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March 23, 2021

The Honorable Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington D.C. 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington D.C. 20515

Dear Chairman Neal and Ranking Member Brady:

On behalf of community banks across the country, with more than 50,000 locations, I write to call your attention to an emerging trend and abuse of the tax code: A surge in credit union purchases of community banks – effectively leveraging their tax exemption to gain an advantage in the acquisitions marketplace. We believe these transactions flout the original purpose of the tax exemption, and request that you convene a hearing during the first session of the 117th Congress to exercise the Ways and Means Committee’s oversight authority over the credit union tax exemption.

America’s community banks are small business lending experts in the thousands of rural, urban, and suburban communities they serve. Community banks have made 60 percent of Paycheck Protection Program loans and over 70 percent of PPP loans to minority-owned and women-owned small businesses. Many of these small businesses had been turned away from larger banks. Small business lending is a highly specialized skill dependent on direct knowledge of a community and local economic conditions. Credit union-community bank acquisitions and the rapid expansion of the credit union industry are reshaping the American financial services landscape in a way that puts small business lending experts at risk.

We suggest that the hearing examine the causes of the credit union-bank acquisition trend, its impact on small businesses and consumers, as well as appropriate legislative and regulatory responses. Below we provide background to support this hearing request.

An Outdated Tax Code Has Created Large, Rapid Growth Credit Unions Which Absorb Most of the Tax Subsidy

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.

Congress created the tax exemption more than 80 years ago during the Great Depression for a narrow purpose: To ensure that people of modest means with a common bond such as an employer or a union have access to consumer credit. While there are thousands of smaller, limited credit unions that adhere to the original vision, we believe that today's industry – particularly the largest, rapid-growth credit unions as well as those that have ventured into more exotic investments – stands in jarring contrast to the original vision.

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. It is impossible to ignore just how far credit unions have strayed from their duty to serve people of modest means.

The evolution of the industry is the fault not only of the tax code, but of the increasingly permissive oversight and regulation from the National Credit Union Administration, which has virtually dissolved field of membership limitations and, more recently, given credit unions authority to raise capital through the sale of subordinated debt securities to venture funds and other outside investors.

Bank Acquisitions Are 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.”¹

All indications are that the credit union-bank acquisition trajectory will continue – unless Congress exercises needed oversight.

The Impact of Credit Union-Bank Acquisitions

Acquisitions fail to extend access to banking services

ICBA believes credit union-bank acquisitions are a perversion of congressional intent in the creation of the federal tax exemption more than 80 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. In fact, 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.² 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.

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.

¹ 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>

² “\$9 B In Service Charge Revenue for CUs.” CUToday.info. December 17, 2019

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. The value of community banks was never more obvious than during the pandemic when these institutions played an outsized role in processing Paycheck Protection Program loans for vulnerable small businesses. Something irreplaceable is lost when a community bank that has been rooted in its community for generations is purchased by an out-of-market mega-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 to explore available options for curtailing the credit union-bank acquisition trend, and, more broadly, restoring the original purpose of the tax exemption.

While Congress may currently lack the appetite for creating full and immediate tax parity between credit unions and banks, incremental options should be considered. These options include:

- Taxation of the largest and/or most growth-oriented credit unions.
- Taxation of credit union commercial lending revenues.
- An excise tax on credit union marketing expenditures that exceed a given threshold (e.g., multi-million-dollar stadium naming rights).
- Creating the option for states to tax federal credit unions. While states have authority to tax state-chartered credit unions, state-chartered credit unions have the option of avoiding any such tax by switching to a federal charter. However, Congress could give states optional authority to tax federal credit unions that operate within their borders.

- Taxation of credit union-bank acquisitions in order to capture the future tax revenue loss these transactions represent.
- Heightened regulatory scrutiny of credit union-bank acquisitions.

To conclude, if current trends continue, the American financial services landscape will shift rapidly and irreversibly as a result of credit union-bank acquisitions. This is a matter of significant public concern and Congress should exercise its oversight authority to examine this troubling distortion. We urge you to convene a comprehensive hearing to examine the causes and the impact of this dangerous trend and to explore potential solutions.

Thank you for your consideration.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

CC: Members of the House Committee on Ways and Means