

*Statement for the Record*

*On Behalf of the*

AMERICAN **BANKERS** ASSOCIATION

*Before the*

**Committee on Financial Services**  
**United States House of Representatives**



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**October 8, 2009**

The American Bankers Association appreciates the opportunity to submit a statement for the record on the Credit Card Interchange Fees Act of 2009, H.R. 2382. ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over 2 million men and women.

H.R. 2382 seeks to amend the Truth in Lending Act (TILA), a consumer protection statute, by extending protections to merchants who choose to accept credit and debit cards. Specifically, H.R. 2382 limits interchange fees and the ability of the payment system and banks to appropriately price interchange rates, while also removing a number of protections and benefits for consumers. If enacted, the bill would significantly reduce the benefits consumers have come to enjoy from using credit cards, subject consumers to confusing merchant advertising practices, and reduce consumer convenience by raising the significant possibility that a merchant will not accept certain credit cards.

The United States has the most innovative, efficient and cost-effective consumer credit market in the world, providing fast, safe and low-cost transactions that benefit consumers and retail merchants. Today, credit and debit cards are responsible for more than \$3 trillion in transactions a year and are accepted at more than 24 million locations in more than 200 countries and territories. There are more

than 6,000 U.S. credit card issuers. In the last 20 years, the number of debit cards has grown from 60 million to nearly 450 million. All payment cards rely on a processing system that handles more than 10,000 transactions *every second* and has enough communications lines to encircle the globe nearly 400 times. ***Clearly, it is a system that works and works very well.***

This highly advanced and efficient payment system is the result of a competitive and innovative industry that has invested heavily in its ideas and its customers. The value delivered through this payment system to consumers, merchants and financial services organizations far exceeds the costs. Merchants, in particular, receive significant benefits from accepting electronic payments, foremost the ability to maximize consumer satisfaction and company sales. These guaranteed, immediate payments help merchants avoid bad check losses, employee theft, check float loss, costs associated with billing and collections, and managing and depositing cash. When merchants *choose to accept* payment cards, they pay a penny or two on each dollar for the ability to accept electronic payments. This is a very small price to pay for all of these benefits.

Interchange fees help to cover the significant risks and costs associated with providing electronic payments, including payment risk, fraud risk, and the operational costs of providing the extremely efficient and seamless payment system we have today. They also provide small community banks, particularly, with an important revenue stream that enables them to offer payment cards to their customers, allowing them to compete on a level playing field with the world's largest banks. There is significant customer demand for community banks to offer card products to complement their traditional bank offerings.

Merchants, banks, and card networks have worked together for more than 50 years to build an efficient and accessible electronic payments system that is convenient, secure, reliable, and global. H.R. 2382, if enacted, would disrupt the balance established in a properly functioning and remarkably

successful marketplace in which merchants, customers, financial institutions, and networks have benefited. We urge Congress to oppose H.R. 2382.

There are three key points we would like to make in this statement:

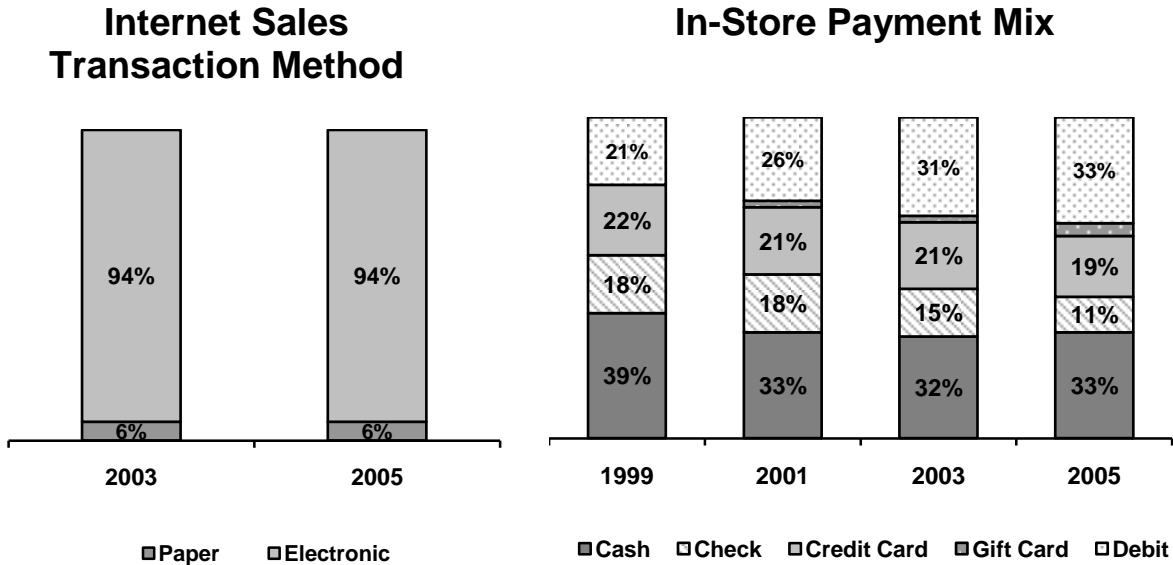
- Payment cards play a vital role in our economy and offer many benefits to consumers, merchants, and the local financial institutions that provide services.
  
- Interchange is not a consumer protection concern but a business-to-business issue.
  
- H.R. 2382 is a “merchant” protection law that ends up hurting consumers.

## **I. Payment Cards Play a Vital Role in Our Economy and Offer Many Benefits to Consumers, Merchants, and Financial Institutions**

Payment cards safely connect consumers and businesses instantly to a panoply of products and services. They provide merchants of all sizes with broad access to the buying public, funding for small businesses, and billions of dollars in annual payment-processing savings. Retail commerce, in particular online shopping, would not exist as we know it today without them. The charts on the next page clearly demonstrate the trend toward the use of payment cards; purchases over the Internet would hardly take place without them.

Millions of consumers and businesses have access to payment cards, and this is directly attributable to a pricing structure that has encouraged financial institutions to issue credit and debit cards, and merchants to accept them. *It is a win-win situation for everyone* involved that has resulted in an effective and reliable system for consumers and merchants that works so smoothly, they

take it for granted. Further, the electronic payments system has fostered a fiercely competitive industry that has revolutionized how Americans do business, fueled e-commerce, provided small merchants unlimited growth potential, and offered millions of consumers convenience, security, and access to money when they need it.



**Consumers have benefited tremendously from payment cards.** In the early 1970s, cards were available only to those with relatively high incomes. This is not the case today as some type of payment card is available to most people. Payment cards provide myriad benefits to consumers, most notably the everyday convenience for making purchases that is enjoyed by individuals and businesses, 24/7 around the world. Card accounts help households keep track of exactly how much and where their money is spent with the help of customized monthly statements or via up-to-the-minute account access over the Internet. Payment cards provide confidence, safety, and convenience when traveling close to home or abroad, and they are a means of identification. Some cards entitle consumers to popular and valuable enhancements, such as rebates and awards tailored to their purchasing habits and special interests, which are a result of the intense competition issuers engage in as they fight for consumer loyalty. Short-term credit is also a proven means by which average consumers can weather unexpected financial disruptions or pay for unexpected expenses.

The pricing structure within this system ensures that financial institutions have incentives to offer new and innovative products, which helps fuel increased use of cards and which translates directly to greater use at merchants in the United States and world-wide. Perhaps most important of all, innovations in the payment card industry have resulted in strong protections against fraud, including state-of-the-art technology that protects consumers from unauthorized access to their accounts. For example, credit card issuers notify consumers if it seems likely their account security has been violated and can automatically suspend account access until the status of the account is verified. Consumers face little if any liability for unauthorized or unlawful use of their credit cards; rather, it is the banks that bear this cost. For credit cards, generally, consumers' liability is limited to \$50 under federal law; however, in most cases, cardholders pay nothing for credit card losses, as issuers waive the \$50. It is hard to imagine a more powerful, flexible tool that offers so many protections against loss or fraud. Put simply, Americans participate fully in today's world economy – largely because of the access that a spectrum of card products provides – but pay nothing directly for this privilege. Importantly, it is the interchange revenue that plays a major role in being able to offer the full spectrum of card services.

**Merchants Benefit from the Payment Card System.** Payment cards of all kinds provide the passkey to new sales channels in the 21st century. Payment card acceptance gives business owners access to the broadest possible customer base. *It allows merchants to sell a greater volume of products in less time and at lower cost.* Payment cards are particularly helpful to smaller merchants because they give them access to a larger pool of customers that helps them compete with large chain stores at both the storefront level and on the Internet. In fact, e-commerce would have been impossible without the support of the electronic payments systems. *Whether online or in person, card transactions generate millions of customers and billions of dollars in sales for merchants every year.*

Sophisticated payment card systems provide merchants huge benefits compared with cash or checks. They are a form of guaranteed payment that protects merchants from the risk of fraud and non-payment. This allows retail merchants to instantly confirm that a customer has enough credit to make a purchase with his payment card and to have that payment transferred electronically from the customer's bank to the merchant's account. Retailers, while fully aware of the benefits these services provide, now do not want to pay for it. Rather, they want Congress to intervene to lower the cost of doing business.

The greater the use by both consumers and merchants, the more valuable the network is to all parties. It is no wonder that even retail businesses that deal in small dollar sales, such as fast food restaurants and coffee shops, are accepting card payment services. The firms had a choice to make regarding how best to increase sales and enhance the customers' need for convenient and fast service. The businesses have realized the significant value of the service and made an economic decision that it is in their best interest to be a part of the system.

Innovations by card issuers have rapidly expanded availability of payment cards to small businesses, further driving sales for retailers. Small firms benefit from access to credit to help finance their operations. They also benefit from flexible terms and greater ability to manage monthly expenses, track purchases, and weather short-term fluctuations in cash flow. Nearly half of all the small firms in the United States depend upon credit cards for their everyday operations. For example, small businesses made more than \$100 billion in purchases using Visa Business cards last year. Again, it is a system that works very effectively.

**The Economy Benefits from Payment Cards.** No retailer acting on its own could arrange for an efficient payment system like this one, developed and paid for by the banks involved. The card payment system today has provided enormous benefits to retailers and the economy. The General Accountability Office (GAO) found that the number of credit cards in use has grown from less than

100 million in the mid-1980s, to over 690 million through 2005. Accounting for trillions of dollars in transactions every year, credit cards are responsible for a large and growing share of consumer spending in the United States. Economic performance depends upon a stable, efficient, and secure means of exchanging value. In the United States, payment cards make this exchange possible every minute of every day. Imposing price controls on a system that has returned such significant benefits for our economy makes no sense.

**Local Community Institutions Benefit.** Community banks, and their customers, have also benefited from the growth of payment systems as it enables smaller banks to compete for customers with larger financial institutions. There is significant customer demand for community banks to offer card products to complement their traditional bank offerings. In fact, debit cards are particularly popular with bank customers and are the fastest growing segment of the payment card market. Revenue derived from interchange fees is critical to community banks' ability to provide card transaction services and helps support the provision of financial services more generally. This benefits consumers by offering more choice and allows community banks to compete with large institutions on an equal footing.

## **II. Interchange is Not a Consumer Protection Concern but a Business-to-Business Issue**

The electronic payments system is working for consumers, merchants, and the financial institutions that handle the transactions. The interchange fee is not paid by consumers but by acquiring banks to issuing banks. Acquiring banks pass these costs on to their merchant customers. Through H.R. 2382, merchants have sought to cloak interchange as a consumer protection issue. The bill goes

as far as to place merchant protections under the Truth in Lending Act (TILA), a statute designed to provide consumer protections related to lending.

Every time a consumer uses a credit, charge, or debit card, data regarding the payment is transmitted across an elaborate electronic payments system to verify availability of funds and to confirm payment directly to the merchant. The system allows the various card issuers to bill consumers appropriately, in the case of credit and charge cards, and to correctly debit a consumer's account in the case of debit cards. Usually the merchant has payment in full for all purchased items within days, long before the consumer receives a billing statement, and often long before a bill is paid in full, thus leaving nearly all repayment risk with the issuing bank. Merchants pay to accept card payments because doing so enhances their business. In fact, according to Entrepreneur.com, merchants can expect to increase profits by up to 50 percent when accepting card payments. In short, the current payments system reflects a ***business arrangement among business partners*** that provides benefit to all involved.

The value conferred to merchants is significant and they ***choose*** to use these systems because they benefit from a fast and secure method of payment that customers like and are using with ever growing frequency. Merchants know that there are costs to other systems as well. Cash has to be counted, and tends to “shrink” from theft. Checks are more expensive to handle, and merchants pay extra fees for check management. In fact, the cost of returned checks was a major reason for the creation of the electronics payments system in the first place. All of this means that merchants have choices. ***Retailers can choose not to accept payment cards, but they know that they will lose customers to other retail competitors that do accept payment cards.***

Supporters of H.R. 2382 argue that the bill is necessary to place more control of payment acceptance in the hands of merchants. However, by allowing merchants to escape bait and switch prohibitions and by eliminating consumer choices in the form of payment, the bill seriously erodes

existing protections available to consumers. Ironically, in the end, while providing protections to merchants, the bill, under TILA, fails to benefit consumers.

### **III. H.R. 2382 is a “Merchant” Protection Law that Ends Up Hurting Consumers.**

ABA strongly believes that passage of H.R. 2382 would lead to significant new costs and reduced benefits for consumers, all for the purpose of increasing profits at merchants. Our banks strongly believe that such a policy choice merely hurts our ability to serve consumers. Please find below some examples of our concern with the legislation.

- The bill would require that interchange fees on premium cards not exceed the fees on non-premium cards. This provision would essentially end rewards benefits that consumers have come to enjoy. If premium card interchange rates are curtailed, consumers would either lose rewards benefits or the cost of the benefits would be transferred to consumers in the form of higher annual fees or credit costs.
- The bill would also impact what is known as the “Honor all Cards” rule, allowing merchants to refuse to accept cards due to a card’s interchange fee. This would allow merchants to refuse to accept a VISA, MasterCard, AMEX or Discover carrying a particular brand, such as a store, association, or union brand, because the merchant believes the interchange fee on such card is too high. In that consumers do not pay interchange, they will not know which card is least costly to the merchant, and will be left to guess which card to use. Under present network rules, when merchants choose to accept payment cards, they generally elect to accept all cards under a particular logo. This is a convenience for customers and prevents consumer surprise at point of sale. H.R. 2382 would reverse all

that, allowing the merchant to dictate to consumers just what card choices that consumer has to make. It would also have the unintended consequence of limiting involvement by some of the smaller institutions in the marketplace, which would impact their ability to offer many services in small communities.

- The bill would allow merchants to establish minimum and maximum amounts for card acceptance, requiring consumers to use cash. While benefiting merchants, minimum and maximum amounts would inconvenience consumers who choose not to use cash for personal or safety reasons. The bill would eliminate consumer choice, add to consumer inconvenience and confusion, and place consumers at risk of harm.
- The bill would require that the identification of interchange fees comply with TILA disclosure mandates related to credit applications and billing statements. TILA disclosures exist for the purpose of informing consumers of fees or costs for which the consumer might be responsible under a covered lending agreement. Since interchange is a business cost ultimately paid by merchants, requiring disclosure under TILA would confuse consumers and serve no consumer protection purpose.

## **Conclusion**

ABA strongly opposes H.R. 2382 because interchange rates and governance should be determined by the free operation of the private market. H.R. 2382 would dilute consumer protections and result in higher real costs to consumers while merchants reap windfall profits and government-backed protections.

Each year our credit and debit card system processes millions of transactions with amazing accuracy. Merchants do not have to participate in this system and are free to accept cash and checks as

payment for goods and services. Indeed, most retail transactions are made via cash and checks, but increasingly, merchants have realized that the benefits of accepting card payments – access to millions of consumers through the Internet, guaranteed immediate payment for goods and services, and fraud protection – far outweigh the costs. The greater the willingness of consumers to use cards for payments, the more valuable the system becomes to merchants.

H.R. 2382 would turn back 50 years of development that has resulted in an efficient, accessible, secure, reliable, and global electronic payments system. It will undercut a pricing system that currently benefits consumers, businesses, and the broader economy. Rather than reduce costs at the cash register, H.R. 2382 would give merchants windfall profits; rather than encourage the development of new products that allow consumers to manage their money more easily, H.R. 2382 would take away options for consumers. The American Bankers Association urges Congress to oppose H.R. 2382.