



# 2023 MCUL FEDERAL ISSUES

## Interchange

### **Credit Union Ask:**

*Oppose changes to the existing interchange system.*

- Interchange fees are vital to credit unions as they help credit unions recoup the growing costs associated with credit card fraud detection, credit monitoring and, importantly, they allow credit unions to shield members AND merchants from fraudulent charges via zero-liability protection policies when bad actors strike.
- Increasing fraud and the possibility of reduced interchange fees pose a real threat to data security.
- In 2022, Sens. Dick Durbin (D-IL) and Roger Marshall (R-KS) introduced the Credit Card Competition Act in the U.S. Senate and companion legislation was introduced in the U.S. House.
- The bill would have decimated an existing system that's proven to be efficient, effective and designed around protecting the consumer and their personal information.
- Fortunately, the bill failed to gain support beyond those who sponsored it.
- Following the defeat of his sweeping interchange legislation in 2022, credit unions are hearing that Sen. Durbin and his allies are changing their legislative strategy and will seek to make incremental changes to credit interchange.
- We understand the Senator will attempt to include interchange language in the 2024 Farm Bill or other "must pass" legislation. His proposal could be modeled after the Credit Card Competition Act from last Congress or perhaps be a scaled down plan focused on credit interchange involving certain types of transactions (eg. EBT/SNAP benefits).
- We have serious concerns about a proposal that would almost exclusively benefit large retailers using taxpayer dollars while low-income families participating in these programs would realize no savings at checkout.
- While the proposal would not impact credit unions directly, if successful, it would no doubt serve as a precursor to comprehensive interchange legislation down the road—something credit unions are adamantly opposed to.
- Additionally, if interchange legislation related to SNAP and EBT were passed, it could negatively impact the interchange ecosystem as a whole and result in credit card issuers, like credit unions, recovering fewer of the dollars necessary to protect consumers and merchants.
- Bottom line is the current system works and shouldn't be touched. Consumers win with access to easy-to-use credit, merchants win with guaranteed payments and financial institutions by being able to recoup the significant costs associated with providing safe and secure products to consumers.
- Michigan credit unions urge members of the Michigan delegation to oppose changes to the current interchange system.

### Federal Lawmaker Positions on Interchange

#### Supports MCUL position:

U.S. Sen. Gary Peters

#### Position unknown:

U.S. Sen. Debbie Stabenow and all Michigan U.S. House members

## 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.
- For-profit financial institutions continue to close brick-and-mortar locations in both rural and urban areas in search of more profitable locations.
- 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 expect legislation will be introduced in the 118th Congress focused on the follow areas and urge members of the Michigan congressional delegation to co-sponsor the legislation and work to support its passage:
  - Expand opportunities for federal credit unions to serve underserved areas.
  - Remove barriers for credit unions to provide small business loans to women, veterans (H.R. 539), minority groups, farmers and others by exempting these loans from the member business lending (MBL) cap.
  - Afford federal credit unions flexibility with regard to the frequency of board meetings. The Credit Union Board Modernization Act (H.R. 582) has been introduced and passed by the House by voice vote and companion legislation (S. 610) has been introduced in the Senate. Under the bill, boards of federal credit unions in strong financial standing 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.
  - Michigan U.S. House members who co-sponsored H.R. 582 include: Reps. Huizenga, Kildee, McClain, Scholten and Walberg.
  - Permit federal credit unions to offer non-mortgage loans (eg. student loans, agricultural loans and other business lending products with a maturity limit of 20 years). Currently, federal credit unions are prohibited from offering many types of loan products with maturity limited beyond 15 years, which suppresses consumer choice.

## Cannabis Banking

### **Credit Union Ask:**

*Co-sponsor and support the Safe Banking Act and urge leadership to pass the bill in 2023.*

- 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 38 states (including Washington, D.C.) with legalized medicinal cannabis. 22 states (including Washington, D.C.) have legalized recreational cannabis 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. 2891 and S. 1323).

### Federal Lawmaker Positions on Cannabis Banking/SAFE Banking Act

#### Supports MCUL position:

U.S. Sen. Gary Peters

#### Co-sponsored SAFE Banking Act in 117th Congress (2021/2022):

U.S. Sen. Gary Peters and U.S. Sen. Debbie Stabenow, along with U.S. Reps. Dan Kildee, Debbie Dingell, Rashida Tlaib, Elissa Slotkin and Haley Stevens

#### Did not co-sponsor but voted in support of the bill:

Rep. Jack Bergman

#### Opposes SAFE Banking Act:

Reps. Bill Huizenga, Lisa McClain, John Moolenaar and Tim Walberg

#### New members with unknown positions:

Reps. John James, Hillary Scholten and Shri Thanedar.

## 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, nearly 12 billion records have been breached due to lax data security standards.
- 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.
- Laws like the Gramm-Leach-Bliley Act (GLBA) and the Health Insurance Privacy and Accountability Act (HIPAA) 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 businesses, 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.

## 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 financial 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 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.

## 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.*

- 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.
- Survey data has shown that credit union members highly value this protection/service.
- 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.
- 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.
- We anticipate legislation will again be introduced that would negatively impact a financial institution's ability to offer voluntary overdraft protection to members/customers.
- Past legislation would have, among other things:
  - Prohibited overdraft fees on debit card transactions and ATM withdrawals.
  - Prohibited financial institutions from charging more than one overdraft fee per month and no more than six overdraft fees in a single calendar year for check and recurring bill payment overdrafts.
- 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.
- 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.
- The House Financial Services Committee approved H.R. 4277 in late July. While the legislation lacks broad support to pass as a standalone bill, MCUL remains vigilant and will oppose any attempt to attach H.R. 4277 to a larger "must pass" bill during the lame duck period.
- Reps. Lawrence, Levin and Tlaib from the Michigan delegation have cosponsored the bill.

### Federal Lawmaker Positions on Voluntary Overdraft Protection

[Opposes MCUL position/co-sponsored anti-overdraft legislation in 117th Congress \(2021/2022\):](#)

Rep. Rashida Tlaib

[Position unknown:](#)

Remaining members of the Michigan congressional delegation

## 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 could 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.

### Federal Lawmaker Positions on Credit Union Tax Status

#### Supports MCUL position:

U.S. Sen. Gary Peters and U.S. Sen. Debbie Stabenow, along with Reps. Jack Bergman, John Moolenaar, Bill Huizenga, Tim Walberg, Debbie Dingell, Elissa Slotkin, Dan Kildee, Lisa McClain, Haley Stevens and Rashida Tlaib

#### New members with unknown positions:

Reps. John James, Hillary Scholten and Shri Thanedar



## Community Development Financial Institutions (CDFI) Fund

### **Credit Union Ask:**

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

- In 2022, credit unions in Michigan and across the country 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.
- CDFIs 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 have received 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 placed into cure status or denied because they fail to meet the Accountability standards under the CDFI Fund's requirements. Reportedly, this is because credit unions have failed to demonstrate they meet racial, ethnic, employment and/or residency requirements for their democratically elected boards.
- Several credit unions in Michigan have lost certification due to not meeting both Target Market thresholds of the Fund.
  - The Target Market thresholds is one area MCUL believes should be looked at by Congress to gauge whether it remains valid and look to modernize the threshold if it does not.

## The Central Liquidity Facility

### **Credit Union Ask:**

*Support a one-year extension of CARES Act provisions related to the Central Liquidity Facility.*

- The Central Liquidity Facility (CLF) exists within the NCUA with member credit unions owning the facility.
- The CLF is a quasi-government corporation created to improve the financial stability of credit unions by serving as a lender to credit unions experiencing unexpected liquidity shortfalls.
- The CARES Act made it easier for credit unions to join the CLF through their corporate credit union.
- The CARES Act provisions reflected lapses in existing law that do not afford credit unions sufficient access to emergency liquidity during times of crisis.
- The CLF provisions are set to expire at the end of 2022 unless Congress acts.
- The Central Liquidity Facility Act (S.544) has been introduced to extend the CLF provisions of the CARES Act for three years. We are urging our members of Congress to co-sponsor the legislation and call on leadership to pass the bill.
- With a potential recession approaching it could prove unsafe to allow the CLF to return to its previous level of borrowing authority and credit union access.
- Over 3,600 credit unions nationally with CLF memberships through their corporate credit unions will no longer have access to the emergency liquidity backstop provided by the CLF.