



October 17, 2022

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, Minority Leader McCarthy, Chairman Reed, Ranking Member Inhofe, Chairman Smith, and Ranking Member Rogers:

American families and businesses are tired of misinformation campaigns. Unfortunately, our friends at the Visa-Mastercard duopoly and the nation's biggest banks are engaging in one around the Credit Card Competition Act (CCCA) in order to preserve their stranglehold on the credit card routing market. We are truly sorry if you took the time to read their letter filled with half-truths, untruths and downright lies about this broken and anticompetitive market. Frankly, we were also more than a little surprised by the number of arguments entirely unrelated to the CCCA that the financial sector decided to stick in the letter. If throwing spaghetti at the wall to see what sticks seems like a desperation move, that's because it is.

Although the banks and networks think their half-baked letter is an effective distraction, credit card routing reform is a serious issue that would greatly benefit every retailer and merchant accepting credit cards as payment, as well as their customers. So, we took the liberty to unpack the lies and rhetoric so that you may decide for yourselves whether the market for credit card routing is fair and transparent.

Sincerely,

Merchants Payments Coalition

Re: Bank and Credit Union to Opposition to Senate NDAA Amendments 6201 & 6174; Durbin Amendment Expansion Via NDAA

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, Minority Leader McCarthy, Chairman Reed, Ranking Member Inhofe, Chairman Smith, and Ranking Member Rogers:

The undersigned state and national trade associations, representing virtually all banks and credit unions, including those primarily serving military-affiliated customers and members, write to express our strong opposition to consideration of the so-called “Credit Card Competition Act of 2022” (Amendment 6201) and an impractical, technically-flawed, and unnecessary study proposal (Amendment 6174) as amendments to this year’s National Defense Authorization Act (NDAA). Both are aimed at expanding the Durbin Amendment (Dodd-Frank Wall Street Reform Act).¹

These non-germane amendments will rob military families of their credit card rewards, reduce the availability of safe credit, and undermine the nation’s data security. They have been filed with the goal of enriching the largest multinational retailers and obscure payments processors and have no business being added to annual legislation designed to bolster our national defense. After months spent failing to obtain more than a single co-sponsor for the CCCA, it does not belong in NDAA.²

Both proposals are complex and flawed and in need of the scrutiny of regular order in their respective committees of jurisdiction (in fact, Amendment 6174 has never been introduced prior to this NDAA). These highly-contentious and divisive amendments directly implicate the interests of various committees with judicial, federal prudential, and international trade oversight.

¹ The Durbin Amendment added Section 920 (15 U.S.C. § 1693o-2) to the Electronic Fund Transfer Act (EFTA) (15 U.S.C. §§ 1693 *et seq.*) to include provisions capping interchange transaction fees for electronic debit transactions and rules for payment card transactions. The Durbin Amendment was included in the Dodd-Frank Act at the last minute, without a hearing and despite being unrelated to the subject matter of the Act. In 2013, commenting upon a settlement between merchants and payments companies, former House Financial Services Committee Chair Barney Frank (D-Mass.) stated “I believe that a free market approach in this area will be better for the economy and all concerned parties than the current [Durbin] system” and noted that Senate procedures prevented important changes to the Durbin Amendment. Also following passage, Senators Jon Tester (D-Mont.) and Bob Corker (R-Tenn.) introduced legislation to delay implementation of the Durbin Amendment.

² “*Capital Alpha’s* Katz wrote Sunday that the NDAA ‘is considered must-pass legislation,’ likely why Durbin and Marshall are trying to get their bill attached to it. ‘The effort feels like a desperation move because Durbin and Marshall don’t believe the bill could pass as a standalone.’ He further noted that the card-routing bill ‘has nothing to do with defense,’ something that’s ‘not an insurmountable obstacle, but for unrelated legislation to latch onto a bigger bill it typically needs broader support than this one has.’” *Bill targeting Visa and Mastercard is ‘still alive,’ but latest path ‘feels like a desperation move’; Legislation around credit-card routing is floated as amendment to defense budget, but analyst notes the bill ‘has nothing to do with defense’.* Marketwatch, 10/3/2022

Commented [MPC1]: A report on how much certain veterans pay in surcharges at commissaries to offset swipe fee costs sounds germane to the NDAA.

Commented [MPC2]: Banks issue rewards, not the credit card networks that are the focus of the bill. Banks use rewards as a marketing tool and will still be able to do so as the estimated savings from the bill are less than 10% of swipe fee revenues. If merchants can offer rewards programs while operating on low margins, then banks that have 32.5% profit margins can certainly do so as well.

Commented [MPC3]: With virtually no competition in the payments space, there is no incentive to innovate and improve security.

In fact, it was only after regulatory pressure on the debit card monopoly that card networks adopted security innovations like end-to-end encryption. Prior to debit reform, networks did not offer end-to-end encryption, but it became standard practice within months of its introduction in the market.

Commented [MPC4]: Small Main Street retailers pay even higher swipe fees than the largest retailers. (Transaction volume is one of the variables in swipe fees, and small retailers with low volume pay a higher rate than large retailers with high volume). Smaller retailers and merchants would greatly benefit from payments competition, as evidenced by the nearly 1,700 retail and merchant companies that signed a [letter](#) calling for competition. The nation’s biggest small business lobby, NFIB, has also endorsed the CCCA.

Commented [MPC5]: Discover and American Express may take offense to being labeled as “obscure” networks. Shazam, Star and NYCE have been routing debit transactions for more than a decade, and are also trusted by banks and consumers alike with billions of dollars in daily ATM transactions. These debit networks are hardly obscure as they have been around for decades. Some have been operating for over 40 years.

Commented [MPC6]: There have been over a dozen congressional hearings over the years on this issue, including a Senate Judiciary hearing in May.

In fact, the May Senate Judiciary included witness testimony that highlights the anticompetitive nature of the credit card market and how merchants pay the cost. Giant Eagle CEO Laura Karet stated in her written testimony that “Visa and Mastercard used the pandemic as an opportunity to effectively increase swipe fees. While Giant Eagle went to great lengths to ensure that our customers and employees were safe by providing curbside pickup and online ordering, Visa and Mastercard used this shift in shopping behavior to charge us a higher ‘card not present’ rate for these services...”

Commented [MPC7]: The legislation is bipartisan and bicameral, a rarity in today’s political climate.

Further, these amendments represent the encouragement of potentially unconstitutional or illegal public policies, given their explicit contravention of the “two-sided market” doctrine set by the U.S. Supreme Court, and its finding that the credit card market is not anticompetitive.³ The market is competitive, according to the Herfindahl-Hirschman Index, which is the standard market competition metric used by the Department of Justice and Federal Trade Commission. The amendments would also constitute an unprecedented and premature legislative intervention in other matters currently under active litigation and settlement phases in various federal courts.

Not only is the CCCA not germane to the NDAA, but it will seriously hurt consumers, small community banks, and credit unions, including financial institutions that serve members of the military.

The Proposed Study Would Waste Taxpayer Resources and Duplicate Existing Data

The “Study” amendment is a litany of slanted research questions hastily written to reach a foregone conclusion. A costly study is unnecessary in light of years of independent, high-quality research by the Federal Reserve and academics. A new report from the Fed shows that credit card issuers lose money on transaction fees they charge to merchants because the issuers pay those fees back out to others, including consumers, in the form of services provided.

The Study amendment also makes no reference to the costs borne by military families in the form of rising retail prices at Kroger, Walmart, Amazon and others. It asks no questions about why military families working at big retailers are seeing their wages lag far behind the price increases they are being charged. It does not look at the failure of big retail to pass along their savings from the original Durbin Amendment to veterans and military families in the form of lower prices. Nor do the sponsors want to study big retailers’ labor⁴⁵ and military⁶ policies that have come under significant scrutiny in recent years. The reality is that cards have expanded access to Morale, Welfare, and Recreation (MWR) facilities, saving military-affiliated consumers money.⁷ If ever a proposed study was designed to miss the big picture, it’s this one.

While executives at companies like Kroger and Albertsons⁸ boast about their ability to freely increase prices on captive consumers, the sponsors introduced their amendments to boost these

³ In its *Ohio v. American Express Co.* ruling, the Court found that the U.S. credit card market did not bear the hallmarks of a non-competitive market, and that because card transactions are a two-sided (with merchants and their banks on one side of a transaction and consumers and their card-issuing financial institution on the other), the appropriate method of analysis was that of a “two-sided market.” See 138 S. Ct. 2274 (2018). The proposed Marshall-Durbin study amendment would analyze the credit card market through the rejected one-sided market framework.

⁴ Walmart changes military leave policy, agrees to pay up to \$14 million for reservists’ claims. Military Times, 1/5/21

⁵ Grocery Stores Are Excited to Charge You Higher Prices. CNN Business, 6/18/21

⁶ Military Families Overseas Say They Can’t Order from Amazon Anymore. Military Times, 3/26/20

⁷ According to a 2019 *Federal Register* Notice by the Office of the Secretary of Defense, a commissary purchase made by card “still nets a 23.2 to 22.8 percent overall savings to the consumer” versus non-commissary prices.

⁸ “Our business operates the best when inflation is about 3% to 4%,” Kroger CEO Rodney McMullen said on an earnings call with analysts Thursday. “A little bit of inflation is always good in our business.” Kroger can pass off

Commented [MPC8]: SCOTUS did not make factual findings about market structure, but ruled that a lower court that did find competition problems had not applied appropriate legal tests.

The case was also focused on American Express, which does not engage in the same business practices as Visa and Mastercard, which the CCCA seeks to address. In fact, the bill exempts the American Express and Discover business models.

Commented [MPC9]: Two companies with 83% market control that set swipe fee rates for the nation's largest banks, which collect said fees from merchants with no negotiating power, does not sound like a competitive market.

Commented [MPC10]: The current monopoly in the payments system cost American families \$900 in swipe fees last year. That number will certainly be higher this year.

Commented [MPC11]: How many small community banks and credit unions have \$100 billion in assets? Only 32 banks and one credit union meet that threshold. (Two of the 32 are American Express and Discover's banks, which aren't "covered under the bill" because they don't issue Visa and ...

Commented [MPC12]: The report did not find negative revenues. In fact, the study found that issuing credit cards is a highly profitable business. Banks are referring to a section of the study that only compared the costs of routing transactions and rewards programs versus swipe fee ...

Commented [MPC13]: We don't know why the banks chose to distract readers with this paragraph, but the fact is retailers are going to extraordinary lengths to attract and retain talent through increased workplace flexibility, enhanced benefits and higher wages. BLS data shows that ...

Commented [MPC14]: A 2013 report from economist Robert Shapiro begs to differ. The study found that in the first full year after the Durbin Amendment, \$8.5 billion were saved in swipe fees with 70% of those savings going to ...

Commented [MPC15]: Shiny object alert: One day after the cited Military Times article was published, the same publication reported that the ordering glitch was fixed.

Commented [MPC16]: The quote was referencing grocers performing well with 3-4% inflation. The article goes on to say if prices go above 4%, consumers may skip buying, hurting sales. Inflation has not been below 4% since March 2021.

Commented [MPC17]: Speaking of executives talking about inflation, Visa's CFO Vasant Prabhu on an earnings call earlier this year said, "historically, we are a beneficiary of inflation," and, "To the extent that there's inflation driving up ticket size, clearly it's beneficial to us." That is because ...

companies' triple-digit profit increases even further and were apparently uninterested in studying how their mega retailer allies are draining the wallets of military families through profitable price increases. Ultimately, these amendments are about passing the buck for higher prices: ensuring that as many bucks as possible pass right out of military families' pocketbooks and into the dividends of publicly-traded retailers.

The Proposed Study Would Violate the Financial Privacy of American Heroes

It is cynical and disrespectful to those who served and sacrificed to invoke Purple Heart recipients, POW-MIA heroes, and disabled American veterans in a desperate attempt to buoy the earnings of corporate retailers, yet the Study amendment does so. Worse, this plan to tally up the spending of these singled-out Americans would require the federal government to undertake an unprecedented violation of their privacy by de-anonymizing their transaction histories, without their consent or due process of law. We urge Senators Marshall and Durbin to remove those sections immediately so that a debate about bank regulation can occur on civil and reasonable grounds. As organizations whose members serve, employ, and protect the privacy and data of these Americans, we are taken aback by this tactic.

The Credit Card Competition Act Will Reduce Competition

The CCCA will not increase competition in the credit card marketplace, but it will benefit multinational retailers at the expense of consumers and community financial institutions, including those serving members of the military. It does so by reducing the number of credit card issuers competing for consumers' business, removing a consumer's choice of preferred card network, reducing the competitive differences among card products, limiting popular credit card rewards programs, and putting the nation's private-sector payments system under the micromanagement of the Federal Reserve Board. It will also make it more difficult for merchants and federally-insured financial institutions to prevent fraud and protect the transaction data.

The CCCA Increases Profits for the Sponsors' Favored Firms

Further, this legislation circumvents the free market to award private-sector contracts to a small handful of payment networks favored by the bills' sponsors in order to pad the profits of the largest e-commerce⁹ and multi-national retailers¹⁰ who are raising prices on American families far more than the real rate of inflation.¹¹

costs to consumers when inflation hovers around that mark, McMullen said, and "customers don't overly react to that." [Grocery Stores Are Excited to Serve You Higher Prices](#). CNN Business, 6/18/21

⁹ [The World's Largest Retailers 2022: Pandemic Helps Amazon Cement Its Lead](#). Forbes, 5/12/22

¹⁰ [Grocery Stores Are Excited to Charge You Higher Prices](#). CNN Business, 6/18/21

¹¹ [Revealed: top US corporations raising prices on Americans even as profits surge](#). The Guardian, 5/12/22

Commented [MPC18]: 137.8 billion "bucks" were collected in total swipe fees last year from every business accepting credit or debit cards. Competition in the payments space could save retailers and their customers at least \$11 billion per year.

Commented [MPC19]: The introduction of more options in the market tends to have the opposite effect. The approximately 30 banks covered under the bill issue nearly 90% of the credit cards today. A little competition won't hurt.

Commented [MPC20]: Consumers have relationships with the bank that issues their card, not the networks. Neither the consumer nor merchant have any choice in how credit card transactions are routed. The bill would recognize merchants as customers to the networks, giving them options that will benefit consumers.

Commented [MPC21]: Banks are currently regulated by the Federal Reserve, so nothing changes. Also, requiring networks to compete like every other American business does is hardly "micromanagement."

Commented [MPC22]: The U.S. has the most credit card fraud in the world at 35%, despite being the most expensive market for routing credit card transactions and only accounting for 22% of the world's transaction data. It's clear that high prices alone are not doing anything to help Visa and Mastercard prevent fraud. Maybe some competition will help the same way debit reform did by bringing innovation and improved security.

Speaking of fraud, retailers are on the hook for most of it. Visa and Mastercard pay nothing for fraud.

Commented [MPC23]: This is a very generous use of the term "free market" when it is a market of which the two networks control 83%.

Commented [MPC24]: If anyone has been padding profits, it's the banks that have a profit margin of 32.5%, the highest of any industry in the nation. In fact, banks are collecting even more in fees due to inflation. Retailers, on the other hand, operate in a highly competitive industry with about 2.5% profit margins.

Profits from swipe fees for the networks and banks are actually growing due to inflation. They charge a percentage of a transaction regardless of its size. However, their cost of sending the data doesn't change on transaction size. So as prices go up, they make more money, no matter what.

Retailer Profits Are At Record Highs – This is About Stock Prices for the Biggest Players

In fact, Federal Reserve Board Vice Chair Lael Brainard stated¹² recently that retailer profits are near their highest levels since World War II. Yet these global retail giants are demanding that Washington intervene on their behalf, even as they reject measures to cap their sudden price increases on everyday consumers.

Despite its authors' claims, the CCCA will result in fewer options for consumers, greater threats to consumer data and privacy, weakened community banks and credit unions, and the disappearance of card rewards programs (i.e., airline miles and cash back) that families of all income levels utilize.

This is Durbin Amendment 2.0 – Recycling a Failed Policy

The federal government's attempt to impose price controls by regulating interchange through the Durbin Amendment is the purest example of a failed government policy. If the goal of the requirement that credit unions and banks enter contractual relationships with many payment networks was to reduce costs to consumers, then it failed. Congress should not double down on this failure in this year's NDAA, especially considering it is not germane to this bill.

For the reasons laid out above, and to protect consumers and financial institutions that support American servicemembers, we urge you to oppose any consideration of the CCCA amendment (Amendment 6201) or related Study amendment (Amendment 6174) to the NDAA.

Sincerely,

AMERICAN BANKERS ASSOCIATION

ASSOCIATION OF MILITARY BANKS OF AMERICA

BANK POLICY INSTITUTE

CONSUMER BANKERS ASSOCIATION

CREDIT UNION NATIONAL ASSOCIATION

¹² “[I]n the second quarter [of 2022], measures of profits in the nonfinancial sector relative to GDP remained near the postwar peak reached last year... Similarly, **overall retail margins—the difference between the price retailers charge for a good and the price retailers paid for that good—have risen significantly more than the average hourly wage that retailers pay workers to stock shelves and serve customers over the past year, suggesting that there may also be scope for reductions in retail margins.** With gross retail margins amounting to about 30 percent of sales, a reduction in currently elevated margins could make an important contribution to reduced inflation pressures in consumer goods.” Prepared remarks of Federal Reserve Vice Chair Lael Brainard at a financial services conference, New York, September 7, 2022.

Commented [MPC25]: Chairwoman Brainard was referring to gross margins, NOT profit margins. Gross margins are of course higher due to supply chain disruptions, inflation and higher operating costs for merchants. By the way, the second highest operating cost for retailers is swipe fees. Only labor costs, which are also rising, are higher.

Commented [MPC26]: Banks in other countries offer rewards while collecting much lower swipe fees. Visa and Mastercard argued that rewards would end in Australia when swipe fee reform was being debated. A decade after reform, The Reserve Bank of Australia found that banks still offered "significant credit card rewards."

Banks will still have plenty of room in their marketing budget to provide rewards. In fact, rewards programs are a highly competitive space, which incentivizes banks to sustain them.

Commented [MPC27]: Did the signers of this letter read the bill? Fee caps and price controls are not included. The bill focuses purely on competition.

Commented [MPC28]: In addition to the 2013 Shapiro study, Moody's Investor Services in 2012 reported that savings from debit reform shielded consumers from higher prices that resulted from other increased operating costs. A separate Federal Reserve study found similar results of merchants being able to avoid price hikes.

Commented [MPC29]: The bill also prohibits any foreign network, including China's UnionPay, from entering the U.S. market, bolstering national security. China UnionPay, at Visa and Mastercard's invitation, currently sits on the board of the two security standards setting bodies for the U.S. payments system. The CCCA would ensure that China UnionPay would not be able to participate in the U.S. market.

DEFENSE CREDIT UNION COUNCIL

ELECTRONIC PAYMENTS COALITION

INDEPENDENT COMMUNITY BANKERS OF AMERICA

NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS

NATIONAL BANKERS ASSOCIATION

cc: The Honorable Amy Klobuchar, Chairwoman, Senate Rules Committee The Honorable Roy Blunt, Ranking Member, Senate Rules Committee The Honorable Jim McGovern, Chairman, House Rules Committee The Honorable Tom Cole, Ranking Member, House Rules Committee