



# HIKE THE HILL

## 2022 Key Federal Issues

### Interchange

#### **Credit Union Ask:**

*Oppose changes to the existing interchange system.*

- Interchange fees cover the cost of fraud detection, credit monitoring and fraudulent purchase protections that make consumers and merchants whole when bad actors attack.
- Increasing fraud and the possibility of reduced interchange fees pose a real threat to data security.
- Senators Dick Durbin (D-IL) and Roger Marshall (R-KS) have introduced S. S. 4674, the Credit Card Competition Act of 2022 and credit unions stand united in opposition to the bill and potential companion legislation in the House.
- The bill would disproportionately harm small financial institutions that will face higher costs.
- It's not difficult to foresee an additional decline in services available to consumers should S. 4674 become law, especially at small and medium credit unions and community based financial institutions that would struggle the most with the loss of interchange revenue.
- The Marshall-Durbin bill, if passed into law, would decimate a system that's proven to be efficient and effective, and is designed around protecting the consumer and their personal information.
- The bill will encourage retailers, whose primary goal is to maximize profits, to choose cheaper card networks that haven't invested in the latest security technology.
- Establishing a dual-routing system will represent a significant expense that raises costs for consumers. The Richmond Fed determined that over 20% of retailers increased their prices following enactment of the Durbin Amendment, and only 1% of retailers passes their savings onto consumers.
- Bottom line is consumers win with access to easy-to-use credit, merchants win with guaranteed payments and financial institutions win with a safe product for consumers.
- Michigan credit unions urge members of the Michigan delegation to oppose changes to the current interchange system.

## Modernizing the Federal Credit Union Act

### **Credit Union Ask:**

*Co-sponsor credit union-supported legislation and urge leadership to pass the bills.*

- The financial service industry is rapidly changing. Advancements in technology have significantly altered our society and how financial institutions do business, but the FCUA and implemented regulations have not kept pace.
- Consolidation continues to increase the average size of credit unions.
- Updating the FCUA has become necessary to ensure federally chartered credit unions have the powers and flexibility to be competitive and best serve their members.
- We urge Congress to pass the following bills:
  - The Expanding Financial Access for Underserved Communities Act (H.R. 7003) would allow federal credit unions to add underserved communities to their field of membership, exempt business loans in underserved areas from the member business lending cap and expand the definition of an underserved area to include areas more than 10 miles from the nearest branch of a financial institution.
  - The legislation passed the House in June as part of a larger financial service package (H.R. 2543) and the bill now awaits action in the Senate.
  - The Credit Union Board Modernization Act (H.R. 6889 and S. 4325) would afford federal credit unions flexibility with regard to board meetings. Under the bill, federal credit union boards would be required to meet at least six times per year, at least once per fiscal quarter, instead of on a monthly basis as currently required.
    - Representatives Huizenga, Kildee and McClain are co-sponsors.
  - The Member Business Loan Expansion Act (H.R. 5189) extends loan maturities, raises from \$50k to \$100k the credit limit for credit union member businesses under which such loans are excluded from overall credit union lending limits, and includes credit unions in the Federal Home Loan Bank definition of “community financial institution.”
  - S.762, the Expanding Access to Lending Options Act. The bill would extend, from 15 years to 20 years, the federal credit union loan maturity limit on non-mortgage loan.
    - Doing so will expand consumer access to affordable student loans, along with agriculture and other business lending products.
    - Sen. Gary Peters is a bill co-sponsor.

## IRS Reporting Requirements

### **Credit Union Ask:**

*Oppose future attempts that would require financial institutions to report sensitive member/customer financial transaction data to the IRS beyond what's already required by law.*

- In May of 2021, the Treasury Department offered a proposal that would have required financial institutions to report, on an annual basis to the IRS, the gross inflows and outflows of member/customer accounts (businesses and individuals) with a breakdown for cash, transactions with a foreign account and transfers to and from another account with the same owner.
- The requirement would have applied to savings, transactions, loan and investment accounts.
- The proposal would have also applied to accounts with gross flows exceeding \$600.
- MCUL and its members are concerned about the effect a proposal of this type would have on credit unions. Privacy and data security are paramount issues.
- In addition, Michigan credit unions are concerned about the compliance burden the proposal, or one like it, would have on their institutions and the member impact.
- Over 80,000 communications were sent to delegation offices from Michigan credit union members opposing the proposal, while approximately 900,000 nationwide communications were sent to members of Congress.
- Due to significant pushback, the proposal was not included in legislation.

## Cannabis Banking

### **Credit Union Ask:**

*Co-sponsor and support the Safe Banking Act and urge leadership to pass the bill in 2022.*

- Although cannabis remains illegal at the federal level, it has been in legal use medically in Michigan since 2008 and became recreationally legal in the state in 2019.
- A growing number of states have legalized various forms of cannabis usage under state law. To date in the United States, there are 36 states (including Washington, D.C.) with legalized medicinal cannabis. Sixteen states (including Washington, D.C.) have legalized recreational cannabis usage and another 14 states that have legalized cannabidiol (CBD) usage.
- As with any growing industry, access to financial services is critical. However, due to the illegality at the federal level, financial institutions remain apprehensive.
- With a limited number of financial institutions willing to bank the industry, cannabis-related businesses are forced to operate on a cash-only basis.
- Given the significant amount of cash being exchanged, the safety and security of those working in the industry, and the communities in which these businesses are located, are at constant risk.
- The situation also creates an environment that makes it extremely difficult to combat money laundering, tax fraud and other violations of law.
- MCUL does not take a stand on the legalization of cannabis; however, we do support legislation that provides safe harbor protections to financial institutions from regulatory punishment for providing services to legal cannabis business in states where cannabis is legalized.
- As such, Michigan credit unions are urging Congress to pass the SAFE Banking Act (H.R. 1996 and S. 910).

## Data Security and Privacy

### **Credit Union Ask:**

*Work with and urge leadership to pass comprehensive legislation that includes strong data security & privacy standards and holds all entities that collect, use or share personal data accountable.*

- Since 2005, there have been more than 10,000 data breaches, exposing nearly 12 billion consumer records.
- The retail industry's self-policing and lack of meaningful security standards is woefully inadequate.
- Breaches have cost credit unions, banks and the consumers they serve hundreds of millions of dollars, and they have compromised the consumers' privacy, jeopardizing their financial security.
- Financial institutions are forced to assume the costs related to card replacement, fraud control, member communication and most, if not all, of the fraudulent transaction cost.
- It's time for Congress to act; patchwork efforts by the states aren't enough.
- H.R. 8152, the American Data Privacy and Protection Act, was introduced in the U.S. House and passed out of the Energy and Commerce Committee in July.
- MCUL and CUNA as supporting the bill but are urging leadership to make improvements to the bill before it is debated and passed.
- Changes to the bill we are calling for include:
  - Expanding the Gramm-Leach-Bliley Act (GLBA) exemption. The security and privacy requirements in the bill are duplicative of protections in the GLBA and would compound the regulatory burden on credit unions. Compliance with the existing strong standards under GLBA and its implementing regulations should deem credit unions compliant with requirements in the bill.
  - The Complete Preemption of State Privacy Laws. The current patchwork of state laws perpetuates a security system littered with weak links and leaves entities and consumers on unequal footing in protecting data. All state privacy laws should be completely preempted to ensure a single rule of the road.
  - The Extension of the Cure Period To All Enforcement Actions. The 45-day cure period for private rights of action should be extended to all enforcement actions, including those brought by the FTC and state attorneys general. If the bill is passed into law there will be a learning curve and allowances should be made for good faith efforts by covered entities to cure perceived violations.
  - Modifying Section 301's Data Security and Privacy Officer Requirements. CUNA has expressed serious concerns that are shared by MCUL about the feasibility of implementing this provision and the financial burden it would impose on credit unions. There is already a shortage of qualified employees in this space, and the addition of the requirement would quickly exhaust the system and drive up the market rate for these positions, pricing out not-for-profit credit unions.

## Voluntary Overdraft Protection

### **Credit Union Ask:**

*Oppose legislation that would limit the flexibility of credit unions to structure the services they make available to their members.*

- U.S. Sen. Cory Booker and Congresswoman Carolyn Maloney have introduced legislation (S. 2677 and H.R. 4277) related to voluntary overdraft services provided by financial institutions. Booker's bill would, among other things:
  - Prohibit overdraft fees on debit card transactions and ATM withdrawals.
  - Prohibit financial institutions from charging more than one overdraft fee per month and no more than six overdraft fees in any single calendar year for check and recurring bill payment overdrafts.
  - Limit check and recurring bill payment overdraft fees and non-sufficient fund fees to an amount that is reasonable and proportional to the financial institution's costs in providing the overdraft coverage.
  - Mandate a three-day waiting period between when an individual opens a new account and when a financial institution may offer overdraft protection.
- Congresswoman Maloney's legislation would, among other things:
  - Prevent financial institutions from charging more than one overdraft fee in a calendar month and no more than six per year.
  - Require that fees be "reasonable and proportional" to the cost of processing these transactions and the amount of the overdraft.
  - Require financial institutions offering overdraft coverage to disclose all marketing materials clearly and conspicuously.
  - Stipulate that overdraft fees on ATM and POS transactions may only be charged if the consumer has consented in writing, electronic form or other means permitted under regulation.
  - Require prompt notification no later than on the day on which the transaction occurs.
  - Mandates that financial institutions must warn a consumer engaged in an ATM or branch teller transaction if completing the transaction would trigger overdraft fees, including the amount, and allow the consumer to cancel the transaction before it is completed.
- While there have been specific abuses in the past by certain for-profit institutions, CFPB regulations were issued a few years ago to require an opt-in for overdraft protection.
- Survey data has shown that credit union members highly value this protection/service.
- Credit unions offer overdraft protection as a convenience and accommodation for their members' benefit, and members that choose to opt in often do so for the peace of mind these services provide.
- During the COVID-19 crisis, consumers are buying critical goods and services intended to help them and their families weather shelter-in-place orders or tend to their health.
- We believe effectively shutting down a popular product offering, even temporarily, would unjustifiably limit credit unions' abilities to assist their members and could be the wrong action to take at this time.
- Credit unions often work with their financially distressed members to reduce the cost of overdraft fees, waive fees entirely and develop customized solutions to secure members' financial wellbeing.
- Relying on credit unions to do what they do best is preferable to a situation where consumers are getting declined in line at the grocery store or pharmacy.

## Community Development Financial Institutions (CDFI) Fund

### **Credit Union Ask:**

*Use oversight to ensure the Fund provides meaningful guidance and assistance to credit unions with regard to program certification and works with credit unions to explore necessary program modernization opportunities through legislation*

- In recent months, credit unions in Michigan and across the country have experienced problems applying for CDFI certification or seeking recertification.
- As established CDFIs are locked out of the process they are wasting valuable time and resources in order to meet unnecessary and frequently impossible new standards the Fund has established in order to obtain (or retain) CDFI certification so as to obtain funding.
- The Fund has indicated the (re)certification and funding process will become more difficult in the future, not less which will hurt the communities Congress directed the Fund to help.
- The Fund announced in late July that it will pause acceptance of new CDFI Certification Applications and Target Market Modification requests for six months to prepare to launch its new application process.
- CDFI's are reporting significant concerns regarding the application or target market modification process resulting in some 10-15% of CDFIs reporting an inability to retain their CDFI designation and, for some, the loss of grant awards under federal programs.
- Among the problems being experienced, credit unions indicate they are receiving form letters from the Fund stating their applications are being placed into "cure status" with a specified resolution deadline, after which their application will be declined; the letters do not inform the CDFI of the specific issues with their application, nor how to fix the problem.
- Credit unions also report their applications are frequently being denied or placed into cure status on very short notice because they fail to meet the accountability standards of the Fund. Reportedly, this is because credit unions have failed to demonstrate they meet certain requirements for their democratically elected boards. Many credit unions are working to meet those requirements but cannot do so such a short timeline and without specific information from the Fund that explains where deficiencies exist.
- Several credit unions in Michigan have lost certification due to not meeting both Target Market thresholds of the Fund.
  - Target Market thresholds are an area MCUL believes Congress should look at to gauge whether the threshold remains valid and look to modernize it if it isn't.

## Modernize Federal E-Commerce Laws

### **Credit Union Ask:**

*Co-sponsor and support the SECURE Notarization Act of 2021 and urge leadership to pass the bill*

- The difficulties with electronic property transactions and electronic and remote notarizations experienced during the pandemic have intensified the need for Congress to update our nation's e-Commerce laws.
- Credit unions call on Congress to pass H.R. 3962 and S.1625, the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021. The legislation authorizes and establishes minimum standards for electronic and remote notarization.
- We also urge Congress to update the 20-year-old E-Sign Act to simplify how consumers signal their acceptance of electronic transactions. S. 3715, the E-sign Modernization Act of 2022, was introduced recently to make updates to the Act.



## Rate Cap

### **Credit Union Ask:**

*Avoid placing broad restrictions on lending that reduce members' access to sensible loan options from local credit unions.*

- U.S. Sen. Jack Reed has introduced legislation, the Veteran's and Consumer Fair Credit Act (S. 2508), that would extend provisions of the Military Lending Act (MLA), which establishes a 36% all-in rate cap on most loans to service members, to all consumer loans.
- The "all-in" APR approach materially deviates from the current industry norm, determining the finance charge pursuant to the Truth in Lending Act, which excludes certain fees and voluntary protection products.
- The bill exempts mortgage loans, certain purchase money loans and loans made by federally chartered credit unions, but state-chartered credit unions would not be exempt and would be required to comply with the 36% all-in cap.
- The all-in cap would make it very difficult for credit unions to maintain viable small-dollar programs and severely hinder a state credit union's ability to offer overdraft products.
- A state credit union with an overdraft product structured as an open-ended credit account (i.e. an overdraft line of credit) would be subject to the proposed 36% all-in APR cap as well.
- The legislation would result in a substantial increase in reprogramming and compliance costs, along with consumer confusion.
- The bill would deem the DOD a financial regulator, something that is well beyond their scope and mission.

## Digital Assets/Cryptocurrency

### **Credit Union Ask:**

- *MCUL and CUNA believe Congress should explore ways to regulate the delivery of financial services using digital currencies to ensure that consumers are protected in the same way if they received services from a financial institution.*
- *Furthermore, Congress should look for ways to enable credit unions and other financial institutions to provide digital asset-related services, so that these services can be properly overseen by federal regulators.*
- *Lastly, credit unions will seek parity with other financial institutions in this area as credit unions must be able to offer digital/crypto products and services directly to their members in the same way that banks can with their customers.*
- Credit unions and other traditional financial service institutions continue to gain interest in cryptocurrency as credit union members and the public at large become more comfortable with it and as crypto matures.
- According to CUNA, 94% of household decision-makers are aware of cryptocurrency and 33% own crypto.
- 18% of households have indicated they're likely or very likely to switch financial institutions based on crypto services.
- The value of cryptocurrencies reached roughly \$3 trillion at one point in 2021 and the number of cryptocurrency wallets rose from 50 million to 70 million in the past year.
- According to a 2021 Deloitte study, three-quarters of global financial executives believe failing to provide digital asset services will harm them competitively. These services include holding keys for members, trading on mobile devices or online banking, creating rewards programs and issuing stable coins.

## Bank Secrecy Act/Anti-Money Laundering Reform

### ***Credit Union Ask:***

*Co-sponsor and support H.R. 2040 and urge leadership to pass the bill.*

- Credit unions take Bank Secrecy Act and Anti-Money Laundering (BSA/AML) compliance very seriously and dedicate significant resources to it.
- Credit unions often spend their limited resources disproportionately on compliance, which means fewer resources are available to spend on innovation and providing safe and affordable products and services.
- We support efforts by Congress to reduce the compliance burden on credit unions while also ensuring the government has access to the information it needs to combat crime.
- MCUL is urging members of the delegation to support and co-sponsor H.R. 2040, which would increase the CTR threshold from \$10,000 to \$30,000 and adjust the SAR threshold from \$5,000 to \$10,000 for most financial institutions.
- Credit unions will work with Congress to pass legislation that:
  - Minimizes redundancies, including the reporting of the same or similar information.
  - Provides additional flexibility based on the reporting institution type or level of transactions.

## Credit Union Difference

### ***Credit Union Ask:***

*Continue to recognize and support the unique structure and role of credit unions.*

*Oppose legislation that changes the not-for-profit tax status of any credit union.*

- Established by Congress over 80 years ago, credit unions have a strong, positive reputation as member-owned, community-centered financial cooperatives.
- Congress designated credit unions as not-for-profit organizations because of their unique structure and mission within the financial service industry.
- Banks were created and operate under their own distinct structure with a mission different from credit unions.
- Congress has long recognized that different structures necessitate different tax treatments, not only in the financial service sector but throughout other areas of our economy.
- Banks can raise capital for the equity and bond markets. Credit unions can only raise capital through retained earnings.
- Credit union boards are drawn from members, elected by the members and serve as unpaid volunteers. Banks can provide stock options and ownership to their boards, executives and staff. Credit union directors and officers are focused on service as opposed to benefiting from stock appreciation.
- These important structural differences, as well as credit unions' commitment to serve the unique needs of the underbanked and local economies, has contributed to the bipartisan support for the federal and state corporate income tax exemptions.
- We anticipate credit union opponents will seek, as they did in the 116th Congress, to have legislation introduced that would eliminate the income tax exemption for credit unions, either across the board or focused on large-asset credit unions and subject credit unions to the Community Reinvestment Act (CRA).
- Michigan credit unions are adamantly opposed to any such legislation and ask for support in defeating this or similar legislation.
- Credit unions are not subject to the CRA for many reasons, among them:
  - At no time in our 100-plus year history have credit unions engaged in "redlining;" we are member-owned financial institutions that serve the needs of our members.
  - We are committed to serving diverse and historically underserved communities,
  - 75% of credit union branches are in middle-, moderate- and low-income communities.
  - Importantly, our consumer-focused model is self-regulating.