

Statement of Rep. John Conyers, Jr.
Introduction of the "Credit Card Fair Fee Act of 2008"

Madame Speaker, today I am introducing the "Credit Card Fair Fee Act of 2008," legislation that would help level the playing field for merchants and retailers negotiating with banks for the cost of certain fees, and ultimately reduce the costs of everyday goods for consumers. I am joined by Representatives Cannon, Lofgren, Shuster, Weiner, Delahunt, Platts, Welch, Sullivan, Wilson (SC), Gohmert, Hall (TX), Boozman and Peterson (PA).

Every time a consumer uses a payment card – at the mall, at the grocery store, at a gas station, or on the Internet – the merchant is charged a fee. This fee gets divided up three ways – between the merchant's bank, the consumer's bank, and the credit card company. It covers processing fees, fraud protection, billing statements, and other expenses such as system innovations.

Almost 90% of this fee comprises a so-called "interchange fee," which is the payment made by the merchant's bank to the consumer's bank. The percentage is set by the credit card companies, generally Visa or MasterCard, and averages 1.75% of the total purchase. In 2006, interchange fees totaled approximately \$36 billion, an increase of 117% since 2001. In 2007, the fees amounted to \$42 billion, about 17% since 2006. These fees are ultimately passed on to all consumers in the form of higher prices for goods and services, whether the consumers purchase these items by credit card, check or cash.

These interchange fees are set by the credit card companies. The two largest, Visa and Mastercard, are associations composed of financial institutions and are owned and controlled by their bank member-owners. Together, Visa and MasterCard control over 73% of the volume of transactions on general purpose cards in the United States and approximately 85% of the cards issued. Banks that are members of the Visa association are often also members of the MasterCard association.

Merchants are forced to deal within this system because it is simply not an option to refuse to accept Visa or MasterCard from their customers. They are presented with take-it-or-leave-it options and are not part of the process

by which the fees are set. Moreover, the card systems operate pursuant to comprehensive operating rules approved by the associations' member - controlled boards, but these operating rules are not accessible by the merchants.

This legislation is intended to give merchants a seat at the table in the determination of these fees. It is not an attempt at regulating the industry and does not mandate any particular outcome. This legislation simply enhances competition by allowing merchants to negotiate with the dominant banks for the terms and rates of the fees.

The bill creates a limited antitrust immunity for negotiating voluntary agreements and, if necessary, participating in the market-based proceedings. These market-based proceedings will determine the exclusive rates and terms merchants must pay for a three year term. No other fees, terms or conditions may be imposed on the merchants.

The rates and terms will be determined by Electronic Payment System Judges, who will be appointed by the Department of Justice Antitrust Division and the Federal Trade Commission. The judges will apply a market standard in their determinations designed to replicate the rates and terms of payment that would have been negotiated in a competitive marketplace between a willing buyer and willing seller, both of which have no market power. The judges will have full independence in making all determinations but may consult with the DOJ and FTC on certain matters.

It is time to level the playing field for merchants and consumers. I am hopeful that Congress can move to enact this worthwhile and timely legislation.