



# 2020 KEY FEDERAL ISSUES

## Credit Union Difference and Not-For-Profit Tax Status

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- Established by Congress over 80 years ago, CUs have a strong, positive reputation as member-owned, community-centered financial cooperatives.
- Congress designated CUs 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 CUs.
- 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
- While CUs don't pay corporate income tax because of the unique structure, we do pay all other applicable taxes, like payroll and social insurance, real estate, Unrelated Business Income Tax (UBIT), sales (state charters), etc.
- Banks can raise capital for the equity and bond markets. CUs can only raise capital through retained earnings.
- CU 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. CU directors and officers are focused on service as opposed to benefiting from stock appreciation.
- This important structural difference, as well as CUs' 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.
- 75% of CU branches are in middle, moderate, and low-income communities.
- We understand legislation may be offered that would take away the income tax exemption for large asset CUs (those over \$500 million) and subject these CUs to the Community Reinvestment Act.
- Michigan CUs are adamantly opposed to any such legislation and ask for support in defeating this or similar legislation.
- Allowing consumers to retain local access to financial services is an important goal of CUs
- According to data from the FDIC, NCUA and CUNA, CU branches have increased by more 1,500 while bank branches have declined by more than 4,700, mostly due to bank failures or low profitability.
- From 2012 to mid-year 2019, there have been more than 2,000 bank of bank acquisitions, totaling \$1.7 trillion in assets vs. 30 transactions where CUs have acquired bank assets and liabilities.
- As bank branch closures create financial deserts, CUs step up to provide basic access to financial services. For example, CUs:
  - Keep earnings local by serving the community, not local investors
  - Offer better rates and lower fees than many megabank buyers
  - Retain more staff than competitors
  - Offer cash which can be taxed rather than an all-stock buyout

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## Data Security and Privacy

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- Since 2005, more than 10,000 data breaches have occurred, exposing more than 11.6 billion records.
- The retail industry's self-policing and lack of meaningful security standards is woefully inadequate.
- 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 are anticipating data privacy/security will be introduced in 2019. We ask that you work with us ensure the bill reflects our priorities and that you then work to build support for its passage.
- Credit unions believe legislation should:
  - Strengthen the weak links in the system by creating strong national data protection and consumer notification standards.
  - Provide for the preemption of inconsistent state laws and regulations in favor of strong federal standards.
  - Afford credit unions and banks the clear authority to inform customers and members about a breach, including where it occurred.

## Cannabis Banking

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- In September 2019, the Secure and Fair Enforcement (SAFE) Banking Act, H.R. 1595, was passed by the House on a 321-103 vote. Members from Michigan voting in support include: Reps. Amash, Dingell, Kildee, Lawrence, Levin, Mitchell, Slotkin, Stevens, Tlaib and Upton.
- It remains to be seen whether the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, H.R. 2093 will be voted on. We urge the House to bring it up for a vote and ask for your support of the bill.
- Both the SAFE Banking Act and STATES Act would provide safe harbor protections to financial institutions from regulatory punishment for providing services to legal cannabis businesses in states where cannabis is legalized.
- While the SAFE Banking Act is solely focused on cannabis banking matters (providing financial institutions a safe harbor to serve the industry), the STATES Act takes a more comprehensive approach on cannabis. In addition to the safe harbor language for financial institutions, the STATES Act amends the Controlled Substances Act to curb federal enforcement against state-legal cannabis activity, prevents the forfeiture of assets derived from these businesses and protects state-legal businesses from federal money laundering laws.
- The U.S. House has included the text of the SAFE Banking Act in their version of a COVID-19 related Phase 4 economic stimulus bill called the HEROES Act. While the HEROES Act is not expected to pass the Senate the House and Senate will need to negotiate and come to a compromise before any Phase 4 legislation can become law. The negotiation process could open the door for cannabis banking related language to make its way into a final bill.

## Current Expected Credit Losses (CECL)

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- U.S. Sen. Thom Tillis (R-North Carolina) introduced S. 1564, the Continued Encouragement for Consumer Lending (CECL) Act.
- S. 1564 would require the Financial Accounting Standards Board (FASB) and relevant financial agencies to report on the impact of their proposed current expected credit losses (CECL) accounting standard on the availability of credit, depletion of regulatory capital, investor decisions and competition, as well as disproportionate impacts on financial institutions of different sizes.
- It would prohibit application of the new standard from the date of bill enactment until one year after the required report under the act is issued.
- U.S. Rep. Vicente Gonzalez (D-TX) has also introduced H.R. 3182, the CECL Consumer Impact and Study Bill of 2019, to the same effect.
- In May of 2019, Senator Peters joined 14 U.S. Senators on a letter to the Federal Reserve and the FDIC to urge a delay in the implementation of CECL until a study about its economic impacts could be completed.
- We are urging all members of the MI delegation to co-sponsor and support H.R. 3182 and S. 1564.
- In October, U.S. Rep. Jack Bergman became Michigan's first co-sponsor.

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## Bank Secrecy Act/Anti-Money Laundering Reform

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- 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.
- H.R. 2514, the Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform (COUNTER) Act was passed by the U.S. House in October. As currently written, the bill would provide some good initial reforms for credit unions, such as indexing the currency transaction reporting (CTR) threshold for inflation. The full text of the bill was also amended into HR2513 and passed by the U.S. House.
- The bill would also require a study on a modified suspicious activity report (SAR) form and a review of financial institution reporting requirements under the BSA and require the Treasury Department and other appropriate departments/agencies to propose reforms to reduce the regulatory burden.
- We support efforts by Congress, including those in H.R. 2514, to reduce the compliance burden on credit unions while also ensuring the government has access to the information it needs to combat crime.
- Furthermore, credit unions urge Congress to adopt 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;
  - Curtails the continually enhanced Customer Due Diligence (CDD) rule requirements;
  - Increases the CTR threshold immediately and allows for periodic adjustments going forward.
- The U.S. House has included language in their version of the 2021 National Defense Authorization Act related to BSA/AML. Specifically, the provisions would index the Currency Transaction Report (CTR) threshold for inflation every five years and would require a study on the impact of Suspicious Activity Reports (SARS).

## Modernizing the Federal Credit Union Act

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- The financial service industry is rapidly changing. Advancements in technology have significantly changed our society and how financial institutions do business.
- Consolidation continues to increase the average size of CUs.
- Updating the Federal Credit Union Act has become necessary to ensure federally-chartered CUs have the powers and flexibility to be competitive and best serve their members.
- H.R. 1661 has been introduced to eliminate the 15-year loan maturity limit on non-mortgage loans. Doing so will expand consumer access to affordable student loan and agriculture, fishing and other business lending products.
- H.R. 2305, the Veterans Members Business Loan Act and its Senate companion, S. 2834, have also been introduced. The bill would exempt loans made to veterans from the member business loan cap.
- H.R. 7963 would update the Federal Credit Union Act would modernize the process by which federal credit unions are allowed to expel abusive members.
- H.R. 6550 would exempt credit union loans related to the COVID-19 pandemic from the MBL for a period of three years.
- Congress should also introduce and pass legislation that:
  - Removes outdated responsibilities of federal CU boards of directors.
  - Modernizes governance and procedures for federal CUs.
  - Permits CUs to establish their own fiscal year.
  - Permits electronic balloting for conversions from state to federal charter and from federal to state charter.