

The GoWest Credit Union Association is pleased to provide our quarterly analysis of regulatory developments at the state and federal levels.

In this edition, we provide an economic review of the first quarter and a second quarter economic outlook. We provide analysis on potential regulatory and policy responses following the recent bank failures.

As always, we provide an NCUA update covering the latest agency developments and opportunities. A CFPB update will provide an analysis on the final small business lending rule and the results of GoWest credit unions' advocacy. Finally, we touch on regulatory advocacy efforts with the FHLB system and the CDFI.

FIRST QUARTER UPDATE AND SECOND QUARTER ECONOMIC OUTLOOK

As expected, Interest Rate Risk (IRR) and Liquidity were top of mind for credit unions and regulators in the first quarter of 2023.

GoWest credit unions saw a dramatic slowdown in deposit growth from the 3rd quarter of 2022 through the fourth quarter of 2022, and in some states credit union deposits were down year over year. While the slowdown in deposit growth has been a factor that has led to tighter liquidity, rapidly slowing prepayments, and underwater investments have also contributed to tight liquidity.

The tight deposit markets have led to rapid growth in financial institution borrowings from the Federal Reserve from approximately \$4.5 billion at the end of February 2023 to \$300 billion by mid-March. These conditions, coupled with high-profile bank failures, have led to heightened industry scrutiny by regulators and policy makers as well as swift action.

Specifically, the creation of the Federal Reserve's Bank Term Funding Program (BTFP) provides one year term loans that can help financial institutions avoid having to roll short term Fed borrowings that may reprice if interest rates rise. The BTFP provides loans of up to one year and a Fed Master Account is not required. The loans will be collateralized with the depositories qualifying assets at par value.

GoWest has received several inquiries from our member credit unions about accessing the BTFP and what potential effect this may have on examinations or CAMELS ratings. Both state and federal regulators have indicated that the use of the Fund and the decision to access it should be documented and monitored by credit unions but will not be viewed as negative. Examiners will continue to review Sensitivity to Market Risk and Liquidity Risk to confirm credit unions have safe and sound policies, controls, risk measurement, and reporting practices in place.

Looking ahead, the Association anticipates that liquidity will remain tight, and the cost of funds will continue to rise with tax refunds providing some short-term relief.

We are also anticipating pre-payments to continue to slow and housing demand to be weak in Q2 2023 compared to historical 2nd quarter demand. In addition, we expect the Fed to continue to raise interest rates an additional 50 –100 basis points this year. Inflation has remained elevated to start the year and labor markets remain tight.

Link to: [Bank Term Funding Program](#)

POLICYMAKERS RESPONSE TO BANK FAILURES

There is expected to be a lot of debate amongst policy makers in response to the recent bank failures. Most specific proposals to date are viewed as partisan so will have difficulty moving through both chambers; however more bank failures could shift the environment quickly. Potential Policy Debates:

- **Federal Commercial Deposit Insurance** - It is becoming clear to policymakers that raising the insurance limit to \$450 - \$500k would not have done much to stem the run on Silicon Valley Bank (SVB) by commercial depositors. As the policy discussion evolves, the conversation could narrow into the advantages and disadvantages of creating federal commercial deposit insurance. Commercial deposit insurance would likely look different than consumer deposit insurance. There are not any fully vetted concepts being considered at this time, but as noted, things can change quickly, particularly if we see multiple failures of financial institutions with significant amounts of uninsured commercial deposits running off because they were seeking insurance coverage.

NCUA

The National Credit Union Administration (NCUA) is preparing for a potential board shake-up that could impact agency priorities and direction. The Administration may submit an NCUA Board nominee soon after Board Member Hood's term ends in August with Senate confirmation in the fall.

Interest Rate Risk and Liquidity

Liquidity and Interest Rate Risk have been top priorities for NCUA examiners. On April 11, Board Member Hood hosted a Capital Markets Symposium at the New York Stock Exchange with a focus on balance sheet management, liquidity, and interest rate risk. Specific topics included asset securitization, loan participations, subordinated debt, diversified funding through both public and private sector contingency funding, derivatives, and on and off-balance sheet strategies to better mitigate IRR and liquidity risk.

NCUA has worked to give credit unions the tools they need to manage these risks. Examples include:

- Modernizing the subordinated debt rules, which has resulted in subordinated debt being far more accessible and has boosted the levels of regulatory capital across the GoWest Region.
- Improved framework for packaging asset-backed securities which allows credit unions to create balance sheet liquidity efficiently and effectively without having to rely on a small universe of single counterparties.
- A derivatives rule that was expanded and simplified to make derivatives easily accessible to all credit unions as a tool to hedge interest rate risk.

While adoption of some of these tools has been slow, GoWest credit unions are leading the way in utilization and the association has the resources to assist with uptake.

NCUA First Quarter Board Meetings:

NCUA held their first three board meetings of the year and have issued a couple of rules that are beneficial to credit unions that GoWest has supported and advocated for. Examples include a proposed rule on chartering and field of membership, and a final subordinated debt rule that extends the permissible maturity for subordinated debt in certain instances.

Field of Membership Expansion specifically would:

- Make four changes to the rules for underserved areas that multiple common-bond federal credit unions may seek to add to their fields of membership. The changes would streamline existing application requirements and clarify the role of data and criteria that other federal agencies provide relating to underserved areas.
- Eliminate the business and marketing plan requirement for certain federally insured, state-chartered credit unions that seek to convert to a federal charter while serving the same community field of membership.
- Expand the community-based field –of membership affinities — relationships between a person and the geographic community — to recognize the growth of telecommuting and remote work for companies headquartered in a community.
- The association is also asking the NCUA to finalize several proposed rules which will positively impact the credit union system including a loan participation rule and an FCU Bylaws rule allowing for member expulsion.

In addition, we are supporting the NCUA congressional ask to modernize the CLF and approve expanded borrowing authority and the ability of Corporates to subscribe on behalf of some members. The GoWest is also advocating for the CLF to be turned into a true liquidity facility that can lend similarly to the Fed window.

NCUA Grant Round

The NCUA grant round will open May 1, and there are some new grant opportunities this year. For the first time, grants are available for Low-Income Credit Unions and Minority Depository Institutions. In addition, the NCUA is piloting two new multi-year collaborative grant initiatives, one aimed at small credit unions and the other aimed at larger credit unions.

- Underserved Outreach (maximum award of \$50,000) — Helping credit unions expand safe, fair and affordable access to financial products and services to underserved communities and improve the financial well-being of their members;
- MDI Capacity Building (maximum award of \$50,000) — Preserving MDI credit unions and increasing their ability to thrive and serve minority populations.
- Consumer Financial Protection (maximum award of \$10,000) — Ensuring credit unions have the resources and expertise to protect credit union members, raise awareness of potential frauds, and facilitate access to fair and affordable financial services;
- Digital Services and Cybersecurity (maximum award of \$10,000) — Providing assistance to credit unions to modernize information and security systems to better protect themselves and their members from cyberattacks; and
- Training (maximum award of \$5,000) — Strengthening credit unions through succession planning, leadership development, staff education, and professional development.

Collaborative grant initiative:

- Impact Through Innovation (maximum award of \$100,000) — A pilot initiative addressing underserved communities by focusing on banking deserts, affordable housing, credit invisibles, and fintechs; and
- Small Credit Union Partnership (maximum award of \$50,000) — A pilot initiative helping small credit unions pool their resources to help them achieve their growth objectives.

CONSUMER FINANCIAL PROTECTION BUREAU:

On Thursday, March 9, 2023, the House Subcommittee on Financial Institutions and Monetary Policy held a hearing in response to the October 19, 2022, Fifth Circuit Court Decision in which the court found that congressional action violated the Appropriations Clause. The decision could have implications

beyond the scope of the CFPB case if upheld by the Supreme Court as it is the first case in which a court has held Congress in Violation of the Appropriations Clause. Most court watchers believe that the Supreme Court will overturn the landmark Fifth Circuit decision.

A Second Circuit Decision in March of 2023 on a separate case challenging the Appropriations Clause held with long standing precedent that Congress is empowered by the Appropriations Clause and that the payment of Money from the Treasury must be authorized by statute.

The Financial Services Committee hearing was held to examine the leadership structure, funding, budget, and operations of the CFPB and areas where reforms are needed. The hearing focused on agency accountability and the necessity to re-establish congressional controls and proper Bureau oversight. There was also robust discussion around the Bureau's use of enforcement as rulemaking.

GoWest will keep you apprised of all changes and potential Bureau reforms. We expect a Supreme Court decision in this case in 2024.

Final Rule on Small Business Lending Data Collection

As expected, the CFPB has finalized the statutorily required Small Business Lending Data Collection rule that was part of the Dodd-Frank Act.

The Association recognizes the impacts of this rule come with a significant compliance and implementation lift. The Association compliance team has issued a compliance guide, and we are working with our legal partners at Farleigh Wada Witt to provide more resources. This will be a topic of discussion at both the upcoming Compliance Legal Update Seminar and the next Compliance Council. The Bureau has also provided several helpful resources designed to help with implementation.

While we recognize the challenges that this rule creates for some credit unions, we also got some key concessions that we advocated for including staggered implementation and exemptions for lenders that originate less than 100 business loans per year, which includes most GoWest Credit Union Association members. An important note to remember: Business loans that credit unions have reported on HDMA are exempt from the covered loan definition. The CFPB estimates that if the rule were to take effect today 209 credit unions nationwide would be subject to the rule with 179 credit unions having a compliance deadline beginning in 2026.

The association has questions about the Bureau's methodology, and we intend to continue advocating for a de minimus loan amount and a higher exemption threshold when we meet with the Bureau during our upcoming Hike the Hill.

Link to: [Association Small Business Lending Rule Compliance Bulletin](#)

Link to: [CFPB Small Business Lending Rule Resources Page](#)

Additional Items on the CFPB Rulemaking Docket:

Open Banking/Consumer Access to Financial Data: The Bureau is working on modernizing Reg V as part of a suite of open banking rules. Another part of the open banking rules is the Required Rulemaking on Personal Financial Data Rights that implements section 1033 of the Dodd-Frank Act.

Jim Morrell, President and CEO of Shelton, Washington-based Peninsula Credit Union, participated in a Small Business Regulatory Enforcement Act (SBREFA) Panel for this rule. GoWest and CUNA worked with Jim to provide stakeholder input on ways that the Bureau might effectively and efficiently implement this rule.

The [Final Report](#) of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under

Consideration for the Required Rulemaking on Personal Financial Data Rights was published on March 30th. Primary points of consideration for this pre-rule:

- Open finance has the potential to bring in new entrants and better products and services, particularly for underserved consumers.
- Robust consumer protections are critical. The promise of data access is matched by the risks, so the CFPB must issue strong protections while ensuring high-quality data access.
- Requiring covered data providers to adopt a third-party access portal could be burdensome for small providers, potentially forcing consumers to move to larger financial institutions, thereby reducing competition. Small entities will be disproportionately affected and may even cease doing business when faced with this burden.
- Fractured data privacy laws in the United States create complications.

We will stay attentive to any updates or additional opportunities to advocate regarding this policy.

Link to [SBREFA Panel Final Report](#)

Proposed Rule on Credit Card Fees - The CFPB added a Credit Card Penalty Fees rule to the unified agenda and as anticipated released a proposed rule that would, among other things, reduce the amount financial institutions could charge for credit card late payments to \$8.

GoWest has solicited member input and plans to submit a comment letter on behalf of our credit unions on May 3rd, 2023. The primary points made in our comment letter are:

- Credit Unions typically charge reasonable late fees, to cover the necessary costs related to past due payment administration. Additionally, this rule should be applied on a scaled basis for larger and smaller financial institutions as smaller institutions typically have higher costs because of scale.
- Changes to Reg. Z should be driven by research, data, and testing. The CFPB should adhere to the established process of the SBREFA to understand and appreciate the impacts of a proposed rule.
- The CFPB must make it clear that these rules will be to reign in bad actors and repeat offenders and not the institutions that are relationally focused and whose mission it is to serve marginalized and underserved communities.

Link to [Draft CFPB Comment Letter.](#)

Federal Home Loan Banks

The Federal Housing Finance Agency (FHFA) wrapped up its comprehensive review of the Federal Home Loan Bank System after holding its final roundtable on the system in late March.

The FHFA, led by Director Sandra Thompson, has indicated its intent to modernize the FHLB system. Potential reforms include expanding access to the FHLB, requiring tracking to ensure that advance proceeds are being utilized to expand access to housing, and re-thinking the agency's affordable housing program. Agency Director Thompson is expected to report recommendations from the review to Congress in the coming months.

The GoWest Credit Union Association solicited feedback and wrote a letter outlining our position that the FHLB system has modernized and evolved but remains true to its mission, continuing to provide liquidity to its member institutions, which capitalize the bank through required stock purchases that creates borrowing authority with Treasury. While this system can and should evolve, it is important to recognize the strength of the system and its more than 90 years of supporting a robust lending market that meets the modern-day needs of the American public.

Key points included that there should be no detriment to the safety and soundness of the system

by allowing a member class that doesn't have equivalent prudential regulation and capital to the current members.

We advocated specifically for:

- Expanded Access to the FHLB to include all insured depositories regardless of lending mix;
- No required tracking of advance proceeds, mission tests, or collateral tests;
- Improving the administration of the Affordable Housing Program; and
- Enhancing the FHLBank system as a means of supporting housing and community investment

The association also pointed out the risks related to disrupting the core liquidity function of the FHLB system during a time when liquidity is tight and the banks have a record amount of advances on the books.

Link to: [GoWest FHLBank System at 100 Letter](#)

CDFI UPDATES

We had another well-attended roundtable in the first quarter with updates on the CDFI leadership transition and the progress made advocating for more input on the CDFI re-certification and application changes.

ECIP reporting is also undergoing some changes similar to the CDFI application revamp. On March 21, the Department of the Treasury released Instructions for the Quarterly Supplemental Report for Credit Unions. Credit Unions will need to create a framework, without violating fair lending laws, to collect and store information that's not used in any other way.

Collecting this type of demographic information exposes credit unions to legal ramifications without interagency safe harbor forms. The Association plans to write a letter advocating for ECIP recipients to utilize proxy data for ECIP reporting.

Link to [ECIP reporting Webinar](#)

Equitable Recovery Program

On April 10, 2023, the CDFI announced Equitable Recovery Program (ERP) fund awards including nearly \$40 Million allocated to 14 GoWest CDFI credit unions.

CDFI ERP awards are designed to help CDFIs expand lending, grant making, and investment activities in low- or moderate-income communities and to borrowers that have significant unmet capital and financial services needs, and enable CDFIs to build organizational capacity and acquire technology, staff, and other tools necessary to better serve low to moderate income communities.

Link to [ERP article](#)

REGULATORY ADVISORY COMMITTEE

The six-state Regulatory Advisory Committee will be meeting on **Thursday, April 27 from 10-12 pm Pacific, and 11-1 pm Mountain time.** The first two meetings of the year will be held virtually with the third meeting to be held in person during the MAXX annual conference. The committee will review rulemaking agendas, provide insights towards improving exams, and help set the regulatory advocacy priorities of the association.



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