



Credit Union National Association

cuna.org

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March 15, 2011

The Honorable Richard Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

On behalf of the Credit Union National Association (CUNA), I am writing in response to your statement on the Senate floor on March 10, 2011, regarding debit interchange regulation. CUNA represents approximately 90 percent of America's 7,600 state and federally chartered credit unions and their 93 million members.

Based on your statement last week, we believe there is a fundamental misunderstanding—or a lack of recognition—with respect to the impact that Section 1075 will have on credit unions and the millions of consumers they serve.

You have cited repeatedly the fact that Section 1075 exempts all but three credit unions from the regulation. We appreciate the intent of the exemption, which was to make most credit unions immune from the impact of Section 1075. Unfortunately, no one can demonstrate that it will work in the marketplace.

The likely ineffectiveness of the exemption and the inability to enforce a two-tiered system are concerns voiced by more than 5,000 letters from credit unions in comments to the Federal Reserve Board. Commenters also underscored the fatal flaw of not including all costs in determining the interchange rate.

Indeed, since passage of your amendment to the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act, credit union members have sent over one million communications to Capitol Hill expressing concern about the amendment's impact on them and their members.

It is true that on this issue, credit unions are aligned with the banks, which typically pursue policies aimed at eliminating consumers' ability to choose credit unions. We are compelled to do so not out of any particular concern for or allegiance to the banks, but because, like the banks, *credit union* officials are fearful of the anticipated impact of the proposed regulation on the institutions they run and on those they serve.



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What distinguishes credit unions from other financial firms and merchants in this debate is our concern for the impact on the consumer. Credit unions are the only interested party that has a demonstrated history of passing savings to consumers as part of a business model. Last year alone, consumers benefited to the tune of \$10 billion from better rates and lower fees by using credit unions rather than banks.

Credit unions are different: the member-owned, not-for-profit structure is central to how they conduct business. At the end of the day, credit union members benefit when the credit union does well, and that benefit is reduced when the credit union is challenged. In this case, that means credit unions will have absolutely no choice but to pass the impact of Section 1075 on to their members; credit unions are the one type of financial institution that can only build net worth from their retained earnings, such as those that come from debit interchange fees.

But as we have seen in recent weeks as the Fed's implementation deadline draws closer, real concern about the potential negative impact of Section 1075 is being expressed not only by credit unions and banks, but by key regulatory officials, consumer groups and other noteworthy commentators concerned about the impact on smaller financial institutions, consumers or both. For example:

- Fed Chairman Ben Bernanke, head of the agency charged with writing the implementing regulations, has said "it is possible the exemption will not be effective in the marketplace."
- FDIC Chairman Sheila Bair just last week wrote Chairman Bernanke to voice concern that small issuers "may not actually receive the benefit of the interchange fee limit exemption explicitly provided by Congress...."
- The Consumer Federation of America and the National Community Reinvestment Coalition are among the consumer groups that have expressed concern about the Fed proposal's impact on low and moderate income consumers.
- The NAACP, the well-known civil rights organization, has asked for a congressional review before the Federal Reserve adopts the interchange proposal due to concern that, as drafted, it could harm at-risk communities.

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- Respected academics have concluded that consumers and small businesses will face adverse impact from the proposal. One report, by David S. Evans, Robert E. Litan, and Richard Schmalensee, found that consumers and small businesses “would face higher retail banking fees and lose valuable services” as financial institutions seek to offset lost interchange revenue. The number of unbanked consumers would increase as lower-income households reduce the use of high-priced accounts, they added. And small businesses, most of which do not accept debit cards, would see higher banking fees with no offsetting benefits from lower interchange fees. Large retailers, on the other hand, “would receive a windfall.”

The concerns that have been expressed by us and others are valid and require action; therefore we must continue to call on Congress to address our concerns. While your intentions were certainly to the contrary, Section 1075 is likely to adversely affect every consumer that holds a debit card.

We hope you will join us in working with the Board to encourage it to enforce the small issuer exemption or to seek a legislative remedy in the likely event that the Board concludes it does not have the authority to enforce the exemption. Until that happens, credit unions will continue our advocacy efforts to delay the implementation of this flawed rule and encourage Congress to further study the impact it will have on consumers and the small institutions that you sought to make immune from the legislation.

On behalf of the 93 million members of America’s credit unions, thank you for your consideration and your continued support of the credit union movement.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Cheney", with a long, sweeping underline that extends to the right.

Bill Cheney
President & CEO