THE VOICE OF FOOD RETAIL
Feeding Families Enriching Lives

April 25, 2017

Chairman Jeb Hensarling
House Financial Services Committee
2228 Rayburn House Office Building
Washington, DC 20515

Ranking Member Maxine Waters
House Financial Services Committee
2221 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

Food Marketing Institute[1] (FMI) respectfully requests to have this letter included in the record for the hearing entitled "A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs." FMI proudly advocates on behalf of the supermarket industry, which employs 4.8 million people in the United States alone and has almost $650 billion in annual sales. Our membership includes retail stores ranging from a single family operated store to a large national chain, all operating in very competitive markets. Unfortunately, the current discussion draft of the Financial CHOICE Act of 2017 includes language that limits choice, competition and transparency and with its inclusion, our industry strongly opposes the legislation. FMI strongly opposes the bill as drafted and respectfully requests that Section 735 of the bill be removed.

The debit reform measures that were included in the *2010 Dodd-Frank Wall Street Reform and Consumer Protection Act* brought stability, transparency and competition into an area of grocers' operations where there previously was none. Repealing this successful law today would needlessly harm U.S. consumers while adding to grocers' cost of doing business, further impeding their ability to grow, create jobs and contribute to our economy. Repeal of the debit reforms would only benefit a few very large banks and card networks.

First, the debit reforms placed voluntary limits on the amount the largest banks in the country could charge merchants through swipe fees on debit card transactions when these 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 large banks could be exempt from any fee caps if they choose to set their own fees as opposed to relying on Visa and MasterCard to centrally set them. Even under the current cap set by the Federal Reserve Board, the covered banks are making a 500 percent profit on debit transactions, on average.

To put this into perspective, in 2016, Wells Fargo & Company was the largest issuer of debit cards in the United States with over 8 billion individual debit purchases totaling $306.8 billion. By collecting on average 23 cents per transaction, the bank made around $1.844 billion in debit interchange revenue last year. Repealing the law and allowing Wells Fargo to return to pre-reform rates would allow the bank to double the average interchange collected on a transaction, netting the bank an additional $1.844 billion in profits paid for by Main Street merchants and U.S. consumers.[2]

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[1] *Food Marketing Institute proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost $770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit www.fmi.org and for information regarding the FMI foundation, visit www.fmifoundation.org.*

[2] Nilson Report, April 2017 Issue 1107

Even MasterCard recognizes that a reduction in interchange fees helps small businesses grow, innovate and compete. In February, MasterCard and the Canadian Federation of Independent Businesses (CFIB) announced that the card brand would reduce credit card interchange rates for CFIB members by 12%. Brian Lang, President of MasterCard in Canada commented that the reduction in interchange fees would "…help small businesses continue to grow and give them more opportunity to bring innovative products and services to Canadian consumers."[3] Main Street retailers in America continue to pay the highest interchange fees in the world, hampering their ability to grow and compete. Repealing the law would only harm them more while benefitting only a few of the very largest banks in the country.

FMI would like to note that the limits on what the giant banks can charge merchants only applies if they choose to have the major card brands, Visa and MasterCard, set their rates for them. These limits were established to encourage banks to step out of the central price setting schemes and set their own rates. If a bank chooses to set their own rates and compete on the open market, they are not bound by the Federal Reserve's limits. An example of this is JP Morgan Chase & Company's introduction of Chase Pay. This novel approach has Chase actually competing for merchant business by offering reduced transaction costs, greater security and visibility to customers. On the bank's website, Chase explains "Chase Pay actually lowers your cost of payments. Because it runs on our closed-loop platform called ChaseNet, we are able to offer special pricing and card present rates for Chase Pay transactions."[4] Innovation and open competition like this is driven by the debit reforms and are further proof of their success.

While much of the committee's focus has been on the interchange portion of the debit reform law, FMI would like to highlight two other pieces that drive competition and are allowing grocers to make decisions that best suit their business. First, the debit reform law required that the networks compete for merchant routing business. Prior to the reforms, the major card brands (Visa and MasterCard) paid many of 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 a single network. As a result, Visa routed 79% of all debit transactions from its ten largest banks.[5] This lack of competition artificially inflated network fees and left grocers of all sizes without the ability to negotiate the cost, security or efficiency in routing. It also did not give grocers a backup plan, should the network be down and unavailable due to any type of emergency.

The law simply requires that each debit card have at least two unaffiliated networks. 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 significant 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 and would eliminate the competition in this space.

Debit reforms took the first step to address the restrictive and voluminous card brand acceptance rules for merchants. Prior to reforms, merchants risked significant fines and penalties from Visa and/or MasterCard if they offered a discount to a customer using a debit card. Additionally, the same merchant was subject to additional fines and fees if they made the business decision to set a minimum purchase amount for credit card transactions to avoid the fee exceeding the purchase price or profit margin. These rules unfairly restricted a merchant's ability to make decisions on how to run their business and try to contain the costs of accepting electronic payments. The debit reforms removed these restrictions. Merchants may now incentivize the use of debit cards or cash by offering a discount for those payment forms and a merchant can choose to set a minimum

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[3] http://www.cfib-fcei.ca/english/article/9162-canadian-federation-of-independent-business-partners-with-mastercard-to-meet-the-needs-of-small-business.html

[4] https://www.chase.com/digital/digital-payments/merchant-chasepay

[5] Digital Transactions, January 2011

for a credit card purchases without the risk of facing fines that can start at $5,000 a day. These useful tools for merchants will be taken away if the debit reforms are repealed.

Unfortunately, as drafted, the "CHOICE" Act ignores the clear success and competition that has resulted from the debit reform law. In its current form, by repealing all of the debit reform provisions, the "CHOICE" Act would allow 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 anti-competitive market that leaves consumers and merchants paying the highest swipe fees in the world in an inherently less secure payment system. Repealing the law would prove to be a windfall for the largest banks that as an industry already enjoys a 24% profit margin paid for by merchants (1.9% profit margin) and consumers.[6] The American economy, merchants and consumers all deserve better.

Thank you for your consideration of FMI's concerns about the "CHOICE" Act. FMI will continue to oppose the "CHOICE" Act of the 2010 debit reforms are repealed. FMI stands ready to work with the Chairman and all House Financial Services Committee members on regulatory reform legislation that will truly foster more competition and benefit our economy, employers, and consumers.

Sincerely,

Jennifer Hatcher

Jennifer Hatcher
Chief Public Policy Officer & Senior Vice President
Government Relations

Cc: Members of the House Financial Services Committee

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[6] http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html