

June 15, 2009

To: Members of the U.S. House of Representatives

Re: Opposition to Proposals to Regulate Interchange Fees (H.R. 2695 and H.R. 2382)

The undersigned trade associations, representing a united lending industry, are writing in strong opposition to legislative proposals that seek to regulate interchange fees. Congressman John Conyers (D-MI), Chairman of the House Judiciary Committee, has introduced H.R. 2695, the Credit Card Fair Fee Act, and Congressman Peter Welch (D-VT) has introduced the H.R. 2382, the Credit Card Interchange Fee Act. Both bills, if enacted, would seriously disrupt the proper functioning of our nation's electronic payment system to the detriment of consumers, businesses, and the broader economy. Moreover, they would dramatically impact the ability of community banks to competitively provide credit and debit cards to local consumers.

While much has been said about interchange fees, very little has been explained. Quite simply, interchange is a fee that merchants pay when consumers use a credit or debit card to make a purchase. The fee partially reimburses the issuing bank for the significant costs and risks of issuing cards, including infrastructure expenses, fraud risk, and the real risk of non-payment. Merchants have lobbied Congress demanding lower interchange fees, while claiming that interchange fees harm consumers. In fact, these fees are an everyday cost of doing business that has greatly facilitated consumer convenience, merchant sales, and overall commerce in this country.

The bills that Congressmen Conyers and Welch have introduced take different approaches in their attempts to regulate the interchange rate, but their goals are the same – to allow retailers to pass their cost of doing business onto the consumer. Chairman Conyer's bill (H.R. 2695) would require parties to negotiate interchange rates, with negotiations and rates monitored by the Department of Justice. In practice, the bill has the implicit goal of artificially driving down rates through government-endorsed retailer collusion. H.R. 2382, offered by Congressman Welch, attempts to regulate interchange rates by limiting rewards card interchange fees and prohibiting certain contract terms related to interchange agreements. In practice, this bill would artificially constrain rules that networks have put in place to protect consumers while trying to use government intervention to drive down merchant interchange costs. If enacted, these proposals would harm consumers, because they would force consumers to bear the infrastructure and other costs.

The electronic payment system, which has greatly benefitted the way consumers conduct normal business, involves a broad network of participants that consists of consumers, merchants, issuing banks, acquiring banks, and card networks. This system, which is responsible for the enormous infrastructure that permits the seamless transfer of dollars and data every time a consumer swipes a card, has provided consumers the ease of purchase and approval in nearly a blink of an eye. This system also ensures that merchants are relieved of the burden of accepting only cash and checks, both of which carry significant risk and cost. Instead, merchants receive guaranteed payment through the payment system well before the consumer pays a single dime for the purchase, and importantly, well before the card issuer receives reimbursement for the dollars it advances to the merchant. To make this work, there must be the necessary balancing of interests and pricing so that lenders are willing to make cards available, consumers are interested in using them, and merchants are willing to accept them as forms of payment. This is an enormously complex undertaking, yet the electronic payment system and interchange as it exists today has provided the necessary balance of each party's interest for the benefit of all, as well as for the broader economy.

Should Congress choose to disrupt this balance, consumers would be harmed, as lenders are forced to pass on portions of the merchant's costs to borrowers. Moreover, community banks and other small businesses would be harmed. Banks would be required to absorb some of these costs, with community banks having less ability to absorb interchange losses. Community banks would no longer be able to provide various payment services on a par with their larger competitors, and thus no longer be able to serve their customers, with local communities suffering as a result. In sum, these initiatives would significantly upend the current marketplace.

Today, interchange is not a consumer issue, but instead a business-to-business issue. The card system is in the business of issuing cards, processing payments, and facilitating financial transactions. Merchants are in the business of selling goods and services and accepting cards for the payment of these goods and services. Thinking they are charged too much for the many benefits of outsourced card processing, the merchants are asking Congress to lower their cost of doing business. Congress should not inject itself into the debate over what is essentially a contract issue between industries, a position reinforced by the fact that consumers would be harmed if it did so.

We strongly urge you not to co-sponsor or support H.R. 2695 or H.R. 2382.

Sincerely,

American Bankers Association	Montana Bankers Association
Alabama Bankers Association	Nebraska Bankers Association
Alaska Bankers Association	Nevada Bankers Association
Arizona Bankers Association	New Hampshire Bankers Association
Arkansas Bankers Association	New Jersey Bankers Association
California Bankers Association	New Mexico Bankers Association
Colorado Bankers Association	New York Bankers Association
Community Bankers Association of Ohio	North Carolina Bankers Association
Connecticut Bankers Association	North Dakota Bankers Association
Delaware Bankers Association	Ohio Bankers League
Florida Bankers Association	Oklahoma Bankers Association
Georgia Bankers Association	Oregon Bankers Association
Hawaii Bankers Association	Pennsylvania Bankers Association
Heartland Community Bankers Association	Puerto Rico Bankers Association
Idaho Bankers Association	Rhode Island Bankers Association
Illinois Bankers Association	South Carolina Bankers Association
Illinois League of Financial Institutions	South Dakota Bankers Association
Indiana Bankers Association	Tennessee Bankers Association
Iowa Bankers Association	Texas Bankers Association
Kansas Bankers Association	Utah Bankers Association
Kentucky Bankers Association	Vermont Bankers Association
Louisiana Bankers Association	Virginia Bankers Association
Maine Association of Community Banks	Washington Bankers Association
Maryland Bankers Association	Washington Financial League
Massachusetts Bankers Association	West Virginia Bankers Association
Michigan Bankers Association	Wisconsin Bankers Association
Minnesota Bankers Association	Wyoming Bankers Association
Mississippi Bankers Association	
Missouri Bankers Association	