AP&S ADLER POLLOCK & SHEEHAN P.C.

100 Westminster Street, 16th Floor
Providence, RI 02903
Telephone 401.274.7200
Fax 401.751.0604 / 351.4607

apslaw.com

April 3, 2025

The Honorable Carol Hagan McEntee
House Small Business Committee
Room 135 - State House

Re: Written Testimony of the Credit Unions of Rhode Island in Opposition to H5554 and H5882

Dear Chairwoman McEntee and Members of the Committee:

I write on behalf of the Credit Unions of Rhode Island in opposition to H5554 and H5882.[1]

As member-owned, not-for-profit cooperatives, credit unions operate with a core mission of helping people. Credit unions reinvest earnings in their members through lower loan rates, higher savings rates, and enhanced service. Countless people and small businesses in communities across Rhode Island benefit from the financial services and protections provided by credit unions.

One significant source of revenue that enables credit unions to offer these member benefits is interchange income—the fee paid to financial institutions for processing card-based transactions. The interchange fee supports much more than just the transaction itself. It covers the cost of fraud prevention and detection, cybersecurity, dispute resolution, and system infrastructure card issuance—all of which are critical to maintaining safe and reliable payment systems for Rhode Islanders.

H5554 and H5882 seek to prohibit the collection of interchange fees on the tax and gratuity portions of electronic payment transactions. While these proposals may appear to offer financial savings to merchants, the reality is that these measures will cause significant harm to consumers, businesses, and credit unions alike.

[1] In the interests of efficiency and brevity, H5554 and H5882 will be referenced collectively.

First, credit unions do not set interchange rates—those are determined by the payment card networks. The notion that credit unions can simply absorb the cost of servicing transactions without revenue from interchange fees ignores the extensive investments required to protect consumers and prevent fraud.

Second, implementation of these restrictions is both technologically burdensome and impractical. Payment processors and card networks do not currently distinguish between base amounts, taxes, and gratuities in real time. Mandating such distinctions would require extensive reprogramming of payment infrastructure and introduce complexity that will lead to errors, delays, and unintended compliance costs that ultimately fall on consumers and small businesses.

Third, interchange fees are not merely transactional charges; they are a necessary safeguard against fraud. Credit unions shoulder the financial burden when fraud occurs. Reducing interchange revenue will directly limit credit unions' ability to invest in the security systems and monitoring needed to protect members. H5554 and H5882 will leave consumers more vulnerable to identity theft and financial fraud.

Fourth, H5554 and H5882 could have a chilling effect on the availability of credit. Credit unions operate on razor-thin margins. If interchange fees are restricted, credit unions—especially smaller institutions that serve underserved communities—will be forced to reduce card benefits and fraud protections, increase interest rates, and potentially limit access to credit entirely.

Finally, these bills will hurt Rhode Island's tourism economy. Many small businesses rely on card payments from out-of-state visitors. By complicating and restricting interchange processing, these bills will create disincentives for card acceptance and will likely lead to surcharges or cash-only policies that frustrate visitors and limit spending.

In addition to the unintended consequences that will result from H5554 and H5882, they will also likely face immediate legal challenges if enacted into law. One basis for such challenge is the doctrine of preemption. The preemption doctrine is a legal principle that renders a state or local law invalid if it conflicts with federal law. The Illinois Interchange Fee Prohibition Act (IFPA), which is similar to the proposed legislation here, was enacted in the summer of 2024 and immediately faced a legal challenge in federal district court based on preemption (among other claims). The litigation remains ongoing.

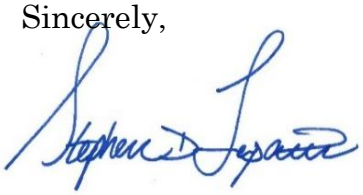
Two federal statutory and regulatory provisions are relevant to the preemption issue. First, the Federal Credit Union Act (FCUA) (12 U.S.C. § 1757) governs federally chartered and federally insured credit unions and grants them broad financial powers, including (a) issuing credit and debit cards; (b) charging fees for financial services; and (c) processing transactions and using transaction data. Second, the federal credit union regulations, 12 C.F.R. § 701.21, issued by the National Credit Union Administration (NCUA), expressly preempts state laws attempting to regulate: (a) loan interest rates, fees, and repayment terms; and (b) other financial conditions on federal credit union loans and credit products.

Because interchange fees are directly tied to credit card lending and transaction processing, H5554 and H5882, which, like the IFPA, attempt to regulate such fees, are likely preempted. In any event, because the legality of the Illinois interchange act remains unclear, it is highly likely that litigation will promptly ensue if H5554 and/or H5882 are enacted. The Illinois litigation has proven that a preemption challenge to an interchange fee law is not frivolous and may even succeed. Given this, H5554 and H5882 face a similar fate if enacted—that is, drawn out, expensive legal proceedings.

The credit unions recognize and commend the efforts of the sponsors and this Committee in seeking to reduce the financial burden on Rhode Island small businesses, but H5554 and H5882 are not the solution. We therefore urge the Committee to reject these bills, or, at a minimum, refrain from taking any action until the Illinois legal challenge is resolved.

We appreciate your consideration and remain available at your convenience.

Sincerely,



STEPHEN D. LAPATIN
slapatin@apslaw.com

RICHARD R. BERETTA, JR.
rberetta@apslaw.com