April 4, 2023

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

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

Dear Chairman Brown and Ranking Member Scott:

On behalf of the Independent Community Bankers of America (ICBA), the undersigned state banking associations, and the thousands of community banks we represent, we 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, putting credit union members at risk. A hearing is needed to update Congress's understanding of the industry and its impact on the American financial services landscape.

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.

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. Below we provide background to support this hearing request.

NCUA's failure to hold credit unions accountable for service to LMI communities

Banks are subject to the Community Reinvestment Act (CRA) and thereby held accountable for their service to low- and moderate-income (LMI) consumers in the communities in which they operate. No similar regulatory mechanism applies to credit unions, though they were created and granted a generous tax exemption for the purpose of serving consumers of "modest means." The credit union exemption from CRA is steadily eroding the scope and coverage of the law as credit unions grow and acquire community banks, thereby removing CRA-covered institutions from the market and leaving more low-income communities without an accountable financial services provider. Credit union-bank acquisitions cut safeguards for low- and moderate-income consumers.

In the absence of CRA, the NCUA should have a special responsibility to ensure that credit unions are serving consumers of modest means. Unfortunately, we have little understanding of what populations are served by credit unions. A 2006 Government Accountability Office (GAO) report ("Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements") found that the NCUA does not have adequate data to determine the extent of credit union service to underserved populations and should develop such data. (Seventeen years later, the NCUA has yet to address this GAO recommendation.) Notably, the GAO study also found that credit unions serve a lower proportion of low- and moderate-income households than banks.

NCUA seeks to increase loan interest rate ceiling over objections of Treasury Department

As members of this committee may know, the NCUA is currently pursuing an increase to the interest rate ceiling for loans made by federal credit unions. The ceiling is currently 18 percent. In January of this year, Treasury Assistant Secretary for Financial Institutions Graham Steele wrote to the NCUA in opposition to the increase, noting, "the FCU Act created the interest-rate ceiling based on the expectation FCUs use their non-profit structure to offer affordable credit, which has continued to be the case." Based on his analysis, Assistant Secretary Steele states that, "current money market interest rates do not appear to provide sufficient justification for changing the interest-rate cap." He concludes: "It thus does not appear that the 18 percent interest-rate cap is materially limiting FCUs' loan portfolios or their ability to serve their communities."

ICBA believes that this would be an important topic to explore at the hearing. The credit union industry has continually sought to obtain bank-like powers without compromising their tax exemption. The NCUA should keep this powers expansion in check rather than abet it. Why is the agency even considering an increase to the interest rate ceiling that is fundamentally at odds with the mission of credit unions, to use their tax exemption to provide affordable products to consumers of "modest means"?

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 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. 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." Unfortunately, the Board did not approve even this modest proposal.

In 2021, 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 unfortunately not comparable to the consumer protection practices of the banking agencies.

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 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 a 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.[1]

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. [2]

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.

Failed oversight of credit union-community bank acquisitions

A Banking Committee hearing would fit well with the broader theme of competition in financial services set forth in President Biden's 2021 Executive Order, "Promoting Competition in the American Economy." Pursuant to this E.O., the FDIC has issued a Request for Information to examine the impact of mergers and acquisitions of banks. The NCUA should undertake a similar

[1] "An 'Historic Low' in Survey". CUToday.info November 20, 2020.
[2] "$9 B In Service Charge Revenue for CUs." CUToday.info. December 17, 2019

effort, and we recommend that the Banking Committee exercise oversight over the agency's failure to do so.

There has been a notable increase in credit union acquisitions of community banks, characterized in the media as a "bank buying spree."[3] Until six years ago, there had been no more than four credit union-bank acquisitions in any year; in many years, there were none. But in 2018, there were nine such deals, three times as many as the preceding year. In 2019, the number rose to 13. While the pandemic slowed the pace of deals, the trend has resumed with 15 deals announced last year, a new high. ICBA fully expects this trend to strengthen in future years as larger, more growth-oriented credit unions exploit opportunities, leveraging their tax exemption and their new authority to issue subordinated debt to outbid banks in the market for acquisitions.

In July 2021, a Michigan state-chartered credit union, carrying the "low income" designation, announced the purchase at twice book value of a Florida bank specializing in private aircraft financing for high-net-worth individuals. Credit unions have also been targeting larger community banks. Also in 2021, Vystar Credit Union, an acquisitive Florida-based institution, announced the proposed acquisition of a Georgia bank with $1.6 billion in assets, though the deal was ultimately abandoned.

In recognition of this trend, the NCUA issued a proposed rule in January of 2020 titled: "Combination Transactions with Non-Credit Unions; Credit Union Asset Acquisitions." According to then Chairman Rodney Hood, the purpose of the rule was to "make sure that they [credit unions] are acquiring a bank that comports with their existing field of membership and the lines of business in which they are operating."

Unfortunately, the NCUA has yet to finalize its January 2020 proposed rule on acquisitions. We believe the proposal would increase the transparency of these transactions, though it falls short in other respects. In particular, the final rule should require a robust analysis of whether a proposed acquisition of a community bank meets the convenience and needs of existing and potential post-acquisition customers. This would be consistent with the requirements of the Bank Merger Act. An adequate analysis by NCUA of proposed acquisitions should assess the number of LMI consumers – not the number of LMI geographic locations - that would actually be served. As noted above, this information is not currently collected by the agency.

Closing

We believe this letter sets forth compelling reasons for the Banking Committee to convene a hearing into the NCUA's oversight of the credit union industry a matter of significant public concern. A hearing would allow for robust consideration of the trends discussed above and their impact on the American financial services landscape.

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[3] Clozel, Lalita, "Credit Unions Go on Bank Buying Spree: Not-for-profit financial firms have acquired a record number of banks since last year," The Wall Street Journal, Sept. 3, 2019. See also, Eisen, Ben, "How Credit Unions Outgrew their Down-Home Reputation," The Wall Street Journal, Dec. 2, 2019.

Thank you for your consideration, and we look forward to your response.

Sincerely,

Independent Community Bankers of America	Alabama Bankers Association
Arizona Bankers Association	Arkansas Community Bankers
California Community Banking Network	Independent Community Bankers of Colorado
Connecticut Bankers Association	Florida Bankers Association
Community Bankers Association of Georgia	Idaho Bankers Association
Community Bankers Association of Illinois	Indiana Bankers Association
Community Bankers of Iowa	Community Bankers Association of Kansas
Bluegrass Community Bankers Association	Louisiana Bankers Association
Maine Bankers Association	Maryland Bankers Association
Massachusetts Bankers Association, Inc.	Community Bankers of Michigan
BankIn Minnesota	Mississippi Bankers Association
Missouri Independent Bankers Association	Montana Independent Bankers
Nebraska Independent Community Bankers	New Hampshire Bankers Association
New Jersey Bankers Association	Independent Community Bankers Association of New Mexico
Independent Bankers Association of New York State	North Carolina Bankers Association
Independent Community Banks of North Dakota	Community Bankers Association of Ohio
Community Bankers Association of Oklahoma	Oregon Bankers Association
Pennsylvania Association of Community Bankers	Independent Banks of South Carolina
Independent Community Bankers of South Dakota	Tennessee Bankers Association
Independent Bankers Association of Texas	Vermont Bankers Association
Virginia Association of Community Banks	Community Bankers of Washington
Community Bankers of West Virginia	Wisconsin Bankers Association
Wyoming Bankers Association	