

Areas of Sensitivity - Talking Points

During our meetings on the Hill, you may get questions about recent regulatory policy announcements or pressing issues in the news, and we want to ensure you can provide a strong response to refute or manage the issue. These are areas that we do not want to bring up in a proactive manner but want to ensure you are prepared to respond to them if asked.

Federal Reserve Proposed Rule on Interchange Fees

Background: Credit unions receive interchange fees to support card services and guarantee payment for purchases. Interchange helps pay for fraud detection, theft protection measures, support for impacted consumers, to replace credit cards that have been compromised, and to cover losses due to fraud or data breach. Over the last decade, the cost of providing these services has doubled for credit unions while interchange fees have remained stable for merchants, which many have offset by passing along the costs of the fees to the very consumers buying the products they sell. Recently, the Federal Reserve Board has announced it will be initiating rulemaking on interchange fees in the coming months,

- The Supreme Court has agreed to hear a case filed by a merchant naming the Federal Reserve as a defendant. The case challenges the Federal Reserve's rulemaking on interchange, alleging the fees are not "reasonable and proportional," nor are they regularly reviewed to ensure they are meeting those standards. The Supreme Court is expected to rule specifically on whether a retailer has the standing to file a lawsuit outside of the statute of limitations. In this case, the retailer, Corner Post, has not been in business for six years, which is the time standard to initiate a lawsuit in this type of matter. Corner Post is arguing that they have standing to sue because the interchange rule has been in place for longer than six years.
- While the case is being adjudicated, the Federal Reserve took a rare but not unprecedented step by issuing a proposed Interchange rule revision, on October 26, that will reduce interchange substantially for covered financial institutions -- those over \$10 Billion in assets. The proposed rule change in Regulation II would reduce the average interchange income on a \$50 transaction from 24.5 cents to 17.7 cents.
- If adopted as proposed, it would mean a 28% decrease on the average interchange transaction for covered issuers, currently defined as institutions over \$10B in assets. The fees will be adjusted every two years based on the mandatory interchange cost reports that covered issuers submit. The fee structure would be released no later than March 31 every two years and would take effect three months after publication on July 1.
- The proposed rule change issued Oct. 26 will have a 90-day comment period. The Fed is hoping to finalize the rule by mid-2024. In addition, the Fed separately proposed to publish the data on which the information is determined every two years. Fed Board Governor Bowman was the lone dissenter on issuing the proposed rule and she also was the lone dissenter on publishing the actual data that shows the costs incurred by covered issuers.

The Fed is seeking comments on a number of specific provisions. They have asked commenters whether setting the adjustment every two years is the appropriate cadence, whether there might be unintended consequences, and if so, what those unintended consequences would be.

Talking Points:

- Go West, and its member credit unions, will vigorously oppose any efforts to lower interchange as this funding helps protect members against fraud and helps credit unions to provide them with other critical services.
- GoWest will work with credit unions across our region as well as with our national partners, to ensure a full and robust response, which outlines the negative impact and the misguided approach to reducing the fee income on interchange.
- Fraud is significantly on the rise, especially with card not present transactions, and the Interchange fees provide the means to ensure financial institutions cannot only fight fraud, but also make customers whole if fraud has occurred on a merchant's network.
- ***Congress and the Fed should raise the current \$10 Billion exemption threshold on debit Interchange to truly protect the future viability of community financial institutions and ensuring robust fraud protection to protect consumers.***

Overdraft Protection (OP/ODP) & Non-Sufficient Fund Fees (NSF)

Background: The State of California recently published its first annual report on ODP and NSF fees that are charged by banks and credit unions in the state. This report was published following the passage of legislation in a previous session of the California legislature that financial institutions report annually on the fees they charge customers and members on overdraft and non-sufficient funds. The report was not flattering for many institutions, but specifically outlined that credit unions appear in this report to be charging a significantly higher rate for NSF and ODP fees, on average, in comparison to the banks. Moreover, it appears to be a significantly larger portion of their overall income when compared to for-profit institutions. The press has made impact with some negative headlines, which attempt to paint credit unions in a negative light in regard to the fees that they charge. We want to ensure you are prepared with talking points if asked about these fees:

[Politico – “Credit Unions Are Making Money Off People Living Paycheck to Paycheck”](#)

[California Report on NSF and ODP Fees](#)

Talking Points:

- Every credit union is different, and it is important to remember that the specific fee structures and policies can vary widely among different credit unions and banks.
- The California report is misleading and is void of a true comparison of fees at credit unions and banks. A better comparison would include account fees, minimum checking fees, bill pay fees, commercial loan fees, pre-payment penalties, etc.
- In addition, looking at overdraft and NSF fees as a percentage of income isn't comparing apples to apples. Credit unions, historically and still today, serve consumer accounts primarily, while banks service more commercial accounts – larger business accounts are less likely to be overdrawn.
- Credit unions require members to **opt-in** to overdraft protection, giving individuals the choice to avoid these fees if they prefer not to participate. They do this because overdraft programs provide a needed service and actually offer value. Using an overdraft program is better than not being able to buy groceries to feed your family or missing a mortgage payment and offers a more cost-effective alternative to predatory options such as payday loans.

- Most credit unions provide the ability for their members to have their NSF fees reimbursed, if they are not being abused. With that said, many credit unions have reduced or eliminated NSF and Overdraft fees and that trend is continuing.
- Overdrawn accounts or NSF fees are not the end results credit unions want, as we serve members, especially those who've been historically unserved or underserved. Credit union focus is on setting their members on a path toward greater financial independence.
- Credit unions often extend more lenient credit to consumers, helping them to avoid more expensive and potentially dangerous means of paying their bills. Our emphasis is on financial education and helping to change members' lives. That is the original mission of credit unions and remains as true today as ever.

CFPB Rules on Open Banking

Background: The Consumer Financial Protection Bureau (CFPB) last month released the long-awaited rule on Personal Financial Data rights, which was passed as part of the Dodd Frank Wall Street Reform Act, and a provision we actively opposed. The goal of the proposed rule is to give members more control over their data. This is a statutory rule that has been under development for more than five years and the Association has been actively involved in the process including working with the former Go West Chair of the CFPB's Credit Union Advisory Council (CUAC). Additionally, a GoWest member credit union representative served on the Small Business Regulatory Enforcement Act Panel (SBREFA). These credit union advocates allowed us to engage early in the rulemaking process and allowed us to get key concessions when the rule was proposed. Specifically, the CFPB included staggered implementation dates which results in all credit unions having longer implementation dates.

Many market participants including credit unions have already sought to develop technologies and standards to facilitate consumer access to personal financial data. The CFPB rule will accelerate that shift to a more open and decentralized system. The stated goal of the proposed rule is to:

1. Ensure third parties are acting on behalf of consumers when accessing their data, including with respect to consumers' privacy interests.
2. Increase security by applying a consistent set of security standards across the market.
3. Boost reliability by promoting the accurate and consistent transmission of data that are usable by consumers and authorized third parties.
4. Be more competitive by promoting standardization and not entrenching the roles of incumbent data providers, intermediaries, and third parties whose commercial interests might not align with the interests of consumers and competition generally.

This rule will require core processors to make significant changes that make data consistently available to financial institutions and will result in credit unions having to make significant changes to their policies and procedures for making covered data available.

GoWest and member credit unions have serious concerns with regards to a number of categories within the over 300-page CFPB rule, specifically in the areas of account portability, deposit "stickiness," unintended consequences as it relates to other regulations that are overlapped by this rule, and the basic component that a national data standard does not currently exist in which to utilize when implementing this rule.

Caution:

- The CFPB proposed rulemaking on accessing personal financial data does have support on both sides of the aisle, amongst consumers, and other industry trades, including the bank trades. We are examining strategies with our national associations and will look at this proposal with an eye to leverage Congress, to create a single data privacy standard, open opportunities or operational flexibility for credit unions, and potentially discuss the exemption of community based financial institutions from the rule.

Next Steps:

We will take the opportunity during Hill meetings to highlight that the proposed personal financial data rights rule must be accompanied by a National Data Privacy standard that pre-empts individual states' privacy rules. Currently, a handful of states have their own data privacy standards with Washington state expected to consider a data privacy standard in the next legislative session. With these individual state standards come differences that make it hard to comply particularly for smaller financial institutions that may still have members in multiple states.

Talking Points:

- **Uniformity:** A Federal Data Privacy Standard must be established before this rule can be implemented. A federal data standard would provide a consistent framework for financial institutions to follow, mitigating the complexity and cost of adhering to multiple, and potentially conflicting, state regulations.
- **Economic Efficiency:** A nationwide standard would prevent the economic inefficiency that comes from a fragmented regulatory landscape, reducing the administrative burden on financial institutions and possibly lowering costs for consumers.
- **Scale for Credit Unions and Other Smaller FIs:** Credit unions struggle with compliance cost associated with a state-by-state approach. For example, a small credit union with 5,000 members will almost certainly have a member in every state. If a credit union has even a few members in California, they may have to follow certain consumer compliance laws for those handful of individuals, but do not have the resources to dedicate staff to be experts in each state's consumer laws. On the other hand, the nation's largest institutions are able to absorb those compliance costs and have enough members in each state to make it economically viable.

Appropriations / Government Funding

Background: The current Continuing Resolution that is keeping the U.S. government funded will run out on November 17th, and the House and Senate are tackling the government funding issue along very different tracks. There are definite sensitivities around the funding mechanism being used to fund the government, and the recent trend to use continuing resolutions and large-scale omnibus appropriations bills versus passing individual appropriations bills. Additionally, fiscally conservative leaders in the House and the Senate continue to rail against the concept of "runaway" government funding and the growth of the national debt.

- Current challenges and roadblocks to ensuring government remains funded revolve around funding for very specific issues and areas:
 - Southern border security and Immigration Reform – a bi-partisan issue based on geographic location of the member of Congress.
 - Funding and weapons support for Ukraine's war against Russia.
 - Funding and humanitarian aid for Israel and the Palestinian people.
 - BROADER ISSUE - overall military funding and funding for social safety nets.

House:

- The House Majority is working diligently to pass all 12 appropriations bills; however, the bills would need to also be passed by the Senate and any differences in the legislation being worked out in a Conference Committee, before final passage. The House has only passed 5 out of the 12 bills and have been stalled on the passage of several specific measures.
- A certain group of House Republican appropriators are working diligently to reduce federal government spending, across the board, especially in discretionary areas and with non-military spending areas. This approach is not aligning with all House colleagues and is likely to meet resistance in the Democrat-led Senate.
- For example, some House Republicans have called for the elimination of funding for the CFPB and the CDFI in the FY '24 funding measures.
- Credit unions are working to protect, promote, and fund the CDFI program at the Treasury budget amount of **\$341 million** and allow low-income designated financial institutions to continue to provide lending and business development opportunities in underserved communities.
- A discussion around a tiered CR approach has been floated in the House, over the past few days, but has met with resistance from both Democrats and Republicans.

Senate:

- The Senate is working on a mini-omnibus appropriations bill, which would consolidate several funding measures into one or a few measures, providing funding for several of the appropriations areas until a permanent bill can be passed.
- With the time drawing very close to November 17th, the Senate has shifted its focus to preparing a stop-gap CR to keep the government funded until a pathway can be outlined to pass the appropriations bills or a package of bills.
- The Southern border security concerns remain a sticking point among Senate Republicans, who are taking a harder stance on the issue after House Republicans stood firm on the issue in September's budget negotiations.

Credit Union Stadium Naming Rights

Background: Two recent, largely unsubstantiated opinion pieces the bank lobby managed to have published in the Arizona Republic, call into question credit unions' tax exemption due to the fact that some credit unions have entered naming rights agreements with university and entertainment venues. These agreements actually support investments back into universities and communities. Both Op-eds made the unfounded assumption that credit unions use fees collected, such as non-sufficient funds and overdraft charges, or their tax exemption, as a means to fund these partnerships. As you know, credit unions' not-for-profit, cooperative structure is what determines how they are taxed, not the services or products they provide. In response to the article, GoWest submitted a response that underscores the not-for-profit, member-owned structure of credit unions. It also highlights the tangible value credit unions consistently deliver to their members and the significant impact they make within the communities they serve. We are working with the editorial staff on publication.

For your background, here are links to the banks' Op-eds:

- [Arizona/Utah Bankers Association](#)
- [American Bankers Association](#)

Talking Points:

- Banks have used innuendo to allege that credit unions have used their tax savings to purchase naming rights at sports and entertainment venues. The point they're overlooking is that such partnerships are about more than a sign on the venue.
- Through university partnerships, credit unions are investing in students and in the future which aligns with the credit union mission of helping people. These sponsorships enable much-needed benefits to universities and their students, such as helping to expand or continue athletic programs, funding scholarships based on financial needs, athletic ability, or academic achievement, and fostering community volunteer partnerships between the credit union and the college or university.
- Colleges and universities are economic engines in their communities, some of them the largest and most respected higher education providers in the county. They are readying the next generation to help businesses and people thrive. Investing in students is an honor, and a responsibility credit unions are proud to get behind.
- The headline isn't about the name on the arena, it's the scholarships that the partnership helps to fund, the donations made for points scored, the money invested in women's and men's athletics, and the facilities that are improved to benefit the entire community.

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