

## Federal Priority Issues Update

April 2023

The first quarter of 2023 was highlighted by a 400+ strong GoWest delegation visiting with 47 out of 48 Congressional offices representing our six-state region, during the Hike the Hill portion of the 2023 CUNA GAC. We delivered strong messages on the economic impact our credit unions are making and outlined opportunities for Congress to help credit unions better serve their members.

### **Prominent Regional Bank Failures - Federal Response**

In March, we witnessed the second and third largest bank failures in U.S. history with the government takeover of Silicon Valley Bank (CA) and Signature Bank (NY). There is a great deal of scrutiny, and finger pointing currently underway of what led up to the banks being placed into conservatorship by state regulators and eventually the Federal Deposit Insurance Corporation (FDIC).

Congress began holding hearings on the bank failures the week of March 27th and requested internal reviews and individual reports by the FDIC, Federal Reserve, and Treasury, on or before May 1<sup>st</sup>, regarding regulatory perspective on what caused the failures, including any missteps or lack of oversight that took place leading up to the failures. Following the release of the internal regulatory inspections, additional hearings will be held, and the GoWest advocacy team expect to see additional banking regulation legislation introduced by Congress, in addition to the bills that have already been discussed or introduced, which is further outlined below.

There have been overly generalized statements made from both sides of the political aisles regarding the cause of the bank failures, including mismanagement by the bank executives, concentration levels, unmatched or hedged interest rate risk, and possible miscues by the regulators. At the same time, there are some differing views on the banking regulations that are currently in place, and what additional regulations, if any, may be necessary to ensure additional failures can be prevented or foreseen to allow regulatory remedy actions to be implemented prior to conservatorship.

Stronger banking regulation proponents, such as Senator Elizabeth Warren (D-MA), have utilized the recent bank failures as a platform for additional and more intense banking regulation on financial institutions, while also decrying regulatory right sizing that Congress passed in 2018. This small, but vocal group of Congressional leaders has attempted to target the passage of S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, as being one of the causes of the bank failures. S. 2155 provided operational flexibility for credit unions and community banks, while also allowing all financial regulators the ability to tailor their regulatory systems to the size and intricacies of the institutions they oversee.

There will continue to be debate on whether additional regulation and direct oversight is necessary following the release of the individual reports by the banking regulators and what Congress has the appetite to pass. The GoWest Advocacy team is working behind-the-scenes with credit unions on both proactive and defensive strategies and proposals on issues that may come up, including federal deposit insurance, concentration risk, portfolio diversification, and more. Below we outline the shifting sands of opportunities that will be presented for credit unions in the 118<sup>th</sup> Congress.

Additionally, as mentioned previously, Congress has not waited around to begin developing legislative ideas that are in direct response to the SVB and Signature failures, a sampling of which are outlined below:

### **“Claw back” Legislation**

#### **[H.R. 1654](#) / [S. 800](#) - The DEPOSIT Act**

The *Deliver Executive Profits on Seized Institutions to Taxpayers Act* is legislation that was introduced in direct response to the apparent sale of stock by SVB Executives and the providing of large-scale bonuses to executives just prior to the bank being put into conservatorship. The legislation takes steps to recoup or “claw back” from bank executives the bonuses and profits from stock sales made within 60 days of a bank failure. Additionally, the bill would impose a 90% tax on the bonuses of bank executives who make an annual income over \$250,000 when a bank is put into conservatorship by the FDIC as well as require them to forfeit 100% of profits they made from recent bank stock trades. The funds would be returned to depositors and used to pay workers and small businesses that were impacted.

#### **[S. 1045](#) - Failed Bank Executives Claw Back Act**

Senator Warren (D-MA) and Senator Josh Hawley (R-MO) sponsored this legislation, bringing together polar political opposites, to require that, in the event of a bank failure, federal regulators would have the ability to claw back all or part of the compensation received by bank executives in the five-year period preceding the failure.

### ***Repealing the Tailoring Changes Made to Dodd-Frank***

#### **[S. 817](#) / [H.R. 1602](#) - SVB ACT**

The companion legislation, Secure Viable Banking Act, was introduced by Senator Elizabeth Warren (D-MA) and Rep. Katie Porter (D-CA-47). It would repeal Title IV of S. 2155 --the tailoring regulation that allowed regulators to determine the regulatory structures and stress testing needed for certain sized medium to large-sized regional banks, rather than the one size fits all approach that Dodd Frank had previously established.

### ***Shifting Opportunities in the 118<sup>th</sup> Congress***

With the recent banking failures, we have seen a shift in issues that are on the forefront of minds in Congress. Legislation that could be viewed as regulatory reduction or modernization, has faded a bit, with renewed focus on ensuring financial system stability, diversifying depositors and ensuring access to financial services for all Americans. With this shift, GoWest and CUNA have an opportunity to promote federal policies and legislation that will open opportunities for our credit unions to better serve the needs of their members.

Over the course of this unsettling time, with the failures of SVB and Signature Bank, we have heard a great deal about concentration risk, diversity of investment portfolios, and the need to have a broader group of depositors and lenders than those regional institutions currently under scrutiny, and the “too big to fail” mega banks. As these discussions take place, credit unions have a unique opportunity to promote policies we have outlined in the past, but with a new vision and vigor for a broader and more balanced financial system.

### **Diversification of Concentration**

- MBL cap expansion and elimination of disparities between banks and credit unions that allow banks to generally charge less for business loans.

### **Diversification of Portfolios**

- Expansion and diversification of investment authority for credit unions;
- Increase in overall interest rate cap to allow federal credit unions to serve higher risk borrowers;
- Increase maturity limits on secondary mortgages; and

### **Diversifying Membership**

- Field of Membership (FOM) expansion – credit unions have cumbersome FOM statutes and regulations that prohibit them from serving a broader group of individuals. FOM restrictions are an outdated vestige that remains from the original 1934 Credit Union Act, which only hurts consumers and weakens the U.S. financial system.
  - *S. 539 – Veteran Member Business Loan Act* - Introduced in Congress.

### **Liquidity Option Expansion**

Unlike banks, credit unions have not had historic levels of significant liquidity events and therefore the NCUA’s Central Liquidity Facility (CLF) has not been modernized like the Federal Reserve system in order to meet a variety of liquidity needs. The CLF needs to be overhauled to provide liquidity beyond being a lender of last resort. In addition, the Community Development Revolving Loan Fund could also be expanded in order to provide long-term capital.

- Permanent extension of the CLF and allowance of agency relationships for smaller credit unions to access liquidity – *S. 544 - Introduced in Congress* and outlined below.
- Modernize the CLF to better serve credit unions needs.
- Expand access to the newly appointed Fed liquidity program beyond 1 year.

## **Other Pressing Federal Issues**

### **Interchange**

GoWest Advocates have done amazing work, battling misguided changes and broadened government intervention into the Interchange system in 2022 and into 2023. At this time, Senator Dick Durbin (D-IL) has yet to reintroduce the Credit Card Competition Act, which is designed to extend the original Durbin Amendment provisions to apply to credit cards. Supporters claim the bill would increase competition in the payment space, but it would in fact be a huge windfall for the mega-retailers at the expense of the security of the payments ecosystem and the financial health of everyday consumers.

Senator Roger Marshall (R-KS) who co-sponsored the Credit Card Competition Act in 2022, as Durbin's Republican partner, has been reluctant to sign back on, as an original co-sponsor, without additional Republican supporters. In addition, Peter Welch (D-VT), one of the original co-sponsors in the House, won his election to the U.S. Senate, and has not made additional movements toward carrying the water for this issue in the 118<sup>th</sup> Congress, at least until Durbin takes steps to introduce the bill.

### ***Farm Bill Reauthorization and the NDAA***

In 2023, the reauthorization of both the Farm Bill and the National Defense Authorization Act (NDAA) will be in a group of very few pieces of legislation that must pass Congress before the end of the year. The Farm Bill is the omnibus, multi-year law that provides governance and extends authorization to nutrition assistance and farm commodity support programs. As credit union leaders are aware, the NDAA is the authorization legislation that ensures defense readiness and support for defense initiatives continue to be funded. We are already hearing reports that Senator Durbin has amendments ready to attempt to attach the Credit Card Competition Act language to one of these bills as it moves through the process. The GoWest advocacy team will remain vigilant in our communications and interaction with Congressional leaders and staff to advocate against including any language of this type in the NDAA or Farm Bill reauthorizations.

### **Revamping the Consumer Protection Finance Bureau (CFPB)**

#### **[H.R. 1382](#) - Taking Account of Bureaucrats' Spending Act of 2023 (TABS Act)**

Congressman Andy Barr (R-KY-6) introduced the TABS Act in early March, which if passed would place the CFPB into the regular appropriations process rather than their direct funding mechanism from the Federal Reserve. Additionally, it would change the overall structure to an independent agency and rename it the Consumer Financial Empowerment Agency.

#### **[H.R. 1410](#) - Consumer Financial Protection Commission Act**

Congressman Blain Luetkemeyer (R-MO-3) introduced an additional CFPB reform bill, which would change the make of the Bureau and turn into a 5-member Commission. The new name of the organization would be the Consumer Financial Protection Commission.

### ***Modernizing the Federal Credit Union Act***

Although there has been a change of focus away from regulatory modernization and the removal of outdated restrictions within the Federal Credit Union Act due to the recent banking failures, many members of Congressional delegation remain committed to providing credit unions with more flexibility to help us deliver more people-over-profit services to consumers, small businesses, and communities. As such, we will continue to pursue these legislative measures and developing options for legislative concepts previously outlined.

#### **[H.R.582](#) / [S. 610](#) - The Credit Union Board Modernization Act**

The Federal Credit Union Act requires that a credit union board meet once a month. This outdated requirement forces credit union boards and staff to spend time and resources organizing board meetings every month rather than focusing on member services. It can take hundreds of hours of staff time to prepare for a board meeting, and a monthly meeting requirement creates travel burdens for the Board of Directors. This is especially burdensome in rural areas, for small credit

unions, and during emergencies, such as the pandemic, when credit unions should be focused on helping members. The legislation has already passed the U.S. House of Representatives, and Senator **Kyrsten Sinema (D-AZ)** was the original sponsor of the Senate version of this bill, following our continued work with her on this issue.

#### *GoWest Delegation Co-Sponsors:*

Rep. Earl Blumenauer [D-OR-3]  
Rep. Russ Fulcher (R-ID-1)

Rep. Derek Kilmer (D-WA-6)  
Rep. Brittany Pettersen (D-CO-7)

Sen. John Barrasso (R-WY)  
Sen. Cynthia Lummis (R-WY)

Sen. Mike Crapo (R-ID)

### **The Expanding Access to Lending Options Act**

Allowing credit unions to service secondary loans with terms longer than 15 years would provide consumers more flexibility to manage the loan. A large group of consumers would benefit from this change, and several of our states already have this flexibility. The National Credit Union Administration's (NCUA) ability to address this through regulation is limited. The current 15-year limit is outdated and does not conform to maturities that are commonly accepted in the market today, which limits federal credit unions from competing in this significant market, while potentially increasing concentration risk in other areas. This legislation has not yet been introduced, but we expect this type of legislation to gain traction and be introduced in short order.

### **The Member Business Loan Expansion Act**

In addition to extending loan maturities, this previously introduced legislation would increase the threshold that counts against the Member Business Lending Cap, allowing credit unions to further aid local small businesses, including family farms and ranches. In the first year alone, lifting the MBL cap to the levels proposed in previous iterations could inject \$5.5 billion in capital into small businesses, and create 50,000 jobs. We expect additional legislation, in addition to the Veteran MBL Cap approach in S. 539, mentioned above, as we continue to move forward in the 118<sup>th</sup> Congress.

### ***Additional Federal Advocacy Priorities***

#### **SAFE Banking Act**

The current make-up of Congress has made the SAFE Banking Act less of a priority in the 118<sup>th</sup> Congress, but there remains a significant support base and group of Congressional leaders who want to see this legislation passed. The new version of SAFE Banking has not been introduced in the 118<sup>th</sup> Congress, but the pressure to move something remains. As we continue to see more support for cannabis legalization for medical or recreational purposes passed in additional states, the support for and need to finalize SAFE Banking will only grow. The GoWest advocacy team will continue to advocate for the passage of SAFE or SAFE+ legislation.

## Data Privacy

Retailers do not face the same strict data security standards that financial institutions are subject to under the Gramm-Leach-Bliley Act (GLBA). Major merchant data breaches expose credit unions to significant monetary costs and reputational risk. We are consistently requesting that Congress takes action to provide a fair and equitable data privacy standard, on a national level, instead of the patchwork of state laws that is currently being established. As the GoWest Congressional delegation includes the Chairwoman of the Senate Commerce, Infrastructure and Transportation Committee, Senator Maria Cantwell (D-WA), and the Chairwoman of the House Energy and Commerce Committee, Rep. Cathy McMorris Rodgers (R-WA-5), we expect to see several versions of data privacy legislation, including the introduction of legislation from House Financial Services Chairman Patrick McHenry (R-NC-10), which includes several sections that we support, and then some additional language that provides us concern. The major sticking points for those working on this complicated issue continue to be private right of action capabilities, state preemption, and overall data usage by companies.

If you have any questions about the different moving components in the 118<sup>th</sup> Congress, please reach out to me at your convenience.

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