

May 10, 2011

The Honorable Shelley Moore Capito
Chairman, Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Capito:

On behalf of the 15,000 community-based financial institutions we represent, we are writing in response to a letter you received last week from the Merchants Payments Coalition disputing the impact that the debit interchange amendment will have on small financial institutions. As the actual representatives of community financial institutions, we question the claim that merchants have no ability or desire to discriminate against our cardholders. Recent evidence suggests otherwise: last week, a prominent technology company boasted of its efforts to develop "...new 'steering' services for merchants..." in order to "...promote the use of certain cards".¹ This report supports Federal Reserve Board Chairman Ben Bernanke's testimony before the Senate Banking Committee that the small issuer exemption may not work in the marketplace.

It is remarkable that the same groups advocating for weakened network operating rules would now hide behind them in their defense of government price controls. Merchants know that enforcing these rules among the millions in their ranks is impossible. As such, we applaud them for admitting as much to you when they acknowledge that "[merchant] employees never see the face of the card the customer is using...." In fact, network operating rules *require* every single card-accepting merchant to take affirmative steps to validate the identity of the cardholder, including an examination of the card.

These rules and steps, of course, are designed to help deter fraud. Because merchants bear very little of the liability associated with debit card-related fraud, we understand why they choose to ignore these network rules and save their diligence for verifying identification at the point-of-sale for checks, where they carry substantial liability. Their failure to comply with network anti-fraud rules gives us no confidence that will comply with anti-discrimination rules designed to protect community institution cardholders.

The merchants opposing your legislation would have Congress, community banks, and credit unions rely on their "commitment" that everything will work out fine in the end. Unfortunately, we, and many market experts, do not believe this to be true. Sadly, the truth can be seen in the quotes above and in the merchants' own statements of their intention to pocket the windfall heading their way from this misguided and harmful regulation. The first step to protecting credit unions and community banks is for Congress to act on legislation to delay the implementation of the Fed's rule, and to study the harmful impact it will have on small financial institutions and the local customers they serve.

Sincerely,

American Bankers Association
Credit Union National Association
Independent Community Bankers of America
National Association of Federal Credit Unions

CC: Members of the U.S. House of Representatives
Members of the U.S. Senate

¹ "First Data Sees Possibility of New Network Business in Durbin Amendment," *American Banker*, 5/5/11.