



3138 10th Street North  
Arlington, VA 22201-2149  
703.842.2215 | 800.336.4644  
F: 703.522.2734  
dberger@nafcu.org

**B. Dan Berger**  
President & Chief Executive Officer

National Association of Federal Credit Unions | [www.nafcu.org](http://www.nafcu.org)

April 2, 2015

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
Washington, D.C. 20510

Dear Leader McConnell and Leader Reid:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing our nation's federally chartered credit unions, I write today to bring your attention to the Food Marketing Institute's (FMI) recent letter to the card networks asking them to delay the October 2015 deadline for the EMV liability shift. As you know, at that time the payment networks will shift the responsibility for any fraud resulting from a payment transaction to the party using the least-secure technology.

Credit unions have worked tirelessly to do their part in providing a safe and secure payments system for consumers across the country. As credit unions and their 100 million members continue to suffer as a direct result of recent merchant and retailer data breaches, FMI is more concerned about the cost of complying with the EMV standards and how quickly they can process transactions than it is about consumers and doing everything they can to protect their customers from future breaches. FMI's delay tactic is remarkable given the extraordinary number of merchant and retailer breaches that have occurred in recent months coupled with the intense interest in preventing breaches from lawmakers and the regulatory agencies.

Indeed, this is just the latest effort by FMI and other merchant and retail groups to intentionally detract from substantive issues, including stringent data safekeeping, in favor of sound-bite arguments focusing exclusively on a smoke-and-mirrors campaign on "chip and PIN." Despite the continued "chip and PIN" rhetoric from groups like the National Retail Federation (NRF) and Retail Industry Leaders Association (RILA), their large retailer members are contacting the payment networks and demanding an implementation delay. Congress should not be fooled by these groups' unscrupulous tactics and falsehoods.

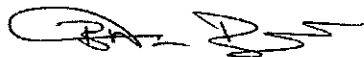
In addition, FMI and other merchant and retail groups have continued their claims that credit unions and other financial institutions are somehow compensated for the reissuance of plastic cards that are compromised is unsubstantiated. A February 2015 survey of NAFCU members found that the estimated costs associated with merchant and retail data breaches in 2014 averaged \$226,000 per institution. Of their losses, respondents expect to recoup less than 0.5 percent.

While NAFCU has long believed that the conversation about EMV is important and that merchants and retailers should do their part in this regard, Congress must act to ensure

technology standards are accompanied by strong data safekeeping standards for merchants and retailers akin to what credit unions comply with under the *Gramm-Leach-Bliley Act* (GLBA). Merchants, retailers and credit unions are all targets of cyberattacks. The difference is that financial institutions have developed and maintain robust internal protections to combat these attacks; they are required by federal law and regulation to protect this information and notify consumers when a breach occurs that will put them at risk. By contrast, merchants and retailers are not covered by *any* federal laws or regulations that require them to protect the data and notify consumers when data is breached.

In short, it's time for merchants and retailers to act in good faith and do everything they can to protect consumers, and that includes embracing EMV technology and welcoming a GLBA-like standard that would help prevent breaches from occurring. Thank you for your continued attention to this important matter. If my staff or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact me or NAFCU Senior Vice President of Government Affairs and General Counsel, Carrie Hunt, at (703) 842-2234.

Sincerely,



B. Dan Berger  
President & CEO

cc: Members of the United States Senate

Enclosure:

March 23, 2015, letter from Leslie Sarasin, President & CEO, Food Marketing Institute to the card networks re: delaying EMV liability shift



**THE VOICE OF FOOD RETAIL**

Feeding Families  Enriching Lives

March 23, 2015

Ms. Elizabeth Karl  
Vice President, U.S. Payments Consultants  
American Express Company  
200 Vesey Street  
New York, NY 10285-3106

Mr. Rob Tourt  
Chief Risk Management Officer  
Discover  
2500 Lake Cook Road  
Riverwoods, IL 60015

Mr. Bruce Rutherford  
Senior Vice President Fraud Management Solutions  
MasterCard  
2000 Purchase Street  
Purchase, New York 10577

Mr. Karteek Patel  
Senior Vice President Product and Innovation Risk  
Visa  
900 Metro Center Boulevard  
Foster City, CA 94404

Dear Sirs and Madam;

The Food Marketing Institute's<sup>1</sup> member companies range from large multinational corporations to single store family-owned grocery stores. While there may be vast differences among the operations of our members, improvement of our nation's payments system is a priority for all of them. To that end, the grocery industry invests hundreds of millions of dollars annually to protect our customers' sensitive personal information, including payment card data. However, regardless of how strong the commitment or how many dollars invested, the reality is that the system will not be ready to meet the card networks' arbitrarily set mandate for the liability shift in October 2015. With this in mind, FMI and our member companies seek your willingness to work with the retail industry to provide a balanced and equitable approach to the transition.

FMI's retail members stand ready to migrate from magnetic stripe cards to the proven chip and PIN cards that have been adopted throughout Europe, Canada and Australia. Unlike other countries' transitions that in some areas took up to a decade, American companies have been given a

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<sup>1</sup> 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](http://www.fmi.org) and for information regarding the FMI foundation, visit [www.fmifoundation.org](http://www.fmifoundation.org).

compressed timeline that has been greatly stunted by outside factors -- factors beyond retailers' control.

First, there was a significant delay in the card networks' release of specifications, setting the software providers back in bringing solutions to market. The delay occurred in spite of the fact that there was already a free common specification offered to the market that the card networks refused to use. One FMI member company shared that it has already installed the EMV readers in lane and has worked closely with its providers to acquire the needed software, but recently were informed that it will not be certified until June 2015. Subsequently, it will take an additional two months to install EMV readers in each point-of-sale device throughout the company's stores. We understand that each point-of-sale device must be updated by hand; the devices cannot be upgraded remotely. This device-by-device update will require significant investments of both time and money. While many FMI members are fully committed to the transition and hope to be able to complete their updates to meet this arbitrary October deadline, any slight delay in the plan by hardware, installation or certification contractors will result in the stores' being held liable under the liability shift.

While some FMI members are as far along as having the EMV equipment already installed in their stores, many are still waiting in queue to receive their equipment. It has been reported to FMI that there is currently a sixteen-week lead time for delivery of orders for the new EMV-capable payments terminals. Compounding the delay in terminal delivery with the installation process and the certification requirements, some grocers already know the October deadline will be unattainable. As a result, FMI requests that you consider either a delay in the liability shift until 2016, or credit retailers who have taken steps to comply with the mandate and are in the process of becoming EMV compliant by not shifting liability to them.

In addition to the existing market challenges of acquiring new POS equipment and then having it installed, certified and fully enabled, the October deadline could not come at a more inopportune time for both consumers and retailers. Heading straight into the holiday season, the busiest shopping time of the year, retailers experience a significant uptick in consumer shopping and must be able to ensure the greatest line efficiencies and system reliability. Instead of swiping a card, the consumer will be required to "dip" a chip card and leave it in the reader throughout the authorization process. This will add time in lane for checkout and require significant consumer education that undoubtedly will be left to the checker as he/she walks the customer through this new process. Transitioning the entire American economy from a well-known experience of the magnetic stripe card purchase to EMV will not be a smooth and easy task. It will take time. While our member companies are committed to it, the timing of this transition should be revisited. As mentioned previously, not all retailers will be EMV-enabled by the deadline, so during the busiest shopping time of the year, customer confusion will only be exacerbated by using magnetic stripe in one store and dipping in another across the street. FMI

asks that you consider the time of year for which this shift is scheduled and allow a delay until August 2016, or a time that would work well in an actual retail setting.

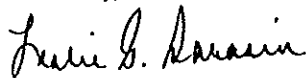
Finally, once again, FMI and our member companies ask that card networks roll out chip and PIN technology, consistent with that which was done throughout the rest of the world --technology proven to be safer for the consumer that significantly reduces the amount of fraud. Chip and PIN would make great strides in addressing three specific types of fraud that continue to plague the American payments system: lost and stolen, counterfeit, and card not present. American consumers have widely adopted the use of PIN with debit cards and to access cash in an ATM. The addition of that layer of security in the credit market is the next step in the fight against fraud.

Furthering the customer and cashier confusion at the register, it has been reported that some banks will issue PIN corporate cards and signature consumer cards. This lack of consistency in the transition could lead to a customer having two cards issued from the same bank -- one PIN-enabled and one requiring a signature. FMI strongly encourages a uniform PIN-enabled chip card rollout, resulting in a simpler transition and a safer transaction for the consumer.

FMI and our member companies stand ready to work with you to find reasonable solutions to the challenges both retailers and consumers face in EMV migration. There is precedence for our requests, as in most other countries, merchants were provided with extensions, in addition to funding for the terminal testing and ultimately a reduction in interchange costs. American retailers seek the same considerations and eventual interchange relief as we migrate to EMV. We ask that you work with us because we believe both the consumer and our economy will benefit if this transition is done thoughtfully and with the strongest consumer protection tools available.

Thank you for your time and consideration of our request. I encourage you to please contact Hannah Walker, FMI's Director of Government Affairs, at [Hwalker@fmi.org](mailto:Hwalker@fmi.org) or at (202) 220-0630 with any questions or feedback.

Sincerely,



Leslie G. Sarasin, Esq.  
President and CEO