



**America's  
Credit  
Unions**

# Navigating Legislative Challenges: Key Issues Impacting Credit Unions

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## 2024 Policy Priorities

### Protect

- Defend credit unions from attacks—whether it's preserving the credit union tax status, addressing data security needs, challenging big bank encroachment, fighting for regulatory oversight of developing industries, or tackling overzealous regulatory burdens

### Empower

- Be relentless in our efforts to ensure credit unions can provide the services that consumers want and deserve

### Advance

- Fiercely advocate for a legislative and regulatory environment that advances credit unions and their 140 million members

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## Federal Legislative Issues

- 2024
  - Lame duck session
  - Continuing Resolution (CR)
  - National Defense Authorization Act (NDAA).
    - *Vehicles for Interchange, CRA, EFTA*
- 2025
  - New Congress
  - Tax Fight from 2017 TCJA
  - Renewed efforts of the above



## Federal Regulatory Issues

- Consumer Financial Protection Bureau (CFPB)
  - “Junk Fees” – Credit Card Late Fees
    - *Suit filed preventing rule from taking place*
  - Overdraft Fees
    - *Aserts ODP as “extension of credit” - awaiting final rule*
  - Non-Sufficient Funds
    - *Proposed rule to prohibit fees on “instantaneously declined”*
  - Medical Debt
    - *Proposed rule prohibiting creditors from using/obtaining medical debt information*



# Consumer Financial Protection Bureau

- Created by the Dodd-Frank Wall Street Reform and Consumer Protection Act
  - Enacted in 2010
- Independent agency led by a single director, who is removable at the will of the President
- Power to regulate beyond traditional depository institutions
- Primary examination authority for institutions, including credit unions, above \$10 billion in assets

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## “Junk Fees” – Credit Card Late Fees

- On March 5<sup>th</sup>, the CFPB released its credit card late fees final rule. Effective date was originally May 14, 2024
  - The rule only applies to issuers that have 1 million or more open accounts
  - The safe harbor for late fees is reduced to just \$8 for all instances and ends the automatic inflation adjustments
- The U.S. Chamber and banker trade groups filed a lawsuit in a district court in Texas to stop the rule from taking effect
  - Judge Pittman questioned whether Fort Worth is the appropriate venue
  - CFPB motioned to transfer the case to D.C. The 5<sup>th</sup> Cir. twice blocked transfers to D.C.
  - Back and forth battle – Judge Pittman now hearing whether case will remain in his court
  - The real outcome is election dependent: what happens to the credit card late fees safe harbor?

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## “Junk Fees” – Overdraft Fees

- In January, the CFPB proposed a rule to amend Regulations E and Z to cap overdraft fees charged by banks and credit unions with at least \$10 billion in assets
  - The proposed rule treats overdraft as an extension of credit
  - The proposal included potential amounts for a safe harbor “benchmark” fee at \$3, \$6, \$7, or \$14
  - Covered credit unions would be prohibited from automatically repaying overdrafts from a consumer’s account
- We submitted our comment letter on April 1<sup>st</sup> and raised the following concerns:
  - The rule is impractical – it would force covered CUs to remove crucial services, tighten eligibility standards, and remove access to overdraft for those who need it most;
  - Exempt CUs would be impacted too as market pressure to reduce/eliminate fees mounts;
  - The rule misinterprets the Truth in Lending Act and impermissibly expands the definition of credit;
  - The asset threshold is unprecedented and arbitrary; and
  - The rule’s de facto price cap violates the takings clause of the Constitution

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## “Junk Fees” – NSF Fees

- In January, the CFPB released a proposed rule to prohibit banks and credit unions from charging NSF fees on instantaneously declined payment transactions
  - Instantaneously declined transactions are processed in real time, not hours or days later. This rule does not cover checks and ACH transactions
  - These fees are relatively uncommon
  - The rule prohibits these fees as abusive acts or practices under the Bureau’s UDAAP authority
- We submitted a comment letter on March 25<sup>th</sup> and raised the following concerns:
  - The definition of instantaneously declined transactions should be clearer;
  - The expansive interpretation and use of the abusiveness prong of UDAAP does not provide clarity for CUs;
    - The CFPB should issue guidance , additional policy statements, and a rule on “abusive” acts or practices; and
    - A cost-benefit analysis and a “reasonable person” standard should be adopted in any future guidance on abusiveness

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# Medical Debt Proposed Rule

- The CFPB convened a small business review panel in October 2023 to consider an outline of proposals under consideration on issues including:
  - Data Brokers
  - Credit Header Data
  - Data Security
  - Legal Disputes
  - Medical Debt
- In June, the CFPB published a proposed rule that would prohibit creditors from obtaining or using information on medical debt for credit eligibility determinations.
  - Rule also prohibits a CRA from furnishing to a creditor a consumer report containing information on medical debt
  - On August 12<sup>th</sup>, we submitted our comment letter raising concerns about the impact of this rule on accuracy of credit eligibility and ability-to-repay determinations. We said the CFPB should allow creditors to continue to use medical debt but only if they assign it a lower weight in the credit decisioning process

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# CFPB: Section 1033 Open Banking Rule

- Yesterday (Oct 22), the CFPB released its widely anticipated rulemaking to implement Section 1033 of the Dodd-Frank Act to establish open banking and support consumers' rights to access and control their personal financial data.
- The final rule demands that credit unions share, at no cost, certain information with fintechs and other third parties who receive permission from consumers.
- The CFPB's excluded the smallest credit unions from the scope of the final rule (now five Tiers from <\$850M to \$250B in assets).
- Concerns related to risk management, downstream fraud, and the ability to defray the cost of maintaining APIs without charging fees remain present.

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## NCUA: Succession Planning

- In June, the NCUA released a new succession planning rule, which is more prescriptive than the February 2022 proposal, to require:
  - FICUs to establish a written succession plan for certain positions, including members of the board of directors, members of the supervisory committee, management and assistance management officials, senior executive offices, and members of the credit committee or loan officers when they are involved daily in the review of loans
  - For each position, the plan should identify the title of the incumbent, an anticipated vacancy date, and the FICU's general plan/strategy for temporarily and permanently filling positions
  - NCUA examiners will consider the size of the FICU, as well as the complexity and risk of its operations when evaluating whether a succession plan satisfies the rule
  - Credit union's board of directors must review the succession plan at least annually
- We, along with over 150 credit unions, submitted comments to the agency asking for guidance instead, highlighting the difficulty in implementing the proposed rule, and arguing at the agency lacked the data to justify this rule

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## NCUA: Incentive-Based Compensation

- In May, the NCUA, OCC, FDIC, and FHFA released a proposed rule to implement section 956 of the Dodd-Frank Act to:
  - Prohibit incentive-based compensation arrangements at covered financial institutions that encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss; and
  - Requiring those covered financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator.
- The rule applies to credit unions with \$1 billion or more in assets. Those with \$50 billion or more in assets, but less than \$250 billion, would be subject to additional prohibitions and requirements, such as clawbacks

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## Federal Reserve

- Debit interchange fee cap is currently set at 21 cents plus a 5 basis point ad valorem component (multiplied by the value of the transaction), plus a 1.0 cent fraud-prevention adjustment, if eligible
  - The 21-cent base component must be “reasonable and proportional” to issuer costs
- **Regulatory:**
  - In October, the Board proposed amendments to Reg II to adjust the interchange fee cap: (1) Base component decreased to 14.4 cents and (2) ad valorem component decreased from 5 basis points to 4 basis points, but (3) the fraud-prevention adjustment increased from 1.0 cents to 1.3 cents
    - *Cap would automatically adjust every other year based on data from the Board's biennial survey of large debit card issuers*
- **Legal:**
  - In *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, SCOTUS said that plaintiffs may challenge a final agency action under the Administrative Procedure Act when they are first injured– that’s when the 6-year statute of limitations begins
  - Illinois Interchange Fee Reduction Act lawsuit filed in August arguing credit unions and banks are preempted from this law

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## Federal Communications Commission

- **Robocalls and AI**
  - In its August Commission meeting, the FCC proposed a new rule that would apply to calls and text, requiring callers to obtain prior consent (at the same time they obtain general consent to make robocalls – e.g., account opening) to make AI-generated communications and to include certain disclosures
  - The disclosure must be an announcement at the beginning of each AI-generated call explaining that the call is using an AI-generated voice
  - This applies to only outgoing calls/texts
- We are concerned that the overly-broad definition of “AI generated call” may inadvertently sweep in other automated voice technologies

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# State Issues

- **Bank Sales (aka Credit Unions Acquiring Bank Assets)**
  - 2025 Outlook: Given the current rate of these acquisitions, we anticipate seeing more adverse legislation, especially in CO, AL, IL, SC, SD, TX, TN, and WV.
- **Interchange**
  - 2025 Outlook: We are hoping the litigation will mitigate any future introductions but we anticipate challenges in several states.
- **Artificial Intelligence**
  - 2025 Outlook: Most legislation that we will be following will be focused on preventing discrimination and ensuring jobs are not replaced through AI.
- **CRA (Community Reinvestment Act)**
  - 2025 Outlook: CRA is often used as a negotiating tactic by the bankers when credit unions look to expanded powers such as field of membership, public deposits, or bank sales. We may see calls for CRA in a handful of states.
- **ESG (Environmental, Social, Governance)**
  - 2025 Outlook: CA, FL, LA, OK, and TX are all candidates for more ESG bills.