



Electronic Transactions Association

March 29, 2010

Dear Senator Sears,

I am writing to you on behalf of the nearly 500 member companies of the Electronic Transactions Association (ETA) to express our concerns regarding S.138.

ETA members are a diverse group of businesses, large and small, primarily involved in the distribution of payment processing services to merchants. The kinds of businesses represented by ETA include: banks that are members of the payment card networks; independent sales organizations (ISOs) who work directly with merchants; payment processors; data security professionals; point of sale terminal manufacturers; and providers of infrastructure and other services to the banks and sales organizations. Most notably, ETA's membership includes a sizeable Vermont institution in the merchant acquiring and payment processing field. ETA strongly recommends that the Senate consider the adverse impacts S.138 will have on merchants and consumers.

The system of interchange and electronic payments is a critical and necessary foundation of modern commercial activity, allowing for ubiquitous acceptance of payment worldwide. Interchange networks are highly specialized and sophisticated tools that are needed to move funds from a card issuing bank to a merchant (or acquiring) bank. Interchange and payments systems provide significant benefits to consumers, retailers and financial institutions. For the consumer, interchange systems provide a secure, cash-free way to make purchases and to receive instantaneous "credit." For retailers and the financial services industry, as reported by the U.S. Government Accounting Office, the interchange system is a well-established way to facilitate business, grow sales, and mitigate certain risks. Recently, interest groups have focused only on the price of conducting transactions through these networks rather than on the infrastructure required to safely, efficiently, and instantaneously process an ever-increasing number of transactions moving through the interchange system.

Given the necessity of such transactions to most consumers, ETA strongly recommends that the Senate consider the adverse impacts S.138 will have on consumers. We outline the reasons for our concern below. First, the bill ends ubiquitous acceptance. Second, the bill interferes in the carefully calibrated risk mitigation of the electronic payments system; third, the bill would cause merchants to experience price increases instead of reductions, with those price increases likely to be passed on to consumers; and last, the bill adds new burdens to payment processors that could drastically impact the function of the electronic payments system. As an attempt to insert government into a series of business-to-business agreements, S.138 would hurt merchants and consumers, not help them.

S.138 would do away with ubiquitous acceptance. Today, a person could decide to hail a cab to the airport, buy a plane ticket to Vermont, fly to Rutland, pick up a rental car, drive to Killington, rent ski equipment, purchase lift tickets, enjoy dinner in a local restaurant, check into a hotel, wake up the next morning and do it all over again – with one card in his pocket. This is known as ubiquitous acceptance; S.138 would eliminate consumers' ability to do this. Upon enactment of this bill, consumers would be very surprised to learn that their desired method of payment may not be accepted at local merchants. It is not helpful or necessary to pass a law that allows merchants, based solely on unsubstantiated claims of financial inequity, to discriminate against consumers' preferred payment choices.

S.138 would cause current risk calculations to become invalid. It is important to note that the bank sponsors of the payment card networks underwrite the risk in the payments system. Sources of that risk include merchants, ISOs, and payment processors. An acquiring (or merchant) bank's primary risks are: 1) merchants going out of business; 2) merchant fraud; 3) fraud perpetrated on the merchant; 4) charge offs (uncollectable sales); and 5) data security breaches. Also, in some circumstances, the acquiring bank extends credit to the merchant so that merchants can receive their funds more quickly. For instance, the acquiring bank will credit the merchant's account for sales transactions in advance of receiving the ultimate settlement amounts from the issuing banks for those sales.

S.138 would not provide financial relief to consumers. This bill falsely presumes that interchange and merchant discount rates are not negotiated. In fact, merchants currently negotiate for the lowest possible discount rates from the thousands of banks and card processors that offer this service. While large retailers may negotiate based on a high volume of transactions, smaller merchants have access to trade associations, professional associations, and local chambers of commerce for group-negotiated rates that offer significant savings on card acceptance. The bill's removal of the base fee structure in the payments system (see below) would require each business to develop and maintain an individual rate structure with tens of thousands of payment card issuers around the world. This will increase administrative costs and likely increase interchange rates paid by individual businesses. Any card -issuing institutions not included in the business's rate regime represent lost sales to the merchant. These costs could easily be passed on to consumers.

S.138 would raise costs for Vermont merchants and consumers. A provision in the bill would prohibit payment card networks (like Visa and MasterCard) from setting "default" interchange rates. Absent specific individually negotiated rates, default rates are the go-to rates between the tens of thousands of banks and credit unions that issue cards, and the thousands of banks and card processors that offer card acceptance services to merchants. Without standardized default rates, each merchant bank would have to individually negotiate a separate interchange rate with each credit-card-issuing entity -- and there are tens of thousands of financial institutions *around the world* that participate in the MasterCard and Visa payment networks. For example, if a small business owner has a customer wishing to make a purchase using a card from her local community bank – but that bank is not one with which a rate has been pre-arranged – then the purchase cannot take place. It is not possible for all card issuers and merchant acquirers—which are spread all over the world, with new institutions joining all the time—to enter into fee agreements

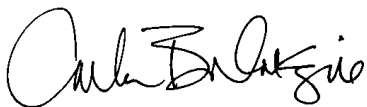
before a transaction takes place. Therefore, there must be default terms for transactions and default interchange rates.

The removal of the standardized format of default interchange rates would make it impossible for payment processors to execute transactions with the speed, efficiency, and safety we know today. S.138, by removing default rates, would create hundreds of thousands of different rate packages to be tracked by payment processors. These rates could change at random, perhaps on a daily basis. One cannot fathom the type of system development and restructuring that processors would have to undertake to begin to accommodate potentially hundreds of thousands of rate agreements. And, if a processor did manage to find the ability to track such rates, any rate matrix developed would be invalid the next day. It remains to be seen if any processing company would find this to be worth the effort in order to accommodate the state of Vermont. At best, processing fees would increase and payment times would slow as a result of this tremendous new burden on payment processors.

ETA respectfully requests that the Senate fully consider the ill effects of S. 138. The interchange and electronic payments systems provide significant benefits to consumers, retailers and the financial services industry. Fracturing the electronic payments framework by removing default rates would turn a seamless, efficient payment modality into a fragmented, inefficient, and uncertain condition of commerce. Interchange and merchant discount rates exist today in a highly competitive marketplace and merchant discount packages are fiercely negotiated. The termination of ubiquitous acceptance will cause consumers to further extend themselves into the personal credit markets, as consumers will need to increase the number of payment cards they carry in order to ensure that they have enough variety to be able to make purchases at different retailers. Each card transaction carries a carefully calibrated risk profile for the issuing and acquiring banks. Disrupting these standardized business agreements will hurt consumers, not help them.

We would be happy to discuss this matter with you or your staff further and welcome the opportunity to answer any questions you may have. Please feel free to contact Mary Weaver Bennett, ETA Director of Government and Industry Relations, at 202-828-2635 or mary.bennett@electran.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carla Balakgie', written in a cursive style.

Carla Balakgie
Chief Executive Officer
Electronic Transactions Association