

April 4, 2023

The Honorable Patrick McHenry  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

**Re: Request for Oversight Hearing on the National Credit Union Administration**

Dear Chairman McHenry and Ranking Member Waters:

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 thank you for your emphasis on much-needed agency oversight in the 118<sup>th</sup> Congress. Financial Services Committee oversight will address concerns of community bankers with the Consumer Financial Protection Bureau (CFPB) and other agencies overstepping statutory authority and effectively creating policy through social media and other informal channels that circumvent the Administrative Procedures Act.

Consistent with your emphasis on oversight, we ask you to consider convening a hearing on the National Credit Union Administration (NCUA), an agency we believe routinely oversteps statutory authority, circumvents the will of Congress, and fails to hold the industry accountable for its consumer practices and mission to serve low- and moderate-income consumers. Unlike the banking agencies, the NCUA acts as an industry advocate and promoter, without regard to the broader financial ecosystem in which credit unions operate or the impact on small business borrowers and consumers. The result is a distorted, anti-competitive financial landscape that poorly serves the American people and our economic interests.

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.

Below we highlight themes that warrant the committee's attention.

**Field of Membership**

NCUA field of membership (FOM) rules distort the marketplace, promote acquisitions of banks and industry consolidation, and exceed the agency's statutory authority. We appreciate Chairman McHenry's opposition to legislation in the last Congress that would expand FOM. Below we quote from the then-minority's markup memo on H.R. 7003, the Expanding Access for Underserved Communities Act.

Currently, multiple common bond credit unions may cover underserved communities, regardless of geographic location. Moreover, low-income designated credit unions are already empowered to serve unbanked, underbanked, and low- and moderate-income populations and are not restricted by member business lending limits. This type of credit union is already permitted to serve non-members (public), and more than half of all credit unions already have a low-income designation.

This bill would expand the universe of credit unions eligible to serve underserved communities, including larger and wealthier credit unions. Yet, this expansion would come at the expense of other financial institutions.

As the minority noted, H.R. 7003 would have benefitted “larger and wealthier credit unions” and further expansion of FOM would come at the expense of other financial institutions. FOM has already expanded well beyond the parameters of the Federal Credit Union Act and the purpose of the credit union tax exemption.

Permissive NCUA rules chiefly benefit larger credit unions that serve higher-income populations. Weakening non-credit union financial institutions reduces competition and harms consumers. A hearing would be a good opportunity to examine these concerns in greater detail.

### **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 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”?

### **Consumer Protection and Disparate Fair Lending Enforcement**

In 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.”

The NCUA’s fair lending enforcement is not comparable to that of the banking regulators. For example, between 2013 and 2018, the number of NCUA fair lending exams and supervisory contacts decreased from 70 to 66, despite the industry’s significant growth during that 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. There is a high correlation of fair lending violations with low- and moderate-income areas.

### **Failed Oversight of Credit Union-Community Bank Acquisitions**

There has been a notable increase in credit union acquisitions of community banks, characterized in the media as a “bank buying spree.”<sup>1</sup> 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.

---

<sup>1</sup> 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.

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.

Pursuant to President Biden’s Executive Order on competition, the FDIC has issued a Request for Information to examine the impact of mergers and acquisitions of banks. The NCUA should undertake a similar effort, and we recommend that the Financial Services Committee exercise oversight over the agency’s failure to do so.

### **Closing**

We believe this letter sets forth compelling reasons for the Financial Services Committee to convene a hearing into the NCUA’s oversight of the credit union industry. Again, we appreciate your intention to conduct oversight of the federal banking agencies and the CFPB and ask that your oversight of the NCUA be no less rigorous. We believe that it would be appropriate to have a hearing dedicated to the NCUA to fully consider the concerns discussed above.

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

Independent Community Banks of  
North Dakota

Community Bankers Association of  
Oklahoma

Pennsylvania Association of  
Community Bankers

Independent Community Bankers of  
South Dakota

Independent Bankers Association of  
Texas

Virginia Association of Community  
Banks

Community Bankers of West Virginia

Wyoming Bankers Association

North Carolina Bankers Association

Community Bankers Association of Ohio

Oregon Bankers Association

Independent Banks of South Carolina

Tennessee Bankers Association

Vermont Bankers Association

Community Bankers of Washington

Wisconsin Bankers Association