



# 2021 KEY FEDERAL ISSUES

Hike From Home Update

## IRS Reporting Requirements

### **Credit Union Ask:**

*Oppose attempts to include any version of the IRS reporting requirement into any legislation now or going forward.*

- The Treasury Department has proposed that financial institutions be required to report annually to the IRS the gross inflows and outflows of account holders (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 apply to savings, transactions, loan and investment accounts.
- The proposal would apply to accounts with gross flows exceeding \$600.
- MCUL and its members are concerned about the effect this proposed new requirement will 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.

## Interchange

### **Credit Union Ask:**

*Oppose changes to the existing interchange system.*

- Indications are Senator Dick Durbin will seek to introduce legislation dealing with interchange and credit routing.
- The proposal will likely require card issuers to have multiple networks over which merchants can choose to route transactions.
- Interchange fees cover the cost of fraud detection, credit monitoring and fraudulent purchase protections that make consumers and merchants whole when bad actors attack.
- The robust security features that make credit cards so appealing to consumers come at a cost. Interchange fees cover those costs but increasing fraud and the possibility of reduced interchange fees post a real threat to data security.
- 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.

## 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. Senator Cory Booker and Congresswoman Carolyn Maloney have introduced legislation (S. 2677 and H.R. 4277) related to voluntary overdraft services provided by financial institutions. Senator 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 well-being.
- 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.

## 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. Senator 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.

## Cannabis Banking

### **Credit Union Ask:**

*Co-sponsor and support the Safe Banking Act and urge leadership to pass the bill in 2021.*

- 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). The bill was recently added to the House-passed National Defense Authorization Act (NDAA), and we are hopeful the Senate version of the NDAA will include the bill as well.

## 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:
  - 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.
  - H.R. 1471, the Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act. The bill would exempt credit union loans related to the pandemic from the MBL cap during the declared national emergency and for one year after.
    - According to an analysis by CUNA, removing the cap will provide over \$5.5 billion in capital to small businesses, creating nearly 50,000 jobs over the course of the next year.
- H.R. 2311, the Credit Union Governance Modernization Act of 2021 makes updates to how federal credit unions can handle violent members or members that have or seek to commit fraud against the credit union.
- The Expanding Financial Access for Underserved Communities Act (bill number not available yet) would allow federal credit unions to add underserved communities to their field of membership, exempt business loans by FCUs 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.
- During the remainder of 2021, and into 2022, we anticipate additional FCUA modernization bills will be introduced. Specifically, MCUL, working with CUNA, will seek to have legislation to:
  - Remove outdated responsibilities of federal credit union boards of directors
  - Modernize governance and procedures for federal credit unions
  - Permit credit unions to establish their own fiscal year
  - Allow electronic balloting for conversions from state to federal charter and from federal to state charter.

## 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.

## Modernize Federal E-Commerce Laws

### **Credit Union Ask:**

*Co-sponsor and support the SECURE Notarization Act of 201 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 also update the 20-year-old E-Sign Act to simplify how consumers signal their acceptance of electronic transactions. S. 4159, the E-sign Modernization Act of 2020, was introduced last Congress but has not yet been introduced in the 117th Congress.

## 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, and
  - Importantly, our consumer-focused model is self-regulating.

## Data Security and Privacy

### **Credit Union Ask:**

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

- Since 2005, nearly 12 billion records have been breached due to lax data security standards.
- The recent Solar Winds breach underscores how imperative it is for Congress to pass legislation that holds everyone's data — and those that keep the data — to a high standard.
- 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.
- We were encouraged by the introduction of the Setting an American Framework to Ensure Data Access, Transparency and Accountability (SAFE DATA) Act, S. 4626, late in the 116th Congress.
  - The bill would simplify privacy and data security laws by creating a national standard that protects all Americans while reducing compliance burdens that occur currently because of the many standards across the states.
  - It didn't pass but it incorporated a great deal of stakeholder input and should serve as the foundation for legislative efforts this session.
- Laws like the Gramm-Leach-Bliley Act (GLBA) and the Health Insurance Privacy and Accountability Act (HIPPA) were once considered the gold standard in privacy and security but are no longer enough to keep data private and secure.
- It's time for Congress to act; patchwork efforts by the states aren't enough.
- Any new privacy law should include both data privacy and data security standards. Congress should enact robust data security standards to accompany and support data privacy standards.
- The new law should cover all business, institutions and organizations that collect, use or share personal data.
  - Any new law should preempt state requirements to simplify compliance and create equal expectation and protection for all consumers.
  - Breach disclosure and consumer notification are important, but these requirements alone won't enhance security or privacy.
  - The law should provide mechanisms to address the harms that result from privacy violations and security violations, including data breach.