America's Credit Unions

crossstate Credit Union Association

Regulatory Advocacy Talking Points

I. The Regulatory Environment for Credit Unions

- Federal financial regulators should streamline current regulations, eliminate antiquated or inconsistent requirements, establish exemptions for credit unions where appropriate, and curb regulatory requirements that inhibit member access to desired products and services.
- Credit unions are consumers' and small businesses' best hope for receiving affordable and fair financial services since their customers are also their owners. This key incentive—that credit union customers are member-owners—is lacking in the for-profit banking industry.

II. NCUA Issues

NCUA Board Composition

- Beginning in January, Ms. Tanya Otsuka has joined the NCUA Board, replacing Board Member Hood. Board Member Otsuka's addition shifts the political balance of the Board, providing Chairman Harper additional support on several issues important to him—as noted below.

Third-Party Vendor/CUSO Authority

- Chairman Harper continues to push for Congressional amendments to the FCU Act to provide the agency with direct supervisory authority over TPVs. Citing ongoing concerns to the Share Insurance Fund, this will remain a priority of Harper's throughout 2024. In addition, Board Member Otsuka has raised the NCUA's lack of authority as one of her top issues.

- We strongly disagree with the need for an unlimited grant of such authority. The NCUA has effectively managed any risk associated with TPVs within the agency's current regulatory authority. Credit unions are required to perform due diligence on their TPV relationships, and this due diligence is already subject to supervision by the NCUA. Further, we are concerned with an increase in the agency's budget that will certainly be required to obtain/train qualified examiners.

- We understand there may be limited instances where the NCUA's involvement is warranted for supervising critical TPVs that present material risks to the credit union system, but we oppose the NCUA having unlimited authority to supervise all TPVs. As such, America's Credit Unions opposes legislative changes aimed at establishing NCUA authority in this area.

FCU Loan Interest Rate Cap

- At its January 2023 meeting, the NCUA Board decided to maintain the FCU loan interest rate ceiling at 18%, where it has been since 1987. Absent Board action, the rate would have reverted to 15%. The rate will remain at 18% through September 10, 2024, unless the Board acts prior to then. The Board made clear that it has the authority to revisit the 18% cap prior to its expiration in 2024, particularly if economic conditions warrant doing so.

- Further, in response to advocacy from the credit union industry, the Board has broached the subject of moving to a floating cap. At its April Board meeting, NCUA's Office of General Counsel stated that it is "reasonable to interpret the FCU Act to permit a floating interest rate ceiling." While the Board has raised concerns with a floating cap, the OGC's assessment is the first major hurdle. We will continue to ask the Board to consider a floating cap, which could allow credit unions to better navigate the current interest rate environment.

- In addition, we continue to urge the Board to remain vigilant with regard to the interest rate ceiling, including monitoring the broader interest rate environment to determine whether the fixed cap should be increased beyond 18% prior to September 2024.

Climate-Related Financial Risk RFI

- Last year, the NCUA issued an RFI on climate-related financial risk, focusing on current and future climate and natural disaster risks to credit unions, related entities, their members, and the NCUSIF.

- We appreciate the NCUA's awareness of climate risk as an area for the agency to monitor. As the federal prudential regulator and insurer of credit unions, it is important that the NCUA maintain a holistic understanding of potential risks to the industry. As such, we agree the agency is warranted in collecting information from credit unions regarding climate-related financial risk.

- However, we wholeheartedly oppose any subsequent regulatory activity that would establish mandatory reporting procedures for credit unions or to otherwise prevent credit unions—directly or indirectly—from continuing to make independent business decisions as they deem most appropriate in order to serve their members. Credit unions know their operations, fields of membership, individual members, and potential risks best, certainly better than the NCUA, which appropriately focuses on the industry on a broad scale.

- While the agency has not taken any action in this space since issuing the RFI in April of 2023, it is more likely we will see movement given Board Member Otsuka's addition to the Board. Of note, however, Board Member Otsuka mentioned in her confirmation hearing that as long as credit unions are following the law and managing risks appropriately, the NCUA should not be dictating how

and to whom they lend from a climate risk perspective, including businesses in the agricultural sector.

Consumer Compliance Examinations

- The NCUA is developing a consumer compliance program for large credit unions not yet supervised by the CFPB, those with between $5 billion and $10 billion. During the January Board meeting, Board Member Otsuka stated her support of developing such a program and for increasing the agency's consumer protection efforts.

- We continue to raise significant concern about expanding the agency's consumer protection and fair lending examination activity without sufficient reason to do so. Altering the agency's risk-focused examination process and substantially increasing consumer examination-related expenditures is simply not warranted.

- The agency should not pursue such exams for several key reasons:
    - As its mission statement makes clear, the NCUA exists chiefly to ensure the safety and soundness of the credit union system. Its examination program should remain focused on that primary objective.

    - The NCUA uncovers and cites occasional individual instances of credit union behaviors and member interactions it deems concerning. This suggests the agency already has—through the risk-focused examination process and consumer complaint hotline—the requisite resources and tools in place to investigate, uncover, and evaluate any deficiencies in an individual credit union's consumer compliance program.

    - Credit unions are the original consumer financial protectors. The unique credit union member-ownership structure and not-for-profit status

establishes powerful incentives that discourage anti-consumer behavior. These underlying characteristics set credit unions apart and encourage strong pro-social and pro-consumer behaviors. They provide a clear and powerful deterrent to anti-consumer behaviors.

National Credit Union Share Insurance Fund

- The equity ratio of the Share Insurance Fund stands at 1.30% as of December 31, 2023. While this is below the Normal Operating Level (NOL) of 1.33%, it is above the 1.20% threshold that would require the Board to institute a formal Fund restoration plan. We urge the Board to refrain from pursuing any premium assessments to address this temporary decline in the equity ratio.

- Chairman Harper has called on Congress to change the FCU Act to:
    - Remove the 1.50% statutory ceiling from the statutory definition of the NOL; and

    - Permit premium assessments when the Fund's equity ratio exceeds 1.30% (and if the premium charged exceeds the amount necessary to restore the ratio to 1.30%). (Currently, the Board is authorized to assess a premium if the equity ratio is below 1.30%; however, the premium may only be enough to return the ratio to 1.30%.)

- We disagree with each of these suggested amendments, as we believe such drastic changes are unnecessary given the reliability and strength of the Share Insurance Fund over the years.

Extended Examination Cycle

- Efforts to extend the examination cycle for certain credit unions have been positive, particularly for credit unions for which a 12-month cycle was clearly

unnecessary. Since banks are provided an extended examination cycle, credit unions are now at a comparative disadvantage.

- The NCUA should extend the examination cycle for credit unions with under $3 billion in assets, as is provided for banks under the Federal Deposit Insurance Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Streamlined/Offsite Examinations

- We appreciate the NCUA's efforts to streamline examinations and make operations more efficient, and we urge the agency to continue these efforts. During the pandemic, the sudden forced move to offsite exams was generally well received by credit unions. While credit unions and the agency had no choice but to adapt, there were many positive lessons learned during this phase.

- We urge the agency to leverage these lessons as it transitions away from fully offsite exams. The NCUA noted in its 2024 Supervisory Priorities as well as its 2024 Annual Performance Plan that examiners will continue to conduct some exam activity offsite when it can be performed efficiently and effectively. In an effort to make the exam process more efficient and less costly for both credit unions and the NCUA, we urge the agency to give greater weight to offsite exams as it works to strike the appropriate balance between on and off site examination and supervision related activity.

NCUA Cyber Examinations

- Cyber and data security is one of the biggest issues currently facing most industries, including financial services. We appreciate the NCUA's recognition of this issue and the agency's commitment to make it a focus area but should do so

while ensuring that credit unions and members benefit from the examinations.

- Cyber exams have become increasingly taxing on resources as the agency focuses on resiliency. America's Credit Unions continues to work the agency to provide necessary flexibility and tools to make cyber exams efficient and beneficial to all stakeholders.

NCUA Examination Consistency

- We continue to urge the NCUA to improve examination consistency. The agency should focus on improved cohesiveness among the regions, as well as closer collaboration with state regulators regarding examinations of state-chartered credit unions and with the CFPB regarding examinations of larger credit unions.

- Specifically, NCUA should strive to conduct safety and soundness examinations of federally insured state-chartered credit unions concurrently with examinations by state supervisory authorities.

Working with the CFPB

- We appreciate the NCUA's advocacy on behalf of credit unions.

- We urge the NCUA to continue to request to the CFPB that credit unions with over $10 billion in assets be transferred to the NCUA for examination and enforcement of consumer financial protection laws.

Modernization of the Call Report

- We support the NCUA's work to modernize the call report. On a going-forward basis, we request the agency continually monitor the call report to determine how it can be further improved.

- We urge the NCUA to more proactively alert the industry to proposed call report changes to ensure all interest parties can provide comments on the proposals and so credit unions are more aware of proposed changes.

Digital Currency

- The NCUA should issue guidance allowing credit unions to offer custodial services or wallets to members. Further information on how credit unions can offer cryptocurrency services directly is necessary to maintain parity with other financial institutions.

- The NCUA should add digital asset related services to the list of preapproved permissible activities of CUSOs to allow them to provide cryptocurrency related services.

- The NCUA, as a member of the FSOC, needs to engage with FSOC members, the President's Working Group, and other interagency working groups on digital assets to ensure the interests of credit unions are strongly represented.

Minority Depository Institution Program

- The minority depository institution (MDI) Program and its related designation must be provide meaningful support in order to preserve and strengthen MDI credit unions.
- In order to serve the purpose of the MDI Program and meet MDI credit unions where they are, the MDI designation must be accessible to credit unions of all sizes and levels of sophistication and should not require complex or sophisticated data and statistical analysis.
- MDI credit unions continue to report that examiners do not understand the MDI model. While NCUA has instituted MDI Exam Procedures intended to address these concerns, this change is still new and MDI examinations are conducted by

the same pool of examiners as non-MDI examinations. NCUA should carefully monitor the impact of the MDI Exam Procedures and whether it leads to any substantive change for MDI credit unions.

III. CFPB Issues

Exemption Authority/Tailoring Regulations

- Broad, overly complex regulations strain the finite resources of community-based credit unions and often result in their exit from markets or a reduction in product offerings. This consequence hurts consumers' access to financial services from local service providers.
- Congress crafted the Dodd–Frank Act to expressly authorize the Bureau to tailor rulemakings so that responsible actors in the financial services marketplace are not negatively impacted by rules intended for others.
- The Bureau should use its exemption authority to protect credit union members from one-size-fits-all rulemakings that are inappropriate when applied to the not-for-profit structure of credit unions.

Fees

CFPB Director Chopra has highlighted so-called "junk fees" as a priority issue for the Bureau. This focus has resulted in three separate fee-related rules on the Bureau's rulemaking agenda: credit card late fees, overdraft, and NSF fees. In March 2023, the Bureau proposed a credit card late fee rule that would considerably decrease the safe harbor dollar amount for late fees from $30 to $8, eliminate the annual inflation adjustment, and eliminate the higher safe harbor dollar amount for fees incurred by subsequent late payments. In January 2024, Bureau proposed a rule to amend Regulations E and Z to remove regulatory exceptions for overdraft credit provided by financial institutions with assets of $10 billion or more, thereby subjecting covered overdraft credit to Reg Z, E, and CARD Act regulations required of similar extensions

of credit. Also in January 2024, the Bureau proposed a rule to prohibit financial institutions from charging NSF fees for consumer transactions that are instantaneously declined.

- Credit unions offer services that benefit their members and provide the exact type of relationship banking the CFPB Director has stated he wanted to return to. Credit unions are the original consumer financial protectors.
- The financial services market is extremely competitive. Banks, credit unions and financial technology companies (FinTechs) compete every single day, including on fees. To imply consumers are captive is simply untrue.
- All the fees in consumer financial services are subject to rigorous disclosure requirements pursuant to applicable statutes and implementing regulations, many of which are administered by the CFPB itself. The Bureau is well-aware of these requirements, so to claim that consumers are caught unaware of fees or that "true costs" are being "hidden" is misguided.
- The harm to consumers could be significant should the Bureau move hastily to limit services without fully considering the alternatives available or the potential for unintended consequences.
- **Credit Card Late Fees:** Credit unions strongly object to the Bureau's proposed rule, as it will negatively impact the ability of credit unions to offer viable credit card programs, manage the risks associated with those programs, and increase the cost of credit cards for all cardholding members – not just those that incur late payment fees.
- **Overdraft Fees:** Overdraft protection is a valued service for consumers and the Bureau's attempt to set fees for the industry puts this service in jeopardy and removes a financial lifeline for those consumers who rely on the service. The rule arbitrarily divides those covered by and exempt from the rule based on an asset threshold. While this allows the Bureau to overlook the impact of the proposed rule on smaller institutions, the rule will have downstream impacts to the ability of smaller institutions to offer overdraft. With reduced access to overdraft

protection, many low-income consumers will be subject to a cascade of financial hardships stemming from declined transactions. The Bureau should not seek to artificially constrain fees in the competitive marketplace but should focus instead on increased financial education and empowering member-focused financial institutions to better serve those members who rely too heavily on overdraft protection.

- **NSF Fees:** The Bureau acknowledges that the subject of its proposed rule, fees charged on instantaneously declined transactions, is extremely uncommon. However, the Bureau chooses to publicize this nonexistent practice to further bolster the unfair perception of financial institutions as benefiting from the misfortune of their consumers. More concerning than its substance, the Bureau's proposed rule espouses an expansive interpretation of the Bureau's power under the abusive prong of UDAAP that could create uncertainty for credit unions and have significant implications for a wide variety of products and services. Under the rule, the Bureau determined that a fee charged as a result of a consumer's lack of understanding of their account balance and the risks, costs, or conditions associated with a transaction would be abusive, even if the consumer's lack of understanding was not reasonable. Such a broad interpretation of the abusive prong by the Bureau could lead to almost any disliked practice being deemed abusive and completely disregards consumer responsibility and awareness.

Open Banking/1033 Rulemaking

- In October of 2023, the CFPB released a notice of proposed rulemaking implementing Sec. 1033 of the Dodd Frank Act (also known as the "Open Banking" rulemaking or the "Personal Financial Data Rights" rulemaking). The proposed rule would require data providers (Reg Z card issuers, Reg E financial institutions, and other persons that control or possess information concerning a covered product or service) to provide an authenticated consumer, an authorized third party, or a data aggregator acting for an authorized third party with the

most recently updated covered data in the data provider's control or possession concerning any covered consumer financial product or service. The covered data would have to be provided in an electronic form accessible through a data provider created developer interface. The data provider would not be permitted to impose any fee or charge on the consumer or authorized third party in connection with any data access request.

- The rule proposes a phased implementation period beginning 6 months after publication of the final rule for the largest data providers. The first credit unions would be required to comply at 1 year after publication, those credit unions with more than $850M in total assets would need to be in compliance approximately 2.5 years after publication of the final rule, and all other data providers would need to comply around 4 years after the publication of the final rule.
- Official comments were due at the end of 2023, and the CFPB indicated a final rule will be published by the end of 2024.
- We regard most aspects of the proposal as fatal to the development of any reasonable final rule and recommend the Bureau take additional time to conduct a more informed rulemaking process that is in alignment with the statutory mandate and that prioritizes and incorporates the meaningful feedback provided by credit union data providers.
- Notwithstanding these fatal flaws, we recommend certain substantive changes to the proposed rule including, but not limited to:
    - Providing tiered exemptive relief for covered data providers;
    - Providing longer compliance timeframes with transitional relief for covered data providers;
    - Establishing a framework that permits data providers to charge reasonable fees for third party access;
    - Establishing a clear allocation of liability to third parties who mishandle covered data or abuse their consumers' trust; and

    - Establishing clear data security standards and an appropriate supervisory framework for third parties that access covered data.
- As proposed, the CFPB's blueprint for open banking will unfairly distort competition and erode the relationship banking model that has underpinned credit unions' cooperative mission. Credit unions cannot afford to subsidize the development, maintenance, and ongoing risk management of an API-based ecosystem that benefits fintech companies, particularly if the CFPB is unwilling to promptly recognize standards or offer safe harbor protections to data providers. Additionally, the Bureau cannot realistically expect credit unions to comply with the proposal within the timeframes given.

Regulation by Enforcement

- The Bureau has previously engaged in the practice of "regulation by enforcement," especially regarding the standard for "abusive." The Bureau's "I know it when I see it" approach often resulted in uncertainty in the financial services marketplace and presented due process concerns.
- We support the Bureau taking meaningful steps toward establishing clear standards for and transparency in all aspects of its authority.
- If the Bureau wants to make actionable policy, then it should either propose regulations through the notice-and-comment process or issue policy statements that clarify expectations for regulated entities.

Small Business Lending Regulations

- The CFPB finalized a rule requiring commercial lenders to compile, maintain, and submit data on credit applications by women-owned, minority-owned, and small businesses. The rule is required by Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act (ECOA). In general, the data collection would apply to any entity originating at least 100 covered credit

transactions to small businesses in the prior two calendar years with no exemption based on asset size or other factors.

- The 1071 Rule, as finalized, is needlessly complex and includes several provisions that will have an adverse impact on the availability of credit for small business borrowers.
- While credit unions support the goals of Section 1071 and seek to provide all members with fair and equitable financial opportunities, we are concerned about the proposal's unjustifiably low threshold for mandatory reporting. Setting the covered financial institution threshold too low, as the Bureau has done, will substantially increase operational costs for smaller financial institutions engaged in commercial lending. This broad scope will result in fewer market participants and reduce access to credit for the nation's small businesses.

Short-term, Small Dollar Lending

- Credit unions provide the safest and most affordable loan options for consumers in need of emergency credit. We continue to advocate for the rules governing short-term, small dollar lending to be appropriately tailored to address predatory lending practices while not inhibiting credit unions from offering affordable small dollar products to members in need.

Fair Credit Reporting Act Rulemaking

- On September 21, 2023, the CFPB announced its intention to consider rulemaking regarding various consumer reporting issues governed by the Fair Credit Reporting Act (FCRA). Subsequently, the CFPB released an outline detailing proposals for this rulemaking, including significant changes to the reporting of medical debt and data broker definitions. To ensure compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the CFPB engaged Small Entity Representatives (SERs) who discussed and provided input on these proposals in two Panel Outreach Meetings held on October 18 and

19, 2023. On January 10, 2024, the CFPB published its final report summarizing the Small Business Review Panel's recommendations and the small business review process for the FCRA rulemaking.

- The SBREFA panel made several recommendations to address the costs and burden on specific industries and encouraged alternative approaches from the bureau. It also shared credit union concerns over the scope of the proposed definition of "data broker." Credit unions believe it should be narrowly defined, and the panel recommended the CFPB carefully consider the scope of entities it proposes to cover.
- The SBREFA panel also recommended the CFPB clarify that it is not proposing to require consumer reporting agencies or furnishers to distinguish between disputes involving legal matters and other disputes. The panel instead advised the CFPB to make clear that those agencies are required to investigate all disputes in accordance with the FCRA regardless of how the dispute is characterized.

IV. FHFA Issues

Access to the Secondary Market

- The FHFA should continue to ensure that all mortgage lenders have equal access to the secondary market, without volume-based pricing.
- The FHFA should identify opportunities to make it easier for small credit unions to originate for Fannie and Freddie, for example, by reconsidering the requirement to have dedicated secondary market staff for smaller credit unions.
- The FHFA should engage in adequate and transparent industry outreach before making any significant changes that could affect lenders' access to the secondary market (e.g., Fannie and Freddie's Single-Family Mortgage Pricing Framework). The data and feedback gathered through this public engagement process should

support the changes being contemplated, such as any changes to the pricing framework and guarantee fees—both upfront and ongoing fees.

Federal Home Loan Bank System

- The Federal Home Loan Banks (FHLBanks) are a critical source of liquidity for credit unions. Credit unions support legislative efforts to add CDFIs and credit unions to the statutory definition of community financial institution (CFI) so that CDFI and credit union FHLBank members below the statutory asset threshold can be recognized as CFIs and pledge CFI collateral. There is significant room to improve the FHLBank System, particularly regarding technological modernization and programmatic efficiency. However, the FHFA should avoid overburdening the FHLBanks balance sheets with inflexible requirements. Further, the individual FHLBanks must be able to exercise their respective discretion with respect to local projects and needs so that they can remain a resilient, elastic, and responsive source for liquidity related to mortgage and community development lending.
- The FHFA must work to ensure that credit unions which are members of the San Francisco Federal Home Loan Bank are able to obtain alternative access to the secondary market at fair prices.

Discrimination and Modernization in Appraisals

- We strongly support the intergovernmental PAVE (Property Appraisal and Valuation Equity) task force and its Action Plan to address the issue of racial discrimination in appraisals, which is absolutely critical to closing the homeownership gap for Black Americans. Credit unions are committed to that mission. Credit unions are dependent on the quality, objectivity, and reliability of appraisals.
- The agencies that make up the PAVE task force should ensure that their interagency efforts to address racial bias and discrimination in appraisals,

including the rulemaking on automated valuation model quality control standards and the guidance on implementing reconsiderations of value into valuation processes, should provide an institution with the flexibility to tailor the requirements based on the size, complexity, nature, and risk-profile of its activities. Moreover, the NCUA, CFPB, and the other agencies involved should consider the benefits of a less prescriptive regulatory framework—such as not requiring an express AVM quality control standard regarding nondiscrimination law—as a way of not creating burdensome and unnecessary friction or impediments to continued technological advancement and ensuring that credit unions of all sizes can continue to access the secondary market.

- The FHFA should strongly consider the increased use of technology and data to conduct valuations. In addition to removing the subjective judgment of people, increased automation should also increase the affordability of and access to mortgage loans.

Affordable Housing

- The FHFA should improve its affordable housing programs. For example, reliance on the area median income (AMI) as an income benchmark for these programs fails to capture the economic realities in high-cost neighborhoods and alternative approaches should be available.
- The FHFA should work to improve credit unions' ability to make and sell loans secured by manufactured housing, including instances where loans may be secured by personal property, rather than real property.
- The FHFA should approve the GSEs' use of Special Purpose Credit Programs (SPCPs) to assist credit unions in closing homeownership gaps in their communities, including establishing agreements for the purchase of loans made under credit unions' own SPCPs.

V. Bank Attacks on Credit Union Mortgage Lending Performance

Community Reinvestment Act Requirement

- Implementing additional regulatory burdens on credit unions is unnecessary because (1) credit unions did not participate in the "redlining" activities that prompted Congress to impose CRA requirements on the banks and thrift institutions; (2) credit unions serve people within their fields of membership and all income levels; and (3) Congress is looking to reduce regulatory burdens on financial institutions, not increase burdens. If credit unions were subjected to CRA requirements, the time and resources used to document the work they already do would take away from new initiatives to enhance existing services and expand to new underserved areas.

VI. Payments and Technology

Central Bank Digital Currency

- The Federal Reserve released a discussion paper in January 2022 titled "Money and Payments: The U.S. Dollar in the Age of Digital Transformation." The creation of a CBDC would fundamentally transform banking and payments.
- Implementation of a CBDC should not proceed without Congressional authorization and a clear structure and novel purpose.
- Any CBDC must utilize an intermediated model that preserves the direct relationship between consumers and financial institutions.
- Deposit substitution and its cascading effects must be sufficiently mitigated as to prevent reduction in the credit supply, to maintain access to affordable credit, and to ensure the safety and soundness of the financial system and the overall economy.

Real-time Payments

- Credit unions have long supported the Federal Reserve developing a real-time payments network. The FedNow network launched in July of 2023 with several credit unions and their service providers as early adopters.

Cryptocurrency / Digital Currency

- The digital assets marketplace demands a comprehensive regulatory framework that provides consistent oversight for similar products and services. This approach should be coordinated among the prudential regulators to provide clarity and a level playing field that encourages competition, provides appropriate protection for consumers, and promotes responsible innovation.
- Credit unions must be treated equitably with fintechs and other stablecoin market entrants. Additionally, credit unions should be included in the definition of "insured financial institutions" for any stablecoin legislation; credit unions must be able to offer stablecoins and accept deposits backing stablecoins; and, credit unions should have regulatory parity with other financial institutions and fintechs in this market.
- Non-financial institution providers of crypto services and products be subject to strict oversight and supervision at the same level as financial institutions providing similar services. This should be accompanied by stringent capital and liquidity requirements, strong risk management protocols, comprehensive data security and privacy requirements, and compliance with all consumer protections laws.

Data Security and Data Privacy

- We support a comprehensive federal data security and privacy framework that includes robust security standards that apply to all who collect or hold personal

data and that is preemptive of state laws. Specifically, we advocate for the following principles:

- **The Gramm-Leach Bliley Act should remain intact**. Data protection legislation should not impose new regulatory burdens on consumers or financial institutions which are already subject to the security and privacy protection requirements of the GLBA.
- **Data security and data privacy must be addressed in tandem.** Any new framework must include robust data privacy and data security standards because data cannot be kept private unless it is also secured.
- **Every party not already subject to federal law should follow the same rules.** The new framework should encompass all businesses, institutions, and organizations by raising expectations for these sectors up to a uniform standard comparable to that currently in place for financial institutions under the GLBA.
- **Entities that jeopardize consumer privacy and security must be held accountable through private right of action and regulatory enforcement.** When a breach occurs, the breached entity must provide useful and timely notice to financial institutions and identify the source and time of the breach. Entities and their agents whose actions or negligence are responsible for a data breach must reimburse the consumer or financial institution on a timely basis for the cost of any notices and any losses they suffer as a result of a breach. Financial institutions must have a safe harbor from liability for misuse of information when the information has been encrypted based on industry standards.
- **The federal data security and privacy framework must be preemptive of state law.** Any new law should preempt state requirements to simplify compliance and create equal expectations and protections for all consumers. A patchwork of state laws with a federal standard as a floor will only perpetuate a system littered with weak links. The federal law should be the ceiling and the ceiling should be high. Just

like moving away from the sector specific approach, the goal should be to create a strong national standard for all to follow.

Regulation II (Debit Interchange Regulations)

- On October 25, 2023, the Board of Governors of the Federal Reserve issued a notice of proposed rulemaking (NPRM) that would make changes to the debit interchange cap and codify an approach for regularly updating the cap on a going-forward basis.
- Specifically, the NPRM proposes the following changes to the cap:
    - Decrease the base component to 14.4 cents (from 21 cents)
    - Decrease the ad valorem component to 4.0 basis points (from 5 basis points)
    - Increase the fraud-prevention adjustment to 1.3 cents (from 1 cent)
- Future updates to the cap would occur in odd numbered years, beginning in 2025, and the changes would occur automatically subject to proposed formulas using data contained in the biennial report of debit issuer costs for covered issuers (Issuers with more than $10B in total assets).
- Comments on this proposed rule are due May 12, 2024. If adopted, the revisions would take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published.
- The Board's proposal is seriously flawed. First and foremost, the new proposed interchange fee cap is based on data from 2021 that does not take into account the far-reaching changes to Regulation II requiring dual routing for card-not-present transactions that went into effect on July 1st of this year. This change has direct bearing on the data used to calculate the proposed interchange fee cap including authorization, clearing, or settling costs.
- Regulation II has caused significant real-world economic harm to credit unions and their members—and its recent expansion by the Board is compounding that harm. The Durbin Amendment's "exemption" of smaller financial institutions has

proven to be largely illusory, as the Federal Reserve's own data shows that regulatory thresholds in the interchange market do not insulate smaller issuers from harm. Specifically, Regulation II data indicates that the average per transaction interchange fee for exempt single-message transactions has fallen by nearly 31% in inflation-adjusted dollars from 2011 to 2021.

- In evaluating the effects of the proposed revisions, the Board claims that the proposal should lower merchants' costs of accepting debit card transactions and merchants, in turn, may pass on some portion of their savings from lower interchange fees to consumers. The data shows this didn't happen in 2011 and wouldn't happen today. The Richmond Fed found that only about 1% of merchants passed their savings on to consumers through reduced prices, and in fact, over 20% increased their prices.
- Simply put, the Board's action is motivated by a selective reading of narrow and incomplete data. Just as the merchants' past claims about consumer savings from promised "pass-throughs" and the effectiveness of "exemptions" have been thoroughly disproven by a bevy of research from leading academics and the Board's own research economists, any promises or representations the merchants make now should be viewed with robust skepticism.
- The Board must halt this rulemaking so that a baseline of timely, accurate, and comprehensive data about the effect of existing regulations can be developed and analyzed before further action is taken on new rules related to debit card interchange.

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