



Credit Union National Association

CUNA Issue Summary

INTERCHANGE FEES

ISSUE: Merchants pay a fee (known as a ‘merchant discount’) to their bank or an independent payment processor for the ability to accept and process debit and credit card transactions. One part of this fee is called interchange. The merchant’s bank forwards the interchange fee to the financial institution that issued the card to the consumer. The payment network and the merchant’s bank divide the remainder of the merchant discount fee.

Credit unions issue debit cards and credit cards to their members, and are therefore known as issuing financial institutions or issuers. Of the 90 million individuals belonging to credit unions, 98% belong to a credit union issuing debit cards and 84% belong to a credit union issuing credit cards. Interchange revenue received by credit unions supports the convenient debit card and competitive credit card programs used by their members. In return for the merchants’ interchange fee, the credit union assumes the expenses and risks of debit cards and credit cards.

The card issuers, including credit unions, and the payment network provide the operational framework for debit and credit card transactions. Interchange fees are payable to the credit union (or other card issuer) with respect to each debit or credit card sales transaction as a contractually-fixed percentage of the amount of the sale, a flat fee, or a formula with both factors. Merchants contract with an acquiring bank, aggregator, or independent payment processor to provide payment processing services for card transactions and negotiate terms with the payment networks on their behalf. Among the costs covered by interchange fees is a credit risk premium earned by card issuers to cover losses resulting from card users’ failure to pay their credit card accounts.

Interchange fees are assessed on each retail debit or credit card transaction at a rate that averages approximately 2% of the total amount of the transaction, including sales tax. Some merchant groups argue this rate is too high and that the rate has rapidly increased in recent years. The merchant groups, including trade associations for convenience stores and grocers, argue interchange fees constitute a “hidden tax” on consumers.

The Merchants Payments Coalition (MPC) was formed by merchants to press Congress to impose limits on the amounts of interchange fees card issuers may receive. <http://www.unfaircreditcardfees.com/>. The Electronic Payments Coalition (EPC) represents several financial services groups, including banks, card networks, and trade associations. CUNA is a member of the EPC. The EPC argues interchange legislation, such as H.R. 5546, is an attempt by the merchants to drive down their cost of doing business at the expense of consumers and the financial institutions issuing debit and credit cards to the consumers. The EPC argues there is no evidence that any reduction in interchange for merchants will result in savings passed along to consumers. <http://www.electronicpaymentscoalition.org/>

In addition to their legislative efforts, merchants have sought redress in the courts. Several retailers have brought suit against Visa and MasterCard, alleging the payment networks have colluded to set the amounts of interchange fees for the benefit of card issuers, and have thus violated federal antitrust laws. The litigation is ongoing.

CUNA POSITION: CUNA opposes legislation that would affect interchange fees as such action would adversely limit consumer options, competition and technological innovation. Interchange fees allow business costs, including the risk of consumer nonpayment, to be shared by the payments participants. Discussions regarding what value should be placed on the use of electronic payments should be within the purview of the industry participants. This policy position was adopted in April 2008.

The card-issuing financial institutions and the payment card networks believe interchange is a balanced business-to-business transaction that supports the value of debit cards and credit cards to consumers and merchants alike. Issuing debit and credit cards allows a credit union to build relationships with its members and remain competitive with larger financial institutions. A card-issuing credit union receives interchange from the merchant to support the debit and credit card programs, for the benefit of its members.

IMPACT ON CREDIT UNIONS: Credit unions strive to meet their members' comprehensive financial needs. It is critically important for our members that credit unions are able to offer debit and credit cards. Debit and credit cards obtained through credit unions offer convenience, competitive rates, and consumer-friendly terms. For example, by managing a credit card account through a credit union, a member is able to effectively manage their bills and establish a strong credit history. From purchasing groceries to gasoline, debit and credit cards are essential financial tools credit union members use several times a day.

For consumers, the current payment processing system, including interchange, enables and supports the convenience of debit and credit cards with competitive rates and terms. Credit unions oppose the proposed government interference as it would likely result in cost-shifting and increased fees for consumers to obtain debit and credit cards.

CUNA opposes legislation intended to disrupt the interchange system. Merchant-supported legislation would adversely affect consumer options, competition, and technological innovation within the financial industry. The merchants are seeking to build support and momentum for several bills that would reduce their interchange obligation.

H.R. 2695, introduced by House Judiciary Committee Chairman John Conyers (D-MI) on June 4, 2009, would give merchants an antitrust exemption advantage in interchange negotiations. A similar bill, S. 1212, was introduced by Senator Dick Durbin (D-IL) on June 9, 2009. While H.R. 2695 and S. 1212 provide an opt-out or carve-out for credit unions from the anti-trust negotiated interchange, credit unions continue to oppose the bills because the suggested exemption would have no practical effect and in fact, would place credit unions in an uncompetitive predicament.

On June 26, 2009, Congressmen James Sensenbrenner (R-WI) and Jason Chaffetz (R-UT) shared a letter with their Republican colleagues outlining their opposition to the legislation, "Because the Conyers/Durbin credit card fee bill will hurt consumers, small banks, and credit unions, and because there are remedies in current law for the alleged problems with the payment card system, we urge you to not cosponsor H.R. 2695."

On October 8, 2009, the House Financial Services Committee held a hearing on H.R. 2382, "Credit Card Interchange Fees Act of 2009," as introduced by Representative Peter Welch (D-VT) on May 13, 2009. The bill would make changes to card practices that would threaten the integrity of the card payment system. For example, the bill would reduce consumer choice and increase consumer costs by allowing merchants to discriminate among cards and removing merchant responsibility for charges in excess of the credit union's authorization. Mark Caverly, Executive Vice President of Local Government Federal Credit Union, testified on behalf of CUNA and the EPC in opposition to H.R. 2382.

In November 2009, the Government Accountability Office (GAO) released a study on interchange fees. The CARD Act (enacted in May 2009) included a provision directing the GAO to conduct this interchange study. CUNA worked with the GAO to share the credit union perspective on interchange and the debit and credit card payment system. Among the report's findings, the GAO stated that:

- "Consumers have benefited from competition in the credit card market, as cards often have no annual fees, lower interest rates than they did years ago, and greater rewards." (Executive summary)
- "Many industry participants and others agreed that the costs of card acceptance might shift from merchants to card holders if interchange fees were limited, card surcharges permitted, and interchange revenues decreased." (p.55)
- "Increased competition for acquiring services provides merchants with considerable choice and opportunities to negotiate and lower some of their card acceptance costs." (p.35)
- "Eight of the nine small merchants we interviewed reported getting solicitations – some frequently – for their acquiring business or have shopped their acquiring business." (p.36)
- "Representatives of credit unions and community banks reported that revenue from interchange fees allowed them to cover expenses related to offering credit cards and compete with large issuers to offer their customers credit cards." (p.22)

As consumers continue to increase their use of debit and credit cards, merchants will see a corresponding increase in their interchange responsibility as dollar volumes grow. However, the GAO report states that if proposed legislative action were to reduce the merchants' obligation for the system, consumers may face higher costs for using their cards (GAO-10-45, p. 45, November 2009). Media coverage of the GAO report supported the credit union position that under the merchants' proposed legislation, the consumer could see an increase in the costs for card services and a decrease in competition and convenience. In summary, the consumers would lose under the merchants' proposals. Without sufficient interchange revenue, credit unions may not be able to issue competitive credit cards for their members.

For merchants, the current payment processing system, including interchange, is competitive. A merchant, whether large or small, has numerous choices when it comes to contracting for payment processing services. For credit unions, interchange is just one part of a payment processing system that is an essential component of the overall financial marketplace. Credit unions believe it is not prudent public policy to separate interchange from the overall financial system. CUNA opposes statutory and rulemaking proposals that would affect interchange fees because such action would result in increased cost for consumers, decreased competition, and an unfair disruption of the marketplace:

Increased costs for consumers: For consumer-members, government intervention in interchange fees would likely result in cost-shifting from merchants to consumers and increased fees for consumers to obtain debit and credit cards. Interchange enables and supports the convenience of credit cards and debit cards with competitive rates and terms.

Decreased competition for consumers: Debit and credit cards obtained through credit unions offer competitive rates and consumer-friendly terms. By managing a debit or credit card account through a credit union, a member is able to effectively manage their bills and establish a strong credit history. Interchange enables credit unions of all sizes to issue debit and credit cards for its members.

Unfair disruption of marketplace: The merchants' legislative proposals to address antitrust and the structure of the card payment network would unfairly disrupt a functioning marketplace by giving merchants an enormous advantage over card-issuing credit unions. Any resulting reduction in the merchants' interchange responsibility would shift to the consumers; resulting in higher fees for cards and reduced access to a convenient and cost-effective payment card system.

CUNA believes government interference in this the card market stands to harm all participants, including consumers, merchants, and credit unions. Credit unions urge Members of Congress to oppose any legislation (H.R. 2382, H.R. 2695, and S. 1212) that would affect the consumers who are members of card-issuing credit unions and the interchange received by card-issuing credit unions.

OUTLOOK: As proposals relating to consumer protection issues and the creation of the Consumer Financial Protection Agency (CFPA) are pending before Congress, we will continue to see the merchants pursuing interchange amendments. For example, during consideration of the expedited effective date for credit card consumer protections, an amendment was offered to give the Federal Reserve authority to issue regulations pertaining to interchange. The amendment was ruled not in order, but the merchants are likely to continue to pursue an amendment strategy. The merchants are also pursuing an aggressive strategy incorporating advertising, grassroots, and media coverage. In their advertising, merchants argue that interchange should be compared to the sub-prime mortgage crisis and that interchange encourages issuers to engage in predatory lending.

HISTORY: Hearings to examine interchange have been held by the Senate Judiciary Committee, the House Judiciary Committee, and the House Energy and Commerce Committee. In the 110th Congress, House Judiciary Committee Chairman Conyers (D-MI) introduced H.R. 5546, the *Credit Card Fair Fee Act*. The bill, as introduced, would establish a three-member board appointed by the Federal Trade Commission and Justice Department to regulate interchange rates and give merchants an antitrust exemption to negotiate interchange with all participants of the payment network system. On July 16, 2008, the House Judiciary Committee passed the Manager's Amendment to H.R. 5546, by a vote of 19 to 16. The votes in opposition to the bill, and in support of the credit union position, were equally divided with eight Democrats and eight Republicans. The bill, as passed by the Committee, would give merchants an antitrust exemption to negotiate interchange with payment network participants. It also provided that credit unions could opt out of the merchants' negotiations. However, credit unions opposed this provision as it did not address the credit unions' concerns with the legislation. H.R. 5546 did not advance further in the 110th Congress.

In addition, the Department of Justice reviewed H.R. 5546. In a June 23, 2008, letter to the Ranking Member of the House Judiciary Committee, the Department of Justice expressed concern with granting an antitrust exemption in a functioning marketplace and questioned whether consumers would benefit from the antitrust exemption proposed in H.R. 5546.

Other interchange legislation was also introduced in the 110th Congress. S. 3086, the Senate companion bill to H.R. 5546, was introduced by Senator Dick Durbin (D-IL). H.R. 6248 was introduced by Congressman Peter Welch (D-VT). Issues addressed in H.R. 6248 include interchange on premium cards (also known as rewards cards) and giving merchants the ability to refuse a consumer's debit or credit card based on its interchange fee. H.R. 6620 was introduced by Congressman Stephen Lynch (D-MA) and it would provide a six-month limit on the amount of interchange charged on a card transaction for a purchase at a gas station. H.R. 6618 was introduced by Congresswoman Eddie Bernice Johnson (D-TX) and it would require gas stations to publicly display the price charged for gas purchases made with cash and the price charged for gas purchases made with debit or credit cards.

CONTACTS: [Ryan Donovan](mailto:rdonovan@cuna.coop), (202) 508-6750, rdonovan@cuna.coop
[Michele Johnson](mailto:mjjohnson@cuna.coop), (202) 508-6718, mjjohnson@cuna.coop

RELATED DOCUMENTS:

[2009 Legislative Briefing Paper](#)

[October 8, 2009: Testimony of Mark Caverly, Executive Vice President of Local Government Federal Credit Union, Raleigh, North Carolina, on behalf of the Credit Union National Association and the Electronic Payments Coalition before the House Financial Services Committee Hearing on H.R. 2382, the Credit Card Interchange Fees Act of 2009.](#)

[June 16, 2009: Letter from Dan Mica to the Members of the United States House of Representatives in opposition to pending legislation related to Interchange Fees](#)

 [CUNA Interchange Powerpoint Presentation](#)

[August 14, 2008: Letter from CUNA President and CEO Dan Mica to Senators Harkin, Snowe and Cardin regarding the Government Accountability Office Report on Interchange Fees](#)

[August 13, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House of Representatives Urging Opposition to H.R. 6620, the Gas Pump Fair Payment Act](#)

[July 21, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House Judiciary Committee Voting in Opposition to H.R. 5546 Expressing Gratitude for their Vote on behalf of Credit Unions](#)

[July 15, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House Judiciary Committee Expressing Opposition to the mark-up of H.R. 5546](#)

[June 6, 2008: Letter from CUNA President and CEO Dan Mica to Members of the Senate Expressing Opposition to S. 3086, the *Credit Card Fair Fee Act*](#)

[April 21, 2008: Letter from CUNA President and CEO Dan Mica to House Judiciary Committee Chairman John Conyers \(D-MI\) regarding H.R. 5546, the *Credit Card Fair Fee Act*](#)

[April 29, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House of Representatives regarding H.R. 5546, the *Credit Card Fair Fee Act*](#)

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