

☆ Published by WBA, 200 East 8th Avenue, Suite 201, Cheyenne, WY 82001, (307)638-5008 ☆



**Wyoming Bankers Association  
2012 Events  
Mark Your Calendar!**



**Credit Conference moves to APRIL....  
WBA Credit Conference  
April 26-27, 2012 \*\* Holiday Inn  
Sheridan, WY**

**Speakers and Topics:**

- Commercial Real Estate Loan Risk Assessment—**John Cochran**
- Managing Appraisal & Evaluation Requirements in Community Banks—**John Cochran**
- Profit Mastery—Improving Small Business Financial Performance—**Bruce Morse**
- Just When You Thought You Had Heard Everything—**Geral Blanchard**
- Economic Outlook: A Lost Decade?—**Keith Leggett**
- SBA 504 Loans—A Vital Source of Financing For Your Business Customers—  
**Diane Johnston**
- The Wild World of Global Economics—**Dr. David Kohl**

*Registration Brochure to be Mailed This Week!*



**WBA Legislative Dinner & Bankers Meeting**

**Wednesday, February 15, 2012 \*\*Little America Hotel—Cheyenne, WY  
1:30 p.m. Legislative Review Session -- 6:00 p.m. Reception**

**WBA Agricultural Bankers Conference**

**May 10 & 11, 2012 \*\*UW Union Hall—Laramie, WY**

**WBA Legal Issues of New Account Documentation**

**May 22, 2012 \*\*Ramada Riverside—Casper, WY**

**2012 Tri-State Bankers Summit**

**June 10-12, 2012 \*\*Grand Hyatt—Denver, CO**



**The Wyoming Bankers Association has  
scholarship opportunities available for various Banking Schools  
-- call Cheryl for more information at 307/638-5008.**

*Reprinted by special permission from the December 2011 ABA Banking Journal. Copyright American Bankers Association*

**ABA CHAIRMAN'S VIEW | BY KELL KELLY**

## Want to lend like a bank? Become one

**Everywhere we turn**, banks face fierce competition. That competition is what makes our free enterprise system work, and we should never complain about it. It's different, however, when a competitor has an unfair advantage. That's the case with some entrepreneurial credit unions, which enjoy a federal tax exemption while avoiding the requirements and responsibilities Congress originally attached to that privilege.

That's why ABA continues to fight legislation that would more than double the business lending cap for credit unions, an action that would effectively turn them into tax-exempt banks.

I testified before the House Subcommittee on Financial Institutions and Consumer Credit on the "Small Business Lending Enhancement Act of 2011" (H.R. 1418). It would allow credit unions within 80% of their member business lending cap to more than double it from 12.25% to 27.5%. Similar legislation has been introduced in the Senate.

The great irony is that at the end of 2010, only a few credit unions—96 out of 7,292—were within 80% of their cap. Those that are near their cap bear little resemblance to traditional credit unions: They seek out large commercial customers and behave like a bank.

H.R. 1418 would enable credit unions to significantly increase their business lending at the expense of doing consumer lending. And it would shift some business loans away from tax-paying banks.

Interestingly, these few credit unions that want this expanded business lending authority are not only opposed by ABA, but by a significant number of traditional credit unions.

We're encouraging credit unions that want to do what banks can do to convert to a mutual savings bank charter, subjecting them to rigorous examination standards and taxation.

Here are the facts:

- ◆ Credit unions can meet their small business member needs without increasing the lending cap. Credit unions can make all the business loans they want under \$50,000. They begin with a blank slate when making further business loans over \$50,000.
- ◆ Business lending is risky. As credit unions have aggressively pursued it, loan delinquencies have risen and some credit unions have failed.
- ◆ Expanding the business lending cap is inconsistent with the credit union mission of serving individuals of modest means. H.R. 1418 would enable credit unions to act like banks without the obligation to pay their taxes or meet the requirements of the Community Reinvestment Act.
- ◆ Credit unions that want to engage in business lending can grow and serve their members by switching to a mutual savings bank charter. Some credit unions have done so; others are pursuing it. A mutual savings bank charter provides greater flexibility, supervision by traditional bank regulators, and preserves the mutual-member focus.

ABA is absolutely right in trying to stop H.R. 1418. And we'll keep fighting to ensure a competitive environment that is fair.

**"Those few credit unions that want this expanded business lending authority are not only opposed by ABA, but by traditional credit unions"**

**— Albert C. "Kell" Kelly, Jr.,**

**President and CEO,**

**SpiritBank, Bristow, Okla.**

## News Briefs From Washington

### Retailers Pocketing Savings From Durbin Amendment

As many predicted, retailers have not passed savings on to customers despite reaping windfall profits from the new, low debit-card interchange rates, according to a recent report from the Electronic Payments Coalition. The coalition found in its “Where’s the Debit Discount” report that at least 76 percent of retailers included in the research have raised prices or kept them the same after receiving about \$825 million in profits since the Durbin amendment’s Oct. 1 effective date. Customers are paying an average of 1.7 percent more after implementation even though the price-fixing plan has slashed the price retailers pay to accept debit cards in half, the report said. The findings come two weeks after the National Retail Federation, National Association of Convenience Stores, and other merchant organizations filed a lawsuit against the Federal Reserve, claiming that they should be paying even less in debit card interchange. Read more at <http://wheresmydebitdiscount.com>.

### Taxpayers Gain \$13 BILLION From Bank TARP Programs

Taxpayers have made more than \$13 billion in profit so far from the Treasury Department’s Troubled Asset Relief Program through repayments, dividends, interest, and other income from banks, the agency said in its monthly TARP report. “As of today, taxpayers have recovered over \$258 billion from TARP’s bank programs . . . over \$13 billion more than the \$245 billion invested in banks,” the report said. Read Treasury’s current TARP report at [www.aba.com/aba/documents/news/TARPreprt121211.pdf](http://www.aba.com/aba/documents/news/TARPreprt121211.pdf).

### Lawmakers Ask CFPB to Study Credit Card Act’s Ability-to-Pay Rules

A bipartisan group of 25 House members, including Financial Services Committee leaders, last week asked the Consumer Financial Protection Bureau to study the effect of the Credit Card Act’s ability-to-pay rules. “The Federal Reserve’s final rules create a uniform standard requiring all consumers to demonstrate ‘an independent ability to repay.’ We believe that these rules contradict the congressional intent of the Credit Card Act since [it] created two distinct standards, one for younger consumers and one for all others,” the lawmakers said in a letter to Raj Date, the CFPB’s acting head. “We also are concerned that these rules will disadvantage stay-at-home spouses, who may not have an independent source of income but . . . may have ample ‘household income’ to secure lines of credit,” they explained. The lawmakers noted the CFPB can look across the credit card-issuing industry and also monitor the agency’s complaint line to determine if the rules have any potentially negative effect. “We believe that a study is both timely and necessary and we would urge the bureau to begin this process before the end of the year,” they said. Read the Dec. 7 letter at <http://maloney.house.gov/press-releases>.

### CFPB Creates Ombudsman’s Office

The Consumer Financial Protection Bureau has created an ombudsman’s office to help resolve individual and systemic problems that banks, nonbanks, and consumers have with the agency. Read more about the Ombudsman’s Office at [www.consumerfinance.gov/ombudsman](http://www.consumerfinance.gov/ombudsman).

### Senate Panel Approves Hoenig’s Nomination

The Senate Banking Committee has approved by voice vote Tom Hoenig’s nomination to become FDIC vice chairman. Hoenig, the former president and CEO of the Kansas City Federal Reserve Bank and a frequent critic of Fed policies, was nominated by the Obama administration in October.

News Source: American Bankers Association

## News Briefs From Washington

### Regulators Testify on Volcker Rule, Other DFA Implementation Issues

The Volcker Rule, the “qualified residential mortgage” definition, and Richard Cordray’s stalled nomination to serve as Consumer Financial Protection Bureau director were among the many topics discussed at this week’s Senate Banking Committee oversight hearing on the Dodd-Frank Act implementation.

Panel ranking member Richard Shelby (R-AL) criticized the 298-page proposal to implement the Volcker Rule for its “ambiguity” and lack of a sign-off from the Commodity Futures Trading Commission. CFTC Chairman Gary Gensler explained that his agency’s lack of “capacity,” rather than a disagreement with other regulators, was the reason the CFTC wasn’t initially part of the Volcker proposal. The CFTC’s version will look similar to the current one, he said.

Sen. Robert Menendez (D-NJ) expressed concern about the proposed risk-retention rule’s “qualified residential mortgage” exemption that includes a 20 percent down payment as one of the criteria. Acting Comptroller of the Currency John Walsh, however, did not commit to changing the QRM definition, which the NBA and ABA believe unfairly harms creditworthy borrowers and should be reworked.

Shelby, who along with more than 40 other GOP senators remains opposed to approving the nomination of Cordray or any CFPB director until the bureau undergoes reforms, asked Treasury Deputy Secretary Neal Wolin whether the administration is “seriously interested” in negotiation with them on the issue. Wolin replied that what the administration is “very interested in is the Senate considering Richard Cordray.” Read more on the Senate Banking Committee’s site at [http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=77971a67-b8f7-4e14-a837-892a065b7201](http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=77971a67-b8f7-4e14-a837-892a065b7201).

### Credit Unions Revise New Member Estimates After Bank Transfer Day

Credit unions dramatically revised their estimates of how many new members the industry gained in the lead-up to last month’s Bank Transfer Day. The Credit Union National Association (CUNA), which originally estimated that 650,000 consumers joined credit unions between Sept. 29 and the first week of November, on Monday said the actual number was closer to 210,000 new members. CUNA changed its estimate after receiving more complete data from credit unions for October.

“This just illustrates the point that many tax-exempt credit unions have evolved into direct competitors with taxpaying banks and should have their preferential tax treatment revoked,” said ABA’s Keith Leggett. “The principle of tax equity states equals should be treated the same by the tax code. Therefore, institutions that are engaged in the same lines of business and are in competition with one another for the same customers should be subject to the same tax treatment.” Read more about Bank Transfer Day on Keith Leggett’s Credit Union Watch blog at <http://creditunionwatch.blogspot.com/2011/11/bank-transfer-day-shows-that-time-has.html>.

### Retailers Sue for Lower Debit Fees

Retailers won a huge victory last summer when the Federal Reserve cut the fees that banks and credit card companies were charging them to process debit card transactions. Retailers now have filed a lawsuit against the Fed arguing that new rules capping transaction fees still left the fees too high. Mallory Duncan of the National Retail Federation said the Federal Reserve’s efforts were “credible” but “didn’t follow the law.” The lawsuit asserts that the Fed board’s debit fee rules still allow banks to capture too much money from debit card purchases. Read more about the situation at [www.nytimes.com/2011/11/24/business/retailers-push-for-yet-lower-debit-fees.html?\\_r=1](http://www.nytimes.com/2011/11/24/business/retailers-push-for-yet-lower-debit-fees.html?_r=1).

News Sources: American Bankers Association & New York Times

**Frank Keating, President and CEO  
American Bankers Association  
Washington Update  
December 2011**

### **Fighting for Examination Relief**

We're urging bankers to write their representatives and ask them to co-sponsor the bipartisan examination relief bill introduced by House Financial Services Financial Institutions Subcommittee Chairman Shelley Moore Capito (R-W.Va.) and Ranking Member Carolyn Maloney (D-N.Y.)

The Financial Institutions Examination Fairness and Reform Act (H.R. 3461) would take a major step toward a more balanced and transparent approach regarding how, and on what basis, decisions are made by the regulatory agencies in the examination process.

The bill would also address some examiner decisions that have effectively and unnecessarily reduced the amount of capital available for increased lending -- particularly to small businesses

ABA worked closely with bankers and the Wyoming Bankers Association in raising issues that the Capito-Maloney bill would resolve as well as offering recommendations.

You've told us that the reasons for certain decisions regulators make during the examination process have not been clear. You've also reported that some examiner decisions have effectively and unnecessarily reduced the amount of capital available for increased lending -- particularly to small businesses. This hurts your banks' abilities to help local businesses grow and create jobs.

The Capito-Maloney bill would address these concerns by requiring, among other things, more timely examination reports; more information about the facts the agency relied upon to make its exam decisions; and more precise, consistent and understandable classification standards for commercial loans.

The legislation also would create a new, independent inter-agency ombudsman within the Federal Financial Institutions Examination Council to ensure the consistency and quality of all exams, and it would institute an expedited process for banks to appeal examination decisions without fear of reprisal.

Working together, bankers, state associations and ABA have identified the problems and recommended a workable, practical solution. This is how we do things. We focus on legislation that is passable, is backed by solid, credible arguments, and will make a real difference for the industry. The Capito-Maloney bill certainly meets those tests. Now, we have to fight for it. (Feels good to be fighting for something, doesn't it?)

Write to your representatives (click on the "Action Alert" icon on ABA's home page at [www.aba.com](http://www.aba.com)) and urge them to co-sponsor the bill. And don't forget to join us in Washington for ABA's GR Summit March 19-21, where we will continue to advance our industry's advocacy goals and priorities.

###

*E-mail Frank Keating at [keating@aba.com](mailto:keating@aba.com)*

© 2011 American Bankers Association. All rights reserved. Reprinted with Permission.

# CORE VALUES

It's who we are, what we do, and how we do it that makes us different.

INTEGRITY

DISCIPLINE

DILIGENCE

AGILITY

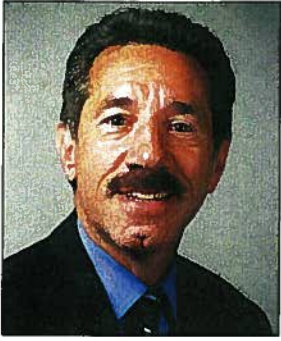
TRUST



**BANCINSURE®**

BY BANKERS - FOR BANKERS  
[WWW.BANCINSURE.COM](http://WWW.BANCINSURE.COM)

For more information contact  
Tempi Ruth 800.541.5126



## PRESIDENT'S MESSAGE

Jim Pishue, *President & CEO, Washington Bankers Association*

# Banks' Value Should Be Recognized

**There's no such thing as a free lunch.**

**Yes, it's a cliché. But there is also a reason the phrase has been part of our popular vernacular for decades: it's true.**

**M**ost people recognize that “free” offers are virtually always a marketing gimmick or promotional ploy to induce consumers to purchase a company's products or services. They know that when timeshare operators offer them a few free days in paradise, they're going to be expected to sit through a pitch to purchase a week or two at the resort.

**Banks will have no choice but to hire fewer people, close more branches, and institute new fees on other services to help patch the holes in their income statements.**

What is amazing to me is that this level of consumer awareness so rarely translates into the public policy arena.

For the past few weeks, the view from my office window has featured a patchwork of tents as the “Occupy” protestors have taken up residence in downtown Seattle. It's hard to understand what exactly they've been protesting beyond the existence of some sort of “establishment” that isn't living up to their expectations about what they deserve.

Claiming to represent “the other 99 percent,” these protestors call for increasing taxes on Wall Street financiers, banks, and corporations.

What they fail to recognize is that corporations don't really pay taxes. People do. When business taxes are increased, one way or another, individuals will pay the bill. The impact might be felt in the form of lower wages and benefits for employees; fewer dividends paid to stockholders, including retirees; or reduced investment in the new facilities and equipment that provide new job opportunities.

Whatever the form the impact takes, the money really comes not from some impersonal corporate checkbook, but from the pockets of individuals like you and me, our customers, and, yes, even from those camped out in Westlake Square.

That's a fact that our state lawmakers would do well to keep in mind as they consider options for balancing the state budget in the face of a struggling economy and weak state revenue collections.

The same principle applies at the national level. Retailers and consumer advocates have trumpeted the benefits of the Durbin amendment to the Dodd-Frank financial reform bill, which imposed


new caps on the fees that banks could charge for interchange services on debit card transactions.

It's estimated that the amendment will provide a \$7.8 billion windfall for retailers, at the expense of the banking industry. In advocating for the artificial price cap, retailers claimed that this money would be passed along to consumers in the form of better prices. But when a retail giant like Home Depot notes that it expects to generate another \$28 million in profits as a result of the Durbin amendment, it's hard to believe that consumers will end up as the beneficiary of the change.

What seems to have been lost in the debate around the Durbin amendment is the value that the banking industry has created for retailers and consumers alike through its investments to create the interchange system that now exists. That network links 7,000 banks and millions of merchants, providing convenience, worldwide card acceptance, guaranteed payments, and fraud controls — benefits that add great value to users, but all of which also cost money to provide.

How will the financial services industry respond to this forced transfer of income to the retail sector? Banks will have no choice but to hire fewer people, close more branches, and institute new fees on other services to help patch the holes in their income statements.

We're already hearing the howls of protest as some banks have taken the first steps in that direction. Those critics are like the naïve people who want the condo company to offer them the free trip, but don't think they should have to sit through the timeshare sales pitch in return.

They're looking to get something for nothing. 

## Join the WBA at the 2012 ABA GR Summit


Join the Wyoming Bankers Association in Washington, D.C., on March 19-21, 2012, when we will attend ABA's Government Relations Summit. Don't miss one of the largest gatherings of bankers in Washington!

Your participation will help legislators understand who bankers really are and what banks do for their constituents. We need our elected officials to recognize that banks are the engines of economic growth and job creation in our communities. In today's environment, we need to proactively manage political risk. We need as many bankers and bank directors to attend as possible. For more information contact Cheryl at (307)-638-5008 or [Cheryl@wyomingbankers.com](mailto:Cheryl@wyomingbankers.com).

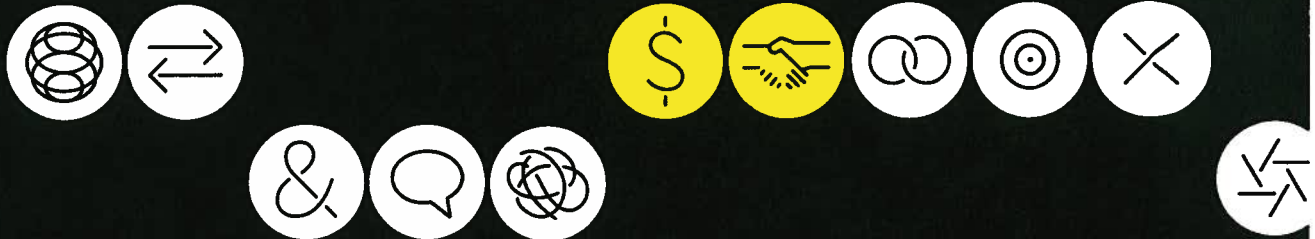
**Talk to Power.**

Unite with fellow bankers at the 2012 ABA Government Relations Summit, March 19-21, in the nation's capital to let lawmakers and regulators know where you stand on issues affecting the banking industry. Hear from top government officials and make the case that your bank is an engine of economic growth in your community.

Visit [aba.com/Summit](http://aba.com/Summit) today.

**NBA** National Bankers Association  American Bankers Association

## Managing Payments, Driving Solutions



We're Vantiv. Dedicated, strategic professionals with 40 years of experience developing innovative payment processing solutions for financial institutions and merchants. We offer an extensive suite of debit, credit, prepaid, ATM and merchant services to provide you with new sources of revenue. Our people, technology, and partnerships are the Vantiv difference. Let's discuss your future success.

**vantiv**

Heidi Saba  
[Heidi.Saba@vantiv.com](mailto:Heidi.Saba@vantiv.com)  
 303.399.8929

As seen in...

## BankNews

Reprinted with permission of BankNews Media. Contents of BankNews are, and remain, the property of BankNews, Inc.

# Banks Under Cyber Attack

From behind a laptop and halfway around the world, they can stroll into a bank vault and drain corporate accounts in a matter of minutes. They can abscond with hundreds of thousands of dollars at a time, all with a just a few swift keystrokes, and all before anybody realizes the money is gone.

Cyber thieves represent one of the most rapidly growing problems for banks and businesses. Since 2008, there have been roughly 50 reported incidents of cyber theft involving at least \$13 million in fraudulent electronic fund transfers. On average, cyber thieves have gotten away with just under \$300,000 per theft, and have spawned almost a dozen lawsuits across the country, turning banks and businesses against each other as the innocent victims of cyber theft.

### Anatomy of Cyber Theft

Cleverly designed emails can trick unsuspecting recipients into installing a computer virus, which can infect a business' entire network and secretly log every keystroke made on the affected computers. By logging keystrokes, the cyber thieves are able to acquire the business' confidential banking credentials, including usernames, passwords and answers to security questions.

When the time is right, the cyber thieves strike, electronically transferring thousands of dollars to outside accounts and depleting the victim's balance. In most cases, the cyber thieves will disguise the transactions as payroll transactions, but the recipients are anything but actual employees of the business. In fact, the recipients are themselves unwitting pawns in the theft. Commonly known as money mules, they have themselves been recruited by the cyber thieves through online scams. In some cases, the money mules are told that they will receive a certain amount of money — usually for completing a nominal task — and instructed to keep a small portion of the theft as their commission and to forward the rest to another person, who is oftentimes yet another unwitting money mule.

There is often little recourse for commercial victims of cyber theft. Unless an account is being vigilantly

monitored, cyber thieves usually have time on their side. They avoid detection by strategically initiating the fraudulent transfers at times when the account is not likely to be actively monitored, such as holidays when key employees may be out of the office. For this reason, school districts with predictable or defined holiday schedules have become favorite targets. The thieves also exploit electronic fund transfers through automated clearinghouses, where processing rules and standards can sometimes give cyber thieves a window of several days before the theft is even detected, at which point it may be too late to cancel or reverse the transactions. The various mules — who rarely pocket enough money to make individualized pursuit worthwhile — obscure the path of the funds and make recovery from the cyber thieves difficult, if not impossible.

As a result, victimized businesses are left with substantially depleted accounts and thus understandably expect their banks to compensate them fully for the apparent bank robbery. That was exactly the situation facing Ocean Bank in Maine and Dallas-based Comerica Bank, both of which had commercial customers that were victimized by cyber theft. While some banks will repay their customers, these banks refused, claiming that they were not responsible for the theft because the theft originated on the customer's end. As some of these disputes have matured into heated lawsuits, the question for the courts now is, "Who should bear the loss?"

### The Legal Standard

The answer is found in Article 4A of the Uniform Commercial Code. While individual consumers are generally protected against losses from this type of cyber theft through Regulation E of the Electronic Fund Transfer Act, businesses with commercial bank accounts are subject to a slightly different standard. Under Article 4A, the question of who bears the loss revolves primarily on whether the bank's security measures were "commercially reasonable." That is, did the bank use appropriate safeguards to ensure that online access to the business' account was properly granted? In the past, a security system requiring only a user name and password may have been deemed

commercially reasonable. But now, a number of factors must be considered, including the wishes of the customer, the types of transactions the customer frequently performs, alternative security procedures offered to the customer, and the security measures used by customers and banks “similarly situated.” For example, a court in Maine recently exonerated Ocean Bank after analyzing these factors and concluding that its security, which involved user names and challenge questions, was commercially reasonable given its specific circumstances. Thus, while banks may not need to adopt every top-of-the-line security measure available, they must still stay current of advances in security to ensure that their security is commercially reasonable based on their clientele.

### Managing Cyber Theft Litigation

Defending cyber theft litigation can be costly for banks. Victimized businesses usually seek not only the return of the lost funds, but also other damages. In some cases of cyber theft, the fraudulent transfers dipped into the customer’s line of credit, triggering additional fees and losses. Outdated insurance policies may not cover the loss, leaving the bank to choose whether to repay the disgruntled and likely now-former customer, or defend the lawsuit.

For most banks, defending the lawsuit may seem appealing at first. After all, from the bank’s perspective, its security functioned precisely as it was supposed to, and the customer should bear the loss for allowing its network and banking credential to be compromised. But this is not the only consideration. Cyber theft can be a public relations nightmare for a bank, especially because most customers may mistakenly believe that the bank’s security failed, when in fact it was the victim’s network that was compromised. Also, news of the cyber theft may adversely affect retail customers, who may not easily understand that Regulation E offers broader protection against cyber theft than the laws applicable to commercial accounts. Thus, if the bank chooses to vigorously defend the lawsuit, it should be prepared to address a variety of inquiries from concerned customers.

To avoid liability and establish the commercial reasonableness of their security, banks must also demonstrate that they processed the fraudulent transfers in “good faith,” which means that the more suspicious the banking activity appears, the harder it will be for the bank to innocently process the transaction. For example, Comerica Bank was held liable because it failed to halt more than a dozen fraudulent transfers that were initiated after the bank received notice of suspicious activity. As a result, banks should be prepared for their security measures and internal policies to come under intense scrutiny. In

*While banks may not need to adopt every top-of-the-line security measure available, they must still stay current of advances in security to ensure that their security is commercially reasonable based on their clientele.*

response, banks will likely need to retain experts familiar with online banking security to testify about the effectiveness of their security, which can increase the cost of defense. Banks will also need to publicly defend their internal policies for dealing with suspicious transfers and, hopefully, their compliance with those policies.

### The Response

Various responses have been proposed to curb cyber crime and its damaging effects, such as such as new legislation, cyber theft insurance and stepped-up prosecution of money mules. For their part, banks must join the fight by assessing their vulnerability to cyber theft and upgrading their security as appropriate. For example, the Federal Financial Institutions Examination Council recently issued a guidance that banks must comply with starting in January 2012. The guidance directs banks to re-assess their security measures and adopt layered security to detect and respond to suspicious banking activity. Such measures could include account fraud detection and monitoring, dual customer authorization, out-of-band verification, enhanced control over account activities and IP-vetting tools. Of course, the FFIEC guidance also stresses customer awareness, which means banks should proactively discuss the threat of cyber theft and work together to develop strategies to protect the customer’s money. After all, the best kind of cyber theft is the one that never occurs.

Still, despite best efforts, cyber theft is bound to increase, as these 21st century criminals have proven adept at staying ahead of the curve and crafting new ways to exploit technology and security vulnerabilities. While the law recognizes that banks can avoid liability for cyber theft in certain instances, customers assume that their accounts are safe and can become justifiably litigious if their funds are lost. As a result, banks must stay vigilant and recognize the devastation that can be wreaked by a few simple keystrokes. **BN**



## Fair Lending Developments

*By:*

*Peter G. Weinstock<sup>1</sup>  
John Delionado*

In response to the recent housing and foreclosure crisis, the Department of Justice (“DOJ”) has made fair lending issues a top priority. In 2010, the DOJ established a Fair Lending Unit in the Civil Rights Division’s Housing and Civil Enforcement Section in order to devote more resources to fair lending enforcement. In the Attorney General’s 2010 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act dated April 5, 2011, the DOJ indicated that in 2010 it had 60 active investigations and received 49 referrals from regulatory agencies involving a possible pattern or practice of discrimination -- more than the DOJ received in at least the last 20 years. To compare, from 2001 through 2008, the DOJ received only a combined total of 30 referrals involving race or national origin discrimination.

Of the 49 referrals to DOJ in 2010, 26 involved allegations of discrimination based on race or national origin. The referrals were from the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve Board (“FRB”), the Office of Thrift Supervision (“OTS”), the Office of the Comptroller of the Currency (“OCC”), the National Credit Union Administration (“NCUA”) and the Department of Housing and Urban Development (“HUD”). The increased number of referrals to the DOJ is a direct result of deliberate and aggressive steps taken by these financial institution regulators within the fair lending context. The regulators and the DOJ believe that they can use the specter of enforcement action to improve and increase the types and level of credit available to protected classes.

---

<sup>1</sup> Peter Weinstock is Practice Group Leader of the Financial Institutions section of Hunton & Williams LLP. He has defended dozens of civil money penalty (“CMP”) matters. Contact Mr. Weinstock at (214) 468-3395/pweinstock@hunton.com. John Delionado is a former assistant U.S. attorney and is a partner in Hunton & Williams’ white collar criminal defense practice. Contact Mr. Delionado at (305) 536-2752/jdelionado@hunton.com.

The DOJ is targeting specific discriminatory lending practices, including, but not limited to:

- Discrimination in the underwriting or pricing of loans;
- Redlining through the failure to provide equal lending services to minority neighborhoods;
- Reverse redlining through the targeting of minority communities for predatory loans;
- Steering minority borrowers into less favorable loans; and
- Marital status, gender and age discrimination in lending.

The discriminatory lending practices at issue can take the form of either intentional discrimination (e.g., discriminatory underwriting criteria, such as requiring that borrowers speak English) or discrimination manifested by the disparate treatment of borrowers (e.g., statistical variations showing that borrowers of a protected class received less favorable loan terms when compared to borrowers of a non-protected class). It is the disparate impact theory that has caused the most difficulty for financial institutions.

Many of the investigations that have been referred from financial institution regulators to the DOJ have been based upon a review of data available under the Home Mortgage Disclosure Act (“HMDA”). This HMDA data has allowed regulators to isolate issues relating to the pricing of mortgage loans, the fees of mortgage loans and the difference in loan products, as well as issues relating to the location of the borrowers, otherwise known as red-lining. However, the review by financial institution regulators is not limited to only HMDA reported loans, but also includes unsecured and secured consumer loans.

Notwithstanding the number of issues that can potentially arise from a fair lending examination, there are a few practical steps a financial institution should take to help prepare itself for the examination and minimize the potential for referral to the DOJ and an enforcement action. We generally divide the fair lending examination into three phases. The first phase involves the regulatory examination process which includes the extraction of loan data, interviews with the financial institution’s personnel and the formal exit interview conducted by the financial institution regulator. The second phase includes the financial institution’s response to a suspected fair lending issue, otherwise known as responding to a “15-day” letter.<sup>2</sup> The third phase of the fair lending process involves production and negotiation with the DOJ in the event a referral has been made by the financial institution regulator. In each phase the financial institution is given the opportunity to correct any deficiencies and demonstrate to the regulators that it is not engaging in discriminatory practices. We discuss some of the steps that a financial institution can take in each phase below:

---

<sup>2</sup> The regulators use 15-day letters in the context of any alleged violation of law regarding which they are considering certain types of enforcement action, including CMPs. Although this client alert discusses fair lending issues, we have seen an extraordinary increase in consumer compliance enforcement actions. The process of warding off such actions once alleged has much in common with the first two phases we discuss below.

## I. The First Phase: Examination Process, Extraction of Data and Interviews

During the first phase of the fair lending examination, it is critical for the financial institution to understand the examiners' focus areas. First and foremost, they are looking for accurate data. In order to assess whether or not the financial institution has accurate data available to it, the financial institution should go back and do a spot review of its electronic data against some of the actual loan files. We have often found that a financial institution's electronic system automatically updates and replaces key elements of the loan data without the financial institution's knowledge. For instance, when loans are renewed and a new Fico score is recorded, the financial institution's electronic system often retains only the new Fico score, thereby overriding the historical score(s) that may have been previously recorded over the course of the lending relationship. The impact of such data changes can be significant and result in inaccurate analysis of the data by examiners.

The financial institution should also compile a complete list of all the materials and factors that are used by the financial institution in setting pricing. An incomplete list will not serve the financial institution's best interests, potentially resulting in an inaccurate assessment by the regulator. Unless the financial institution informs the regulators that it uses a particular risk factor in making and setting its prices, the regulators will not know it and will not use that risk factor in analyzing the data.

The examiners will also seek to conduct interviews of personnel, in particular, loan officers. It is important that the loan officers are familiar with the policies and processes used to approve loans to ensure that they are not communicating inaccurate information to the examiners. It is critical that the loan officers convey all of the factors and materials actually considered and used by the loan officers in setting price. It will also be beneficial to have the individual loan officers refer any difficult or strategy-oriented questions to a central contact at the financial institution – perhaps the head of lending or compliance to ensure uniformity in answering questions of that nature.

At the time of the exit interview, the examiners will express some of their views on the policies and the results of the personnel interviews. The examiners will also ask management to validate the findings and/or address any issues the financial institution may have with the conclusions reached. This is a critical opportunity to clear up any misconceptions and ensure that the examiners are aware of all the factors that should be considered as part of the fair lending examination. Management should resist the urge to simply agree with the characterizations of method of setting pricing, but instead should be sure to reiterate the actual process used. It does not serve the financial institution's best interest to oversimplify things to make the examiners' jobs easier. If the financial institution engages in a multi-staged process in setting pricing that allows for discretion within certain parameters, the financial institution should expressly say so. This is a critical time to enlist counsel and have counsel participate in the interviews. Examiners are trying to influence certain answers pointing to a model for testing behavior. It is essential to understand the questions to be asked and the model to be used.

Ultimately, the examiners will compile the information from the written documentation and interviews to create a package of information for the agency's fair lending task force. This

information will then be reduced into a series of variables in a regression analysis that the regulators will use to assess whether or not there is a disparate impact on protected classes of individuals. The regulators are obligated to include in this regression analysis all factors that the financial institution considers in setting pricing. That is why it is essential that the financial institution provides a complete discussion of all the factors considered by the financial institution and the manner of such consideration. The goal of the regression modeling analysis is to control all legitimate pricing factors and test whether those legitimate pricing factors are used in a uniform way such that members of protected classes are treated the same as members of non-protected classes. In the event that the regression analysis comes out with a statistically significant differential between the protected and non-protected classes that is not explained by legitimate pricing factors, the regulators can be requested to share these results with the financial institution and ask the financial institution for an explanation in writing.

## II. The Second Phase: Responding to a “15-day” letter

In the event that a financial institution receives a “15-day” letter from the regulators conveying that there is an unexplained differential in pricing between the protected group and non-protected group, the financial institution should immediately begin preparing a detailed response. Among the things a financial institution should consider is retaining a firm that has the ability to run its own regression analysis to test the appropriateness and accuracy of the regulator’s model. The financial institution should request from the regulator not only the back-up documentation used to reach the regulators’ results, but also the back-up “codes” and the “model” that the regulators purported to use. The models that the regulators use are fairly similar and involve an attempt to normalize a number of legitimate pricing factors within a single regression model per portfolio of loan.

The financial institution should first review the data the regulators used to build their model to satisfy itself that the data used is what the financial institution actually provided and is complete and accurate. If the data is inaccurate, then the results of the regression analysis, and therefore, the conclusions, will also necessarily be inaccurate. The financial institution should then seek expert guidance as to whether the model the regulators have built accurately captures all the factors and information the financial institution conveyed to the regulators during the examination process culminating with the exit interview. It is also important to understand what a model can accomplish and the limits of what the regulators’ expert witnesses can assert. As with inaccurate data, an inaccurate model can also lead to an inaccurate assessment of the financial institution’s lending practices.

## III. The Third Phase: Referral to the DOJ

In the event that the regulators find a potential “pattern or practice” of discrimination<sup>3</sup>, the regulators will refer the matter to the DOJ. Upon receiving a referral, the DOJ must determine whether to file a lawsuit in federal court or return the matter to the regulators for administrative enforcement. The DOJ will receive from the regulators all of the compiled

---

<sup>3</sup> The FDIC has alleged that indications of disparate pricing against a group as small as four people is a pattern or practice.

information from the fair lending examination along with the results of the regression analysis. The DOJ will contact the financial institution and initiate its own investigation and analysis, resulting in the production of additional information by the financial institution. During this phase, as with the earlier phases, the financial institution must engage in a process of validating the accuracy of the additional data produced to the DOJ. The financial institution must normalize the additional data to make sure that this data is consistent with the information previously provided and consistent with the actual factors employed by the financial institution in making pricing decisions. As with the second phase, the financial institution should engage experts to analyze the data and determine the affects, if any, the additional data may have upon the models used by the DOJ. After a full analysis of the data is completed, the financial institution should assess whether a meeting with the DOJ would be beneficial to make an affirmative presentation.

We have been successful at illuminating the DOJ as to why they should not pursue a case even though referred. Certain lawyers and consultants have erroneously suggested that a referral to DOJ is the kiss of death. We believe that maybe they have such belief because they have never been through the enforcement process for such cases. It is critical that a financial institution have a firm that has both bank regulatory counsel and former DOJ attorneys who have addressed fair lending matters with the DOJ. We recognize that this statement is self-serving, but frankly, it is clearly the case. The regulators know the DOJ “end game” and shape their work from the beginning with the end game in mind, why should not the financial institution?

In sum, the DOJ’s current emphasis on targeting financial institutions for potential fair lending issues is unprecedented. Fair lending investigations and enforcement actions are nuanced and involve a unique focus upon statistical regression analysis in assessing whether or not there is a disparate impact on protected classes of individuals. As such, financial institutions need to see that the regulators and, if need be, the DOJ, are provided a complete and accurate picture of the lending process and pricing criteria employed by the financial institution. While not required, we tend to retain consultants familiar with the statistical models employed by the regulators and the DOJ. There is also no substitute for a good understanding of the regulatory investigation practices.

ANY LOSS PREVENTED IS ADDITIONAL PROFIT FOR YOUR BANK

# SECURITY OFFICER'S BY-WORD

By  
Charles M. Towle  
Senior Vice President

## Suspicious Activity Reports Can't you notify the bonding company?

The Suspicious Activity Report (SAR) is required to be filed in many situations in which a bank suspects a crime may have been committed. The SAR contains a multitude of items, including question No. 26: "Has your bonding Company been notified?" The question obviously implies that the bank may need to notify its bonding company of the matter.

Recent changes in the regulations appear to forbid notifying almost everyone about the SAR. The question is, "Should I or should I not notify the bonding company?"

Many banks have had a practice of sending a copy of the SAR to bonding companies so that the answer of "yes" to the question would be truthful.

Federal law, [31 U.S.C. 5138(g)(2)] prohibits a bank, and its directors, officers and employees from disclosing to "any person involved in the transaction" that the SAR has been filed.

Prior to March 2011, the Federal Regulation [31 CFR 103.18(e)] also stated that "No Bank... and no director officer or employee ... may notify any person involved in the transaction that the transaction has been reported."

Banks were not violating these laws and regulations when they previously provided copies of the SAR to their bonding company. Because the bonding companies, as insurance companies, are also prohibited by law from disclosing the SAR to any person involved in the transaction, the providing of the SAR to the bonding company was legal and maintained the confidentiality of the SAR.

However, as of March, 2011 the regulation implementing the same unchanged law was modified dramati-

cally. The new Federal Regulation [31 CFR 1020.320(3) (e)(1)(i)] now states that "No bank, and no director, officer or employee or agent of any bank, shall disclose a SAR or any information that would disclose the existence of a SAR." Period. No disclosure of even the existence of an SAR to anyone is allowed. Part (ii) of the same regulation makes what appear to be the only exceptions for disclosure. Under Part (ii), provided no person involved in the transaction is notified, banks can disclose the SAR and its existence to FinCEN, Federal, State, and local law enforcement, and certain Federal or State regulatory authorities. It also makes an exception for sharing within the bank's corporate organizational structure. This regulation makes few other exceptions allowing disclosure.

There is no exception for bank attorneys, outside compliance auditors, or bonding companies.

A bank can still provide the identical underlying facts being reported in an SAR to various parties, including your bank attorneys, outside compliance auditors, and bonding companies, as needed. However, the bank by regulation is now prohibited from providing a copy of the SAR itself, or even anything that reveals the existence of the SAR to these parties.

The question on the SAR, "Has your bonding company been notified?" does not mean "Has the bonding company been notified of the existence of the SAR". If it did, answering "Yes" would be admitting to a violation of the new regulation. The question really means "Has the bonding company been notified of the same facts about the underlying transaction that were disclosed in the SAR?" Therefore, if the bank an-

swers this question with a "Yes", then the bank must have sent to the bonding company the same facts that the bank is providing in the SAR. However, the bank needs to make certain they do not send a copy of the SAR or any information of the existence of the SAR to the bonding company when it is reporting the underlying facts to the bonding company.

While the SAR regulations do not actually require banks to notify the bonding company, the terms and conditions of most bonds do require notice to the bonding company of theft by employees as well as notice of other crimes which may involve coverage under the bond.

There are other crimes, such as customer's acts in structuring cash deposits in ways to avoid CTR reporting, which require the filing of an SAR. The terms of the bond do not require notice to the bonding company of these customer's acts. In those cases, the bank either needs to answer "No" on the SAR to indicate the bonding company was not notified, or provide the information about the incident to the bonding company without disclosing the SAR filing.

**The bottom line: To comply with the government regulation, when notifying the bonding company of an incident for which an SAR was filed, the same information provided in the SAR needs to be provided to the bonding company. But this must be done without providing an actual copy of the SAR or mentioning the existence of the SAR to the bonding company.**

Just another case of the government requiring bankers to understand the complicated tight rope walk they now must perform while trying to serve their community.

SERVING BANKERS FOR OVER 100 YEARS!  
EXPERIENCE... There is no substitute!

## The Kansas Bankers Surety Company

*Serving the Heartland of America Since 1909*

Phone (785) 228-0000

P.O. Box 1654, Topeka, Kansas 66601-1654

RATED A++ (SUPERIOR) by A.M. Best



## Five Ways to Grow a Merchant Processing Program

By Nancy Brook, *Business Development Executive, Vantiv LLC*

Would your bank like to deepen customer relationships, attract new business customers and grow noninterest income? By leveraging your bank's merchant processing program you can accomplish all of these goals.

Merchant outreach, whether a bank runs its own merchant processing program or uses the services of an outside provider, is key to obtaining new customers and gaining greater visibility in the local business community.

Here are five ways your bank can develop a more successful merchant processing program:

### **Branch Referral Goals**

Have your bank's senior management establish branch goals of at least two referrals per branch per month. Each month, as part of the performance review, the achievement of these goals should be reported to executive and branch management. Have the highest-performing branches share the secrets of their success with the lower-performing ones.

### **Staff Education**

If staffers are not comfortable referring business customers for merchant processing, they may not understand the product well enough. Regular staff training sessions, such as breakfast meetings or lunch and learns, can help educate employees. They'll learn how to ask the right questions to gain a referral or how to identify customers through the bank's systems who may be doing their merchant processing with another bank. Also, consider developing online training resources to support ongoing staff learning. The end goal is to make your employees fully comfortable with starting the conversation with merchants that can lead to additional business.

### **Motivate and Reward**

Incentives, typically in the form of cash, are always effective. One approach is to provide a financial incentive for each referral that yields a new merchant processing customer. Offer quarterly contests to help build the excitement and promote friendly competition among employees and branches.

### **Growing Business DDAs**

Encourage your bank's merchant salespeople to not only call on current bank customers, but also to cold call non-bank business customers. This approach is proven to grow a bank's overall merchant revenue, as well as open the door to discussions of the bank's other products. It also presents the opportunity to offer incentives to new merchant customers to switch their DDAs to your bank. In this type of contact, the sales representative can take the opportunity to compare the merchant's current processing agreement with your institution's merchant services program. Have your employees make joint calls with the sales representative, which will increase the success rate for such sales calls.

### **Review and Critique Your Program**

Whether you are managing your own merchant program or working with an outside processing partner, make sure you understand the terms of your current contract and any auto-renew provisions. If you plan to review alternatives, start about a year in advance of your contract expiration date to give yourself ample time. Key considerations include a vendor's commitment to provide sales representatives in your area, the level of support when it comes to business development, and the percentage of revenue share for bank-referred business and cold call business. For some banks, switching merchant processing partners has yielded a doubling of revenue--or even greater gains.

*Our experienced payment professionals are ready to help you leverage and build your merchant processing revenue. Visit us at [www.vantiv.com](http://www.vantiv.com) or contact Nancy Brook at 406-855-3679 or [Nancy.Brook@vantiv.com](mailto:Nancy.Brook@vantiv.com). ■*

**Alexander on Wyoming and the world market**

By MJ Clark

**December 1, 2011 --**

"It's the end of the world as we know it ... and I feel fine" (a line cribbed from an REM song) was the headline of Anne Alexander, Ph.D.'s first screen of her Powerpoint presentation at the Wyoming Business Report's Central Wyoming Economic Forecast last month.

The slide, illustrated with a photograph of German Chancellor Angela Merkel and French President Nicolas Sarkozy ganging up on former Prime Minister of Greece George Papandreou, captured the sobering and at times irreverent tone of her presentation, which focused on Wyoming and the world economy.

"Wyoming is in a fairly stable place right now," Alexander said. "We seemed to have recovered a bit from the really severe recession that we went into as a nation, and Wyoming has bounced back better than a lot of other places."

To bolster the good news, Alexander pointed to Wyoming's having the lowest food stamp usage in the nation. "That just went down again," she said, "and that's not just our tough cowboy mentality; it's really reduced need."

Also, she noted that Wyoming has the sixth lowest poverty rate in the United States, and the trend is looking up for the core commodities of the state's energy economy: coal, gas and oil.

However, the financial crisis of 2007-08 put a dent into the structure of the nation's economy. According to recent studies, Alexander warned that we could expect the following:

Unemployment rates will remain significantly higher in the decade after the crisis than they were in the decade before. (Pre-crisis unemployment was 4.7 percent. It is projected to be 6.8 at the end of 2014.)

Real housing prices will remain 10-15 percent lower during the decade after the crisis than they were during the decade before.

Leverage, or the domestic credit-to-Gross Domestic Product ratio is expected to rise about 38 percent in the decade after a crisis, and external indebtedness rises immensely. Alexander warned that leverages usually take about 7 years to fall back.

Economic growth will be significantly lower during the entire post-crisis decade. While we have seen some recovery in recent months, the situation in the European Union (EU) - which is the United State's biggest trading partner - could tip the U.S. back into recession if there were a financial crisis in addition to a recession in the EU.

On a broad scale, Alexander explained, Wyoming doesn't have much direct exposure to the Euro crisis. Wyoming's top 10 trading partners do not include any EU country. Wyoming firms have low direct exposure to the EU via exports.

Some industries are more at risk, however. Wyoming tourism, which has been successfully courting tourists from the EU, could see its numbers drop if the situation in the EU worsens.

Also, the banking sector in Wyoming could be impacted due to potential debt defaults and bank failures in the EU through a negative effect on Wyomingites' savings, higher uncertainty in the business climate and reduced demand for commodities and energy resources if a Euro financial crisis sets in.

As the Business Report was going to press, the situation in the EU was heating up. We got in touch with Alexander to see if she had anything to add to what she had to say in November.

"My take is that right now, the Euro Zone is precariously close to falling apart," she said. "The major players - Merkle and Sarkozy, as well as the European Central Bank - are making motions and saying things that will soothe markets. The coordinated moves by the Fed and the other central banks to provide liquidity in the markets also soothed tensions. But, I think it's likely the Euro Zone as we know it may not survive the next month or two.

"That coordinated central bank move signaled that something was really ominous that monetary authorities didn't like. It was likely a bank, somewhere - we don't know where - that had some inordinate exposure to something about to go bad.

"It could have been a French bank, a Canadian bank, a U.K. bank, a U.S. bank - we don't know, but it was likely a big one; and the psychology of it (like Lehman) must have spooked authorities. But this, like all the other solutions provided so far, is a stopgap. No one seems to see a good solution."

Despite the dire sound of things, Alexander insisted, "Really, it was a good thing. It probably staved off a really bad thing! So, that's on balance for a happy ending ... for now."

Wyoming Business Report Editor MJ Clark lives in Lander and can be reached at [wbr.mjclark@wyoming.com](mailto:wbr.mjclark@wyoming.com).

(Reprinted with permission.)

## Community Investment News

---

November 4, 2010

### **RE: FEDERAL HOME LOAN BANK OF SEATTLE ANNOUNCES AFFORDABLE HOUSING ADVISORY COUNCIL APPOINTMENTS**

The Federal Home Loan Bank of Seattle (Seattle Bank) is pleased to announce the appointment of Gregory Hancock of Casper, Wyoming, and the reappointments of Carol Gore of Anchorage, Alaska, and Peter Hainley of Newberg, Oregon, to the Seattle Bank's Affordable Housing Advisory Council (Advisory Council). All will serve on the Advisory Council for three-year terms beginning January 1, 2011.

The Seattle Bank's Advisory Council advises the Seattle Bank on housing and economic development programs and needs across the eight-state region the Seattle Bank serves. It includes eight members, one from each state in the Seattle Bank's district. Advisory Council members are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low- and moderate-income housing and community lending, and they are generally appointed to serve for terms of three years.

#### **2011 Affordable Housing Advisory Council Members**

Mr. Hancock is president and chief executive officer of Wyoming Housing Network, a NeighborWorks affiliate, where he manages the development and preservation of affordable and workforce housing and the delivery of homebuyer education, including foreclosure prevention counseling. Previously, Mr. Hancock worked for the Rural Community Assistance Corporation in Grand Junction, Colorado, where he provided technical assistance to nonprofit organizations in the Western United States. He has also served as development director for the Grand Junction Housing Authority.

Ms. Gore is president and chief executive officer of Cook Inlet Housing Authority in Anchorage, Alaska, a nonprofit organization that supports a wide range of affordable housing activities, including the ownership and management of approximately \$157 million in real estate assets. She has served on the Seattle Bank's Advisory Council since 2005 and as its chair in 2007.

Mr. Hainley is executive director of Community and Shelter Assistance Corp. dba CASA of Oregon in Newberg, Oregon, a developer of housing, programs, and facilities that improve the quality of life and self-sufficiency of farmworkers and other low-income populations. He is also vice president of the National Farmworker Housing Project Directors Association and a director at the National Rural Housing Coalition and the Network for Oregon Affordable Housing. Mr. Hainley has served on the Seattle Bank's Advisory Council since 2005, currently as its chair.

In addition to Ms. Gore, Mr. Hainley, and Mr. Hancock, the Seattle Bank's 2011 Advisory Council will include the following individuals:

- Roy Katsuda, Executive Director, Hale Mahaolu, representing Hawaii
- Andrew R. Rodriguez, Executive Director, Nampa Housing Authority, representing Idaho
- Maureen Rude, Operations Director, NeighborWorks Montana, representing Montana

- C. Ty Tippetts, Executive Director, Color Country Community Housing, Inc., representing Utah
- John Berdes, President and CEO, Enterprise Cascadia, representing Washington

Michael Stanfield, the Advisory Council's current representative from Wyoming, will be completing his term at the end of 2010. Mr. Stanfield is the president of HOM, Inc., which manages the Cheyenne Housing Authority, Buffalo Housing Authority, and Lusk Housing Authority, and he is the executive director of each of those agencies. He is also the president of the Wyoming chapter of NAHRO (Wyo-NAHRO) and has served in other capacities with NAHRO on the state, regional, and national levels. Mr. Stanfield has served on the Advisory Council for six years, and the Seattle Bank is very appreciative of his service.

Visit the Seattle Bank's website at [www.fhlbsea.com](http://www.fhlbsea.com) for additional information regarding the Seattle Bank's Affordable Housing Advisory Council and its community investment products and services.

## **American National going to ANB Bank**

On Dec. 30, American National Bank will shorten its name to ANB Bank.

The Denver-based bank has a branch on Main Street in Buffalo.

“We’re matching our new name with the more innovative banking services we’re bringing to our customers,” said chief executive officer Don Sturm. “We will continue to be the locally-owned bank we always have been.”

For more information, visit

[www.anbbank.com](http://www.anbbank.com).

## Bank rewarding local shoppers

The Newcastle Area Chamber of Commerce will be kicking off its promotion to encourage residents to shop local this holiday season when it hosts the Lighted Parade on Friday night, and Pinnacle Bank will be kicking off a promotion of its own next week.

Beginning Dec. 6, shoppers can drop off receipts of items purchased in Weston County at Pinnacle Bank, and print their name and phone number on the receipt. That will enter them into their Christmas x 2 drawing, where participants can win up to a \$100 reimbursement on holiday purchases.

Winners will receive reimbursement for the amount of purchase to the qualifying store the receipt was from. Three

separate drawings will be held on Dec. 9, 16 and 23.

"Supporting our local economy essentially means the opportunity to support the ideals we find important with our dollars. Local businesses form the backbone of our local economy and it is our mission to continually reinvest in and support our communities and make them a better place to live and work each day," stated Faron Ferguson, Pinnacle Bank-Regional Branch president.

A press release from the bank said that research indicates for every \$100 spent at a local merchant, roughly \$45 of those dollars stay in the community they serve. Numerous studies show that if dollars are

spent at a local, independent business, they'll generate far more economic benefit in the local community than money spent at businesses outside the community.

Beyond the economic impact, the Christmas x 2 promotion is also about celebrating the uniqueness of the community, according to Ferguson.

"This promotion was developed out of determination to positively impact our community. We are well aware that strong, committed businesses are essential to the vitality of our community, and it is our commitment to always be a large part of the financial foundation that drives economic stability and prosperity right here on Main Street," he said.

# Central banks step in to shore up the world's financial system

By DAVID McHUGH and PAUL WISEMAN  
The Associated Press

FRANKFURT, Germany — The central banks of the wealthiest countries, trying to prevent a debt crisis in Europe from exploding into a global panic, swept in Wednesday to shore up the world financial system by making it easier for banks to borrow American dollars.

Stock markets around the world roared their approval. The Dow Jones industrial average rose almost 500 points, its best day in two and a half years. Stocks climbed 5 percent in Germany and more than 4 percent in France.

Central banks will make it cheaper for commercial banks in their countries to borrow dollars, the dominant currency of trade. It was the most extraordinary coordinated effort by the central banks since they cut interest rates together in October 2008, at the depths of the financial crisis.

But while it should ease borrowing for banks, it does little to solve the underlying problem of mountains of government debt in Europe, leaving markets still waiting for a permanent fix. European leaders gather next week for a summit on the debt crisis.

The European Central Bank, which has been reluctant to intervene to stop the growing crisis on its own continent, was joined in the deci-

## TRYING TO PREVENT ANOTHER MELTDOWN

■ **What are central banks?** Central banks regulate the money supply and control interest rates in their respective countries. In the United States, the central bank is the Federal Reserve.

■ **What are they doing?** Central banks of the wealthiest countries will make it cheaper for commercial banks in their countries to borrow U.S. dollars, the dominant currency of trade. Even China, the world's third-largest economy, is in on the act.

■ **What will that fix?** Hopefully, that will make it easier for commercial banks to lend money to people and businesses -- credit has been getting tighter in Europe, in particular, as its debt crisis drags on, and if it's too hard to get

loans, it's difficult to grow and maintain businesses or for individuals to make major purchases.

■ **What it doesn't fix** European banks hold massive amounts of bonds of heavily indebted countries that overspent for years. It's not clear how much money the banks stand to lose. That debt burden is the root of Europe's economic woes.

■ **More symbol than anything?** "With today's action, central banks signal that they are aware of the issue and prepared to act. As always in market panics with central bank action, the signal is more important than the actual size of the action." Christian Schulz, economist — Wall Street Journal

sion by the Federal Reserve, the Bank of England and the central banks of Canada, Japan and Switzerland.

"The purpose of these actions is to ease strains in financial markets and thereby mitigate the effects of such strains on the supply of credit to households and businesses and so help foster economic activity," the central banks said in a joint statement.

China, which has the largest economy in the world after the European Union and the United States, reduced

the amount of money its banks are required to hold in reserve, another attempt to free up cash for lending.

The display of worldwide coordination was meant to restore confidence in the global financial system and to demonstrate that central banks will do what they can to prevent a repeat of 2008.

That fall, fear gripped the financial system after the collapse of Lehman Brothers, a storied American invest-

Please see **BANKS**, A2



## BANKS

Continued from page A1

ment house. Banks around the world severely restricted lending to each other. The global credit freeze panicked investors and triggered a crash in stock markets.

In October 2008, the ECB, the Fed and other central banks cut interest rates together. That action, like Wednesday's, was a signal from the central banks to the financial markets that they would be players, not spectators.

This year, investors have been nervously watching Europe to see whether they should dump stocks as they did in 2008. World stock markets have been unusually volatile since summer.

The European crisis, which six months ago seemed focused on the relatively small economy of Greece, now threatens the existence of the euro, the common currency used by 17 countries in Europe.

There have also been signs, particularly in Europe, that it is becoming more difficult to borrow money, especially as U.S. money market funds lend less money to banks in the euro nations because of perceived risk from the debt crisis.

European banks cut business loans by 16 percent in the third quarter. And no one knows how much European banks will lose on their massive holdings of bonds of heavily indebted countries. Until the damage is clear, banks are reluctant to lend.

Banks are also being pressed by European governments to increase their buffers

against possible losses. That helps stabilize the banking system but reduces the amount of money available to lend to businesses.

"European banks are having trouble borrowing in general, including in dollars," said Joseph Gagnon, a former Fed official and a senior fellow at the Peterson Institute for International Economics. "The Fed did the Europeans a favor."

Foreign central banks are reducing by half a percentage point, to about 0.6 percent, the rate they charge commercial banks for dollar loans. Commercial banks need dollars because it is the No. 1 currency for international trade. The lower rate is designed to get credit flowing again.

To get the dollars to lend, central banks go to the Fed and exchange their currency for dollars under a special swap program. Foreign central banks pay the Fed whatever interest they earn from commercial banks.

The Fed had offered dollar swaps from December 2007, when world financial markets were weakening because of fear about subprime mortgages, until February 2010. It reopened the program in May 2010, as European debt concerns grew, and planned to end it Aug. 1, 2012. On Wednesday, the Fed extended the program to Feb. 1, 2013.

If it all works, the market rates on dollar loans will drop, and stock and bond markets will calm down.

"It shows that policymakers are on the case," said Roberto Perli, managing director at the International Strategy & Investment Group, an investment firm. He said it has symbolic value even if it does not have a big impact on credit markets.

# Sundance State Bank supports Historical Foundation

Sundance State Bank, a cornerstone in north-eastern Wyoming since 1895, works hard to support worthy projects in and around Crook County. Most recently their discussions of philanthropy resulted in a donation of \$2,500 to the Wyoming Historical Foundation's long-term endowment. The Foundation is the fundraising arm for the Wyoming State Historical Society. This is not the first time the bank has partnered with the Society, according to Foundation president, Mike Jording. He says, "In 1994 the bank was instrumental in the success of the Wyoming State Historical Society's project to reprint "Wyoming: A Pictorial History," by historian Mark Jung. Without their participation that project would not have been possible."

Bank president and CEO, Jim Durfee, said that throughout the history of the bank they have been involved in building their community. Some of the projects they've participated in include helping to renovate Hulett's new community center, assisting Crook County Medical Services and also with efforts to renovate Old Stoney, in addition to numerous school projects. "If there is something going on in Crook County most likely we are involved," he said. Durfee added, "We are thrilled to help with the Wyoming Historical Foundation's long term endowment; it is something that benefits the entire state."

Two years ago the Wyoming Historical Foundation created an endowment designed to ensure the long-term sustainability of the Wyoming State Historical Society. Since then the members of the Society have stepped up and donated more than \$10,000 to this effort. Foundation president, Mike Jording, says it is because of the philanthropic policies of major institutions like the Sundance State Bank, that the Society's mission to support, educate and foster the study of Wyoming history will be secure.

The Society's executive committee and the Foundation's board of directors expressed a heartfelt thank you to Sundance State Bank for their contribution to both the long-term endowment and to other areas in their community.



*Courtesy photo*

President and CEO of Sundance State Bank, Jim Durfee, presents a \$2,500 donation to Mary Garman (left), a member of the Wyoming Historical Foundation board, and to Pam Thompson, a member of the Wyoming State Historical Society's Executive Committee. For specific details about the long-term endowment visit [www.wyshs.org](http://www.wyshs.org) and click on the link Wyoming Historical Foundation, or contact Society headquarters at P. O. Box 247, Wheatland, WY 82201.

## **CHEYENNE**

### **Warren Federal Credit Union plans expansion into Fort Collins, Colo.**

Warren Federal Credit Union will break ground on its first Fort Collins, Colo., branch near the intersection of Drake and Timberline Roads next spring.

Warren will build a 10,000-square-foot, full-service branch, its second in Colorado. It also has a branch in Wellington, Colo. The new location will be Warren eighth branch overall, with other locations in Cheyenne and Laramie.

Warren provides credit union services to almost 40,000 members worldwide and recently reached \$400 million in assets, according to Michael Nagl. Nagl is currently the credit union's chief lending officer but will become the Colorado market vice president when the Fort Collins location opens at the end of 2012.

Nagl estimated that the branch ultimately will employ between 15 and 20 people.

**We would like to welcome back  
Terri Jeffress  
to the Real Estate Department.**

**Come see Terri and Tammy  
while the rates are still low.**



**2124 S. Douglas Hwy • (307) 686-8080  
Gillette, WY • [www.securitystatebk.com](http://www.securitystatebk.com)**



**FIRST NATIONAL BANK WELCOMES  
KEVIN BETTINGER**



**INVESTMENT CENTERS  
OF AMERICA, INC.**  
We know the territory.

First National Bank of Buffalo is proud to announce that Kevin Bettinger has joined First National Bank as our ICA advisor in Buffalo.

Kevin comes to us from a major investment firm and has extensive experience in financial planning. Stop by or call Kevin today.

Buffalo



**Kevin Bettinger**  
Financial Advisor



**Jessica Nicholas**  
Insurance Specialist

Sheridan



**Colin Peldo**  
Financial Advisor



**First National Bank**  
Serving you since 1888

*Located at:*

**First National Bank of Buffalo**  
141 South Main Street  
(307) 684-8745

**First National Bank of Sheridan**  
29 North Gould Street  
(307) 673-7777

Investment Centers of America, Inc. (ICA), a member of FINRA and SIPC and a Registered Investment Advisor, is not affiliated with First National Bank of Buffalo. Securities, advisory services and insurance products offered through ICA and affiliated insurance agencies are: not insured by the FDIC or any other federal government agency; not a deposit or other obligation of, or guaranteed by any bank or their affiliates; subject to risks including the possible loss of principal amount invested.



The Target mascot dog advertizes gift cards Nov. 25 at the Target store in Mayfield Hts., Ohio. AP photo

## Giving a gift card? Don't add fees under the tree

NEW YORK (AP) — Gift cards are an easy way to ward off disappointment during the holidays.

In the best case scenarios, they give our loved ones the freedom to buy whatever it is they really want and alleviate the stress of trying to find the perfect gifts. But that doesn't mean they're always a slam-dunk.

The surprising number of fees and earlier-than-expected expiration dates on some gift cards were enough of an issue to prompt new regulations last year. For example, monthly inactivity fees in the past may have drained funds before consumers had a fair chance to use them.

The changes are expected to help dramatically reduce the amount consumers lose on gift cards. Yet an estimated \$1.9 billion is nevertheless expected to go unused this year, according to TowerGroup, a consulting firm.

The problem is that fees and expiration dates aren't the only way consumers can lose the money. There's also confusion about the different types of gift cards on the market, some of which are entirely exempt from the new regulations. Whether you give or receive a gift card, here's what you should know.

### — What the regulations cover

To start, it's a good idea to know the consumer protections that come with a gift card.

Under the rules that took effect last summer, gift cards can't expire for at least five years. Monthly service and inactivity fees are also banned in the first year and only one such fee a month is allowed after that.

The rules were included as part of sweeping credit card reforms and should go a long way toward reducing many of the "junk fees" in the industry, Brian Riley, a senior researcher at TowerGroup, said.

But there are several important exceptions to note.

For example, the gift cards many retailers offer either as incentives or rebates with big purchases are exempt from the rules. You may also be considering redeeming your credit card rewards for gift cards to pass out during the holidays. But those gift cards aren't subject to the new regulations either.

"Any type of gift card that you don't purchase outright, you're going to run into expiration dates and fees," Michelle Jun, a senior attorney at Consumers Union, said. This is because such cards are viewed as discounts or "extras."

As a result, Jun notes that rebate and incentive gift cards often expire as quickly as three months.

### — When to check the terms twice

The gift cards issued by major retailers are fairly straightforward; you load a set amount onto the card and the recipient generally isn't subject to any fees.

The terms become more complicated with bank-issued gift cards, which bear an American Express, MasterCard or Visa logo. The upside of these cards is that they provide more flexibility, but they're also more likely to come with fees that you'll need to review carefully.

Gift cards from American Express, Chase and Wells Fargo, for example, charge purchase fees of around \$3 to \$7. That's on top of the money you want to add to the card.

Chase charges an inactivity fee of \$2.50 a month if the card isn't used for a year. Wells Fargo stopped charging inactivity fees on cards issued after August 2010.

American Express last year did away with inactivity fees and expiration dates.

The fine print may contain other details that may sway your decision on which card to buy. Chase, for example, eliminated its \$12 fee to replace lost or stolen cards, but Wells Fargo still charges \$7.50 for the service.

There may be incentives to consider too; Chase's premier checking account customers, for example, don't have to pay the purchase fee for the bank's gift cards.

It's also worth noting that bank-issued gift cards aren't subject to the stricter laws that some states enforce. So even if you live in New York, where expiration dates are banned altogether, a bank gift card could still expire after five years. Wells Fargo notes that the underlying value on its cards do not expire — consumers can request a replacement card when the card expires at no charge.

### — Other ways cards can lose value

Unlike debit and credit cards, consumers aren't given any guaranteed legal protections if a gift card is lost or stolen.

So if it's an option, go online and immediately register any gift cards you receive whether they're from a store or bank. If you're planning on buying a gift card as a present, e-gift cards can greatly reduce the chances for loss or theft, Riley of TowerGroup said. This is because the code for the gift card is sent in an e-mail to the recipient.

Another possibility to consider in this economic climate is that a retailer will simply go out of business. Retailers that stay open as they reorganize under Chapter 11 bankruptcy may still honor gift cards. That's what Borders did before it liquidated and closed its doors. But companies can also choose to suspend the acceptance of gift cards, which are treated as loans to the company by the bankruptcy court.

To recoup the value on the card in that scenario, you'd have to file as a creditor to the bankruptcy proceedings. Even if you decide to go through the trouble, it's a process that could take months or even years to resolve. And it probably won't end with you recovering the full value of the card anyway.

## Bank of America settles for \$335M in discrimination case

Associated Press

Bank of America agreed to pay \$335 million to resolve allegations that its Countrywide unit engaged in a widespread pattern of discrimination against qualified African-American and Hispanic borrowers on home loans.

The settlement with the U.S. Justice Department was filed Wednesday with the Central District court of California and is subject to court approval. The DOJ says it's the largest settlement in history over residential fair lending practices.

According to the DOJ's complaint, Countrywide charged over 200,000 African-American and

Hispanic borrowers higher fees and interest rates than non-Hispanic white borrowers with a similar credit profile. The complaint says that these borrowers were charged higher fees and rates because of their race or national origin rather than any other objective criteria.

"These institutions should make judgments based on applicants' creditworthiness, not on the color of their skin," said Attorney General Eric Holder.

"With today's settlement, the federal government will ensure that the more than 200,000 African-American and Hispanic borrowers who were discriminated against by Countrywide will be entitled to compensation."

Rocket-Miner  
Rock  
Springs, WY  
Circ. 7904  
From Page:  
1  
11/29/2011  
51013



# Where is <sup>35 14</sup><sub>132</sub> your money?

## Banks and credit unions discuss their pros and cons

**RYAN JAMES**  
Rocket-Miner Staff Reporter

**ROCK SPRINGS** — Management of personal finances can be confusing and complicated. Financial institutions vary widely in the services and products they offer, interest rates and the number of branches.

The two primary financial institutions offering the most services and locations are banks and credit unions, but there are many others that will accept deposits and offer loans, like insurance companies and investment firms.

There is significant overlap in the services provided by banks

and credit unions, but the organizational structures and role of account holders are very different.

### **OWNERSHIP**

Banks are publicly-traded corporations. Banks' profits go directly to the people who own stock in the corporation.

Credit unions, on the other hand, are owned by the members, or account holders at each credit union, known as a member-owned cooperative institution.

The members at a credit

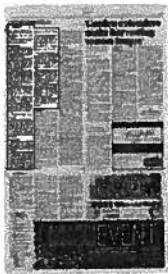
A handwritten signature in black ink, appearing to be 'Ryan James'.

▶ SEE MONEY, PAGE 3





Rocket-Miner  
 Rock  
 Springs, WY  
 Circ. 7904  
 From Page:  
 3  
 11/29/2011  
 51013



► **MONEY** ✓

union elect the board of directors, and any member can run to be on the board. At a bank, the shareholders elect the board members.

Each vote is weighted according to the amount of stock owned by a shareholder.

**PROFIT MOTIVE**

Banks offer deposit and savings accounts as well as business and personal loans, among many other services, by charging interest rates and fees for the use of these services.

Banks pay a lower interest rate on deposits than the interest rate they charge for loans. The difference between these rates is the net income, according to the accounting Web site [www.svtuition.org](http://www.svtuition.org).

Mark Wolff, senior vice president of communications at the Credit Union National Association, said while credit unions do make money, they are not-for-profit "in the sense that the earnings are channeled back to the members, not to a group of outside investors."

Reinvesting earnings in the members most often takes the form of lower interest rates charged on loans and higher interest rates paid for savings, Wolff said.

A June 2011 report by the CUNA estimated credit union members in Wyoming save about \$80 a year compared to bank customers in the state.

However, President and CEO of Uinta Bank Walter Riebenack said the idea that credit unions are not for profit is a "legal fiction."

"They just don't pay taxes on the money they make," Riebenack said.

Because of their designation as member-owned cooperative institutions, credit unions are exempt from federal and state income taxes, but not other taxes such as payroll, property and sales taxes, according to the CUNA's Web site. Credit union members also pay income taxes on the payments they receive, or

dividends.

**CONVENIENCE**

Because banks are publicly traded corporations, their account holders are considered customers and the accounts are not limited to a particular group of people.

Credit union membership, on the other hand, is often limited to a geographic area or people who work in a specific occupation, like law enforcement or education. For example, to be a member of Green River Basin Federal Credit Union, you must "live, work, worship or attend school in Sweetwater, Sublette,

Uinta or Lincoln counties in Wyoming," according to its Web site.

Kelly Davis, the president of Green River Basin Federal Credit Union, said more people use banks than credit unions because banks have more name-brand recognition and their profits allow them to establish branches all over the country, making it easier to find locations.

Wells Fargo, for example, is one of the largest national banks in the country with branches in Rock Springs and Green River.

Cristie Drumm, a Wells Fargo spokesperson for Wyoming, said the bank has locations "coast to coast — 6,200 according to its Web site — and about 12,000 ATMs.

Wolff said credit unions have made strides in expanding their availability. Credit unions offer shared branching, which allows members from one credit union to perform basic transactions at no charge at credit unions within the same network.

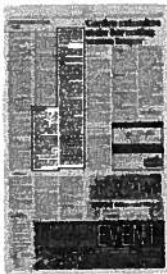
Many credit unions are part of the Co-op Network, which has 28,000 ATMs nationally, including machines in the McDonald's restaurants on Elk Street and Sunset Drive in Rock Springs, according to its Web site, [www.co-opnetwork.org](http://www.co-opnetwork.org).

Trona Valley Federal Credit Union, which also has locations in Rock Springs and Green River, is a member of the Co-op Network.





Rocket-Miner  
 Rock  
 Springs, WY  
 Circ. 7904  
 From Page:  
 3  
 11/29/2011  
 51013



**FOCUS ON LOCAL COMMUNITIES**

Bill Klevin, a spokesperson for Rocky Mountain Bank, said community banks like Rocky Mountain Bank are more like credit unions in their interest and involvement in local economic development.

Klevin said community banks would not reach their potential if they don't reinvest in the communities in which they operate. The bank's shareholders live in Rock Springs, Jackson and Pinedale.

Both credit unions and locally owned banks are more in tune with the needs of their communities, said Klevin, but credit unions are more focused on consumer loans and provide fewer business loans and commercial opportunities than banks.

Federal law currently limits the amount credit unions can lend to small businesses at 12.25 percent of assets. There is no cap on small-business loans for banks.

Davis said there is more personal service at credit unions than banks because they are smaller and more community-oriented.

"We know our members when they come through the door, and we can typically process their loan applications within a day or two," Davis said. "A lot of credit unions are just the little guys. Without being well-known, that's probably why we're losing out a little bit."

**BIG PICTURE**

The entire financial industry has been heavily scrutinized since the global financial crisis and economic recession began in 2008.

Much anger has been directed at national banks that took government bailout funds to avoid collapse.

The repeal of a provision in the Glass-Steagall Act in 1999

allowed a single company to control both an investment bank and a commercial bank. Riebenack said this created a "huge shift in the structure of financial institutions" that resulted in national banks that became "truly too big to fail."

Riebenack said there are about half the number of financial institutions in the United States than there were 25 years ago, so he supports breaking these too-big-to-fail national banks into smaller institutions through antitrust legislation to increase competition in the financial industry.

The Bank Transfer Day Facebook page created debate when it called for bank customers to move their money to credit unions in response to the announcement of new fees for the use of debit cards by Bank of America and Wells Fargo, among others. The fees were eventually scrapped.

"The debit card comes with a lot of value from a convenience standpoint as well as a safety standpoint because there's a 100 percent guarantee against fraud," Drumm said. "We heard loud and clear from our customers that they didn't want a fee on the debit card, so we're not moving forward with that."

In the five weeks between the announcement of Bank of America's debit card fee and the Bank Transfer Day on Nov. 5, Wolf said nearly 700,000 people joined credit unions nationally. By comparison, there were only about 600,000 new credit union members in all of 2010.

"I think everyone should seriously consider where they want to be. Don't just base transferring your funds on one decision, like a debit card fee. Look at the whole picture," Davis said. "Do we benefit if people move from a bank to us? Yes, but I still want people to consider all aspects of it."



Rocket-Miner  
 Rock  
 Springs, WY  
 Circ. 7904  
 From Page:  
 1  
 11/29/2011  
 51013



► **WHAT YOU NEED TO KNOW**

**SIMILARITIES**

Credit unions and banks both offer:

- Online and mobile banking.
- Deposit and savings accounts.
- Personal loans.
- Direct deposit.
- Debit cards.

**DIFFERENCES**

- Banks have more branches and ATMs.
- Banks are owned by shareholders, who receive the bank's profits.
- Credit unions are owned by account holders. Profits are used to decrease rates.
- Credit unions have a limited field of membership.
- ~~Anyone can join a bank.~~
- Banks provide more business loans.
- Federal law limits credit union business loans.
- The board of directors at a bank is elected by shareholders.
- The board of directors at a credit union is elected by account holders.



Carlo Harryman/Rocket-Miner

Patricia Overy, a teller at Green River Basin Federal Credit Union, works at her desk Monday afternoon. Overy said she moved to Wyoming in January. Green River Federal Credit Union is one of at least four credit unions in Rock Springs and Green River, including Trona Valley, Sweetwater and Meridian Trust federal credit unions. All credit unions in Wyoming must be federally chartered as they are not regulated at the state level.

