

May 11, 2009

To: Members of the U.S. Senate

Re: Durbin-Bond Interchange Amendment to H.R. 627

The undersigned credit union and banking organizations are strongly opposed to the interchange-related amendment that Senators Richard Durbin (D-IL) and Kit Bond (R-MO) are likely to offer to credit card legislation (H.R. 627) that will be considered this week on the Senate floor. If enacted into law, the amendment would drive credit unions and smaller banks out of the card business, reducing the availability of credit and consumer choices and hurting the economy.

Merchant access fees, sometimes called “interchange,” generate the income that pays for the extensive infrastructure costs, fraud risk, and nonpayment possibilities that are assumed by financial institutions involved in the payment system. Interchange is important for credit unions and banks of all sizes. It is particularly important for smaller credit unions and banks, because it allows them to offer card products that consumers like and thereby compete for customers with larger institutions. If the Durbin amendment is adopted, the economics of offering card products will dramatically change and many credit unions and community banks would be likely to leave the business – and consumers and our overall economy would suffer.

The amendment is unnecessary and fraught with potential unintended consequences. Sec. 501 of Senate Banking Committee Chairman Chris Dodd’s substitute amendment to H.R. 627 already includes a provision directing the Comptroller General (GAO) to conduct a detailed study of interchange rates and make recommendations to Congress. The study will provide in-depth information that will help Congress make informed decisions on interchange policy. Interchange is a complex issue and Congress should not act precipitously to adopt the Durbin amendment without the benefit of this study, a hearing record, or the slightest analysis of the potential consequences for consumers, credit unions, banks, and our economy.

The amendment has several flaws that Congress should consider. For instance, although supporters claim that the amendment is intended to facilitate discounts on different types of payment transactions, it would actually permit merchants to discriminate against payment cards issued by a particular financial institution, including community banks and credit unions. For example, if a consumer presented one type of card, the merchant would be permitted to “direct” the consumer to use another type of card – perhaps a card issued by a “preferred” institution with which the merchant has an agreement.

All banks and credit unions also would face significant new governmental reporting requirements. Every year, banks and credit unions would be required to report to the Federal Reserve every fee or charge associated with every credit card, debit card, stored-value card, or any other payment card the community bank or credit union issues. Furthermore, every year, every merchant acquirer in the industry would be required to report to the Federal Reserve every term and condition in each of its acquiring contracts, in addition to the pricing arrangements it has with every individual merchant. This means that the Federal Reserve would gather and publish confidential pricing information that can be used by competitors.

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The impact of the changes made by the Durbin amendment have not been studied, and if adopted it could harm the economy and consumers by driving credit unions and smaller banks out of the card market. This would reduce credit and the choices available to consumers and we urge you to oppose the amendment.

Sincerely,

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