NAFCU
National Association of Federal Credit Unions
3138 10th Street North • Arlington, Virginia • 22201-2149
703-522-4770 • 800-336-4644 • 703-522-0594

B. Dan Berger
Executive Vice President
Government Affairs

January 21, 2011

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member Shelby:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the interests of our nation's federal credit unions, I am writing to urge you to repeal the Durbin interchange fee amendment included as part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act.*

The Durbin Amendment, which called on the Federal Reserve to implement burdensome new price caps on debit interchange fees, was a hastily included provision that was never fully considered or even debated by the Senate. Last-minute handwritten modifications on the Senate floor were never deliberated and did little to alleviate the concerns of small financial institutions like credit unions. Instead, this price-fixing language interjects the government between two industries and destroys a system that was developed by the free market and has worked successfully for the American public, as evidenced by the continued record use of debit cards during the holiday season. In fact, based on the Federal Reserve's proposed rule, it appears that the worst case scenario is materializing. The proposal will lead to job losses, higher costs to consumers, and may even force some small financial institutions out of business as market forces will surely impact small institutions negatively, in spite of any implied exemptions or assertions to the contrary.

In light of these circumstances, NAFCU strongly urges you to take immediate action to repeal the Durbin Amendment capping debit card interchange fees and prevent large merchants from making a significant profit on the backs of credit unions and the 92 million Americans they serve. Such action is needed to delay and prevent the Fed rule from becoming final and going into effect later this year.

We believe repeal is needed because the Federal Reserve failed to consider as part of their proposal important factors that impact the cost of maintaining a debit card portfolio at a not-for-profit credit union.

First and most significantly, more consideration should have been given to fraud losses and data security concerns when drafting any regulation limiting interchange fees. Credit unions have suffered steep losses in recent years due to the cost of data breaches and re-establishing member safety after they occur. They are often forced to charge-off fraud losses and incur additional expenses in making their members whole again, many of which stem from the failure of merchants to protect sensitive financial information about their customers. Such costs include, but are not limited to, the re-issuance of new cards, creation of new personal identification numbers, and fraud insurance. These were not factored into the Federal Reserve's proposal.

E-mail: dberger@nafcu.org • **Web site:** www.nafcu.org

Second, the Federal Reserve should have also taken into consideration the significant costs associated with maintaining a debit card network at a financial institution. Network fees, licensing fees, personnel training, regulatory compliance, and the technology (such as improvements to the system) needed to operate a debit card program can add up quickly and become a significant burden for small financial institutions. Neither the Durbin Amendment, nor the Federal Reserve's proposed rule, currently account for these considerable costs.

Furthermore, this harmful price-fixing amendment fails to recognize that use of the debit card system provides a significant benefit to merchants, such as by allowing for the immediate transfer of payment at the point of sale. Proponents of this amendment sold it by falsely asserting that debit cards are just like paper checks. However, unlike paper checks, the use of plastic cards leaves the onus on the financial institutions to recoup losses incurred by a defrauded customer. If debit cards are to be treated as equivalent to checks, then recovering the cost of a fraudulent transaction on a debit card should lie with the merchant, just as it does for a paper check.

Finally, the amendment does nothing to require the Federal Reserve to consult with functional regulators for safety and soundness regarding the impact of the proposed interchange fee regulation and factor that into their rulemaking. This is of paramount importance for not-for-profit, member-owned credit unions, as they are structured and operated differently than large financial institutions that can turn to their shareholders or capital markets to raise funds. The National Credit Union Administration (NCUA), which serves as the regulator for all federally-insured credit unions, can provide a more accurate depiction of how interchange fee price caps will negatively impact the credit union industry.

It is with these factors in mind that NAFCU continues to urge you to repeal the harmful debit interchange fee provision included in *Dodd-Frank*.

Thank you for your attention to this matter, which is of critical importance to credit unions and their 92 million members. Should you have any questions or require any additional information please do not hesitate to contact myself or Brad Thaler, NAFCU's Director of Legislative Affairs, at 703-842-2204.

Sincerely,

B. Dan Berger
Executive Vice President, Government Affairs

cc: The Honorable Ben Bernanke