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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Credit Card Competition Act of 2022”.
SEC. 2. COMPETITION IN CREDIT CARD TRANSACTIONS.

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

(1) in subsection (b)—

(A) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

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

“(2) COMPETITION IN CREDIT CARD TRANSACTIONS.—

“(A) NO EXCLUSIVE NETWORK.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Credit Card Competition Act of 2022, the Board shall prescribe regulations providing that a covered card issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, technological specification, or otherwise, restrict the number of payment card networks on which an electronic credit transaction may be processed to—

“(I) 1 such network;
“(II) 2 or more such networks which are owned, controlled, or otherwise operated by—

“(aa) affiliated persons; or

“(bb) networks affiliated with such issuer; or

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

“(ii) Determinations by Board.—

“(I) In general.—The Board, not later than 3 years after the date on which the regulations prescribed under clause (i) take effect, and not less frequently than once every 3 years thereafter, shall determine whether the 2 networks identified under clause (i)(III) have changed, as
compared with the most recent such determination by the Board.

“(II) EFFECT OF DETERMINATION.—If the Board, under subclause (I), determines that the 2 networks described in clause (i)(III) have changed (as compared with the most recent such determination by the Board), clause (i)(III) shall no longer have any force or effect.

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

“(i) directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise—

“(I) inhibit the ability of any person who accepts credit cards for payments to direct the routing of electronic credit transactions for proc-
••S 4674 IS

5

essing over any payment card network
that—

“(aa) may process such
transactions; and

“(bb) is not on the list es-
established by the Board under
subparagraph (D);

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

“(III) inhibit the ability of an-
other payment card network to handle
or process electronic credit trans-
actions using an authentication,
tokenization, or other security tech-
nology for the processing of those
electronic credit transactions; or
“(ii) impose any penalty or disadvan-
tage, financial or otherwise, on any person
for—

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

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

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

“(D) DESIGNATION OF NATIONAL SECU-
RITY RISKS.—Not later than 1 year after the
date of enactment of the Credit Card Competi-
tion Act of 2022, the Board, in consultation
with the Secretary of the Treasury, shall pre-
scribe regulations to establish a public list of
any payment card network—
“(i) the processing of electronic credit transactions by which is determined by the Board to pose a risk to the national security of the United States; or

“(ii) that is owned, operated, or sponsored by a foreign state entity.

“(E) DEFINITIONS.—In this paragraph—

“(i) the terms ‘card issuer’ and ‘creditor’ have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602);

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

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

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

“(II) under common ownership with the payment card network with respect to the credit card;
“(iv) the term ‘electronic credit transaction’—

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

“(II) includes a transaction in which a person does not physically present a credit card for payment, including a transaction involving the entry of credit card information onto, or use of credit card information in conjunction with, a website interface or a mobile telephone application; and

“(v) the term ‘licensed member’ includes, with respect to a payment card network—

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

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

“(aa) screen and accept any person into any program under
which that person may accept, for payment for goods or services, a credit card bearing any logo of the payment card network;

“(bb) process transactions on behalf of any person who accepts credit cards for payments; and

“(cc) complete financial settlement of any transaction on behalf of a person who accepts credit cards for payments.”; and

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

(b) EFFECTIVE DATE.—The regulations prescribed by the Board of Governors of the Federal Reserve System under paragraph (2) of section 921(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693o–2(b)), as amended by subsection (a) of this section, shall take effect on the
date that is 180 days after the date on which the Board prescribes the final version of those regulations.