Protecting Consumers from Data Breaches

Data breaches are a continued and growing problem, affecting consumers and financial institutions alike. In Missouri, credit unions have been hit hard with both regional and nationwide retailer data breaches. Action is needed. Here are some facts about data breaches and how it affects credit unions and the consumers served by credit unions:

- When data breaches occur, credit unions and other financial institutions bear the actual costs of the breach. This includes not only the cost of fraud, but the expenses of helping the consumer – blocking transactions, reissuing cards, increased staffing at call centers and monitoring consumer accounts.
- Retailers that accept electronic payments are NOT subject to the same stringent data security standards as financial institutions under the Gramm Leach Bliley Act (GLBA)
- Millions of consumers' personal financial information has been compromised as a result of merchant data breaches, highlighting the need for retailers to fall under standards similar to GLBA.
- The Target breach cost credit unions a minimum of $30.6 million, and the Home Depot breach resulted in nearly $60 million in costs. Credit unions have not been reimbursed a dime for either of these breaches.
- EMV (chip and pin) cards will not prevent all data breaches. It is a tool, but not the save-all solution. (For example, the Target breach would not have been prevented by using EMV technology.) The most effective option is making sure all parties involved in electronic payments systems are held to the same standards to protect consumer data.

Credit Unions Request to Missouri's Members of Congress:

Credit unions are concerned about protecting consumers and ask Congress to take action by passing data security legislation utilizing these points:

1. Any comprehensive data security effort should include strong national data protection and consumer notification standards with effective enforcement provisions. These provisions should apply to any party with access to important consumer financial information.
2. Credit unions and banks are subject to high data security and notification standards under Section V of the Gramm-Leach-Bliley Act (GLBA).
3. Establish strong federal data protection and notification standards for standard and consistent enforcement.
4. Allow credit unions and banks to inform consumers about information regarding a breach, including where it occurred. (This notification is currently prohibited).
5. Shared responsibility for all those involved in the payments system for protecting consumer data. Financial institutions often bear a disproportionate burden in covering the cost of breaches that occur beyond their premises. The costs of a data breach should be ultimately borne by the entity that incurs the breach.

Missouri Credit Union Association

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Missouri Credit Union Association

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The Value of Credit Unions

Credit unions are not-for-profit financial cooperatives. No matter the size or what services a credit union offers – its structure remains the same with a focus to serve consumers. This focus on consumers benefits the entire community and financial services, including those who are not credit union members.

- Credit unions do not pay the federal income tax on profits because profits are **returned back** to member-owners, who pay taxes on those profits.
- Credit unions DO pay taxes. Missouri state chartered credit unions pay state income tax at the same rate as other financial institutions in the state. Credit union members pay taxes on dividends (interest) that their accounts earn. Federal credit unions pay real property taxes, tangible personal property taxes and payroll taxes for their employees.

Consumer Benefits

A tax on credit unions would be a tax increase for millions of credit union members.

- Consumers nationwide benefit to the tune of $10 billion EACH YEAR because of credit unions' tax status.
- More than 100 million Americans use credit unions to conduct financial services, including 1.4 million members in Missouri.
- The credit union benefit is also felt by non-members, who experience greater consumer choice and better access to mainstream financial services due to competition.

Credit unions actively work to fulfill their mission, established by Congress in 1937.

- During and following the financial crisis, Americans saw credit unions as a safe haven in the financial services sector. Credit unions continued to lend to consumers, homebuyers and small businesses when other lenders were unable or unwilling to do so.
- Credit unions serve all of their members, including low-income consumers who are often neglected by traditional financial institutions or targeted by predatory lenders.
- Credit union members see this benefit in terms of lower rates on loans, lower fees on services, and higher returns on deposits.

Eliminating the credit union tax status eliminates credit unions.

Credit unions are an important choice for consumers to conduct their financial services. Taxing credit unions takes this option away from consumers, and will drive up the cost of financial services for all.

Credit Unions Request to Missouri's Members of Congress:

- Recognize the unique role of credit unions in the financial services sector and be outspoken in their support of the credit union tax status.
- Tax reform legislation should not eliminate or alter the credit union tax status.

Capital Reform

Capital Access for Small Businesses and Jobs Act (H.R. 989)

Access to supplemental capital is a tool to enable credit unions to enhance their service to members without jeopardizing the strong capital cushion that provides safety and soundness.

- By law – not regulation, as is the case for other insured depositories – credit unions must maintain a 7% net worth (or leverage) ratio in order to be considered "well capitalized." The law also specifies that only retained earnings constitute net worth for credit unions. All other U.S. depository institutions and credit unions in other countries are permitted forms of supplemental capital. The regulator supports access to additional capital.
- Capital reform is important because credit unions will soon be subject to a new risk-based regulatory capital requirement of 10% in order to be considered "well – capitalized" by NCUA.
- The legislation would maintain credit unions' not-for-profit cooperative structure, because no voting rights will be conveyed to contributors of supplemental capital.
- NCUA would determine the forms of supplemental capital offered for purposes of the statutory capital requirements.

Regulatory Burden and the Need for Regulatory Reform

While credit unions did not cause the financial crisis and consistently engage in safe lending practices, the resulting significant growth in regulatory burden has placed barriers in credit unions' ability to fully and efficiently serve consumers. Credit unions ask Congress to support legislation that removes barriers to credit union service and provide better oversight of organizations that regulate credit unions.

- Since 2008, credit unions have been subjected to more than **190 regulatory changes** from at least **15 different federal agencies** resulting in more than 6,000 *Federal Register* pages to review and implement.
- Time and funds spent on regulatory compliance means time and funds not spent on member services.
- Regulatory burden is of particular significance to credit unions, as many have small staff.
  - Approximately 759 credit unions operate with one or fewer full-time equivalent employees.
  - Nearly one-half of the nation's 6,500 credit unions operate with five or fewer full-time equivalent employees.

Eliminate Privacy Notice Confusion Act (H.R. 601 and S. 423)

The Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act, requires financial institutions to give annual privacy notices each year, even if their privacy policies have not changed. H.R. 601 and S. 423 would require credit unions and other financial institutions to provide information to their members only when there is a change to the policy or practice related to the privacy of the member.

- Since 2001, credit unions have sent more than 1 BILLION privacy notices - an average of 87,000,000 per year.
- Sponsored by U.S. Rep. Blaine Luetkemeyer (R-District 3), H.R. 601 is identical to the bills that passed the U.S. House in the 111th, 112th and 113th Congress.
- Both bills eliminate costly and burdensome redundancies, while still retaining notification policies to consumers.

Community Lending Enhancement and Regulatory Relief Act of 2015 (CLEARR Act) (H.R. 1233)

Sponsored by U.S. Rep. Blaine Luetkemeyer (R-District 3), the bill addresses multiple regulatory relief elements:

- Requires a review of capital requirements of mortgage servicing assets (MSA) under the proposed risk based capital rule by the NCUA and a delay in implementation.
- Treat mortgages held in portfolio at credit unions as qualified mortgages for purposes of the Consumer Financial Protection Bureau's (CFPB) mortgage lending rules.
- Amend exemption of small services of mortgage loans from Section 6 of Real Estate Settlement Procedures Act (RESPA) and exempts credit unions that service 20,000 or fewer mortgages.
- Amend Truth in Lending Act (TILA) to exempt higher risk mortgages from property appraisal requirements.
- Eliminates annual privacy notices and only requires notification when privacy policies have changed.

NCUA Budget Transparency Act (H.R. 1176)

This bill would direct the U.S. Government Accountability Office (GAO) to study the NCUA's budgeting process and identify ways the agency can increase transparency of the process within 18 months of enactment.

Consumer Financial Product Safety Commission (H.R. 1266)

H.R. 1266 would replace the Consumer Financial Protection Bureau (CFPB) director with an independent Financial Product Safety Commission, expanding the leadership to a five member board instead of a single director.

Helping Expand Lending Practices (HELP) in Rural Communities Act (H.R. 1259)

H.R. 1259 would direct the CFPB to establish an application process determining whether an area should be designated as a rural area if the CFPB has not designated it as one.

Member Business Lending

Credit Union Small Business Jobs Creation Act (H.R. 1188)

The Credit Union Small Business Jobs Creation Act could provide $16 billion in additional capital for small businesses. It lifts the member business lending cap from 12.25% to 27.5% of total assets for credit unions that fit certain specifications. Credit unions must: be well capitalized; be at or above 80% of the current MBL cap for one year prior to applying for the higher cap; have five or more years of MBL experience; demonstrate sound underwriting and servicing based on historical performance; have strong management, adequate capacity and have policies to manage increased MBLs; and receive approval from the National Credit Union Administration, the federal agency that regulates and insures credit unions.

Veteran Member Business Loans (H.R. 1133)

H.R. 1133 would exempt business loans to veterans from the credit union restriction of MBLs. Currently, credit union lending to members is limited to 12.25% of the credit union's assets. This would enhance lending to veterans who want to start or finance a small business and create more access to business loans without changing the 12.25% cap.

Mortgage Issues and Access

The Dodd-Frank Act created a "qualified mortgage" (QM) definition. This category of loans are considered more stable, since lenders must make good faith efforts to determine a borrower's ability to repay, and the absence of certain loan features that can be harmful.

Mortgage Choice Act (H.R. 685)

The CFPB's "ability-to-repay" rules limit points and fees for qualified mortgages to 3% of the loan amount. Affiliated land title fees are included in the cap, but fees charged for the same service by unaffiliated companies are excluded from the cap. This limits consumer choice without justification. Consumers can benefit if a credit union can provide a comparable service to the member for a lower price. The rule does not allow this option and the credit union member bears the cost. H.R. 685 would modify the definition of points and fees.

Portfolio Lending and Mortgage Access Act (H.R. 1210)

Would allow residential mortgages held in portfolio by the original creditor to be deemed "qualified mortgages" (QMs) under the Consumer Financial Protection Bureau (CFPB).

Federal Home Loan Bank Membership Eligibility Parity

A proposed Federal Housing Finance Agency (FHFA) rule would require ALL Federal Home Loan Bank (FHLB) member credit unions to hold 10% of assets in "residential mortgage loans" on an ongoing basis. However, FDIC-insured banks with less than $1 billion in total assets are exempt from the 10% requirement.

- Credit unions and banks should be treated equally under the proposed rule.
- Congress has the authority to determine the nature and scope of eligibility for FHLB membership. Congress has previously supported greater access to important funding that the FHLB provides, not less.
- Credit unions ask Congress to support parity with banks on membership regulations.

Patent Reform

Credit unions have experienced a dramatic increase in demand letters from non-practicing entities, often called "patent trolls," who obtain obscure/dormant patents and then blanket an industry – including credit unions - with demands for licensing fees. Credit unions ask for support of legislation that follows these principles: 1) Efficiency of the litigation process; 2) Enhanced transparency – requiring more detail in patent claim letters; and 3) Patent quality – improvements in the post-grant review of patents.

Innovation Act (H.R. 9)

H.R. 9 addresses needed patent reforms.

Missouri Credit Union Association