

August 5, 2022

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Joint State Financial Services Associations Letter Opposing S.4674 & Expansion of Durbin Amendment Routing to Credit

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, and Minority Leader McCarthy:

The undersigned state and national trade associations, representing virtually all banks and credit unions, write to express our strong opposition to the so-called “Credit Card Competition Act of 2022” (S. 4674) introduced by Senators Roger Marshall (KS) and Dick Durbin (IL).

Far from increasing competition in the credit card marketplace, this legislation will reduce the number of credit card issuers competing for consumers’ business, wring out the competitive differences among card products, decimate card rewards programs (e.g. airline miles) valued by American families and our tourism sector, and put the nation’s private-sector payments system under the micromanagement of the Federal Reserve Board. The Marshall-Durbin bill does all this by using legislation to award private-sector contracts to a small handful of the sponsors’ favored payment networks in order to pad the profits of the largest internet¹ and national² merchants who are raising prices on American families far more than the real rate of inflation³.

¹ *The World’s Largest Retailers 2022: Pandemic Helps Amazon Cement Its Lead.* Forbes. May 12, 2022. <https://www.forbes.com/sites/laurendebter/2022/05/12/worlds-largest-retailers-2022-amazon-walmart-alibaba/>

² “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 costs to consumers when inflation hovers around that mark, McMullen said, and ‘customers don’t overly react to that.’” *Grocery stores are excited to charge you higher prices.* CNN. June 18, 2021 <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>

³ “[A] Guardian analysis of top corporations’ financials and earnings calls reveals most are enjoying profit increases even as they pass on costs to customers, many of whom are struggling to afford gas, food, clothing, housing and other basics. The analysis of SEC filings for 100 US corporations found net profits up by a median of 49%, and in one case by as much as 111,000%. Those increases came as companies saddled customers with higher prices and all but ten executed massive stock buyback programs or bumped dividends to enrich investors.”
Revealed: top US corporations raising prices on Americans even as profits surge. The Guardian. April 27, 2022

And contrary to its sponsors' misguided claims, a decade of research has shown that government favoritism in private payments markets is a backdoor price control that causes significant harm to community banks and credit unions and has not produced the consumer savings promised by retailers. Since the enactment of the Durbin Amendment in 2010, our industry (comprised of financial institutions of all sizes and charters) has been clear, consistent, and in lockstep in our opposition to that destructive policy, and the Marshall-Durbin bill manages to take a bad idea and make it worse.

The impacts of this bill are clear: **fewer options for consumers, greater threats to consumer data and privacy, weakened community banks and credit unions, and the disappearance of card rewards programs** that families of all income levels⁴ use to stretch their budgets.

While big merchants are fighting against bicameral legislation that would scrutinize their spiraling price increases amid rocketing retail profits⁵, they eagerly support the Marshall-Durbin federal price controls. They fail to mention that credit card acceptance⁶ fees were recently *reduced* for small merchants and food stores. We urge you to reject this cynical manipulation of our nation's payments system for narrow financial gain.

This Legislation Hands Control of Our Nation's Credit Card System to Breach-Prone Merchants

The Marshall-Durbin bill purports to provide merchants a choice of which networks credit card transactions are processed across. *But this dual-routing technology does not exist today* and for good reason. A credit card transaction is an extension of the bank or credit union's own funds to its cardholder, who directs those newly lent funds to a merchant. It makes perfect sense that the bank and credit union that lends these funds should carefully and deliberately select the network over which their own funds flow to the merchant. Unlike merchants that specialize in selling groceries or shoes, financial institutions are payments experts responsible for and best positioned to protect their customers against fraud, loss of private data, and the inefficiencies of unreliable systems. Financial institutions are also examined for compliance with privacy, data security, and fair lending laws, while merchants are not.

<https://www.theguardian.com/business/2022/apr/27/inflation-corporate-america-increased-prices-profits>

⁴ *Joint Bank and Credit Union Statement for the Record to the U.S. Senate Judiciary Committee*. May 4, 2022. <https://www.aba.com/-/media/documents/testimonies-and-speeches/joint-trades-sfr-on-durbin-amendment-05042022.pdf>

⁵ *Companies use inflation to hike prices and generate huge profits, report says*. [NBC News](https://www.nbcnews.com/business/consumer/food-suppliers-blame-inflation-price-hikes-lawmakers-say-padding-bill-rcna9200). December 20, 2021. <https://www.nbcnews.com/business/consumer/food-suppliers-blame-inflation-price-hikes-lawmakers-say-padding-bill-rcna9200>

⁶ *Visa to cut consumer credit fees for U.S. small businesses by 10%*. [Reuters](https://www.reuters.com/business/finance/visa-cut-consumer-credit-fees-us-small-businesses-by-10-document-2022-03-03/). March 3, 2022. <https://www.reuters.com/business/finance/visa-cut-consumer-credit-fees-us-small-businesses-by-10-document-2022-03-03/>

If You Like Your Credit Card, You Can't Keep It: Bill's Mandates Render Existing Cards Inoperable

This bill requires much more than “routing choice” or two networks per card. It also contains an explicit requirement that card issuers enable all types of transactions and security protocols, even if a bank or credit union board finds that these methods are unnecessary, unaffordable, or unsecure. Supporting the whims of any merchant in our large country would mean adopting *many more* than two networks, the only route to avoid a costly enforcement action from regulators. Each time a network is added or changed to keep up with merchant demands, hundreds of millions of new chip cards would have to be issued, inconveniencing cardholders, exposing consumers to identity fraud through mail theft, and increasing the cost of the payment system, particularly when there is a microchip shortage.

Federal Agency Statistics and Courts Agree: The Credit Card Marketplace is Competitive

Let us be clear: there is no deficiency in the current credit card processing system. To the contrary, it moves millions of dollars a second with 99.999% reliability and remains hardened against security intrusions and data theft. It provides protections like zero-dollar fraud liability for consumers and guaranteed payments for merchants, the kind of benefits that might be taken for granted but aren't available through other payment methods. This 24x7/365 infrastructure is expensive and credit card interchange is a major source of how it is financed.

And with over 5,000 credit card issuers marketing directly to consumers, the credit card industry is competitive, as confirmed by metrics used by the FTC and DOJ, and a recent U.S. Supreme Court decision where no justice found evidence of anticompetitive market structure. The vast majority of these card issuers are small and community financial institutions based on the Main Streets of America. For Americans who receive frequent marketing to try a new card, Senators Marshall and Durbin's claims that there is no competition in the credit card marketplace will come as a surprise.

Marshall-Durbin Guarantees Profits for and Steers Private Contracts to Its Favored Card Networks

This bill is not borne of real needs in the American payments system. It is about Congress picking winners and losers. The Marshall-Durbin bill is a throwback to regulatory rent-seeking of the worst kind - reminiscent of the Washington-enforced Ma Bell phone network monopoly and the price-fixing of the Civil Aeronautics Board, when central planners limited choices and guaranteed corporate profits. In this case, regulators will essentially award credit card franchises and routes to certain payment networks using complex studies, policy task forces, and formulas not yet created. While its sponsors speak of increasing options, this bill contains mandates that our members buy from certain companies, while prohibiting them from choosing better and more secure options.

Congress Should Not Force the Federal Reserve to Override Consumers' Choice of Credit Cards

The Marshall-Durbin bill is an overreach that should concern people of all political persuasions. It reaches into the pockets of every American who uses a credit card and forces the vast majority of them to give up their preferred card and chosen network in favor of a new, federally-mandated regime. Our members think that Americans are smart enough to pick what goes in their wallets

without getting a government seal of approval. By placing control of routing, a key part of transaction approval and authorization, into the hands of the government, this bill crosses important civil liberty boundaries and leaves the door open for new regulations at any time, reflecting the political perspectives of the appointees in power at that moment.

The Durbin Amendment Hurt Community Banks and Credit Unions, Why Create a Sequel?

This experiment has been tried before, with the Durbin Amendment on debit cards, leading to a precipitous drop in the availability of low-cost banking services and free checking accounts for consumers. A recent GAO report found that **the Durbin Amendment was “among the top five laws and regulations most cited...as having significantly affected the cost and availability of basic banking services.”** Further, the merchant lobby’s promise that this regulation would result in savings for consumers never happened – the merchants pocketed the savings. According to the Federal Reserve Bank of Richmond, after the Durbin Amendment was implemented, 98.8% of merchants failed to pass-through savings realized from debit regulation to consumers, and over 20% increased prices.

Most dangerously, this central planning of the major conduit for money in our economy will reduce access to banking services and harm community financial institutions. While supposedly “exempt” from the Durbin Amendment, community banks and credit unions still suffered a 30% decrease in their interchange revenue. Though the restrictions for "exempt" issuers are not explicit price controls, they have the same practical effect of distorting the market and transferring wealth from community financial institutions and consumers to a handful of high-volume, highly profitable large merchants. There is no surer way to disrupt the economics of small credit card issuers than to enact this legislation, which will wipe out already-thin margins of lower-volume issuers, causing them to leave the credit card market and concede the product category to larger firms better able to absorb these changes.

For the numerous reasons laid out above, and to protect consumers and community banks and credit unions alike, we urge you to oppose the Credit Card Competition Act of 2022.

Sincerely,

- American Association of Credit Union Leagues
- American Bankers Association
- Credit Union National Association
- Alabama Bankers Association
- Alabama Credit Union Association
- Alaska Bankers Association
- Alaska Credit Union League
- Arizona Bankers Association
- Arkansas Bankers Association
- Arkansas Credit Union Association – a political division of Cornerstone League
- Association of Vermont Credit Unions
- California Bankers Association
- California Credit Union League
- Carolinas Credit Union League – North Carolina
- Carolinas Credit Union League – South Carolina

Colorado Bankers Association
Connecticut Bankers Association
Credit Union Association of New Mexico
Credit Union League of Connecticut
CrossState Credit Union Association
Dakota Credit Union Association
Delaware Bankers Association
Delaware's Credit Unions – Cooperative Credit Union Association
Florida Bankers Association
Florida Credit Union Association
Georgia Bankers Association
Georgia Credit Union Association
GoWest Credit Union Association – Arizona
GoWest Credit Union Association – Colorado
GoWest Credit Union Association – Idaho
GoWest Credit Union Association – Oregon
GoWest Credit Union Association – Washington
GoWest Credit Union Association – Wyoming
Hawaii Bankers Association
Hawaii Credit Union League
Heartland Credit Union Association – Kansas
Heartland Credit Union Association – Missouri
Idaho Bankers Association
Illinois Bankers Association
Illinois Credit Union System
Indiana Bankers Association
Indiana Credit Union League
Iowa Bankers Association
Iowa Credit Union League
Kansas Bankers Association
Kentucky Bankers Association
Kentucky Credit Union League
Louisiana Bankers Association
Louisiana Credit Union League
Maine Bankers Association
Maine Credit Union League
Maryland Bankers Association
Maryland and DC Credit Union Association
Massachusetts Bankers Association
Massachusetts' Credit Unions – Cooperative Credit Union Association
Michigan Bankers Association
Michigan Credit Union League
Minnesota Bankers Association
Minnesota Credit Union Network
Mississippi Bankers Association
Mississippi Credit Union Association
Missouri Bankers Association
Montana Bankers Association

Montana's Credit Unions
Nebraska Bankers Association
Nebraska Credit Union League and Affiliates
Nevada Bankers Association
Nevada Credit Union League
New Hampshire Bankers Association
New Hampshire's Credit Unions – Cooperative Credit Union Association
New Jersey Bankers Association
New Mexico Bankers Association
New York Bankers Association
New York Credit Union Association
North Carolina Bankers Association
North Dakota Bankers Association
Ohio Bankers League
Ohio Credit Union League
Oklahoma Bankers Association
Oklahoma Credit Union Association – a political division of Cornerstone League
Oregon Bankers Association
Pennsylvania Bankers Association
Puerto Rico Bankers Association
Rhode Island Bankers Association
Rhode Island's Credit Unions – Cooperative Credit Union Association
South Carolina Bankers Association
South Dakota Bankers Association
Tennessee Bankers Association
Tennessee Credit Union League
Texas Bankers Association
Texas Credit Union Association – a political division of Cornerstone League
Utah Bankers Association
Utah's Credit Unions
Vermont Bankers Association
Virginia Bankers Association
Virginia Credit Union League
Washington Bankers Association
West Virginia Bankers Association
West Virginia Credit Union League
Wisconsin Bankers Association
Wisconsin Credit Union League
Wyoming Bankers Association

cc: Members of the United States Senate
Members of the United States House of Representatives