



Credit Union National Association

# ***CUNA Issue Summary***

## **INTERCHANGE FEES**

**ISSUE:** Merchants pay a fee (known as a ‘merchant discount’) to their bank or an independent payment processor for the ability to accept and process debit and credit card transactions. One part of this fee is called interchange. The merchant’s bank forwards the interchange fee to the financial institution that issued the card to the consumer. The payment network and the merchant’s bank divide the remainder of the merchant discount fee.

Credit unions issue debit cards and credit cards to their members, and are therefore known as issuing financial institutions or issuers. Of the 90 million individuals belonging to credit unions, 97% belong to a credit union issuing debit cards and 83% belong to a credit union issuing credit cards. Interchange revenue received by credit unions supports the convenient debit card and competitive credit card programs used by their members.

The card issuers, including credit unions, and the payment network provide the operational framework for debit and credit card transactions. Interchange fees are payable to the credit union (or other card issuer) with respect to each debit or credit card sales transaction as a contractually-fixed percentage of the amount of the sale, a flat fee, or a formula with both factors. Merchants contract with an acquiring bank, aggregator, or independent payment processor to provide payment processing services for card transactions and negotiate terms with the payment networks on their behalf. Among the costs covered by interchange fees is a credit risk premium earned by card issuers to cover losses resulting from card users’ failure to pay their credit card accounts.

Interchange fees are assessed on each retail debit or credit card transaction at a rate that averages approximately 2% of the total amount of the transaction, including sales tax. Some merchant groups argue this rate is too high and that the rate has rapidly increased in recent years. The merchant groups, including trade associations for convenience stores and grocers, argue interchange fees constitute a “hidden tax” on consumers.

Over last two years, hearings to examine interchange were held by the Senate Judiciary Committee, the House Judiciary Committee, and the House Energy and Commerce Committee. Pursuant to a request from a group of U.S. Senators, the Government Accountability Office (GAO) is studying how interchange fees are managed and the possible effect of price controls.

In the 110<sup>th</sup> Congress, House Judiciary Committee Chairman Conyers (D-MI) introduced H.R. 5546, the *Credit Card Fair Fee Act*. The bill, as introduced, would establish a three-member board appointed by the Federal Trade Commission and Justice Department to regulate interchange rates and give merchants an antitrust exemption to negotiate interchange with all participants of the payment network system.

On July 16, 2008, the House Judiciary Committee passed the Manager's Amendment to H.R. 5546, by a vote of 19 to 16. The votes in opposition to the bill, and in support of the credit union position, were equally divided with eight Democrats and eight Republicans. The bill, as passed by the Committee, would give merchants an antitrust exemption to negotiate interchange with payment network participants. It also provided that credit unions could opt out of the merchants' negotiations. However, credit unions opposed this provision as it did not address the credit unions' concerns with the legislation. H.R. 5546 did not advance further in the 110<sup>th</sup> Congress, but it is certain the merchants will continue to pursue legislation to address interchange..

In addition,, the Department of Justice reviewed H.R. 5546. In a June 23, 2008, letter to the Ranking Member of the House Judiciary Committee, the Department of Justice expressed concern with granting an antitrust exemption in a functioning marketplace and questioned whether consumers would benefit from the antitrust exemption proposed in H.R. 5546.

Other interchange legislation was also introduced in the 110<sup>th</sup> Congress. S. 3086, the Senate companion bill to H.R. 5546, was introduced by Senator Dick Durbin (D-IL). H.R. 6248 was introduced by Congressman Peter Welch (D-VT). Issues addressed in H.R. 6248 include interchange on premium cards (also known as rewards cards) and giving merchants the ability to refuse a consumer's debit or credit card based on its interchange fee. H.R. 6620 was introduced by Congressman Stephen Lynch (D-MA) and it would provide a six-month limit on the amount of interchange charged on a card transaction for a purchase at a gas station. H.R. 6618 was introduced by Congresswoman Eddie Bernice Johnson (D-TX) and it would require gas stations to publicly display the price charged for gas purchases made with cash and the price charged for gas purchases made with debit or credit cards.

The Merchants Payments Coalition (MPC) was formed by merchants to press Congress to impose limits on the amounts of interchange fees card issuers may charge. <http://www.unfaircreditcardfees.com/>. The Electronic Payments Coalition (EPC) represents several financial services groups, including banks, card networks, and trade associations. CUNA is a member of the EPC. The EPC argues interchange legislation, such as H.R. 5546, is an attempt by the merchants to drive down their cost of doing business at the expense of consumers and the financial institutions issuing debit and credit cards to the consumers. The EPC argues there is no evidence that any reduction in interchange for merchants will result in savings passed along to consumers. <http://www.electronicpaymentscoalition.org/>

In addition to their legislative efforts, merchants have sought redress in the courts. Several retailers have brought suit against Visa and MasterCard, alleging the payment networks have colluded to set the amounts of interchange fees for the benefit of card issuers, and have thus violated federal antitrust laws. The litigation is ongoing.

**CUNA POSITION:** CUNA opposes legislation that would affect interchange fees as such action would adversely limit consumer options, competition and technological innovation. Interchange fees allow business costs, including the risk of consumer nonpayment, to be shared by the payments participants. Discussions regarding what value should be placed on the use of electronic payments should be within the purview of the industry participants. The position was adopted in April 2008.

**IMPACT ON CREDIT UNIONS:** The merchants' primary legislative strategy in 2008 would have given merchants an antitrust exemption to use in interchange negotiations with payment network participants to lower the amount of interchange earned by card issuing institutions. CUNA believes interchange negotiations are more appropriately addressed by the market participants, without any antitrust exemption advantage for the merchants. Government interference in this working market stands to harm all participants, including consumers, merchants, and financial institutions.

Credit unions strive to meet their members' comprehensive financial needs. It is critically important for our members that credit unions are able to offer debit and credit cards. Debit and credit cards obtained through credit unions offer convenience, competitive rates, and consumer-friendly terms. For example, by managing a credit card account through a credit union, a member is able to effectively manage their bills and establish a strong credit history. From purchasing groceries to gasoline, debit and credit cards are essential financial tools credit union members use several times a day.

For consumers, the current payment processing system, including interchange, enables and supports the convenience of debit and credit cards with competitive rates and terms. Credit unions oppose the proposed government interference as it would likely result in cost-shifting and increased fees for consumers to obtain debit and credit cards. For credit unions, interchange is just one part of a payment processing system that is an essential component of the overall financial marketplace. Credit unions believe it is not prudent public policy to separate interchange from the overall financial system. For merchants, the current payment processing system, including interchange, is competitive. A merchant, whether large or small, has numerous choices when it comes to contracting for payment processing services.

In summary, CUNA opposes legislation intended to disrupt the interchange system. The merchant-supported legislation would adversely affect consumer options, competition, and technological innovation within the financial industry.

#### **STATUS/OUTLOOK:**

The merchants have not had a House bill nor a Senate bill introduced at this point in the 111<sup>th</sup> Congress. However, given their advertising in Capitol Hill newspapers, it is clear interchange remains a legislative priority for them in 2009. In their advertising, merchants argue that interchange should be compared to the sub-prime mortgage crisis and that interchange encourages issuers to engage in predatory lending. Therefore, it is important for credit unions to continue to be vigilant and talk to policymakers about the importance of interchange to their card-issuing credit union.

In the House, it is expected merchants will pursue a bill through the Financial Services Committee in connection with credit card billing practices legislation. Merchants may pursue issues identified in Rep. Welch's bill from last Congress (H.R. 6248), such as the amount of interchange on premium or "rewards" cards and the ability of a merchant to refuse a particular card based on its interchange fee. The merchants also announced in March 2009 that they had targeted approximately eight members of the Financial Services Committee to hit with their interchange grassroots efforts in anticipation of committee consideration of the credit card billing practices legislation.

Card issuers, including CUNA and state leagues, responded to the merchants' grassroots campaign with a similar effort. House Judiciary Committee Chairman Conyers remains interested in interchange and it is likely he could sponsor a bill similar to his 2008 bill (H.R. 5546).

In the Senate, Senate Banking Committee Chairman Dodd's credit card billing practices bill (S. 414) has a section calling for a GAO study regarding interchange fees. Senator Durbin has not introduced an interchange bill, but it is expected that he will introduce a bill similar to his 2008 bill (S. 3086).

CUNA urges Members of Congress to not to cosponsor and oppose any legislation that would affect the interchange received by card-issuing credit unions.

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#### **RELATED DOCUMENTS:**

 [CUNA Interchange Powerpoint Presentation](#)

[August 14, 2008: Letter from CUNA President and CEO Dan Mica to Senators Harkin, Snowe and Cardin regarding the Government Accountability Office Report on Interchange Fees](#)

[August 13, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House of Representatives Urging Opposition to H.R. 6620, the Gas Pump Fair Payment Act](#)

[July 21, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House Judiciary Committee Voting in Opposition to H.R. 5546 Expressing Gratitude for their Vote on behalf of Credit Unions](#)

[July 15, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House Judiciary Committee Expressing Opposition to the mark-up of H.R. 5546](#)

[June 6, 2008: Letter from CUNA President and CEO Dan Mica to Members of the Senate Expressing Opposition to S. 3086, the \*Credit Card Fair Fee Act\*](#)

[April 21, 2008: Letter from CUNA President and CEO Dan Mica to House Judiciary Committee Chairman John Conyers \(D-MI\) regarding H.R. 5546, the \*Credit Card Fair Fee Act\*](#)

[April 29, 2008: Letter from CUNA President and CEO Dan Mica to Members of the House of Representatives regarding H.R. 5546, the \*Credit Card Fair Fee Act\*](#)

**LAST UPDATED:** April 16, 2009

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