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July 15, 2008

The Honorable John Conyers  
Chairman, Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lamar Smith  
Ranking Member, Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

I am writing on behalf of the members of the American Bankers Association (ABA) in strong opposition to the Credit Card Fair Fee Act of 2008 (H.R. 5546), which is scheduled for markup by the Judiciary Committee on July 16.

This bill would provide a broad and unprecedented anti-trust exemption for merchants and would authorize a government-appointed panel to set interchange rates. This blatant price control legislation, whether accomplished indirectly through anti-trust exemptions or directly through the creation of a government price-fixing panel, would ultimately harm consumers, reduce the ability of financial institutions (and particularly community banks) to serve their local communities, and upend marketplace pricing at the very time the economy can least afford such government price manipulation.

Please consider the following major concerns with the proposed legislation:

- **Financial institutions and the customers they serve would be dramatically harmed by the legislation.** The legislation would create a new federal bureaucracy to regulate the fees that retail merchants rightly pay for access to the credit and debit card payment systems. Banks bear the risks in the payments system, including the costs of establishing and developing customer relationships, building the payment infrastructure, monitoring for fraud, and assuming losses for data breaches. Interchange fees allow banks to recover some of those costs. Government mandates to reduce those fees would strain the existing payments system while reducing the revenue necessary to compensate for these risks and costs. All banks, but particularly community banks, would be forced to reduce services they provide to consumers and local communities, to the significant detriment of both.
- **The legislation would cost consumers more to use their debit and credit cards, only to line the pockets of retailers.** It would place government price controls on a highly competitive market and it would backfire. Australia imposed caps on merchant access fees five years ago and the cost of credit went

up, benefits associated with card use (e.g., reward programs) went down, and competition decreased as the rate caps caused key players to leave the market. Importantly, there is no evidence that merchants passed on any of their reduced costs to consumers.

- **Government agencies charged with executing the anti-trust laws have expressed deep concerns over the bill's impact on consumers.** The Department of Justice (DOJ) and the Federal Trade Commission have expressed strong reservations about the core components in the bill, pointing to both the danger of undercutting existing anti-trust laws and the ultimate harm to consumers. DOJ's letter is strongly worded and specifically notes that the bill may harm consumers by increasing the cost of credit and reducing rewards programs, that it would establish a "buy-side monopoly" for merchants, and that it is "essentially price-control legislation" that is likely to be inefficient and costly, thereby harming consumers. DOJ also noted that the proposed anti-trust exemption for retailers would be inconsistent with anti-trust laws, stating that "the joint negotiations among merchants exempted by the bill appear to be the type of naked collusion that anti-trust laws condemn..."
- **The legislation would disrupt the balance established in a functioning, successful marketplace in which merchants, customers, financial institutions, and networks have benefited.** When merchants *choose to accept* payment cards, they pay a penny or two on each dollar for the ability to accept electronic payments. In return, merchants receive guaranteed payment (i.e., a guarantee that they will be paid for the purchase, which is otherwise not the case when a customer uses a check, for example, to pay for goods or services), increased sales and customer satisfaction, protection from employee fraud, and many other benefits. The interchange cost is a very small price to pay for all of these benefits.

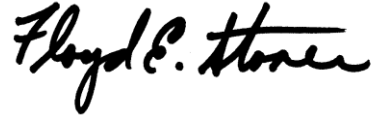
The merchants have made several outrageous and misleading claims about the impact that interchange fees have on gasoline prices. The fact is that interchange fees are only a minor component of the price of gasoline – a penny or two on the dollar – and merchants can and do make cash discounts available. Moreover, both Visa and MasterCard have capped or reduced interchange fees on gasoline purchases. As the price of gas – or food – is primarily driven by complex market forces involving supply and demand, as well as contractual relationships between suppliers and retailers, Congressional efforts to regulate interchange will have little to no impact on the price of these products and should not be the basis for moving forward on the legislation.

If the anti-trust exemption were to become law, every merchant in the country could band together in a group, or series of groups, and use normally anti-competitive tactics to wring concessions from the payment systems – the "buy side monopoly" noted by DOJ. This would harm consumers and undermine the nation's anti-trust protections. It would also seriously undermine competition that drives innovation in the card market. Not only does artificially lowering and capping prices diminish the incentives for payment systems to compete, but it slows or prevents the development and introduction of new technologies and products that benefit consumers.

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For the above reasons, ABA strongly opposes and urges you to vote against H.R. 5546 and any amendments that would provide an anti-trust exemption for merchants.

Sincerely,

A handwritten signature in black ink that reads "Floyd E. Stoner". The signature is written in a cursive style with a prominent horizontal line across the top of the letters.

Floyd E. Stoner

Cc: Members of the House Judiciary Committee