



Credit Union National Association

cuna.org

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June 25, 2008

The Honorable Max Baucus
Chairman
Senate Finance Committee
219 Senate Dirksen Office Building
Washington, DC 20510-6200

The Honorable Charles Grassley
Ranking Member
Senate Finance Committee
219 Senate Dirksen Office Building
Washington, DC 20510-6200

The Honorable Charles Rangel
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Jim McCrery
Ranking Member
House Committee on Ways and Means
1139E Longworth House Office Building
Washington, DC 20515

Dear Chairmen Baucus and Rangel and Ranking Members Grassley and McCrery:

On behalf of America's 8,300 credit unions and over 90 million credit union members, I am writing again to express our grave concern regarding a proposal to require merchant acquiring financial institutions and third party payment card processors to annually report aggregate electronic remittance payments to merchants. As you may recall, I wrote you on April 15, 2008, when this proposal was being considered in the context of H.R. 2419, the *Food and Energy Security Act*. While this provision ultimately was not included in the final legislation, it has been included as a "payfor" in H.R. 3221, the *Housing and Economic Recovery Act of 2008* as well as H.R. 6275, the *Alternative Minimum Tax Relief Act of 2008*. While CUNA is not opposed to the underlying legislation pending in the House and Senate, we feel that this new reporting proposal should receive a full hearing before the Senate Finance Committee and the House Ways and means Committee before it is enacted into law.

Simply put: this proposal represents a costly unfunded mandate and complex compliance burden for financial institutions and payment card processors. It increases liability for financial institutions and places small businesses in jeopardy of bankruptcy. The revenue estimates associated with this proposal are inconsistent and unsubstantiated. And, the proposal adds the inappropriate role of law enforcement agent to financial institutions at the expense of their role of financial services provider.

Taxpayer Identification Number and Social Security Number Verification Requirement Contradicts Federal Data Security Recommendations, Exposes Financial Institutions to Liability, and Puts Small Businesses At Risk

The proposal would expand Form 1099 reporting by requiring merchant acquiring banks and credit unions, as well as third-party payment card processors, to report annually the aggregate payments remitted to merchants from payment card sales.

Should an error occur with the merchant acquirer or third-party processor, the acquiring entity could be subject to liability for any damages to a business caused by unnecessary backup withholding. Back-up withholding could interrupt the cash flow of many small businesses that operate on tight profit margins. This would have a devastating impact on many small businesses, and has the potential to force some into bankruptcy.



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Eighty-Three Fold Increase in Revenue Yield Is Unsubstantiated

The Administration's budgets for Fiscal Years 2007, 2008, and 2009 include this payment card reporting proposal. In its FY2007 budget, the Administration estimated that the proposal would yield \$225 million over 10 years. In FY 2008, that estimate increased to \$10.8 billion. Finally, in this year's budget, the figure jumped again to \$18.73 billion. No explanation has been given with respect to the 83-fold increase in revenue yield since this provision was scored two years ago.

Contrary to what these unexplained budget numbers indicate, we believe the long term effect of this proposal would have a negative impact on tax revenue. Card processors likely will have increased compliance costs to ensure accurate reporting to the IRS, which would be passed to merchants resulting in lower profit margins and less taxable income.

Financial Institutions Should Not Be Law Enforcement Agents

Financial institutions currently have an extraordinary burden with heavy policing responsibilities under the *Bank Secrecy Act* and Office of Foreign Assets Control rules. Increasing this policing role to merchants' tax responsibilities could interfere with our responsibility to provide financial services to our members.

As an alternative to the proposal presently under consideration, we suggest increased audits and merchant reporting of electronic sales revenue as better options to catch businesses that underreport income to evade taxes.

While we do not support this proposal, if Congress decides to proceed, we strongly urge safe harbor protections be added that give immunity from civil and criminal liability to financial institutions that report in good faith the information they receive from third parties.

Additionally, we request that the effective date be extended to give financial institutions reasonable time to develop and adopt proper policies and procedures, and review and modify operations to conform to the new requirements.

Conclusion

This proposal would add to the substantial compliance burden credit unions already face. On behalf of America's credit unions and their 90 million members, we encourage your opposition.

Sincerely,



Daniel A. Mica
President & CEO