

## **Proposals to Foster Economic Growth**

### **Submitted to the Senate Committee on Banking, Housing and Urban Affairs**

#### I. Repeal of Durbin Amendment

- **Description:** Congress should repeal the Durbin Amendment (Section 1075 of the Dodd-Frank Act) in its entirety.
- **Impact on Economic Growth:** The Durbin Amendment puts price controls on debit card charges for credit unions and banks, which created a “merchant markup” for customers and has led to merchant windfalls of approximately \$42 billion. To get the amendment passed, retailers told Congress they would lower prices for customers using the money they received from the price controls. This has not happened. According to a study done by the Federal Reserve Bank of Richmond, retailers have kept \$6 to \$8 billion per year for themselves instead of passing the savings through to consumers. The Durbin Amendment price controls have forced financial institutions, not least of which are credit unions and community banks, to reduce popular customer products and services like debit card rewards and free checking accounts. Moreover, the requirement of the Durbin Amendment that issuers enable two unaffiliated networks for debit cards and that merchants pick which network gets used for a transaction is harming community banks and credit unions. In particular, community banks under \$10 billion in assets, which are exempt from the price controls but not these provisions, will face a gradual, yet persistent, decline in their debit card revenue because merchants pick networks that pay the lowest revenue to the community banks and credit unions.
- **Impact on the Ability of Consumer Market Participants and Financial Companies to Participate in the Economy:** Repealing the Durbin Amendment would restore the free market for debit card transactions. The reversal of the windfall that merchants have experienced would result in the restoration of many of the financial products and services that are no longer offered or offered only for a fee. Additionally, credit unions and community banks will have stronger financial results and increased ability to make loans to small- and medium-sized businesses, in addition to consumers, in their communities.
- **Legislative Language:** Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 1693o-2) is repealed.

## II. Federal Information Security and Data Breach Notification Standards

- Description: Congress should establish uniform federal standards for (1) the security of the personal information of consumers, and (2) notification of consumers if their personal information is compromised. The federal standards should preempt state law.
- Impact on Economic Growth: Many states have enacted laws regarding information security requirements with respect to personal information, and over half of the states have enacted laws with respect to the disposal of personal information. These state laws vary in terms of covered persons and the requirements for compliance. Moreover, forty-seven states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have enacted legislation requiring private or governmental entities to notify consumers when their personal information has been compromised. These state laws have different standards for key aspects, including the threshold at which notification is required, the type of personal data that must be compromised, and the type of notice that must be given and to whom. In addition, the Gramm-Leach-Bliley Act (“GLBA”) already subjects financial institutions to information security standard and a data breach notification requirement. However, the GLBA does not expressly preempt comparable state laws. The myriad of laws leads to increased compliance costs for financial institutions and uneven consumer protections.
- Impact on the Ability of Consumer Market Participants and Financial Companies to Participate in the Economy: Creating a federal standard for information security and data breach notification would benefit consumers by eliminating the patchwork of standards that exists currently in which they may or may not receive state law protections. Federal standards would also reduce the burdens on financial institutions that may have to comply with dozens of laws.
- Legislative Language: Several information security and data breach notification bills were introduced in the last congressional term.<sup>1</sup> We anticipate that those bills would serve as the basis for any new bill. Any such legislation should:
  - Create an express exemption from the information security and data breach notification standards for entities that are “financial institutions” as defined in the GLBA.
  - Expressly preempt any state laws and common law on the topics of information security and data breach notification;
  - Prohibit any private rights of action; and

---

<sup>1</sup> See, e.g., S. 961 (Apr. 15, 2015), H.R. 2205 (Apr. 29, 2015), H.R. 1770 (Apr. 16, 2015), and S. 1158 (Apr. 30, 2015).

- Prohibit enforcement by any state attorneys general.

### III. Federal Cybersecurity Standards

- Description: Congress should preempt state cybersecurity laws that apply to bank service providers that are subject to regulation and examination under the Bank Service Company Act (“BSCA”).
- Impact on Economic Growth: State governments have begun to take an interest in cybersecurity regulation of state-chartered financial institutions and their service providers. For example, in September 2016, the New York Department of Financial Services issued a proposed cybersecurity regulation that went into effect on March 1, 2017. The regulation applies to New York-chartered banks and their service providers. Service providers to federally-supervised banks are subject to regulation and examination by the federal banking agencies under the BSCA as well as ongoing monitoring by their bank customers. The federal regulation and examination include cybersecurity and related topics. The layering of state oversight on top of federal oversight of bank service providers drives up costs of both service providers and banks with no benefit for the public. Therefore, federal law should preempt state law on this narrow topic in the field of cybersecurity.
- Impact on the Ability of Consumer Market Participants and Financial Companies to Participate in the Economy: The existing approach does not benefit financial institutions or the integrity and security of the larger financial system. Financial institutions and service providers, along with consumers, would benefit from reduced costs associated with simplifying the complex web of cybersecurity regulations to which banks and their service providers are currently subject.
- Legislative Language: Legislation should expressly state that federal law preempts any state laws and common law on the topic of the regulation or oversight of bank service providers in the field of cybersecurity.

