases. To quote one of my fellow witnesses today, Ed Mierzwinski of U.S. PIRG, "Interchange fees are hidden charges paid by all Americans, regardless of whether they use credit, debit, checks or cash. These fees impose the greatest hardship on the most vulnerable consumers – the millions of American consumers without credit cards or banking relationships. These consumers basically subsidize credit card usage by paying inflated prices – prices inflated by the billions of dollars of anticompetitive interchange fees. And unfortunately,

²⁶ New York University, "Margins by Sector (US)," at [Operating and Net Margins \(nyu.edu\)](https://www.nyu.edu/operating-and-net-margins).

²⁷ NACS State of the Industry (April 2022).

²⁸ *Id.*

²⁹ *Id.*

³⁰ See [Visa Profit Margin 2010-2021 | V | MacroTrends](https://www.macro-trends.com/visa-profit-margin-2010-2021) and [Mastercard Profit Margin 2010-2021 | MA | MacroTrends](https://www.macro-trends.com/mastercard-profit-margin-2010-2021).

those credit card interchange fees continue to accelerate, because there is nothing to restrain Visa and MasterCard from charging consumers and merchants more.”³¹ In addition, over the years, consumer groups including the Consumer Federation of America, Consumer’s Union, and Consumer Action have all submitted Congressional testimony criticizing the current system of swipe fees because it is not fair to consumers.

In addition, the European Commission has found that interchange fees harm consumers. In December 2007, the Commission found MasterCard’s multilateral interchange fee illegal and Competition Commissioner Neelie Kroes said that interchange “inflated the cost of card acceptance by retailers without leading to any advantage for consumers or retailers. On the contrary, consumers foot the bill, as they risk paying twice for payment cards. Once through annual fees to their bank. And a second time through inflated retail prices . . .”³² Kroes concluded that MasterCard’s interchange “acts like a ‘tax on consumption’ paid not only on card users but also by consumers using cash and cheques.”

One of the most troubling aspects of the high swipe fees imposed by the broken credit card market is the way they impact low-income Americans. The fees get baked into the prices of goods and services with very few exceptions in part due to the longtime pricing constraints imposed by Visa and Mastercard. So, those who do not have or cannot qualify for credit cards pay the cost of these fees as well – as do cardholders with basic cards that don’t carry rewards. In 2009, the Hispanic Institute published a paper showing how payment card swipe fees and rewards systematically transferred wealth from low income to high income individuals.³³

A working paper published by Boston Federal Reserve economists came to the same conclusion: that swipe fees combined with rewards programs amount to a regressive system in which low-income Americans subsidize high-income Americans.³⁴ This disproportionate negative effect on low-income consumers is particularly unfair.

An updated study was just released by the Hispanic Leadership Fund. That study found:³⁵

- 1) “Lower income Americans are losing money to higher income individuals.
 - American families earning less than \$75,000 per year send a total of \$3.5 billion to families earning more than \$75,000 per year

³¹ “Testimony of Ed Mierzewski before the House Judiciary Committee Antitrust Task Force,” (May 15, 2008).

³² “Commission Prohibits MasterCard’s intra-EEA Multilateral Interchange Fees: Introductory remarks at press conference,” available at https://www.parlement.com/id/vhqt3q9z8/nieuws/toespraak_eurocommissaris_kroes_over.

³³ Hispanic Institute, “Trickle-Up Wealth Transfer: Cross-subsidization in the payment card market,” by Efraim Berkovich (Nov. 2009) available at [Trickle-Up Wealth Transfer: \(thehispanicinstitute.net\)](http://Trickle-Up_Wealth_Transfer_(thehispanicinstitute.net)).

³⁴ Marie-Helene Felt, Fumiko Hayashi, Joanna Stavins, and Angelika Welte, “Distributional Effects of Payment Card Pricing and Merchant Cost Pass-through in the United States and Canada,” Federal Reserve Bank of Boston (Dec. 2020) at 4, available at <https://www.bostonfed.org/publications/research-department-working-paper/2020/distributional-effects-payment-card-pricing-merchant-cost-pass-through-united-states-canada.aspx>.

³⁵ Efraim Berkovich and Zheli He, “Rewarding the Rich: Cross-Subsidies from Interchange Fees,” Hispanic Leadership Fund (May 2022) available at <https://hispanicleadershipfund.org/>.

- More than \$1.9 billion of that money goes into the pockets of those making more than \$150,000 per year.
 - Families making less than \$20,000 per year pay more than \$1.2 billion of the \$3.5 billion that gets transferred to higher income people”
- 2) “Black families are disproportionately harmed by today’s credit card schemes.
- The average American Black family pays nearly \$60 per year to subsidize higher income people’s rewards through these fees
 - Black families in the United States lose more than \$1 billion each year from these transfers”
- 3) “The current swipe fee structure drives up shelf prices for all Americans regardless of how you pay.
- The study found that swipe fees cost some retailers between 17 and 19 percent of annual profit.
 - Annual variation in interchange costs drives profit up and down by about 4.5 percent for smaller stores. This added risk generates economic inefficiency, and the entire economy suffers from this unneeded risk.”

Those findings are staggering. Low income Americans should not be forced to pay for their wealthy neighbors’ airline tickets, but that is precisely what Visa and Mastercard’s anti-competitive practices cause.

Not only have fees increased dramatically and moved money from low-income to high-income Americans, but these fees change the nature of the credit card business in a way that hurts consumers. As Georgetown Law professor Adam Levitin observed in testimony before the House Judiciary Committee, the huge fee revenue the banks earn from credit card transactions taking place has created bad incentives. He testified, “The card industry’s business model is the heart of the problem and needs to change. Just as with subprime mortgages, the credit card business model creates a perverse incentive to lend indiscriminately and let people get into so much debt they can’t pay it back.”³⁶

Others have clearly observed this trend as well. For example, Acting Comptroller of the Currency Julie Williams said in March 2005, “Today the focus for lenders is not so much on consumer loans being repaid, but on the loan as a perpetual earning asset . . . it’s not repayment of the amount of the debt that is the focus, but rather the income the credit relationship generates through periodic payments on the loan, associated fees, and cross-selling opportunities.”³⁷ These changes mean that banks are less worried than they should be about consumers’ welfare. It should be in the interest of banks for consumers to do well and be able to pay back credit card loans. But the huge fee income the banks generate through interchange and other means gives

³⁶ Adam J. Levitin, Testimony before the House Judiciary Subcommittee on Commercial and Administrative Law, “Consumer Debt – Are Credit Cards Bankrupting Americans?” (April 2, 2009).

³⁷ Remarks by Julie L. Williams, Acting Comptroller of the Currency, Before the BAI National Loan Review Conference, New Orleans, LA, (March 21, 2005) available at <http://www.occ.treas.gov/ftp/release/2005-34a.pdf>.

them another incentive – milk consumers for all they are worth and don't worry about the money getting paid back.

The bottom line is that abuse of consumers by banks will continue as long as they have the incentive to treat people that way. Interchange fees are the key incentive with which Congress has not yet dealt. The abuses of consumers and using credit cards as predatory lending vehicles will continue until something is done about interchange fees.

The credit card industry strenuously argues that if anything at all happens to reduce swipe fees, then other fees paid by consumers will increase and consumers will be in a worse position than they are today. This is false. In fact, the European Commission's Directorates for Competition and Financial Services jointly conducted a comprehensive study into the European payment card industry in general, and Visa and MasterCard in particular. The Commission found no evidence to support the card systems' arguments that the high fee levels associated with the existing interchange system benefit consumers. In particular, the Commission rejected arguments that lower interchange fees to merchants would result in higher fees to consumers:

“There is no economic evidence for such a claim. Firstly, the inquiry's data suggests that in most cases card issuers would remain profitable with very low levels of interchange fees or even without any interchange fees at all. Secondly, the international card networks have failed to substantiate the argument that lower interchange fee would have to be compensated with higher cardholder fees. The evidence gathered during the inquiry rather suggests that the pass-through of higher interchange fees to lower cardholder fees is small. Consumers already pay the cost of the interchange fee without knowing it. This cost is now hidden in the final retail price and is therefore non-transparent.”³⁸

VI. Swipe Fees Hurt the U.S. Economy

Payments should not cause all of these negative outcomes. The purpose of having money is to reduce transaction costs and make buying and selling things more efficient. Our credit card system does the opposite. The comparison to our hundred-year-old system of paper checks is instructive. It was not that long ago that the originals of those checks had to be transported around the country to the proper banking institutions in order to clear payments. That was an expensive way to do things. But, remarkably, the Federal Reserve had prohibited the equivalent of swipe fees (known as exchange fees) from being charged on checks. There were (and are) still costs to processing checks, but the system works efficiently and those who accept and handle checks are able to make decisions about how to conduct business and how best to keep their costs under control.

³⁸ European Commission, Directorates on Competition and Financial Services, *Competition: Final report on retail banking inquiry – frequently asked questions*, Jan. 31, 2007, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/40&format=HTML&aged=0&language=EN&guiLanguage=en>.

Electronic payments should be much more efficient than paper payments. The actual costs of handling electronic payments are indeed lower. But, the prices paid by all of society are much, much higher due to competition problems inflating the associated fees.

The United States is an outlier in the world in this area – and not in a good way. Swipe fee rates are higher in the United States than anywhere in the industrialized world.³⁹ This harms American retailers and consumers – disadvantaging them compared to the rest of the world. Just to take one example, merchants and consumers in China pay much lower rates than their American counterparts.⁴⁰

These fees are stunting business growth and hurting efforts to hire more workers and expand operations. One study of this impact in 2010 concluded that without the higher prices caused by fees above and beyond costs plus a reasonable rate of return, consumers would have an additional \$26.9 billion to spend and the economy could add 242,000 jobs.⁴¹ Of course, the fees have nearly tripled since that report was written. The lost economic growth during that time period is immense.

The overinflated swipe fee rates cause other economic problems as well. The U.S. credit card system has the most fraud in the world.⁴² These problems are related. The high fees reduce the economic incentives for the credit card industry to fight fraud – because they make money even with relatively high fraud rates and would have to spend money to make the system safer for all of us. And, not incidentally, much of the fraud on credit cards gets charged back to merchants so the credit card industry does not lose those funds – the merchants do.

Rather than taking straightforward actions that have proven to be effective in fighting fraud, like requiring the entry of personal identification numbers (PINs) or using other means of authenticating the person making the transaction, the card networks have pushed most of the costs of fighting fraud onto merchants. The switch to chip cards in the United States is a primary example. While the vast majority of the world required PINs as part of that switch, Visa and Mastercard not only did not do that, but they threatened retailers that tried to require PINs with fines.⁴³ Instead of the common-sense measure that had been successful around the world, merchants were forced to spend \$30 billion to upgrade their point-of-sale equipment and software to make the transition to chips without the protection of PIN usage. And, for their trouble, many merchants were still required to pay more to cover fraud.

In fact, a 2019 report found that the card networks use their positions in setting card security standards to entrench their own market share at the expense of focusing on card security

³⁹ See Kansas City Federal Reserve, “Credit and Debit Interchange Rates in Various Countries August 2021 Update,” [CreditDebitCardInterchangeFeesVariousCountries_August2021Update.pdf](https://www.kansascityfed.org/~/media/Files/Interchange/CreditDebitCardInterchangeFeesVariousCountries_August2021Update.pdf) (kansascityfed.org).

⁴⁰ *Id.*

⁴¹ Robert J. Shapiro and Jiwon Vellucci, *The Costs of Charging It in America: Assessing the Economic Impact of Interchange Fees for Credit Card and Debit Card Transactions*, Feb. 2010, at 2.

⁴² “Credit Card Fraud Statistics,” Shift Processing (Sept. 2021) available at [Credit Card Fraud Statistics \[Updated September 2021\] Shift Processing](https://www.shiftprocessing.com/credit-card-fraud-statistics/).

⁴³ Robin Sidel, “Kroger Sues Visa Over PIN Debit Transactions,” Wall Street Journal (June 27, 2016) at [Kroger Sues Visa Over PIN Debit Transactions - WSJ](https://www.wsj.com/articles/kroger-sues-visa-over-pin-debit-transactions-1467061200).

and fraud protection. They do this through their control of a standard-setting body called EMVCo.⁴⁴ According to the report, “Our research reveals an insidious pattern in which the card companies use EMVCo as a tool to maximize their share of transaction volumes: when the card companies feel threatened by competitive pressures or economic challenges, they — or EMVCo supporting their strategies — assume responsibility for the definition of a standard, which results in technical specifications that only benefit the card companies, not the U.S. payments industry at large.”⁴⁵ Security standards should be made to protect against fraud, not to secure market share for already-dominant companies.

The large amounts of fraud on U.S. credit cards add costs to the economy. All of us must pay for that as well as swipe fees. The collective price tag for all of these inefficiencies is far higher than it should be. The United States has the largest economy in the world and should have the most effective and cost-efficient payment system. It doesn’t. That should change.

VII. Dispelling Myths the Card Industry Uses to Distract From Its Anti-Competitive Behavior

As noted, anti-competitive behavior on the part of the major card networks causes serious problems for merchants, consumers, and the U.S. economy. Because the card networks cannot justify their actions and do not want to defend them, they typically try to distract any focus on their activities with complaints about the reforms Congress and the Federal Reserve put in place more than a decade ago to deal with anti-competitive activity in the debit card market. These arguments are a distraction, as well as factually wrong, and the Committee should not let the card networks try to distract its attention with those points — particularly when legislative attempts to derail those reforms have repeatedly failed over many years.

Nonetheless, the section below addresses many of the most often repeated myths that the credit card industry raises in order to ensure that you actually have the facts before you on these claims.

- Consumers and Businesses Have Benefitted from Debit Reform

Debit reform authored by Senator Durbin, which was enacted in 2010 and took effect in 2011, has been helpful in curtailing debit swipe fee rates and providing competition among networks.⁴⁶ One report showed that debit reform saved consumers \$5.86 billion in 2012 alone — the first year the reforms were in effect.⁴⁷ That was nearly 70 percent of the overall savings from

⁴⁴ RPCG Group, “Payment Insecurity: How Visa and Mastercard use standard setting to restrict competition and thwart payments innovation,” (Dec. 2019) available at <https://securepaymentspartnership.com/paper.pdf>. EMVCo was started by Visa, Mastercard and Europay but the governing body now includes American Express, Discover, Japan’s JCB and China’s Union Pay.

⁴⁵ *Id.* at 8.

⁴⁶ While reform has been beneficial, the rates paid by merchants remain higher than they should be. Costs have declined over the past decade and the rates are not proportional to costs.

⁴⁷ Robert Shapiro, “The Costs and Benefits of Half a Loaf: The Economic Effects of Recent Regulation of Debit Card Interchange Fees,” (Oct. 2013) available [here](#).

debit reform that year with merchants saving an additional \$2.64 billion.⁴⁸ Collectively, these savings supported more than 37,000 jobs⁴⁹ – a significant economic stimulus.

In addition, *Moody's Investor Service* has reported that debit reform savings have shielded consumers from higher prices that would have resulted from increases in other operating costs for businesses such as transportation and fuel costs. The report says, “As merchant acquirers pass on debit fee savings to retailers, we believe retailers will use them to help shield customers from the impact of these other rising costs.”⁵⁰ The report also noted, “While on the surface it would be easy to presume that retailers would benefit from a reduced debit interchange fee, we do not expect retailers to see a material improvement in their earnings due to the Durbin Amendment.”

The Moody's report is supported by analysis of how pricing moved following the implementation of debit reform. The data shows that there was inflation in the U.S. economy in the years after debit reform was implemented. Cost increases, as reflected in the Producer Price Index for retail trade industries, rose 9.4 percent from the time reform went into effect in October 2011 through the end of 2016, while price increases to consumers, reflected in the Consumer Price Index, increased only 4.3 percent.⁵¹ That is a large spread between the higher costs that merchants had to pay for the goods they sold and the prices that they charged consumers. Those numbers demonstrate clearly that merchants shielded their customers from the majority of the cost increases the merchants themselves faced. And, that experience has held true even during the past year with increased inflation. During 2021, the Producer Price Index rose by 9.7 percent while the Consumer Price Index rose by 7 percent.⁵²

Retail profit margins show the same pattern. Those margins did not grow following debit reform. In fact, in the grocery industry, pretax profit margins in the two years prior to debit reform were 2.3 percent – and following debit reform those margins fell to 2.1 percent (in 2012) and 1.9 percent (in 2013).⁵³

This data reconfirms the intensely competitive nature of U.S. retail. It is very clear that savings from debit reform (and more) have been consistently passed along from merchants to consumers in the form of prices that are significantly lower than what consumers would have been forced to pay in the absence of those reforms.

⁴⁸ *Id.* at

⁴⁹ *Id.* at

⁵⁰ “New Debit Rules Hurt Banks and Reshape the Payment Processor Market,” *Moody's Investor Service* (June 20, 2012) at 10.

⁵¹ Producer price index figures from the St. Louis Fed can be found here: <https://fred.stlouisfed.org/series/PCUARETTTRARETTR> and consumer price index figures from the Minneapolis Fed can be found here: <https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913>.

⁵² The U.S. Bureau of Labor Statistics' release on the producer price index can be found here: [Producer Price Index News Release summary - 2021 M12 Results \(bls.gov\)](#) and the 2021 increase in the consumer price index can be found here: [CPI Home : U.S. Bureau of Labor Statistics \(bls.gov\)](#).

⁵³ “Grocery Store Chains Net Profit,” FMI available at [FMI | Grocery Store Chains Net Profit](#).

Anyone who believes free markets work would need to recognize that cost savings to retail businesses help hold down prices to consumers – unless they believe that there is a market failure in the retail sector of the economy. Of course, there is not. Retail is one of the most competitive sectors of the U.S. economy and has been for decades. Without a market failure, there is no question that reduced costs pass-through into lower prices. By arguing otherwise, it makes it sound as though the credit card industry has lived with centralized price-setting so long that they have forgotten how real competitive markets work.

The credit card industry likes to point to a report released by the Richmond Federal Reserve to try to disprove consumers' clear benefits from debit reform. The problem is that, in talking about that report, they never mention the cautionary notes that the study's authors themselves included in the report – which make clear it should not be used to prove the point for which the credit card industry tried to use it. First, the report made clear they did not look at actual costs and prices - it was just an opinion survey.⁵⁴ Second, the survey sample was small and could have been biased by getting responses primarily from those dissatisfied with the way the Fed wrote its regulation. Finally, it is worth noting what may be obvious given today's economic environment. Inflation is always present and matters. The actual data shows that merchants held prices down as their costs increased. That is real consumer savings. But a survey that asks whether prices were reduced would not get that information.

- Free Checking Increased Following Debit Reform

The credit card industry like to claim that consumers had fewer options for free checking accounts following debit reform, but their claims are demonstrably wrong. At the outset, it should be noted that the banking industry has admitted that “free” checking is a fallacy, “Customers never had free checking accounts. They always paid for it in other ways, sometimes with penalty fees.”⁵⁵

In addition to Bank of America's doubts about free checking ever having existed, it should be noted that the banking industry rapidly got rid of many free checking account offerings in the years *before* debit reform ever took effect. First, the banking industry blamed the financial crisis as the reason why they had to take away free checking and charge consumers higher fees.⁵⁶

⁵⁴ Renee Haltom and Zhu Wang, “Did the Durbin Amendment Reduce Merchant Costs?” (Dec. 2015) at 4, available [here](#).

⁵⁵ Bank of America spokeswoman, Anne Pace, quoted in “Bank Accounts: Free Checking Fading Fast,” The Christian Science Monitor (Oct. 19, 2010), available at <http://www.csmonitor.com/Business/Latest-News-Wires/2010/1019/Bank-accounts-Free-checking-fading-fast>

⁵⁶ *Rising Bank Fees are Setting Records*, USA Today (Oct. 27, 2008), available at http://www.usatoday.com/money/industries/banking/2008-10-26-atms-fees-checks-banks_N.htm (“The high fees come at a time when banks are struggling to unload bad mortgage loans.”); *Banks Boost Customer Fees to Record Highs*, Wall Street Journal (Nov. 12, 2008), available at <http://online.wsj.com/article/SB12264510907719219.html> (“Banks are responding to the troubled economy by jacking up fees on their checking accounts to record amounts.”); *Banks Find Ways to Boost Fees; Checking Accounts Latest Target*, USA Today (May 28, 2009), available at http://www.usatoday.com/money/industries/banking/2009-05-27-checks-fees-banks_N.htm (“Banks defend their policies, saying that as unemployment rises, consumers have become riskier, and the higher fees reflect that risk. Banks may also be raising some account fees to compensate for higher borrowing

Then, the industry pivoted and started blaming overdraft regulations for their decisions to increase checking account fees.⁵⁷ In fact, some even had the temerity to suggest that they had to increase checking fees because they couldn't make the same money from risky mortgages anymore.⁵⁸

All of these various excuses for the steep drop in free checking offerings were made long before debit reform came into being. The litany of excuses was summed up well in a 2011 article written when banks were blaming debit reform for their increases in checking fees – remarkably, doing this even before debit reform had ever taken effect – “The pattern is getting old and weary.

costs and to keep prices in line with other financial institutions, says Scott Talbott of the Financial Services Roundtable, which represents the nation's largest banks.”); *Bank Fees Rise as Lenders Try to Offset Losses*, *New York Times* (July 2, 2009), available at

http://www.nytimes.com/2009/07/02/business/02fees.html?_r=1 (“Scott E. Talbott, a lobbyist for the Financial Services Roundtable, said that the banks’ fees reflect the cost of providing those services and the rise in overdraft charges reflects increased risk. ‘There is an increased riskiness around repayment because of the recession, he added.’”).

⁵⁷ *Is Free Checking on its Way Out?* *CNNMoney.com* (July 2, 2009), available at <http://moremoney.blogs.money.cnn.com/2009/07/02/is-free-checking-on-its-way-out/> (“Bank customers used to the perks of free checking accounts -- unlimited check writing, online banking, debit card use and ATM access, to name a few -- might have to recalibrate their expectations soon. That's because overdraft fees, which banks use to subsidize the expense of free checking accounts, have been under fire by consumer advocacy groups.”); *Banking Expert: Free Checking Accounts aren't Long for this World*, *WalletPop.com* (Aug. 31, 2009), available at <http://www.walletpop.com/2009/08/31/banking-expert-free-checking-accounts-arent-long-for-this-world/> (Following the Credit Card Accountability Responsibility and Disclosure Act and overdraft regulations, “banks are already trying to think of new ways to make their profits.”); *Banks' Struggle May Mean End of Free Checking*, *msnbc.com* (Nov. 10, 2009), available at http://www.msnbc.msn.com/id/33840681/ns/business-consumer_news/ (“The change by Citi comes as Congress considers legislation that would limit banks' ability to levy overdraft fees on checking accounts.”); *The End of Free Checking?* *MoneyTalksNews.com* (Dec. 30, 2009), available at <http://www.moneytalksnews.com/2009/12/30/the-end-of-free-checking/> (“[N]ew Congressional regulations like the CARD Act have limited the amount of money banks can make from credit cards. The Federal Reserve also has plans to address the highly lucrative ‘overdraft fee industry’, estimated to be worth \$38.5 billion in 2009 by industry consultants Moebs Services. In other words, free checking accounts may soon be going the way of the dinosaur.”); *The End of Free Checking*, *NPR Planet Money* (June 17, 2010), available at <http://www.npr.org/blogs/money/2010/06/17/127899418/you-may-have-to-pay-for-that-checking-account> (“It costs banks a few hundred bucks a year to maintain a customer's checking account. Banks have been able to make that up (and more) largely by charging overdraft fees. But new federal rules mean banks can only charge those fees to customers who sign up for overdraft protection.”); *The End of Free Checking*, *The Atlantic* (June 21, 2010), available at <http://www.theatlantic.com/business/archive/2010/06/the-end-of-free-checking/58444/> (“Free checking is on life support. . . . The main reason why, of course, is the imminent prohibition of overdraft fees, which had been a boon for banks.”); *End of Free Checking a Financial Squeeze: How Employers Can Help*, *The Huffington Post* (June 28, 2010), available at http://www.huffingtonpost.com/clare-j-morgan/end-of-free-checking-a-fi_b_627540.html (“The free checking accounts many Americans enjoy will soon be a thing of the past as banks scramble to find new ways to recoup overdraft charges and other fees they're no longer allowed to impose.”).

⁵⁸ *The End of Free Checking? Not at Credit Unions!* *Credit Unions Online* (June 17, 2010), available at <http://www.credituniononline.com/news/2010/The-End-of-Free-Checking-Not-at-Credit-Unions.html> (“Since banks can no longer charge many credit card fees of the past and high risk (high fee) mortgages are gone, banks are finding themselves short of revenue. . . . Now the banks are coming after your checking account to make up the difference.”)

Banks will raise checking fees whenever and wherever they think they can get away with it. And they will blame any convenient development for their choices.”⁵⁹

This background matters because the credit card industry typically relies on two fatally flawed studies to try to show that reductions in free checking that came before debit reform – reductions they blamed on the financial crisis and limits on overdraft fees – were actually caused by debit reform. These studies take January 2009 as the measuring point for free checking prior to debit reform even though those reforms did not come into effect until October 2011, nearly two full years later. And, they pushed these studies onto the Government Accountability Office which cited them in a recent report without recognizing that the timing of the studies meant that the studies were blaming debit reform for things that happened prior to reform coming into effect.⁶⁰

The number of checking accounts without monthly fees fell by 11 percentage points just from 2009 to 2010 – still a year before debit reform.⁶¹ But, by counting the remarkably swift and steep reduction in the number of free checking accounts that occurred during the financial crisis and blaming that on debit reform (which came later), these studies magically find that debit reform reduced free checking. It didn’t.

Banking industry data demonstrates that free checking increased from the time debit reform went into effect at least for its first few years in operation. The ABA reported that 61 percent of banks had free checking in 2014 which compares favorably to the 50 percent of banks with free checking that the ABA reported in 2010 and the 39 percent of large banks that Moeb’s Services reported offered free checking two months prior to debit reform taking effect.⁶²

- Rewards Will Not End (and the Sky Will Not Fall) if Competition Comes to Credit Cards

The credit card industry consistently argues that any reforms to the current credit card market will end credit card rewards. In fact, they have spread advertisements all over the Internet

⁵⁹ David Balto “The Bankers’ New Goat,” HuffPost (May 25, 2011) available at https://www.huffpost.com/entry/the-bankers-new-goat_b_834615.

⁶⁰ See “Banking Services,” Government Accountability Office (Feb. 2022) available at <https://www.gao.gov/assets/gao-22-104468.pdf>.

⁶¹ *Region Banks Refrain from Raising Checking Account Fees*, [Nwi.com](http://www.nw.com) (Nov. 9, 2010), available at http://www.nw.com/business/local/article_337b378b-3f74-5a00-9d86-b9e6b3d58799.html (“Bucking a national trend, the region’s community banks aren’t raising fees or putting the breaks on free, non-minimum-balance checking accounts, yet. A recent Bankrate.com national survey on checking accounts indicates the percentage of checking accounts with no monthly service charges and no minimum balance fell to 65 percent in 2010 from 76 percent in the 2009 study.”)

⁶² Cadence Bank, “ABA: Most Americans Pay Nothing for Bank Services,” available at <https://cadencebank.com/about/resources/aba-survey---most-americans-pay-nothing-for-bank-services>; American Bankers Association, “ABA Survey Shows Majority of Bank Customers Pay Nothing for Monthly Bank Services,” available at <http://www.prnewswire.com/news-releases/aba-survey-shows-majority-of-bank-customers-pay-nothing-for-monthly-bank-services-104516904.html>; Ismat Sarah Mangla and Tali Yahalom “Bank Accounts: Get a Fair Shake, not a Shake-Down,” CNN Money (Aug. 31, 2011) available at https://money.cnn.com/2011/08/31/pf/bank_accounts.money/index.html (“This was backed by data from Moeb’s Services, which found that 39% of big banks offered free checking in 2011, down from 64% in 2010”).

depicting Senator Durbin as a cartoonish figure and alleging that he wants to end credit card rewards. That is remarkable given that neither Senator Durbin nor any other Senator has to date proposed legislation to reform the competition problems with credit cards. You might think that the credit card industry would want to review any such proposal and analyze its effects before giving a reasoned evaluation of its impact – but you would be wrong. The industry clearly prefers insult to reasoned debate. And, of course, the credit card industry wants to warn other Senators that they could be the subject of its ridicule if they have the temerity to support potential reforms.

The credit card industry resorts to these tactics because the facts are not on its side. The nation with the longest track record of credit card fee reforms is Australia. After more than a decade under reforms there, the Reserve Bank of Australia has found, “The existence of significant credit card rewards programs suggests that credit card interchange fees are currently materially higher than is necessary for banks to provide payment cards with credit functionality. The Bank’s 2013 Payments Cost Study shows that – for the average-size transaction for each payment method – the existence of the interest-free period and rewards means that the effective price paid by a cardholder to use a credit card is lower than that for a debit card, even though the resource costs are substantially higher.”⁶³

When Australia acted, MasterCard said it would mean the end of the credit card system in that nation – arguing that there would be a “death spiral.”⁶⁴ They were wrong. More consumers use more cards for less than ever before in Australia. In fact, rather than Visa and MasterCard competing to raise interchange fees so that banks will issue more of their cards, they have had to give consumers what they really wanted – lower interest rates on their cards. This interest rate competition has benefitted consumers immensely. The only ones who don’t like it are Visa and MasterCard (and their member banks) because they don’t make as much on interchange fees and must now compete more thoroughly on the value they deliver to consumers. The Reserve Bank of Australia reviewed the interchange reforms instituted there and concluded, “Overall, consumers are benefiting from this greater competition and lower merchant costs . . . one group of consumers clearly better off are those who regularly borrow on their credit cards. They are now able to obtain a card with an interest rate of 10 to 13 per cent, rather than the 16 to 18 per cent payable on traditional cards. For many consumers the resulting savings can run into hundreds of dollars per year . . . Consumers who do not use credit cards at all are also benefiting from the reforms as they are paying lower prices for goods and services than would otherwise have been the case. For many years, these consumers have helped subsidise the generous reward points of the credit card issuers through paying higher prices for goods and services. The reforms have helped unwind some of this subsidy.”⁶⁵

⁶³ Reserve Bank of Australia, “Review of Card Payments Regulation,” at sec. 3, available at <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/conclusions-paper-may2016/interchange-fees-and-transparency-of-card-payments.html>.

⁶⁴ See Alan S. Frankel, “Toward a Competitive Card Payments Marketplace,” at 40, available at <https://www.rba.gov.au/payments-and-infrastructure/resources/publications/payments-au/paymts-sys-rev-conf/2007/5-compet-card-payment.pdf>.

⁶⁵ Payments System Board Annual Report, *Reserve Bank of Australia*, 2005 at 14.

Lower fees, competition, and other reforms in other countries have not stopped Visa and Mastercard from aggressively marketing their networks to banks around the world. It is clear that there is plenty of revenue in nations with far lower fees for the credit card business to be very profitable.

- Visa and Mastercard Do Not Provide a Meaningful Break on Swipe Fees at Gas Pumps

Swipe fees have jumped by enormous amounts on motor fuel purchases during the past year. As noted, the convenience industry saw its fees rise by 26.5 percent in 2021 and are seeing more rapid increases this year. These large increases add a significant economic pressure to increase gas prices at the worst possible time. The card industry has tried to defend themselves from criticism for these rapidly rising fees by saying that they have capped swipe fees at \$1.10 per fill-up. But they know that cap is largely ineffectual. The average amount of gas put in a car during a fill-up is 11.7 gallons.⁶⁶ So, using the average credit card interchange rate of 2.22 percent, a cap of \$1.10 does not impact what the merchant pays for that fill up until gas costs about \$4.25 per gallon. Other than in California, even recent gas prices have only rarely reached that number.

Swipe fees are often near 10 cents per gallon on a fill-up today. That is simply too much for local retailers or their customers to bear.

- Visa and Mastercard Do Not Need to Set Prices for Large Banks

One of the few ways that the credit card industry has tried to justify the centralized setting of prices by the networks for the banks that issue cards is by citing the large number of banks on each side of a credit card transaction. With thousands of banks issuing cards and thousands of banks and processors handling the merchant side of processing, they argue that it is too complicated and difficult for the prices of all those combinations to be negotiated in a free market.

But, the research has found that the card industry's protestations don't fit the facts. Nicholas Economides of New York University has studied this and found that credit card issuing and, on the other side, acquiring/processing of credit card transactions is very concentrated among small numbers of banks and processors with large market shares. As a result, in 2009, he found that a mere 90 negotiated agreements would cover a full 72 percent of all Visa and Mastercard transaction volume.⁶⁷ That, of course, is very doable – and there has been significant additional concentration in both markets since then.⁶⁸ There is no reason why the largest banks

⁶⁶ <https://www.statista.com/statistics/1143194/average-fuel-transaction-volume-us-gas-stations/#:~:text=Average%20quantity%20of%20fuel%20purchased%20per%20transaction%20in%20the%20U.S.%202019%202020&text=Americans%20bought%2011.7%20gallons%20of,the%20gas%20pump%20in%202020.>

⁶⁷ Nicholas Economides, "Competition Policy Issues in the Consumer Payments Industry," at 122 In R. Litan & M. Baily, *Moving Money: The Future of Consumer Payment*, Brookings Institution (2009) available at [06-0277-1 CH 06 \(nyu.edu\)](https://www.brookings.edu/wp-content/uploads/2009/06/06-0277-1-CH-06-nyu.edu).

⁶⁸ The top 5 Visa/Mastercard issuing banks accounted for more than 70% of purchase volume in 2021, and the top 10 banks comprised more than 80%. See Nilson Report, Issue No. 1214 at 8-9 (Feb. 2022).

couldn't do business like other companies operating throughout the economy and negotiate their own pricing.

- The Combination of Thousands of Banks Under the Visa and Mastercard Umbrellas Means that Merchants Can't Just Stop Taking Credit Cards

Economists have found that due to the market power of Visa and MasterCard, merchants have no real choice but to accept credit cards. While the credit card industry likes to say merchants have a choice, this argument would be like AT&T claiming in the 1980s that no one should worry about its monopoly because people could choose not to have a telephone. Accepting cards is essential for most businesses – as the U.S. Department of Justice has concluded.⁶⁹

In fact, the Kansas City Federal Reserve studied this and concluded, “Only monopoly merchants who are facing an inelastic consumer demand may deny cards when the fee exceeds its transactional benefit. . . Merchant competition allows the network to set higher merchant fees. The network can always set higher merchant fees in more competitive markets. Moreover, in competitive markets the merchant fees in the long run may exceed the sum of the merchant's initial margin and the merchant's transactional benefit. . . . As long as the merchant fee does not exceed the level that gives merchants negative profits, merchants may have no choice but to continue accepting cards.”⁷⁰ The courts also agree that Visa and MasterCard both have market power which means they have the ability to raise their prices above what would be sustained in a competitive market.⁷¹

- Debit Reform Has Helped Small Banks and Credit Unions Compete

Currently, the way that credit card swipe fees are fixed disadvantages small banks and credit unions. Those institutions typically have higher costs than do large institutions (which, unlike small banks, often pay nothing to the credit card networks). Credit union representative John Blum, for example, testified on behalf of the National Association of Federal Credit Unions in 2010 and told the House Judiciary Committee: “Credit unions have a higher per-transaction cost for processing card payments.”⁷² Community banks have similar disadvantages because of their relatively small size resulting, in many instances, in the need to outsource card operations.⁷³ By fixing fees for all banks at the same level, however, large banks have for years been guaranteed higher profit margins than their smaller competitors. Those large banks have used their advantage to aggressively market themselves to consumers. That is one of the reasons why the credit card market is more concentrated than the debit card market. Many consumers who

⁶⁹ See Complaint, *U.S. v. Visa, Inc. and Plaid, Inc.* (Nov. 5, 2020) at ¶13.

⁷⁰ Fumiko Hayashi, “A Puzzle of Card Payment Pricing: Why Are Merchants Still Accepting Card Payments?” Federal Reserve Bank of Kansas City (2004) available at <https://ideas.repec.org/p/fip/fedkpw/psrwp04-02.html>.

⁷¹ *U.S. v. Visa U.S.A., Inc.*, 344 F. 3d 229 (2d Cir. 2003).

⁷² John Blum, Hearing before the Task Force on Competition Policy and Antitrust Laws, House Judiciary Committee, May 15, 2008, House Report No. 110-179, at 80.

⁷³ Dave Carpenter, Hearing before the House Judiciary Committee on the Credit Card Fair Fee Act of 2009, Apr. 28, 2010.

have accounts and debit cards at small banks and credit unions receive credit card and other offers from large banks. The large banks take the small banks' customers in this way on a regular basis – paid for by their excess interchange earnings. The result is that large banks have a bigger share of both the credit and debit card markets than their share of deposits.⁷⁴

Debit reforms have helped to level the playing field. The Philadelphia Federal Reserve published a study on the impact of debit reform on small financial institutions in February 2016. The study found that after reform, “the volume of transactions conducted with cards issued by exempt banks *grew faster* than it did for large banks.”⁷⁵ The study concluded that “the evidence does not support the claim that competitive forces have effectively imposed the interchange fee ceiling on small banks.”⁷⁶

The Credit Union Times has reported that debit reform created “a powerful way for credit unions to accumulate market share” and “what some say is a huge opportunity for credit unions.”⁷⁷ According to Texas Trust President and CEO Jim Minge, debit reforms created “...a huge opportunity for credit unions like the Mansfield, Texas Trust Credit Union and everybody else below the \$10 billion threshold...” Debit swipe fee reform “applies only to financial institutions with more than \$10 billion in assets, which has created a huge opportunity for credit unions – especially those that want to attract millennials.”⁷⁸

Centralized price-setting of credit card swipe fees harms smaller financial institutions. More competition in the market would help give them additional levers to try to compete with the largest banks including by allowing them to negotiate among the different networks.⁷⁹

- Debit Reform and Network Competition Enhanced Fraud Protection

⁷⁴ See Adam J. Levitin, *Interchange Regulation: Implications for Credit Unions*, 2010, at 39 (noting that 10 banks alone account for almost 90 percent of the credit card market and 51 percent of the debit card market, even though those 10 banks hold only 36 percent of insured deposits), available at http://www.federalreserve.gov/newsevents/files/levitin_file.pdf.

⁷⁵ James Disalvo and Ryan Johnston, “How Dodd-Frank Affects Small Bank Costs,” Economic Insights: Federal Reserve Bank of Philadelphia (Feb. 2016) available at <https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/economic-insights/2016/q1/eiq116.pdf>.

⁷⁶ *Id.*

⁷⁷ “Credit Unions Revive Debit Rewards” (Jan. 22, 2016) available at <http://www.cutimes.com/2016/01/22/credit-unions-revive-debit-rewards>; “Credit Unions Pile Into Debit Rewards” (Jan. 20, 2016) available at <http://www.cutimes.com/2016/01/20/credit-unions-pile-into-debit-rewards?page=1&slreturn=1453333652>.

⁷⁸ “6 Winning Credit Union Payments Strategies” (Apr. 15, 2016) available at <http://www.cutimes.com/2016/04/15/6-winning-credit-union-payments-strategies?slreturn=1487974414&page=2>.

⁷⁹ The two largest networks favor larger financial institutions in the terms of their deals. See “2019 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) at 15, available at https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2019.pdf.

Competition pushes businesses to provide lower prices and better service. That has been the impact that debit reform brought to payments a decade ago. By prohibiting exclusivity arrangements so that more than one network had to be available to handle debit card transactions, the market changed so that networks needed to find a way to improve their offerings. One way they did that was with enhanced protections against fraud. As soon as the debit reforms came into effect, the networks started introducing full end-to-end encryption of data.⁸⁰ They also accelerated the transition to chip cards in the United States.⁸¹

The credit card industry sometimes argues that high swipe fees are needed to cover fraud costs, but this is not the case – as is clear from the fact that fraud is much lower in nations with much lower swipe fee rates. Economists with the Federal Reserve Bank of Kansas City have found that fraud costs are not a justification for over-inflated interchange fees. They wrote, “Card organizations have often argued that the reason why they impose proportional fees stems from the cost they bear from their ‘payment guarantee’ service which insures merchants against customers who pay with cards without having sufficient funds. We argue that the cost of fraud and insufficient funding is negligible compared with fees at the range of 1% to 3% commonly imposed by brand name cards. For example, industry studies show that the average net fraud losses are around 0.05% for signature debit cards, which do not extend credit to card users.”⁸² And, as noted above, the majority of fraud is paid by merchants, not banks.

The swipe fee system on debit cards prior to reforms created disincentives to the card industry taking fraud protection more seriously. Because the fees were much higher than losses from fraud, financial institutions were not highly motivated to make changes to cut down that fraud. A June 2011 Consumer Reports article pointed out these problems. It noted that thieves could “easily and cheaply” copy U.S. debit card data that is usually stored unencrypted in a magnetic stripe on the back of the card. According to the article, “The U.S. and some non-industrialized countries in Africa are among the only nations still relying on magstripe payment cards, which came into wide use in the 1970’s.”⁸³

A representative from the New York Police Department explained in the Consumer Reports piece that the NYPD had “recommended to several of the large financial institutions that the biggest deterrent to skimming would be using the kind of cards that are issued in Europe and Canada with a chip that makes them pretty much impossible to skim.”⁸⁴ The article noted that financial institutions had been reluctant to do that due to their large card revenues. After debit

⁸⁰ See, e.g., Tracy Kitten, “Visa’s New End-to-End Encryption Service,” Bankinfo Security (Sept. 12, 2012) available at <https://www.bankinfosecurity.com/interviews/visas-new-end-to-end-encryption-service-i-1650>.

⁸¹ See Visa presentation to Federal Reserve (Jan. 8, 2014) at 2, available at <http://www.federalreserve.gov/newsevents/rr-commpublic/visa-meeting-20140108.pdf>.

⁸² Oz Shy and Zhu Wang, “Why Do Card Issuers Charge Proportional Fees?” The Federal Reserve Bank of Kansas City Economic Research Department, (December 2008) at 3 available at <https://www.kansascityfed.org/documents/5325/pdf-rwp08-13.pdf>.

⁸³ “House of cards: Why your accounts are vulnerable to thieves,” Consumer Reports Magazine (June 2011).

⁸⁴ *Id.*

reform, however, the card industry had newfound motivation to reduce fraud and pushed the transition to chip cards – though, unfortunately, they failed to push PIN usage as they had in other parts of the world.

- Merchants Absorb More Card Fraud Than Banks

While the card industry often talks about a “payment guarantee,” merchants are not guaranteed payment on credit or debit card transactions. In fact, merchants are forced to absorb the majority of the cost of fraudulent card transactions. When the merchant is forced to pay for the fraud, this is called a “chargeback.” It means that the money the merchant was supposed to receive on the transaction is taken away (in other words, charged back). This can happen to a merchant without notice even months after the transaction takes place.

The Federal Reserve has collected data on debit card fraud every two years since debit reform was passed. Its 2019 data shows that merchants covered 56.3 percent of debit card fraud while card issuing banks only covered 35.4 percent.⁸⁵ The picture is similar for credit cards as merchants absorb most fraud losses – particularly since Visa and Mastercard implemented a liability shift to push chip card usage which pushed a significant share of fraud onto merchants. In fact, the Federal Reserve has reported that the merchant share of fraud on dual message debit cards (processed in similar fashion to credit cards) is more than 60 percent.⁸⁶

Of course, all of the fraud chargebacks merchants must pay are on top of the swipe fees they pay. Those swipe fees amount to a prepayment of all fraud charges (and much more) to card-issuing banks. Merchants should not have to prepay for fraud and they should not have to pay when the fraud happens in addition to prepaying for it. They also shouldn’t have to hear about the great “payment guarantee” they receive on credit and debit cards when the merchants pay for fraud multiple times.

It is worth noting that even with debit reform, merchants prepay all the fraud that banks otherwise cover. Federal Reserve Regulation II, which implements debit reform, includes 5 basis points as part of the regulated debit swipe fee to cover fraud losses by banks. That number was pegged to 100 percent of the fraud losses on debit cards paid by the average bank covered by the regulation. Of course, that means that fraud is a guaranteed profit center for many of the banks covered by the regulation (those with below average fraud losses). And, the vast majority of banks across the nation are not subject to the Fed’s fee regulation. They charge even higher fees that exceed their fraud losses on debit cards. Why merchants must pay chargebacks to cover the majority of fraud that they have already prepaid (and then some) to the banks is inexplicable.

⁸⁵ “2019 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) at 4, available at https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2019.pdf.

⁸⁶ *Id.*

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The harm done to merchants, consumers and the U.S. economy due to the anti-competitive actions of the card industry is far too large and should end. Market competition improves economic efficiency, innovation, and price competition. Bringing competition to the credit card market would produce real economic benefits across the spectrum. It is time for that to happen.



Testimony of Laura Karet
Chief Executive Officer, President and Executive
Chair, Board of Directors
Giant Eagle, Inc.
Pittsburgh, PA

“Excessive Swipe Fees and Barriers to
Competition in the Credit and Debit Card
Systems”
Before the U.S. Senate Committee on the
Judiciary
May 4, 2022

Chairman Durbin, Ranking Member Grassley, and Members of the Committee:

I am Laura Karet, CEO, President and Executive Chair of Giant Eagle, Inc., one of the nation's largest multi-format food, fuel and convenience retailers with approximately 34,500 team members operating more than 470 corporate and independently owned and operated store locations throughout western Pennsylvania, Ohio, north central West Virginia, western Maryland, and Indiana. On April 22, 2022, with no negotiation or threat of competition constraining them, Visa and Mastercard imposed a fee increase that will cost Giant Eagle \$1.3 million annually. I appreciate the opportunity to talk to you about the impact of swipe fees on our business today.

Our company was established in 1931 by five founders determined to build better lives for their families and communities – a cause we continue to embrace.

Our purpose is to provide communities with life's essentials, so our neighbors have the opportunity to thrive. This purpose and our guiding principles of "Purpose Beyond Profit" have obviously been an extremely important driver for us throughout the past two years of the pandemic. I am so proud of all that our team has accomplished both in ensuring that food and household supplies were accessible to families during this challenging time, and also in administering COVID vaccinations and providing critical pharmacy supplies. We were one of the first pharmacies authorized to provide COVID vaccinations to our rural communities – a role we continue to play with boosters today.

I am also proud to serve as Vice Chair of FMI, the Food Industry Association. FMI works with and on behalf of the entire food industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers who sell to consumers, to producers who supply the food, to a wide variety of companies providing critical services —to amplify the collective work of the industry.

FMI's membership includes nearly 1,000 supermarket member companies that collectively operate almost 33,000 food retail outlets and employ approximately 6 million workers. Our industry historically operates on razor thin margins of just 1-2%. We operate in a highly competitive market, and as inflation has driven prices higher, our customers have become even more conscious of how they are spending their money, driving down profit.

During COVID, we invested in safety protocols, increased employee salaries and benefits, and other measures to ensure our industry was able to keep our doors open and serve our customers safely.

In total, food retailers invested more than \$24 billion, in the first year of the pandemic alone, on additional pandemic-related expenses, including:

- **\$12 billion** in increased payroll and incentive pay;
- **\$5 billion** in increased employee benefits;

- **\$1 billion** in non-monetary benefits and vaccine incentives;
- **\$1 billion** in personal protective equipment and other pandemic supplies;
- **\$3 billion** in cleaning and sanitation supplies and labor; and
- **\$1.5 billion** in technology and online delivery expenses.

There are three points that I want to address today.

First, Giant Eagle's swipe fees have materially increased over time, and the April 22nd unilateral increase will only exacerbate the problem.

Visa and Mastercard together control 85% of the market. On April 22, 2022, both Visa and Mastercard increased the fees retailers pay, and they also created new categories of fees. Every bank that issues credit and debit cards adopted these fee increases without deviation or exception. In my estimation, this cannot possibly comply with either the letter or the spirit of our nation's antitrust laws.

This latest price increase fits the pattern we have seen for years. Giant Eagle has been paying higher and higher payment fee costs. Electronic tender sales—which includes credit, debit, open loop gift cards, SNAP, fleet cards, and various online and emerging tender types sales currently make up around 82% of sales transactions for Giant Eagle. Of the 82% that are electronic tender, about 37% of the total sales are Visa and Mastercard, but when you look at the total card processing fees, Visa and Mastercard make up over 62% of those fees.

Over the past 4 years, our Visa and Mastercard fees have grown from 57% of our total fees to 62% of our total fees, while, at the same time, Visa and Mastercard sales as a percent of total sales have declined about 2%.

Visa and Mastercard used the pandemic as an opportunity to effectively increase swipe fees. While Giant Eagle went to great lengths to insure that our customers and employees were safe by providing curbside pickup and online ordering, Visa and Mastercard used this shift in shopping behavior to charge us a higher "card not present" rate for these services. This alone effectively increased the swipe fees that Giant Eagle paid.

The other members of our industry also witnessed an explosion in the growth of online sales, which are principally limited to credit or debit cards, in part due to Visa and Mastercard's efforts to insure that their cards were essentially the only form of payment that could be used for such transactions. Even before the pandemic, FMI research shows card transactions accounted for nearly 80% of grocery sales across the industry. The rise in card payments due to the pandemic remains elevated to this day, meaning the cost of swipe fees on grocery stores is higher than ever before.

In stark contrast, during the pandemic, my company and others like it were authorized by USDA to accept online payments from our customers using the Supplemental Nutrition Assistance (SNAP) EBT cards. This allowed families using SNAP benefits to purchase groceries online. This

online SNAP EBT card has been a lifesaver for some of our customers, especially during the most challenging days of the pandemic when customers were advised to remain in their homes. It is interesting to note that those SNAP electronic transactions are completed securely, without Visa or Mastercard, and without incurring any swipe fees.

It is hard for us to understand why SNAP EBT cards could accommodate the changes necessitated by the pandemic, but Visa and Mastercard used it as an avenue to increase prices.

Second, millions of customers suffer when swipe fees increase.

Because of the unilateral fee increases, Visa and Mastercard announced on April 22nd, my company and my customers will be paying an additional \$1.3 million just to use their cards. This fee increase came on the heels of Visa reporting in its March 22, 2022 quarterly financials that its profit was just above 50%.

I was truly shocked to hear the remarks made by Vasant Prabhu, CFO of Visa, on the company's April 26 earnings call: "And then, the last thing I'd say, net-net, historically, inflation has been positive for us." Inflation is not and should not be a positive. We in the food industry are working every day to reduce its impact. I know this Congress, the Board of Governors of the Federal Reserve and the White House also are focused on policies intended to reduce inflation. A business that benefits from price increases is not facing any competition, in my estimation, and clearly is not at all concerned about announcing that fact publicly.

Third, there must be competition in the debit and credit card market.

Visa and Mastercard are the only vendors that Giant Eagle cannot negotiate with. When Giant Eagle buys ketchup or paper towels, its suppliers compete to give Giant Eagle the best price. Ultimately, our customers benefit from a competitive market.

In contrast, Visa and Mastercard do not compete for merchant business. I believe companies should be able to charge competitive prices for the goods and/or services they offer, but, from my experience, there is nothing competitive about two companies collectively setting fees that are then charged uniformly by every bank in the country at a rate that ends up exceeding all our business expenses, other than the salaries of our associates and rent.

Our customers want to have the convenience of using these cards, and so merchants must pay what Visa and Mastercard set as the so-called default interchange rates. Yet, the fees associated with accepting any type of payment for a particular good should be incidental to the transaction, and certainly should not be among the highest expenses, third only to labor and rent, business owners should face.

In summary, the three points that I want to leave you with are: (1) Giant Eagle's swipe fees have materially increased over time, and the April 22nd unilateral increase will only exacerbate the problem; (2) millions of customers suffer when swipe fees increase; (3) there must be competition in the debit and credit card market.

I applaud this Committee for looking at ways to achieve robust competition in the use of credit and debit cards, similar to the robust competition we must take part in if we are to remain in business in the grocery industry, and I would be pleased to answer your questions.

Testimony of
Charles G. Kim
Before the
Senate Judiciary Committee
May 4, 2022

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Good morning, Chairman Durbin, Ranking Member Grassley, my home state senator Mr. Hawley, and members of the committee. My name is Chuck Kim, and I am the chief financial officer of Commerce Bancshares. I am pleased to testify before you today on behalf of Commerce Bank team members who serve communities up and down America's heartland.

Commerce is a mid-sized Main Street bank founded in Kansas City in 1865. We are honored to employ talented people in Missouri, Tennessee, Texas, Kansas, Illinois, Iowa, Oklahoma, Colorado, Ohio, Indiana, and Michigan. We have grown over the years but have done so responsibly. During the financial crisis, we were proud when former House Financial Services Committee chairman Barney Frank and our hometown Congressman Emanuel Cleaver recognized our business and financial strength. We offer a full suite of payments services, including debit and credit cards and merchant card acceptance services that keep money moving in the communities we are privileged to serve.

I intend to share perspectives which are broadly held among my colleagues at the thousands of mid-size and community card issuers across this country. Just this week, letters have come to this committee signed by every single state bankers association, community bankers association, credit union league and minority-owned banks. From small to large, from public banks to non-profit mutual banks and cooperative credit unions owned by their depositors, urban, rural, and suburban, we are united in our view: price controls in the form of interchange regulation like the Durbin Amendment harm consumers, harms small merchants, harms competition, and harms communities.

What is interchange and is there a competition problem around it? Simply put, our payment system requires constant investment and protection and we need a fair way to pay for it. I believe that banks and merchants should pay in first and the consumers should pay last, and hopefully not at all. Banks and credit unions invest billions into building and securing the payment system before, during, and after the sale. Merchants contribute to these costs by paying a small fee when they use the system to make a sale. That's interchange and as a fee, it's just a convenient and proportional way to pay their share. Accepting cards costs less than any other form of payment, including cash. In fact, U.S. and Canadian retailers spent more than \$96 billion on cash-handling activities in 2017.¹

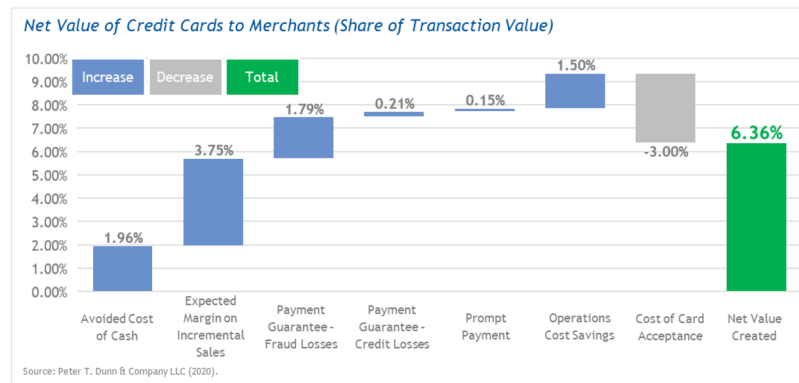
So paying interchange actually saves merchants money. How many things get you more value than they cost? I can also say that when we compete for merchants' card business, it's a very

¹ *Cash Multipliers: How Reducing the Costs of Cash Handling Can Enable Retail Sales and Profit Growth*. IHL Group. 2018

competitive situation – we are up against many players trying to give the merchant a slightly better deal. That used to just mean other banks selling a card terminal, but today there are so many independent providers competing, I think the average merchant probably gets tired of the sales calls. But cards aren't the only choices today. There's Venmo, PayPal, Square, Cash App, Clover, Toast, RTP, FedNow, same-day-ACH, BNPL: new payment rails and merchant payment solutions at all price points, including *free*. If this is a noncompetitive market, how are hundreds of new payments companies thriving? Merchants have far more choices to “plug in” than I do as a bank on the other side of the transaction.

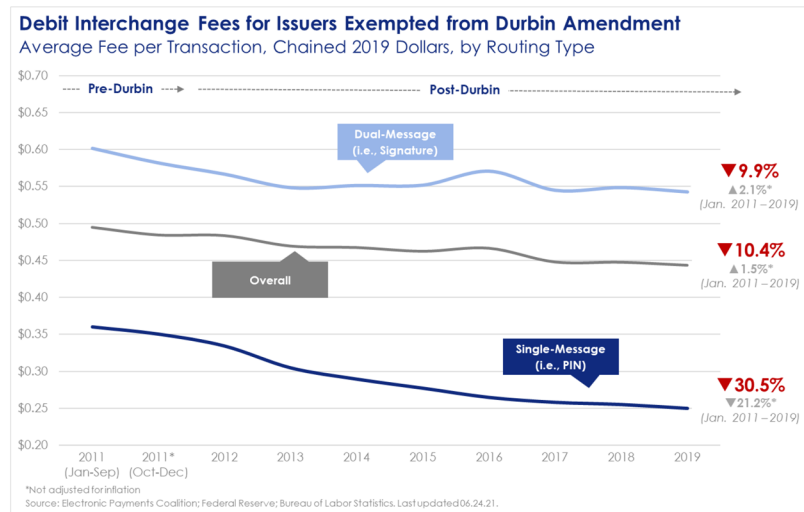
A decade ago, my bank's Executive Chairman testified in the House and predicted that the Durbin Amendment would cause “great harm to consumers... and will affect banks of all sizes.” Now the data is in and we can quantify the size of the harm and how the promises made about protecting community banks and lowering prices turned out to be empty. Interchange regulation was a mistake a decade ago, and it remains a mistake today.

Many consumers have lost access to free checking, minimum balance and monthly fees are up, debit card rewards are scarcer, and small merchants have seen their cost of accepting cards rise. These are the findings of federal banking regulators and respected academics. Per research from the Federal Reserve Board and Dr. Natasha Sarin a University of Pennsylvania law professor who is now a senior economic policymaker in the Biden Treasury Department, banks were 35 to 40 percent less likely to offer free checking accounts following the passage of the Durbin Amendment.²



² Manuszak, M. and Wozniak, K. (2017). [The Impact of Price Controls in Two-sided Markets: Evidence from US Debit Card Interchange Fee Regulation](#). Federal Reserve Board, Washington, D.C., and Sarin, N. and Mukharlyamov, V. (2019). [The Impact of the Durbin Amendment on Banks, Merchants, and Consumers](#). Faculty Scholarship at Penn Law. 2046.

For the largest merchants, this law has been a windfall and it's helped some get more market share, but for smaller businesses and financial institutions that can't tap into a law that encourages consolidation and scale, the costs have been steep. Small banks and credit unions, which were prominently proclaimed as "exempt" from the price caps in the Durbin Amendment, have seen their interchange revenue drop 30% per swipe on PIN debit transactions. It's awfully



hard to offer a free checking account with that kind of reduction. This is a direct result of small issuers being covered by the law's backdoor price controls, known as "routing mandates." I am concerned that the Fed is now proposing to expand these rules to mandate that financial institutions take new kinds of transactions which carry higher fraud costs. Banks should make risk decisions themselves.

Merchants also promised Congress that they would reduce retail prices after the law passed. But the Fed found that nearly 99% of merchants did not pass on any savings they received to their customers. At the very least, this should make us skeptical about their current demands that the debit routing rules be expanded and the law even be extended to credit cards.

But those new demands now come without any predictions of consumer benefit, perhaps an admission that this is about one industry using government policy to elevate their own economic interests in what should be a normal commercial negotiation. Left unsaid is that regulating credit

interchange would spell the end of card rewards, which would harm consumers who love them³ and American companies that depend on them, like our travel and tourism sectors.

Some say that rewards are a wealth transfer from the poor to the wealthy and that interchange is part of the problem. The reality is that while there is a Reverse Robin Hood effect in the rewards payments marketplace, it is one created by regulation and not banks: the loss of rewards on debit cards due to the Durbin Amendment has allowed some large merchants to increase profits. For checking accounts covered by Durbin, the minimum balance required to avoid fees increased 50% after the law came into effect. During the same time period, large merchants received over \$50 billion in benefits from the law. Many bank customers can now only access rewards programs if they can qualify for a credit card. This is the definition of Reverse Robin Hood – using the force of law to remove benefits from basic financial products such as debit cards in order to increase profits at large global retailers. Many of the current discussions about the “real value” of rewards are really arguments about the costs to merchants of payment acceptance.

Members of the Committee, take it from a bank that called it correctly a decade ago: please save our miles and points and reject expansion of this failed law. Instead, I respectfully urge you to give serious consideration to repealing the Durbin amendment and undoing the harm it has caused.

Competition is an important issue and I am concerned that if the Durbin Amendment is expanded to credit cards, many smaller banks would leave the market and consumers and merchants would end up with fewer choices. A marketplace where a company can make a sustainable return is one where you will find more participants and entrants.

But there are also regulatory threats to the integrity and sustainability of our payments system. The Federal Reserve Board should withdraw its 2021 Proposed Rule to expand the Durbin Amendment to cover virtually any kind of debit card transaction, a standard which is so vague and confusing that it threatens to undermine key parts of the mobile wallet ecosystem. Its implicit endorsement of a mandate that community financial institutions accept so-called “PINless” transaction types would fundamentally transform the payments system in a manner not required by Congress, while removing card issuer discretion in preventing fraud – a harsh blow to small banks and credit unions operating payment systems on tight margins. The Proposed Rule was issued without the analyses required by law, including regarding the impacts on small entities. Once withdrawn, it should only be repropose after all procedural requirements are satisfied and its substantive flaws remedied, and if the Federal Reserve can articulate a compelling justification for continuing to pursue this discretionary rulemaking at the expense of small financial institutions and their customers.

The reality is that card acceptance is a two-sided market, which the Supreme Court affirmed just a few years ago. Some commentators on interchange ignore that there are separate but intersecting markets for card issuance and card acceptance. Policies which focus exclusively on the merchant side of the story ignore the others side of the market: card-issuing financial

³ *The Value of Rewards*. Electronic Payments Coalition, 2019.
<http://www.electronicpaymentscoalition.org/wp-content/uploads/2019/03/EPC-Value-Of-Rewards.pdf>

institutions and their customers. This is an intentionally narrow analysis, akin to examining the sustainability of newspapers but only looking at *either* their advertising sales or their subscriber sales. Cards are much the same: merchants must be attracted by a platform that provides value and attracts customers at a fair price and banks must see a sustainable way to engage with that platform and find customers to sign up as consumers in the market.

Our nation needs to keep up when it comes to payments technology and security, and that won't happen if we cost cut the investment out of our own infrastructure. Countries like China and Russia are investing heavily in innovating their payments systems and challenging America's leadership in this key area of national and economic security. Yet policies like the Durbin Amendment create rigid rules and investment caps that limit our potential to do the same. The payments world is changing fast and smaller financial institutions are facing enormous costs to upgrade, offer new products, and stay in the game. Interchange is an investment in American commerce, not a junk fee.

The question before us is whether we want to maintain a leadership posture with our payments system or invest the same or less than our global competitors, creating an artificial austerity that undercuts innovation and security. I urge the Committee to look at both sides of this story and put the consumer and sound economics first. Thank you again for having me.

**EXCESSIVE SWIPE FEES AND BARRIERS TO COMPETITION IN THE CREDIT
AND DEBIT CARD SYSTEMS**

**TESTIMONY OF LINDA KIRKPATRICK
PRESIDENT, NORTH AMERICA
MASTERCARD INTERNATIONAL INCORPORATED**

Before the
United States Senate Committee on the Judiciary

May 4, 2022

Good morning Chairman Durbin, Ranking Member Grassley, and Members of the Committee. My name is Linda Kirkpatrick and I am the President, North America of Mastercard. I am here to discuss the Mastercard network and the competitive environment in which we operate. Through its structure, including interchange, Mastercard has helped deliver continuity to the American and global economy, especially as people and businesses navigated the pandemic. As a core element enabling global commerce, our technology has also helped to transform global commerce by providing enormous benefits to consumers, merchants, and the economy.

Background on Mastercard

Mastercard is a technology company in the global payments industry that connects consumers, financial institutions, merchants, governments, digital partners, businesses, and other organizations worldwide, enabling them to use electronic payments instead of cash and checks. We make payments easier and more efficient by providing a range of payment services using our family of well-known brands, including Mastercard®, Maestro®, and Cirrus®. We are a multi-rail network (debit, credit, prepaid, and real-time payments) that offers customers one partner for their domestic and international payment needs.

Through our global payments network built over decades, which we refer to as our core, we “switch” (*i.e.*, authorize, clear, and settle) payment transactions and deliver products and services. We also supply payment capabilities that include automated clearing house (“ACH”) transactions (both batch and real-time account-based payments). Moreover, we provide integrated value-added offerings such as cyber and intelligence products, information and analytics services, consulting, loyalty, and reward programs. Our payment solutions offer customers choice and flexibility to ensure security for the global payments system.

Mastercard seamlessly processes more than 110 billion payments annually. With more than 2.9 billion cards issued through our family of brands globally, Mastercard serves consumers and businesses in more than 200 countries and territories.

Summary of Key Points

I will discuss each of these more below, but we believe that it is important to view Mastercard's current position in the marketplace with the proper context:

First, Mastercard brings extraordinary value to the marketplace because it works seamlessly for its participants. It works because it is available to consumers—of all economic means—at millions of merchants and from thousands of banks, both large and small. It works because it is frictionless, fast, and convenient. It works because consumers derive satisfaction from knowing that they can make a transaction wherever they see the Mastercard brand, whether they have cash or a checkbook, or whether they are in a store, in their car, or at home. It works because it guarantees merchants payment and is often cheaper than accepting cash. It works because it provides banks with a platform to compete fiercely to win customers by offering an endless variety of cards with features that deliver more than \$60 billion annually to consumers.

Second, we manage our network to consider all ecosystem players and balance their needs. Interchange is the foundation of the Mastercard network and delivers the appropriate incentives for merchants to accept our products and for banks to issue credit to consumers. Moreover, Mastercard ensures that banks will act as a card issuer (with the credit risk) and provide merchants with guaranteed payment on Mastercard transactions. Mastercard's recent decision to adjust certain credit default interchange rates, the first changes since 2006, reflects the need to respond to the changing dynamics in the marketplace, including by helping small merchants by drastically cutting interchange on transactions under \$5. Our recent changes have virtually no impact on issuers' revenues.

Third, Mastercard is an independent, publicly owned company that acts in the interests of its shareholders to promote its business. As of 2022, just 0.8% of Mastercard stock is held by issuing banks. The rest—99.2%—is held by public investors [88.4%] and the Mastercard Foundation [10.8%]. All decision-making authority over Mastercard's actions (including setting interchange rates and network rules) is held by its management, under the authority of an independent board of directors; banks have no control over any Mastercard action. Rather, banks (including community banks and credit unions) are Mastercard's customers—just as merchants (of different sizes), tech firms, governments, and transit authorities are valued Mastercard customers. Mastercard meets the demands of all customers, as well as cardholders, to bring value to their businesses and finances, all while competing with other systems of payment.

Fourth, Mastercard and Visa are each other's most fundamental competitors within an extremely competitive and dynamic payments market. Mastercard and Visa each pursue business initiatives to compete and take market share from each other (and from other forms of payment). Mastercard also aggressively competes with American Express, Discover, and debit networks like Pulse. Mastercard competes against these networks for issuers' business; it competes for merchant acceptance; and it competes for major co-brand deals (*e.g.*, the Delta co-brand deal, which Amex controls).

Mastercard is in no position to exercise market power in this industry. A business has "market power" when it has the unilateral ability to raise prices by restricting output. There can be

no argument that Mastercard or this industry suffers from restricted output; to the contrary, Mastercard has grown steadily for decades because it has produced innovative products and systems for consumers, financial institutions, and merchants.

Moreover, Mastercard does not have the unilateral market power to restrict output or raise prices even if it desired to do so. Visa is twice as large as Mastercard in volume; if Mastercard sought to raise prices or restrict output to anticompetitive levels, it would promptly lose share to Visa. During the past 20 years, Mastercard has always been comparable in size to American Express, with each having a credit share of around 20%. In 2021, our market share in debit and credit was only 25% (down 10 bps); and our credit-only market share was only 23%. For comparison, Amex's credit-only market share in 2021 was 19.6%.

Fifth, and finally, this Committee must focus on the nature of competition in the payments marketplace today. The payments industry is more dynamic and competitive than ever, and its players are constantly innovating to respond to consumer needs. The rapid expansion of Buy Now Pay Later (BNPL), account-to-account transfers, and digital currencies has increased payments competition; the demand for contactless and digital payments will only increase as the pandemic continues to drive innovation. In many cases, merchants pay *twice as much* to offer BNPL than they do for Mastercard acceptance. BNPL exists not because it is the cheapest form of payment. It exists because millions of merchants recognize the benefits of BNPL drastically exceed its costs. Concurrently, FinTechs are supporting new account-to-account payment options that bypass Mastercard. Growth in "open banking" and fast ACH options enable consumers, merchants, and financial institutions to work outside of the card environment.

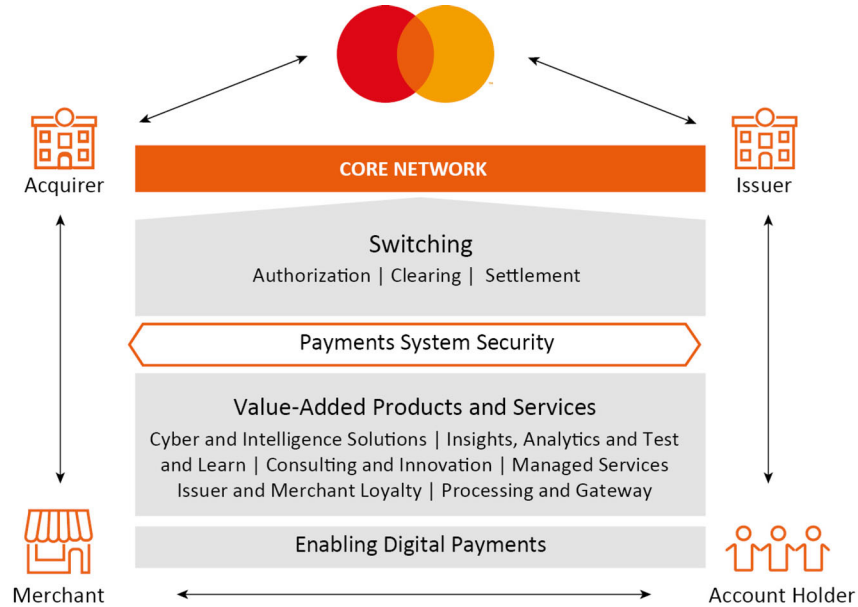
Against this competitive backdrop, Mastercard is attempting to maintain a competitive presence by continuously innovating. To stay competitive, Mastercard has been investing in a new multi-rail strategy that moves beyond payment cards, affording customers new payment solutions.

Now, let me return to the fundamentals of our network.

A Mastercard Transaction

A typical transaction on our network involves four participants in addition to Mastercard: an account holder (a person or entity who holds a card or uses another device for payment), a bank or credit union issuer (the account holder's financial institution), a merchant, and an acquirer (the merchant's bank or credit union). Mastercard does not issue cards, extend credit, determine or receive revenue from interest rates or other fees charged to account holders by issuers, earn money from interchange, or establish the rates charged by acquirers in connection with merchants' acceptance of our products. Consumer relationships belong to, and are managed by, our customers.

The following graphic depicts a typical transaction on our network, and our role in that transaction:



In a typical transaction, a consumer purchases goods or services from a merchant using one of our products. The merchant is connected to Mastercard via a contract with its acquirer, which in turn connects with Mastercard as the network. On the other side of our platform, the issuing bank for the cardholder also connects with Mastercard. Using the electronic network, the consumer's transaction is authorized by the issuer. Upon authorization, the issuer uses the network to pay the acquirer an amount equal to the value of the transaction, minus the interchange owed to the issuer by the acquirer. Then, it posts the transaction to the consumer's account. The acquirer pays the amount of the purchase, net of a discount (referred to as the "merchant discount" rate), to the merchant.

Interchange serves as a system-wide foundation providing value to all the participants in the Mastercard network, including merchants and cardholders. By establishing "default" interchange that applies to transactions when the issuer and acquirer do not agree on compensation, Mastercard can incentivize both card issuance and card acceptance through rates that grow the network and help to provide more than \$60 billion in annual rewards to consumers. Generally, interchange is paid by acquirers to issuers. By directing the flow of funds this way, the system has recognized that the issuer's services are critical to the operation of an efficient network. The issuer takes on all the risk that a consumer does not pay his or her monthly bill. In contrast, normally a merchant will receive guaranteed payment by an issuer (less a merchant discount) regardless of whether the cardholder pays his or her bill. Interchange drives card issuance by thousands of banks

and credit unions and incentivizes millions of merchants to accept cards because of the benefits that they derive.

Moreover, interchange fosters participation from both large and small merchants and issuing banks. By establishing default interchange, Mastercard enables all participants, regardless of size, to understand the financial structure of a transaction before it occurs. In the absence of default rates, millions of merchants would have to negotiate with thousands of banks to settle on the terms of Mastercard acceptance—a ridiculous proposition. Issuers and acquirers also remain free to reach their own agreements on interchange, and some large banks can sidestep the interchange system where they contract with both cardholders and merchants.

Mastercard does not generate revenue from interchange. We administer the collection and remittance of interchange through settlement. Mastercard must set interchange to benefit merchants, issuing banks, and consumers. We generate revenue from what we charge to our customers based on the gross dollar volume on their products that carry our brands, from what we charge to our customers for switching, and from other payment-related products and services.

The merchant discount rate is established by the acquirer in its contract with the merchant (to which Mastercard is not privy) to cover its costs of both participating in the four-party system and providing services to merchants. The rate considers the amount of interchange, which the acquirer generally pays to the issuer. Additionally, acquirers may charge merchants processing and related levies.

Competition

Competition in payments today is extraordinarily dynamic and innovative. Consumers are constantly discovering new ways to pay that fit their changing lifestyles, particularly in the face of health and technological challenges. Mastercard has not only provided great value to its system participants, but also is trying to react quickly in the marketplace to adjust to innovations that are moving beyond cards.

Mastercard competes against all forms of payment, including cash and checks; electronic transactions, such as wire transfers, ACH payments, and real-time account-based payments; contactless, mobile, and e-commerce payments; and other electronic forms of payment, including card-based payment systems that process credit, charge, debit, and prepaid transactions. We compete vigorously worldwide with brands such as Visa (including Plus, Electron, and Interlink networks), American Express, Discover, China UnionPay, and JCB, among others.

Mastercard's share of the credit or debit card transaction market is not dominant. For example, according to the Nilson Report, our share of the credit card transaction market in the United States in 2021 was 23.8%, around the same size as American Express at 19.6%, and well below Visa's share of 52.7%. (Discover is at about 4%). We also compete with ATM and point-of-sale debit networks globally, such as Star, NYCE, and PULSE in the United States, Interac in Canada, and EFTPOS in Australia. Finally, we compete against businesses that issue their own private label cards.

Increasingly, we must compete against companies that offer alternative payment systems, such as PayPal, digital wallet providers, Buy Now Pay Later providers, mobile operator services, mobile phone-based money transfer and microfinancing services, handset manufacturers, and cryptocurrencies.

Thus, Mastercard must meet this advanced competition by pursuing a multi-rail strategy that offers customers and consumers new and secure ways to pay that go beyond the traditional card transaction. Mastercard must continue to compete intensely for the loyalty of our financial institution customers, for our merchant customers, and for consumers. The graphic below provides a sense of the new payments environment within which Mastercard must compete:



Benefits to Consumers

As discussed, consumers have a variety of payment choices. Consumers can pay with cash, check, debit card, charge card, credit card, gift card, prepaid card, alternative payment system, or store-issued cards. Even among payment cards, consumers have thousands of options regarding the provider of those cards and the benefits associated with their use.

Mastercard offers a broad value proposition to consumers:

- Consistent, seamless, and secure checkout experiences
- Increased purchasing power and access to credit to finance purchases

- Consumer protections, such as zero fraud liability protections and dispute resolution processes
- Avoiding cash spoilage (lost or damaged currency)
- Value-added features and benefits, such as rewards, lounge accesses, and concierge service

Because of this, Mastercard is popular with cardholders. A consumer with a Mastercard knows that they can go almost anywhere in the world and make a purchase using their card, whether that card was issued by a large New York City bank or an Iowa, Utah, Missouri, or South Carolina credit union or small bank. Mastercard cardholders can transact in more than 150 currencies without the need to exchange cash.

Mastercard plays a critical role in expanding financial inclusion for consumers of all socio-economic means. Mastercard provides all cardholders with enhanced purchasing power, potential access to unsecured credit, access to merchants through remote and mobile mechanisms, easy ways to pay for medical and other benefits, and an orderly and convenient way to manage personal finances. The Mastercard brand promises fast, safe, and secure transactions for all Mastercard cardholders, regardless of income level.

Further, Mastercard continually innovates to improve its performance. A cardholder need not even leave his or her own home to shop around the globe. The Internet has become a powerful, ubiquitous tool for consumers to find the lowest prices. The rapid development of e-commerce and its important role for our consumer economy, including during the COVID-19 pandemic, is due largely to a cardholder's ability to pay for a product online with a card. Furthermore, Mastercard is developing, and intends to continue to develop, new and innovative payment options.

In addition to the convenience and security of our network, Mastercard enables banks to offer consumers significant tangible benefits across the socio-economic spectrum. Whether by issuing prepaid or student cards, or cards with airline miles, rewards points, and cash back, Mastercard issuers innovate to produce an endless variety of cards. The proliferation of these benefits is the direct result of intense competition in payments. Mastercard competes with other forms of payment, and Mastercard issuers compete vigorously against each other and against other payment card issuers. Because consumers can pick from thousands of different cards, issuers strive to make their card products more innovative and appealing. This intense competition has resulted in the elimination of annual fees for many cards. The increase in rewards and loyalty cards is also a direct result of competition in the marketplace. Contrary to some narratives, more than 80% of all cards are "rewards" cards, and data from the Consumer Financial Protection Bureau demonstrate that consumers of all incomes enjoy the benefits of rewards and points. For many card products, credit risk is more important than income alone.

During the pandemic, there is a preference for contactless payment transactions and the benefits of e-commerce. These trends are further accelerating the shift to digital payment. For example, in 2020, we expanded "click to pay," the activation of the EMV Secure Remote Commerce industry standard that enables a faster, more secure checkout experience across e-commerce. This checkout experience is designed to eliminate the need to retype credit card

information during every checkout online. We also have continued our focus on contactless technology to help deliver a simple way for consumers to pay.

Benefits to Merchants

Merchants were the first to recognize the benefits of payment cards when, in the 1920s, they began to issue credit cards. These card programs, known now as two-party systems, grew because they were attractive to consumers due to the convenience and ready access to credit they provided. These programs were inefficient, however. Each merchant had to conduct underwriting to determine which customers qualified for the credit. Legal compliance costs grew as the programs were increasingly regulated. Merchants learned that the availability of credit can increase sales, but collecting on that credit can be expensive. This problem was compounded for merchants because the borrowers from whom they sought to collect were the very customers from whom they derived their sales—and collection activities often fail to create customer loyalty.

The powerful desire of merchants to benefit from cards, combined with the relative inefficiency of the two-party systems (*i.e.*, the merchant card programs), created opportunity for others and, in 1950, Diners Club introduced the first so-called “universal” credit card that could be used at any store or business that chose to accept it. In 1958, American Express followed and offered its own card. Diners Club and American Express both used the three-party system, in which a single company issues the cards, signs up merchants to accept the cards, and completes the transactions.

In the 1960s, banks began to use a four-party system to offer their own credit card programs. One group of banks created MasterCharge (which became Mastercard in 1979). Around the same time, Bank of America licensed a group of banks in the United States to issue its BankAmericard (which eventually became known as Visa). These four-party systems created even greater efficiencies and benefits by bringing together the cardholders and merchants of hundreds, eventually thousands, of banks to complete transactions. Four-party systems are less expensive and more efficient than the two-party or three-party systems—a benefit to competition that our antitrust laws encourage.

More and more merchants, especially small businesses, were drawn to these card offerings as the benefits, which far outweighed the costs, became more widely known. Small- and medium-sized businesses realized the great value of Mastercard and other four-party systems because it was too expensive for them to issue their own proprietary cards. One can imagine the reaction of a merchant that had struggled with the underwriting, administrative, legal, and credit risk; and other problems associated with its own credit card when Diners Club offered to perform those functions for the merchant’s customers. The prospect of guaranteed payment alone (*i.e.*, getting paid for a transaction even if the customer does not pay the credit card bill) was hard to resist.

Today, Mastercard has built on the benefits of the four-party model to make payments faster, safer, and less expensive for merchants. As with consumers, Mastercard offers a powerful value proposition to all merchants, large and small:

- Incremental transactions, driven from consumer preference, ability to buy when low on cash, and access to new customers with greater purchasing power
- Increased sales
- Greater sales throughput from better customer checkout experience
- Guaranteed consumer payment for goods and services
- Reduced risks and security concerns (*e.g.*, fraud liability protections and dispute resolution processes)
- Higher customer engagement and loyalty given data-backed insights, card-linked offers, and co-brand programs
- Operational efficiencies (*e.g.*, no losing cash and paying armed guards to haul it, and faster settlement of funds)

We keep billions of electronic payments safe through end-to-end encryption, tokenization, and authentication. We spot anomalous activity and identify fraud before it occurs. Our technology ensures that genuine transactions are not declined—and that keeps consumers happy. Beyond operating a payment network that brings incredible value to merchants, we improve business for merchants in other ways.

Today, merchants derive enormous benefits from payments industry competition, including the ability to provide an unprecedented number of payment options for their customers. This affords merchants enormous flexibility in their business. For example, a merchant can offer its customers the choice to pay by cash, check, general-use card, proprietary card, installment loan, ACH, or real-time payment. Moreover, this choice permits a merchant to manage its costs of payment acceptance. Merchants that prefer certain types of payment can restrict payment options in their stores, or they can offer other payment options but steer their customers to the preferred methods, as many merchants are doing with debit or proprietary cards. Merchants that prefer to receive payment by cash have many options too, such as requiring payment in cash or providing incentives, such as cash discounts, to encourage their customers to forgo other payment options.

Even with this array of choices, merchants continue to offer card options. Merchants are rational and will accept a type of payment if it makes business sense. For example, the convenience of cards means consumers will spend more than they would if they had to pay with cash or checks. Cards generally are faster than other forms of payment, meaning merchants can serve their customers more quickly. Many cardholders understand that certain Mastercard cards provide financial benefits far more valuable than other forms of payment. A merchant understands the value in offering acceptance at a certain cost in lieu of potentially losing the sale to a competitor. Indeed, merchants often will accept a competing payment that costs them significantly more than Mastercard.

The value of Mastercard to merchants may never have been more important than during the height of the pandemic. In March 2022, online spend was up +84% compared to pre-pandemic levels. However, 9 million small businesses did not have an online presence then. Within four weeks, Mastercard established “Digital Doors,” a program that has helped more than 20,000 small businesses get online through digital enablement tools. Thanks to efforts like these, American small businesses that started an online store during the pandemic saw average monthly sales growth of 6%, compared to those that did not create a digital presence.

Small business owner Michelle Cadore is one such example. Ms. Cadore is a designer who owns and operates DA SPOT NYC, a Brooklyn-based clothing boutique that showcases the works of Black designers and entrepreneurs. At the beginning of the pandemic, DA SPOT NYC was forced to close for six months, while Ms. Cadore looked for alternative methods to keep her business afloat. After securing several grants, she utilized Mastercard's Digital Doors Program, which offers guidance and resources to digitally transform small businesses and build a robust e-commerce platform. Using Mastercard tools such as its Small Business Digital Readiness Diagnostic, Ms. Cadore conducted an analysis of her digital business and can now protect her business against downturns. She attributes her partnership with Mastercard to increasing her sales by 300% since she began working with us.

Ursula Smith is another incredible example of perseverance during the pandemic. Ursula is a small business owner in Birmingham, Alabama who had long nurtured a dream of opening her own studio to introduce children of color to ballet, tap, and West African dance. After nearly two decades of starts and stops, she opened the doors of the Ursula Smith Dance Studio in the heart of the city's historic Civil Rights District on February 1, 2020. She suddenly had to pivot to a digital world, which included setting up and hosting free virtual dance workshops and launching a web store with class options. Since then, Ursula has hosted more than 150 virtual dance classes and rehearsals.

In addition to fostering digital enablement, Mastercard works to support small businesses through access to capital, giving entrepreneurs the tools they need to succeed. For example, an estimated 41% of Black-owned businesses across the U.S. shut down between February and April of 2020 according to the Federal Reserve Bank of New York, outpacing all other owner groups. To address this inequity, we formed the Strivers Initiative, which is a consumer-facing platform that elevates the visibility of Black female business owners overcoming obstacles to maintain and grow their businesses, providing them with access to capital, a suite of security technology for the businesses, and lasting partnerships and mentorship.

Mastercard allows all merchants to reach their audiences more effectively. When contrasted against a system in which a merchant runs a lay-away plan or other credit extension program, the benefits of outsourcing that function to the Mastercard system is clear. Not only does a merchant receive guaranteed payment, but what it pays for acceptance is well below the costs it would incur to run its own credit program. According to the Federal Reserve, the average annual consumer credit card charge-off rate—which is the amount of credit that a bank or credit union extends that is not repaid by the borrower—has been roughly 4.5%. The average credit interchange rate for Mastercard has been roughly 1.9%.

In short, no one is forcing merchants to accept Mastercard. Merchants accept Mastercard because the benefits of acceptance drastically exceed the costs.

The Merchant Discount and Interchange

Since the inception of these payment systems, merchants have paid to their acquirers a “merchant discount” rate in exchange for the benefits of card acceptance. In a three-party system,

the merchant discount is paid directly to the single entity that provides the services to the merchant. For example, in the Discover system, the merchant discount is paid to Discover, which issues the card, licenses the merchant to accept the card, and enables transactions.

In a four-party system, the merchant pays the merchant discount to the acquirer (*i.e.*, the bank) that licensed the merchant to accept the card. That merchant discount rate enables a merchant to accept and process card transactions.

Since 2004, Mastercard management has been responsible for establishing default interchange for our system in the United States when there are no other established settlement terms in place between an issuer and an acquirer. Although Mastercard establishes interchange and collects and remits it on behalf of our financial institution customers, *we do not keep any portion of interchange*. Nonetheless, interchange is a critical part of our system because issuers must be compensated for extending credit, managing fraud, and paying rewards to consumers.

Mastercard considers many factors in determining interchange, and there are always competing considerations. If we set interchange too high, the merchants' desire and demand for Mastercard acceptance will drop. If we set interchange too low, the card issuers' willingness to issue and promote Mastercard-branded cards will drop, as will consumer demand for those cards when issuers cease promoting Mastercard cards with extensive cardholder benefits. Mastercard management works diligently to maximize the output of the Mastercard system by setting interchange at levels that enable it to compete effectively for both issuance and merchant acceptance. Three-party systems like American Express and Discover set their merchant discounts to establish a similar objective. Generally, merchants pay the highest merchant discount for accepting American Express, the lowest for accepting Discover, and somewhere in between for accepting Mastercard-branded cards. Merchant discounts for accepting Visa cards are understood to also fall somewhere in between American Express and Discover. Other new payment options, like BNPL, often cost merchants far more than Mastercard.

Mastercard Rate Changes

In January 2020, Mastercard publicly announced our intent to adjust credit interchange effective April 2020. These proposed changes were the first significant changes since 2006. Due to the pandemic, we delayed our plans to adjust default interchange rates. In 2021, we again delayed our proposed changes. On April 22, 2022, we adjusted interchange, with some rates going up and some going down. To be clear: the net effect of our recent changes *is neutral* (*i.e.*, cumulative impact of less than 1 basis point).

Among our changes: we lowered rates for merchants with transactions below \$5, directly supporting smaller businesses. These "small ticket" transactions represent more than 10% of Mastercard credit transactions. As a result of our recent cuts, the rate for a small ticket credit transaction is now less than the price-controlled rate for a debit transaction under Reg II. We also lowered rates for hotels, rental car companies, casual dining, and daycare facilities.

It is true that some of our rates also went up. For example, default rates increased modestly at grocery stores. Since 1992, we have set rates at grocery stores at an incredibly low number to

incent acceptance. But gone are the days of long checkout lines at grocery stores and delays while someone writes a check. Most grocery stores have adopted self-checkout terminals, which allow one employee to staff more than a dozen terminals concurrently. Online delivery services at grocery stores have also increased sales and ticket size by promoting electronic payments at checkout. As such, a rebalancing of our system was warranted. Even so, the new rate for grocery is still one of our lowest default rates, and it is 10% lower than the retail card present rate.

To put rates into historical context, in 2018, the average cost of credit acceptance for Mastercard and Visa cards was 2.26%, according to Nilson Report. Since then, the rate has fallen by 4 basis points and remained flat during the pandemic. Contrary to false claims, we do not have unilateral pricing power to continue to escalate interchange. Rather, recent market changes have forced declines, even from American Express. Since 2014, the cost of accepting American Express has fallen by 22 basis points, according to Nilson Report. Our merchant partners are paying less and receiving more value than they did even a few years ago.

Transaction Security and Tokenization

Mastercard invests heavily in the security of our network. Mastercard has increased its resources to support innovation and technology designed to protect our payments system for cardholders, merchants, and financial institutions. These innovations included our U.S. rollout of chip card technology and our introduction in recent years of security technologies such as Mastercard Safety Net, Mastercard Identity Check, our Mastercard Biometric Card, and ID Theft Protection. These innovations come at a significant cost and produce real results. For example, our SafetyNet technology stopped real-time fraud attacks and prevented more than \$10 billion in potential fraud in 2021 alone.

One of our more recent developments is our creation of a tokenization service that protects consumers and merchants from payment fraud by encrypting card numbers and deploying dynamic data in the authentication of transactions. We pair our world-class payment security with our Zero Liability fraud protection that protects consumers from fraud when making purchases.

For decades, Mastercard has built a payment ecosystem that brings enormous net benefits and efficiencies to all those that make, accept, or process payments. It has done so while facing larger and stronger network competitors and continually evolving competitive challenges from new entrants, including FinTechs and BNPL firms. We recognize competition is a critical issue in Congress and we appreciate the opportunity to testify. I am happy to answer any questions from the Committee.

**Testimony of Ed Mierzwinski
Senior Director, Federal Consumer Programs
U.S. PIRG**

at a Hearing

of the

U.S. Senate Judiciary Committee

on

**Excessive Swipe Fees and Barriers to Competition
in the Credit and Debit Card Systems**

**The Honorable Richard J. Durbin
Chair**

May 4, 2022

**Testimony of U.S. PIRG at a Senate Judiciary Committee Hearing
on Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems
4 May 2022**

Thank you, Chair Durbin, Senator Grassley and members of the Judiciary Committee.

My name is Ed Mierzwinski. I am senior director for federal consumer programs at the U.S. Public Interest Research Group. U.S. PIRG is an advocate for the public interest. We speak out for a healthier, safer world in which we're freer to pursue our own individual well-being and the common good. U.S. PIRG serves as the national office of the nonprofit state Public Interest Research Groups.

As a consumer advocacy group, we have long supported credit and debit interchange (or swipe) fee reform and the Durbin amendment, which made debit interchange markets fairer.¹

All consumers pay more at the store and more at the pump because of unfair, nonnegotiable, nontransparent merchant interchange fees imposed by the card networks.

These fees impose the greatest hardship on the most vulnerable consumers—the millions of American consumers without credit cards or banking relationships. These consumers, as cash customers, subsidize card usage by paying inflated prices for many goods and services. These prices are inflated by the billions of dollars of anticompetitive interchange fees, which are used to subsidize rewards programs, promotions, and riskier credit underwriting for credit card users.

And unfortunately, credit card interchange fees continue to accelerate, because there is nothing to restrain Visa and Mastercard from charging merchants, and their customers, even more.² Just a few days ago, Visa and Mastercard raised interchange rates, despite the economic uncertainty

¹ Here are some examples of U.S. PIRG's support for interchange fee reform: For example, see my testimony (page 44) before the Senate Appropriations Committee's subcommittee on Financial Services and General Government, at a hearing on "Oversight of Federal Payment of Interchange Fees: How to Save Taxpayer Dollars," 16 June 2010, available at https://www.appropriations.senate.gov/imo/media/doc/hearings/06_16_10%20FSGG%20Oversight%20Interchange%20Fees%20GPO%20Record.pdf. Also see my testimony before the House Judiciary Committee's Hearing on HR2695, the Credit Card Fair Fee Act of 2009, 28 April 2010, available at <https://republicans-judiciary.house.gov/wp-content/uploads/2010/04/Mierzwinski100428.pdf>. Also see my testimony before the Antitrust Task Force of the House Judiciary Committee on Credit Card Interchange Fees, 17 July 2007, available at <https://babel.hathitrust.org/cgi/pt?id=pst.000063525090&view=1up&seq=1>. See my testimony at a hearing of the House Small Business Committee, "The EMV Deadline and What it Means for Small Businesses: Part II," 21 October 2015, https://republicans-smallbusiness.house.gov/uploadedfiles/10-21-2015_mierzwinski_testimony.pdf.

² The United States appears to one of the few countries in which interchange fees are increasing and it has far higher fees than almost any other industrialized country. See Fact sheet, "Credit and Debit Card Interchange Fees in Various Countries August 2021 Update," Federal Reserve Bank of Kansas City, August 2021, https://www.kansascityfed.org/documents/8288/CreditDebitCardInterchangeFeesVariousCountries_August2021Update.pdf.

caused by the pandemic and inflation.³ I believe that the big banks are happy with inflation -- when gas prices double, their percentage-based interchange revenue doubles -- without the banks making anything or doing anything.

We commend this committee for its series of hearings and actions on making markets more competitive. Visa and Mastercard are classic examples of anti-competitive platforms that control two-sided markets.

The interchange “market” represents a market failure. Merchants pay too much and cannot negotiate. Interchange rates are set, not by the banks that profit, but by Visa and Mastercard. Consumers bear the brunt of the higher prices as merchants are forced by payment networks rules to bake the swipe fee costs into the prices of the products they sell, yet are forbidden by card network rules from offering price signals to consumers to choose lower cost options for payment. Other jurisdictions, including Canada and the European Union, have imposed much more significant restrictions on interchange practices to correct the market failure.

Of course, ever-rising swipe fees that defy gravity act as a form of reverse competition to convince more banks to join the payment networks that set them. A rising interchange tide raises all bank boats, but it drowns merchants and consumers.

We present the following main points:

I. The Durbin amendment was a well-thought-out approach to the payment networks’ market failure but the Federal Reserve must act to improve compliance:

The Durbin amendment provided the Federal Reserve Board with the authority to cap certain, but not all, fees for debit interchange under rules that require the fees be “reasonable and proportional” to the cost of conducting the transaction, rather than based on what the card networks call “value” which really means “whatever they want and they can get.”

The Durbin amendment also took steps to improve competition in debit card network routing. More needs to be done to improve this provision, especially since the bulk of innovation in this space is in those networks not controlled by Visa and Mastercard. Merchants would like to choose from these other innovative networks, which Federal Reserve Board action could enable.

Much of the bank, credit union and card network complaining about the Durbin amendment, especially during the implementation of Regulation II, had focused on its supposed government

³ Andriotis, AnnaMaria, “Visa, Mastercard Prepare to Raise Credit-Card Fees: The increases, delayed during the pandemic, mean many merchants will pay more when shoppers use credit cards,” the Wall Street Journal, 8 March 2022, <https://www.wsj.com/articles/visa-mastercard-prepare-to-raise-credit-card-fees-11646743166>

price-fixing – its cap on certain debit card swipe fees. Now, they defend their defiance of the Durbin amendment’s also- important routing requirements.

The Durbin amendment was always about more than stopping excessive rent-seeking. It was also designed to promote the development of a competitive payment network marketplace. The Fed’s recent Notice of Proposed Rulemaking on debit routing sends an important signal that conduct inconsistent with the Durbin amendment will not be tolerated. The Federal Reserve’s NPR makes simple clarifications that protect the Section 920 routing provisions required by the Durbin amendment that promote competition.

In particular, the NPR would make clearer that EFTA⁴ Section 920 and its regulations:

- 1) “forbid issuers and payment card networks from restricting the number of such networks to fewer than two unaffiliated networks (“prohibition on network exclusivity”)” and
- 2) “forbid issuers and payment card networks from directly or indirectly inhibiting any person that accepts debit cards for payment from directing the routing of an electronic debit transaction over any network that may process that transaction (“prohibition on routing restrictions”).

Importantly, in its comments on these draft rules, the U.S. DOJ said:

“Consumers of financial services, like all consumers, benefit from competition. [...] Increasing the competitiveness of the debit payment market is particularly important given that competition in the debit market is very limited today. The debit payment market is highly concentrated—over 75% of transactions are processed by two firms, Visa and Mastercard. The online debit payment market is even more concentrated with Visa and Mastercard collectively accounting for over 90%, and Visa alone accounting for approximately 70%. This gives incumbent debit networks a significant amount of leverage when negotiating with merchants over the price charged to merchants for the use of their respective debit networks. **Lacking competitive alternatives, merchants must pay higher transaction fees that are passed on to consumers in the price of goods and services.”⁵ [emphasis added]**

We support the rules under consideration at the Federal Reserve to improve debit card routing choices for merchants as required by the Durbin amendment.⁶ We note that the Department of

⁴ The Electronic Funds Transfer Act.

⁵ Comments to the Federal Reserve Board by Department of Justice staff on debit card routing, 11 August 2011, https://www.federalreserve.gov/SECRS/2022/January/20220110/R-1748/R-1748_081121_140725_318718138961_1.pdf

⁶ Comments of U.S. PIRG to the Federal Reserve Board on debit card routing, 11 August 2021, https://www.federalreserve.gov/SECRS/2022/February/20220215/R-1748/R-1748_081121_140702_384455847906_1.pdf

Justice⁷ and the FTC,⁸ our two government competition cops, have also offered supportive comments to the Fed.

II. The banks have spent years developing and promoting false counter-factual narratives about the impacts of consumer protection rules and the Durbin amendment specifically on both the declining number of banks and the fees bank customers pay:

The decline in the number of financial institutions began many years ago. The reason is two-fold, according to a study by the St. Louis Fed: there are fewer “*de novo*” banks and there are more bank mergers.⁹ Also, according to this study, “A large number of banks failed during the 1980s and early 1990s, and again during and after the 2007-09 financial crisis.”¹⁰ The Durbin amendment, which was enacted in 2010 and didn’t take effect until 2011, should not be blamed for a trend that largely predated it.

The Durbin amendment has neither forced nor caused banks to raise other consumer fees. The reality is that banks raise fees whenever they can and often cite the latest regulation, especially the Durbin amendment, as their excuse.¹¹ Banks raised consumer fees whenever they could before the Durbin amendment and they raised fees whenever they could after the Durbin amendment. High bank fees remain a problem; we strongly support the Consumer Financial Protection Bureau’s inquiry¹² into “junk fees.”¹³ The banks, in their propaganda to the Congress, cite a recent GAO study that is largely based on anecdotal votes of a few bank stakeholders to impugn the Durbin amendment.¹⁴

Along with other consumer groups, U.S. PIRG has long been concerned that despite all the taxpayer benefits provided to the insured banking system—from taxpayer-guaranteed deposit insurance to the Federal Reserve discount window and even to bailouts—banks have either

⁷ Comments to the Federal Reserve Board by Department of Justice staff on debit card routing, 11 August 2011, https://www.federalreserve.gov/SECRS/2022/January/20220110/R-1748/R-1748_081121_140725_318718138961_1.pdf

⁸ Comments to the Federal Reserve Board by the FTC staff on debit card routing, 11 August 2021, https://www.federalreserve.gov/SECRS/2022/February/20220215/R-1748/R-1748_081121_140730_316414853046_1.pdf

⁹ “The long-term decline in the number of commercial banks shows no signs of ending. Bank failures have become much less common, but the rate of new-bank chartering also has declined to insignificance. Meanwhile, bank mergers continue at a historically high rate on a percentage basis,” in Emmons, William, “Slow, Steady Decline in the Number of U.S. Banks Continues,” St. Louis Fed, 9 December 2021, <https://www.stlouisfed.org/on-the-economy/2021/december/steady-decline-number-us-banks>

¹⁰ *Id.*

¹¹ Balto, David, “The Bankers’ New Goat, HuffPost, 11 March 2011, https://www.huffpost.com/entry/the-bankers-new-goat_b_834615.

¹² “Request for Information: Fees Imposed by Providers of Consumer Financial Products or Services,” CFPB, 2 February 2022, <https://www.regulations.gov/document/CFPB-2022-0003-0001>

¹³ Comment on CFPB Request for Junk Fees Information from U.S. PIRG Education Fund, 12 April 2022, <https://www.regulations.gov/comment/CFPB-2022-0003-2551>

¹⁴ Report, “Regulators Have Taken Actions to Increase Access, but Measurement of Actions’ Effectiveness Could Be Improved,” U.S. Government Accountability Office, 14 February 2022, <https://www.gao.gov/products/gao-22-104468>

chosen to ignore or been unwilling to provide the un- and under-banked with reasonably-priced accounts. Consequently, many have become victims of the fringe banking system—payday lenders, rent-to-own stores, check cashers, etc. But this was true both before and after the Durbin Amendment took effect. While the FDIC notes that the number of unbanked households has dropped in recent years, it finds that “An estimated 5.4 percent of U.S. households (approximately 7.1 million) were “unbanked” in 2019, meaning that no one in the household had a checking or savings account at a bank or credit union (i.e., bank).”¹⁵ As mentioned earlier, cash customers, such as unbanked consumers, are hurt the most by the inflated retail prices that result from high interchange fees.

III. Interchange fees represent a broken market, and all consumers, even those who pay with cash and checks, pay more at the store and more at the pump when interchange fees go up.

The significant increases in interchange fees signal a broken market. Courts have held that Visa and Mastercard have market power, which allows them to dictate the terms of trade: merchants have no choice but to accept Visa and Mastercard products on the sellers’ terms.¹⁶ In the absence of broader regulation, including on credit interchange, interchange fees have increased significantly and are much higher in the United States than other countries.

In 2021, according to the Nilson Report, Visa and Mastercard charged merchants a total of \$105.54 billion in credit and debit card fees. U.S. merchants paid out a staggering \$77.48 billion in credit card fees and \$28.06 billion in debit card fees imposed by Visa and Mastercard.¹⁷ And just last week, Visa and Mastercard further increased many of their interchange fee rates. I am sure that the merchant witnesses today will offer details on how the purported accompanying “decreases” in some fees are largely illusory.

The card associations’ rules prevent merchants from informing consumers on the costs of payment and limit the ability of merchants to direct consumers to the safest, lowest cost and most efficient forms of payment. If markets are non-transparent and consumers cannot receive price signals, then they cannot take actions to restrain unfair practices.

¹⁵ Survey, How America Banks: Household Use of Banking and Financial Services, Federal Deposit Insurance Corporation, 17 December 2021, <https://www.fdic.gov/analysis/household-survey/index.html>

¹⁶ There are 4 credit card networks, also including Discover and American Express, but Visa and Mastercard dominate. “The general-purpose bank credit card market in the United States is dominated by cards issued on the Visa and Mastercard networks, which, combined, accounted for nearly 576 million cards, or about 83 percent of general-purpose credit cards, in 2019. In addition, American Express and Discover networks accounted for another 115 million general purpose cards in 2019.” in “Report to the Congress on the Profitability of Credit Card Operations of Depository Institutions,” Federal Reserve Board, November 2020, <https://www.federalreserve.gov/publications/files/ccprofit2020.pdf>

¹⁷ “Merchant Processing Fees in the United States—2021,” *The Nilson Report*, Issue 1216, March 2022.

IV. The interchange market has prices that are set not by the acquiring or issuing banks, but by the card networks. Neither the card-issuance or card network markets are competitive.

The card-issuance market is highly concentrated. The Top Ten card issuers “controlled 81% of the credit card market based on receivables and 85% based on purchase transactions in 2019.”¹⁸ This oligopolistic concentration has allowed issuers to engage in a variety of unfair and anti-consumer practices.

For example, the “honor all cards” rule means what it says. U.S. merchants (but not European merchants) must accept all cards branded Visa or Mastercard, despite wide ranges of interchange (unknown to the merchant or consumer).¹⁹

Further, merchants cannot signal consumers to pay with cards that carry lower interchange fee rates, and as the network offers more and more rewards cards with higher and higher interchange fees, the merchants are compelled to raise overall prices to pay for the fees associated with the cards.

The enormity of the interchange fee competition problems is perhaps best shown by the massive antitrust lawsuit that Visa and Mastercard have offered to settle with thousands of merchants for over \$6 billion dollars, said to be the largest antitrust settlement ever.²⁰ Why would they offer to settle for such a sum?

In fact, most merchants, large and small, have opted out and objected to the settlement and it is still not decided. Other than the cash to merchants, the settlement’s terms do little to end the unfair conduct that the networks are accused of. In fact, the settlement would bar any merchants, including future merchants, from suing Visa or Mastercard, even for future illegal payment network practices. Such a settlement does not protect merchants or consumers, nor does it promote innovation or choice.

¹⁸ Geffner, Marcie, “Credit Card Issuer Market Share: Top 25 Issuers,” in CardRates.com based on Nilson data, 1 September 2020, <https://www.cardrates.com/advice/credit-card-issuer-market-share/>

¹⁹ Riley, Brian, “Credit Card Rewards: Honoring or Dishonoring All Cards,” Payments Journal, 71 October 2018, <https://www.paymentsjournal.com/credit-card-rewards-honoring-or-dishonoring-all-cards/>

²⁰ Sweet, Ken, “Visa, Mastercard in new settlement of credit card fee suit,” Associated Press, 18 September 2018, <https://apnews.com/article/a51be2dbfe7a4503bef1d08ccde2f1a9>

V. Other jurisdictions have done far more to rein in the debit and credit card market failures.

Canada's non-profit Interac system sets low fixed prices for certain debit fees and no fee for debit interchange.²¹

The European Union's Interchange Fee Regulation (IFR) is an exemplar of government action. A study looking at the results of this regulation found the following:

Overall, it can be concluded that major positive results have been achieved through the implementation of the IFR (Cf. Part A), including but not limited to reduced merchants' charges resulting ultimately in improved services to consumers or lower consumer prices and enhanced market integration.²²

U.S. interchange fees have a complex schedule set by Visa and Mastercard but merchants indicate that they generally pay 2-3% in interchange.²³ European fees, then, are only 10% of those U.S. interchange fees. As the EU announced upon implementing this regulation:

"As a general rule, the Regulation will cap interchange fees at 0.2% of the transaction value for consumer debit cards and at 0.3% for consumer credit cards. [...] Furthermore, the Regulation removes major obstacles to technological innovation in payment options. Technologies that allow consumers to pay with their debit or credit cards online or using their mobile phones (with apps, fingerprints, contactless "swipes", etc.), are readily available. However, uncertainty on the rules regarding interchange fees has been one of the factors holding up the use of these technologies. Commissioner Margrethe Vestager, in charge of competition policy, said: "For too long, uncompetitive and hidden bank interchange fees have increased costs of merchants and consumers. Today's vote has brought us another step closer to putting an end to this. This legislation will put a cap on interchange fees, make them more transparent and remove a hurdle to rolling out innovative payment technologies. It is good for consumers, good for business and good for innovation and growth in Europe. As cards are the most widely used means of online

²¹ Fact Sheet, "Understanding Business Fees, Interac Canada, April 2022, <https://www.interac.ca/en/business/support/understanding-fees/>

²² Report on the application of Regulation (EU) 2015/751 on interchange fees for card based payment transactions, European Commission Staff Working Document, 29 June 2020, https://ec.europa.eu/competition-policy/system/files/2021-10/IFR_report_card_payment.pdf

²³ Interchange is the amount paid to the acquiring (merchant's) bank that is passed through to the issuing (consumer's) bank. The acquiring bank also keeps a small fee, the card network keeps a small fee, and a payment processor also collects a fee. But the bulk of the "merchant discount" is the interchange fee paid to the consumer's bank.

payment, this Regulation is also an important building block to complete the European Digital Single Market.”²⁴

VI. Actions by the FTC and DOJ over the last decade have also helped improve competition.

For example, a 2016 FTC investigation forced Visa to improve merchants’ ability to offer price signals to consumers.²⁵ The market is still non-transparent. Consumers need to see their choices to act on them.

The Department of Justice filed a lawsuit to block Visa from acquiring nascent competitor Plaid and the merger was later dropped. From the DOJ release:

“Millions of American consumers and merchants depend on debit services to transact business online. The complaint alleges that Visa has dominated online debit for years and has protected its monopoly with exclusionary tactics that have prevented rivals, including Mastercard, from expanding or entering. The lawsuit alleges that Visa’s proposed acquisition of Plaid is a violation of both Section 2 of the Sherman Act and Section 7 of the Clayton Act.”²⁶

VII. Other Marketplace Problems Are Enabled by the Lack of Competition in Interchange

Most importantly, the most vulnerable consumers, those without credit cards, receive nothing from interchange, and subsidize the supposedly “free gift” of rewards programs for more affluent consumers.

Further, any system that allows sellers to control the terms of trade in anti-competitive ways—prohibiting discounts or prohibiting advising customers so that they can understand the differences between the costs of a rewards credit, plain old classic credit, debit, check or cash transaction—is a non-transparent system. Consumers always benefit from transparency. Is there a situation where they have not?

²⁴ Release, “Commission welcomes European Parliament vote to cap interchange fees and improve competition for card-based payments, European Commission, 10 March 2015, https://ec.europa.eu/commission/presscorner/detail/hr/IP_15_4585.

²⁵ “As we have discussed, Visa’s existing rules told merchants to present a selection screen to customers paying with a debit card. This screen asked customers to select which application would process their transaction, but only one of these applications permitted merchants to access every competing payment card network enabled on the card.” in Letter to Visa from FTC, 22 November 2016,

https://www.ftc.gov/system/files/documents/closing_letters/nid/closing_letter_from_james_frost_to_visa_-_11-22-16.pdf

²⁶ Release, “Justice Department Sues to Block Visa’s Proposed Acquisition of Plaid: Acquisition Would Eliminate Nascent Competitor Plaid and Prevent Disruption of Visa’s Monopoly in Online Debit,” Department of Justice, 5 November 2020, <https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-acquisition-plaid>

Since interchange is highest for rewards cards, especially rewards credit cards, that means cash customers and checking account customers with low-cost debit cards are subsidizing the most affluent credit card customers.

Recommendations:

Urge the FRB to complete the debit card routing rule discussed in Section I above.

Expand the Durbin amendment – both its placing of reasonable limits on network-established interchange fees and its other pro-competition improvements to marketplace practices - to credit cards.

Conclusion

Despite the successes of the Durbin amendment, swipe or interchange fees are non-negotiable, rising in the U.S. and harming consumers as well as merchants. Merchants and consumers are angry. And as we found out in 2010 at your previous hearing, Chair Durbin, even the U.S. government cannot negotiate its interchange fees.²⁷ It is not just consumers. It is not just merchants. It is also the Federal Government that pays too much in nonnegotiable, nontransparent interchange fees. It is time for more to be done. I look forward to working with you and the committee on solutions to the broken card network market.

²⁷ Hearing of the subcommittee on Financial Services and General Government of the Senate Appropriations Committee, "Oversight of Federal Payment of Interchange Fees: How to Save Taxpayer Dollars," 16 June 2010, https://www.appropriations.senate.gov/imo/media/doc/hearings/06_16_10%20FSGG%20Oversight%20Interchange%20Fees%20GPO%20Record.pdf

Statement of Bill Sheedy

Senior Advisor to the Chairman and CEO at Visa Inc.

U.S. Senate Committee on the Judiciary

May 04, 2022

Chairman Durbin, Ranking Member Grassley, members of the Committee, my name is Bill Sheedy and I am Senior Advisor to the Chairman and CEO at Visa Inc. My career at Visa spans over 29 years where I have served as the Executive Vice President of our Corporate Strategy Group, and President of the Americas, among other roles. Thank you for the opportunity to testify today about Visa and the competitive landscape in the payments industry. I am pleased to be able to share with the Committee the many ways that Visa strives every day to be the best way to pay and be paid.

For more than 60 years, we have invested heavily to ensure we deliver an innovative, reliable, and secure transaction processing network globally. Our network is the connective tissue which brings consumers and merchants together to enable commerce no matter where they are in the world. Our success is contingent on consumers being able to engage in safe and secure commerce and merchants being able to confidently complete sales and grow their business. If merchants do not complete sales and submit transactions, we do not have a network to operate. It is as simple as that.

In addition to significant investments in the security and safety of our network, we stand behind every Visa transaction. This includes, as discussed in more detail below, zero liability for consumers on fraudulent transactions that they did not authorize, as well as guaranteeing payment to merchants. Likewise, our financial institution clients who provide the payment options that run over our network also invest tremendously to protect and improve payment experiences for consumers and merchants.

The security, reliability, and protections that Visa provides have never been more critical than during the pandemic. We have taken a number of proactive steps to ease the burden of the pandemic on consumers and merchants, including by adjusting our interchange rates to address evolving market and economic developments.

Visa competes in one of the most innovative and dynamic industries in the country and world right now, and it is an industry that is continuing to evolve rapidly. Consumer and merchant demands, technological innovations, and new use cases and payment options have spurred tremendous competition and investment. We believe this intense market competition is good for everyone. At the same time, regulatory interventions in a thriving sector often do lead to unintended consequences. Furthermore, regulations that exclusively focus on card payments, and do not take into account the influx of new players and payment methods in our industry, could shift consumer spending to payment options that are less secure and more expensive, and that do not demonstrate the same commitment to efficiency, transparency, and security that payment networks like Visa have dedicated themselves to for decades.

About Visa

Visa enables people, businesses of all sizes, and governments to make and receive payments through its innovative, reliable, and secure payment network. Visa's advanced transaction processing network operates in over 200 countries and territories around the world. Because of the rapid evolution of our industry, we must continuously innovate to meet the challenges of changing technology and payment methods, the growing sophistication of threats to payment system security, and the ever-changing needs of all those who use Visa's payment network.

While Visa is one of the world's most recognized brands, our role in the payments industry is not well understood. Visa is an open network that enables financial institutions and technology companies – from

established players to entrepreneurial start-ups – to connect their consumer and merchant customers, so that people on both sides of our network can pay, and receive payment, for goods and services.

Visa facilitates global commerce, enabling secure and efficient transactions between consumers, merchants, and financial institutions, whether it be via traditional means or any of the new, innovative payment methods we will discuss today. Every day we connect consumers with millions of merchants through thousands of financial institution customers across the globe. We do all of this while investing and innovating to deliver the highest levels of operational resilience, cyber security, and fraud prevention.

Visa's network is capable of processing more than 65,000 transaction messages per second. To ensure near-constant availability and security, Visa maintains a set of geographically separated, synchronized, state-of-the-art data processing centers, each one capable of processing every transaction on the Visa system by itself.¹ As I explain below, our cutting-edge security technology reduces fraud and controls many types of risk, delivering secure, efficient transactions for merchants big and small, across numerous types of cards and other payment devices, and for many types of payment uses.

Importantly, Visa is just one player in the payments landscape. We participate in a multiparty payment system, which includes financial institutions known as "acquirers" that sign up merchants to accept payment cards and "issuers" that sign up cardholders to enable them to transact using credit, debit, prepaid, and small business accounts.

Visa does not issue cards. It is the financial institutions, including banks and credit unions of all sizes, that issue Visa cards, set interest rates and consumer fees on those products, and compete to offer rewards and other benefits to cardholders. Similarly, acquiring banks sign up merchants for card acceptance, competing for merchant business based on the services they offer and the fees they charge. Visa does not earn revenue from interchange fees. Visa's revenue comes from fees we charge financial institutions who issue cards and process transactions over our network.

As a service provider to thousands of regulated financial institutions, Visa meets stringent regulatory standards of safety, security, and reliability. Regulators abroad and in the United States frequently examine Visa. For instance, the Federal Financial Institutions Examination Council closely reviews our compliance with applicable regulatory requirements. We have regular and constructive engagement with many regulators on issues across the payments, financial services, and technology spectrums, as well as with members of the law enforcement community.

I am pleased to share with the Committee more about Visa and how we make payments more innovative, secure, and accessible. To that end, I am going to cover three topics:

1. Providing Security to Visa's Customers
2. New Security Challenges, and Visa's Recent Interchange Adjustments
3. Competition in the Payments Sector is Thriving

¹ As a result of the reliability and resilience of our operations, Visa's flagship data center recently received a Management & Operations approval award from the Uptime Institute, which is the premier independent IT advisory organization assessing digital infrastructure performance.

Providing Security to Visa's Customers

For over six decades, Visa's employees have strived to make electronic payments what they are today – convenient, reliable, and secure. We help expand and accelerate digital payments, providing opportunities for consumers to transact at millions of merchants around the world, and helping economies thrive. Our early innovation in online authorization and transaction processing – predating the internet – vastly increased transaction speed and fraud control. We introduced the debit card nearly five decades ago as a convenient means of making everyday payments and worked with multiple stakeholders to expand the reach of our network, connecting businesses of all sizes and consumers across geographies. As payments evolve, we have forged partnerships with fintechs and others to enable emerging payment form factors, new consumer and merchant experiences, and to expand access to electronic payments.

At Visa, nothing is more important than trust. Trust and security are the foundation of everything we do – they are a fundamental component of our brand promise and value proposition to all consumers and businesses who we are proud to serve. We invest heavily and continuously in network security. For instance, we have spent more than \$9 billion over the past five years alone on reducing fraud and enhancing network security. We work tirelessly to intercept and prevent would-be attacks, thanks to a team of people dedicated to cybersecurity across the payments lifecycle, from protection to detection and response. In addition to our secure data centers, we operate a series of integrated cyber command hubs globally that handle 24/7 security monitoring, incident response, and investigations. Visa also utilizes a team of fraud experts to monitor 24/7 the integrity of the transactions on our network. In 2021 alone, our fraud prevention capabilities helped prevent nearly \$26 billion in attempted fraudulent transactions for merchants and financial institutions.

Given the dramatic expansion in e-commerce since the start of the pandemic, we have increased our focus on securing online commerce. To stay ahead of a massive upsurge in insidious malware, social engineering, and brute-force attacks, we invested to accelerate the speed and intelligence of our automated systems. We have built a deep bench of PhD researchers, data scientists, and engineers who collectively have more than 150 patents in Artificial Intelligence ("AI") and machine learning. Our flagship AI-based platform, Visa Advanced Authorization, a risk management tool that evaluates transactions over Visa's network in real time, analyzed billions of Visa transactions in 2021. Each transaction is scored against hundreds of risk factors in one millisecond. Visa cardholders benefit from the greater effectiveness of our fraud controls on their cards, receiving helpful real-time alerts or other support from their financial institutions when a suspicious transaction is spotted.

All Visa cardholders can count on our zero liability protections on unauthorized or fraudulent transactions, ensuring that they do not have to pay for transactions they did not authorize. In addition, we maintain well-established dispute resolution processes to implement the consumer protections embedded in our network rules. The value of these protections has been especially evident throughout the pandemic, when consumers were able to tap into simple, widely used processes to dispute charges or to get refunds on purchases that did not work out as planned, including protections from unauthorized or fraudulent charges.

Visa also stands behind every transaction authorized on our network. For Visa merchants, this means they are guaranteed to receive payment on Visa transactions authorized by the issuer in accordance with Visa rules. This protection extends through our bank and credit union partners to every merchant,

irrespective of size, resources, or sophistication. The security of our guarantee allows merchants everywhere to confidently transact with any Visa account holder, from any corner of the world.

Given the scope and scale of payments we support, ensuring these promises and providing unparalleled reliability requires enormous investment, infrastructure, processing capacity, fraud and risk tools, and financial resources. It also requires constant, ongoing investment and state-of-the-art innovation, both to live up to the needs and expectations of consumers and merchants in our highly competitive industry, as well as to stay ahead of the increasingly challenging fraud and cyber landscape globally.

Most recently, our focus has been on removing sensitive account data from the flow of payments, so compromised information cannot be used by criminals for fraud:

The introduction of chip cards, which utilize a far richer level of card and security information, has made it so that more good transactions can be authorized and more fraudulent transactions prevented. Chip technology introduces dynamic data into each transaction. When used properly, it makes it more difficult for fraudsters to use counterfeit cards at the point of sale. Introducing chip technology into the complex U.S. payments ecosystem was a multi-year effort, including coordination across many payment system participants, significant investment, and the use of incentives to encourage the upgrading of existing payment technologies. By 2021, as a result of the widespread adoption of this chip technology, counterfeit fraud at the point of sale declined by approximately 90% among merchants for whom chip cards represent the bulk of their Visa payment volume. In addition, the recent adoption of chip technology at automated fuel dispensers (“AFDs”) is having a meaningful impact on reducing fraud at the pump. Since fuel merchants began to implement chip technology at AFDs, we have seen counterfeit fraud drop by almost 80%. Our efforts to continue to enhance security throughout the payments industry remains one of our highest priorities.

Visa has facilitated the widespread use of contactless payments, which employ the security of a chip using a touchless, tap-and-go interaction with the terminal. Contactless interactions have grown significantly during the pandemic and continue to be the preferred technology in environments like transit, where speed and convenience are critical.

Tokenization, another recent innovation, further secures the payments ecosystem. A token is a substitute proxy number that effectively creates a payment credential separate from the account number displayed on the physical card. Tokens also offer dynamic data elements, making them more secure, and they can be added to a mobile wallet, an app environment, a web browser, or hosted in the cloud. If a token is somehow compromised by fraudsters, it can be replaced behind the scenes without requiring a new card number or physical card to be issued. To date, Visa has invested hundreds of millions of dollars to develop, test, and roll out token technology to issuers, acquirers, mobile partners, and merchants. As token adoption continues to accelerate, we have already seen a 28% year-over-year reduction in fraud rates for digital payments.

In addition to its security benefits, tokenization has also unleashed innovation across the ecosystem, enabling digital wallets on smartphones like Apple Pay, Google Pay, and Samsung Pay, giving rise to wearables like rings or watches that you can simply wave to make a payment, and adding efficiency and security to various online subscription services. The use of tokenized payments will also unlock efficient and secure purchase experiences from cars, household

appliances, and virtually endless other devices as part of the “internet of things.” And over time, by reducing the use of the account numbers displayed on cards and replacing them with dynamic data, widespread token adoption in the e-commerce environment will greatly reduce the need for physical cards to be replaced and account numbers updated following a data breach, saving significant time and expense for cardholders, merchants, and financial institutions.

While we have steadily grown and expanded our network for over 60 years, we recognize that we will only have the privilege to serve consumers and businesses if we can continue to maintain the highest standards of safety, security, and innovation in a rapidly evolving, dynamic, and competitive environment. Our brand promise is rooted in being the best way to pay and be paid. We remain steadfast in our focus to deliver on this commitment and enable the commerce of tomorrow.

New Security Challenges, and Visa’s Recent Interchange Adjustments

Since the start of the pandemic, digital payments have enabled businesses to continue serving their customers, both in their local communities and online. We launched programs to bring more small businesses online and to provide them essential digital capabilities to support their continued recovery.

Businesses that had access to digital payments were more resilient and better able to compete than those that did not. Visa has taken a number of steps and invested considerable resources since the beginning of the pandemic to maintain the security, reliability, and stability in our payments system, including adjusting our interchange rates to address dynamic market and economic developments.

Here are a few of the more recent steps we have taken to support efficient commerce and economic growth:

First, since the pandemic, we lowered interchange rates for certain segments including grocery stores and supermarkets, restaurants, travel, small ticket, education, rent, telecommunications, healthcare, and insurance.

Second, in April of this year, Visa instituted changes to our credit interchange rates to help U.S. small businesses compete and grow by lowering key in-store and online consumer credit interchange rates for more than 90% of American businesses by 10%.

Finally, effective in April, Visa introduced two targeted interchange modifications for credit, focused on enhancing the security and integrity of the network, which were previously delayed. These changes are part of Visa’s efforts to promote behaviors that will help protect the entire payments ecosystem and are described below.

Visa counters fraud risks by bolstering our many layers of security and encouraging the use of secure tokens for Card Not Present (“CNP”) transactions, transactions that take place remotely or online and not at the physical point of sale. When merchants have a data breach, use of a token (a substitute proxy number) will help protect the account number. To incentivize merchants to use technology that reduces fraud and risk in the Visa payments system, we are increasing our CNP rate on transactions at merchants that have not adopted secure Visa Payment Tokens, while maintaining current rates on transactions at merchants that adopt this fraud-reducing technology.

We are also implementing changes designed to improve the quality and integrity of merchant and transaction data on our network. Among other benefits, this and related efforts will provide better information for consumers about their transactions. Merchants who meet these data quality and processing requirements will keep their current rates, but more importantly consumers and merchants will benefit from a safer and more efficient payment network.

Already, many merchants have adopted these best practices, and as a result will see no change to their current interchange rates. We are making these adjustments to improve the health of the payments ecosystem and consumer experience.

As a payment network, Visa takes its role in setting interchange rates very seriously with the goal of fostering balance, security, and stability, while growing the overall payments ecosystem. Consistent with this goal, within the Visa system the average effective rate for consumer credit in the United States remains at the same level as it was in 2015. As mentioned above, Visa does not earn revenue from interchange fees. Visa's interest is in optimizing secure transactions on our payment network, and therefore we have no interest in setting interchange rates too high or too low. Financial institutions receive these fees, which support the extension of credit to consumers and businesses across the country, and fund efforts in fraud prevention, cybersecurity, customer support, and payments innovation.

Competition in the Payments Sector is Thriving

Visa sets interchange in the context of a highly competitive market, with major new players and technologies in use today, and on the horizon. Some of the most significant players and brands in payments now include names like Paypal/Venmo, Square (Block), Affirm, Afterpay, Klarna, and Zelle, as well as large technology platforms including Facebook (Meta) and Amazon, among others, who have expressed ambitions to internalize payments into their platforms. We also see new forms of payment, like cryptocurrencies, open banking solutions, and significant investments in real-time payments by financial institutions, the Federal Reserve, and others. These rapid developments are changing how consumers and merchants think of payments. When this Committee last held hearings on competition in this industry, many of these names and trends would not have been mentioned in connection with payments; some did not even exist.

Indeed, competition in the payments sector is more dynamic than it has ever been, a trend that has accelerated rapidly over the past several years. New competitors, new ways of paying, and advances in security are increasingly technology driven. As payments go digital and become more and more smartphone-based, getting into payments has become as easy as developing and marketing an attractive app. The sheer number of payment options now available at checkout, especially online, is an indication of the many payment capabilities accessible to consumers. In this fast-moving environment, Visa's success is contingent upon innovating to deliver safer, more secure payments and a stronger value proposition compared to the numerous alternatives now available to consumers and businesses.

Competition in our industry exists among forms of payment, among business models, among established players and new entrants, and among an explosion of new, disruptive technologies. Even with the transformation taking place across the payments landscape, we continue to compete with cash, checks,

and money orders, which, despite their high costs and inefficiency, still make up one out of four consumer payments in the United States.

Across all payments, we also compete against “traditional” U.S. network competitors such as Mastercard, American Express, Discover/Pulse, STAR, and NYCE, for example, for card issuance, for merchant acceptance, and ultimately for consumer and merchant preference on each transaction at the point of sale. Specifically, competition in the credit space is intense. Consumers often carry multiple credit cards, and there are a wide range of products available from thousands of issuers who compete by offering different features, including benefits like purchase protections, co-branding with the consumer’s favorite merchants, and travel-related cards that offer airline, hotel, or loyalty discounts.

There are also an increasing number of players within payments operating outside the traditional banking regulatory structure, some of which promote account transfer rather than card-based payment methods. These players offer digital prepaid wallets, digital marketplaces, closed commerce ecosystems, real-time payments, Buy-Now-Pay-Later solutions, open banking systems, and cryptocurrency solutions. Each has experienced rapid growth over a very short period of time, transforming the competitive landscape for payments. In 2021 alone, the venture capital funding for payments start-ups more than doubled globally to \$32.7 billion (up from \$14.6 billion in 2020).²

Recent innovations that are most notable include:

Digital pre-paid wallets have emerged in recent years as alternatives to card-based payment technologies. Consumers increasingly view digital pre-paid wallets as convenient payment options. They provide a platform onto which users can load funds and then make payments using those funds and/or receive additional funds. For instance, one of the most prevalent digital wallets in the United States today offering a pre-paid solution, PayPal, reports 429 million active accounts and an acceptance network that spans the globe.

Buy-Now-Pay-Later solutions have emerged as a widely available payment method. Fintech companies such as Affirm, Afterpay and Klarna – as well as incumbent offerings (e.g., “Pay in 4” by PayPal) – allow consumers in the United States to make purchases in a predetermined number of installments over a fixed period of time. These solutions provide an alternative to traditional credit cards and are particularly attractive to younger buyers. Many of these Buy-Now-Pay-Later solutions have achieved widespread merchant acceptance.

The biggest tech companies in the world have also made substantial investments in payments. Apple, Amazon, Alphabet, Facebook (Meta), and others have all announced significant initiatives in this space. Their offerings include mobile or digital wallets similar to PayPal, which sometimes use payment cards, and other times favor pre-paid wallets, bank-to-bank or other non-card payment systems.

“Real-time payments” systems are designed to enable “faster payments” in the U.S. ecosystem. Large and small U.S. financial institutions, as well as the Federal Reserve, have implemented or have plans to build significant systems to enable “faster payments,” giving consumers additional options for electronically transferring money from their account to an individual or business using

² CB Insights Research, *State of Payments 2021 Report*, <https://www.cbinsights.com/research/report/payments-trends-2021/> (last visited April 30, 2022).

a mobile device or a participating bank's website. These systems are described as having the potential to offer consumer-to-merchant payment options at lower cost than existing payment networks.

Finally, cryptocurrencies and "stablecoins" are growing as a means of payment, with many well-funded crypto enterprises seeking to offer disruptive alternatives to existing payment options. Central Banks globally have shown interest as well as in potentially developing Central Bank Digital Currencies.

Each and every one of these competitors is seeking to enable consumers to transact in diverse environments, in new and convenient ways, wherever consumers and merchants want to transact: at the checkout counter in a physical store; online from computers or mobile devices; using chip or contactless cards, mobile payment wallets, QR codes, or buy-online and pick up at the store; on social media sites; for everyday purchases, necessities, luxury items, travel and entertainment, subscription-based services, streaming services, bill payment, person-to-person transfers, and more. The merchant "point of sale," which in the not-too-distant past involved the need for magnetic-stripe payment terminals, is demonstrating similarly dynamic innovation in the technologies available to serve the needs of merchants, from acceptance technology for physical sales environments integrated into tablets and smartphones, to software solutions offering ease for rapid adoption when setting up online sales. Dynamic innovation and consumer demand are driving the entrance of large numbers of new players into the sector and the level of investment, creativity, and opportunity to compete is high.

Finally, payments are global, and so are payments competitors. China UnionPay, or CUP, for instance, operates one of the largest card-based payment systems in the world. In addition, closed commerce ecosystems developed in foreign countries are growing rapidly and expanding their influence around the globe. Alipay and WeChat Pay, created by China's e-commerce giants Alibaba and Tencent, respectively, are prime examples of the growing influence of foreign payment giants. They are sophisticated players that have transformed the payments market in China and are now expanding their business model globally. We have already seen widespread acceptance of CUP, for example, in the United States.

As new and emerging payment options continue to grow, it is critical that policymakers focus on these market developments. Digital payments increase sales for both large and small businesses. Adoption of more efficient digital payments has been shown, time and time again, to drive overall economic growth.

The dramatically evolving landscape we see in payments competition and innovation is delivering new payment uses, new business models, and more frictionless commerce. We believe this intense market competition is good for everyone, encouraging greater adoption of digital payments. At the same time, regulatory interventions that embrace outdated and historic narratives by exclusively focusing on card payments could result in a shift of consumer spending to payment methods that do not offer the same consumer protection benefits as cards, that are more expensive to merchants, or that do not demonstrate the same commitment to efficiency, transparency, and security that payment networks like Visa have dedicated themselves to for decades.

Competition drives all players to excel. We frequently partner with new and emerging players, who find value in the ability to work with Visa and utilize the security and reach of our payment network. In fact, Visa continues to be a catalyst and enabler of innovation. We invest and seek to improve constantly, so

that the next time a consumer and merchant are making the choice of what payment option to use, no matter how many options are available, they will elect to use Visa.

Conclusion

Finally, as a participant in the highly competitive payments industry, it is important to note Visa's commitment to conducting our business with the highest integrity and doing things the right way. For the tenth consecutive year, Visa has been named one of the World's Most Ethical Companies by the Ethisphere Institute.³ The 2022 award reflects continuing recognition of how Visa employees consistently conduct business and interact with others in ways that are ethical, respectful, and responsible.

Visa is also deeply committed to advancing inclusive financial growth and helping drive financial inclusion. We do this by supporting debit, credit, prepaid, and other solutions that benefit consumers broadly in their payment needs, whether through receipt of a stimulus payment, or access to credit to help with a pressing emergency, and by encouraging greater adoption of digital payments, which give small, Main Street, and rural businesses tools to reach more customers and grow more efficiently and securely.

Financial literacy has been a longstanding priority at Visa. In the United States, our award-winning Practical Money Skills program strives to link consumers, educators, financial institutions, and governments to the tools they need to help people of all ages develop money management skills. Visa believes that great financial knowledge can empower people to better manage their money and improve their quality of life.

Visa levels the playing field between small and large merchants. Every merchant that accepts Visa can transact securely with billions of Visa cards across the globe and know that they will get paid because we stand behind every Visa transaction. By tapping into our network, any small e-commerce site can benefit from Visa's world-class security and fraud-fighting tools so they can better compete with big technology players. Similarly, every small community bank and credit union has access to the same payment products, processing capabilities, dispute tools and fraud-fighting technologies from Visa as the largest financial institutions. Visa is proud of the role we play in ensuring that the American and global economies are secure and will continue to grow.

We appreciate the opportunity to address the Committee on these important issues, and I look forward to answering your questions.

³ Ethisphere, *The 2022 World's Most Ethical Companies Honoree List: Visa Inc.*, <https://worldsmoethicalcompanies.com/honorees/visa-inc/> (last visited April 30, 2022).

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions
Hearing on “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”
May 11, 2022

Questions for Doug Kantor, General Counsel, National Association of Convenience Stores

1. Mr. Sheedy of Visa and Ms. Kirkpatrick of Mastercard indicated that swipe fees were helpful in moving the credit and debit card systems toward greater security, including toward the use of tokenization technology.

a. Do you agree? Please explain.

Unfortunately, the opposite is true. The lack of competition in the credit and debit card markets has decreased the incentives for the card networks to innovate and invest in security.

Debit reform, for example, increased security protections. By prohibiting exclusivity arrangements so that more than one network had to be available to handle debit card transactions, the market changed so that networks needed to find a way to improve their offerings. One way they did that was with enhanced protections against fraud. As soon as the debit reforms came into effect, the networks started introducing full end-to-end encryption of data.¹ They also accelerated the transition to chip cards in the United States.²

The credit card industry sometimes argues that high swipe fees are needed to cover fraud costs, but this is not the case – as is clear from the fact that fraud is much lower in nations with much lower swipe fee rates. Economists with the Federal Reserve Bank of Kansas City have found that fraud costs are not a justification for over-inflated interchange fees. They wrote, “Card organizations have often argued that the reason why they impose proportional fees stems from the cost they bear from their ‘payment guarantee’ service which insures merchants against customers who pay with cards without having sufficient funds. We argue that the cost of fraud and insufficient funding is negligible compared with fees at the range of 1% to 3% commonly imposed by brand name cards. For example, industry studies show that the average net fraud

¹ See, e.g., Tracy Kitten, “Visa’s New End-to-End Encryption Service,” Bankinfo Security (Sept. 12, 2012) available at <https://www.bankinfosecurity.com/interviews/visas-new-end-to-end-encryption-service-i-1650>.

² See Visa presentation to Federal Reserve (Jan. 8, 2014) at 2, available at <http://www.federalreserve.gov/newsevents/rr-commpublic/visa-meeting-20140108.pdf>.

losses are around 0.05% for signature debit cards, which do not extend credit to card users.”³ And, as noted above, the majority of fraud is paid by merchants, not banks.

The swipe fee system on debit cards prior to reforms created disincentives to the card industry taking fraud protection more seriously. Because the fees were much higher than losses from fraud, financial institutions were not highly motivated to make changes to cut down that fraud. A June 2011 Consumer Reports article pointed out these problems. It noted that thieves could “easily and cheaply” copy U.S. debit card data that is usually stored unencrypted in a magnetic stripe on the back of the card. According to the article, “The U.S. and some non-industrialized countries in Africa are among the only nations still relying on magstripe payment cards, which came into wide use in the 1970’s.”⁴

A representative from the New York Police Department explained in the Consumer Reports piece that the NYPD had “recommended to several of the large financial institutions that the biggest deterrent to skimming would be using the kind of cards that are issued in Europe and Canada with a chip that makes them pretty much impossible to skim.”⁵ The article noted that financial institutions had been reluctant to do that due to their large card revenues. After debit reform, however, the card industry had newfound motivation to reduce fraud and pushed the transition to chip cards – though, unfortunately, they failed to push PIN usage as they had in other parts of the world.

Of course, fraud problems still persist and the large fees charged to merchants when cards are used make those problems worse. A recent investigative report indicated that both Visa and Mastercard are aware of significant fraud with payment cards and take little to no action to stop it.⁶ The report detailed extensive fraud problems and indicated that because of the networks’ interest in collecting high fees on a per transaction basis they were not as motivated as they should be to make efforts to reduce that fraud.

b. I am concerned that network-imposed requirements to use Visa and Mastercard proprietary tokenization technology may serve as a barrier to competition and security innovation. Do you agree? Please explain.

Yes, proprietary tokenization requirements are among the most recent actions taken by Visa and Mastercard that inhibit merchants’ ability to choose an alternative debit network to handle their transactions. Visa and Mastercard do not allow many alternative networks to tokenize these transactions which increases the risk of transactions being denied. It also means that when these smaller competitor networks receive tokenized transactions, they must request

³ Oz Shy and Zhu Wang, “Why Do Card Issuers Charge Proportional Fees?” The Federal Reserve Bank of Kansas City Economic Research Department, (December 2008) at 3 available at <https://www.kansascityfed.org/documents/5325/pdf-rwp08-13.pdf>.

⁴ “House of cards: Why your accounts are vulnerable to thieves,” Consumer Reports Magazine (June 2011).

⁵ *Id.*

⁶ Rosalind Adams and Tom Warren, “Two-Card Monte: Why Mastercard and Visa Rarely Shut Down Scammers Who are Ripping Off Consumers,” Buzzfeed News (May 18, 2022) available at <https://www.buzzfeednews.com/article/rosalindadams/mastercard-visa-fraud>.

detokenization from Visa or Mastercard – and Visa and Mastercard then have visibility into the data regarding the business that is going to their competitors. So, tokenization becomes a tool to increase Visa’s and Mastercard’s favored position in the marketplace.

It appears that Visa and Mastercard are working with one or more web browser companies to use their proprietary tokenization technology to push it into more transactions and create greater advantages for these two dominant networks.⁷ The combination of dominant card networks working with dominant web browsers to disadvantage smaller network competitors is a worrisome sign for the market.

2. Mr. Sheedy testified that credit card swipe fees have remained level since 2015. **Is that what merchants have experienced?**

No, that is not accurate. The average swipe fee paid by retailers on Visa and Mastercard credit cards has risen by 9 basis points since 2015. The raw dollar increases on those transactions are even more staggering and tell the larger story. Swipe fees paid on Visa and Mastercard credit cards have increased more than \$34 billion since 2015 – from \$43 billion to \$77 billion.⁸ That is an increase of 79 percent in just six years.

Merchants certainly don’t view paying an additional \$34 billion as “level.”

3. There was discussion during the hearing about swipe fees creating a level playing field for banks. You indicated that that was not the case in part due to the higher per transaction costs incurred by smaller banks in handling payment card transactions. **Are there other ways in which you think the current system does or does not create a level playing field for financial institutions?**

Currently, the way that credit card swipe fees are fixed disadvantages small banks and credit unions. Those institutions typically have higher costs than do large institutions (which, unlike small banks, often pay nothing to the credit card networks). Credit union representative John Blum, for example, testified on behalf of the National Association of Federal Credit Unions in 2010 and told the House Judiciary Committee: “Credit unions have a higher per-transaction cost for processing card payments.”⁹ Community banks have similar disadvantages because of their relatively small size resulting, in many instances, in the need to outsource card operations.¹⁰ By fixing fees for all banks at the same level, however, large banks have for years been guaranteed higher profit margins than their smaller competitors. Those large banks have used their advantage to aggressively market themselves to consumers. That is one of the reasons why the credit card market is more concentrated than the debit card market. Many consumers who

⁷ See <https://9to5google.com/2022/05/11/google-chrome-virtual-cards/>.

⁸ See Nilson Report (March 2022) available at [Nilson Report | News and Statistics for Card and Mobile Payment Executives](#).

⁹ John Blum, Hearing before the Task Force on Competition Policy and Antitrust Laws, House Judiciary Committee, May 15, 2008, House Report No. 110-179, at 80.

¹⁰ Dave Carpenter, Hearing before the House Judiciary Committee on the Credit Card Fair Fee Act of 2009, Apr. 28, 2010.

have accounts and debit cards at small banks and credit unions receive credit card and other offers from large banks. The large banks take the small banks' customers in this way on a regular basis – paid for by their excess interchange earnings. The result is that large banks have a bigger share of both the credit and debit card markets than their share of deposits.¹¹

Debit reforms have helped to level the playing field. The Philadelphia Federal Reserve published a study on the impact of debit reform on small financial institutions in February 2016. The study found that after reform, “the volume of transactions conducted with cards issued by exempt banks *grew faster* than it did for large banks.”¹² The study concluded that “the evidence does not support the claim that competitive forces have effectively imposed the interchange fee ceiling on small banks.”¹³

The Credit Union Times has reported that debit reform created “a powerful way for credit unions to accumulate market share” and “what some say is a huge opportunity for credit unions.”¹⁴ According to Texas Trust President and CEO Jim Minge, debit reforms created “...a huge opportunity for credit unions like the Mansfield, Texas Trust Credit Union and everybody else below the \$10 billion threshold...” Debit swipe fee reform “applies only to financial institutions with more than \$10 billion in assets, which has created a huge opportunity for credit unions – especially those that want to attract millennials.”¹⁵

Centralized price-setting of credit card swipe fees harms smaller financial institutions. More competition in the market would help give them additional levers to try to compete with the largest banks including by allowing them to negotiate among the different networks.¹⁶

4. At the hearing, there was discussion about the extent to which interchange fees are used to cover fraud losses.

¹¹ See Adam J. Levitin, *Interchange Regulation: Implications for Credit Unions*, 2010, at 39 (noting that 10 banks alone account for almost 90 percent of the credit card market and 51 percent of the debit card market, even though those 10 banks hold only 36 percent of insured deposits), available at http://www.federalreserve.gov/newsevents/files/levitin_file_paper.pdf.

¹² James Disalvo and Ryan Johnston, “How Dodd-Frank Affects Small Bank Costs,” Economic Insights: Federal Reserve Bank of Philadelphia (Feb. 2016) available at <https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/economic-insights/2016/q1/eiq116.pdf>.

¹³ *Id.*

¹⁴ “Credit Unions Revive Debit Rewards” (Jan. 22, 2016) available at <http://www.cutimes.com/2016/01/22/credit-unions-revive-debit-rewards>; “Credit Unions Pile Into Debit Rewards” (Jan. 20, 2016) available at <http://www.cutimes.com/2016/01/20/credit-unions-pile-into-debit-rewards?page=1&slreturn=1453333652>.

¹⁵ “6 Winning Credit Union Payments Strategies” (Apr. 15, 2016) available at <http://www.cutimes.com/2016/04/15/6-winning-credit-union-payments-strategies?slreturn=1487974414&page=2>.

¹⁶ The two largest networks favor larger financial institutions in the terms of their deals. See “2019 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) at 15, available at https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2019.pdf.

a. Please explain how fraud losses are allocated within the credit and debit card systems.

While the card industry often talks about a “payment guarantee,” merchants are not guaranteed payment on credit or debit card transactions. In fact, merchants are forced to absorb the majority of the cost of fraudulent card transactions. When the merchant is forced to pay for the fraud, this is called a “chargeback.” It means that the money the merchant was supposed to receive on the transaction is taken away (in other words, charged back). This can happen to a merchant without notice even months after the transaction takes place.

Visa and Mastercard adjudicate whether the merchant or the bank that issued the card must pay for the fraud on any given transaction. The two networks do that knowing that they are not going to pay the costs of the fraud. This can lead to questionable incentives for the networks – particularly because the major banks own restricted stock in the two networks and the networks are dependent on those two banks to issue cards. The deck is stacked against merchants.

The Federal Reserve has collected data on debit card fraud every two years since debit reform was passed. Its 2019 data shows that merchants covered 56.3 percent of debit card fraud while card issuing banks only covered 35.4 percent (and consumers covered the remaining 8 percent).¹⁷ The picture is similar for credit cards as merchants absorb most fraud losses – particularly since Visa and Mastercard implemented a liability shift to push chip card usage which pushed a significant share of fraud onto merchants. In fact, the Federal Reserve has reported that the merchant share of fraud on dual message debit cards (processed in similar fashion to credit cards) is more than 60 percent.¹⁸

b. In what ways are merchants held responsible for fraud losses?

All of the fraud chargebacks merchants must pay are on top of the swipe fees they pay. Those swipe fees amount to a prepayment of all fraud charges (and much more) to card-issuing banks. Merchants should not have to prepay for fraud and they should not have to pay when the fraud happens in addition to prepaying for it. They also shouldn’t have to hear about the great “payment guarantee” they receive on credit and debit cards when the merchants pay for fraud multiple times.

It is worth noting that even with debit reform, merchants prepay all the fraud that banks otherwise cover. Federal Reserve Regulation II, which implements debit reform, includes 5 basis points as part of the regulated debit swipe fee to cover fraud losses by banks. That number was

¹⁷ “2019 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) at 4, available at https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2019.pdf.

¹⁸ *Id.*

pegged to 100 percent of the fraud losses on debit cards paid by the average bank covered by the regulation. Of course, that means that fraud is a guaranteed profit center for many of the banks covered by the regulation (those with below average fraud losses). And, the vast majority of banks across the nation are not subject to the Fed's fee regulation. They charge even higher fees that exceed their fraud losses on debit cards. Why merchants must pay chargebacks to cover the majority of fraud that they have already prepaid (and then some) to the banks is inexplicable.

Because merchants pay for fraud at least twice, banks do not have the full economic incentives to do their part to reduce fraud. The situation is even worse for networks because, as noted above, they are not responsible for fraud losses on credit and debit cards. There should be greater alignment of incentives by increasing competition in the marketplace so that margins earned by banks come back toward reality and they have more reason to cut back on fraud. As noted, competition would also spur networks to compete on fraud prevention and innovate in this area.

Ultimately, of course, American consumers pay more when fraud costs are too high. The system needs to change so that those costs get reduced for everyone's benefit.

Questions for Doug Kantor

- 1) I have heard competing views on whether changes to interchange fees are beneficial for the consumer. Some argue that the consumer benefits through lower prices at the store while others say that the consumer benefits through free checking or rewards through their cards. What is your view on how any changes to interchange fees could benefit the consumer?

There is no question that lower swipe fees would benefit consumers. Consumers ultimately pay when retailers have higher costs. That is true when those costs come from higher wholesale or other costs just like it is true when those costs come from swipe fees. Subjecting those costs to competitive market pressures benefits everyone. The only way that cost savings would not be passed on to consumers would be if there was a market failure and lack of competition in U.S. retail markets. There is no such failure. American retail is very competitive on price, quality and service. The idea that retailers with average profit margins of 2.65 percent would be able to keep cost savings rather than keeping those margins narrow defies economic reality and is contrary to how competitive markets work.

Debit reform demonstrates that consumers benefit from lower swipe fees. Those reforms were enacted in 2010 and took effect in 2011. They have been helpful in curtailing debit swipe fee rates and providing competition among networks.¹ One report showed that debit reform saved consumers \$5.86 billion in 2012 alone - the first year the reforms were in effect.² That was nearly 70 percent of the overall savings from debit reform that year with merchants saving an additional \$2.64 billion.³ Collectively, these savings supported more than 37,000 jobs⁴ – a significant economic stimulus.

In addition, *Moody's Investor Service* has reported that debit reform savings have shielded consumers from higher prices that would have resulted from increases in other operating costs for businesses such as transportation and fuel costs. The report says, "As merchant acquirers pass on debit fee savings to retailers, we believe retailers will use them to help shield customers from the impact of these other rising costs."⁵ The report also noted, "While on the surface it would be easy to presume that retailers would benefit from a reduced debit interchange fee, we do not expect retailers to see a material improvement in their earnings due to the Durbin Amendment."

The Moody's report is supported by analysis of how pricing moved following the implementation of debit reform. The data shows that there was inflation in the U.S. economy in the years after debit reform was implemented. Cost increases, as reflected in the Producer Price

¹ While reform has been beneficial, the rates paid by merchants remain higher than they should be. Costs have declined over the past decade and the rates are not proportional to costs.

² Robert Shapiro, "The Costs and Benefits of Half a Loaf: The Economic Effects of Recent Regulation of Debit Card Interchange Fees," (Oct. 2013) available [here](#).

³ *Id.* at

⁴ *Id.* at

⁵ "New Debit Rules Hurt Banks and Reshape the Payment Processor Market," *Moody's Investor Service* (June 20, 2012) at 10.

Index for retail trade industries, rose 9.4 percent from the time reform went into effect in October 2011 through the end of 2016, while price increases to consumers, reflected in the Consumer Price Index, increased only 4.3 percent.⁶ That is a large spread between the higher costs that merchants had to pay for the goods they sold and the prices that they charged consumers. Those numbers demonstrate clearly that merchants shielded their customers from the majority of the cost increases the merchants themselves faced. And, that experience has held true even during the past year with increased inflation. During 2021, the Producer Price Index rose by 9.7 percent while the Consumer Price Index rose by 7 percent.⁷

Retail profit margins show the same pattern. Those margins did not grow following debit reform. In fact, in the grocery industry, pretax profit margins in the two years prior to debit reform were 2.3 percent – and following debit reform those margins fell to 2.1 percent (in 2012) and 1.9 percent (in 2013).⁸

This data reconfirms the intensely competitive nature of U.S. retail. It is very clear that savings from debit reform (and more) have been consistently passed along from merchants to consumers in the form of prices that are significantly lower than what consumers would have been forced to pay in the absence of those reforms.

Anyone who believes free markets work would need to recognize that cost savings to retail businesses help hold down prices to consumers – unless they believe that there is a market failure in the retail sector of the economy. Of course, there is not. Retail is one of the most competitive sectors of the U.S. economy and has been for decades. Without a market failure, there is no question that reduced costs pass-through into lower prices. By arguing otherwise, it makes it sound as though the credit card industry has lived with centralized price-setting so long that they have forgotten how real competitive markets work.

The credit card industry likes to point to a report released by the Richmond Federal Reserve to try to disprove consumers' clear benefits from debit reform. The problem is that, in talking about that report, they never mention the cautionary notes that the study's authors themselves included in the report – which make clear it should not be used to prove the point for which the credit card industry tried to use it. First, the report made clear they did not look at actual costs and prices – it was just an opinion survey.⁹ Second, the survey sample was small and could have been biased by getting responses primarily from those dissatisfied with the way the Fed wrote its regulation. Finally, it is worth noting what may be obvious given today's economic environment. Inflation is always present and matters. The actual data shows that merchants held

⁶ Producer price index figures from the St. Louis Fed can be found here:

<https://fred.stlouisfed.org/series/PCUARETTTRETTR> and consumer price index figures from the Minneapolis Fed can be found here: <https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913>.

⁷ The U.S. Bureau of Labor Statistics' release on the producer price index can be found here: [Producer Price Index News Release summary - 2021 M12 Results \(bls.gov\)](#) and the 2021 increase in the consumer price index can be found here: [CPI Home : U.S. Bureau of Labor Statistics \(bls.gov\)](#).

⁸ "Grocery Store Chains Net Profit," FMI available at [FMI | Grocery Store Chains Net Profit](#).

⁹ Renee Haltom and Zhu Wang, "Did the Durbin Amendment Reduce Merchant Costs?" (Dec. 2015) at 4, available [here](#).

prices down as their costs increased. That is real consumer savings. But a survey that asks whether prices were reduced would not get that information.

In addition, the idea that consumers were harmed by reform are simply wrong. The offers that banks provide consumers on things like checking accounts have their own market dynamics and primarily turn on the interest rate environment at a given time. Debit regulation does not determine what banks do pricing checking.

While the credit card industry like to claim that consumers had fewer options for free checking accounts following debit reform, their claims are demonstrably wrong. At the outset, it should be noted that the banking industry has admitted that “free” checking is a fallacy, “Customers never had free checking accounts. They always paid for it in other ways, sometimes with penalty fees.”¹⁰

In addition to Bank of America’s doubts about free checking ever having existed, it should be noted that the banking industry rapidly got rid of many free checking account offerings in the years *before* debit reform ever took effect. First, the banking industry blamed the financial crisis as the reason why they had to take away free checking and charge consumers higher fees.¹¹ Then, the industry pivoted and started blaming overdraft regulations for their decisions to increase checking account fees.¹² In fact, some even had the temerity to suggest that they had to

¹⁰ Bank of America spokeswoman, Anne Pace, quoted in “Bank Accounts: Free Checking Fading Fast,” *The Christian Science Monitor* (Oct. 19, 2010), available at <http://www.csmonitor.com/Business/Latest-News-Wires/2010/1019/Bank-accounts-Free-checking-fading-fast>

¹¹ *Rising Bank Fees are Setting Records*, *USA Today* (Oct. 27, 2008), available at http://www.usatoday.com/money/industries/banking/2008-10-26-atms-fees-checks-banks_N.htm (“The high fees come at a time when banks are struggling to unload bad mortgage loans.”); *Banks Boost Customer Fees to Record Highs*, *Wall Street Journal* (Nov. 12, 2008), available at

<http://online.wsj.com/article/SB122645109077719219.html> (“Banks are responding to the troubled economy by jacking up fees on their checking accounts to record amounts.”); *Banks Find Ways to Boost Fees; Checking Accounts Latest Target*, *USA Today* (May 28, 2009), available at

http://www.usatoday.com/money/industries/banking/2009-05-27-checks-fees-banks_N.htm (“Banks defend their policies, saying that as unemployment rises, consumers have become riskier, and the higher fees reflect that risk. Banks may also be raising some account fees to compensate for higher borrowing costs and to keep prices in line with other financial institutions, says Scott Talbott of the Financial Services Roundtable, which represents the nation’s largest banks.”); *Bank Fees Rise as Lenders Try to Offset Losses*, *New York Times* (July 2, 2009), available at

http://www.nytimes.com/2009/07/02/business/02fees.html?_r=1 (“Scott E. Talbott, a lobbyist for the Financial Services Roundtable, said that the banks’ fees reflect the cost of providing those services and the rise in overdraft charges reflects increased risk. ‘There is an increased riskiness around repayment because of the recession,’ he added.”).

¹² *Is Free Checking on its Way Out?* *CNNMoney.com* (July 2, 2009), available at <http://moremoney.blogs.money.cnn.com/2009/07/02/is-free-checking-on-its-way-out/> (“Bank customers used to the perks of free checking accounts -- unlimited check writing, online banking, debit card use and ATM access, to name a few -- might have to recalibrate their expectations soon. That's because overdraft fees, which banks use to subsidize the expense of free checking accounts, have been under fire by consumer advocacy groups.”); *Banking Expert: Free Checking Accounts aren't Long for this World*, *WalletPop.com* (Aug. 31, 2009), available at <http://www.walletpop.com/2009/08/31/banking-expert-free-checking-accounts-arent-long-for-this-world/> (Following the Credit Card Accountability Responsibility and Disclosure Act and overdraft regulations, “banks are already trying to think of new ways to make their profits.”); *Banks’ Struggle May Mean End of Free Checking*,

increase checking fees because they couldn't make the same money from risky mortgages anymore.¹³

All of these various excuses for the steep drop in free checking offerings were made long before debit reform came into being. The litany of excuses was summed up well in a 2011 article written when banks were blaming debit reform for their increases in checking fees – remarkably, doing this even before debit reform had ever taken effect – “The pattern is getting old and weary. Banks will raise checking fees whenever and wherever they think they can get away with it. And they will blame any convenient development for their choices.”¹⁴

This background matters because the credit card industry typically relies on two fatally flawed studies to try to show that reductions in free checking that came before debit reform – reductions they blamed on the financial crisis and limits on overdraft fees – were actually caused by debit reform. These studies take January 2009 as the measuring point for free checking prior to debit reform even though those reforms did not come into effect until October 2011, nearly two full years later. And, they pushed these studies onto the Government Accountability Office which cited them in a recent report without recognizing that the timing of the studies meant that the studies were blaming debit reform for things that happened prior to reform coming into effect.¹⁵

msnbc.com (Nov. 10, 2009), available at http://www.msnbc.msn.com/id/33840681/ns/business-consumer_news/ (“The change by Citi comes as Congress considers legislation that would limit banks’ ability to levy overdraft fees on checking accounts.”); *The End of Free Checking?* MoneyTalksNews.com (Dec. 30, 2009), available at <http://www.moneytalksnews.com/2009/12/30/the-end-of-free-checking/> (“[N]ew Congressional regulations like the CARD Act have limited the amount of money banks can make from credit cards. The Federal Reserve also has plans to address the highly lucrative ‘overdraft fee industry’, estimated to be worth \$38.5 billion in 2009 by industry consultants Moebs Services. In other words, free checking accounts may soon be going the way of the dinosaur.”); *The End of Free Checking*, NPR Planet Money (June 17, 2010), available at <http://www.npr.org/blogs/money/2010/06/17/127899418/you-may-have-to-pay-for-that-checking-account> (“It costs banks a few hundred bucks a year to maintain a customer’s checking account. Banks have been able to make that up (and more) largely by charging overdraft fees. But new federal rules mean banks can only charge those fees to customers who sign up for overdraft protection.”); *The End of Free Checking*, The Atlantic (June 21, 2010), available at <http://www.theatlantic.com/business/archive/2010/06/the-end-of-free-checking/58444/> (“Free checking is on life support. . . . The main reason why, of course, is the imminent prohibition of overdraft fees, which had been a boon for banks.”); *End of Free Checking a Financial Squeeze: How Employers Can Help*, The Huffington Post (June 28, 2010), available at http://www.huffingtonpost.com/clare-j-morgan/end-of-free-checking-a-fi_b_627540.html (“The free checking accounts many Americans enjoy will soon be a thing of the past as banks scramble to find new ways to recoup overdraft charges and other fees they’re no longer allowed to impose.”).

¹³ *The End of Free Checking? Not at Credit Unions!* Credit Unions Online (June 17, 2010), available at <http://www.credituniononline.com/news/2010/The-End-of-Free-Checking-Not-at-Credit-Unions.html> (“Since banks can no longer charge many credit card fees of the past and high risk (high fee) mortgages are gone, banks are finding themselves short of revenue. . . . Now the banks are coming after your checking account to make up the difference.”)

¹⁴ David Balto “The Bankers’ New Goat,” HuffPost (May 25, 2011) available at https://www.huffpost.com/entry/the-bankers-new-goat_b_834615.

¹⁵ See “Banking Services,” Government Accountability Office (Feb. 2022) available at <https://www.gao.gov/assets/gao-22-104468.pdf>.

The number of checking accounts without monthly fees fell by 11 percentage points just from 2009 to 2010 – still a year before debit reform.¹⁶ But, by counting the remarkably swift and steep reduction in the number of free checking accounts that occurred during the financial crisis and blaming that on debit reform (which came later), these studies deceptively pronounce that debit reform reduced free checking. It didn't.

Banking industry data demonstrates that free checking increased from the time debit reform went into effect at least for its first few years in operation. The ABA reported that 61 percent of banks had free checking in 2014 which compares favorably to the 50 percent of banks with free checking that the ABA reported in 2010 and the 39 percent of large banks that Moebs Services reported offered free checking two months prior to debit reform taking effect.¹⁷

- 2) Using cards to pay for purchases has been on the rise. Some argue that merchants feel like they have to accept Visa and Mastercard regardless of the fees that are charged, or consumers will go elsewhere. Others believe that these cards allow for convenience and higher buying power benefiting both parties. Have you seen where retailers feel compelled to take Visa and Mastercard or else lose out on a sale?

Retailers are compelled to accept Visa and Mastercard due to the highly competitive nature of retail. Because those two networks bring together the market power of virtually all of the banks across the nation, there are not adequate ways for merchants to do business without the cards. In fact, economists have found that due to the market power of Visa and MasterCard, merchants have no real choice but to accept credit cards. While the credit card industry likes to say merchants have a choice, this argument would be like AT&T claiming in the 1980s that no one should worry about its monopoly because people could choose not to have a telephone. Accepting cards is essential for most businesses – as the U.S. Department of Justice has concluded.¹⁸

In fact, the Kansas City Federal Reserve studied this and concluded, “Only monopoly merchants who are facing an inelastic consumer demand may deny cards when the fee exceeds its transactional benefit. . . Merchant competition allows the network to set higher merchant fees.

¹⁶ *Region Banks Refrain from Raising Checking Account Fees*, [Nwi.com](http://www.nwintimes.com/business/local/article_337b378b-3f74-5a00-9d86-b9e6b3d58799.html) (Nov. 9, 2010), available at http://www.nwintimes.com/business/local/article_337b378b-3f74-5a00-9d86-b9e6b3d58799.html (“Bucking a national trend, the region’s community banks aren’t raising fees or putting the breaks on free, non-minimum-balance checking accounts, yet. A recent Bankrate.com national survey on checking accounts indicates the percentage of checking accounts with no monthly service charges and no minimum balance fell to 65 percent in 2010 from 76 percent in the 2009 study.”)

¹⁷ Cadence Bank, “ABA: Most Americans Pay Nothing for Bank Services,” available at <https://cadencebank.com/about/resources/aba-survey---most-americans-pay-nothing-for-bank-services>; American Bankers Association, “ABA Survey Shows Majority of Bank Customers Pay Nothing for Monthly Bank Services,” available at <http://www.prnewswire.com/news-releases/aba-survey-shows-majority-of-bank-customers-pay-nothing-for-monthly-bank-services-104516904.html>; Ismat Sarah Mangla and Tali Yahalom “Bank Accounts: Get a Fair Shake, not a Shake-Down,” CNN Money (Aug. 31, 2011) available at https://money.cnn.com/2011/08/31/pf/bank_accounts.money/index.html (“This was backed by data from Moebs Services, which found that 39% of big banks offered free checking in 2011, down from 64% in 2010”).

¹⁸ See Complaint, U.S. v. Visa, Inc. and Plaid, Inc. (Nov. 5, 2020) at ¶13.

The network can always set higher merchant fees in more competitive markets. Moreover, in competitive markets the merchant fees in the long run may exceed the sum of the merchant's initial margin and the merchant's transactional benefit. . . . As long as the merchant fee does not exceed the level that gives merchants negative profits, merchants may have no choice but to continue accepting cards."¹⁹ The courts also agree that Visa and MasterCard both have market power which means they have the ability to raise their prices above what would be sustained in a competitive market.²⁰

The problem is not that there is no benefit to credit and debit cards. There are benefits. But, because the market lacks competition, the pricing and related terms mean that the cards are a net negative for merchants, consumers, and the economy as a whole. Simply introducing competition could change that situation and make payments far more efficient. That competition would also incentivize innovation that would make card payments more valuable. The time is overdue to bring competition to bear on payment cards.

¹⁹ Fumiko Hayashi, "A Puzzle of Card Payment Pricing: Why Are Merchants Still Accepting Card Payments?" Federal Reserve Bank of Kansas City (2004) available at <https://ideas.repec.org/p/fip/fedkpw/psrwp04-02.html>.

²⁰ *U.S. v. Visa U.S.A., Inc.*, 344 F. 3d 229 (2d Cir. 2003).



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VIA EMAIL
Kara Dubbs
Assistant Clerk
Senate Committee on the Judiciary
kara_dubbs@judiciary-dem.senate.gov

May 24, 2022

Re: Senate Committee on the Judiciary Hearing: “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”

Dear Senate Committee on the Judiciary Members:

I write to address the written question raised in connection with the May 4, 2022 hearing regarding credit and debit card swipe fees. Specifically, you asked that I address the following:

I have heard competing views on whether changes to interchange fees are beneficial for the consumer. Some argue that the consumer benefits through lower prices at the store while others say that the consumer benefits through free checking or rewards through their cards. What is your view on how any changes to interchange fees could benefit the consumer?

To reiterate what I said in the hearing, Giant Eagle operates in a very competitive market. We would place any savings that we would receive from interchange fee changes into lowering, or keeping low, our prices, paying our employees a reasonable wage, and improving our stores. In short, our customers benefit from the competition we face from other merchants, and from the competition among our vendors (other than Visa and Mastercard) because it drives us to do everything possible to deliver low prices and high quality to our customers.

Visa’s and Mastercard’s recent increases in interchange fees place Giant Eagle in the opposite position. Given our small profit margins, these costs (which neither Visa nor Mastercard have sought to justify with the promise of higher rewards or other benefits to card holders) will have to be passed on to all consumers either in the form of higher prices or fewer benefits to our customers. Unlike our other vendors, I have not seen any competition between Visa and Mastercard for our business, or even a willingness to lower prices in response to supposed competition. As I stated at the hearing, Visa’s and Mastercard’s Honor All Cards rules further prevent banks from competing for my business, that is, to accept their cards. We cannot count on competition among credit or debit cards to insure that card prices are as low as possible or that consumers get the benefit of what merchants pay to accept cards.

Simple math suggests that *unless* banks are passing on 100% of their interchange revenue to consumers, then consumers are worse off when merchants, who are operating in a highly competitive market, pay higher interchange (and thus must raise their prices, pay their workers



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less, or reduce quality). I am not aware of any bank that has been willing to open its books to show that it had to eliminate free checking or another benefit, rather than take a slightly smaller profit margin, because of an interchange reduction. At the hearing, Mr. Kim indicated that his bank was highly profitable and was offering free checking to its customers. Other banks that are as well managed should be able to do the same. Again, it is my belief that banks would do so in a competitive world.

Thank you for your question, and for the opportunity to appear before you on May 4.

Respectfully,

Laura Shapira Karet
Chair and CEO
Giant Eagle, Inc.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions
Hearing on “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”
May 11, 2022

Questions for Charles Kim, Executive Vice President and Chief Financial Officer, Commerce Bancshares, Inc.

1. You testified during the hearing that “I think roughly 60 percent of interchange revenue goes out in the form of rewards.”

- a. **Does this 60 percent figure apply across the banking industry or just to Commerce Bank?**

My answer was based on Commerce Bank’s portfolio and my general knowledge of industry figures I’ve seen over time, and the figure represents the equivalent value of rewards relative to interchange. There are multiple income streams for credit card products. As a two-sided market, the interchange paid to retailers and the rewards received by consumers are determined through different but related market forces. These competitive forces provide the most value to all participants, merchants and our customers alike, and are not unlike those in other two-sided markets.

- b. **Does this 60 percent figure apply to credit card interchange revenue, debit card interchange revenue, or both?**

My answer was based on credit card interchange revenue. There are generally no rewards directly associated with debit cards.

- c. **Prior to your testimony, has Commerce Bank informed other card networks or banking trade associations about the percentage of interchange revenue that goes out in the form of rewards? If so, when and to whom?**

No, not that I am aware of.

- d. **To the best of your understanding, do Visa and Mastercard set default interchange fee rates at a level that enables 60 percent of interchange revenue to go out in the form of rewards?**

No, to the best of my knowledge, interchange rates are not set based on rewards. In this two-sided market, competitive forces will tend to drive the importance of factors like risk, benefits, features and services associated with the card. Rewards are determined by the individual issuing banks and vary by individual products,

customers and terms and conditions that are specific to each bank. There is not one kind of rewards card or card portfolio, which is a good thing.

Questions for Charles Kim

- 1) I have heard competing views on whether changes to interchange fees are beneficial for the consumer. Some argue that the consumer benefits through lower prices at the store while others say that the consumer benefits through free checking or rewards through their cards. What is your view on how any changes to interchange fees could impact the consumer?

Interchange is an essential part of the income banks need to provide card-based services. It is therefore essential to consumers too, although they don't know it. If interchange is reduced, whether directly or by stealth, the consumer must necessarily suffer as a result. One can see the true cost of government interference in a functioning market by reviewing the effects of artificially lowered interchange in other countries. The merchant lobby in the US may point to, and cheer, lower European interchange rates imposed by government. They dissemble about the burden paid by the European consumer in the end through higher costs for banking services, and few or no rewards.

Any reduction in interchange would have a negative impact on consumers because it would have a negative impact on value of payments products, especially those offered by small and medium-sized banks. Banks invest in the card transaction before, during, and after the purchase. They must be rewarded for the ongoing investments that make the payment system possible. A reduction in revenue for those banks would mean a reduction in or exit from card-related businesses. Just as in Europe, Australia, and elsewhere the cost of financial services to the consumer would go up, the rewards for the consumer would go down or disappear altogether and local community banks and credit unions would be forced out of the business. The card business would be left to the Wall Street titans. Compare the thousands of American banks and credit unions serving our communities to the handful of banks in countries like Canada, Australia and elsewhere. We think that concentration of services is to be avoided so that small banks can continue to serve small communities. Interchange is a necessary part of that.

When the original Durbin amendment was made into law, the merchants cheered. The CFO of Home Depot famously said that company would benefit by taking millions of dollars to the bottom line while on an investor call. Fancy words and clever arguments can't erase that fact.

According to the Federal Reserve Bank of Richmond, more than three-fourths of merchants surveyed did not change their prices after the Durbin Amendment was implemented, while 22 percent of merchants actually *increased* prices. Only 1 percent of merchants reduced prices after the Durbin Amendment was implemented. As the authors stated, 'a sizable fraction of merchants [raise] prices or debit restrictions as their costs of accepting debit cards increase. However, few merchants [reduce] prices or debit restrictions as debit costs decrease.' Part of the reason for the lack of a savings "pass-through" is that some merchants (particularly smaller merchants) saw interchange rates *rise* after the Durbin amendment was implemented because networks

no longer offered discounts for smaller-ticket purchases — in effect, the price ceiling became the floor.

Merchants had the chance to give their Durbin amendment savings to the consumer in the form of lower prices. They just didn't. We have no reason to believe they would do it now.

Last year, an [American Bankers Association white paper](#) summarized the benefits to consumers and merchants alike, including lower income consumers, of credit card rewards. Among other findings, the paper concluded that households of all incomes benefit from rewards cards, that most interest is paid by higher-income cardholders, and that credit card rewards are not a wealth transfer. Regarding this last point: merchant groups often argue that credit card rewards are a “reverse Robin Hood” offering whereby lower-income credit cardholders fund rewards for higher-income credit cardholders. Using a comprehensive and representative sample of credit card accounts provided by independent payments data company Verisk Financial, ABA's study found that this view is simply inaccurate. On the contrary, policy proposals based on conjecture and misunderstanding of data about the Reverse Robin Hood theory could lead to serious unintended consequences for the very populations they intend to help

- 2) Using cards to pay for purchases has been on the rise. Some argue that merchants feel like they have to accept Visa and Mastercard regardless of the fees that are charged, or consumers will go elsewhere. Others believe that these cards allow for convenience and higher buying power benefiting both parties. What is your view on this?

There can be no doubt that the investments made by U.S. banks and credit unions in the American payment system infrastructure has paid massive dividends for consumers and merchants *all over the world*. As a nation, we should be proud of the fact that we invented and constantly refine the best payment system anywhere. It allows any card user to buy goods and services down the street, on-line, and in millions of merchants around the world, with confidence. We no longer worry about carrying large amounts of cash to buy gas on our road trips. We no longer buy large amounts of foreign currency or traveler's cheques so that we can shop and eat on that once-in-a-lifetime foreign vacation. Instead, we use our rewards to subsidize the vacation and we use our card to rent our car, check into our hotel, and buy our meal in seconds and with ease. Sometimes we use our own money. Sometimes we borrow that money via our credit card. We frequently spend more than we would were we using cash.

No one group has benefitted from the interchange-based US Payments System more than the merchant community. Amazon, Sam's Club, Wal-Mart et al have not suffered under it, they have prospered almost beyond belief. Interchange may be an expense to the merchant community (like the electricity bill), but it is one that has facilitated a *massive* growth in business for them. Merchants don't accept cards because they must, they do so because it helps them grow their business**. A small business can open their doors and be plugged into a worldwide interchange of cardholders and businesses in minutes. That is an astonishing achievement. That system works. It will not benefit from heavy-handed government intervention.

These benefits can be quantified and the costs of accepting cards put in perspective. Per a recent [report](#), the benefits to merchant of accepting cards is 9.36% of transaction value, on average, which far exceeds the 3.0% average cost of credit card acceptance. Interestingly, most major merchants now partner with Buy Now Pay Later firms, paying a fee is generally 2-3x higher than the average credit card fee (and much higher than the average debit card fee).

As for whether merchants *must* accept cards, we feel that they would be foolish not to, but they do have other options. Merchants can and do accept cash, checks, ACH, and various other forms of payment. Those forms of payment are expanding all the time and merchants cheerfully adopt them, even when the cost of doing so is higher than credit cards. Target's own Red Card offers 5% discounts on purchases. There is nothing to prevent merchants from building a better payment system. Failing that, they can pay their fair share for access to the best payment system in the world, the one we have now.

** The following is a partial list of the extra benefits various merchants provide to cardholders for using their credit cards. These generous benefits are in addition to any interchange expense the merchant pays. We suggest this is proof that these merchants value the system more than they let on and can easily afford to pay their share of the system's upkeep. They do not need the Federal Government to favor them with preferred pricing.

- **Walmart Rewards Mastercard:**

- 5% cash back at Walmart.com.
- 2% cash back in Walmart stores & fuel stations, at restaurants and on travel
- 5% cash back in Walmart stores for the first 12 months

- **Sam's Club – Mastercard:**

- 5% back on gas anywhere
- 3% back on Sam's Club purchases for *Plus* members

- 3% back on dining and takeout
- **Walgreen's Mastercard:**
 - \$25 Walgreens Cash rewards when you open an account and make your first purchase.
 - 10% Walgreens Cash rewards on Walgreens branded purchases
 - 5% Walgreens Cash rewards on all other brands and pharmacy purchases
 - 3% Walgreens Cash rewards on grocery and health & wellness purchases
 -
- **Southwest - 'Rapid Rewards' Visa:**
 - Earn 40,000 points after you spend \$1,000 on purchases in the first 3 months from account opening
 - Refer friends and earn up to 100,000 bonus points per year
 - Earn 5X points on Amazon, grocery and dining
 - Redeem points for flights, gift cards, merchandise, hotel stays, rental cars and exclusive Cardmember experiences
- **Costco – 'Anywhere' Visa:**
 - 4% on eligible gas purchases
 - 3% on restaurants and eligible travel
 - 2% on all other purchases from Costco and Costco.com

In many cases, retailers who partner with banks also get significant interchange reductions, share in card interchange revenue and receive volume discounts all while receiving the benefits of increased spend and customer loyalty. Taken together, these partnerships may make a merchant's branded card the most cost-effective marketing and customer retention strategy.

Senator Marsha Blackburn
Questions for the Record to Linda Kirkpatrick
President, North America, Mastercard

1. Financial institutions face more risk with credit card transactions than they do with debit card transactions because credit transactions are unsecured loans to the consumer. If we were to legislatively create a framework that allows regulators to dictate the terms for which credit unions and banks are allowed to extend credit for credit cards, what would be the impact on consumers' access to credit?

If regulators dictated the terms under which credit unions and banks were allowed to extend credit for credit cards, consumers and businesses would be significantly harmed by (1) a lack of access to credit, (2) a reduction in industry investment to protect against fraud, (3) a loss of benefits, and (4) an inability to participate in modern financial services.

The financially underserved would be disproportionately affected by artificial price controls. Research from Professor Natasha Sarin ("The Impact of Durbin Amendment on Banks, Merchants and Consumers") found consumers lost roughly \$3 billion annually from debit regulation.

Any artificial direct or indirect controls (e.g., routing mandates, Honor All Cards rules repeals, exemption from state income tax, etc.) would hamper consumer and small business growth. Controls would also negatively affect commerce and economic stability during the current unprecedented, massive inflationary environment when consumers and businesses are at their most vulnerable.

2. What is the cost to Mastercard each year of accepting liability for fraud and loss?

Financial institutions bear 100% of the losses resulting from charge-offs, which occur when consumers fail to pay their credit card bills. Charge-off rates are on average 3% - 4%, far exceeding the average merchant cost of credit acceptance of ~2%.

With respect to fraud, financial institutions bear 100% of the losses for in person transactions when merchants use EMV-enabled terminals. The vast majority of U.S. merchants have implemented EMV terminals, representing more than 80% of in person transactions. Further, while merchants bear some liability for fraud in card not present environments, merchants could shift 100% of this liability to financial institutions if they leveraged 3D secure technology.

Separately, Mastercard has invested billions of dollars in products and services to mitigate fraud in electronic payments. For example, Mastercard's SafetyNet technology prevented more than \$10 billion in fraud in 2021 alone. Further, Mastercard's "zero liability" rules offer total protection to consumers who fall victim to fraud – consumers are never responsible for fraud losses.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions
Hearing on “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”
May 11, 2022

Questions for Linda Kirkpatrick, President, North America, Mastercard

1. Mr. Kim testified during the hearing that “I think roughly 60 percent of interchange revenue goes out in the form of rewards.”
 - a. **Is Mr. Kim correct?** Financial institutions are responsible for managing rewards with their cardholders. Based on Mastercard’s knowledge, financial institutions reinvest most or all of the interchange revenue they collect back to the consumer to support and service their accounts. In the case of co-brand portfolios, financial institutions often share interchange revenue with merchants. In this way, both financial institutions and merchants reinvest interchange revenue to benefit their shared consumer relationships.
 - b. **If not, what is the percentage of interchange revenue that goes out in the form of rewards?** Please see the response above.
 - c. **Does Mastercard ever receive information from card-issuing banks in the Visa network on what percentage of the banks’ interchange revenue goes out in the form of rewards? If so, how often does Mastercard receive such information and from how many banks does Mastercard receive it?** No, Mastercard does not receive this data from banks in the Visa network.

Question for Linda Kirkpatrick

- 1) Using cards to pay for purchases has been on the rise. Some argue that merchants feel like they have to accept Visa and Mastercard regardless of the fees that are charged, or consumers will go elsewhere. Others believe that these cards allow for convenience and higher buying power benefiting both parties. Do you believe that retailers have no choice but to accept Mastercard because of their market power in the credit and debit card markets?

Merchants have the ultimate choice to accept the forms of payments that align with their business needs. Many merchants only accept cash and check. Others prefer to only accept electronic payments because they recognize the value of doing so far exceeds their costs, given the benefits they receive from increased sales, decreased fraud, guaranteed payments, and more efficient operations. Various merchants accept both cash and check and electronic payments, and some provide discounts for cash to incentivize their preferred form of payments. Merchants are also free to decide whether to accept American Express, which has roughly the same share of the U.S. credit market as Mastercard. Other merchants accept Mastercard debit products, and not Mastercard credit products to minimize their cost of acceptance. Many merchants have direct agreements with Mastercard, or with their acquiring banks, which meaningfully reduce their cost of acceptance.

Merchant choice in payments is exemplified by the number of options they offer to consumers at the point of sale, including for example, digital wallets, digital currencies, and ACH-based payments that do not leverage Mastercard's network. Further, buy now pay later (BNPL) payment options have extensive merchant acceptance and experienced explosive growth during the pandemic, despite being two to three times more costly to merchants relative to credit card acceptance. Merchant choice in payments has never been more prolific than it is today. It is also clear that the competitive environment for payments has never been more intense.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions
Hearing on “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”
May 11, 2022

Questions for Bill Sheedy, Senior Advisor to the Chairman and CEO, Visa Inc.

1. Mr. Kim testified during the hearing that “I think roughly 60 percent of interchange revenue goes out in the form of rewards.”
 - a. Is Mr. Kim correct?
 - b. If not, what is the percentage of interchange revenue that goes out in the form of rewards?
 - c. Does Visa ever receive information from card-issuing banks in the Visa network on what percentage of the banks’ interchange revenue goes out in the form of rewards? If so, how often does Visa receive such information and from how many banks does Visa receive it?

Visa does not earn revenue from interchange fees; our revenue comes from fees we charge financial institutions who issue cards and process transactions over our network. Those institutions, which include banks and credit unions of all sizes, receive interchange fees and compete with each other, and with other forms of payment, to offer attractive fee structures, credit access, and other features and benefits to cardholders. Visa does not receive information from financial institutions on how they allocate revenue from interchange fees to cover the costs of benefits, like rewards, offered to cardholders.

Senator Marsha Blackburn
Questions for the Record to Bill Sheedy
Senior Advisor to Chairman and CEO, Visa Inc.

1. Financial institutions face more risk with credit card transactions than they do with debit card transactions because credit transactions are unsecured loans to the consumer. If we were to legislatively create a framework that allows regulators to dictate the terms for which credit unions and banks are allowed to extend credit for credit cards, **what would be the impact on consumers' access to credit?**

Any legislative framework that would allow regulators to dictate the terms for extending credit would result in significant detriments to consumers, including fewer cards being issued, reduced access to credit, and increased cost of credit – with low-income Americans bearing the brunt of a more restrictive credit market.

Credit cards and debit cards have varying levels of risk for financial institutions. For example, a debit card has no built-in credit component and enables consumers to make payments by using money they already have in their bank accounts. Credit cards, on the other hand, afford consumers the ability to purchase goods and services by providing access to an unsecured line of credit from their financial institution. When a credit card is used to make a purchase, the merchant is guaranteed payment for that transaction, but the purchase amount constitutes a loan that the issuing financial institution extends while absorbing the risk of non-payment.

Credit card programs also tend to be more expensive than debit card programs for financial institutions for several reasons, including the costs associated with maintaining the underlying line of credit, the period of “free float” provided to cardholders, the risk of default by cardholders, the fact that there tends to be more fraud on credit cards than on debit cards, and because these products often come with additional benefits for consumers.

Government mandates, whether in the form of price controls, routing or network enablement requirements, or otherwise, will make the administration of credit card portfolios more expensive and force financial institutions to reassess their offerings, including access to credit, to consumers and businesses. This will be particularly acute for small and medium sized financial institutions, including credit unions and community banks, ultimately harming the communities, consumers and businesses they serve locally, and slowing economic growth. In short, dictating the terms by which financial institutions offer credit cards to consumers would unnecessarily upend a thriving, highly innovative and competitive payments sector and will reduce access to credit products and slow consumer spending, with disproportionate negative impacts for lower-income consumers and small businesses.

Senator Charles E. Grassley
Question for the Record to Bill Sheedy
Senior Advisor to Chairman and CEO, Visa Inc.

1. Using cards to pay for purchases has been on the rise. Some argue that merchants feel like they have to accept Visa and Mastercard regardless of the fees that are charged, or consumers will go elsewhere. Others believe that these cards allow for convenience and higher buying power benefiting both parties. Do you believe that retailers have no choice but to accept Visa because of their market power in the credit and debit card markets?

No. Merchants have more payment choices than ever because competition in the payments sector is more dynamic than it has ever been, a trend that has accelerated rapidly over the last several years. In our experience, merchants accept Visa because it is good for their business.

Some of the most significant domestic players and brands in payments now include names like PayPal, Venmo, Square (Block), Affirm, Afterpay, Klarna, and Zelle, as well as large technology platforms, and a growing list of international entrants. These players offer digital prepaid wallets, digital marketplaces, closed commerce ecosystems, real-time payments, Buy-Now-Pay-Later solutions, open banking systems, and cryptocurrency solutions. Many of these new payment options are offered outside the traditional banking regulatory structure, some of which promote account transfer rather than card-based payment methods. In addition to these new alternative payment methods, there are four successful credit card networks in the United States, and more than a dozen debit networks. Cash and checks also remain an important part of the payments landscape. Merchants also remain free to steer consumers to use their preferred payment options with discounts or other benefits.

From traditional payments options, fintechs, Big Tech companies, and domestic and foreign players, consumers and merchants have many choices for how they can choose to pay and be paid, and we expect those options to continue increasing over time. Card networks like Visa enable merchants of all sizes to compete on a level playing field. Whether the merchant is large or small, they can transact securely with billions of Visa cards across the globe and know they will get paid. Likewise, all merchants that accept Visa can equally benefit from our security and fraud fighting tools. It is this dynamic that drives Visa to invest and innovate constantly in order to continue having the privilege to serve consumers and businesses, so that the next time a consumer and merchant are making the choice of what payment option to use or accept, no matter how many options are available, they will elect to use Visa.



National Association of Federally-Insured Credit Unions

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B. Dan Berger
President & Chief Executive Officer

May 3, 2022

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

Re: Tomorrow's Hearing on "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems"

Dear Chairman Durbin and Ranking Member Grassley:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on how government interference with debit interchange as part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) has harmed community financial institutions and consumers, and to express our strong opposition to any expansion of price controls and market manipulation related to credit or debit interchange. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 million consumers with personal and small business financial service products. We appreciate the opportunity to share our thoughts on this incredibly important issue.

The electronic payments system is a two-sided market, with consumers on one side and merchants on the other. Both sides benefit from the arrangement, with card networks setting interchange rates based on the cost of doing business and the benefit to consumers and merchants. In the wake of the pandemic, many merchants are requesting cashless payments for employee safety and to streamline their operations. This is evidence that the electronic payments system offers real value to merchants and consumers alike. Ultimately, merchants receive far more value from accepting electronic payments than they pay in interchange fees. Any new caps or restrictions on interchange fees would only hurt community institutions such as credit unions as well as the American consumer.

When a consumer uses a credit or debit card to pay for a transaction, the merchant pays an interchange fee, or "swipe" fee, to the card-issuing bank for the benefits they receive from that transaction (such as immediate payment). Interchange fees cover a variety of expenses, including the cost of customer service, system improvements, online transactions, data security, and card production. Furthermore, interchange fees can vary significantly depending on whether or not a card was present for the transaction, whether the data is complete, the category of merchant, whether the card is credit or debit, the brand of the card, and whether the owner of the card is an individual, business or other entity. They are not monolithic by any means.

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The Honorable Dick Durbin, Chairman
The Honorable Chuck Grassley, Ranking Member
May 3, 2022
Page 2 of 3

Section 1075 of the Dodd-Frank Act, 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 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 by 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.

While the 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 that 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.

A new February 2022 [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.” Further, the merchants’ promise of 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 percent of merchants did not pass-along savings realized from debit regulation to consumers, and over 20 percent increased prices.

Since the “Durbin amendment” was enacted, we have seen consumer prices increase, consolidation among community banks and credit unions, 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. These are many of the same merchants, such as Wawa, Target, and Home Depot, that have suffered massive consumer payment card data breaches over the last decade and looked to financial institutions to clean up their mess and restore consumers who

The Honorable Dick Durbin, Chairman
The Honorable Chuck Grassley, Ranking Member
May 3, 2022
Page 3 of 3

were harmed—all while trying to fight the interchange system that helps financial institutions aid consumers when their payment cards have been compromised at these retailers.

As the economy begins its long recovery from the pandemic, merchant groups should not be considering ways to put consumer spending at risk by interfering with the efficient way credit cards work today. Credit cards provide the lifeblood of credit availability for consumers and small businesses. Over 70 percent of U.S. GDP depends on consumer spending, and credit cards are what drive that. 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.

While envisioned to help consumers, the “Durbin amendment” has instead lined the pockets of big-box retailers, with little evidence of price cuts for consumers or benefits to small merchants. 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. The arbitrary price cap imposed by the debit interchange amendment in the Dodd-Frank Act should be repealed in order to restore some fairness to the interchange system and increase the benefits realized by a greater range of merchants and consumers. The debit interchange restrictions added in Section 1075 of the Dodd-Frank Act are a prime example of a failed policy of government interference in a free market, and to consider extending these provisions to credit cards is not only irresponsible, but also reckless. On behalf of the 130 million member-owners of credit unions around the country who would stand to suffer, we urge you to reject any such effort.

Thank you for your attention and the opportunity to share our thoughts on this important issue. Should you have any questions or require additional information, please do not hesitate to contact me or Chad Adams, NAFCU’s Senior Director of Legislative Affairs, at (703) 842-2265 or cadams@nafcu.org.

Sincerely,



B. Dan Berger

cc: Members of the Senate Judiciary Committee

**PRESIDENT**

J.J. Moran
Four Winds Liquor & Lounge
Cheyenne, WY

VICE PRESIDENT

Jay Gesner
Souise's Lounge
Rockford, IL

VICE PRESIDENT

Bobby Greenawalt
B&B Bartending
Auburn, AL

VICE PRESIDENT

Chris Marsicano
The Village Supper Club
Delavan, WI

VICE PRESIDENT

Juan Negrin
Super Wine Warehouse
Paterson, NJ

TREASURER

Mat Dinsmore
Wilbur's Total Beverage
Fort Collins, CO

PAST-PRESIDENT

Steve Morris
Jorgenson's Restaurant & Lounge
Helena, MT

EXECUTIVE DIRECTOR

John Bodnovich
American Beverage Licensees
Bethesda, MD

May 4, 2022

The Honorable Dick Durbin The Honorable Chuck Grassley
Chairman Ranking Member

Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of American Beverage Licensees (ABL) and its thousands of independent beer, wine and spirits retailer members, we write to thank you and the Senate Judiciary Committee for holding today's hearing "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems."

We believe that the hearing shines a light on the broken payment card fee system wherein beverage licensees who accept payment cards face take-it-or-leave-it decisions that provide them with few choices and drive-up costs for them and their consumers.

Payment card swipe fees are one of the highest expenses for the taverns and liquor stores that ABL represents. In many cases, these fees outpace rent and utilities, and are second only to labor costs.

Small beverage businesses have no option for negotiating these swipe fees, nor any ability to choose which cards they can accept if they want to take any of the cards from a banking institution, Visa or MasterCard under "honor all card" rules.

We are disappointed that Visa and MasterCard ignored a recent bipartisan [request](#) by members of Congress to halt swipe fee increases and instead have chosen to move ahead with raising swipe fees this spring. These increases will increase costs for retailers and subsequently raises prices for their customers.

After the challenges of the last two years of the pandemic, the last thing that bars and taverns need as they fight to return to running profitable businesses is an unwarranted fee increase. And in an increasingly competitive package liquor store marketplace where labor shortages and supply chain disruptions are hampering retailers, adding an unjustified swipe fee increase will harm local small businesses and those they serve.



According to the Merchants Payments Coalition (MPC), the average family pays [more than \\$700 a year](#) in higher prices resulting from swipe fees. At a time when many American families are struggling to afford basic goods and services, let alone what many consumers rightly view as the affordable luxury of their favorite beer, wine or cocktail, hiking these fees is disproportionate relative to the credit card companies' risk.

When it comes to routing, Visa and MasterCard have managed to exclude competitors from entering the credit market, with 80 percent of credit card transactions running through Visa and MasterCard network services. This contrasts with the competition introduced in the debit card routing marketplace to the benefit of businesses and consumers.

With inflationary pressures hitting hospitality business and their customers alike, we need to fix the broken payment card system. Doing so will help not just Main Street, but also consumers who increasingly face rising costs for most products.

Thank you for examining and bringing to light undue credit card swipe fee increases and the fractured credit card system. Beer, wine and spirits retailers look forward to collaborating with you to find solutions to these critical issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'John D. Bodnovich'.

John D. Bodnovich
Executive Director
American Beverage Licensees

cc: Senate Judiciary Committee Members

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May 4, 2022

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Chairman Ranking Member

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U.S. Senate
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John D. Bodnovich
Executive Director
American Beverage Licensees

cc: Senate Judiciary Committee Members



May 3, 2022

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 America's credit unions, we are writing regarding the hearing entitled, "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems." The Credit Union National Association (CUNA) and the state credit union leagues and associations (the Leagues) represent America's credit unions and their more than 130 million members.

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. These fees cover the cost of fraud detection, credit monitoring, and fraudulent purchase protection that make consumers and merchants whole when bad actors attack. The robust security features that make credit cards so appealing to consumers come at a cost. While interchange fees cover those costs now, a potential reduction in those fees, when coupled with an alarming rise in fraud, poses a real threat to data security.

The rate—and cost—of criminal activity is on the rise, and when a merchant's systems are breached, or a card is otherwise compromised, it is the financial institutions who absorb a significant portion of the costs.¹

- \$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

It is important to recognize that 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 over a network that was singularly developed for this purpose. 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 possibly the reduction in important credit building and educational programs offered by financial institutions.

When merchants pay an interchange fee, it is the cost they incur for the service of utilizing the card network. Imposing additional compliance burdens or capping the rates charged for the service provided would have an outsized impact on credit unions' ability to provide card services with at least 15% of credit unions reducing or eliminating their credit card programs.² The Durbin Amendment was enacted to allow merchants to reduce their prices and encourage customers to spend more; however, an analysis by the

¹ CUNA/Frederick polling, July 2021

² CUNA/Frederick polling, July 2021



Federal Reserve Bank of Richmond found that only about 1 percent of merchants have passed their savings on to consumers through reduced prices.³

Furthermore, a recent Government Accountability Office (GAO) study found that the debit card interchange fee regulations imposed through Section 10753 (Durbin Amendment) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) were associated with increases in the costs of checking accounts, a decrease in the availability of noninterest checking accounts without monthly fees, and that lower- and middle-income Americans, including minority communities, are the most significantly harmed by the Durbin Amendment.⁴ The result of the Durbin Amendment has been additional compliance burdens and related business costs for credit unions, a reduction in interchange revenue from debit transactions, and a massive transfer of money to the largest retailers.

The largest retailers are asking you, once again, to expand interchange regulations to limit their costs and add to the growth they have achieved amidst the pandemic while so many small businesses were forced to close. Restrictions on credit card interchange would take critical resources away from credit unions 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 low-cost card programs that provide lines of credit to members who would not be able to obtain them otherwise.

The GAO study has demonstrated the significant harm to consumers that increased interchange regulations have caused. Expanding these regulations in a time when the economy is struggling to recover from a global pandemic will only compound the harm to community financial institutions and limit their ability to serve the small businesses and individuals that need it the most.

On behalf of America's credit unions and their 130 million members, thank you for holding this important hearing and for considering our views.

Sincerely,

Credit Union National Association
 American Association of Credit Union Leagues
 Alabama Credit Union Association
 Alaska Credit Union League
 Arkansas Credit Union Association - a political division of Cornerstone League
 Association of Vermont Credit Unions
 California Credit Union League
 Carolinas Credit Union League – North Carolina
 Carolinas Credit Union League – South Carolina
 Credit Union Association of New Mexico

³ 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.

⁴ 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).



CrossState Credit Union Association
 Dakota Credit Union Association
 Delaware's Credit Unions - Cooperative Credit Union Association
 Florida Credit Union Association
 Georgia Credit Union Association
 Hawaii Credit Union League
 Heartland Credit Union Association – Kansas
 Heartland Credit Union Association – Missouri
 Illinois Credit Union System
 Indiana Credit Union League
 Iowa Credit Union League
 Kentucky Credit Union League
 Louisiana Credit Union League
 Maine Credit Union League
 Maryland and DC Credit Union Association
 Massachusetts' Credit Unions - Cooperative Credit Union Association
 Michigan Credit Union League
 Minnesota Credit Union Network
 Mississippi Credit Union Association
 Montana's Credit Unions
 Mountain West Credit Union Association - Arizona
 Mountain West Credit Union Association – Colorado
 Mountain West Credit Union Association - Wyoming
 Nebraska Credit Union League and Affiliates
 Nevada Credit Union League
 New Hampshire's Credit Unions - Cooperative Credit Union Association
 New York Credit Union Association
 Northwest Credit Union Association – Idaho
 Northwest Credit Union Association – Oregon
 Northwest Credit Union Association – Washington
 Ohio Credit Union League
 Oklahoma Credit Union Association - a political division of Cornerstone League
 Rhode Island's Credit Unions - Cooperative Credit Union Association
 Tennessee Credit Union League
 Texas Credit Union Association - a political division of Cornerstone League
 The Credit Union League of Connecticut Inc
 Utah's Credit Unions
 Virginia Credit Union League
 West Virginia Credit Union League
 Wisconsin Credit Union League



Jim Nussle
President & CEO

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99 M Street SE
Suite 300
Washington, DC 20003-3799

May 3, 2022

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 10753¹ (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.

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

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.

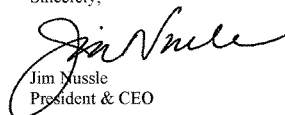
Currently, the average limit per credit card is approximately \$7,700, for a net return of 1.3% for money for credit card loans by credit unions. At this time, 5.2% of credit unions lose money on their credit card programs, with this burden disproportionately distributed amongst small credit unions.²³ 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.

Dubbs, Kara (Judiciary)

From: Swanson, Daniel (Judiciary-Dem)
Sent: Monday, 23 May, 2022 18:54
To: Dubbs, Kara (Judiciary)
Subject: Letters for the record for May 4 hearing on "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems"
Attachments: 22 5.4 ABL Letter for the Record - SJC Swipe Fee Hearing.pdf; 050322_CUNA-League Letter Interchange.pdf; 050322_Senate Judiciary.pdf; EPC Statement for the Record - Senate Judiciary Committee Hearing 5.4.22.pdf; FINAL Joint Trades SFR on Durbin Amendment.pdf; Honorable Chuck Grassley.pdf; IFA Letter to Senate Judiciary - interchange fee hearing 050422.pdf; RILA-Judiciary Hearing Letter-Excessive swipe fees and barriers to competition.pdf; 5-3-2022 NAFCU Letter to Senate Judiciary on Interchange Hearing.pdf; SenateJudiciary_AnticompetitiveCreditDebitPracticesHearing_NRALetterfortheRecord_Final.pdf; Honorable Chuck Grassley.pdf; NRF Letter - SJC Payments Hearing Letter.FINAL.pdf; Guaranteedpayment.blast.hearing.senjudi2022-cs.pdf; merchant.letter4Durbinhrg2022.final.pdf; merchant.letter4Durbinhrg2022.final-Carltons.docx; Merchant Letter Final - American Sale IL.pdf; Merchant Letter Final - Heart n Home IA Fees Breakdown.pdf; Merchant Letter Final - Heart n Home IA.pdf; Merchant Letter Final - Klems MA.pdf; Merchant Letter Final - Tesoro CA.pdf; Merchant Letter Final - Yedi CA.pdf; NE Swipe Fees 05-03-22.pdf; MN Grocers Association Letter - Credit Card Fees.pdf; FMI Statement for Record Senate Judiciary Swipe Fees 050422.pdf; MA FOOD ASSOCIATION TESTIMONY - SWIPE FEES.PDF; 22 5.4 ABL Letter for the Record - SJC Swipe Fee Hearing.pdf; For the record; Letter to US Senate Committee on the Judiciary - Credit and Debit Swipe Fees - 5.03.22.pdf; IFA Letter to Senate Judiciary - interchange fee hearing 050422.pdf; USHCC Letter Re- Cap Credit Interchange.pdf; NGA_Senate Judiciary 5-4-22 Statement for the Record.pdf

Hi Kara- here are the letters for the record for the May 4 hearing on "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems." Also, Senator Durbin at one point during the hearing asked to include in the record two articles related to American Bankers Association survey results regarding free checking. Those two articles are here:

- American Bankers Association, "ABA Survey Shows Majority of Bank Customers Pay Nothing for Monthly Bank Services," Oct. 7, 2010, available at <http://www.prnewswire.com/news-releases/aba-survey-shows-majority-of-bank-customers-pay-nothing-for-monthly-bank-services-104516904.html>.
- American Bankers Association, "Survey: Most Americans Pay Nothing for Bank Services," August 18, 2015, available at <http://www.aba.com/Press/Pages/081815SurveyonBankCosts.aspx>;

Please let me know if you have questions about any of this or need help sorting/organizing the materials. Thanks again,
 Dan

Statement for the Record
The Electronic Payments Coalition

“Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems”

Senate Committee on the Judiciary

Wednesday, May 4, 2022

10:00 AM

The Electronic Payments Coalition—the coalition of credit unions, community banks, payment card networks, and institutions who support the backbone of our economic system: electronic payments—appreciates the opportunity to express its views on the Senate Judiciary Committee hearing entitled, “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems” on May 4, 2022.

The Failure of the Durbin Amendment

The Durbin Amendment was passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. There was little empirical evidence of its impact on consumers, merchants, community financial institutions, or the electronic payments system.

The evidence that existed showed no benefit for consumers. The co-author of Dodd-Frank, Congressman Barney Frank, who opposed the inclusion of the Durbin Amendment, said at the time, “unfortunately the evidence we’ve seen elsewhere is the consumers don’t get any benefit from this.”¹

Since the Durbin Amendment was implemented over ten years ago, a multitude of [research](#) from the Federal Reserve, Government Accountability Office (GAO), academics, and think tanks detail the failures of the Durbin Amendment.

After the Durbin Amendment, reduced interchange fees did not reduce prices for consumers. According to a 2014 study by the Federal Reserve Bank of Richmond, only 1% of merchants cut prices after Durbin; the rest raised them or kept them level.² Reduced interchange fees did not lead to reduced prices for consumers, according to The Loyola Consumer Law Review.³ In a 2015 consumer survey by Javelin Research, nine in ten consumers said prices rose after Durbin despite an annual inflation rate of 0.12% in 2015.⁴

The Durbin Amendment cut interchange income for community banks and credit unions. In 2016, the Federal Reserve found that community banks and credit unions, technically exempt under Durbin, saw a reduction in interchange up to 20%.⁵ Nearly three-quarters of small financial institutions said Durbin had a negative effect on their earnings, according to a report by the Mercatus Institute.⁶

Many consumers lost access to banking after the Durbin Amendment was passed, as the number of free checking accounts was cut in half.

The number of free checking accounts was cut almost in half in the two years after Durbin was passed.⁷ Lower-income consumers have lost one to three billion dollars a year due to a reduction in free checking accounts, loss of debit rewards programs, and higher retailer prices.⁸

¹ [Reuters](#), 12/16/2010

² [Federal Reserve Board of Richmond](#), 2014

³ [The Loyola Consumer Law Review](#), 2013

⁴ [Javelin Strategy and Research](#), 2017

⁵ [Federal Reserve](#), 2016

⁶ [Mercatus](#), 2014

⁷ [Competitive Enterprise Institute](#), 2017

⁸ [International Center for Law & Economics](#), 2017

In February 2022, the Government Accountability Office (GAO) released a [report](#) on the access to and affordability of financial services. They concluded that the Durbin Amendment is associated with reduced issuer revenue, decreased access to free checking accounts, and higher checking account fees for consumers.

GAO also highlights the study's finding that banks offset interchange revenue losses by raising other fees consumers pay (e.g., monthly service fees and minimum balance fees), illustrating the two-sided nature of the electronic payments market. As EPC [recently wrote](#), government intervention on behalf of one side of the market carries a high risk of negative consequences for the other side, as well as the overall system.

According to the GAO report, the Durbin Amendment and Reg II were among the top five laws and regulations most cited by market participants as having significantly affected the cost and availability of basic banking services.

Banks covered under the regulation saw annual interchange revenue fall by more than 25% because of the interchange cap, according to a study cited by GAO.⁹

The debit interchange cap is associated with an increase in the cost of checking accounts and a decrease in the availability of free checking accounts, according to multiple academic studies reviewed and cited by GAO. For example, GAO cites a Federal Reserve study which found that noninterest checking account fees at covered banks rose by 20%, and the average minimum balance required to avoid a fee rose by 50% following the implementation of Reg II.¹⁰ Market participants interviewed by GAO auditors also reported that the price cap "limited banks' ability to offer free checking accounts" (p. 25).

Some merchants and merchant groups argue that, even if consumers face higher prices for banking services, these would be offset by lower prices at stores. However, savings from interchange caps were generally not passed through from merchants to consumers in the form of lower prices following the interchange cap.¹¹

Elsewhere in the report, GAO found that about 5% of U.S. households are unbanked, and nearly 18% are underbanked. These individuals have a bank account but use alternative services like payday lenders and check cashing. Consumers who have lower incomes, lower education levels, or who are Black, Native American, or Hispanic are more likely to be unbanked or underbanked. Per GAO, unbanked individuals cite lack of funds, minimum balance requirements, and unpredictable or costly fees as the primary reasons for not having a bank account. As such, additional account fees and requirements—like those associated with interchange regulation—exacerbate the problem of unbanked and underbanked households in these demographic groups.

While GAO did not issue specific recommendations to the Federal Reserve concerning Reg II, GAO did note the Fed's continued, data-driven analyses of the effects of Reg II and stated that the

⁹ [Pennsylvania Law School Institute for Law and Economics](#), 2019

¹⁰ [Federal Reserve Board](#), 2017

¹¹ [Federal Reserve Bank of Richmond](#), 2015 and [Pennsylvania Law School Institute for Law and Economics](#), 2019

Fed is aware of the impacts on the costs of banking services. EPC continues to believe that the Fed should consider these additional costs to consumers when evaluating the impacts of Reg II.

Given the documented consequences of interchange caps for consumers, lawmakers and regulators should be wary of the potential unintended effects of additional price controls or other financial regulations, especially for the underbanked and other vulnerable groups.

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.¹² For example, retailers have rushed to offer Buy Now Pay Later (BNPL) products for which they pay substantially more (as much as 6%) than for payment cards.¹³ The free market is working, and suggestions that government intervention is needed do not stand up to scrutiny.

In addition to BNPL, merchants currently have a wide range of [choices](#), many of them also more expensive than Visa and Mastercard. Merchants nonetheless continue to insist on using political pressure to distort the functioning of the free market and gain an unjustified windfall to boost their own profit margins.

Many large merchants have negotiated lower fees with the card networks and their merchant acquirers. If they don't get the prices they prefer in those negotiations, they can opt not to accept particular credit card networks (e.g., Costco only accepts Visa credit cards for in-store purchases and previously only accepted American Express credit cards for in-store purchases).

This trend is completely inconsistent with and undermines the alleged need for government intervention in interchange.

Merchants' willingness to pay more for other payment types illustrates that this is simply an exercise in using legislative pressure to re-write their contractual commitments, improve profit margins, and pad their own bottom lines at the expense of consumers and other businesses.

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 large and small

¹² 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 along with U.S. based fintechs.

¹³ <https://www.mercatoradvisorygroup.com/the-buy-now-pay-later-merchant-proposition-credit-card-interchange-is-cheaper/>

financial institutions and credit unions 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 Seeks 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.

Elimination of Consumer Choice

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.

Undermining Small Business

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 institutions' 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.

Value to Merchants

[Interchange](#) reflects the value that credit card issuers bring to merchants through increased sales. The reality is that interchange reflects the ongoing investment required by credit card issuers and credit card networks that creates tangible value for merchants and consumers, and that's been borne out in studies by the Federal Reserve.¹⁴

Credit cards bring more consumers into the credit markets than any other credit product.¹⁵ In fact, interchange has allowed EPC members to bring millions of new customers into the credit system who they otherwise would not have been able to offer products to, because they did not have sufficient credit histories to be underwritten via conventional methods. This benefits consumers—particularly those from low- and middle-income communities—by providing access to safe and affordable credit products, and it benefits merchants by facilitating greater spending in their businesses.

Do Not Expand the Durbin Amendment

The EPC and its members have experienced firsthand the disastrous results of what government price-setting regulation does to a competitive free market—whether through outright rate caps or back door structural mandates such as the regulation of routing. 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 regulation to a completely different form of payment serves no public policy goal and will irreparably harm consumers, small businesses, and small financial institutions, while creating new and unpredictable risks to the safety and soundness of the U.S. payments ecosystem.

Credit cards facilitate greater customer spending at merchants than other tender types—in some cases upwards of 100%—while still offering important consumer protections such as ensuring the "ability to pay."¹⁶ Additionally, credit cards enable merchants to close sales at the time of purchase without merchants' having to bear the risk of consumer non-payment or having to bear the cost of accepting cash. Merchant advisory groups estimate the cost of cash to average 9% of transaction

¹⁴ See, e.g., Prager, Robin and Manuszak, Mark D. and Kiser, Elizabeth K. and Borzekowski, Ron, Interchange Fees and Payment Card Networks: Economics, Industry Developments, and Policy Issues (May 13, 2009). FEDS Working Paper No. 2009-23 at 15-17, Available at SSRN: <https://ssrn.com/abstract=3107189> or <http://dx.doi.org/10.2139/ssrn.3107189>.

¹⁵ Kenneth Brevoort, Michelle Kambara, Consumer Financial Protection Bureau, Data Point: Becoming Credit Visible (June 2017), https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf.

¹⁶ Drazen Prelec and Duncan Simester, Always Leave Home Without It: A Further Investigation of the Credit-Card Effect on Willingness to Pay, *Marketing Letters* 12:1, 5-12, 2001, <https://web.mit.edu/simester/Public/Papers/Alwaysleavehome.pdf>

cost due to theft, slower checkout times, and other costs associated with having cash-on-hand.¹⁷

Finally—and perhaps most importantly to both consumers and retailers—are rewards, which generate net sales to merchants significantly in excess of whatever interchange merchants pay to accept cards. These rewards go straight back into the economy, with enormous benefits for industries like travel and tourism. The remaining revenue helps card issuers invest in innovation for the overall payment system, like fraud prevention, error and fraud resolution for consumers, and other important services and functions.

¹⁷ Greg Buzek, “Cash Multipliers – How Reducing the Costs of Cash Handling Can Enable Retail Sales and Profit Growth.” IHL Group.

May 4, 2022

Statement for the Record

On behalf of the

**American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Credit
Union National Association, and National Association of Federally-Insured Credit Unions**

before the

United States Senate Committee on the Judiciary

May 4, 2022

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On behalf of their thousands of card-issuing members, the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Credit Union National Association, and National Association of Federally-Insured Credit Unions appreciate the opportunity to submit a statement for the record for the hearing titled “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems.”

This hearing is about the following moment of everyday life: a customer approaches a merchant with a payment card and the merchant accepts it as payment. Right then, the customer and merchant access a vast, sophisticated, and costly messaging apparatus, data flows through protected channels, money moves instantly, and the customer is assured that their purchase is protected if there is a problem. The merchant is paid faster and more easily than by check or cash, and the customer has access to myriad benefits and protections they would not get through those older methods.

And the question becomes: **who pays for all of this?**

We believe that the consumer should always pay last and that the two commercial parties to the transaction — the financial institution and the merchant — will cover the vast majority of transaction costs in a market-driven card ecosystem. Unfortunately, some large merchants seek to use political pressure to increase their margins. For them, the answer to the question of who should pay is simple: anyone and everyone, except them.

Interchange regulation, both rate caps and routing requirements, is about creating a world where transaction costs are disproportionately borne by the non-merchant parties to the card-based payment transactions, notwithstanding the fact the merchant receives the most value from card-based payments. The Durbin Amendment, as implemented by Regulation II, imposes rate caps on non-exempt debit card issuers, prohibits all issuers and networks from restricting the number of networks over which debit transactions may be processed to less than two unaffiliated networks, and prohibits all issuers and networks from inhibiting a merchant's ability to direct the routing of a debit transaction over any network that the issuer has enabled to process it. The Durbin Amendment shifted the burden of merchants' normal contributions onto debit card customers and their banks. While presented as “fairness,” the law has made payments more regressive and expensive for consumers, many small businesses, and community banks, while ensuring big merchants pay as little as possible. Merchants promised Congress they would lower prices after the Durbin Amendment passed, but did not. Having misled Congress and the American people once, merchants again promise that they will lower prices if Congress intervenes on credit card

May 4, 2022

interchange. The reality is that they won't — and they have already acknowledged as much publicly on earnings calls and in other forums.

Our statement will be brief because our argument is simple: interchange is a fair and normal way to ensure that consumers pay as little as possible for payment services. On the other hand, the Durbin Amendment forces consumers to pay for costs merchants would otherwise cover. It should be repealed, not expanded.

The Card Payment System Benefits Merchants by Design

The card system was created as a *merchant payment system*. Before the card system was created, merchants faced delayed payment associated with check processing and were at risk of having the payment returned as fraudulent or without sufficient funds to cover the transaction. Even with respect to cash-based transactions, merchants had to pay the processing, sorting, and additional safety costs associated with those transactions, which required far more time and presented a higher risk of fraud borne by the merchant. The card system was created as a system that was geared towards one principal and primary goal — giving merchants a fast and reliable form of payment that sought to protect them against the risks associated with each of the other types of payments. During a card transaction, money moves in one direction: to the merchant. This may seem obvious, but large retailers have painted financial institutions as the sole beneficiary of card transactions. If you follow the money, this assertion does not sync with the facts.

When a consumer pays with a debit card, the consumer gives up some of their money to the merchant and the merchant receives it. The consumer can no longer spend or invest those funds. In the same moment, the financial institution loses access to those deposits and takes on a wide range of regulatory and customer service responsibilities related to the transaction. When a consumer pays with a credit card, the financial institution transfers its own funds to a merchant and the consumer becomes responsible for repaying a loan; many times outstanding balances will be repaid in full during the statement cycle and therefore will not accrue interest, and other times the loans will not be repaid, in full or in part (historically, 3–4 percent of these loans are not repaid).¹ In the case of both debit and credit cards transactions, the card system facilitated removal of funds from a customer's financial institution and its transfer to the merchant. While everyone participating in a card transaction benefits from it, it is the merchant who always ends up with more funds and without further obligations. For the merchant's convenience, they contribute to the system in the form of a *fee* at the moment of a transaction, while financial institutions have paid into the system before a card is swiped and will continue to incur costs after. These costs include account maintenance, security, consumer rewards, fraud prevention/reimbursement, customer service, and other actions essential to ensuring that the merchant's customer has a safe and seamless payment experience.

The card system is designed to make being paid as easy as possible, and our members would like it no other way: America's banks and credit unions are proud to support the economic success of merchants. The benefits to merchants are substantial, including higher transaction values; reducing costs associated with cash handling, bounced checks, and counterfeiting; access to prompt and guaranteed payments; a speedier checkout process; and e-commerce facilitation. In short, accepting cards makes a business stronger and more efficient.

¹ Board of Governors of the Federal Reserve, Charge-Off Rates for Credit Cards, 2022.

May 4, 2022

Interchange Fees are Fair and the Card Market is Competitive

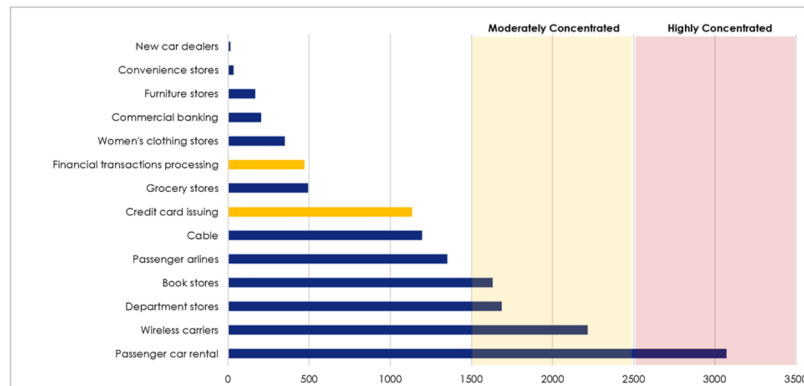
While it has been alleged that credit cards are unfair to sellers, the fact is that merchants themselves invented the credit card. Department stores once issued store cards, which allowed them to extend credit to their customers to increase sales. Merchants also shouldered the responsibility of holding loan risk on their books, assessing interest on their customers' accounts, and collecting on debts after the sale. Merchants quickly exited the credit card space when banks and credit unions made it possible for them to accept *anyone's* card rather than only the card they issued themselves — for a small interchange fee, the financial institution would handle the rest. Best of all, the merchant was paid immediately and the customer's bank or credit union took on all the risk and costs of collecting loan payments. It was a mutually beneficial agreement that merchants gladly accepted.

A basic tenet of the American system is fair compensation for services provided. That, in a nutshell, is what interchange is: financial institutions that issue cards, extend credit, and maintain the accounts that underlie them are compensated for some of the value and the risk transfer/mitigation they provide for merchants. Without financial institutions issuing cards, merchants would not have access to card payments and the myriad benefits that accepting cards generates. Focusing solely on their share of the cost to keep the system functioning ignores the benefits — which, as illustrated later in this letter, more than justify the costs. In essence, merchants want all of the benefits of the electronic payments system without bearing any of the costs.

Because card transactions are a high-volume business involving millions of parties, the market has a strong tendency towards efficient and competitive price discovery. It would be unusual under these circumstances of constant market testing for one provider's prices and terms to vary *dramatically* from others. Yet a normal amount of market variations does exist and the market functions as one would expect: the price merchants pay to accept the most "expensive" cards has fallen in recent years, moving closer to the prices of less-expensive cards.

The U.S. Supreme Court recently examined the credit card market and stated they could find no indicators of it being an anticompetitive marketplace. The metric (HHI) used by the federal government and courts to evaluate competitiveness places credit card issuance squarely within the "competitive" category, as shown below. There are thousands of banks and credit unions that issue cards and there have been no mergers of major payment card brands. New merchant options like Square, Clover, and Toast have rapidly gained scale, reflecting low entry barriers — another key attribute of a competitive market.

Herfindahl-Hirschman Market Concentration Index for Select Industries, 2017



Source: Census Bureau

Two Sides to the Market, Two Sides to the Story

Critics cast interchange fees as mere “swipe fees” and assert that they are money-for-nothing – a “junk fee” charged by financial institutions to powerless merchants, at artificially-high rates set by a handful of payments brands. This narrative is sleight of hand: it focuses on only one side of the market (merchants who accept cards) and ignores the other side of the market (consumers who use cards and the banks and credit unions that issue them). When an honest observer zooms out, it becomes apparent that the fees paid by merchants are directly related to the value of high-quality payment services they and their customers receive, and that the fees earned by financial institutions during a transaction correspond to the work they have done to ensure the merchant is presented with a functioning and funded card. Consumers enjoy most of these benefits for free. Economists call this a two-sided market, where a platform (like a card brand) stimulates the development of supply and demand in two separate but connected markets.

Interchange Rates are Set by Markets, Not Arbitrary Network Decisions

In a two-sided market, the value that each end-user group derives from using the platform depends on the extent to which the other group participates. Due to this interdependency, market forces exerted by both cardholders and merchants jointly determine the price to participate in the electronic payments system — of which interchange is a component. The resulting price balances the need to attract merchants (e.g., by providing the benefits outlined above) with the need to increase the number of cardholders (e.g., by offering incentives, including frequent flier miles and cash-back rewards). Put another way, the interchange charged must be reasonable enough for merchants to make the economic decision to accept cards, while also being sufficient for banks and credit unions to continue issuing and supporting cards (including offering rewards and benefits to consumers to increase participation). Over time, these rates may change to account for the unique transaction characteristics of each merchant type.

The Supreme Court Believes that the Credit Card Market is Competitive

Recently, the U.S. Supreme Court examined the credit card market and affirmed that it is a two-sided market where policy analysis must take into account both merchants as well as issuing financial institutions

and their customers. The Court also found no evidence of the market being anticompetitive.² Whether the Durbin Amendment and its implementing regulation comply with the two-sided market analysis required by this ruling has not been tested in litigation.

We urge the Committee to look at the full picture and analyze these complex issues without writing consumers and financial institutions out of the picture.

Cards are Rewarding for Consumers and Merchants

Studies consistently show that card rewards programs (which are largely funded by interchange) are extremely popular.^{3,4} America's financial institutions are proud to provide ways to pay that help merchants earn better sales and turn those purchases into holiday trips, cash back, and other benefits for American families. Using data from 2020, the Consumer Financial Protection Bureau (CFPB) found that over 60% of subprime credit cards and 70% of near-subprime cards featured rewards. For average risk borrowers (prime tier), 80% of credit cards feature rewards.⁵ According to Verisk Financial, the figure is even higher: 86% of cardholders have an active rewards card, including 77% of consumers with an annual household income of less than \$50,000.⁶

Last year, an ABA white paper summarized the benefits to consumers and merchants alike, including lower-income consumers, of credit card rewards.⁷ Among other findings, the paper concluded that households of all incomes benefit from rewards cards, that most interest is paid by higher-income cardholders, and that credit card rewards are not a wealth transfer. Regarding this last point: merchant groups often argue that credit card rewards are a "reverse Robin Hood" offering whereby lower-income credit cardholders fund rewards for higher-income credit cardholders. Using a comprehensive and representative sample of credit card accounts provided by independent payments data company Verisk Financial, ABA's study found that this view is simply inaccurate. On the contrary, policy proposals based on conjecture and misunderstanding of data about the Reverse Robin Hood theory could lead to serious unintended consequences for the very populations they intend to help.⁸

² *Ohio v. American Express Co.* U.S. Supreme Court, 2019.

³ *Emerging Trends at Point of Sale.* Hanover Research, 2020.

⁴ *The Value of Rewards.* Electronic Payments Coalition, 2019.
<http://www.electronicpaymentscoalition.org/wp-content/uploads/2019/03/EPC-Value-Of-Rewards.pdf>

⁵ *Report on the Consumer Credit Card Market.* Consumer Financial Protection Bureau. 2021

⁶ *The Benefits of Credit Card Rewards: How Rewards Provide Value to Merchants and Consumers of All Incomes.* American Bankers Association, 2021. <https://www.aba.com/news-research/research-analysis/the-benefits-of-credit-card-rewards>.

⁷ *ibid.* See also: *Assessing the Costs and Benefits of Credit Card Rewards: A Response to "Who Gains and Who Loses From Credit Card Payments? Theory and Calibrations.* Steven Semeraro, Thomas Jefferson School of Law Consumer Law Review, 2012.
<https://lawecommons.luc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1918&context=clr>

⁸ *ibid.* ABA's analysis was based on balance-active credit card accounts, taken from a nationally representative depersonalized sample of nearly 40 million open accounts (16 million customers) sourced from Verisk Financial.

May 4, 2022

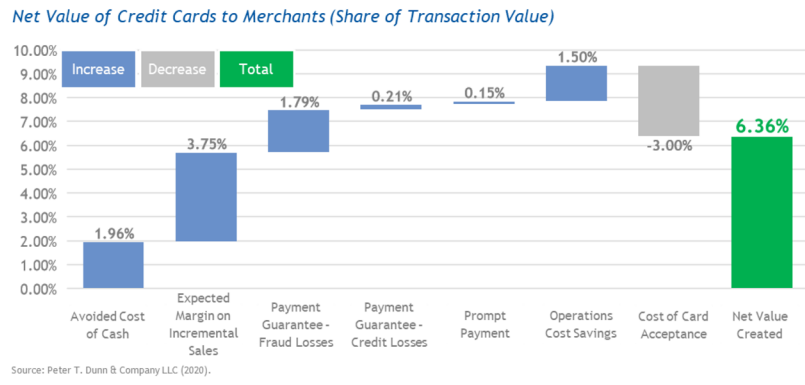
The paper also found that *merchants* gain far more from credit card rewards programs—billions in direct and indirect revenue—than they pay in transaction fees. These benefits accrue through higher purchase values, increased security, lower risks, and avoided costs of cash.

Indeed, a 2017 study conducted by Javelin Strategy concluded that instead of seeking out payment processing packages that have the lowest possible price, most small merchants care more about choice and flexibility than price.⁹ Further, those who demonstrate an understanding of the interchange process are overwhelmingly satisfied with the rates they pay, and are more willing to pay a premium for higher-quality payment processing packages.

Value of Interchange Fees May Lower Retail Prices Paid by Consumers

Because the efficiencies created by the card system deliver more benefits than the amount merchants pay in interchange, there is little evidence that merchants pass the costs of card acceptance on to consumers.

Some have argued that the costs of card acceptance (including interchange) cause merchants to raise prices on consumer goods and services, effectively “passing through” the cost of fees to consumers. In reality, merchants gain far more from accepting rewards cards than they pay in interchange, as shown in the figure below. Even after accounting for the cost of acceptance, credit cards provide a net benefit of 5% to 6.4% of the purchase value to merchants. Indeed, the positive return-on-investment from accepting credit cards suggests that if merchants pass through any aspect of credit card acceptance to cash users, it could occur in the form of lower prices, not higher.¹⁰



Merchants Are Signing Up for Payments Services More Expensive Than Cards

Interestingly, merchants are rapidly signing up for Buy Now Pay Later (BNPL) services, which reportedly charge merchants interchange fees that are significantly higher than what they would pay when a customer uses a credit card for a transaction. This enthusiastic merchant adoption of a more expensive payment method like BNPL indicates that cost is not the primary factor when a merchant offers their customer a

⁹ Javelin Strategy (2017), “Small Merchants on Interchange: Value More Important Than Cost.”

¹⁰ *ibid.*

payment method. Rather, the primary motivation — similar to the motivation for merchants to develop the card payment system and their decision to accept more expensive payment services (e.g., BNPL) — has remained consistent: getting a reliable form of payment that allows for larger purchase values and more completed sales. If card interchange rates were prohibitive, it would be unlikely that merchants would so quickly accept BNPL's higher costs. We have seen no reports of merchants increasing retail prices to cover the higher costs of offering BNPL.

Capping Interchange Fees and Routing-by-Regulation: the Durbin Experience

Twelve years after the passage of the Durbin Amendment, the evidence is clear: the large merchants who advocated for the law's passage have reaped the vast majority of its benefits in the marketplace at the expense of consumers and small businesses.

Contrary to merchant promises to Congress and the American people that consumers would benefit from the Durbin Amendment, there exists no evidence that consumers and small businesses have benefited from the law. Instead, any savings from the reduction of interchange was pocketed by large merchants at the expense of, and in contravention of the promises made to, the American people.¹¹ Small businesses have also been disserved by the Durbin Amendment, as interchange fees have actually increased for small-ticket transactions. Evidence of this outcome was presented in research from the Federal Reserve Bank of Richmond: interchange fees increased for almost one-third of all merchants after the Durbin Amendment was implemented, and merchants who specialize in small-ticket items are nine times more likely to have encountered an increase in interchange cost than a decline.¹²

Additionally, multiple independent studies have found that the Durbin Amendment harmed consumers. Because of the nature of the two-sided market, banks had to make up lost interchange fee revenue through increases in other fees. This unintended consequence was highlighted in a recent report from the Government Accountability Office, which found that "debit card interchange fee limits imposed by the Durbin Amendment and Regulation II are associated with increases in the costs of checking accounts."¹³ Per research from the Federal Reserve Board and the University of Pennsylvania, banks were 35 to 40 percent less likely to offer free checking accounts following the passage of the Durbin Amendment.¹⁴ Consumers also paid higher monthly fees and had to adhere to higher minimum balance requirements.¹⁵ Studies have

¹¹ *The Cost of the Durbin Amendment*. Electronic Payments Coalition (2021). <https://electronicpaymentscoalition.org/resources/the-cost-of-the-durbin-amendment/>. Also see: *Out of Balance: How the Durbin Amendment has Failed to Meet Its Promise*. Electronic Payments Coalition (2022). <https://electronicpaymentscoalition.org/resources/new-epc-study-reveals-how-the-durbin-amendment-tipped-the-scales-at-the-expense-of-consumers/>

¹² 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, 194.

¹³ Government Accountability Office (2022). *Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could be Improved*.

¹⁴ Manuszak, M. and Wozniak, K. (2017). *The Impact of Price Controls in Two-sided Markets: Evidence from US Debit Card Interchange Fee Regulation*. Federal Reserve Board, Washington, D.C., and Sarin, N. and Mukharlyamov, V. (2019). *The Impact of the Durbin Amendment on Banks, Merchants, and Consumers*. Faculty Scholarship at Penn Law. 2046.

¹⁵ Manuszak, M. and Wozniak, K. (2017).

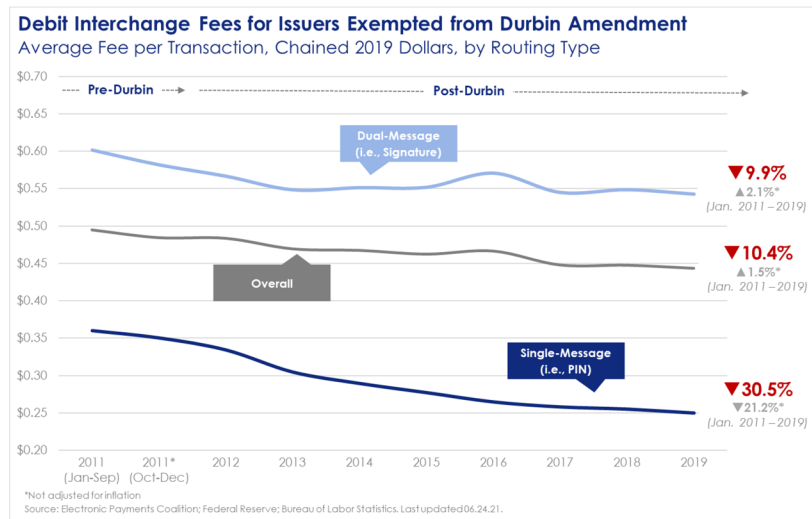
May 4, 2022

found little evidence of across-the-board price reductions from merchants, indicating that merchants did not pass through the savings from lower interchange fees to consumers.¹⁶

As ABA concluded last year, price controls, like interchange and interest rate caps, can severely impact access to credit for some consumers, and lower-income consumers would likely bear the brunt of these negative effects. Such regulations could also cut rewards programs, which are enjoyed by cardholders of all incomes. Policy decisions around credit cards should be grounded in data and a full understanding of how the two-sided credit card market benefits consumers and merchants alike.

Community Financial Institutions Pay a High Price for Interchange Regulations

While community banks and credit unions were nominally exempt from the Durbin Amendment's rate caps, they are fully subject to its routing requirements. The negative impacts of this law on community financial institutions are well-documented, both by academic and Federal Reserve staff researchers. Most recently, the Federal Reserve's *Debit Card Issuer Cost Study* found that community financial institutions (less than \$10 billion in assets) experienced a 21% decrease in per-transaction debit card revenue (PIN) from 2011 to 2019.¹⁷ Adjusted for inflation during this period, this is equivalent to a nearly 31% revenue decline (see figure below). The conclusion is clear: smaller institutions were excluded from one prong of the law (i.e., the interchange transaction fee caps); however, this "exemption" has not shielded community banks and credit unions from the distortive effects of the Durbin Amendment's routing requirements.



¹⁶ Sarin, N. and Mukharlyamov, V. (2019).

¹⁷ Federal Reserve Board (2019). *Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions*.

Merchant trade groups have argued for Durbin-style dual-routing requirements for credit cards. Under these proposals, credit card issuers would be required to have their card transactions processed by two different networks, with the merchant being given the choice of which network to use at the point of sale. However, the major credit card networks have invested in offering a wide range of protections for transactions that are processed on their networks. For example, some card networks provide consumers an extended warranty for products purchased on their networks. The card network also may provide a satisfaction guarantee, so that if the consumer is dissatisfied with the purchase and the merchant will not accept the item for a return, the card network will actually reimburse the consumer out of its own pocket, or the card network may provide price protection for consumers, in case a merchant changes prices after the sale is finalized.

There are a wide range of other services that card networks provide to cardholder, including cell phone insurance, auto rental insurance, travel insurance and related services, and identity theft protections.

If Congress takes up the merchant proposal to require credit card issuers to bootstrap low-cost networks on their cards, merchants will choose to route transactions using one criteria: the lowest interchange fee. As a direct result of this merchant-lobbied initiative, consumers would lose these important protections. It is not fair to American consumers that they will lose these benefits, solely to pad merchants' margins.

Policy Recommendations

We urge the Committee to consider the following policy recommendations:

- **Repeal the Durbin Amendment.** Study after study has found that the Durbin Amendment has failed to lower retail prices as merchants promised and as time goes on, an increasing number of smaller banks and credit unions will be subject to its rules because its thresholds were not indexed for inflation. Repealing this law will prevent these harms from continuing to mount and will restore a fully functioning market for checking accounts.
- **Urge the Withdrawal of Regulation II Expansion.** The Committee should urge the Federal Reserve Board to withdraw its 2021 Proposed Rule to expand the Durbin Amendment to virtually any kind of debit card transaction, a vague and confusing standard. Its implicit endorsement of a mandate that community financial institutions accept so-called "PINless" transaction types would fundamentally transform the payments system in a manner not required by Congress, while removing card issuer discretion in preventing fraud – a harsh blow to small banks and credit unions operating payment systems on tight margins. The Proposed Rule was issued without the analyses required by law, including a credible examination of its impacts on small entities.
- **Do Not Extend Durbin Amendment to Credit.** Congress should not once again give credence to merchants' promises that they will lower prices for American consumers if Congress intervenes in credit card interchange. Rate caps or routing restrictions in the credit card context will have a dramatic effect on consumer protections and services associated with the credit card products that are overwhelmingly popular with the American public.
- **Examine PINless Debit and Fraud.** The Durbin Amendment has been used as leverage by bank software and payments processors to force some small financial institutions to accept novel, so-called 'PINless' transactions from the processor's own, lesser-known debit networks. These payment processors have acquired their own payments networks in recent years, and increasingly, routing happens over their in-house networks even if the financial institution desires otherwise. This consolidation that has resulted

May 4, 2022

in the same corporations owning both bank-side payments management services and merchant-side processing has empowered merchants to route transactions in a manner that dramatically reduces the interchange a financial institution earns while increasing their liability for fraud losses. While merchants are having their concerns addressed today, the Committee should give equal consideration to how these powerful combined bank software-payment processor-card payment network companies are using the Durbin Amendment as cover to coerce small banks and credit unions into using transaction services that may harm their sustainability as independent institutions.

Conclusion

America's financial institutions are committed to a competitive, secure, and sustainable payments system based on sound economics and fair play for all parties in this two-sided market, but most importantly for consumers. Once again, we are pleased to provide these comments to the Committee and our members stand ready to provide perspectives on any of the comments raised.



STATEMENT FOR THE RECORD

FMI – THE FOOD INDUSTRY ASSOCIATION

Senate Judiciary Committee Hearing

“Excessive Swipe Fees and Barriers to Competition in the Credit and
Debit Card Systems”

Wednesday, May 4, 2022

FMI – The Food Industry Association appreciates the Senate Judiciary Committee for holding this hearing entitled “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card System,” and welcomes the opportunity to provide input on how processing fees for accepting credit cards in our stores are impacting business operations and consumer prices.

FMI is a trade association representing food retailers, wholesalers, and product suppliers, including nearly 1,000 supermarket member companies that collectively operate almost 33,000 food retail outlets and 12,000 pharmacies, ultimately touching the lives of more than 100 million U.S. households per week and an industry that employs over 6 million individuals. FMI brings together a wide range of members across the value chain — from retailers who sell to consumers, to producers who supply the food, and the wide variety of companies providing critical services — to amplify the collective work of the industry.

FMI member companies comprise a critical infrastructure industry in this country, are overwhelmingly consumer-facing businesses, and primarily employ associates serving in in-store or distribution center positions. Throughout the pandemic, grocers have continued to make the investments necessary to keep our doors open, respond to consumer and community needs, maintain safe environments, and find ways to make an impact in our communities. At a time when most businesses were forced to close their doors, food retailers invested \$24 billion in such things as in-store safety measures, around the clock sanitation, and personal protective equipment to keep both our employees and customers safe and to ensure Americans were able to keep their families healthy and fed.

FMI appreciates the recent bipartisan, bicameral Congressional letter sent to Visa and Mastercard’s CEOs by Judiciary Chairman Dick Durbin (D-IL), Senator Roger Marshall (R-KS), and





Representatives Peter Welch (D-VT) and Beth Van Duyne (R-TX), calling on the networks to halt their scheduled April fee increases on retailers. The card networks increased swipe fees on retailers by a total of \$1.2 billion in April 2021 (Visa) and April 2022 (Visa, Mastercard). Last year, credit and debit card fees on retailers totaled \$137.8 billion. More must be done to bring competition in the credit card market.

Increased consumer use of credit and debit cards

The COVID-19 pandemic transformed almost every aspect of the food retail industry including consumer demand for, and how consumers shopped for, groceries. Consumer demand for groceries jumped by 50% almost overnight to unprecedented levels, with average weekly household spending on groceries now holding steady at \$148. In 2019, U.S. consumers reported spending 10.5% of their grocery budget online. By the summer of 2020, the number almost tripled to 29.2%. Nearly 100% of these transactions are performed using credit and debit cards alone. While over the past decade consumers have been steadily shifting away from using cash and checks for purchases to using credit and debit cards, there was a seismic shift to card spending in response to the pandemic.

While the grocery industry is committed to serving all their customers, regardless of how they pay, the increase in card usage has several unintended consequences. Retailers pay processing fees to accept credit and debit cards as payments from their customers for goods and services. These processing fees are very expensive and include various fees, such as swipe and routing fees. In 2021, merchants' card processing fees totaled \$137.8 billion, up over 112% from the previous decade. Swipe fees are most retailers' highest operating cost after labor and rent.

The hidden processing fees negatively impact U.S. consumers – at an average of \$700 a year for an American family. The \$137.8 billion in hidden processing fees artificially drives up the price consumers pay for goods and services. Retailers are forced to incorporate these fees in their pricing decisions and sell items at the “credit card” price to cover costs. The impact disproportionately hurts lower income Americans, those who rely on cash, and those who do not have access to high credit card rewards. The current credit card market leaves lower income Americans paying for bloated credit card rewards they will never enjoy.

Retailers and our customers need competition and transparency in the credit card market

FMI member companies negotiate prices on every product they sell and every service they use with vendors. The one area that they have no ability to negotiate is with Visa and Mastercard on how much it costs us to use their card networks to accept this form of payment from our customers. As the card networks, Visa and Mastercard set their own fees: they set the fees for processing a customer's payment information across their data rail; and they set the fees that banks who issue their cards charge to retailers who accept these cards as payment. U.S. retailers pay the highest swipe fees in the





industrialized world. Visa and Mastercard control 80% of the credit card market and set their own fees – this is not real competition. This is a take it or leave it scenario – retailers either accept Visa and Mastercard as a form of payment or they lose customers, because for many customers, that is what they have in their wallets.

There is no transparency into Visa and Mastercard's fees or terms of condition. Twice a year, typically April and October, Visa and Mastercard update their merchant fees and terms. This is not a negotiation. Retailers cannot go to the table and ask Visa and Mastercard to lower fees or change terms. Additionally, there is no transparency into the actual rates charged for each type of credit card a customer is using until after a monthly statement is sent to the retailer. At the time a customer swipes, dips, taps, or enters their card, retailers are required to accept the card and do not know how much they will be charged for accepting the card. Card processing fees vary depending on the type of credit card used – for example, a credit card that offers high airline rewards miles comes with a high processing fee for the retailer. The average credit card swipe fee is about 2.2%. These airline miles cards could cost a retailer 2.75% per transaction. Retailers are required to “honor all cards” – a policy that leaves no choice for the retailer. Visa and Mastercard also charge higher swipe fees for online purchases than they do for in-person purchases, even for the same merchandise at the same retailer. This “card not present” is a growing segment of the grocery business, especially because of the pandemic.

Retailers are asking for competition not caps

Banks and the credit card networks are claiming that retailers want the federal government to set a cap on credit card fees. This is completely wrong. Retail, and specifically the grocery industry, is a highly competitive industry and we operate on very slim profit margins – about 1-3% on average. This is not about picking winners or losers – this is about bringing competition, transparency and fairness to a marketplace that has none. We are not asking the federal government to step in and cap credit card fees or set prices for the market – what we are asking for is the federal government to establish parameters that would foster competition and transparency so that card networks would have to compete for our business on fees and terms – just as we have to compete for our customers' business. Visa and Mastercard, the duopoly that controls 80% of the entire credit card market, are having local, community banks testify on behalf of the largest banks in the country that retailers want the federal government to cap credit card fees is just false rhetoric and they know it is false.

Our customers will benefit the most with credit card competition

As noted above, the processing fees Visa and Mastercard set are very expensive operating costs for retailers. Retailers have no choice but to accept these fees and cards if they want to be able to accept Visa and Mastercard as forms of payment from their customers – whether for in store purchases or online, including on demand delivery service orders and curb side pickup. Retailers are forced to





incorporate these fees in their pricing decisions and sell items at the “credit card” price to cover costs. Our customers who lose out the most are those who rely on cash or do not have access to high rewards credit cards – they gain no benefit from paying the higher “credit card” price.

During the pandemic, many FMI retail members were authorized by USDA to accept payments online from our customers using the Supplemental Nutrition Assistance (SNAP) EBT cards. This allowed families using SNAP benefits to purchase groceries online in addition to curbside and in the store. The ability to use the SNAP EBT card online has been a lifesaver for some of our customers. Those SNAP electronic transactions are completed securely, efficiently, without Visa or Mastercard, and without swipe fees. FMI members are proud to be the federal government’s primary retail partner in delivering these benefits efficiently, securely, and reliably.

A first step: Credit Card Routing Competition

FMI and the retail community want to work with Congress in a bipartisan manner to foster competition and transparency in the credit card market. One concept we support is requiring more than one network option to route financial data on a credit card – just like most cities have more than one road into the city. When a customer uses a credit card – whether in store through a swipe, dip or tap or online when entering the card number – it takes fractions of a second for that financial data to be routed from the retailer, through its processing vendor, over the Visa or Mastercard data rail, to the bank who issued the card and approves the payment.

There is no additional network rail option for credit cards – it is just Visa for a Visa credit card and Mastercard for a Mastercard credit card. A reform in the debit card space that has worked to provide some competition is requiring at least two network rail systems on each transaction – you may find Visa or Mastercard on your debit card, but you will also find another network like Star or Pulse or Shazam that does the exact same thing as Visa and Mastercard – route financial data. Requiring more than one routing network would foster competition – bringing down the cost of the swipe fees, increasing transparency of terms, even competing on innovative services and fraud protection. Routing competition would also bring about more security and duplicity in the credit card market. We are all very concerned about cybersecurity. Realistically, a hacker could bring down the entire Visa network. Without another routing option, the entire network would be unavailable to American consumers and businesses.

Debit card reform is working but needs further clarification, revision

The 2010 debit reform law (Durbin Amendment to Regulation II) prohibits routing exclusivity. The law enables retailers to have the choice of which service providers to send debit transaction data through. Although this requirement is law, some of the largest issuing banks are not enabling what is called a “PINless” routing option for online purchases, essentially blocking any competition in the online





routing market. In May 2021, the Federal Reserve issued a proposed clarification making it abundantly clear that retailers should have a choice on routing networks regardless of whether the purchase is made at the store (card present) or online (card not present). The clarification is still pending with the Fed but has tremendous support from retailers as well as regulators and legislators. Grocery retailers strongly support the proposed routing clarification¹ and urge the Fed to act swiftly in finalizing the policy to preserve competitive routing for online debit transactions.

In 2021, the Fed issued its required biannual report on issuer costs, fraud costs, and volume. The report showed that issuer costs have reduced by about half since the Fed implemented the regulated rate in 2011. The rate still sits at 21 cents, plus 1 cent for fraud prevention 0.05% of the transaction amount for fraud loss recovery. On average, this comes to about 24 cents per transaction – even though the issuing banks costs are less than 4 cents. This regulated rate serves as a cap but all covered transactions we are aware of are charging the maximum amount. Grocery retailers strongly support an immediate reduction in the regulated rate, consistent with the law² which requires the regulated rate cap to be reviewed and adjusted to reflect a rate that is “reasonable and proportionate.”

Conclusion

FMI and our food retailer members of all sizes across the country want to work with Congress in a bipartisan manner to foster competition in the credit card market so we can better serve our customers and communities, especially in these economically challenging times. Implementing network routing competition would be a good first step in addressing the unchecked card fees and lack of transparency retailers face as the condition of accepting credit cards for customer purchases. Grocers remain committed to serving all their customers, regardless of how they pay, but reforming the credit card market is imperative to our industry.

¹ <https://www.fmi.org/newsroom/news-archive/view/2021/08/10/fmi-supports-federal-reserve-proposal-to-guarantee-merchant-choice-for-debit-routing>

² <https://www.federalreserve.gov/paymentsystems/regii-about.htm>





MERCHANTS ARE NOT GUARANTEED PAYMENT ON CREDIT OR DEBIT CARD TRANSACTIONS

- Card organizations say swipe fees go, in part, to cover the cost they bear from their “payment guarantee” service, which insures merchants against customers who pay with cards without having sufficient funds.
- The “guarantee” does protect merchants when consumers don’t pay their credit card bills. But it does not provide any guarantee in cases of fraud.
- When a consumer reports a fraudulent transaction on their credit card bill, the bank pulls the disputed amount from the merchants’ account through a “chargeback.” That means the merchant has lost the cost of the merchandise and the profit on the sale.
- The credit card industry argues that high swipe fees are needed to cover fraud costs. But economists with the Federal Reserve Bank of Kansas City have found that fraud costs are not a justification for over-inflated fees.
- Merchants argue that the cost of fraud and insufficient funding is negligible compared with fees at the range of 1% to 3% commonly imposed.
- While the card industry often talks about a “payment guarantee,” merchants are not guaranteed payment on credit or debit card transactions. In fact, merchants are forced to absorb most of the cost of fraudulent card transactions.
- The Federal Reserve has collected data every two years since debit reform was passed. Its 2019 data shows that merchants covered 56.3 percent of debit card fraud while card issuing banks only covered 35.4 percent.
- In addition to the lost cost of a product or service, banks impose chargeback fees that can range from \$20 to \$100. In addition, businesses are on the hook for credit card processing

fees between 1% and 4%. The costs add up quickly, which makes it tough on small business owners who already face thin profit margins.

- The fraud “chargeback” fees merchants must pay are on top of the swipe fees they pay. Swipe fees amount to a prepayment of all fraud charges (and much more) to card-issuing banks. Merchants should not have to prepay for fraud, and then pay again when the fraud happens in addition to prepaying for it. There’s no “payment guarantee” on credit and debit cards when they pay for fraud multiple times.
- Whether it’s friendly fraud (when a customer mistakenly requests a refund through their bank because they don’t recognize a purchase on their bill for various reasons) or criminal fraud (when a bad actor steals a card number, for example), every \$1 in fraud ends up costing retailers \$3.60 when all expenses involved are included, according to a 2021 study by LexisNexis. This shows that credit and debit card payment is not “guaranteed.”
- The so-called “payment guarantee” is a red herring and simply does not exist.



Honorable Chuck Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

May 3, 2022

Dear Senator Grassley,

The Iowa Grocery Industry Association is a state trade association that represents chain and independent supermarkets and convenience stores in Iowa.

In advance of the critical hearing on Wednesday, May 4th, which examines the "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems", I write on behalf of the retail food industry in Iowa urging reform of the broken and unfair U.S. credit card market. Specifically, the lack of competition in the credit card market is driving up prices for merchants and American consumers. Swipe fees for processing card transactions cost more than \$700 a year for the average family. Reforming the credit card market would foster competition and significantly help Main Street businesses and their customers during these challenging economic times.

Merchants pay expensive processing swipe fees to accept cards as payments from their customers for goods and services. In April, Visa and Mastercard once again increased these swipe fees. Visa and Mastercard – which control 80% of the credit card market – centrally set the swipe fees charged by the banks that issue their cards. These fees are non-negotiable, and U.S. merchants pay the highest swipe fees in the industrialized world.

In 2021, credit and debit card processing fees totaled \$137.8 billion, up 112% over the previous decade. These hidden fees negatively impact U.S. consumers, artificially driving up the prices they pay for goods and services. Merchants are forced to incorporate these fees in their pricing decisions and sell items at the "credit card" price to cover costs. The impact of these fees disproportionately hurts lower-income Americans, those who rely on cash, and those who do not have access to high credit card rewards.

Now is the time to reform one of the significant cost barriers the industry faces and to foster competition in this broken and unfair credit card fee system. I urge you to act on this important issue.

Thank you for your consideration.

Sincerely,


Michelle Hurd, President
Iowa Grocery Industry Association



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135 Hart Senate Office Building
Washington, D.C. 20510

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Sincerely,


Michelle Hurd, President
Iowa Grocery Industry Association



May 4, 2022

The Honorable Dick Durbin
Chairman
U.S. Senate Committee on Judiciary
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
U.S. Senate Committee on Judiciary
Washington, DC 20510

Dear Senators Durbin and Grassley:

On behalf of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide, I am writing to thank you for convening today's hearing on the costs of interchange fees on small businesses and consumers. With inflationary pressures impacting franchise business owners across the country, this discussion about small business costs is warranted.

IFA's membership encompasses 775,000 franchise establishments supporting 8.2 million direct jobs, \$787.7 billion of economic output for the U.S. economy, and almost 3 percent of Gross Domestic Product. Franchise businesses continue to emerge from the COVID-19 pandemic facing high inflation, supply chain issues, and labor shortages. Earlier this year, IFA surveyed franchise businesses on the impact of labor shortages and found that 87.6% of respondents reported having trouble finding both skilled and unskilled workers, and a total of 46% reported that either "quality of labor" – meaning, the availability of qualified workers – or "cost of labor" is the single most important problem facing their business today. With the economic rebound still underway, an unnecessary increase in interchange fees will exacerbate these workforce costs at a pivotal time for the economy.

Payment issues are critical to small businesses. According to a February 2022 survey of franchise businesses, the Franchise Payments Network revealed that 86% of franchises accept either credit or debit payments for transactions. IFA and our members have longstanding concerns about the way that payment card fees are set and administered, and we are asking for action from Congress to inject additional competition into the payment card marketplace. Thus, we applaud your leadership in shedding light on the subject in today's hearing.

Again, thank you for your leadership, and IFA looks forward to being a constructive partner with you on this important issue.

Sincerely,

Michael Layman
Senior Vice President, Government Relations and Public Policy



May 4, 2022

The Honorable Dick Durbin
Chairman
U.S. Senate Committee on Judiciary
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
U.S. Senate Committee on Judiciary
Washington, DC 20510

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Sincerely,

Michael Layman
Senior Vice President, Government Relations and Public Policy



Big Y Foods, Inc.
2145 Roosevelt Ave., P.O. Box 7840
Springfield, MA 01104-7840
(413) 784-0600

May 3, 2022

Via E-Mail

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley and Members of the Senate Judiciary Committee:

I am writing on behalf of Big Y Foods, Inc. one of the largest independently operated supermarket chains in New England. Big Y operates 84 locations in Connecticut and Massachusetts, including 71 supermarkets and 13 Big Y Express gas and convenience locations. I write to urge you to reform the broken and unfair U.S. credit card market. The lack of competition in the credit card market is driving up prices for merchants and American consumers – swipe fees for processing card transactions cost more than \$700 a year for the average family. Reforming the credit card market would foster competition and significantly help retail businesses and their customers during these challenging economic times.

Merchants pay expensive processing swipe fees to accept cards as payments from their customers for goods and services. In April, Visa and Mastercard once again increased these swipe fees. Visa and Mastercard – which control 80% of the credit card market – centrally set the swipe fees charged by the banks that issue their cards. These fees are non-negotiable, and U.S. merchants pay the highest swipe fees in the industrialized world. Given our small profit margins, these fees must be passed on to the consumers. The swipe fees payable on a transaction are often 2 or 3 times what Big Y makes in profit on that sale!

In 2021, credit and debit card processing fees totaled \$137.8 billion, up 112% over the previous decade. These hidden fees negatively impact U.S. consumers, artificially driving up the prices they pay for goods and services. Merchants are forced to incorporate these fees in their pricing decisions and sell items at the “credit card” price to cover costs. The impact of these fees disproportionately hurts lower-income Americans, those who rely on cash, and those who do not have access to high credit card rewards.

Now is the time to foster competition in this broken and unfair credit card fee system. I urge you to take action on this important issue. Thank you for your consideration.

Very truly yours,

Big Y Foods, Inc.

Michael P. D'Amour
Chief Operating Officer

Only The Best For Your Family... From Ours®



MASSACHUSETTS FOOD ASSOCIATION

OFFICERS
Chair
 CHRISTINE CURTIS
 CES Wholesale Grocers
Vice Chair
 RALPH CROWLEY, JR.
 Polar Beverages

Past Chair/Treasurer
 MICHAEL GORD
 Big Y Foods

DIRECTORS

TRACY ANTHONY
 Lee Market
 JOHN BIERFELD
 Acosta Sales & Marketing
 JACQUE BUCKLEY
 Stop & Shop
 STEVE CAPANNA
 Bazzoni's
 MIKE CARCIO
 Uta Quality Foods
 JAMES CARLSON, JR.
 Price Chopper Supermarkets
 BECK CARON
 Truett's Supermarkets
 ROE CORONA
 Harpoon Brewery
 JIM CROSBY
 Conley's Markets
 CARL CULOTTA
 Gold Medal Bakery
 * CATHERINE D'AMATO
 Greater Boston Food Bank
 * CHARLES D'AMOUR
 Big Y Foods
 MARISA DEJULIO
 Advantage Solutions
 BILL DEVIN
 Price Rite Marketplace
 JOE DONELAN
 Donelan's Supermarkets
 CRAIG DRENNOWATER
 Hann Kiosk
 SHAWN EDDY
 Hannaford
 TIM FONTAINE
 HF Food LLC
 RONN GARREY, JR.
 Tropical Foods International
 BOB HAYES
 PepsiCo
 PAUL HERRING
 Coca-Cola Beverages Northeast
 JEREMY ISENBERG
 Chee Flier Foods
 JOHN JOYCE
 Banet New England
 MICHAEL LEARY
 BJ's Wholesale Club
 AL LETIZIO, JR.
 A.J. Letizio Sales & Marketing
 JOHN MARTINO
 Nettle Waters N.A.
 MATT MONSIEVICZ
 Kayen Foods
 MIKE MATYCHOSKI
 Try-Angle Foods
 MATT O'HARE
 JPH
 PAT OPPEDISANO
 Boston Retail Grocers
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 ERIC SINGICALLI
 Ocean Spray Cranberries
 JONATHAN SLAVESKY
 Madison Food Corp.
 MICHAEL SLEEPER
 Imperial Distributors
 MICHAEL VIOLETTE
 Associated Grocers of N.E.
 ADAM WEISSMAN
 SAS Retail Services
 PAUL WILSON
 CROSSMARK

*Ex-Officio **Honorary

President
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(617) 542-3085
 FAX: (617) 542-3505
 Email: mafood@mafood.com

May 4, 2022

To: Members of the Senate Judiciary Committee

Re: Comments submitted for May 4, 2022 Public Hearing entitled "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems."

My name is Brian Houghton, I serve as Senior Vice President of Government Affairs and Communications for the Massachusetts Food Association (MFA), a trade association representing the supermarket and grocery industry in Massachusetts, including food stores and the non-retail segment of the food industry that supports them.

I thank you for the opportunity to offer comment submitted on behalf of our members in response to the above-mentioned topic.

In April, Visa and Mastercard once again increased swipe fees for merchants across the country. These hidden processing fees negatively impact U.S. consumers and artificially drive up the price shoppers pay for goods and services.

Merchants are committed to serving all their customers regardless of how they pay but are charged these fees by big banks and giant card networks whenever consumers pay with a credit or debit card. These fees are very expensive. In 2021, the swipe fees on merchants totaled \$137.8 billion, up 112% over the previous decade.

Continuously rising interchange fees lead to higher consumer prices for basic goods and services and add to inflationary pressures which are only more intensified as inflation continues to rise, supply chain issues linger and costs for goods and services continue to rise.

I appreciate the opportunity to submit comment.

Sincerely,

Brian Houghton





April 29, 2022

Senate Judiciary Committee

United States Senate

RE: Swipe Fees

Dear Senator Durbin and Committee,

American Sale is a 60+ year old family business retailer with 8 stores in Chicagoland selling home recreation products like swimming pools, patio furniture, hot tubs and holiday products especially Christmas decorating products. Over the years we have processed millions of credit card transactions and over this time the credit card fees we pay have grown tremendously. In fact, these fees are now our 4th largest expense after Salaries, Rent and Advertising. In fact, we don't actually classify this cost as an expense but as a pass through like sales tax. A pass through means we are collecting someone else's money at the point of sale like Sales Tax. We do this, because like Sales Tax, we have no control over what the Credit Card companies decide to charge customers for processing the sale. For Salaries, Rent and Advertising we at least have negotiating power to affect the cost we pay.

I write to thank you for holding your important and timely hearing on "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems." My customers have been steadily shifting from cash to card payments, and the global pandemic has only accelerated that shift. Most businesses, including mine, now have no choice but to accept credit and debit card payments. But as the fees charged by card networks and banks only continue to increase, the cost of doing so has become even more burdensome to my business and my customers, particularly during these times of inflation. U.S. merchants and consumers pay the highest swipe fees in the industrialized world. In 2021 alone, U.S. merchants paid nearly \$138 billion to accept card payments.

I believe Swipe Fees are unfair to retailers because we do not have this negotiating power. Visa and MasterCard (MC) tell us what the charges are and we pay. Plus, the fee is different based on what benefits they provide to each card holder, such as airline points or cash back. They shower rich benefits on card holders but make retailers pay. Visa and MC say we should build this “cost” into our prices, but we have no idea what those fees will be when we price our merchandise. This also means that customers who don't use a credit card pay higher prices.

Unlike every other expense to my business, I have no ability to negotiate swipe fees. That is because this is a fundamentally broken market. As a merchant, I set the price of every item sold in my store. However, the banks that collect and benefit from the swipe fees levied on merchants do not set their own prices. Instead, Visa and Mastercard centrally set the fees charged by the banks that issue their cards. Since the banks do not set their own fees and are therefore not required to negotiate with merchants, the market pressures that usually come to bear simply do not exist. That is why the fees I am charged increase year after year despite technological efficiencies and economies of scale that should serve to drive these prices down.

Fortunately, with technology today there is a **simple** solution. Currently, when a customer uses their card, our machine at the register gets an approval. Visa and MC could easily send us the amount they charge to process the transaction based on what type of card the customer uses. Our POS system could then print the amount clearly on the receipt like it does the Sales Tax and the customer would know to the penny what they paid for Visa and MC's service. Simple! Visa, MC and the banks would have to compete for their customer's business! Some customers would choose higher fees but more benefits like cash back. Some customers would choose to forgo the benefits and pay lower fees. Simple! And the added benefit is the Senate would no longer have to have Hearings about Swipe Fees!

My guess, if you propose this concept to Visa and MC, they are not going to like it. They will have all kinds of fake reasons to say it would not work. But the real reason is they love hiding their \$138 billion in fees inside the protection of retail prices. They can pass along their increases and the consumer never knows. In fact, the customer blames retailers for higher prices. In this time of higher inflation that is not fair.

Visa and MC say they are providing a service to the retailer and that is why they have swipe fees. But if that were true then why don't they market the benefits of their services to the retailer? We retailers are never solicited about all the cash back or points our businesses will receive if we use their service. They market these benefits to the consumer! A better system then would be to require they charge the consumer directly for the service and benefits they offer. This would introduce competition and lower prices for consumers.

I believe Visa and MC should be paid for the services they provide. And like retailers, they should have to be up front about what they charge and let the customer know what they paid.

I would again like to thank the committee for holding this important hearing and examining ways to reform this broken market. It is time to bring competition to credit card payments through market-based reforms. By ensuring transparency and competition, credit card network choice would benefit consumers and merchants and transform the credit card system to a more fair and free market. The time for reform is now and U.S. merchants, consumers and our entire economy need your help.

Sincerely,



Robert Jones

President

American Sale

8401 West 185th Street

Tinley Park, IL 60487

\$100,000. ⁰⁰	yearly sales in credit card
x .07	Iowa sales tax
\$7,000. ⁰⁰	in sales tax paid is
x .03	credit card fees
\$210. ⁰⁰	in credit card fees paid on money I didn't earn but still paid on
x 29	number of years I've been in business
\$6,090. ⁰⁰	in money I paid in for credit cards fees that had to come out of my own pocket

Julie M. Dunn

Chairman Durbin and Ranking Member Grassley,

I write to thank you for holding your important and timely hearing on “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems.” My customers have been steadily shifting from cash to card payments, and the global pandemic has only accelerated that shift. Most businesses, including mine, now have no choice but to accept credit and debit card payments. But as the fees charged by card networks and banks only continue to increase, the cost of doing so has become even more burdensome to my business and my customers, particularly during these times of inflation.

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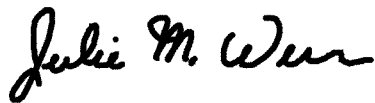
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Furthermore, every time a credit card is used (for example let's say it is \$1,000 for wedding flowers). A credit card fee at 3% would be \$30. But that charge isn't just \$1,000 because there is state sales tax. So the total is \$1,070 and the credit card fee just sent to \$32.10. I have to pay the \$70 to the state every month. Even though I don't get to collect extra to make up for that \$2.10 loss simply because a customer chose to use a credit card fee. \$2.10 isn't that big of deal, right? Until that happens over and over. That and the unpredictable pricing we are occurring with our fresh flowers (some are doubling wholesale) and our hard goods (like vases) and having to project wedding bids out a year ahead of time...this is a losing game. I can over-estimate the price of flowers - but do I need to assume each and every time that they are going to use a credit card to buy the wedding flowers? A \$5,000 flower bill with tax would be a \$160.50 credit card fee. That is a loss of an extra \$10.50 because I am paying the fee on sales tax that I don't even get to keep.

I would again like to thank the committee for holding this important hearing and examining ways to reform this broken market. It is time to bring competition to credit card payments through market-based reforms. By ensuring transparency and competition, credit card network choice would benefit consumers and merchants and transform the credit card system to a more fair and free market. The time for reform is now and U.S. merchants, consumers and our entire economy need your help.

Thank you,

A handwritten signature in black ink that reads "Julie M. Wurr". The signature is written in a cursive, flowing style.

Julie Wurr

Owner

Heart 'n Home

Laurens IA

Chairman Durbin and Ranking Member Grassley,

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Thank you,

Jessica Bettancourt
President and CEO

Klem's
Spencer, MA

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Thank you,

Tara Riceberg
Owner

Tesoro
Los Angeles, CA

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Thank you,

Bobby Djavaheri
President
Yedi Houseware Appliances
Los Angeles, CA



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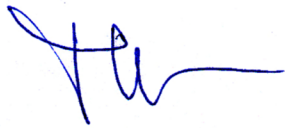
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In all my schooling and professional career, I was taught and learned that competition was the fundamental concept behind the great American economy. Great lengths were taken to encourage competition and avoid monopolistic and non-competitive behaviors, but there is one current situation that severely and unfairly impacts me and my fellow retailers. That would be the excessive, unchecked, and unregulated credit card swipe fees and the barriers in place impeding competition and innovation. History has shown time and time that competition has forced more fair pricing and technology advance ("necessity is the mother of invention"). Reality shows that unlike all other expenses in my business, credit card swipe fees are the one stand-out expense that we have zero recourse other than to acquiesce and pay the tab.

I would again like to thank the committee for holding this important hearing and examining ways to reform this broken market. It is time to bring competition to credit card payments through market-based reforms. By ensuring transparency and competition, credit card network choice would benefit consumers and merchants and transform the credit card system to a more fair and free market. The time for reform is now and U.S. merchants, consumers and our entire economy need your help.

Thank you,

A handwritten signature in blue ink, appearing to read 'Trey Kraus', with a stylized, flowing script.

Trey Kraus
Owner
Carlton's Men's and Women's Apparel
Rehoboth Beach, DE

The Kindship

PAPER LUXE | THE CURIOUS BEAR | THE CREST HOME | LITTLE LUXE | KINDSHIP CARDS

May 2, 2022

Dear Chairman Durbin and Ranking Member Grassley,

I write to thank you for holding your important and timely hearing on "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems."

I am an entrepreneur who has dedicated the last ten years of my life to providing my local community with quality gift shops so they can celebrate all the people in their lives.

With the current state of inflation, supply chain issues, and staffing shortages, small business is HARD. Even for those of us with a solid track record and excellent sales numbers, making an actual profit at the end of the day is HARD. I have seen small business after small business close up shop over the past few years and it is heart-breaking.

The global pandemic has personally dramatically increased our number of online sales vs. in-personal sales (and therefore, credit card transactions), as well as the number of people wanting to "tap" and use their credit card chip to avoid germs that can come with using cash. Most businesses, including mine, now have no choice but to accept credit and debit card payments. But as the fees charged by card networks and banks only continue to increase, the cost of doing so has become even more burdensome to my business and my customers, particularly during these times of inflation.

In our top grossing store, Paper Luxe, 91% of customers in 2021 used a credit or debit card for payment, accounting for over 94% of our gross revenue. We paid over \$60,000 in swipe fees in 2021, approximately 30% of our net profit for the year.

What I find the most irresponsible and outrageous, is that small businesses are required to pay swipe fees on all sales tax collected. This is money that is not ours and we have no control over. In my city, our combined state and local taxes are 10%. So I have to pay a 2.5-3% swipe fee on that additional 10%. I estimate that I paid approximately \$6,000 in credit card fees in 2021 JUST for sales tax. Money I immediately hand over to the State of Washington.

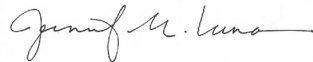
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Sincere thanks,



Jennifer Luna
Owner, The Kindship
253-244-065
jenn@paper-luxe.com


MINNESOTA GROCERS ASSOCIATION

1360 Energy Park Drive, Suite 110 • St. Paul, MN 55108 • 651-228-0973 • 1-800-966-8352 • mga@mngrocers.com

May 3, 2022

Chair Durbin and Members of the Senate Committee on the Judiciary,

Thank you, on behalf of the members of the Minnesota Grocers Association for holding a hearing on credit card processing fees and making this conversation a priority. We appreciate the consideration of the committee and are pleased to see the legislature shine a light on the hidden fees that increase the costs of goods and services for Americans by billions of dollars every year.

The Minnesota Grocers Association is the only state trade association representing the food industry of Minnesota from farm to fork. We have over 300 members with over 1,300 locations statewide. Minnesota has a unique culture of hundreds of hometown grocers and convenience stores, many of whom are independent, multi-generational, and locally owned. Our industry provides over 150,000 jobs in the state - both union and non-union.

In April, Visa and Mastercard once again increased their swipe fees. Visa and Mastercard – which control 80% of the credit card market – centrally set the swipe fees charged by the banks that issue their cards. These fees are non-negotiable, and U.S. merchants pay the highest swipe fees in the industrialized world.

In 2021, credit and debit card processing fees totaled \$137.8 billion, up 112% over the previous decade. These hidden fees negatively impact U.S. consumers, artificially driving up the prices they pay for goods and services. Merchants are forced to incorporate these fees in their pricing decisions and sell items at the “credit card” price to cover costs. Our members tell us that interchange fees are in the top five costs of running their businesses.

We write to urge you to reform the broken and unfair U.S. credit card market. The lack of competition in the credit card market is driving up prices for merchants and American consumers – swipe fees for processing card transactions cost more than \$700 a year for the average family. Reforming the credit card market would foster competition and significantly help Main Street businesses and their customers during these challenging economic times.

We are thankful for the discussion about the impact of swipe fees on businesses and consumers. Now is the time to foster competition in this broken and unfair credit card fee system. Please don't hesitate to contact the MGA to facilitate a conversation with us or our members as the committee explores this issue further.

Sincerely,

Jamie L. Pfuhl
President
Minnesota Grocers Association



Statement for the Record
Nicole Elam
President and CEO
National Bankers Association

Senate Judiciary Committee Hearing
“Excessive Swipe Fees and Barriers to Competition in the Credit and
Debit Card Systems”

May 4, 2022

Chairman Durbin and Ranking Member Grassley thank you for the opportunity to share the views of the National Bankers Association (NBA), the leading trade association for the country’s 143 Minority Depository Institutions (MDIs), on the important topics being explored at today’s hearing. Many of our member institutions are also Community Development Financial Institutions (CDFIs) and have become banks of last resort for consumers and businesses who are underserved by traditional banks and financial service providers. Members of our association are on the front lines, trying to reduce the economic hardship in minority communities, which are historically the most vulnerable during any crisis. The COVID-19 pandemic has exasperated the economic conditions in the communities we serve, and we all need to do our part to ensure individuals in the middle of the health crisis, principally minority communities that have accounted for ~50% of the deaths, have equal access to financial services needed to recover and stabilize.

As you know, regulation of interchange was a contested part of financial regulatory reform, as adopted by the Senate during debate of S. 3217, the Restoring American Financial Stability Act of 2010. While the bill and subsequent regulations have primarily been identified as targeting larger banks and the card networks, there has been significant harm done to MDIs, the very financial institutions that the Congress and banking regulators have a statutory duty to preserve and promote. It is for these reasons that the National Bankers Association respectfully opposes inclusion of any additional limiting interchange regulations. We believe that the real consequences for MDIs and CDFIs have not been fully considered by the Administration or Congress, and that the survival of some of our most disadvantage communities and institutions is at stake.

MDIs and CDFIs have traditionally served as economic development engines due to their relative concentration in minority and low-income communities, as well as their well established and deep relationships in these communities. As community lenders, they are significant providers of financial services, mortgages, and small business loans often saying yes when mainstream financial institutions say no to underserved populations. This is especially true in African American communities. Unfortunately, MDIs' smaller size and declining number, especially among African American MDIs, has not allowed them to respond as quickly or with as much scale as the current economic situation in LMI communities demands. From 2009 to 2021, the number of MDIs significantly dropped from 215 to 143. In addition, MDIs are far smaller than the average non-MDI bank, with total average assets of \$2.2 billion. Of note, African American MDIs (which have the smallest average assets size of all MDIs), have average assets of \$363 million, compared to an average of \$4.9 billion for all U.S. banks in 2021.

Given the important role these institutions play in the communities they serve, we need to do more to preserve and promote them. This obligation is not just morally justified but required by federal statute. Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) requires the FDIC and other Federal Banking Agencies to preserve and promote MDIs by: (i) preserving the number of MDIs, (ii) preserving the minority character of MDIs in case of merger or acquisition, (iii) providing technical assistance to prevent insolvency, (iv) promoting and encouraging creation of new MDIs, and (v) providing for training technical assistance and educational programs. The FDIC notes the importance of MDIs in its own Policy Statement Regarding Minority Depository Institutions, stating MDIs promote the "economic viability of minority and under-served communities."

Unfortunately, policies proposed by Congress and the implementation by regulators have failed to preserve and promote MDIs. In many instances, policymakers are often not sufficiently sensitive to the special risk factors associated with the balance sheet and income statement characteristics that result from operating a bank in a LMI, minority or underserved community. MDIs often find themselves subjected to broad policy prescripts such as reporting requirements, fees adjustments and others that are not only costly to the institutions but limit the range of services that can be provided to the communities we bank. In this regard, we believe placing limitations on the amount or use of interchange fees would represent yet another change that would be a net harm to our institutions and customers.

As noted previously, MDIs serve economically disadvantaged populations, and themselves face numerous economic challenges due to high customer turnover and low account balances associated with the populations served, which result in higher than usual operational costs. Interchange revenue, in addition to providing no and low-cost banking products and services such as free checking and neighborhood development programs like financial literacy, also helps to offset higher than normal operational expenses. For some minority depository institutions, particularly those that issue only debit cards, interchange revenue does not cover the cost of issuance, meaning the bank or thrift takes an actual loss. Many institutions have seen an erosion of income linked to transaction fees during the years since the Federal Reserve's action on debit card interchange fees.

These losses have led directly to further losses at MDIs, leading to drastic cuts in services, and the closure of some institutions.

Minority owned and operated banks are committed to the people and communities they serve. However, if interchange regulation that reduces fee revenue through additional price caps or routing requirements is adopted, many banks will have no choice but to raise costs for customers, cut back on services, and reduce vital capital allocations for neighborhood and business development. In a survey conducted by the NBA in 2010 during the consideration on debit interchange legislation, we learned just how important interchange revenue is to minority banks and their communities. According to one minority owned bank located in the northeast region of the country, "interchange revenue helps to offset some of the cost associated with offering affordable products, convenient distribution points, financial literacy programs, and partnering with city and state agencies around programs to help low to moderate income residents of inner-city communities." A Hispanic owned bank reported that, "modification to the interchange fee system would create financial harm for both the consumer and the banks which provide these services-particularly community banks for which these fees allow them to compete against larger national institutions and provide valuable support to local communities."

The National Bankers Association again applauds the Committee for holding this important hearing and for the ongoing efforts to ensure equity for communities in the country. While we commend Congress on its leadership to date in responding to the COVID-19 pandemic and the corresponding economic ripple effects, we respectfully urge this Committee and the Congress as a whole to carefully consider the full impact of interchange fee proposals under discussion. While it is very easy, especially in times of economic distress, to oversimplify this issue as one of consumer protection, we believe it to be a business-to-business concern that can have dire consequences for banks serving the very customers policymakers seek to protect. Congress and the Administration must act deliberately when the negative impact on minority depository institutions and the communities they serve looms large in the balance. The NBA and its members banks look forward to working closely with the Committee on the solutions being considered at this hearing to ensure LMI communities do not just survive but ultimately thrive. Thank you again for the opportunity to comment.



May 3, 2022

The Honorable Ben Sasse
Russell Senate Office Building, 139
Washington, DC 20510

Senator Sasse –

In advance of the Senate Judiciary hearing, “Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems,” the Nebraska Grocery Industry Association, Nebraska Retail Federation, and the Nebraska Hospitality Association are writing to corroborate concerns you will hear regarding the excessive and continually increase cost of accepting credit cards.

Swipe fees are, for many of our members, the second highest operational cost, behind labor. These fees also drive up the cost of goods and services, disproportionately hurting lower-income consumers who rely on cash.

Card networks set fees non-transparently, leaving no room for negotiation of price or terms of acceptance. Retailers do not even know what the cost of a card will be when it’s used, they must wait for their statement.

The pandemic made it more essential than ever to accept credit cards and have an online presence, but card networks are charging retailers higher swipe fees for online use. They are also, in some cases, using “card not present” loopholes to stick retailers with the cost of fraudulent transactions while still forcing them to pay the highest swipe fees in the world.

Our industries run on tight margins – grocers, for instance, generally operate around 1-2 percent – but pay close to 3 percent on swipe fees. In Nebraska, we pay swipe fees not only on the base cost of a transaction, but also on the sales tax portion of the purchase. This has created a situation where credit card companies can actually make more money on a retail transaction than the retailer. Now it actually *costs* retailers to collect sales tax.

Our retailers and the hospitality industry need your support. We ask you take action to address excessive swipe fees and other unfair exercises of market power.

Thank you for your time and consideration.

Sincerely,

Ansley Fellers, Executive Director
Nebraska Grocery Industry Association

Jim Otto, President
Nebraska Retail Federation

Zoe Olson, Executive Director
Nebraska Hospitality Association



May 4, 2022

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate

RE: National Grocers Association's Statement for the Record – Committee on the Judiciary Hearing, "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems"

Dear Chairman Durbin and Ranking Member Grassley:

The National Grocers Association (NGA) represents an industry comprising more than 21,000 independent community grocers across the country and the wholesalers, manufacturers and suppliers who service them. The independent grocery sector is responsible for 1.1 million jobs and one-third of all U.S. retail grocery sales, and generates more than \$36 billion in taxes. Roughly 65% of NGA's membership is made up of single-store operators, and many of these family grocers have fed and served their communities for generations.

Grocery is a highly competitive industry with net profit margins ranging from 1-2% annually. For many of our members, the fees associated with accepting credit and debit cards is one of the highest costs of doing business. These "swipe fees" have a direct effect on our members' operations and the viability of their businesses. NGA thanks the committee for holding this timely hearing and would like to illustrate some of the impacts that the lack of competition in our card payment systems have on Americans and the small businesses that serve them.

The U.S. Card Payments System is Broken

Independent grocers, and U.S. merchants more broadly, strive to provide myriad payment options to meet their customers' preferences for how they want to transact. As credit and debit payments become more and more ubiquitous, grocers must reckon with the fact that an ever-growing share of their transactions come with an ever-growing cost in the form of swipe fees.

For more than a decade, Visa and Mastercard have set not only their network fees – the costs associated with a credit or debit card payment being routed through their network – but the interchange fees that

merchants pay to the issuers of the credit and debit cards with which Americans transact. Nearly twice a year, every year, these two card networks have instituted fee changes that, on net, almost always lead to increases in merchants' costs. Case in point, this hearing comes on the heels of a net \$1.2 billion increase in interchange fees and other merchant costs implemented by Visa and Mastercard in April 2022.

Visa and Mastercard use their dominance over the U.S. card payment marketplace to set not only the fees associated with accepting card payments, but the rules and "standards" that govern the rest of the participants in the marketplace as well. Unfortunately, the benefit of this duopoly has been one-sided. Visa and Mastercard profit margins continue to lead the S&P 500, and credit and debit card issuers continue to gain from central interchange price fixing. Merchants and American consumers, meanwhile, are left with increased costs and higher rates of fraud.

U.S. merchants paid \$137.83 billion in credit and debit card processing fees in 2021, a 24.3% increase from 2020 and more than double the amount paid a decade ago.¹ U.S. merchants pay the highest swipe fees in the industrialized world, an average of 2.2%, but these fees can vary from 1-4% depending on the type of credit card a customer uses. Merchants have no ability to affect these costs. Even some of the world's largest retailers do not have leverage to negotiate significantly lower swipe fees.

The U.S. also has the dubious distinction of leading the world in card fraud, with merchants shouldering an ever-increasing percentage of these costs. Visa and Mastercard continually use increased rates of U.S. card fraud as an excuse to implement higher fees onto merchants, yet neither network actually pays for the costs of fraud. According to the Federal Reserve's most recent debit issuer survey, "From 2011 to 2019, the percentage of losses from fraudulent transactions reported by covered issuers absorbed by merchants steadily increased from 38.3 to 56.3%, while the percentage of losses absorbed by issuers steadily decreased from 59.8 to 35.4%."² Of the other 8.3%, the Fed survey states, "Cardholders absorbed the remainder."

Everyone Pays for Swipe Fee Increases

For independent grocery – a high-volume, low-margin industry – swipe fees are too costly to absorb fully and, unfortunately, some portion must be passed onto American consumers in the form of higher prices. Whether a customer pays with a credit card or not – or receives points, miles or other rewards – all

¹ Nilson Report, "Merchant Processing Fees in the United States—2021", Issue 1216 (March 2022)

² Board of Governors of the Federal Reserve, "2019 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions", (May 2021)



Americans have to pay for these increased costs. According to merchant payment consultancy CMSPI, the average American family pays more than \$700 per year in swipe fees.

Swipe Fees are an Inflation Multiplier

Grocery is an incredibly competitive industry in which even a few cents can drive life-long customers to shop at a different store. In this environment, independent grocers do all they can to keep costs low and maximize savings that can be passed on to their customers. This trickle-down savings effect has been illustrated in the delta between the Producer Price Index (PPI) and the Consumer Price Index (CPI), but our current economy is being impacted by a level of inflation not experienced in over a generation.

Swipe fees – whether they be the interchange portion that Visa and Mastercard set on behalf of the banks that issue the credit cards, or the network fees portion that is paid directly to Visa and Mastercard – are generally a percentage of every transaction and therefore act as an inflation multiplier. As inflation forces the costs of goods and services higher, merchants and their customers must shoulder an ever-greater amount of these fees.

Thank you for holding this hearing and bringing transparency to the U.S. card payments marketplace. The independent grocery industry, and the Americans across our country who our members' serve, need the federal government to inject competition into this broken system. Allowing Visa and Mastercard to continue their swipe fee duopoly will only lead to worse outcomes and more costs, to American consumers, merchants, and the economy as a whole.

National Grocers Association



May 3, 2022

Dear Chairman Durbin and Ranking Member Grassley:

I am writing on behalf of the National Retail Federation to share our views on lack of competitiveness, innovation, and security in the U.S. payments system. We are pleased and encouraged that the Senate Judiciary Committee's hearing on "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems" will shed light on this urgent issue. This hearing gives Congress an opportunity to closely examine anticompetitive practices by the credit card industry that are adding to near-record high inflation through billions of dollars in "swipe" fees charged to process credit and debit card transactions.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation's largest private-sector employer, supporting one in four U.S. jobs — 52 million working Americans. Contributing \$3.9 trillion to annual GDP, retail is a daily barometer for the nation's economy.

This hearing brings attention to constantly rising fees and unfair practices that show clear disregard for small businesses and American families. Visa and Mastercard have price-fixed swipe fees for years and have repeatedly moved to block any innovation or fair play that threatens their hold on the payments market. Their fees have more than doubled in the past decade and, on April 22, they pushed through another billion-dollar increase that will make inflation even worse. Lack of competition is why swipe fees keep skyrocketing, and it is necessary that Congress demand answers that will lay the groundwork for a solution.

The \$1.2 billion April 22 increase in swipe fees was forced on merchants by Visa and Mastercard despite a letter sent by Chairman Richard Durbin, Sen. Roger Marshall, R-Kan., and Reps. Beth Van Duyne, R-Texas, and Peter Welch, D-Vt., [asking Visa and Mastercard](#) to withdraw the increase.

Visa and Mastercard, which control 80 percent of the U.S. credit card market, centrally price-fix the swipe fees charged by banks that issue their cards despite ongoing litigation claiming the practice violates federal antitrust law. They don't allow credit card transactions to be processed over competing independent networks that could do the job more securely and at lower cost. And recent rule changes would put financial pressure on merchants to use proprietary services from the two networks even if they prefer to use services from competitors.

Swipe fees are most merchants' highest operating cost after labor, averaging 2.22 percent of the transaction amount for Visa and Mastercard credit cards. The fees drive up consumer prices, amounting to more than \$700 a year for the average American family. As a percentage of the

transaction, they go up as prices go up, creating a multiplier effect for already-soaring inflation.

Swipe fees can be even higher for small retailers because they are based, in part, on transaction volume. Small retailers with a few dozen transactions per day pay a higher percentage than national retailers with millions of transactions. Fees are also higher for e-commerce transactions, which have become increasingly important for small retailers because of the shift to more online shopping since the beginning of the pandemic.

Ongoing and unwarranted increases in swipe fees are especially damaging to small retailers. We have heard many stories from small retailers about the extreme challenges posed by the current payments system and Visa and Mastercard's continuing monopoly. It is small retailers who are calling for swipe fee reform more than any other segment of our industry. They pay the highest swipe fee rates and have the fewest resources to fight back against global credit card networks and Wall Street banks. They want the card industry to compete the same as they do.

Here are a few examples of how small retailers are affected:

- "As the use of credit cards has become more and more prevalent, the credit card companies are making more and more money from merchants. When we first opened our business, credit card transactions accounted for approximately 40 percent of our business. Now the credit card share is about 80 percent of transactions. At the same time, fees have risen and the time taken before funds appear in our accounts gets longer. This is one more burden for merchants."

John Morman, owner of Celtic Tides gift shop, Lexington, Va.

- "Credit card fees have reached the equivalent of a starting salary while there have been no noticeable enhancements regarding credit card fraud security. Shouldn't there be free market competition and competitive options, as one would expect with any other sizable business expense? And shouldn't businesses be able to expect improved security and services to accompany the ongoing increases in fees? The current anticompetitive market does not encourage any such innovation by Visa or Mastercard, who represent over 85 percent of our credit card transactions, and we small businesses have no choice but to pay up."

Danny Reynolds, owner of Stephenson's of Elkhart clothing store, Elkhart, Ind.

- "Credit card swipe fees are the largest expense item our business faces and one over which we have little control. The fact that swipe fees are a percentage of the transaction amount is particularly punitive to our hobby business when we sell higher priced items and especially during these inflationary times. The amount we pay in credit card fees is higher than any operational cost we have other than payroll and rent."

Patti Riordan, owner of Smoke Stack Hobby Shop, Lancaster, Ohio

- "As a third-generation business owner, every year is becoming more challenging. The last two years have seen enormous cost-of-goods increases, payroll increases and freight increases, and now skyrocketing inflation has driven these costs even higher. As we

struggle to stay ahead of it all, we are unable to have any effect on our second-largest expense, credit card processing fees. These fees just keep climbing every year. Even though this year my sales are down, my credit card fees are up. We need to reform this system. It is broken and unfair.”

Jessica Bettencourt, President and CEO, Klem’s hardware, gifts and clothing store, Spencer, Mass.

Due to their anti-competitive practices, Visa and Mastercard have been able to raise swipe fee rates for years with little to stand in their way. The amount charged for Visa and Mastercard credit cards reached a record high of \$77.5 billion in 2021, up 26 percent in one year alone and up 180 percent over the previous decade, according to the Nilson Report. Swipe fees for all types and brands of cards totaled \$137.8 billion last year, more than double over 10 years, according to Nilson

Thank you again for your leadership on this pressing issue. At a time when retailers of all sizes are facing supply chain disruptions, labor shortages and rampant inflation in a still-recovering economy, the dramatic increase in swipe fees and the lack of competition in the U.S. payments system requires close examination by Congress. We look forward to working with you to finally lift the unfair burden placed on both merchants and consumers by the broken payments system.

Sincerely,

Stephanie Martz
Chief Administrative Officer and General Counsel
National Retail Federation



**RETAIL INDUSTRY
LEADERS ASSOCIATION**

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Washington, DC 20003
www.rila.org

May 4, 2022

The Honorable Richard Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley,

On behalf of the Retail Industry Leaders Association (RILA), we strongly support the decision by the Committee on the Judiciary (Committee) to focus on critical issues in the payment ecosystem. The hearing, "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems" will provide one of the first opportunities in years to concentrate on the lack of competition in the payments arena and how excessive swipe fees impact American businesses and consumers.

RILA is the U.S. trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

Competition is a hallmark of America's retail industry. It drives innovation and brings consumers lower prices and new products and services. However, the absence of competition in the payments ecosystem has resulted in bloated fees that every U.S. merchant pays to accept credit and debit cards. In 2021, U.S. retailers paid an astounding \$138 billion to accept electronic payments, a significant increase from 2015 when merchants paid \$83 billion, and this past year's number is more than double what the retail community paid in 2011, \$64 billion. RILA members believe the Committee must protect consumers by ensuring that competition exists throughout the payments arena. That requires holding hearings and pursuing legislation that curtail anticompetitive business practices, remove roadblocks to innovation and ensure the ability of all retailers to improve the customer experience, unconstrained by the dominant market power of Visa and Mastercard. They consistently shape that experience to their own benefit and to the detriment of consumers. It is imperative the Committee focus on ensuring that competition among players in the payments ecosystem actually benefits American consumers, rather than seeing those benefits stifled by dominant issuing banks and the persistent duopoly of Visa and MasterCard.



Technological progress has completely eliminated any justification for competitor collaboration in the credit and debit card market. While the Committee is fully aware that Visa and Mastercard are no longer owned by their members banks, the fundamental proposition remains the same: banks do not compete for merchant acceptance of their credit and debit cards, and banks all agree to accept the same interchange fees as their competitors are receiving. Unlike the hyper-competitive retail market, there is no competition among banks in this market, and there is no regulation of the joint fees that are fixed for all issuing banks by the dominant two credit card companies. There is also no constraint on the exercise of market power that Visa and Mastercard wield, which is why this hearing today is critical.

Congress has held several hearings over the past couple of years on dominant market players touching every key vertical in the economy and RILA commends the Committee for holding this specific hearing on payment issues. Addressing the lack of competition in the payment ecosystem will benefit American consumers and Main Street businesses throughout the country. RILA looks forward to being a partner in this challenge and welcomes the opportunity to continue to work with the Committee and its members.

Sincerely,

A handwritten signature in blue ink, appearing to read "Christopher Finn".

Senior Vice President, Government Affairs





May 4, 2022

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Senate Judiciary Committee Hearing, "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems"

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the National Restaurant Association, we thank you for the opportunity to submit our views regarding the anticompetitive practices perpetuated by the dominant payment card networks and their respective card-issuing banks within our nation's electronic payment ecosystem. We ask that this letter be entered into the record of the hearing, "Excessive Swipe Fees and Barriers to Competition in the Credit and Debit Card Systems," on May 4, 2022.

Founded in 1919, the National Restaurant Association ("The Association") is the leading business association for the restaurant and foodservice industry, representing national and small restaurant businesses. As the nation's second-largest private sector employer, with nearly one million locations across the country, the restaurant industry is a vital driver of the U.S. economy.

As you are aware, our industry was completely upended due to the COVID-19 pandemic. More than 8 million restaurant employees were laid off or furloughed, and the industry collectively lost \$290 billion in sales due to mandated closures and capacity limits during the pandemic. Even as the pandemic begins to subside, restaurants still have an incredibly long road to recovery as they continue to face labor shortages, supply chain disruptions, and rising food costs, all while the U.S. economy is experiencing its highest inflationary rate in decades.

Despite these challenges and our industry's ability to innovate by shifting business models to accommodate remote and online orders, restaurants and other merchants continue to be hamstrung by exorbitant interchange fees paid to the credit card industry. For restaurant owners and operators, accepting a form of payment that is not "cash only" is an absolute imperative to best serve their customers, and ultimately, to stay in business. However, facilitating card payments is often one of the highest costs borne by our industry, only behind labor and food. And in the current economic environment, restaurants are juggling a 17% increase on food costs and more than 13% increase in payroll expenses on top of these extremely costly interchange fees.

Furthering this issue is the fact that restaurants and other merchants have no ability to negotiate the credit card rates that the two dominant card companies impose, nor in practicality are they able to seek out alternative payment processing options. These two card brands have leveraged their market power to effectively ban such alternatives, wiping away competition that could stem these exponentially rising fees and together controlling upwards of 80 percent of the U.S. credit market. This duopolistic behavior continues to cause significant harm to the restaurant community and paints a strikingly different picture when compared to our highly competitive and low-margin industry.

Enhancing the quality of life for all we serve

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Chairman Durbin
 Ranking Member Grassley
 May 4, 2022
 Page Two

Credit card processing fees have more than doubled over the last decade despite improvements in payment technology that have driven down overall processing costs. According to the Nilson Report, the two prevailing card networks (along with their respective card-issuing banks) charged U.S. merchants a total of \$137.8 billion in total card processing fees just last year.¹ A typical restaurant that makes an average of just 3-5% pre-tax margin, with swipe fees averaging 2.22% the amount of each transaction, restaurants and other small businesses struggle to succeed.²

While there is still work to be done with respect to the enforcement of these requirements in the card-not-present space, thankfully, the Durbin Amendment has saved consumers billions of dollars over the last decade. Now, alternatives are readily available for debit card processing and our restaurants are empowered to make rational business decisions between competing service providers. This type of healthy competition should be injected into the credit card market as well.

The Association appreciates the leadership on this issue demonstrated by Chair Durbin, Sen. Roger Marshall, Reps. Peter Welch, and Beth Van Duyne in their [recent letter to these two dominant card companies](#) requesting that they withdraw the \$1.2 billion in credit card swipe fee increases set to take effect at the end of April. We agree with the argument that “these fees... are ultimately borne by consumers in the form of higher prices for goods and services” and that further increasing these rates will only add to the “already high costs consumers are facing” today.³ Unfortunately, the two dominant networks chose to move forward with their newest set of interchange fee hikes during a time when American consumers and merchants alike are facing the highest rate of inflation in decades. And we were further disheartened to learn that one of these card companies has recently promoted that it lowered swipe fees for small businesses across the United States, but in reality, most small restaurants do not qualify for these fee decreases.

In sum, the Association once again applauds the Committee for holding this important hearing as a first step toward reeling in the egregiously anticompetitive practices maintained by the credit card industry and the big banks on Wall Street. Restaurants stand ready to work with Members of this Committee to establish a healthier level of competition within the nation’s payment ecosystem.

Sincerely,



Sean Kennedy
 Executive Vice President, Public Affairs

¹ *The Nilson Report*, Issue 1216, March 2022

² *The Nilson Report*, Issue 1216, March 2022

³ <https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20Mr.%20Kelly%20and%20Mr.%20Miebach%20-%20April%2015,%202022.pdf>



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May 2, 2022

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary
SH-711, Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
SH-135, Hart Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

On behalf of the United States Hispanic Chamber of Commerce (USHCC) and our Board of Directors, we want to reach out to you regarding proposed legislation that seeks to indirectly cap credit interchange via routing mandates on payment networks, small banks, and credit unions.

The USHCC actively promotes the economic growth, development, and interests of more than five million Hispanic-owned businesses that, combined, contribute over \$800 billion to the American economy every year. We also serve as a platform for our nationwide network of over 260 local Hispanic chambers of commerce.

Since March 2020, electronic payments have become the lifeline of commerce. Online commerce had to respond drastically to COVID-19 protocols and nearly doubled during the unprecedented global pandemic. This rapid expansion was necessary, and merchants, both large and small, banks, credit unions, processors, and payment networks all played a crucial role.

We understand the need to regulate bad actors and provide sensible rules of the road for the financial services sector. However, we urge you to carefully consider the unintended consequences of extending Dodd-Frank's routing requirements from debit cards to credit cards. We believe this extension could disproportionately harm small and minority-owned financial institutions and millions of Hispanic American consumers. We believe the cost of this regulation will only increase the cost of credit, which will impact marginalized consumers the most.

Specifically, extending routing requirements to credit will move billions of dollars away from financial institutions and consumers. We saw this with debit controls more than a decade ago. According to University of Pennsylvania's Professor, Natasha Sarin, who is now at the U.S. Department of the Treasury, and Georgetown's Professor Vladimir Mukharlyamov, "We find little evidence of across-the-board consumer savings. Our analysis suggests that consumers are not helped by this interchange regulation." More than a dozen studies from the U.S. Federal Reserve, Government Accountability Office, and Harvard University have come to the same conclusion that interchange regulation hurts consumers and small-minority financial institutions.

Furthermore, we believe the original routing mandates negatively impacted Hispanic consumers. Roughly two million Hispanic small businesses saw price increases as a result of the original regulation. The regulation on debit interchange caused cuts in other areas, including a reduction in free checking accounts, higher transaction fees, and barriers to banking account access. If these regulations are mirrored on the credit market, we have no doubt that marginalized Hispanic borrowers will be negatively impacted. Moreover, billions of dollars in new regulatory costs will raise the cost of credit, hurting Hispanic consumers and businesses disproportionality.



Thank you for your service and partnership in supporting America's Hispanic and minority owned businesses as well as the more than 63.5 million Latinos/as living in America. If you have any questions, please do not hesitate to reach out to C. LeRoy Cavazos-Reyna, Vice President of Government and International Affairs via phone at 956-844-9628 or email at LCavazos@ushcc.com. We commend this committee's work to examine the payments industry and look forward to a positive outcome on this important legislative matter

Respectfully,

Ramiro A. Cavazos
President & CEO
U.S. Hispanic Chamber of Commerce

CC: The Honorable Marsha Blackburn
The Honorable Dick Blumenthal
The Honorable Cory Booker
The Honorable John Cornyn
The Honorable Tom Cotton
The Honorable Chris Coons
The Honorable Ted Cruz
The Honorable Dianne Feinstein
The Honorable Lindsey Graham
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The Honorable Thom Tillis
The Honorable Sheldon Whitehouse
The Honorable Raul Ruiz, Congressional Hispanic Caucus (CHC)