

ICBA Talking Points on Credit Unions

HEADLINES

- Credit unions are violating the limits established by Congress to justify their tax exemption.
- Credit union acquisitions of community banks diminish tax revenues, consolidate the industry through tax subsidies, grow the publicly subsidized sector of the financial services industry, and increase the portion of the industry exempt from Community Reinvestment Act oversight.
- Congress should [hold hearings](#) to investigate the credit union tax exemption.
- Credit unions should not be able to use their tax subsidy to purchase taxpaying banks.
- Congress should impose an [“exit fee”](#) on credit unions’ bank acquisitions to capture the tax revenue lost due to these transactions.

FACTS WITH NUMBERS

- Credit union acquisitions of community banks and their branches have accelerated rapidly, with the past five years seeing approximately a 400% increase over the previous five years.
- Community banks led the financial response to the coronavirus pandemic, accounting for roughly 60% of Paycheck Protection Program loans and saving an estimated 49 million jobs.
- But the credit union tax exemption is contributing to the growing phenomenon of tax-subsidized credit unions buying taxpaying community banks.
- Further, the tax exemption allows credit unions to make inflated purchase offers well above the book value of acquired community banks.
- The credit union tax exemption dates to 1934, when Congress chartered credit unions as not-for-profit institutions to serve people of modest means with a “common bond” of occupation or association. But this nearly 100-year-old law hasn’t been updated since it was passed.
- While it took credit unions 106 years to hit the \$1 trillion asset threshold in 2015, they needed just six years to double in size and pass \$2 trillion in assets in 2021.

a. Taxpayer impact

- Credit union purchases of community banks—which [peaked in 2022](#) and continue to rise this year—is an alarming trend because credit unions don't pay taxes, unlike their tax-paying community bank targets.
- While community banks contributed over \$12 billion in tax revenue in 2020, the credit union industry enjoys a tax exemption worth nearly \$4 billion per year, based on the industry's net income.
- The federal tax exemption for nearly \$2.2 trillion in credit union assets continues to grow with each credit union-community bank acquisition because bank assets become tax exempt when bought by a credit union.
- While credit unions paid nothing in federal taxes last year, nurses, cashiers, and teachers had a total tax liability of more than \$38.2 billion, \$5.7 billion, and \$8.4 billion, respectively.

b. Consumer impact

- These deals not only hamper tax revenue, but also restrict access to financial services.
- For instance, they increase the portion of the financial services industry exempt from the Community Reinvestment Act (CRA), which assesses whether financial institutions are meeting the needs of low- and moderate-income communities.
- While the CRA applies to community banks and virtually every other depository institution, credit unions are fully exempt.
- Further, the credit union industry's regulator—the National Credit Union Administration—continues expanding the powers of the industry it is charged with regulating without adequately examining compliance with consumer protection directives.

c. Underserved community impact

- Credit unions were established a century ago to serve people of modest means with a common bond, but the data show they are falling short of that mission.
- Today, less than 10% of credit unions are physically located in an economically distressed community and only 13% are in low- and moderate-income areas, according to ICBA research.
- Community banks outnumber credit unions by a 2-1 margin in low-income or distressed communities and are more likely to lend in census tracts with above-average poverty and unemployment, according to Home Mortgage Disclosure Act data.

d. Small-business impact

- Further, these deals risk displacing a critical provider of capital to small businesses.
- The nation’s community banks account for roughly 60% of U.S. small-business loans and made 60% of federal Paycheck Protection Program loans to save an estimated 49 million jobs during the pandemic — outpacing credit union PPP lending by a factor of 16 to 1.

e. Consolidation impact

- Ultimately, credit union-community bank combinations further financial services consolidation, reducing the availability of locally based financial institutions in communities most in need of them.
- And community banks aren’t the only local institutions affected by this trend. Traditional credit unions themselves are declining as larger credit unions expand and account for more of the tax burden.
 - Credit unions in every asset category under \$500 million [lost](#) both members and loans in 2020.
 - Meanwhile, credit unions over \$1 billion [comprise](#) 9% of the industry but 76% of its tax exemption.
 - Representatives of smaller, community-based credit unions are beginning to [question the tax exemption](#) for the largest and most growth-oriented of these financial firms.

f. Transparency concerns

- These acquisitions [lack transparency](#), with credit union executives using their members’ savings to buy out bank owners in largely private deals.
- In fact, credit unions can leverage the savings from their tax exemption to make inflated offers for healthy institutions.

g. Cyber concerns

- Credit union acquisitions are also concerning because the industry’s regulator—the National Credit Union Administration—is not authorized to examine credit union third-party service providers for cyber risk.
- This means the NCUA does not have the same authority as bank regulators to supervise for cyber risk in the industry it is charged with regulating.

- NCUA Chairman Todd Harper [has called](#) the lack of authority a “regulatory blind spot” that means the agency doesn’t “necessarily know what is happening” with credit union cybersecurity and could leave them as the “soft underbelly” of the broader financial system.
- Fortunately, bipartisan legislation would allow the NCUA to directly examine and regulate credit union service organizations, core providers, and other large third-party service providers.
- The Improving Cybersecurity of Credit Unions Act—introduced during the last Congress by Sens. Jon Ossoff (D-Ga.), Cynthia Lummis (R-Wyo.), and Mark Warner (D-Va.)—would ensure the NCUA has the same authority as bank regulators to supervise for cyber risk.
- The bill is supported by the NCUA’s Harper and inspector general, the Government Accountability Office, the Financial Stability Oversight Council, and Senate Banking Committee Chairman Sherrod Brown (D-Ohio).

h. States leading momentum for policy review

- To counter the negative impact of these deals, policymakers in several states have begun responding.
 - Mississippi enacted a [law](#) requiring acquired bank assets to remain under the control of an FDIC-insured institution.
 - The Nebraska banking department separately [ruled](#) that only chartered financial institutions organized to do business in the state may participate in a cross-industry acquisition or merger — rejecting an attempted bank acquisition by an out-of-state credit union.
 - A Tennessee judge in 2022 [blocked](#) a credit union bank acquisition after the Tennessee Department of Financial Institutions said the acquisition agreement is prohibited under state law.
 - The Iowa Division of Banking in 2020 [denied](#) an acquisition, saying it would violate state law requiring that banks be sold to other banks, following a [similar ruling](#) by the Colorado State Banking Board.
 - Further, Colorado state lawmakers voted down [legislation](#) to allow credit unions to hold municipal deposits and other public funds.
 - Legislation in North Dakota to significantly expand the field of membership for the state’s tax-exempt credit unions was voted down by the state’s House of Representatives in 2023.

STORIES

National Credit Union Administration

- While many credit unions are virtually indistinguishable from taxpaying banks, the credit union industry’s federal regulator—the National Credit Union Administration—continues finding new

ways to increase the powers of the industry it is charged with regulating, calling into further question the justification for the tax exemption.

- The NCUA has allowed outside investors to profit from the credit union tax subsidy, repeatedly delayed capital requirements more than a decade after the financial crisis, and allowed credit unions to include wealthy suburbs of metropolitan areas in their fields of membership while leaving out their urban cores.
- Most recently, the NCUA has proposed deregulating for-profit companies owned by credit unions even though these companies are not supervised by the agency and are exempt from Federal Credit Union Act consumer protections.
- The NCUA has also repeatedly delayed implementing risk-based capital rules for large credit unions. In his dissent before taking over as NCUA chairman, board member Todd Harper noted that risk-based capital rules went into effect for banks years ago. "We are forgetting the past repeatedly, just like characters in Groundhog Day," he said.
- Harper has also [said](#) that some credit unions are "essentially eligible to anyone who wants to join them..." While Harper said this requires the NCUA to ensure credit unions are following through on their mission, this expansion of the industry's field-of-membership standards contradicts the industry's founding mission of serving people of modest means with a common bond.
- Harper also noted that the NCUA is the only financial services regulator that doesn't do a "deep dive" consumer compliance exam, which is increasingly important as credit unions consolidate, grow, and become more complex.
- Former NCUA Chairman and board member Mark McWatters has also [admitted](#) that the industry's fund insuring credit union deposits would be at risk without taxpayer subsidies. This admission underscores the need for Congress to review this sizable tax exemption.

RECOMMENDATIONS

- While states have started to respond, this is a matter of national importance, and taxpayers are entitled to know more about how the subsidy they fund is being used to underwrite financial services consolidation.
- With the number of credit union-bank acquisitions likely to continue increasing as the economy reopens, ICBA is advocating an ["exit fee"](#) on these acquisitions to capture the value of the tax revenue that is lost once the business activity of the acquired bank becomes tax-exempt.
- Further, Congress should also [hold hearings](#) to investigate the impact of this trend and the role of the credit union tax exemption and lax NCUA oversight.

- Lawmakers can get a firmer grasp on what has contributed to the growing acquisition trend by [requesting](#) a Government Accountability Office study on the evolution of the credit union industry and NCUA supervision.
- Congress should end the unwarranted federal tax subsidy of the credit union industry and/or promote increased tax parity between credit unions and community banks.
- Further, policymakers should apply Community Reinvestment Act requirements to credit unions comparable to and with the same asset-size distinctions as banks and thrifts, and states should prohibit the placement of public deposits in tax-exempt credit unions.
- There is precedent should Congress reconsider the credit union tax exemption. In 1951, Congress revoked the tax exemption for building and loan associations, cooperative banks, and mutual savings banks, finding that these institutions operated much like commercial banks and should be taxed accordingly.
- As policymakers work to support consumers, small businesses, and the taxpaying community banks that sustain local communities, their first stop should be reexamining the credit union tax exemption and NCUA's lax oversight.