Credit Union National Association CUNA

FAQ
S. 1838 – Credit Card Competition Act of 2023

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Sponsors: Senators Marshall (R-KS), Durbin (D-IL), Welch (D-VT), Vance (R-OH)

What does the bill do?

- The Credit Card Competition Act of 2023 amends the Electronic Fund Transfer Act (EFTA) to require the Board of Governors of the Federal Reserve (the Fed or Board) to issue regulations requiring covered card issuers to include at least 2 unaffiliated networks on which an electronic credit transaction can be processed. Additionally, the 2 networks cannot be the networks holding the two largest market shares of credit cards issued in the U.S. by licensed members of such networks as determined by the Board at the time the regulations are issued or any network identified by the Fed and Treasury as a risk to national security.
- The determination of the 2 largest networks must be re-evaluated every 3 years, and if the networks change from the previous study, the requirement that the card networks be limited to those 2 no longer applies.
- Prohibits limitations by covered card issuers or payment networks on the ability of merchants to route credit transactions over any network that may process such transactions.
- Prohibits use of authentication, tokenization, or other security technology that would limit the ability of merchants to route credit transactions over any network that could process such transactions.
- Prohibits the imposition of any penalty or disadvantage for choosing to route credit transactions over certain networks or for failing to ensure a certain number or aggregate dollar amount are routed through a particular network.
- Directs the Fed to work with Treasury to prescribe a list of networks that are deemed a risk to national security or that are owned, operated, or sponsored by a foreign state entity and to update that list every two years.
- Defines covered card issuer as "a card issuer that, together with its affiliates, has assets of more than $100 billion."

If there is a $100 billion threshold, why do credit unions care?

- While most credit unions are under the threshold and won't be directly subject to these requirements, they will undoubtedly suffer the consequences. The interchange fee credit unions receive from card transactions is one part of the larger Merchant Discount Fee that is distributed between the payment card network, the acquiring financial institution, and the issuing institution. The issuing institution negotiates with the payment card network to establish the interchange rate they will receive. Changes to the card ecosystem through additional routing requirements will result in "exempt" financial institutions with less negotiating power in these contract negotiations receiving reduced interchange revenue to support their card programs.

- While supposedly "exempt" from the Durbin Amendment, credit unions and community banks suffered a 30% decrease in interchange revenue. These proposed restrictions have the same practical effect of distorting the market and transferring wealth from community financial institutions and consumers to a handful of high-volume merchants, wiping out already thin margins of lower-volume issuers and forcing them to shift resources from vital products and services to support card programs or end their programs altogether.
- CUNA members' analysis finds that 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, particularly harming credit unions under $100 million in assets that disproportionately serve poorer and socio-economically disadvantaged populations.
- 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 their credit card program altogether.
- The low-cost card programs available at credit unions allow consumers to build credit and gain access to funds that otherwise may not be available to them, something not possible with debit cards. Reduction in revenue from the card system, at the same time the cost of operating the card program is increasing, will cause the cost of these loans to increase, leading to less spending power for consumers and the possible reduction of important credit building programs.

Won't this help reduce costs for small businesses and consumers?

- This bill puts decisions in the hands of big box retailers that are always going to make decisions based on their bottom line, without regard to protection of consumer data or respect for consumer choice.
- Small businesses won't benefit because they won't be making the decisions about how their transactions are routed—their choice will be bundled with other small business transactions and used as a negotiating tool for networks to obtain the high-volume transactions from mega retailers.
- The aftermath of the Durbin amendment showed that any savings from the controls were realized by major retailers and that costs actually increased for small businesses. The Richmond Fed determined that over 20% of retailers increased their prices following the enactment of the Durbin Amendment, and only 1% of retailers passed their savings onto consumers.

- Prices will actually rise for consumers. Unlike the debit card system that was an open system due to requirements for ATM usage, the credit card system is a closed loop and establishing a dual-routing system (that doesn't exist today) will represent a significant expense that raises costs for consumers.
- A recent 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."
- 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

Won't this end the "Visa-Mastercard monopoly" and give consumers greater choice?

- Instead of preserving or expanding consumer choice, this bill will put that decision in the hands of the retailers. With only their bottom line as motivation due to the protections provided by financial institutions through the interchange system, the retailer will choose the cheapest-- not the most secure-- option.
- 86% of consumers use credit cards because they feel their information is secure from data breach. Consumers have a wide variety of cards, processors, and issuing institutions to choose from, and their choice of their trusted card network must be respected
- With over 5,000 credit card issuers, the industry is competitive, as determined by FTC and DOJ metrics. Moreover, a recent Supreme Court decision, *Ohio v. American Express Co.*, was released where no justice found evidence of an anticompetitive market structure.
- This bill isn't the result of systemic risk or need. It is about choosing winners and losers. The provision that if the 2 largest networks change at any point, the requirement that other networks be available on the card no longer applies makes this clear.

This bill only requires two networks that the card issuer gets to choose, what's the big deal?

- This bill requires much more than "routing choice" or two networks per card. It also contains an explicit requirement that card issuers enable all types of transactions and security protocols, even if a credit union finds these methods are unnecessary, unaffordable, or unsecure.
- Compliance with this requirement means adopting many more than two networks, the only way to avoid a costly enforcement action from regulators.
- Each time a new network is added or changed, new chip cards would have to be issued: inconveniencing consumers, expanding identity fraud risk through mail theft, and increasing the cost of the payment system.

What is Interchange?

- Interchange is the cost merchants pay for services provided. Interchange is the portion of the merchant discount fee that is paid to the cardholder's financial institution for the service of utilizing the card system.
- 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. To make this possible, financial institutions incur operational costs for software, hardware, equipment, labor, network processing fees, and transaction monitoring.
- Card issuers also bear the costs of billing and collection, data processing, fraud prevention, card replacement, customer inquiries, and customer service. The card-issuing financial institution is ultimately responsible for fraud and insufficient funds, while the merchant receives full, guaranteed payment for the goods or services rendered.

The credit card difference

- A credit card transaction represents an extension 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.
- Debit and credit cards 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.
- Changes to the card system would force regulators to tell financial institutions the terms for which they are allowed to extend credit, adding substantial burdens to lenders while they continue to assume 100% of the risk.
- Consumers 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. This bill could cause the cost of these low-cost loans to increase, leading to less spending power for consumers and possibly the reduction of important credit building and education programs offered by financial institutions.
- These card programs allow small businesses to outsource credit risk to financial institutions and compete with large retailers without having to run their own card programs.

The cost of fraud

- Fraud rates have doubled since 2011. 422 million individuals were affected by data breaches in 2022 alone. The average cost credit unions assume to protect consumers from a data breach is $0.86 per transaction.
- The interchange fee covers the cost 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 those costs:
    - $1,600/card-the average fraud payout in 2020
    - $6.50—Average cost to replace contactless cards
    - $90/card—Credit union average interchange revenue each year
    - Credit card costs= 23 cents MORE per transaction than interchange revenue
    - Card program costs are 1.6 times more than interchange revenue

- Unlike merchants, credit unions are payments experts responsible for and best positioned to protect their members against fraud, loss of private data, and the inefficiencies of unreliable systems. Thus, it makes perfect sense that the credit union that lends these funds should carefully and deliberately select the network over which their own funds flow to the merchant.