

Data Privacy Legislation Stalls in DC

Posted by **Ryan Fitzgerald** on July 2, 2024



Over the past few weeks, there has been a lot of activity related to the Congressional push to establish a national data privacy / data security standard that all industries would be required to meet.

As you know, GoWest credit unions have been long-term, consistent advocates for the establishment of a strong, national data security, data privacy and consumer notification standard. That decade-long effort has influenced the leadership shown by Senate Transportation & Commerce Chair Senator Maria Cantwell (D-WA) and House Energy & Commerce Committee Chair Rep. Cathy McMorris Rodgers (R-WA-5) and their collective efforts to develop bi-partisan legislation that would establish a nationwide standard and eliminate the current patchwork of different data standards that are required from state to state.

As previously reported, the Chairs of the germane committees, Cantwell and McMorris Rodgers, have presented thoughtful draft legislation entitled the American Privacy Rights Act (APRA), which includes several of the components sought by credit unions. However, the legislation comes up short in establishing a truly single, national standard and may require industries with Gramm-Leach-Bliley (GLBA) data standards requirements, like credit unions, to now meet two data standards under APRA and GLBA. Additionally, it includes some components that need to be addressed before the bill could strike the right balance for the credit union movement.

For APRA to meet the goal of weaving together a truly comprehensive, national standard, several adjustments will likely need to be made, which include:

- Clear preemption of current state data security and data privacy laws so that a single point of reference and reporting can be established at the federal level.
- Adding an institutional level GLBA exemption for financial institutions who are already subject to and examined to this national data security standard, while ensuring merchants and technology companies have an equal data security / data privacy standard that they must meet under APRA.
- Establishing reasonable limitations or standards on any private right of action (PRA) or standing for individuals who are harmed by a breach, ransomware or denial of services currently included in the bill; while also providing financial institutions with legal standing if a merchant or external breach impact members or the individual credit union, bank or other GLBA regulated financial institution.
-

Ensuring federal and state-chartered credit unions are treated equally as it relates to the enforcement provisions that are given to the Federal Trade Commission, but do not appear to provide equal or differential treatment to the federal banking regulators. Last Thursday, the House Energy and Commerce Committee was preparing to move forward with a full Committee markup of the APRA legislation, along with two other data privacy bills, before Chairwoman McMorris Rodgers cancelled the hearing due to questions and pushback by House Leadership and Republican committee members. The main concern from Republicans centered around the expansive PRA components of the bill.

GoWest credit unions and advocacy team values Rep. McMorris Rodgers' continued support of credit unions and we are supportive of her efforts to address this significant policy area in a timely manner. We are hopeful that the APRA draft will continue to evolve into a more balanced and comprehensive solution for data security and data privacy that will result in a focused and singular standard on this important issue; however, time is running short in the 118th Congress and hurdles continue to mount against this specific bill.

GoWest is in the process of finalizing comment letters to both committees with our specific concerns and solutions for making the legislation more workable for financial institutions.

ACU has sent comment letters and will continue to collaborate with GoWest on advocacy to improve this legislation in hopes that a balanced bill can be finalized. We will continue working with the Chairs and staff of both germane committees and monitor any changes in the discussions around APRA or the data privacy / security landscape in Congress.

Please stay tuned to our Advocacy Blog for further updates and reach out to [Ryan Fitzgerald](#) if you have any specific feedback.

Supreme Court Strikes Down Chevron Doctrine

Posted by [Ryan Fitzgerald](#) on June 28, 2024



Early Friday, the U.S. Supreme Court (SCOTUS) struck down the Reagan-era judicial precedent known as the Chevron Doctrine, which has provided deference to federal regulators and agencies in their reasonable interpretation of ambiguous federal laws when presenting to courts on legal determinations of agency rules and guidelines.

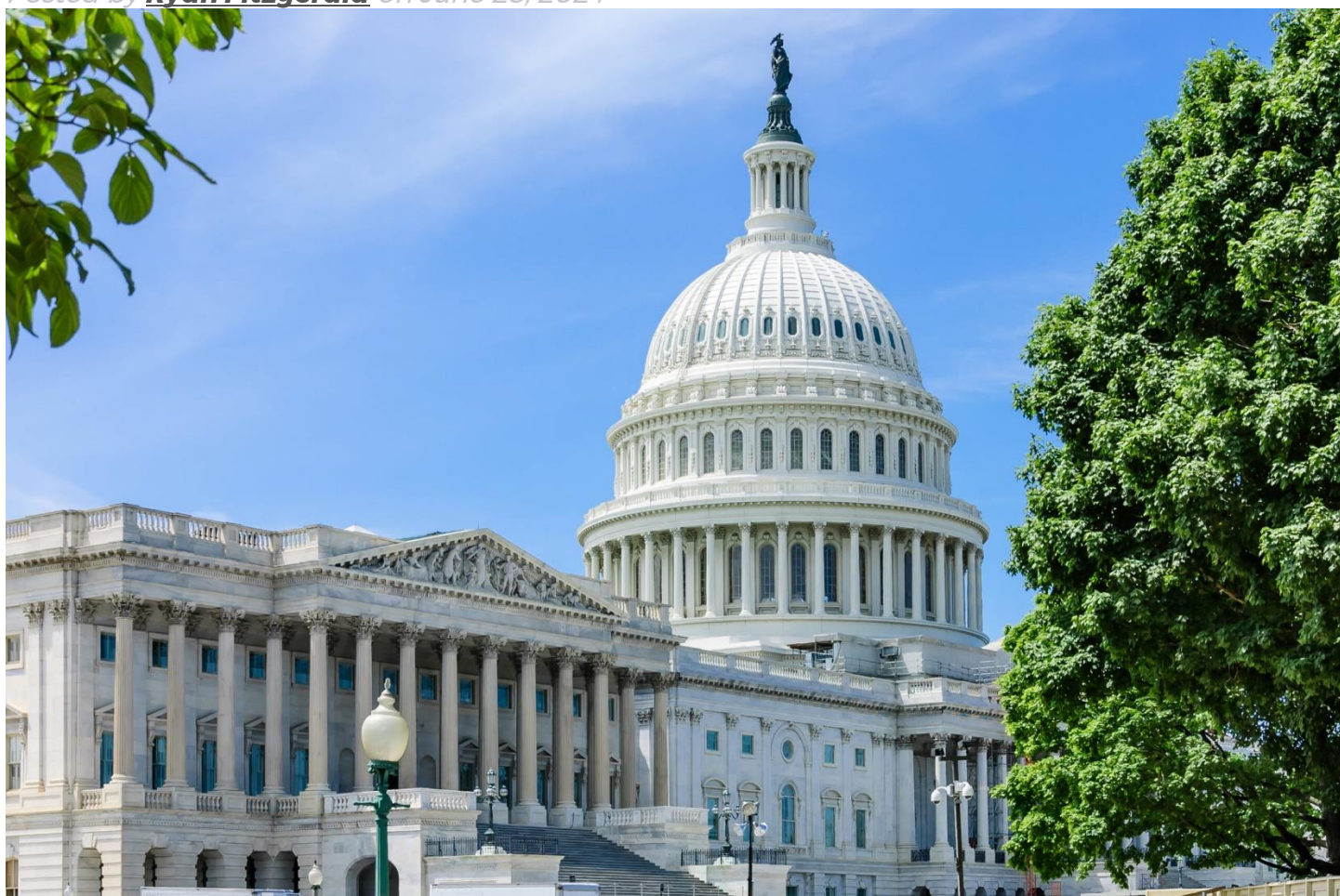
This decision outlines that courts do not automatically have to rely on the expertise and/or interpretation of a statute by the Administration or federal agencies.

In a 6-3 decision, which divided SCOTUS along traditional ideological lines, it delivers a major victory for those organizations and businesses that feel that the Executive Branch of the federal government has overstepped its powers in a broad group of policy areas, where agencies frequently use highly trained experts to interpret and implement federal laws. With this decision, we can expect the flow of lawsuits to push back on current agency rules to increase.

The GoWest Advocacy Team will continue to closely follow the ripple effect from this monumental change in federal administrative interpretive powers, strategize potential actions that can be taken in collaboration with our national partners, and keep you informed of impacts that we see on the horizon in the financial services arena.

New Version of Warren-Cleaver Housing Legislation Not Expected to Include CRA

*Posted by **Ryan Fitzgerald** on June 28, 2024*



The GoWest federal advocacy team has learned that Senator Elizabeth Warren (D-MA) and Rep. Emanuel Cleaver (R-MO-5) will be introducing a revamped version of the *American Housing and Economic Mobility Act*, without the inclusion of Community Reinvestment Act (CRA) requirements for credit unions. We brought this legislation to your attention a few weeks ago regarding the possible inclusion of CRA for credit unions and wanted to make sure you are up to date on this positive development.

Thanks to the collective advocacy of GoWest credit unions, the advocacy teams at GoWest, and our league and national partners, we are happy to report that the pressure brought to bear from our movement persuaded key congressional leaders to push back on the inclusion of CRA for credit unions in the bill. That pressure along with our advocacy resulted in the removal of the CRA language altogether.

Again, we will closely monitor this legislation as it rolls out and will stay close to the discussion around CRA for credit unions, where that pressure or theme is resonating from, and gaining traction. We will keep you closely informed if the landscape changes and if additional credit union advocacy is needed.

Republicans Looking for Creative Ways to Curtail Administrative Rulemaking

Posted by [Ryan Fitzgerald](#) on June 28, 2024



Last week, Senator Ted Budd (R-NC) introduced a companion version of the Secure Payments Act ([S. 4570](#)), which was originally introduced by Rep. Blaine Luetkemeyer (R-MO) early in March, as our credit unions were preparing to Hike the Hill at the National Government Affairs Conference. [S. 4570](#), and its House companion [H.R. 7531](#), would require the Federal Reserve to stop rulemaking on Regulation II and its proposed reductions in debit interchange, and would require a quantitative analysis on the entire Interchange system before the rule could be finalized.

The legislation would mandate the Fed to provide a full and formal report to Congress regarding the status of the Interchange system as well as how the proposed changes to Reg II would impact all stakeholders in the Interchange system before taking any further action to reduce Interchange income for financial institutions.

Additionally, last week, the House passed the REINS Act of 2023 (**H.R. 277**), which is legislation that would establish a formal process requiring approval of all “major” administrative rules put in place by the Executive Branch or President’s Administration. The “*Regulations from the Executive in Need of Scrutiny (REINS) Act*” is a legislative concept that has been enacted in several states, including in Idaho, with the goal of increasing legislative oversight of administrative agency rulemaking with certain financial or economic impacts. The REINS Act would apply to major agency rules, defined in the current Congressional Review Act statute as any agency rule that has a financial implication on the U.S. economy of more than \$100 million, would increase consumer prices, and/or a cause significant harm to the U.S. economy. If passed, the legislation would require any administrative rule that meets one of these definitions to gain Congressional approval before the proposed rule would take effect.

Individual members of Congress who are supportive of the REINS Act see the measure as an opportunity to return legislative powers back to Congress, feeling the body has excessively delegated its Constitutional authority to the Executive Branch through rulemaking. The authors of the REINS Act believe it will provide Congress with appropriate oversight and retain accountability for the content of the laws it passes.

It is unlikely that the REINS Act will gain traction with the current makeup of the U.S. Senate; however, the GoWest Advocacy team will continue to closely monitor this legislation as well as a growing sentiment in many offices that administrative rules have exceeded Executive Branch authority. As we know, the upcoming elections for the White House and Congressional majorities will have an impact on the future outlook of these types of bills and the future use of administrative rulemaking.