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National Association of Federally-Insured Credit Unions

B. Dan Berger
President & Chief Executive Officer

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The Honorable Janet L. Yellen
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: Credit Union and Bank Mergers

Dear Secretary Yellen:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you to highlight the benefits that credit unions provide to their communities and dispel falsehoods and inaccuracies in a recent letter to you from the Independent Community Bankers of America (ICBA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 125 million consumers with personal and small business financial service products. Bank and credit union mergers are voluntary, market-based transactions that require a community bank's board of directors to vote to sell to a credit union. *To be clear, the bank makes the ultimate decision to sell to, and merge with, a credit union*. These transactions are a far cry from "hostile takeovers."

ICBA's complaints about the "weaponization" of the credit union tax exemption are nothing more than a Trojan horse, distracting from their real aim—eliminating competition for community banks. These efforts should be ignored as credit unions continue to provide exceptional products and services for their members and communities, while community banks continue to cut corners and put the interests of consumers and their communities second after shareholder profits. Credit unions always put their members first and have continuously shown the positive impacts they have on their communities.

The Credit Union Difference

In 2019, the Federal Reserve published a study detailing the dramatic decline in bank branches in rural areas.[1] The study showed that 7 percent of bank branches were lost between the years 2012 and 2017 and that number has grown to 11 percent through 2019. Losses are concentrated among large banks, which lost 14 percent of their total branches, compared to 6 percent for community banks. Credit unions, on the other hand, were the only financial institution that added branches in both rural and urban areas, demonstrating credit unions' commitment to their members and serving underserved communities.

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[1] *Perspectives from Main Street: Bank Branch Access in Rural Communities*, The Federal Reserve (2019), https://www.federalreserve.gov/publications/november-2019-bank-branch-access-in-rural-communities.htm.

TABLE 2.1: BRANCH CHANGES BETWEEN 2012 AND 2019					
Institution Type	County Type	Starting branches	Ending branches	Net change	Percent Change
Large Banks	Urban	48,707	42,298	-6,409	-13
	Rural	6,479	5,267	-1,212	-19
Community Banks	Urban	23,798	22,240	-1,558	-7
	Rural	13,890	13,137	-753	-5
Credit Unions	Urban	17,513	17,599	+86	+0
	Rural	3,458	3,537	+79	+2

Notes: Urban counties are those that were part of a metropolitan statistical area in 2017. Excludes U.S. territories as well as counties that have undergone code changes. Bank branches are assigned according to the institution it last reported under. Community banks are those with assets below $10 billion in June 2019 or the last reported total. Bank branches include only those coded as types 11 or 12 in the FDIC data.

In fact, credit unions continue to maintain and even expand branch presence to meet the needs of their communities, accounting for roughly one in five depository branches in the United States. Although the credit union industry is consolidating at a similar pace as banks, the same is not true for branches. As outlined in the table above, from 2012 through 2019, credit unions added offices to their branch network. Even though the additions were modest, this gain nevertheless stands in stark contrast with banks.

The effect of bank branch closings in rural and urban communities on consumers has been compounded by statutory limitations which prevent credit unions from effectively filling the void. In 1998, as part of the *Credit Union Membership Access Act* (CUMAA), Congress provided federal credit unions with the ability to add underserved areas to their fields of membership. However, subsequent legal challenges by the banking industry over the reading of the statute led the National Credit Union Administration (NCUA) to limit this authority to only multiple common bond credit unions in 2006. To preserve physical branches and access to affordable financial services, NAFCU has supported legislative amendments to the *Federal Credit Union Act* (FCU Act) that would permit all federal credit unions to add underserved areas to their field of membership. Specifically, NAFCU supports the discussion draft of the "Expanding Financial Access for Underserved Communities Act."

The biggest difference between banks and credit unions is that credit unions put their members and their communities first. The credit union industry is more committed to diversity and inclusion than banks as over 51 percent of credit union CEOs are female compared to merely 5 percent at banks. Additionally, consumers consistently rank their satisfaction with credit unions higher than that of community banks, regional banks, and national banks. The credit union difference is clear.

The Truth About Credit Union and Bank Mergers or Combination Transactions

The merger process is transparent and already supervised by both the NCUA and the Federal Deposit Insurance Corporation (FDIC), which must both independently approve a merger request before it becomes final. A credit union merger with a bank is closely scrutinized by the NCUA because credit unions are subject to strict field of membership rules limiting who may and may not become a member. Credit unions are also subject to other statutory limitations, including a prohibition on holding capital other than as retained earnings, so a merged-bank's stock must be divested. Business lending is also capped at 12.25 percent of assets, thus there may be instances where a bank's loan portfolio cannot be assimilated into the credit union. Additionally, the NCUA will soon finalize a rule regarding credit union and bank mergers, or as they are more accurately termed, combination transactions, to provide more parameters and even transparency in the process.[2]

In the current phase of financial institution consolidation, there are instances where banks, which answer to shareholders, are unable to remain economically viable. To avoid a bank failure, a merger with a credit union can ensure access to financial services is maintained for an established consumer base. If a merger with a credit union can avoid a banking desert, or continue to serve an underserved market, then consumers benefit and the choice is clear—credit unions are better able to serve their communities because of their statutory mission and commitment to members.

Banks Behaving Badly

ICBA's attempt to establish an excise or "exit" tax on the credit unions that save communities by acquiring failing community banks is simply a ruse to distract from the fact that countless banks continue to face large fines for their anti-consumer behaviors. Since the financial crisis, banks have racked up around $243 billion in fines. In 2020 alone, banks amassed $4.2 billion in fines for assisting in tax evasion. *Bank Secrecy Act* and Anti-Money Laundering compliance-related fines mostly fell on Goldman Sachs, but Citibank was also fined a $400 million civil money penalty.[3]

Ironically, in many cases, banks are permitted to take tax deductions on fines imposed for their wrongdoings.[4] Some of the largest settlements between banks and the U.S. Department of Justice related to consumer abuses from the financial crisis resulted in murky deals that did not specify how compensation and restitution, the bulk of these settlements, should be treated for tax purposes.[5] The ambiguity in these settlements and failure to specify penalties as non-deductible allowed banks to reduce their future tax bills by billions of dollars, in some cases.[6] Again, banks continue to use any means necessary to maximize profits for shareholders at the expense of consumers.

Benefits of the Credit Union Tax Exemption

Although ICBA asks for a new exit tax to capture "the future value of the tax revenue that is lost once the business activity of the acquired bank becomes tax exempt," they fail to disclose that

[2] Combination Transactions with Non-Credit Unions; Credit Union Asset Acquisitions, 85 Fed. Reg. 5336 (proposed Jan. 30, 2020) (to be codified at 12 CFR 708).
[3] *Up Close and Personal – The Year of Personal Accountability: A Global Research Report on Financial Institution Fines and Enforcement Actions, North American Edition*, Fenergo (2021), https://www.fenergo.com/report/nam-regulatory-fines-report-2020/.
[4] Phineas Baxandall & Michelle Surka, *Settling for a Lack of Accountability? Which Federal Agencies Allow Companies to Write Off Out-of-Court Settlements as Tax Deductions, and Which are Transparent About It,* U.S. Public Interest Research Group Education Fund (2015), https://uspirg.org/sites/pirg/files/reports/USPIRG_SettlementsReport.pdf.
[5] *Id*. at 21.
[6] *Id*.

credit unions already pay local property taxes and payroll taxes when a former bank merges with a credit union. The proposed additional legislative actions outlined in ICBA's letter would only serve to dilute the economic benefits of the credit union tax exemption and harm consumers as a result. As not-for-profit, member-owned financial institutions, each dollar that credit unions earn is returned to their members in the form of lower rates, higher dividends, and other benefits. As credit unions already operate on tight margins, any additional expenses would only reduce the types of products and services credit unions can offer their members to help them achieve financial security and prosperity.

In fact, although ICBA refuses to acknowledge the benefits of the credit union tax exemption, the numbers speak for themselves. According to NAFCU's own independent study, the estimated benefit credit unions provide the economy totals roughly $16 billion a year, or $159 billion over 10 years.[7] The study shows that altering the tax status of credit unions would have a devastating impact not only on credit union members across the country, but also on consumers and small businesses in general. More specifically, removing the credit union tax exemption would cost the federal government $38 billion in lost income tax revenue over the next 10 years. Simply put, the credit union tax exemption helps grow the greater economy, create jobs, and deliver a net surplus in federal tax revenues.

What is most alarming is that banks continue to attack the credit union tax exemption while enjoying exorbitant tax breaks themselves. The banking industry received tens of billions of dollars in annual tax breaks from the *Tax Cuts and Jobs Act* (TCJA). The estimated benefit of the banking industry from the lower tax rates under the TCJA was about $20 billion in 2020. For community banks alone, the estimated benefit from lower tax rates under the TCJA amounted to $2.8 billion in 2020. Additionally, ICBA conveniently fails to point out that over one-third of all banks are Subchapter S corporations and do not pay a dime in corporate income taxes. These annual tax breaks for banks far outpace any tax revenue that would be gained from the proposed exit tax on credit union and bank mergers.

Conclusion

Thank you for your attention to this matter. If we can answer any questions or provide you with additional information about the credit union difference and the benefits credit unions provide to their communities, please do not hesitate to contact me or Ann Kossachev, NAFCU's Director of Regulatory Affairs, at 703-842-2212 or akossachev@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

[7] Credit Union Tax Exemption, NAFCU, www.nafcu.org/cutaxexemption.