



# TRANSFORMATION OF CREDIT UNIONS AND FARM CREDIT DRIVEN BY AN OUTDATED TAX CODE

## THE EMERGENCE OF MEGA CREDIT UNIONS AND A SURGE IN CREDIT UNION-BANK ACQUISITIONS

Federal credit unions are exempt from federal, state, and local taxes. This tax subsidy, which has outlived its original purpose, has created a wave of credit union purchases of community banks in recent years. A decade ago, there were only two to three such deals a year. In 2022, there were 15, and there is every indication that the trend will continue to strengthen. These deals erode the tax base as taxable activity in community banks is transformed into tax-exempt activity at credit unions.

Credit unions were chartered by Congress with a narrowly defined mission. An outdated tax code has transformed a credit union industry which once consisted of small institutions serving limited fields of membership and offering basic consumer financial products. Today, the industry is dominated by multi-billion-dollar institutions, national in scope, with broad commercial-lending powers and no effective check on their fields of membership. They fund shopping malls, real-estate developments, and other commercial ventures rather than fulfilling their statutory purpose of serving members of “modest means” who share a “common bond.” Given this transformation, their tax exemption is no longer justified.

There are 426 credit unions with assets of more than \$1 billion and 21 credit unions with assets of more than \$10 billion, the largest of which has more than \$150 billion in assets. Credit unions with more than \$1 billion in assets account for the largest share of the industry’s tax subsidy, 79 percent.



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## NEW, PERMISSIVE RULES WILL FURTHER TRANSFORM CREDIT UNIONS

The evolution of the credit union industry is the result not only of the tax code, but of permissive oversight and regulation from the National Credit Union Administration (NCUA), which has virtually dissolved field of membership limitations that underpin the common bond requirement, adopted loopholes to expand commercial lending powers, and, more recently, given credit unions authority to raise capital through the sale of subordinated debt securities to venture funds and other outside investors, in contradiction to credit unions' cooperative ownership structure. The NCUA has thwarted the intent of Congress. For years, Congress has debated these issues and decided not to make these changes. The NCUA's actions are transforming credit unions and causing irreparable harm to community banks, and their customers and communities. The NCUA is an industry advocate and cheerleader, not a regulator.

## SUPERVISION HAS SHORTCHANGED CREDIT UNION CONSUMERS

The NCUA's consumer compliance examination and supervision program has failed to keep pace with a changing industry or prioritize the protection of consumers in the way federal banking regulators do. This is evident by a sharp rise in consumer complaints received by the NCUA, the reduction in fair lending exams, and a trend of sinking consumer satisfaction with credit unions in recent surveys.

## FARM CREDIT SYSTEM CHARTERED BY CONGRESS FOR A NARROW PURPOSE

The Farm Credit System (FCS) is a government sponsored enterprise (GSE) chartered by Congress primarily to serve *bona fide* farmers and ranchers and a narrow group of farm-related businesses that provide on-farm services. FCS lenders leverage their tax and funding advantages as government sponsored enterprises (GSEs) to siphon the best loans away from community banks and disrupt rural communities. The FCS is the only GSE that competes directly against private sector, tax-paying lenders at the retail level. Due to its tax-free real estate lending, the FCS now has 22 percent more in agricultural loan volume than commercial banks, a significant increase since 2015 when banks held an advantage. In recent years FCS has sought to leverage these tax advantages into numerous **non-farm** lending powers to compete directly with commercial banks for **non-farm** customers.



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FCS was chartered by Congress with a narrowly defined mission in exchange for its GSE tax and funding advantages. However, in recent years FCS has sought numerous non-farm lending powers to compete directly with commercial banks for **non-farm** customers.

## **FARM CREDIT REGULATOR FLOUTING CONGRESSIONAL AUTHORIZATION**

FCS's compliant regulator, the Farm Credit Administration, has also sought to expand FCS activities through regulatory initiatives such as "investment bonds" and the "Rural Community Investments" regulation finalized in 2018. These initiatives provide authority for non-farm lending under the guise of "investments," though such lending goes beyond the constraints of the Farm

Credit Act. Additionally, the Farm Credit Council has proposed replacing the FCA's approval of these "investments" with blanket FCS authority to finance any investment. ICBA vigorously opposes the Farm Credit Council's proposal.

Recent proposals to allow the FCS to become the equivalent of rural commercial banks would devastate thousands of rural community banks that serve rural and remote areas of the U.S. Such proposals are another FCS-initiated effort to utilize GSE tax and funding advantages to expand beyond statutory lending constraints, ignore FCS's GSE mission of serving actual farmers and ranchers, and dramatically increase FCS institutions' profits and market share at the expense of the private sector.

## **REFORM AND REFOCUS THE FARM CREDIT SYSTEM**

Congress should, among other actions, reform and refocus the FCS by equalizing tax treatment between community banks and FCS lenders; prohibiting FCS non-farm lending including "similar entity" and other types of loans to large corporations; prohibiting FCS predatory, below-market pricing of loans; and enforcing prohibitions against FCS deposit-taking schemes.

## **MESSAGE FOR YOUR MEMBERS OF CONGRESS**

- Support review of the outdated tax code that has transformed the credit union industry.
- Support taxation of credit union-bank acquisitions to recapture the loss of future tax revenues.
- Support congressional oversight of the National Credit Union Administration.
- Return the FCS to its primary mission of serving bona-fide farmers and ranchers. Limit FCS investments to comply with the Farm Credit Act's lending authorities.
- Enact comparable tax relief for community banks as envisioned in the Access to Credit for our Rural Economy (ACRE) Act.