



CUNA & Affiliates

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**STATEMENT OF THE
CREDIT UNION NATIONAL ASSOCIATION (CUNA)
BEFORE THE HOUSE JUDICIARY COMMITTEE
HEARING ON**

H.R. 2695, the "Credit Card Fair Fee Act of 2009"

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Chairman Conyers and members of the Committee, thank you for the opportunity to provide a written statement on H.R. 2695, the "Credit Card Fair Fee Act of 2009" on behalf of the Credit Union National Association (CUNA). CUNA is the largest credit union advocacy organization, representing over 90 percent of our nation's 8,000 federal and state chartered credit unions and their nearly 92 million members.

Credit unions strive to meet their members' financial needs, and credit and debit cards obtained through credit unions have competitive rates and consumer-friendly terms, offering members important financial options to manage their finances more efficiently.

Of the approximately 92 million credit union members nationwide, 98% belong to a credit union issuing debit cards and 84% belong to a credit union issuing credit cards. Credit unions are proud to issue debit and credit cards to their members. Credit unions can offer these products because of interchange, the transaction fee that flows from the merchant, through its bank, to the credit union that issued the card to the consumer. Interchange helps the credit union cover its expenses and losses. In some cases, these expenses and/or losses far exceed the amount of interchange revenue a credit union receives. Merchants benefit as they are guaranteed payment at the time the transaction is completed.

CUNA opposes legislation intended to reduce the interchange responsibility of the merchants because consumers will not see a benefit as a result of any reduction in the merchants' interchange responsibility, and actually could be harmed by the legislation; credit unions would continue to experience expensive merchant data breaches with reduced resources; and credit unions would not be exempt from the result of the proposed negotiation structure in the pending interchange legislation.

Consumers Will Not See a Benefit, and Could Be Harmed

H.R. 2695 would artificially lower interchange rates and force credit unions to accept less revenue from the payments system. Merchants have argued that lowering interchange rates would be good for consumers, but if that were true, they would have supported an

amendment offered during the Committee's 2008 consideration of this legislation that would have directed merchants to pass on to the consumer any savings they received from lower interchange rates. If this legislation is truly in the best interests of consumers, merchants would have supported this amendment; however, they did not and the amendment failed.

If forced to accept lower interchange fees that would result from this legislation, many credit unions and other smaller institutions would re-evaluate their credit and debit card offerings, and possibly exit the market. This would result in consumers having fewer credit and debit cards from which to choose, forcing them to rely on only a handful of large issuers for credit and debit cards.

Supporters of this legislation assert that consumers would benefit from government interference, but there is no clear indication that this objective will be met. Granting merchants an anti-trust exemption on interchange fees is more likely to increase credit and debit cards costs that consumers bear.

It is unlikely that consumers will see any benefit from this legislation, and it is more likely that they will be harmed by this legislation because credit and debit cards would be less available and more expensive.

Credit Unions Would Continue to Experience Expensive Merchant Data Breaches

Merchants are guaranteed payment at the time the consumer's transaction is completed. When a data breach occurs at a merchant's site, the card-issuing credit union is the one bearing the immediate financial responsibility to make things right for the affected consumer. Credit unions bear the cost of replacing cards, shoring up member accounts, and often have to deal with the perception that they were at fault for the breach since the merchant does not have to disclose when they are the source of the data breach. Costs borne by a credit union for a data breach can often run in the hundreds of thousands of dollars per event. Litigation can take years and a vast amount of resources for the affected credit union, so the merchants either delay or avoid their responsibility for the breach.

At today's hearing, the Committee will hear from a witness, David Carpenter, representing the National Association of Convenience Stores. Mr. Carpenter owns a conglomerate that includes gas stations, convenience stores, and car wash outlets in Iowa. In 2007, a data breach occurred at a Kwik Stop convenience store in southeast Iowa. Kwik Stop is a competitor of Carpenter's "ShortStop" convenience stores. According to local financial institutions, magnetic strip data (containing ATM, debit card, and credit card numbers) was obtained from the Kwik Stop terminal and the breach occurred over a period of three years.

The impact of the Kwik Stop breach on local financial institutions was significant. For example, Dupaco Community Credit Union of Dubuque, had to reissue over 7,000 cards,

costing its credit union member-owners approximately \$78,000 (not including staff time); the fraud loss from this breach was approximately \$100,000. Another financial institution, Liberty Bank, where Mr. Carpenter sits on the board, likely also incurred significant costs associated with this single breach.

Despite the effect that breaches like the Kwik Stop breach have on local community banks and credit unions, merchants continue to push for legislation like H.R. 2695. Merchant's insistence on an anti-trust exemption illustrates their refusal to bear some responsibility for securing the payments system and paying their fair share of the costs of the system. Ironically, it also highlights the fact that merchants enjoy significant costs savings and benefits under the current system; nevertheless, they want more.

Credit Unions Would Not be Exempt from the Result of the Proposed Negotiation Structure in the Pending Interchange Legislation

Under H.R. 2695, credit unions and community banks are exempted from the anticipated negotiation sessions where the merchants will have an antitrust exemption advantage. Assuming the large merchants and the large financial institutions emerge from the negotiation sessions with a new and improper interchange rate, all card-issuing financial institutions in the card networks will receive the same interchange. Therefore, while a credit union may be excluded from the negotiation session, it will still be subject to the artificially lower interchange. The reduced interchange will result in higher fees for the consumer, reduced competition for consumer-friendly terms, and the high probability that some credit unions may have to discontinue their debit or credit card programs.

In conclusion, under H.R. 2695, merchants win and consumers lose. Merchants win because the anti-trust exemption allows them to collude and artificially lower their cost to accept debit and credit cards. Consumers will lose because an artificially lower interchange fee rate will mean fewer credit unions and community banks will offer cards to their members and customers, which will reduce availability and increase costs for consumers.

On behalf of America's credit unions and their 92 million members, we urge you to oppose the legislation and thank you for your consideration of our views.