

United States Senate
Washington, DC 20510-1304

September 25, 2012

Frank Keating
President and CEO
American Bankers Association
1120 Connecticut Ave. NW
Washington, DC 20036

Dear Mr. Keating:

Last week you sent a letter to the United States Congress in which you criticize the debit interchange reform law that Congress enacted as a “mistake[.]” Your letter also discusses the proposed interchange litigation settlement that was negotiated in secret between your industry, Visa and MasterCard, and attorneys who represent a handful of merchants. You claim that this proposed settlement “resolve[s]” all disputes about the U.S. payments system and that as a result of the settlement Congress can “put this issue to rest once and for all.” Both your criticism and your claim are flawed.

Congress made no mistake in passing debit interchange reform. The law was adopted through a careful and transparent legislative process in which the views of all stakeholders – banks, merchants, consumers, and other entities that accept debit cards such as universities, charities, and government agencies – were expressed and considered. During this process, a bipartisan supermajority of the Senate voted to rein in the excessive swipe fees that Visa and MasterCard set on behalf of their big bank allies, a House-Senate conference committee reaffirmed the need for reform, both houses of Congress voted to enact the reform into law, and the Senate later voted down an effort to delay the law’s implementation. While the banking industry may resent that its enormous lobbying effort did not produce a different outcome, a defeat is not the same as a mistake.

Indeed, benefits from this reform law have been evident since it took effect last October. Main Street businesses all across America that were previously being crushed by ever-rising debit swipe fees are now seeing real relief. This relief has been achieved without any significant negative impact on the small banks and credit unions that were exempted from interchange regulation –in fact, these small financial institutions have been thriving since reform took effect. Many consumers have been able to receive discounts for buying products such as gasoline and airline tickets with their debit cards, and many more have benefitted as merchants have been able to keep prices down as a result of lower interchange costs. Far from being a mistake, debit interchange reform is showing real results.

It would be a serious mistake, however, to conclude that the proposed interchange litigation settlement would resolve all the troubling issues surrounding the electronic payments system and put to rest future Congressional involvement in these matters. The proposed settlement would lock in Visa and MasterCard's current set of anti-competitive practices for credit card transactions and likely for mobile payment transactions as well. This would force Main Street merchants and their customers to continue subsidizing big banks with billions each year in windfall fees that have been centrally fixed by Visa and MasterCard. The proposed settlement also would permanently extinguish the legal rights of all current and future merchants, including merchants who do not support the settlement, to challenge these abusive fees and rules. If this proposed settlement is finalized, millions of consumers, merchants, universities, charities, government agencies and others whose interests were not represented in the secret settlement negotiations would be negatively impacted by its terms. Adoption of this proposed settlement would almost certainly guarantee that future Congressional intervention will be necessary to salvage these stakeholders' interests and protect them from Visa and MasterCard's abuses.

The stakes involved with this issue are enormous. Our nation is rapidly moving from a payments system based on cash and checking transactions to one based on electronic payments - credit, debit, and mobile. Trillions of dollars are now transacted each year through electronic payments, and it is essential to ensure that these systems are administered fairly for the sake of all participants in our nation's economy. However, electronic payment systems in the U.S. are dominated by Visa, MasterCard and the big banks, and they have been taking a growing amount of fees out of every transaction and have been rigging the systems to avoid competitive market forces that would keep fees at a reasonable level. While Congress' interchange reform law has helped curb these abuses when it comes to debit cards, the credit and mobile payment systems still suffer from excessive swipe fees, a lack of transparency, and a dearth of real competition. Based on your letter, it appears your association wants to keep things that way.

In contrast to Congress' debit interchange reform law, the proposed litigation settlement will not benefit consumers and merchants and will not make our economy stronger. As the debate over fairness in electronic payments goes forward, I will continue to stand up for Main Street merchants, for their customers, and for all those who simply want to buy and sell goods in America without being nickel and dimed to death by Visa, MasterCard and Wall Street.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Durbin", written in a cursive style.

Richard J. Durbin
United States Senator