

117TH CONGRESS
2D SESSION

S. 4674

To amend the Electronic Fund Transfer Act to require the Board of Governors of the Federal Reserve system to prescribe regulations relating to network competition in credit card transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2022

Mr. MARSHALL (for Mr. DURBIN (for himself and Mr. MARSHALL)) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Electronic Fund Transfer Act to require the Board of Governors of the Federal Reserve system to prescribe regulations relating to network competition in credit card transactions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Card Competi-
5 tion Act of 2022”.

1 **SEC. 2. COMPETITION IN CREDIT CARD TRANSACTIONS.**

2 (a) IN GENERAL.—Section 921 of the Electronic
3 Fund Transfer Act (15 U.S.C. 1693o–2) is amended—

4 (1) in subsection (b)—

5 (A) by redesignating paragraphs (2), (3),
6 and (4) as paragraphs (3), (4), and (5), respec-
7 tively; and

8 (B) by inserting after paragraph (1) the
9 following:

10 “(2) COMPETITION IN CREDIT CARD TRANS-
11 ACTIONS.—

12 “(A) NO EXCLUSIVE NETWORK.—

13 “(i) IN GENERAL.—Not later than 1
14 year after the date of enactment of the
15 Credit Card Competition Act of 2022, the
16 Board shall prescribe regulations providing
17 that a covered card issuer or payment card
18 network shall not directly or through any
19 agent, processor, or licensed member of a
20 payment card network, by contract, re-
21 quirement, condition, penalty, technological
22 specification, or otherwise, restrict the
23 number of payment card networks on
24 which an electronic credit transaction may
25 be processed to—

26 “(I) 1 such network;

1 “(II) 2 or more such networks
2 which are owned, controlled, or other-
3 wise operated by—

4 “(aa) affiliated persons; or

5 “(bb) networks affiliated
6 with such issuer; or

7 “(III) subject to clause (ii), the 2
8 such networks that hold the 2 largest
9 market shares with respect to the
10 number of credit cards issued in the
11 United States by licensed members of
12 such networks (and enabled to be
13 processed through such networks), as
14 determined by the Board on the date
15 on which the Board prescribes the
16 regulations.

17 “(ii) DETERMINATIONS BY BOARD.—

18 “(I) IN GENERAL.—The Board,
19 not later than 3 years after the date
20 on which the regulations prescribed
21 under clause (i) take effect, and not
22 less frequently than once every 3
23 years thereafter, shall determine
24 whether the 2 networks identified
25 under clause (i)(III) have changed, as

1 compared with the most recent such
2 determination by the Board.

3 “(II) EFFECT OF DETERMINA-
4 TION.—If the Board, under subclause
5 (I), determines that the 2 networks
6 described in clause (i)(III) have
7 changed (as compared with the most
8 recent such determination by the
9 Board), clause (i)(III) shall no longer
10 have any force or effect.

11 “(B) NO ROUTING RESTRICTIONS.—Not
12 later than 1 year after the date of enactment of
13 the Credit Card Competition Act of 2022, the
14 Board shall prescribe regulations providing that
15 a covered card issuer or payment card network
16 shall not—

17 “(i) directly or through any agent,
18 processor, or licensed member of the net-
19 work, by contract, requirement, condition,
20 penalty, or otherwise—

21 “(I) inhibit the ability of any per-
22 son who accepts credit cards for pay-
23 ments to direct the routing of elec-
24 tronic credit transactions for proc-

1 essing over any payment card network
2 that—

3 “(aa) may process such
4 transactions; and

5 “(bb) is not on the list es-
6 tablished by the Board under
7 subparagraph (D);

8 “(II) require any person who ac-
9 cepts credit cards for payments to ex-
10 clusively use, for transactions associ-
11 ated with a particular credit card, an
12 authentication, tokenization, or other
13 security technology that cannot be
14 used by all of the payment card net-
15 works that may process electronic
16 credit transactions for that particular
17 credit card; or

18 “(III) inhibit the ability of an-
19 other payment card network to handle
20 or process electronic credit trans-
21 actions using an authentication,
22 tokenization, or other security tech-
23 nology for the processing of those
24 electronic credit transactions; or

1 “(ii) impose any penalty or disadvan-
2 tage, financial or otherwise, on any person
3 for—

4 “(I) choosing to direct the rout-
5 ing of an electronic credit transaction
6 over any payment card network on
7 which the electronic credit transaction
8 may be processed; or

9 “(II) failing to ensure that a cer-
10 tain number, or aggregate dollar
11 amount, of electronic credit trans-
12 actions are handled by a particular
13 payment card network.

14 “(C) APPLICABILITY.—The regulations
15 prescribed under subparagraphs (A) and (B)
16 shall not apply to a credit card issued in a 3-
17 party payment system model.

18 “(D) DESIGNATION OF NATIONAL SECU-
19 RITY RISKS.—Not later than 1 year after the
20 date of enactment of the Credit Card Competi-
21 tion Act of 2022, the Board, in consultation
22 with the Secretary of the Treasury, shall pre-
23 scribe regulations to establish a public list of
24 any payment card network—

1 “(i) the processing of electronic credit
2 transactions by which is determined by the
3 Board to pose a risk to the national secu-
4 rity of the United States; or

5 “(ii) that is owned, operated, or spon-
6 sored by a foreign state entity.

7 “(E) DEFINITIONS.—In this paragraph—

8 “(i) the terms ‘card issuer’ and ‘cred-
9 itor’ have the meanings given the terms in
10 section 103 of the Truth in Lending Act
11 (15 U.S.C. 1602);

12 “(ii) the term ‘covered card issuer’
13 means a card issuer that, together with the
14 affiliates of the card issuer, has assets of
15 more than \$100,000,000,000;

16 “(iii) the term ‘credit card issued in a
17 3-party payment system model’ means a
18 credit card issued by a card issuer that
19 is—

20 “(I) the payment card network
21 with respect to the credit card; or

22 “(II) under common ownership
23 with the payment card network with
24 respect to the credit card;

1 “(iv) the term ‘electronic credit trans-
2 action’—

3 “(I) means a transaction in
4 which a person uses a credit card; and

5 “(II) includes a transaction in
6 which a person does not physically
7 present a credit card for payment, in-
8 cluding a transaction involving the
9 entry of credit card information onto,
10 or use of credit card information in
11 conjunction with, a website interface
12 or a mobile telephone application; and

13 “(v) the term ‘licensed member’ in-
14 cludes, with respect to a payment card net-
15 work—

16 “(I) a creditor or card issuer that
17 is authorized to issue credit cards
18 bearing any logo of the payment card
19 network; and

20 “(II) any person, including any
21 financial institution and any person
22 that may be referred to as an
23 ‘acquirer’, that is authorized to—

24 “(aa) screen and accept any
25 person into any program under

1 which that person may accept,
2 for payment for goods or serv-
3 ices, a credit card bearing any
4 logo of the payment card net-
5 work;

6 “(bb) process transactions
7 on behalf of any person who ac-
8 cepts credit cards for payments;
9 and

10 “(cc) complete financial set-
11 tlement of any transaction on be-
12 half of a person who accepts
13 credit cards for payments.”; and

14 (2) in subsection (d)(1), by inserting “, except
15 that the Bureau shall not have authority to enforce
16 the requirements of this section or any regulations
17 prescribed by the Board under this section” after
18 “section 918”.

19 (b) EFFECTIVE DATE.—The regulations prescribed
20 by the Board of Governors of the Federal Reserve System
21 under paragraph (2) of section 921(b) of the Electronic
22 Fund Transfer Act (15 U.S.C. 1693o–2(b)), as amended
23 by subsection (a) of this section, shall take effect on the

- 1 date that is 180 days after the date on which the Board
- 2 prescribes the final version of those regulations.

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