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National Association of Federally-Insured Credit Unions

May 14, 2021

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

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

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

Re: Bank and Credit Union Mergers

Dear Chairwoman Waters, Chairman Brown, Ranking Member McHenry, and Ranking Member Toomey:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in response to a recent letter to you from the American Bankers Association (ABA) regarding the mergers of banks and credit unions.

In their letter to you, the ABA continues to misrepresent the facts on these types of transactions. First and foremost, it is important to recognize that bank-credit union mergers are voluntary, market-based transactions that require a community banks' board of directors to vote on selling to a credit union. These are not "hostile" takeovers. *The bank is the one that ultimately makes the decision to sell to, and merge with, a credit union.* Perhaps, ABA's concerns would be better addressed by sending a letter to their members asking why they are choosing credit unions over banks.

Bank and credit union mergers are typically a win-win for a local community that may lose its community-focused financial services, or even local employees and branches, if a mega-bank buys the local community bank. Credit union-community bank mergers often mean employees retain jobs and branches remain open with a focus on the members in the community. These mergers also cannot occur without approval from both bank and credit union regulators. This is a power that the National Credit Union Administration (NCUA) takes seriously as evidenced by their work on rulemaking in this area last year. Furthermore, credit unions that merge with a bank retain their credit union characteristics and are still subject to strict statutory prohibitions and limits on powers as set out in the *Federal Credit Union Act*, including field of membership requirements for the newly acquired bank customers, limits on business lending, a usury ceiling, and the capital limitations of credit unions.

While the ABA uses the letter to attack the tax status of credit unions, what they do not tell you is that these mergers are often purchase and assumption transactions (if the bank is a C-corporation, which is most common) and are subject to taxation at the bank level (unlike bank-to-bank transactions, which are often stock transactions). We estimate that over $100 million in taxes have been paid in the past several years due to these transactions. Additionally, the credit union actually pays many taxes, such as local property taxes and payroll taxes when the former bank remains open as a credit union. ABA's ongoing attacks on the credit union tax exemption continue to ring hollow.

In their letter, the ABA also implies that the growth in the credit union industry means that some credit unions are now no different than banks. They are wrong. We urge you to visit https://www.nafcu.org/cu-difference to help set the record straight on how credit unions are different.

Additionally, it is ironic that the ABA calls for credit unions to be subject to the Community Reinvestment Act (CRA) at the same time they are seeking to lessen the CRA impact on banks. They want you to forget that CRA was adopted as a punitive measure to punish specific bad actors – namely banks and thrifts – for engaging in discriminatory practices such as redlining and disinvestment. Credit unions were not included under CRA because there has never been any evidence that credit unions have engaged in these illegal and abhorrent activities. Credit unions can only take deposits from and make loans to their membership. The credit union commitment to their members and the communities they serve was most recently demonstrated with the Small Business Administration's (SBA) Paycheck Protection Program (PPP), where a number of banks turned away a number of main street businesses as too small, while credit unions stepped in to help them. The average credit union PPP loan size in 2020 was $50,000 while the average bank loan was over $100,000. The credit union commitment to serving all is also seen in the fact that there are over three times as many minority depository institution (MDI) credit unions as MDI banks

The truth is that while banking trade groups like ABA have called on Congress to change the tax status of credit unions, they fail to disclose that the banking industry received tens of billions of dollars in annual tax breaks from the *Tax Cuts and Jobs Act*. They also fail to point out that nearly one-third of all banks are Subchapter S corporations and do not pay corporate income taxes themselves. These annual tax breaks for banks far outpace the annual tax expenditure of the credit union tax exemption.

The real issue is that it is difficult to be a community financial institution today. Regulatory burdens and competition from big banks and unregulated actors entering the financial services space make it hard to survive. Many institutions, whether banks or credit unions, need to grow to survive. One avenue for growth is mergers – whether bank-bank, credit union-credit union, or credit union-bank. The fact is that credit union-bank mergers remain a small percentage of overall mergers among financial institutions. There have also been cases where the bank acquires a credit union and is the surviving institution. A top priority of NAFCU is to ensure that there is an environment where credit unions can grow, thrive, and continue to serve the nearly 125 million Americans that are credit union members today. We look forward to continuing to work with you to achieve that goal.

Thank you for your attention to this issue and for allowing us to set the record straight. Should you have any questions or require any additional information, please contact me or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

B. Dan Berger
President and CEO

cc: Members of the House Financial Services Committee
Members of the Senate Banking Committee