

Issue Update

On July 30, 2024, the FDIC issued a proposal on brokered deposits that would rollback many of the changes made to the brokered deposit framework in 2020. If finalized, the proposal would significantly broaden the scope of deposits considered “brokered.”

Background

Enacted in 1989, Section 29 of the Federal Deposit Insurance Act (FDIA) sets restrictions on the acceptance of brokered deposits by institutions with weakened capital positions. Brokered deposits themselves are not defined in statute or implementing regulations. Instead, it is up to the FDIC to interpret the definition of “deposit broker.” On December 15, 2020, after a multi-year initiative, the FDIC finalized its brokered deposit rules, which modernized the FDIC’s approach to reflect technological changes and innovations across the banking industry since the 1980s, and make the framework and its interpretations more transparent.

Why It Matters

Prior to implementation of the 2020 rule, the FDIC had continually applied an ever broader interpretation of what deposits are “brokered,” unnecessarily subjecting a broad swath of deposits to supervisory stigma, limits, and additional regulatory costs, even when held by well-capitalized banks. This, in turn, limited bank access to stable sources of deposits both in the normal course and under stressed conditions. This proposal would roll back many of those changes.

Unwarranted negative supervisory treatment of brokered deposits inhibits innovation in the banking industry and limits consumer access to safe financial products via contemporary platforms. Modern technology, including the internet and smart phones, allows banks to gather stable deposits from both affiliates and customers outside of their local markets. Many of these deposits were viewed as “brokered” by the FDIC, as some technology platforms and other third parties are considered “deposit brokers.”

A broad, outdated interpretation of who is a deposit broker leads to increased regulatory costs and supervisory bias from bank examiners against what, as a practical matter, is stable funding. The result is that even well-capitalized banks are strongly discouraged from holding brokered deposits, which limits innovation in how customers can access financial

Recommended Action Items

- **Tell Congress to Convene an Oversight Hearing.** Section 29, enacted in 1989, has not been updated in over 30 years and no longer aligns with modern banking.
- **Tell the FDIC to provide relevant data to support the changes they are proposing.** The proposal offered limited data to support the changes. The FDIC is in the process of revising how banks report deposit data.

Federal Home Loan Banks' Comprehensive Review

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Issue Update

In August 2022, the Federal Housing Finance Agency (FHFA) initiated a comprehensive review of the Federal Home Loan Bank (FHLB) System, the first in its 90-year history. The review included two listening sessions in Washington, DC and 19 regional roundtables in which ABA and a number of bankers participated and filed comments. FHFA issued a comprehensive report on the review in November 2023 which makes 55 recommendations for changes to the System. Key recommendations include: Clarifying the dual mission of the FHLBs to provide liquidity to members and support for affordable housing efforts by members; ensuring that FHLBs are not the “lender of last resort” for members; and strengthening member risk management. While FHFA made no specific recommendations to expand or restrict membership in the System, longstanding efforts by groups seeking to gain access to the System or restrict some banks' existing access are likely to continue.

FHFA has authority to make some changes to the System, including changing affordable housing requirements and imposing regulatory or supervisory restrictions on provisions of liquidity to members. In other areas, such as expansion or restriction of membership eligibility, or mission, only Congress can make changes. FHFA has undertaken a series of Requests for Input (RFI) as the next stage in the review process, before proposing rulemaking or other changes.

Why It Matters

The FHLBanks have been a fundamental part of the nation's financial system for more than eight decades, and they provide members with an important source of funding for mortgages and liquidity management. The System has proven to be well designed; its cooperative structure ensures that each participant has an interest in its safety and soundness. Member institutions capitalize the System with their investment, and in return, they receive the benefit of borrowing at attractive rates, earning potential dividends on their investment, and eligibility for Affordable Housing Program funds (and other community support programs) in lieu of or in addition to potential dividends.

We agree that an expansion of the Affordable Housing Program (AHP) mandate or some other form of community support obligations may be appropriate. However, because the FHLBanks are chartered by Congress, requirements about the level of support they must provide to affordable housing and community development is to be decided by Congress. We are generally supportive of voluntary efforts by the FHLBs to expand their affordable housing efforts, and especially welcome efforts that help community banks further affordable housing efforts.

Attention by FHFA to the FHLBs' role in the provision of liquidity is expected and reasonable. How FHFA addresses these issues – especially as it relates to day-to-day liquidity management will be important. It is essential that any changes be subject to careful consideration by all stakeholders, including members and prudential regulators, and that no changes are made without input and understanding by all impacted parties.

Changes in this area have the potential for significant negative impact on banks of all sizes, and these changes could require a comprehensive realignment of the financial system to avoid significant disruption.

While the financial system is evolving, and numerous new entities compete with FHLB members in the housing and community development finance arena, those entities do not have comparable capital requirements as well as comparable prudential requirements and oversight as existing FHLB members. Most also do not have the kinds of eligible collateral used to back borrowing from the System in its current form. Given the success of the FHLBs, it is not surprising that these entities want to join or replicate the System. However, their admission would introduce significant

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risk to the cooperative System. Allowing entities with vastly different regulation, collateral and oversight into the System risks destabilizing it and putting existing members' capital at risk, with potential negative cascading effects throughout the financial system and US economy.

Recommended Action Items

- Explain to Congress and FHFA why your bank is a member of the System – include points about the access to necessary liquidity in all economic cycles and specifics about how your bank uses System access to further economic opportunity in your community including through the Affordable Housing Program (AHP).
- Urge Congress not to expand FHLB membership to less regulated entities or those without collateral to back their borrowing, which would destabilize the FHLB System and put bank investments at risk.
- Engage with FHFA through the RFI process to be sure that they hear how important the FHLBs are to your bank, your community and your customers.

Debit and Credit Card Interchange/Durbin Amendment

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Issue Update

Debit Card Interchange. The Durbin Amendment caps interchange on debit card transactions for banks with more than \$10b in assets and requires all banks to provide merchants with two unaffiliated debit networks in certain situations. Regulation II (“eye-eye”) implements those statutory requirements.

The Federal Reserve’s pending Regulation II proposal would (1) lower the debit interchange price cap by nearly 30% and (2) implement an automatic update mechanism to reset the interchange price cap every two years. These government price caps, and routing requirements, are simply a wealth transfer from bank customers, who lose access to low-cost financial services, to large corporate megastores that the FRB’s research demonstrates do not pass the savings on to consumers.

The Secure Payments Act, introduced by Rep. Luetkemeyer (R-MO) and Sen. Budd (R-NC), would require the Federal Reserve to pause its Regulation II proposal and complete a quantitative impact study of its effects before moving forward.

Credit Card Interchange. Now, Senators Roger Marshall (R-KS) and Dick Durbin (D-IL), among others, are trying to expand the Durbin Amendment routing requirements to credit cards. The Credit Card Competition Act of 2023 (CCCA) would require banks with more than \$100b in assets to offer merchants multiple credit card processing networks from among a list of networks determined by the Federal Reserve, not the card issuer.

Why It Matters

Interchange funds the security and seamlessness of the payment system, and it is also a key source of revenue to offset the cost of offering checking accounts and rewards programs.

The impacts of interchange price caps and routing mandates are not limited to the largest issuers. The Federal Reserve’s own data clearly shows that debit card revenue has fallen fastest at banks below \$10b in assets, due to Durbin’s routing mandate. Community banks and credit unions have seen debit interchange revenue decline by over 35% since the Durbin Amendment was implemented in 2011.

In setting the debit interchange cap, the Federal Reserve is required to calculate “bank costs” to determine whether interchange fee is “reasonable and proportional”. Because the Fed’s interchange routing regulation just took effect on July 1, 2023, meaningful debit card costs are not yet available. Understanding the impact that regulation on bank costs is critical to achieving an accurate calculation of an appropriate interchange cap under the requirements of the statute. Additionally, the Fed is not including other components of running a debit card program such as cardholder inquiry costs and NSF handling costs in the calculation.

Recommended Action Items

- Urge your member of Congress to oppose the Credit Card Competition Act and consider repealing the Durbin Amendment and restoring a fair and free market for debit cards.
- Urge the Federal Reserve to withdraw its Regulation II proposal and not repropose further rulemaking in this area until it has completed significant additional research that calculates costs to consumers and reflects the real-world experience of covered financial institutions.
- Urge your member of Congress to cosponsor the Secure Payments Act of 2024 (H.R. 7531).

Access to Credit for our Rural Economy (ACRE) Act

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Issue Update

The Access to Credit for our Rural Economy Act, also known as ACRE, will help sustain and grow rural America by lowering the cost of credit for farmers and ranchers financing agricultural real estate, as well as rural homeowners seeking credit for housing in small rural communities of 2,500 or less.

ACRE will:

- Lower the cost of credit for farmer and ranchers
- Enhance competition for agricultural and rural housing credit
- Help sustain access to local credit in rural America

ACRE removes the taxation on interest income earned by a lender on farm real estate loans and home mortgage loans in rural areas and towns of less than 2,500. By removing this taxation, community banks would finally be able to match the pricing of lenders that already benefit from this tax treatment for rural loans. This will lower interest rates, thereby expanding access to low-cost sources of credit in rural communities. It is estimated ACRE could save rural communities \$1.15 billion in interest savings annually. ACRE offers a simple solution to help farmers and ranchers and rural homeowners without creating new government payments or programs.

Why It Matters

Inflation and supply chain disruptions are driving up the cost of running America's farms and ranches, which in turn forces farmers to rely more heavily on credit. At the same time, rising interest rates are squeezing profitability for farmers and putting homeownership out of reach for many rural Americans. Congress needs to do everything they can to help sustain and grow rural America by creating the most competitive interest rate environment possible for rural borrowers.

Recommended Action Items

Cosponsor ACRE. Helping sustain access to competitive low-cost credit for farmers, ranchers and rural homeowners is a bipartisan priority. As of 8/20/2024, the ACRE Act has 67 bipartisan cosponsors in the U.S. House of Representatives and 4 bipartisan cosponsors in the U.S. Senate.

Hold Hearings on ACRE. The House of Representatives Agriculture and Ways and Means Committees and the Senate Agriculture and Finance Committees have jurisdiction over this legislation. We urge these committees to hold hearings on the value of ACRE to farmers, ranchers, and rural homeowners across America.

Issue Update

Over the years multiple groups have attempted to expand the limitations on consumer liability in the Electronic Funds Transfer Act (EFTA) and its implementing regulation, Regulation E, which govern consumer electronic payments and transfers of money. Currently, EFTA limits a consumer's liability only for unauthorized transactions and not for authorized transactions (i.e. initiated by the consumer or someone the consumer authorized). With the rise in scams perpetrated against consumers, some groups are pushing to expand EFTA to require banks to reimburse consumers for an authorized payment that was fraudulently induced (i.e. the consumer was convinced to make the payment as part of a scam). These groups have convinced a small group in Congress to introduce S. 4943 / H.R. 9303, the Protecting Consumers from Payment Scams Act, which would expand bank's liability under EFTA.

Why It Matters

Massively Increases Bank Liabilities. Under the proposed bill, banks would be responsible for reimbursing customers for an authorized transaction that they claim was fraudulently induced. This approach removes responsibility from the customer to vet requested payments and places it solely on the bank, which cannot know the full circumstances behind each customer decision to authorize a transfer. Banks cannot and should not second-guess each decision a customer makes to transfer their own money. Even when the bank suspects a scam, it often cannot convince the customer they are a victim. Every bank has a story of a teller pleading with a customer not to send funds and being ignored. The bill would also encourage first party fraud where a customer sends money to an accomplice that they later claim was fraudulently induced. Community banks, in particular, cannot shoulder higher fraud losses, and could be put in the untenable position of having to restrict consumers' access to deposit accounts, which is bad for financial inclusion and reduces community banks' competitiveness.

Does Nothing to Stop Scams. This approach is only remedial and would do nothing to stop the criminals that are committing these scams. Instead, it would encourage fraud. Criminals would have new tools to convince consumers to send money under clearly suspicious circumstances if they could point out that the consumer has nothing to lose because only the bank's money is at risk.

Recommended Action Items

- **Tell Congress banks need help protecting consumers from scams.** Banks invest heavily to protect consumers from scams, but criminals use impersonated Caller ID or text messages or social media profiles that appear to be legitimate. FTC and FCC should establish rules forcing telecom and social media companies to disallow these impersonations and take them down when notified.
- **Tell Congress banks cannot second-guess customers.** Share your experiences of customers who could not be persuaded not to transfer funds to likely scammers.
- **Urge Congress to support development of a national anti-fraud and scam strategy.** Fraud and scams are a multi-billion dollar national problem, and yet there is no comprehensive strategy to protect Americans led by a single Federal agency or official.

Issue Update

On March 30, the CFPB issued a final rule to implement section 1071 of the Dodd Frank Act. Section 1071 is an amendment to the Equal Credit Opportunity Act, which requires lenders to collect, and report to the Consumer Financial Protection Bureau, information about lending to “women owned, minority-owned and small businesses.” Section 1071's purpose is to facilitate enforcement of fair lending laws and community development efforts. Although the CFPB's final rule has been delayed and challenged in court, section 1071 has not been repealed, and advocacy on the rule's compliance burden and invasion of privacy remain critical.

The final rule applies to banks, credit unions, fintechs and other nonbank lenders that make at least 100 small business loans in each of the two preceding calendar years. Covered “small business loans” are loans to for-profit entities with no more than \$5 million in gross annual revenue in the preceding fiscal year. Reporting will be required on loans originated as well as applications that do not result in loans. The CFPB expanded the 13 data points Congress mandated, requiring lenders to report a total of 81 data points. The data points include the race, gender, and ethnicity of the business's principal owners, and whether the business is owned by minorities, women, and/or LGBTQI+ individuals. The CFPB tiered the compliance dates based on loan volume, with the highest volume lenders required to start collecting data on October 1, 2024, medium volume lenders on April 1, 2025, and smaller volume lenders on January 1, 2026.

The ABA and the Texas Bankers Association (TBA) challenged the final rule in Federal court in Texas on several grounds, including whether the CFPB's funding structure is constitutional. The Federal court stayed the CFPB's final rule pending the Supreme Court's review of the CFPB's funding. On May 16, 2024, the Supreme Court upheld the CFPB's constitutionality, which caused the stay to be eliminated. The CFPB has published adjusted compliance dates for 1071, reflecting the Federal court's order that the CFPB extend the tiered compliance deadlines to compensate for the time period that ran from July 31, 2023 until May 16, 2024, the date of the Supreme Court's ruling. Those dates are: July 18, 2025; January 16, 2026; and October 18, 2026. However, ABA and TBA's challenge to the 1071 rule is ongoing in Federal court, and we are waiting for the judge to rule on motions for summary judgment.

Why It Matters

New data collection rules will impose additional compliance burden on banks, especially community banks. While section 1071 applies to non-banks and banks alike, banks will be regularly examined for compliance and data accuracy and non-banks will not face such scrutiny. Nonbanks are not subject to Bureau examination for compliance with 1071. Similarly, the history of redlining enforcement in the mortgage context indicates that regulators and consumer groups will focus on banks' 1071 data for evidence of discrimination and pay scant attention to non-banks. We are concerned that, rather than motivating banks to increase their lending to small businesses, the costs associated with the 1071 data collection and the anticipated reliance on statistical manipulation in fair lending supervision and enforcement may *discourage* bank lending to small businesses, particularly by community and mid-size banks. Finally, the CFPB

Section 1071 Rulemaking / Small Business Lending Data Collection and Reporting

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will make the 1071 data public at the loan level, creating severe risks to privacy of small businesses.

Recommended Action Items

- 1. Express support for the Small LENDER Act (S. 1159/ H.R. 1806)**, which would exempt lenders originating fewer than 500 small business loans in each of the preceding two calendar years from 1071, and limit 1071's application to small businesses with gross annual revenues of \$1 million or less.
- 2. Express support for the Bank Loan Privacy Act (H.R.1810)**, which would require the CFPB to engage in a rulemaking to determine which small business financial data can be made public. A rulemaking is the best way to ensure that all stakeholders, including small businesses themselves, are heard.

Basel III Endgame – Unintended and Unjustified Consequences

Issue Update

It is critically important that banks' capital levels be correctly calibrated to provide an adequate cushion against risk and losses, while also allowing banks to remain competitive sources of credit for their communities. Regulatory capital serves as a cushion to help banks absorb unanticipated losses of all kinds, protecting bank customers and allowing banks to provide ongoing services. However, excessive capital levels impose a cost. Increasing required capital will act as a constraint on credit growth and bank innovation and could hinder adjustment to changing business conditions, so proper calibration is essential.

In July 2023, the banking agencies proposed Basel III Endgame, a proposal that if enacted, would usher in the most radical transformation of bank regulation in the last decade. ABA believes the proposal is unworkable in its current form and needs to be withdrawn. It is notable that so many voices beyond the banking sector – users of credit and other banking services – have also concluded that this proposal is a mistake.

Why it Matters

Banks are highly capitalized and resilient, and additional capital is unwarranted. Over the last year regulators have continually recognized that the banking industry is safe, resilient, and highly capitalized.

The proposal would negatively impact borrowers, businesses, and the capital markets. The proposal would raise capital requirements (in excess of 25% for some institutions), limiting the availability and increasing the costs of bank products and services including:

- **Negatively impacting housing finance and homeownership**, particularly for first-time or low-income home buyers who often have high loan-to-value ratios.
- **Negatively impacting farmers, ranchers, and other agricultural end-users** who hedge commodity price risks with banks.
- **Negatively impacting small businesses** because the proposal favors larger companies that have access to capital markets.

The proposal was developed without adequate economic analysis. The proposal fails to justify significant increases in capital or to assess the significant associated costs.

The proposal would reverse regulatory tailoring by applying a one-size-fits-all standard to all banks above \$100 billion in assets.

Increasing capital requirements will drive demand to the less regulated nonbank sector. These nonbanks are not subject to any robust capital requirements, and as economic conditions worsen over the course of a business cycle, they will not be able to absorb the shocks and continue providing credit to businesses and households. This will impact the economic resiliency of the US economy.

Recommended Action Items

Some regulatory principals have foreshadowed substantial changes to the proposal. Ask the banking agencies to withdraw the proposal, fully assess the impact of new requirements, and offer a new proposal that won't harm the economy. Regulatory capital promotes a safe and resilient banking system, but requiring too much capital comes at a cost to consumers, businesses, and the economy.

Ask your congressional delegation to exercise vital oversight regarding the costs and benefits of this sweeping regulatory proposal and encourage the banking agencies to withdraw the rule pending deeper analysis of potential unintended consequences

Basel III Endgame – Unintended and Unjustified Consequences

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Proposed Changes Impacting Customers and Communities

Issue	Proposed Change	Customers Negatively Impacted
Mortgage Treatment	Increases capital requirements based on a borrower's Loan-to-Value ratio	Mortgage borrowers, particularly lower-income and first-time home buyers
Equity Treatment	Raises capital requirements for certain legislatively mandated programs	Renewable energy infrastructure companies and future users
Mortgage Servicing	Increases regional bank capital requirements for mortgage servicing	Mortgage borrowers, as regional banks will likely reduce or exit the servicing business
Determination of Investment Grade	Lowers capital requirements for loans to investment grade entities – but only if publicly listed	Non publicly listed companies like small- and medium-sized businesses that are not public companies, mutual funds, and pension funds
Operational Risk	Introduces an operational risk framework	All banking activity is impacted but fee-based activities like custody, wealth management services, and securities underwriting, will be disproportionately impacted, areas where U.S. banks dominate
Credit Value Adjustment	Captures credit deterioration of derivative counterparties, but does not include end-user exemption	Any business using banks to hedge their risks: <ul style="list-style-type: none"> - Corporations, e.g. airlines, hedging business and operating risks - Pension plans hedging interest rate risk - Farmers hedging commodity risk
Securitization Treatment	Raises capital requirements on most securitizations, including credit linked notes	Companies, like smaller banks, that use credit linked notes or other securitizations to allocate risk Borrowers whose financing depends on securitization markets
Fundamental Review of the Trading Book	Rewrite of how market risks are calculated, resulting in higher capital requirements	Corporations, pension funds, municipalities, and insurance companies hedging risks and managing investment activities
Trade Finance	Significant implications for the bank-related provisions of trade financing for goods and services	US exporters, agriculture, commodities, US-based global contractors, small-and medium-sized enterprises engaged in international trade

Bank Secrecy Act and Beneficial Ownership Update

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Issue Update

Treasury's Financial Crimes Enforcement Network (FinCEN) continues active work on Anti-Money Laundering Act (AMLA) implementation, Congress' first major reform to Bank Secrecy Act (BSA) laws in decades. Congress' intent for the AMLA was to reinforce a risk-based approach to BSA compliance, reduce burden on banks, and eliminate or update outdated rules. FinCEN recently issued proposed revisions to banks' BSA program rule obligations and has requested information about the burden outdated rules currently place on banks. More work is needed to realize the intent of the AMLA, reinforce a true risk-based approach, and minimize check-the-box compliance burden on banks. The AMLA also includes the Corporate Transparency Act (CTA), which requires small businesses to report their beneficial ownership information directly to FinCEN, intended to ensure that the United States is not a haven for dirty money. The CTA extends FinCEN's jurisdiction to over 33 million small businesses, who must report beneficial ownership information directly to FinCEN. To complete implementation of the CTA, FinCEN anticipates issuing a revised customer due diligence (CDD) rule for banks in October.

Why it Matters

Complying with outdated reporting requirements (such as currency transaction reports or CTRs) and repeatedly requiring banks to collect and verify duplicative information are not de minimis burdens—and they divert banks' critical resources from focusing on illicit transactions. FinCEN must accurately understand the burden outdated rules impose. A true risk-based approach means banks must be allowed to divert compliance resources away from lower-risk customers and activities to focus on higher-risk customers and activities. FinCEN must revise its rules (e.g., the BSA program rule, CDD rule, and reporting rules) to reduce duplicative, inefficient, and burdensome requirements on banks. The expectations for banks must be clear and reasonable, with sufficient time in order to prepare to implement the new rules.

The CTA was intended to fight the use of shell companies to commit crimes, while also reducing burden on banks. More education is necessary, as FinCEN must make the public aware of this new reporting requirement, especially since non-compliance can result in significant civil and criminal penalties. Banks cannot be expected to serve as de facto regulators of their customers.

Recommended Action Items

- Reinforce ABA messaging regarding the burden outdated BSA rules place on banks. Provide examples of the impact of outdated rules on bank operations, and how they make it difficult to allocate resources on the basis of risk (e.g., current CIP and CDD rules triggered by new account openings). Explain that CTR reporting thresholds (unchanged since 1945) require banks to allocate significant compliance resources to report on law-abiding customers, and away from suspicious activity.
- Ask for more feedback regarding evolving threats, as well as the value of BSA reporting.
- Emphasize FinCEN needs to continue and amplify efforts to publicize and educate the public regarding beneficial ownership reporting rule requirements, as many small businesses remain in the dark. Share the CTA-related challenges banks and customers are facing (e.g. Amish customers who need paper filing options). Explain that banks cannot police their customers.

Issue Update

Thirty-eight states have legalized cannabis for medical purposes and 24 states have approved adult-use. Nevertheless, federal law (namely, the Controlled Substances Act (21 U.S.C. §801 et seq.)), still classifies cannabis as an illegal drug and prohibits its use for any purpose. For banks, that means that all proceeds generated by a cannabis-related business operating in compliance with state law are still unlawful, and that any attempt to conduct a financial transaction with that money (including simply accepting a deposit), is considered money-laundering. This remains true even if cannabis is reclassified from its current classification as a Schedule 1 drug to a Schedule 3 drug as proposed on May 16, 2024 by the U.S. Drug Enforcement Administration (DEA), as all banks, whether state or federally chartered, are subject to federal anti-money laundering laws.

In fact, the consequences extend beyond cannabis growers and shops to any person or business that derives revenue from a cannabis firm – including employees, real estate owners, security firms, utilities and other vendors. Despite years of non-enforcement by the Department of Justice and attempts by financial regulators to advise banks on best practices to identify and report cannabis money, the federal law has not changed. That means banks remain in the untenable position of violating federal law or refusing financial services to a legal sector of their local economies.

Why It Matters

Leaving the cannabis industry unbanked is not a viable option. Cannabis businesses, which are legally permitted under state law in most states, are forced to handle increasingly large amounts of cash because of their exclusion from the banking system. Cash-intensive businesses are difficult to monitor for compliance with tax laws or irregular financial activity and are themselves ripe targets for violent crime. These businesses will be safer and better regulated if they are permitted to use the banking system, which would increase the transparency and accountability of the industry and better protect our communities. Additionally, the federal prohibition on banking is likely to exacerbate barriers to entry for cannabis businesses with unequal access to alternative forms of capital, thereby contributing to inequities in this rapidly growing industry.

Only Congress can resolve the divide between state and federal law. Without a change in federal law, neither the federal banking agencies nor state governments can remove the legal restrictions on providing banking services to cannabis-related businesses. Similarly, moving cannabis from a Schedule I to a Schedule III controlled substance would not resolve the banking challenges – current state cannabis programs would continue to run afoul of federal law and complicate the ability of banks to provide financial services.

Recommended Action Items

Urge Congress to move quickly to enact the Secure and Fair Enforcement Regulation (SAFER) Banking Act (S. 2860), which passed the Senate Banking Committee with bipartisan support, or the SAFE Banking Act (H.R. 2891), which has passed the House multiple times in previous sessions of Congress. The bill would:

- Allow banks to serve cannabis-related businesses in states where the activity is legal;
- Specify that handling proceeds from cannabis-related businesses' legitimate transactions is not money laundering and does not violate any provision of federal law; and
- Require federal banking regulators to provide explicit, clear, and uniform expectations regarding the treatment of all cannabis-related accounts.

Issue Update

More than 90 years ago, Congress enacted the Federal Credit Union Act, giving credit unions a mission to provide basic consumer financial services to individuals in need with limited access to financial services. Historically, credit union customers were connected through a common bond within well-defined communities, such as employees of a company or parishioners of a church. This mission limited credit unions' potential membership and together with their not-for-profit status, justified an exemption from federal corporate taxes and certain reporting requirements.

The credit union industry has evolved dramatically over the past few decades, with America's entire population now eligible for membership. The expansion of the common bond and field of membership – largely a result of the Credit Union Membership Access Act of 1998 and subsequent actions taken by the National Credit Union Administration (NCUA) – have pushed credit unions away from their mission and eliminated the justification for their preferential tax and regulatory treatment.

Why It Matters

Serving LMI Communities. Community Reinvestment Act (CRA) requirements have historically not applied to credit unions as their field of membership limitations ensured they were focused on the specific groups they were chartered to serve. Although NCUA-approved field of membership expansions have since granted credit unions access to the entire country, the CRA exemption remains. This incongruity deprives low- and moderate-income communities of investment and a number of states have enacted state-level CRA requirements for state-chartered credit unions in the absence of congressional action.

Justifying Tax Subsidy. The \$2.3 trillion credit union industry receives a \$35.8 billion tax subsidy to provide basic consumer financial services to under-resourced groups and communities. However, unlike most tax exempt non-profits, tax exempt credit unions have no community benefit reporting requirements and do not file IRS Form 990. With few reporting and disclosure requirements, credit unions have little accountability as it relates to their use of taxpayer resources.

Recommended Action Items

- **Tell Congress to Convene a Hearing on the Community Benefit of the Credit Union Tax Exemption.** Congress last examined this issue in 2005; oversight is necessary to determine whether 21st-century credit union industry practices, like acquiring banks, align with its mission.
- **Urge Congress to Require Metrics Around Credit Union Service to LMI Communities.** Congress should scrutinize whether credit unions are meeting their statutory objective of serving low- and moderate-income communities in a robust, demonstrable way.
- **Oppose Further Expansion Efforts.** Congress should oppose legislation seeking to expand credit union powers and enhance its oversight of credit union service organizations.

Issue Update

Data is playing an ever-increasing role in all aspects of our economy, and banking is no different. Today, both banks and fintech companies offer products (such as budgeting tools, income verification, and digital wallets) that rely on access to a consumer's financial data, which is often housed at another business.

Section 1033 of the Dodd-Frank Act gives consumers the right to access their financial records in a standardized electronic format, with some exceptions. Such access could be direct by the consumer or by authorized third parties, using entities known as data aggregators as intermediaries. In 2017, the CFPB issued a set of principles that outlined the Bureau's vision for realizing a robust and safe data sharing ecosystem. Since then, industry has collaborated through an entity called the Financial Data Exchange (FDX) to transition from the dangerous use of credential-based screen scraping to the more secure API method, which currently connects more than 76 million accounts (although screen scraping still occurs).

The CFPB issued a proposed 1033 rule in October 2023. In a comment letter submitted in December 2023, ABA urged the Bureau to: take a more active role in enforcing compliance while affording data providers flexibility to manage risk and prevent fraud; not require payment initiation; allow data providers to recoup costs; deem data providers complying with 1033 not to be furnishers under the Fair Credit Reporting Act (FCRA); and revise several sections of the regulatory text to comport with the statute, avoid confusion, or otherwise ensure the practical operationalization of the rule. In June 2024, the CFPB released a partial final rule laying out the requirements for recognition of industry standard setters to evidence compliance with portions of the rule; FDX is a potential standard setter. The remaining final 1033 rule is anticipated in Fall 2024. ABA is also monitoring the forthcoming FCRA rulemaking on data brokers for the ways it might impact the 1033 ecosystem.

Why it Matters To Your Community

Banks support their customers' ability to access and share their financial data in a secure, transparent manner that gives the customer control. The CFPB's 1033 rule will require data providers, including banks, to make certain information available in an electronic format. This will impose significant compliance costs. However, banks will also be able to capture consumer consent in order to ingest their data, which will enable innovative use cases. Thus, the rule also represents a business opportunity.

Recommended Action Items

- **Continue to urge the CFPB to create a larger participant rule that brings data aggregators under direct supervision** to ensure consistent protections and outcomes for consumers.
- **Urge the CFPB to provide more time for compliance; ABA has asked for an 18-month extension for all tiers.** This will give banks time to conduct a data inventory/mapping exercise; plan for an external API portal (built in-house or through a service provider); assemble cross-functional teams to create policies, procedures, disclosures, and workflows for both making data available and ingesting it; and develop use cases for functioning as a data recipient.
- **Provide feedback to the 1033-adjacent FCRA rulemaking on data brokers.** This rulemaking could have significant implications for data sharing under 1033.

Data Aggregation - 1033

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Compliance Dates for Banks under CFPB's Proposed 1033 Rule
(<https://www.federalregister.gov/documents/2023/10/31/2023-23576/required-rulemaking-on-personal-financial-data-rights>)

Bank Asset Size	Compliance Date as Proposed by CFPB*	Compliance Date as Urged by ABA*
At least \$500 billion	6 months	2 years
At least \$50 billion but less than \$500 billion	1 year	2.5 years
At least \$850 million but less than \$50 billion	2.5 years	4 years
Less than \$850 million	4 years	5.5 years

*Triggered by publication of final rule in the Federal Register

Issue Update

In recent years, when applying for credit, bank customers have experienced a sharp increase in the volume of “trigger leads” – unwanted call, text, email, and mail solicitations from lenders the customer has no relationship with and may never have heard of.

When a consumer applies for credit and consents to a credit check, the bank pulls their credit report to evaluate their application. This “triggers” the credit reporting agency to identify that the consumer is shopping for credit and to sell their information to other lenders who do not have a relationship with the bank or customer, and who then contact the consumer to market prescreened credit offers.

Individuals who apply for a mortgage may receive dozens or even hundreds of trigger lead solicitations. One bank had a customer report receiving 249 phone calls and 53 text messages over nine days. Another reported receiving 276 calls within a 24-hour period. Unfortunately, these are not isolated incidents.

Why It Matters

Protecting Consumers from Unwanted and Abusive Solicitations. While receiving a limited number of prescreened credit offers from known and trusted financial institutions can help consumers shop for mortgages, receiving hundreds of calls, texts, and other communications merely causes confusion and disruption. Some of those solicitations may be confusing, or even designed to deceive the customer into believing they came from the bank to whom the customer originally applied for the loan.

Preserving Customers’ Trust in Banks. Trigger leads can damage banks’ relationships with their customers, who often mistakenly believe it was their bank that sold their information to other lenders with whom the customer has no prior relationship. In reality, banks carefully safeguard their customers’ privacy, and it is consumer reporting agencies who sell trigger leads. Nonetheless, this misperception can erode customers’ trust in their banks and in the financial system.

Recommended Action Items

- **Tell Congress to Support the *Homebuyers Privacy Protection Act (S. 3502 and H.R. 7297)*.** This bipartisan, bicameral legislation would eliminate abusive mortgage “trigger leads,” and limit prescreened credit offers to consumers who consent or who have a preexisting relationship with a financial institution.