April 14, 2017

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing, and Urban Affairs
239 Dirksen Senate Office Building
Washington, DC 20510-1204

The Honorable Sherrod Brown
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
713 Hart Senate Office Building
Washington, DC 20510-3505

Dear Senators Crapo and Brown:

The Merchants Payments Coalition (MPC) appreciates the opportunity to submit proposals to the Senate Committee on Banking that will foster economic growth. The MPC applauds the Committee's interest in growing our economy and making it more competitive on the global stage. As a point of reference the MPC is a group of retailers, supermarkets, restaurants, drug stores, convenience stores, gas stations, on-line merchants and other businesses advocating for a more competitive and transparent electronic payments system that works better for consumers and merchants. The coalition's member trade associations represent 2.7 million stores with 50 million employees.

Our first proposal would be for Congress to maintain the debit reforms that were included in the *2010 Dodd-Frank Wall Street Reform and Consumer Protection Act*. These debit reforms brought some stability, transparency and competition into an area of retailer's operations where previously there was none. Repealing this successful law today would needlessly harm the American consumer while adding to retailers' cost of doing business, further impeding their ability to grow, create jobs and contribute to our economy; the repeal will only benefit a few very large banks and card networks.

The debit reforms addressed the broken and anticompetitive debit market in two ways. It placed voluntary limits on the amount the largest banks in the country could charge merchants through swipe fees on debit card transactions in each of those cases where fees are set centrally. These largest banks consist of only the top 1.4% of banks – each with over ten billion dollars in assets. These huge banks could be exempt from any fee limits tomorrow if they choose to set their own fees as opposed to relying on Visa and MasterCard to centrally set them. Even under the current limit set by the Federal Reserve Board, the covered banks are making a 500 percent profit on debit transactions, on average.

The debit reform law also required that the networks compete for merchant routing business. Prior to the reforms, the major card brands (Visa and MasterCard) paid the largest banks in the country to sign exclusivity contracts, ensuring the brands had monopolies on routing debit transactions from these large issuing banks. In 2010, five of Visa's ten largest issuing banks had signed contracts prohibiting competition. As a result, merchants were left with no options on the majority of cards presented in their stores but to route using the Visa network. As a result, Visa routed 79% of all debit transactions from its ten largest banks. This lack of competition artificially inflated network fees and left retailers of all sizes without the ability to negotiate the cost, security or efficiency in routing.

The law simply requires that each debit card have at least two unaffiliated networks enabled for the merchant to choose to route through. This requirement has been successful in increasing the efficiency and security of debit transactions while lowering grocers' cost for processing them. Since the law went into effect, there have been greater innovations in security tools as well as reliability in the networks. A repeal of this law would result in more costly and potentially less secure and less reliable transactions as there would be no more competition in this space.

Unfortunately, some are actively trying to repeal this law allowing for the return of the monopolistic exclusivity contracts eliminating the competition that we see today. Repeal of the reforms would ensure that the largest banks and networks can return to an anticompetitive market that leaves consumers and merchants paying the highest swipe fees in the world in an inherently less secure payment system. The American economy, merchants and employers all deserve better.

As we have seen in the debit market, competition has worked and the American economy has benefited with that in point proven, the MPC would also like to propose that the Committee look at our broken credit card system and how the lack of competition has artificially driven up costs in addition to hampering innovation. As the American consumer looks to move to mobile payments, there is a great opportunity to interject real competition into our domestic payments space. However, the MPC is greatly concerned that the two dominant card brand merchant acceptance rules and market power are acting as inhibitors to real competition and innovation.

The facts are clear, the American credit card payments system is not an open market and the lack of competition is harming our economy. Competition drives innovation that in an open market traditionally translates to greater efficiencies driving down costs. The exact opposite has happened in our electronic payments system. While demand for more electronic payments has increased, the lack of competition has artificially increased the costs of acceptance instead of reducing it. These hidden acceptance fees total almost $80 billion annually and continue to grow, far exceeding what is paid in any other industrialized country in the world.

American merchants are facing greater global competition every year. This competition forces U.S. merchants to be as efficient as possible and keep consumer costs as low as possible in order to compete. If new entrants are able to compete for e-commerce and mobile payments we could finally see acceptance costs begin to go down and our payments systems become more secure.

The MPC respectfully requests that the Banking Committee investigate the card brands rules, fining abilities and market practices and consider reforms to foster real competition in that space before we are locked into an anti-competitive mobile and e-commerce payments market.

Finally the MPC would like to address our current payment card security situation here in the United States. Unfortunately, the U.S. outpaces the rest of the world in payment card fraud. As with other areas of the broken credit and debit card system the lack of competition and current closed security standard setting bodies continue to hold us back globally. In their current forms neither the Payment Card Industry Data Security Council (PCI) nor EMVco (EuroPay, Mastercard, and Visa – since EMV's inception, Europay has been acquired by Mastercard) are open standard setting bodies. Despite countless requests from industry, merchants still do not have a vote nor can they sit on either organization boards even though they both set standards that merchants must comply with. This lack of representation was made abundantly clear by the unnecessarily burdensome chip card technology roll out here in the United States. Merchants, like all stakeholders should have an equal voice and ability to affect security standard policy.

The MPC is very concerned with recent reports that small and regional banks claim they are being unnecessarily burdened with the cost of card reissuance after a retailer is a victim of a payment card data breach. In reality, merchants pay for card reissuance several times over and are liable for incremental fraud resulting from a breach. Under Federal Reserve rules, merchants pre-pay for all of the costs that an average bank has for both fraud and fraud prevention (including card reissuance) for debit cards through swipe fees. And that is for banks with more than $10 billion in assets who are covered by the rule. For banks that aren't covered and for all credit card transactions, the fees are much higher for merchants – meaning that they prepay more than 100 percent of banks' fraud losses and fraud prevention costs. This is true even for merchants that never suffer a breach. All merchants that accept cards must pre-pay these costs through swipe fees.

Any merchant that accepts a credit or debit card also is bound by contract to card acceptance terms, one provision of which deals with liability costs in the case of a breach. These terms require merchants to pay the networks, who should pass the funds along to card issuers, a predetermined fee for each compromised card, and a separate reimbursement for any incremental fraud seen following a breach. It is important to note that even if no fraudulent activity has occurred on the card, according the card brand rules card issuers are immediately eligible for a per-card reimbursement based upon rates contractually agreed to by the card issuer and card network. These assessments on a retailer who is a victim of a breach can reach into the hundreds of millions of dollars depending on the number of cards that may have been compromised and any fraud that may have occurred following the breach.

This reimbursement mechanism is only one way in which card issuers recoup the cost of card reissuance or resulting fraud following a breach. Merchants also pay "chargebacks" for more than half of the value of fraudulent transactions. That means when there is fraud; the merchant suffers the loss more than half the time. This is true even if the fraud resulted from a data breach at a bank or credit union (which is more common than a retail breach). The money never flows from banks to retailers. But, retailers pay for more than 100 percent of banks' fraud and fraud prevention costs every year.

Card issuers have also sought restitution in civil court following a merchant breach, often leaving the same merchant paying at least three times for card reissuance. The MPC encourages the Committee to investigate the current payments card security setting practices and to support open standards to foster greater competition and innovation in the market. Additionally, the MPC asks the Committee to investigate the card brand rules and address the inequity and burdons merchants face with paying for card reissuance multiple times, even if there is never a breach.

Thank you for our consideration of our thoughts on how to foster economic growth here in the United States and make us more competitive globally. The Merchants Payments Coalition stands ready to work with the committee to find real solutions to foster competition in our payments systems.