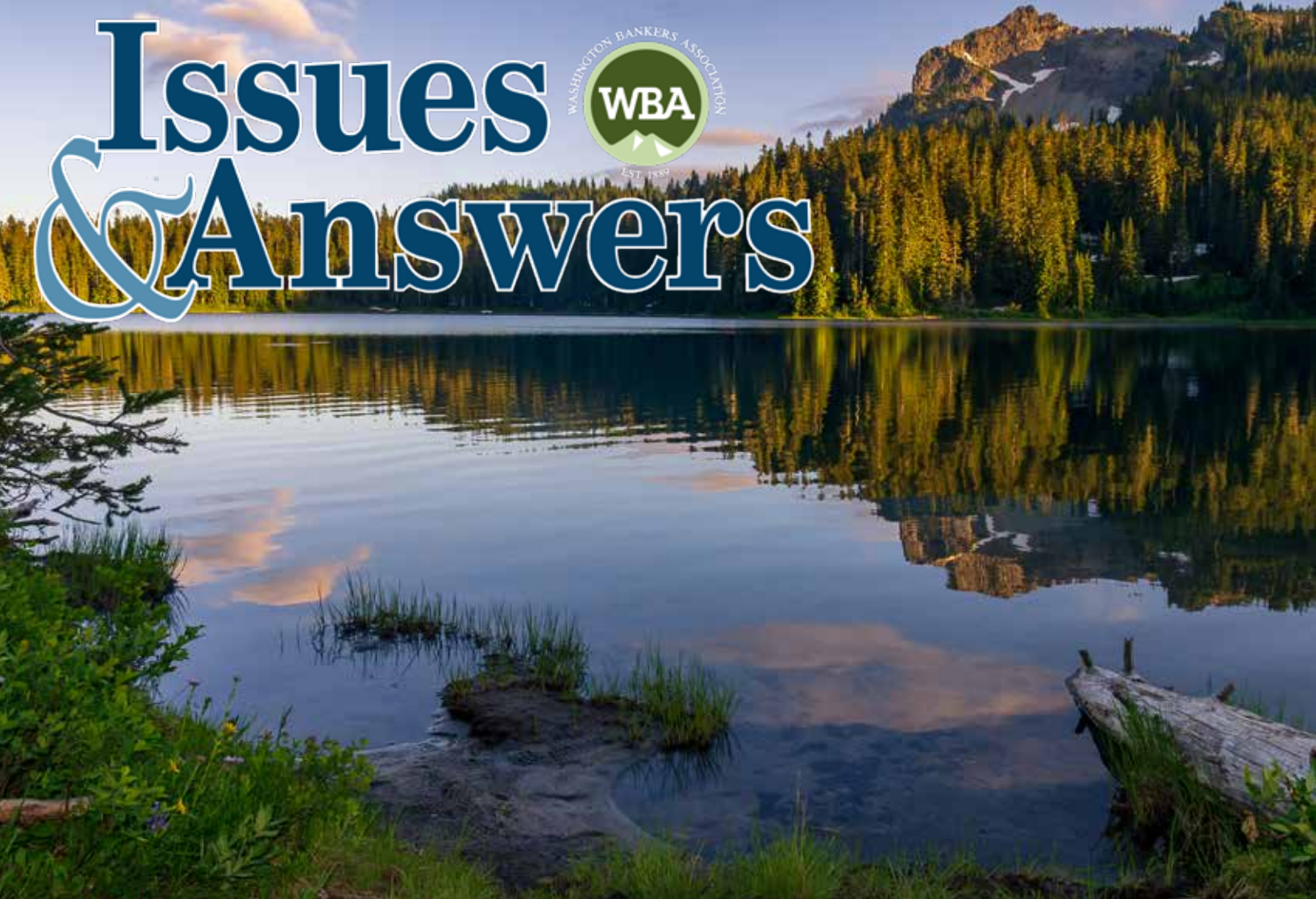


# Issues & Answers



May 2023

## Legislative Session a Good One For Banks



*By Glen Simecek, President and CEO, Washington Bankers Association*

“No one’s life, liberty, or property are safe when the legislature is in session.”

Washington’s bankers, who have seen more than our share of eleven-

hour legislative surprises over the years, can be excused if we claim a unique appreciation of Mark Twain’s famous quip. So it’s no wonder we were all relieved when lawmakers gaveled their 2023 legislative session to adjournment on April 23 and headed out of Olympia.

Before doing so, they enacted a two-year operating budget of approximately \$69 billion. To put that number in perspective, lawmakers approved a biennial budget of \$33.7 billion a decade ago. One has to wonder, how many individuals, families, or businesses have seen their income and spending more than double over the last decade?

One silver lining hidden in the cloud of spending increases is that this year the Legislature did not enact any significant new taxes on businesses in general or our industry in particular. Of course, a mid-session ruling from the State Supreme Court affirming the constitutionality of the previously enacted capital gains tax took some of the pressure off the legislature’s spending plans.

Even with that ruling, it’s not that there weren’t some proposals to impose new taxes. A “wealth tax” on extremely high net worth individuals continued to be discussed, even though it didn’t move far in the legislative process. Similarly, a proposal to scrap the existing business and occupation tax and replace it with a new “margins tax” got some attention but failed to garner sufficient support to move forward.

A proposal to increase state and local real estate excise taxes to generate more funding for affordable housing met strong opposition, with opponents successfully arguing that the tax would make home prices and rents less

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## Issues & Answers – May 2023

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### On the Cover

Dewey Lake in the Okanogan Wenatchee National Forest glows in  
the afternoon sun of late spring. *Photo courtesy of Dave Pettinger,  
Flickr.com*

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affordable. It didn't hurt that between the general fund, capital budget, and some other revenue sources, legislators were able to direct a historic \$1 billion-plus toward housing, even without the REET increase.

Finally, and most relevant to most WBA members, a proposal to eliminate small and medium-sized banks' business and occupation tax deduction on interest earned from first mortgages failed to move out of committee.

While the failures of these tax proposals were wins worthy of celebration, the proposals themselves should serve as warning shots across our collective bows. There are progressive legislature members who will continue pursuing new revenue sources to fund ambitious social service agendas or address perceived inequities in the state's current tax structure. We should expect these and other ideas to reemerge in the coming years.

When inflation and interest rates are up significantly over recent levels, and we are facing more economic uncertainty than ever since the Great Recession of 2008, a predilection to pursue new revenue sources could pose real problems, not just for bankers but also for customers.

That's why WBA's advocacy programs are so important. Whether it's attending an interim luncheon briefing with legislators, participating in our Bankers Day on the Hill meetings, or serving as an expert as we evaluate and respond to legislative proposals, we need you. Your relationships, expertise, and local community knowledge all provide real-world credibility that makes our efforts more effective.

Once again, this year, we saw the value of your participation and our broader engagement with the other members of the United Financial Lobby. We successfully passed our top legislative priority, a bill to clarify in statute lien priorities along the time-honored "first in time, first in line" principle. Potentially problematic bills, such as the annual proposal to create a state bank, failed to proceed. Other bills were amended to remove our concerns, such as the inclusion of a Graham-Leach-Bliley Act exemption in the health care data privacy bill or the inclusion of language to make clear that a robocall/telephone scam bill was not intended to limit how we legitimately contact our customers.

As an industry, we touch every aspect of our local economies and communities. So there will always be a wide range of bills that will concern our members. Our job is to identify and respond to those that are direct threats or would have unintended negative consequences for banks.

And, of course, if that means protecting life, liberty, and property along the way, so be it!

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# Recap of the 2023 Legislative Session in Olympia

The Washington State Legislature finished its business on time, with the Sine Die gavel dropping at 10:04 pm on Sunday, April 23. Democrats, emboldened by November election results and a large majority, focused on gun violence prevention, housing and homelessness, workforce issues, police pursuit, and abortion.

Below is a recap of some of the bills that passed the Legislature, including bills important to the banking industry and a few others of interest. For the full sine die report, please click on the link above.

## Banking Issues

One of our top priorities this Legislative Session was to fix a lien propriety issue after a ruling by the state Supreme Court last summer. We worked closely with the Community Bankers of Washington and the Washington Mortgage Bankers Association on this legislation that removes uncertainty in the lien environment. Our collaborative bill (HB 1240) codifies the “first in time, first in line” principle. WBA testified in both the House and Senate, and the bill passed both chambers without opposition. Thank you to the many bankers who supported the bill and provided feedback and expertise throughout this process. We plan to spend time working on a similar issue related to protecting second-lien holders this interim.

HB 1349, which changes the timeline for notifications during the foreclosure process, also passed the Legislature this year. This bill outlines that borrowers who have not been referred to mediation can only be referred there after a notice of default has been issued no later than 90 days prior to the date of sale listed in the notice of trustee’s sale.

Two bills of note passed the legislature this year on the data privacy front. HB 1335 establishes penalties for the unauthorized release of Personal Identifying Information (PII). We secured a GLBA exemption and exemptions for releases of PII that are explicitly required or authorized by state or federal laws. The second privacy bill of note was HB 1155, which focuses on collecting, sharing, and selling consumer health data. While our industry is not the focus of this measure, we again were able to include language that would provide exemptions for data covered by GLBA and other federal data privacy regulations.

Another priority for the WBA and banking industry this year was SB 5483, which would provide clarity to prevent the Department of Revenue from taking an inappropriate position on the taxation of financial institutions’ purchases of digital automated processing services. The bill did not advance due in part to a large fiscal note that made lawmakers cautious of the proposal. However, thanks to testimony from bankers and

## A Note from the President

I’d like to thank all the WBA member bankers who have participated in our government affairs process this year, whether it was testifying on a bill, providing information about the impact of a policy, or attending Bankers Day on the Hill. Your support shows lawmakers how vital the banking industry is to a strong economy.

I’d also like to say a special thanks to our Government Relations Committee, which helps set the WBA’s priorities for the year and is an invaluable resource as we move through the session. We couldn’t do it without you.

And last but certainly not least, a massive thank you to our team in Olympia – Trent, Carrie, and Sam; we genuinely appreciate the many hours, long days, and nights you spend advocating on our behalf.

– Glen

others in our industry, lawmakers are now more aware of the issue. WBA will continue to work with DOR and lawmakers this interim to determine if there is a path forward. Fixing this issue is crucial as it will keep Washington’s state-chartered financial institutions from incurring additional costs that would make them less competitive.

This year’s legislation to create a Washington State Infrastructure Bank (SB 5509) was similar to previous proposals, but it would place the new institution within a newly created state agency. While the bill was heard in its Senate policy committee, it did not advance this year. This proposal remains a solution in search of a problem, and how to capitalize the new bank would be a significant problem. Our position remains that any potential benefits of this proposal could be had more cost-effectively through other ways.

A proposal to expand the property-assessed clean energy and resiliency program (PACER) to residential buildings (SB 5312) did not advance out of committee this year. The WBA monitored the legislation due to concerns related to lien priority and new requirements these types of projects could create.

## Taxes

Once again, this year, legislation (SB 5493) to remove the B&O tax deduction for first mortgage interest income was introduced. In previous years, this bill was heard in the Senate Banking and Insurance Committee; however, this year, it has been moved to the Housing Committee chaired by Senator Kuderer, the bill’s prime sponsor. The bill passed out of Committee for

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# Strengthen Fundamentals With Virtual Understand Bank Performance This July

Fundamentals are essential for a reason, as the recent news in the banking world has taught us. Understanding how and why a bank makes certain decisions is critical for any banker to understand. Starting on July 6, the WBA is hosting a virtual session of the Understand Bank Performance program.

Designed to help bankers of all levels understand bank performance, students will learn to assess and analyze a bank's financial performance using real data. This program is relevant for directors, solution providers, or anyone the bank works with to provide a foundation of industry knowledge.

Students will become familiar with balance sheets and income statements and learn how to apply key performance metrics to data in those documents. The program will finish with students going through a proforma capstone.

This is a great way to help newer employees get up to speed on how the banking industry works or help experienced individuals further their careers.

This program is also being offered to bankers from 17 other states, and space is limited, so register early!

WBA also offers virtual sessions of our Commercial Lending Development Program and the Credit Analyst Development Program this August and September.

The CLDP, which begins in early August, helps bankers learn more about the bank's highly competitive commercial lending segment and builds a solid foundation for bankers to learn and grow. Industry leaders teach this eight-session program with decades of experience.

The CADP will begin in mid-September. It is ideal for new and experienced analysts better to understand their role in the industry and organization while providing skills needed for all economies.

Both programs are being offered virtually, giving bankers the flexibility and convenience to attend classes from where they need to be.

This year, the programs are being co-sponsored by our partners at the Montana Bankers Association and the West Virginia Bankers Association, so space is limited and expected to fill quickly.

On May 11-12, the WBA is co-sponsoring the Idaho and Oregon Bankers Association Annual Agriculture Confer-

## Join Us in Sunriver for 2023 Annual Convention!

Registration for the 2023 Annual Convention, co-sponsored by the Idaho, Nevada, Oregon, and Washington Bankers Associations, is going strong, and we encourage you to secure a spot soon.

This year's event will be held June 26-28 at the gorgeous Sunriver Resort in Sunriver, Ore., and brings together bankers from throughout the Western U.S. to learn about the latest in the industry.

The agenda includes sessions with Ryan McManus, co-founder and CEO of Tectonic, and Matt Pieniazek, president and CEO of Darling Consulting Group, on reimagining ALCO and legislative updates from both ABA and ICBA.

Last year's event sold out, so don't miss out on your opportunity to secure a spot early. Learn more and register online at [www.wabankers.com/convention](http://www.wabankers.com/convention).

ence. The 2023 event features Dr. David Kohl, a nationally-regarded speaker on agriculture banking topics, and Mike Pearson, the host of Agriculture of America!, a weekly show about agriculture.

In autumn, WBA will host the Credit and Lending Conference at the Washington Athletic Club on September 7-8. Previously the Senior Credit Conference, this event has been expanded to include lenders and will cover topics relating to the economy, current credit, lending regulations, and more.

In honor of Cybersecurity Awareness Month in October, we will host the Virtual Financial Technology and Security Conference on October 23-24, co-sponsored by the New Jersey and North Carolina Bankers Association. This event brings IT, operations, and security professionals from across the industry to discuss innovation and learn about the latest in the industry.

*Please visit the WBA website at [www.wabankers.com](http://www.wabankers.com) for more information about registration for our upcoming programs.*

## Events Calendar

**May 11-12** – IBA, OBA, WBA Agricultural Banker Conference, Meridian, Idaho

**June 26-28** – 2023 Annual Convention, Sunriver Resort, Sunriver Resort, Oregon

**July 6** – Virtual Understanding Bank Performance

**August 7** – Virtual Commercial Lending Development Program

**Sept. 7-8** – Credit & Lending Conference, Washington Athletic Club

**Sept. 14** – Virtual Credit Analyst Development Program

**October 23-24** – Virtual Financial Technology & Security Conference

*To register or to learn more about any of the listed events, please visit [www.wabankers.com/calendar](http://www.wabankers.com/calendar).*



### Commencement Bank Supports Community Health Care Luncheon

Earlier this spring, the Commencement Bank team participated in the annual Lunch and Laughter Luncheon supporting Community Health Care.

The organization provides high-quality medical care with service for all in Pierce County. They operate six medical and behavioral clinics, four dental and six pharmacies.

### First Financial Northwest Bank Supports Bothell Kenmore Chamber of Commerce

First Financial Northwest Bank participated this spring in the Bothell Kenmore Chamber of Commerce “Topsy Fools” wine, beer, and spirits walk.

The bank is a longtime supporter of the Chamber and volunteers for many events.



### Liberty Bank Sponsors Jewel Box Theater Annual Gala

Liberty Bank sponsored the Jewel Box Theater’s annual gala this spring, celebrating 23 years in business.

The bank’s staff, including Jeremy Key, Galina Georgieva, Sheila Dennison, Chelsie Calara, and Rhonda Morris, volunteered at the event, which raised money for the organization.

### Baker Boyer Bank Teaches Financial Literacy in Walla Walla

Starting in 2020, Baker Boyer Bank has been hosting the Finance Academy program, which puts bankers into local schools to help students learn about banking basics, such as budgeting, insurance, mortgage, debt management, and more.

The program, originally taught in high schools, was adapted and expanded into K-5 classrooms this year. Younger students focus on learning about coins, savings, and general financial literacy.

There are 15 schools participating in the program, which was created thanks to a partnership between the bank and EVERFI, a company that provides digital courses for K-12 students and adults. Over 500 students have participated since it began.

Last year, the program offered scholarships to high school seniors who completed the financial literacy course.



### Kitsap Bank Partners with Habitat for Humanity of Clallam County

In 2023, Kitsap Bank is partnering with Habitat for Humanity of Clallam County, which provides the opportunity for homeownership for people of low incomes.

The bank pledged \$4,000 to the organization, which has helped over 30 families find permanent housing.



### U.S. Bank Puget Sound Volunteers at Dress for Success Seattle Pop-Up Wardrobe Event

Members of the U.S. Bank Women’s BRG recently volunteered in the Dress for Success Career Opportunity Fair and Wardrobe Pop-Up.

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The team helped local women find professional clothing and discussed career opportunities.

### Olympia Federal Savings Donates to Oly Town FC Sound Foundation

Olympia Federal Savings donated to Oly Town FC Soccer Foundation this spring as part of the Two Cents program.

The bank donated \$2,793 after customers donated two cents from each debit card transaction for a month.



### First Fed Bank Donates to Aquaculture Scholarship Foundation

First Fed Bank announced a donation to a local aquaculture scholarship in early April.

The bank made a \$10,000 donation to the Kurt Grinnell Aquaculture Scholarship Foundation, which supports indigenous students interested in careers in aquaculture.

In addition to this donation, the bank has pledged \$25,000 over the next five years.

### WaFd Bank Supports Special Olympics Washington

WaFd Bank is supporting Special Olympics Washington this year, which includes donating tickets to athletes in the organization.

The tickets were for a Seattle Sounders FC game, and the group participated in a halftime show highlighting Special Olympics.

### North Cascades Bank Sponsors Annual Easter Egg Hunt

North Cascades Bank was once again, this spring, the sponsor of the annual Easter Egg Hunt in Waterville.

The bank participates in the event, and local businesses donate Easter baskets for the children who win prizes.



### Washington Trust Bank Participates in Community Events Across State

This spring, the Washington Trust Bank team participated in several community events across the state.

The team supported the Pacific Science Center as the sponsor of the 2023 Ignite Luncheon, which raises money to provide innovators which hands-on science experiences.

In Eastern Washington, the support operations team volunteered at Second Harvest Inland Northwest. At the same time, employees in downtown Spokane stopped by Ben & Jerry's free cone day, which donated to Maddie's Place.



### Community First Bank Volunteers at Second Harvest

Community First Bank and HFG Trust volunteered recently at Second Harvest Tri-Cities.

The group helped sort over 4,800 meals for families in the community.

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## Industry News

### New Hires

Matt Glade  
Mortgage Loan Representative at Peoples Bank

Steve Wilde  
Senior Loan Officer at Peoples Bank

Sam Boysen  
Loan Processor at Olympia Federal Savings

Linda Halvorson  
Customer Service Representative at Olympia Federal Savings

Joylyn Marsh  
Customer Service Representative at Olympia Federal Savings

Lirio Perez  
Vice President and Senior Commercial Loan Officer at Sound Community Bank

Ryan Douglas  
Senior Vice President and Risk Officer at Pacific Crest Savings Bank

Angela Monsef  
Senior Loan Processor at Pacific Crest Savings Bank

### Promotions

Jaidyn Hope  
Assistant Branch Manager at First Fed Bank

Ben Crowl  
Chief Lending Officer at 1st Security Bank of Washington

Rob Butterfield  
Executive Vice President and Chief Financial Officer at Banner Bank

### Board of Directors

Jeff Dolven  
Kitsap Bank

Tina Pappas  
Kitsap Bank

Have Industry News to share with WBA? Email [megan@wabankers.com](mailto:megan@wabankers.com) or call (206) 344-3472.

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### Cashmere Valley Bank Operations Officer Teams Financial Education

Cashmere Valley Bank's East Wenatchee branch retail operations officer Edith Amante recently volunteered to teach financial education to a local school during Financial Literacy Month.

She spoke with students at Wenatchee High School in the AVID program about banking, credit cards, budgeting, and more.



### Washington Trust Bank Partners with YWCA Spokane

Washington Trust Bank is a partner of the YWCA Spokane and was the official partner of Women's History Month in March, which helped sponsor events and the annual Women of Achievement Awards.

The YWCA Spokane is also celebrating its 120th anniversary this year.



### North Cascades Bank Donates to Wenatchee Valley Humane Society

North Cascades Bank recently donated to the Wenatchee Valley Humane Society as part of the bank's GIVE promotion.

For every free account opened at the bank during a specific period, the bank donated to the selected charity. This resulted in a donation of \$630 to help the local animal shelter.

### Olympia Federal Savings Announces Employee of the Quarter

In late April, Olympia Federal Savings announced it's em-

ployee of the quarter.

Erika Frazier, the assistant branch manager of the downtown Olympia location, earned the honor for her exceptional customer service and team leadership.

"Erika displays such an incredible passion for people," said Josh Deck, OlyFed president & CEO. "She builds strong relationships with her customers and encourages and develops her team of bankers with such caring support."



### Commencement Bank Participates in Puyallup Sumner Chamber Event

The Commencement Bank team recently participated in the Puyallup Sumner Chamber of Commerce's Spring Hopper Business Expo and Mixer.

The bankers enjoyed local food, met fellow business professionals, and spent the afternoon learning more about their local community.



### Kitsap Bank Celebrates Earth Day

The Kitsap Bank team celebrated Earth Day in late April by volunteering at Newberry Hill Heritage Park

Each spring, the bank volunteers at a different site in honor of the holiday, to celebrate and give back.

*If you have WBA Member News or Bankers Care news to share, please email Megan Managan at [megan@wabankers.com](mailto:megan@wabankers.com).*

## WBA Endorsed Vendor: Vericast

# 4 Questions for Getting the Most Out of Your Data

All your customers are valuable — but not all your customers are of equal value to your institution.

It's best to focus on attracting and engaging the right prospects for your institution. That's how you capture the full potential of each customer relationship and stem attrition overall.

However, a strong customer acquisition strategy starts with having the right data to provide answers to the right questions.

### Marketing Forecast: Which Opportunities Are You Missing?

You already know a lot about your customers. But chances are, the insight stops short of understanding how your customers compare to the industry or market. Do you know your market penetration by customer segment? The creditworthiness of your deposit customers? Do you know what relationships your customers have with other financial institutions? Do you know to bring those relationships in-house?

Knowing these and other data points makes a huge difference in the success of your marketing efforts.

Conducting a portfolio analysis will help identify the missed opportunities and identify the segments that are at-risk, the most responsive, the most profitable and more.

### Statistical Modeling: Who's Worth Your Time and Money?

Most banks and credit unions don't have a way to place a "value" on their customers and thus don't know who's a high-, medium-, or low-value customer. Attributing a value score to customers shouldn't depend solely on current product penetration or account balance information.

It should be focused on the potential of growing the customer relationship into more than it is today. Without a broader, more holistic understanding of your customers, you'll be unable to fully unlock that potential.

By using sophisticated predictive modeling, you can get a 360-degree view of your current portfolio and what your customer segments look like today in terms of accounts, balances, longevity, product and service mix,

and so on. Then, a value segmentation study can identify opportunities and risks across purchase propensity and attrition risk.

Based on this combination of information, it is easier to define a relationship and engagement strategy for individual customers as well as specific market segments, investing your time and money in those who bring the most value to your institution. This intelligence will help provide your customers a more relevant, personalized and, ultimately, effective experience.

### Lifecycle Marketing: How Can You Attract and Retain The Right Customers?

Lifecycle marketing maximizes the value of each customer relationship throughout its tenure with your institution.

With data-driven insight, customized strategies for acquisition, onboarding and cross-selling can be developed and executed. Using relevant customer data, you can engage new customers early — and at key intervals — with targeted multichannel communications.

From a customer's perspective, the ability to suggest appropriate products and services for their current life circumstances equals personalization in action. For example, a consumer who isn't a homeowner shouldn't receive a home equity loan offer. This tone-deafness not only irritates customers, it shows a lack of knowledge and understanding of their needs. For maximum effectiveness, every channel of a multichannel communication strategy needs to be optimized. It isn't enough to simply have a web presence or be "on" social media, for example. Optimizing each channel to deliver the value and experience customers are seeking.

Data-driven cross-selling captures the full profit potential of each customer relationship by increasing the number of products owned in the household. All along the lifecycle, data drives these initiatives, ensuring that you are investing your marketing dollars where they will have the most impact.

### Post Campaign: What's Working and What's Not?

There's no question that response is a great early indica-

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# Looking at AI Language Model Use Cases for Financial Institutions

By Connor Heaton, VP/Intelligent Automation & AI, Strategic Resource Management



STRATEGIC RESOURCE MANAGEMENT

The banking industry's reaction to recent advances in artificial intelligence (AI) platforms such as OpenAI's ChatGPT and freshly released GPT-4 has been a mix of excitement and caution.

Morgan Stanley is among the banner clients of GPT-4, using it to enhance its internal knowledge base and handle federated search capabilities for its wealth management personnel. JPMorgan Chase, in contrast, has tried to restrict employee use of ChatGPT. We believe adoption is inevitable, especially after Microsoft integrates GPT's capabilities into its Office products.

Awareness of the opportunities for disruption around these new AI tools, commonly termed large language models (LLMs), is spreading in financial services, with established technology vendors scrambling to integrate them into their offerings, and a surge of investment in AI and new startups.

LLMs are evolving at an incredible pace, with OpenAI pushing updates to the publicly available GPT models multiple times a month.

With that in mind, here are some of applications we see emerging in the FI space:

- **Technical support:** Stripe has also been using the technology to streamline helpdesk functions by automatically routing issue tickets and summarizing user queries.
- **Fraud detection:** Payments giant Stripe is piloting using GPT-4 to autonomously monitor community and support forum posts and flag malicious actors who are phishing or trying to gain information on vulnerabilities.
- **Training/education:** LLMs can help produce training scripts and quizzes, accelerate tailored training and onboarding for new employees, and flexibly answer questions and reframe content to aid learning. Duolingo uses GPT-4 to provide customized conversational practice and feedback to help users learn new languages.
- **Professional writing:** LLMs can assist with ad copy, internal/external communication, eminence, sales outreach, document summaries, and status reporting. An increasing number of third-party tools and plugins use OpenAI's APIs to deliver on-the-spot drafting and editing capabilities, including highly specialized and advanced revisions.

- **Code generation and review:** While the capabilities are nascent and generally not suitable to be used without oversight, LLMs can create functional software from scratch based on high-level directions. Tremendous resources are being dedicated to refining and integrating these capabilities into development workflows.
- **Web/mobile design:** OpenAI has demonstrated how GPT-4's image classification function could be used instantly create a functioning webpage prototype. This can only improve as OpenAI's technology evolves.
- **Reporting:** Further democratization of data analytics will be driven by the capability of LLMs to create and iterate upon SQL queries and reports based on plain language instruction, helping bridge a longstanding gap in understanding between business users and technical personnel. LLMs could also help smaller FIs that struggle to use data effectively.

## The Bottom Line

LLMs will find their way into nearly every FI, one way or another. Even if institutions are slow to embrace the technology, individual employees will realize how valuable these AI tools can be for their work, and existing vendors will be using them to enhance and expand their products.

There's a quiet revolution occurring in knowledge work, and FIs must figure out how to realize the potential of LLMs and manage the risks associated with them.

SRM is here to educate and guide our bank and credit union partners in various areas, such as LLMs, prompt engineering, and risks and security. Expect more content as we monitor evolving trends and share our insights throughout the journey.

*Connor Heaton, vice president of intelligent automation and AI, has years of experience in this space from prior work at Deloitte advising federal agencies and startups. At SRM, he has led numerous engagements around automation and conversational AI. He can be reached at [cheaton@srmcorp.com](mailto:cheaton@srmcorp.com).*

# To Compete or Non-Compete, That is the Question



By Prince Girn,  
Associate General  
Counsel,  
Compliance  
Alliance

On January  
5, 2023, the  
Federal Trade  
Commission  
(FTC) released

a Notice of Proposed Rulemaking (“the proposed rule”) to essentially implement an all-out federal ban on non-compete clauses in employment contracts. Non-compete clauses generally restrict a person’s ability to work for a competing employer whether by name or in general. Many times, these clauses will carve out a radius in which a person is prohibited from working with competing employers and will have limits on the duration of the ban.

However, this potential ban goes further than just your average non-compete clauses that you may be used to seeing or hearing of. There are other clauses in employment contracts that the proposed rule seeks to ban, clauses that are sometimes so broad in scope that they can be considered “de facto” non-compete clauses.

- Non-disclosure agreements (NDAs)—also known as “confidentiality agreements”—which prohibit the worker from disclosing or using certain information;
- Client or customer non-solicitation agreements, which prohibit the worker from soliciting former clients or customers of the employer (referred to in this NPRM as “non-solicitation agreements”);
- No-business agreements, which prohibit the worker from doing business with former clients or customers of the employer, whether or not solicited by the worker;
- No-recruit agreements, which prohibit the worker from recruiting or hiring the employer’s workers;
- Liquidated damages provisions, which require the worker to pay the employer a sum of money if the worker engages in certain conduct; and
- Training-repayment agreements (TRAs), a type of liquidated damages provision in which the worker agrees to pay the employer for the employer’s training expenses if the

worker leaves their job before a certain date.

The latest move by the FTC may be traced or influenced by the recent attitudes towards these types of clauses and their overall chilling effects on the labor market and economy. The attitudes that the FTC maybe be particularly be focused on maybe coming from the current Biden Administration and recent enforcement actions by the US Department of Justice Antitrust Division (Antitrust Division). On July 9, 2021, President Biden signed the Executive Order Promoting Competition in the American as part of a “whole-of-government effort to promote competition,” in which the order explicitly encourages the FTC to “exercise the FTC’s statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.” Recently, the Antitrust Division has criminally prosecuted employers for executing wage-fixing and no-poach agreements against companies and individuals. Those attitudes may have paved the way for not only the FTC to bring forward this proposed rule but also bring its own enforcement against companies and their executives for imposing non-compete clauses just one day before the proposed rule.

Further, to support the move, the FTC cites data that bolster the central arguments that these types of clauses. The data the FTC presents supports the notion that noncompete clauses significantly reduce earnings for workers and causes exploitation, stifle entrepreneurship and new ideas, and reduces overall economic and marketplace freedom. Additionally, the FTC cites that there are other methods to protect competition without imposing undue risks to workers and burdens on the economy.

Putting the ban in a nutshell, it would bar employers from imposing non-compete clauses in employment contracts. It would also require employers that have non-compete clauses in effect before the rule were to go into effect to rescind all non-compete clauses that were to exist at the time the law was to go into effect. With respect to the abovementioned rescission of prior-existing clauses, the rule would require the existing clauses to be rescinded within 180 days of the publication of the final rule and that employers

provide notice to all currently employed and former employees informing them that the non-compete clause is no longer effective and that they are no long subject to it.

There could be some potential limitations to the proposed ban, however. In the proposed rule itself, it suggests alternatives to the proposed rule for which the FTC seeks public comment on. For example, the proposed rule would not cover non-compete between franchisors and franchisees. The FTC seeks comment whether such clauses should be covered between franchisors and franchisees, and if covered, whether there should be a categorical ban on such clauses or a rebuttable presumption of unlawfulness, or whether different types of clauses should be subject to different standards or exemptions. The FTC seeks similar comments on similar considerations regarding senior executives and treating low/high-wage workers differently.

Although the proposed rule has no immediate effect, employers may consider taking proactive measures to demonstrate good faith compliance should the rule go into effect or to lean to towards the attitudes/trends of the FTC and other agencies regarding these clauses even if the rule were to not go into effect. These proactive measures may include prohibiting the use of non-compete clauses in contracts, using non-compete clauses in the meantime but making sure they are specific in scope and not overburdensome, and auditing current contracts. If the bank chooses to audit current contracts, it should be doing a careful review looking for non-compete clauses and de facto non-compete clause as described previously, and get a head start on determining what action to take with the identified clauses should the rule go into effect.

*Prince Girn serves C/A as an associate general counsel. He received his bachelor’s degree in political science from the University of California, Davis and received his Juris Doctor from San Joaquin College of Law. Before joining the firm, Prince worked in several areas of law such as real estate, immigration, and criminal defense. He also practiced workers’ compensation law as a defense attorney where he represented major municipalities, hospital systems, and companies.*

## Continued from page 3

the first time; however, it did not advance further in the legislative process. In the interim, we will continue to educate lawmakers about mortgage banking and the effect this legislation would have on the market.

After much discussion leading up to the Legislative Session, SB 5482 was introduced almost a month into the process. This bill would create a new margins tax to replace the existing business & occupation tax. Significantly, there was very little support for the idea, especially from the business community. This reinforces the initial sense that this measure doesn't have sufficient momentum to make it through the legislature. The WBA will be forming a working group this summer to analyze the impacts on all our members and strategically communicate our concerns.

Two tax bills were part of the conversation until this year's session's final moments. HB 1628 would have created a new classification for the graduation real estate excise tax, adding a tax of 3.5 percent for homes that sell for more than \$3 million. It would have also adjusted the taxes in lower sales classifications. SB 5770 would have increased the local property tax cap from 1 percent to 3 percent annually. Both proposals were part of the final budget negotiations, but in the end, neither was necessary to balance the final deal.

### Budget

On Sunday, both chambers agreed to a new operating budget of \$69.2 billion. The new two-year package includes roughly \$4.7 billion in new spending and leaves \$3 billion in the reserve accounts without new broad-based taxes. The new budget includes increased spending for K-12 schools, including more funding for special education and a \$2.2 billion increase in the pay for state workers and school employees.

### Other Bills of Note

The final bill the Legislature discussed was SB 5536, which would fix the so-called "Blake" bill that would provide clarity following

the state Supreme Court's decision that struck down the state's felony drug possession statute. The conference-negotiated compromise on drug possession failed to pass, with many progressive Democrats joining the Republicans in opposition. The temporary fix passed last year and is set to expire on July 1. There is speculation that the Governor will call a special session to work on this issue, as letting the temporary fix expire would mean, by default, there would be no law in the state against drug possession.

HB 1240, which was the subject of much discussion this year, prohibits the manufacturing, importation, distribution, sale, or offer for sale of any assault weapon in the state. The legislation is expected to be challenged in court. Another firearms bill, HB 1143, outlines that any deal may not sell or transfer ownership of any firearm to a purchaser until completion of a background check and 10 business days have passed.

In the housing space, which was one of the Democrat's major priorities this year, HB 1110 passed, which requires certain cities under the Growth Management Act to authorize specific provisions related to middle housing in regulations in areas traditionally focused on single-family housing. HB 1474 requires county auditors to collect a Covenant Homeownership Program (CHP) assessment of \$100 per document recorded to fund the CHP. The Department of Commerce and the Washington State Housing Finance Commission will then create one or more special-purpose credit programs to provide down payment assistance and closing cost assistance to economically disadvantaged classes of people.

In the policing space, SB 5352 would lower the evidentiary threshold required for engaging in a vehicle pursuit by allowing officers to pursue if they have reasonable suspicion that the person has committed or is committing a crime.

*If you are interested in getting more involved in WBA Advocacy or learning more about it, please contact Megan Managan at [megan@wabankers.com](mailto:megan@wabankers.com).*

*The WBA will host its annual Legislative Roundtables in the fall throughout the state. More information will be available soon.*

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tor of a marketing campaign's effectiveness. But it's not the only metric that counts. Combining response rates with additional metrics such as conversion rate, average balance, and attrition, allows for a more holistic evaluation of a customer engagement strategy.

Combined, these metrics — and others — provide a complete picture of your overall marketing strategy, which enables you to refine your efforts, re-

peat successes and learn from failures. Many marketers don't have the capability to tie these outcomes — or lack thereof — back to specific marketing campaigns. They don't know whether a campaign was a winner or a loser, so there's no way to learn what works best.

Financial institutions have a wealth of customer data at their fingertips that can be used to learn more about your customers.

This information can be leveraged to

target your ideal customers in a market footprint and further accelerate account acquisitions. When the goal is to attract and engage customers, a strategic, data-driven acquisition campaign can give your financial institution a marketplace advantage. Taking the time to target customers with whom you have a likelihood of establishing strong relationships or with deepening current relationships can help curb attrition.

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