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March 4, 2021

The Honorable Sherrod Brown  
Chairman  
Committee on Banking, Housing,  
and Urban Affairs  
United States Senate  
Washington D.C. 20510

The Honorable Patrick J. Toomey  
Ranking Member  
Committee on Banking, Housing,  
and Urban Affairs  
United States Senate  
Washington D.C. 20510

Dear Chairman Brown and Ranking Member Toomey:

On behalf of community banks across the country, with more than 50,000 locations, I write to request that you convene a hearing at the earliest opportunity to examine how the National Credit Union Administration's (NCUA's) permissive oversight of the credit union industry has allowed it to evolve far beyond its original mission and the troubling impact of this trend on American consumers.

In recent years, as large credit unions have prioritized rapid growth and non-traditional financial product offerings, the NCUA has failed to keep pace with the evolving character of the industry, and credit union consumers have suffered as a direct result. A hearing is needed to update Congress's understanding of the industry and its impact on the American financial services landscape. Among other issues, the hearing should consider the recent trend of credit union purchases of community banks, which is contributing to the broader trend of industry consolidation at the expense of consumers and small businesses.

The NCUA has new leadership and an opportunity to reassess its oversight of the industry and make a course correction. An NCUA that is truly independent of the industry it oversees, exercises robust supervision, and issues rules that are consistent with statutory authority is in the best interest of consumers, small businesses, and the American economy. A hearing would provide an opportunity to explore all of these issues and chart a course forward. Below we provide background to support this hearing request.

### **NCUA consumer compliance supervision has failed to keep pace with a changing industry**

In late 2019, NCUA Board Member, now Chairman, Todd Harper, remarked that: "As the largest credit unions continue to grow in size, the time has come for the NCUA to evolve its consumer compliance

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WASHINGTON, DC  
1615 L Street NW  
Suite 900  
Washington, DC 20036

SAUK CENTRE, MN  
518 Lincoln Road  
P.O. Box 267  
Sauk Centre, MN 56378

866-843-4222  
www.icba.org

program.” Contrasting the NCUA’s compliance program with that of other financial regulatory agencies, Harper said that the NCUA’s program was based on an industry that no longer exists, comprised of “a large number of small credit unions serving a limited field of membership with only a few basic financial products.” Harper proposed the addition of three new full-time employees in the NCUA’s Office of Consumer Financial Protection to create a dedicated consumer compliance examination program for large, complex credit unions. Unfortunately, the Board did not approve even this modest proposal.

Just last week, the NCUA Inspector General found that NCUA doesn’t investigate whether laws were actually broken when overseeing complaints: “Based on our review of complaints, we determined that the agency’s consumer complaint process focuses mostly on assisting consumers with resolving consumer complaints with their credit union as opposed to determining whether the credit union has violated a law or regulation... Because the credit union resolves the issue with the consumer without a violation determination, the credit union could continue violating the consumer protection law after it resolves the complaint.”

This is obviously not comparable to the consumer protection practices of the banking agencies. In support of Harper’s proposal, the National Community Reinvestment Coalition (NCRC) wrote that NCUA must “prioritize the protection of consumers and strive to match the efforts of the federal banking regulators.”

### **Data attest to rise in consumer complaints and sinking consumer satisfaction**

As the NCRC has noted, the number of consumer complaints received by the NCUA rose from 3,480 in 2013 to 53,337 in 2018, while the number of fair lending exams and supervisory contacts decreased from 70 to 66 over the same time period. By contrast, every bank is examined for fair lending on a regular basis without exception on a 12-month or 18-month cycle, and every year the agencies conduct thousands of exams.

The rise in credit union consumer complaints corresponds to trend of sinking consumer satisfaction. In the 2020 American Consumer Satisfaction Survey, credit unions fell to a historic low of 77 out of 100, 10 points lower than their score in 2011 and the second year in a row they were rated behind banks. The banking industry as a whole scored a 78 in 2020, though community banks and regional banks scored an 81. “According to ACSI data, member satisfaction with credit unions significantly weakened during the COVID-19 pandemic—a phenomenon that did not hit banks,” the organization said.<sup>1</sup>

Consistent with the above findings, a recent study found that credit union service fee income has surged in recent years and now stands at 132 percent of its 2008 level. Compare this to bank service fee income, which has dropped to just 84 percent of its 2008 level.<sup>2</sup>

### **Rise in credit union consumer risk a result of industry growth spurred by NCUA permissive regulation, lax oversight, and a generous tax subsidy**

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<sup>1</sup> [“An ‘Historic Low’ in Survey”. CUToday.info November 20, 2020.](#)

<sup>2</sup> [“\\$9 B In Service Charge Revenue for CUs.” CUToday.info. December 17, 2019](#)

In the years immediately following enactment of the Federal Credit Union Act in 1934, the credit union industry stayed true to its tax-exempt purpose of serving individuals and families of modest means with a common bond among them.

The era of rapid growth and charter expansion began with the creation of the NCUA in 1970. The NCUA's permissive regulation and supervision – consistently flouting the statutory limits of the Federal Credit Union Act – is largely responsible for the rapid growth of credit unions and their tax subsidy. Restrictions on field of membership have all but dissolved, while limits on commercial lending have been drastically weakened. In December 2020, the NCUA finalized a rule to allow credit unions to raise capital through the sale of debt securities to venture funds and other outside investors. These outside debt sales undermine credit unions' status as member-owned cooperatives, which they have long used to justify their tax exemption. With access to outside, private capital, growth-driven credit unions will likely create war chests to fund bank acquisitions, resulting in less consumer choice and fewer specialized small business and agricultural lenders.

It is impossible to ignore just how far credit unions have strayed from their duty to serve people of modest means. Consider, taking just a recent example, Pentagon Federal Credit Union's partnership with Goldman Sachs to fund the second phase of the District of Columbia Wharf's million dollar plus residences, hotels and marina with a nearly \$1 billion loan – the biggest construction loan in D.C. history.

### **Today's credit unions: unrestrained growth and consolidation has created fewer, larger institutions**

In the last five years alone, the total assets of federally insured credit unions have grown by more than \$610 billion, about 52 percent, and membership has grown by 21.7 million, over 21 percent, while the total number of credit unions has declined by 957, or 16 percent. Today there are over 364 credit unions with assets of more than \$1 billion and 14 credit unions with assets of more than \$10 billion, the largest of which has more than \$131.6 billion in assets, dwarfing the size of the community banks with which they compete. The largest credit unions are experiencing the fastest growth. The nation's largest credit union, Navy Federal in Vienna, Va., increased its assets by 137 percent between 2013 and 2020. What's more, credit unions with more than \$1 billion in assets account for the largest share of the industry's tax subsidy, over 75 percent.

### **Bank acquisitions: the next phase of the industry's aggressive growth**

For decades, credit unions have used their tax subsidy and a permissive regulatory environment to expand their market share. What's happening today – credit union “weaponization” of their tax subsidy and lax regulatory environment to purchase whole community banks – is an order of magnitude more significant and warrants Congressional scrutiny. These deals transform taxable business activity at community banks into tax-exempt activity at credit unions, thereby shrinking the tax base, not only at the federal level but at the state and local level as well.

The trend has sharply increased in recent years. Before 2012, credit union acquisitions of banks or bank assets were limited to two or three a year. They have steadily ramped up since then, accelerating rapidly in 2018, which saw 13 acquisitions, and in 2019, which saw 21, seven times as many as occurred just six

years ago. In 2020, the \$8.3 billion Alaska Federal Credit Union, headquartered in Anchorage, announced a deal to purchase seven Phoenix-area bank branches and deposits from TCF Financial in Detroit. Alaska Federal Credit Union, which operates in four states, is typical of an acquiring credit union both in its multi-billion-dollar balance sheet and in crossing state lines to make an acquisition.

The acquisition targets have also grown larger. In June 2019, \$3.6 billion MidFlorida Credit Union announced the acquisition of Ocala Community Bank & Trust of Florida, a \$730 million community bank. At the time, the size of the target bank dwarfed any previous acquisition, which typically involved a community bank with assets of \$200 million or less. In December 2019, Suncoast Credit Union of Tampa, a \$10.4 billion institution, announced the purchase of Apollo Bank, a \$747 million asset bank in Miami. Though that deal was never consummated, the trend suggests that it will not be long before we see the first credit union acquisition of a bank with assets of \$1 billion or more.

These deals have received significant media attention and public interest. Prominent examples include a September 2019 Wall Street Journal article headlined, “Credit Unions Go on Bank Buying Spree,” and the December 2019 American Banker article, “Credit Unions’ Bank Buyout Spree Snags Biggest Fish Yet.”<sup>3</sup>

All indications are that the credit union-bank acquisition trajectory will continue – unless Congress exercises needed oversight. In January 2020, in response to pressure created by rising media and congressional scrutiny, the NCUA issued a proposed rule governing credit union-bank acquisitions. Unfortunately, while ICBA believes the proposal is a step in the right direction, it does not create adequate guardrails to govern these transactions. We urge the Financial Services Committee’s support in ensuring the NCUA significantly strengthens the proposal.

## **The impact of credit union-bank acquisitions**

### *Acquisitions fail to extend access to banking services*

Credit union-bank acquisitions are a perversion of congressional intent in the creation of the federal tax exemption more than 70 years ago. The purpose of the tax exemption was to create access to affordable, basic banking services for people of modest means who would otherwise lack it. Bank customers, by definition, already have access to banking services, nor are they better off as customers of an acquiring credit union. As noted above, a recent study found that credit union service fee income has surged in recent years while bank fee income has declined. Credit union complaints have risen, and customer satisfaction has fallen to a historic low. Using the generous tax exemption to shift consumers from banks to credit unions serves no public purpose; it merely displaces existing services provided by tax-paying banks. This is not a free-market transaction: The purchasing credit union is using tax-subsidized earnings to acquire a tax-paying business.

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<sup>3</sup> Clozel, Lolita. “Credit Unions Go On Bank Buying Spree.” Wall Street Journal, September 3, 2019. <https://www.wsj.com/articles/credit-unions-go-on-bank-buying-spree-11567515601?mod=searchresults&page=1&pos=3>  
McCarthy, Ken. “Credit unions’ bank buyout spree snags biggest fish yet.” American Banker, December 3, 2019. <https://www.americanbanker.com/news/credit-unions-bank-buyout-spree-snags-biggest-fish-yet>

### *The tax subsidy is promoting harmful consolidation*

The purchase of community banks by multi-billion credit unions is a policy concern for the same reason that all financial industry consolidation is a concern: Larger, out-of-market institutions – be they banks or credit unions – displace locally based community banks. A market dominated by large institutions is less competitive, creates systemic risk, and will result in fewer choices for consumers and small businesses and ultimately less favorable rates and pricing. Institution size should be dictated by the marketplace and economies of scale, not by regulatory compliance burden, nor by a distorted tax code that favors one type of financial institution over another and promotes growth-obsessed credit unions.

A less tangible but no less real consideration is this: Consolidation alters the character of our financial services sector for the worse. What sets community banks apart from other institutions is their firsthand knowledge of their communities and their offer of personalized services and customized products. Something irreplaceable is lost when a community bank that has been rooted in its community for generations is purchased by an out-of-market credit union.

### *Acquisitions reduce scarce tax revenues at all levels of government*

The cost of the credit union tax exemption has grown steadily as credit unions have become larger, grown their market share, and displaced tax-paying banks. That cost now stands at \$2 billion annually and is projected to grow, according to the Joint Committee on Taxation. However, when a credit union purchases a bank it removes a taxpayer wholesale from the revenue stream. Over time, this will significantly increase revenue losses, not only for the federal government but for state and local governments that depend on these revenues to fund essential services from teachers to fire fighters and police officers.

Community banks support their local communities and their federal government with tax dollars. Credit unions do not. As noted above, the largest six percent of all credit unions (those with assets greater than \$1 billion) are responsible for 75 percent of the revenue deficit. Their expansion should be held in check, or their tax status should be altered.

### **Legislative and regulatory solutions**

Finally, we urge you to use a committee hearing and your jurisdiction over the Federal Credit Union Act and the NCUA to explore available options for curbing the credit union-bank acquisition trend.

These options include requiring the NCUA to create more rigorous standards for the approval of acquisitions. In addition, current NCUA rules impose numerous and daunting hurdles that make it nearly impossible for a bank to buy a credit union or for a credit union to convert to a bank. This explains why there have been so few of these transactions in recent decades. Congress should ensure that it is no more difficult for a bank to acquire a credit union than for a credit union to buy a bank. A level playing field in this regard would go a long way toward addressing the concerns outlined in this letter.

To conclude, the American financial services landscape is shifting rapidly and irreversibly as a result of the rapid growth of credit unions and credit union-bank acquisitions. This is a matter of significant public concern and Congress should exercise its oversight authority to examine these trends. The change

in leadership at the NCUA should be viewed as an opportunity to prompt a course correction at an agency with increasing over American consumers and the economy at large.

Thank you for your consideration.

Sincerely,

/s/

Rebeca Romero Rainey  
President & CEO

CC: Members of the Senate Committee on Banking, Housing, and Urban Affairs