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National Association of Federally-Insured Credit Unions

January 31, 2020

The Honorable Michael Crapo
Chairman
Committee on Banking, Housing
& Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing
& Urban Affairs
United States Senate
Washington, DC 20510

Re: Bank and Credit Union Mergers

Dear Chairman Crapo and Ranking Member Brown:

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

In their letter to you, the ICBA 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, ICBA's concerns would be better addressed by sending a letter to their members asking why they are choosing credit unions over banks.

These mergers cannot occur without approval from both bank and credit union regulators. This is a power that the National Credit Union Administration (NCUA) takes seriously. Just last week, on January 23rd, the NCUA Board released a new proposed rule relating to these transactions for comment. We invite ICBA to participate in this comment process, rather than trying to end-run it straight to Congress.

Just yesterday, NCUA Chairman Rodney Hood published an editorial in *American Banker* on credit union and bank mergers, outlining the upsides to communities of such transactions and pledging that NCUA will "continue to monitor these transactions carefully." A copy of that editorial is attached.

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 national 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.

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*

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Union Act, including field of membership requirements for the newly acquired bank customers, limits on business lending and the capital limitations of credit unions.

While ICBA uses the letter to attack the tax status of credit unions, what they don't tell you is that these 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. ICBA's ongoing attacks on the credit union tax exemption continue to ring hollow.

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. 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 120 million Americans that are credit union members today. We look forward to continuing to work with the Committee to achieve that goal.

Thank you for your attention to this issue. We stand ready to work with the Committee as you continue to examine this important topic. 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,

A handwritten signature in black ink, appearing to read 'B. Dan Berger', with a stylized flourish at the end.

B. Dan Berger
President and CEO

cc: Members of the Senate Banking Committee

Attachment

BankThink Upsides of bank sales to credit unions

By [Rodney Hood](#)

• January 30 2020, 9:00am EST

In December, I testified before the House Financial Services Committee in my capacity as a financial industry regulator.

During questioning, several [committee members noted the trend](#), recently reported in the media, of credit unions “acquiring” banks. I was glad to take those questions, as I welcomed the opportunity to clarify this issue.

It is important to clear up the most common misperception of these transactions. When speaking of credit unions “acquiring” banks, these credit unions are actually purchasing bank assets and certain liabilities in market-based transactions. These purchases could include loans and deposits, but credit unions could not own bank stock, for example.

Some argue that these transactions [threaten the original mission](#) of credit unions, and because of this, credit unions no longer warrant their tax exemption. However, while credit unions are exempt from federal income taxes, they may still be subject to payroll taxes, property taxes and sales taxes.

Moreover, in instances where a credit union and bank transaction leads to continued or improved financial services for an underserved community, these transactions should be welcomed as a needed boost to financial inclusion efforts.

Data show the banks involved in these transactions are typically smaller institutions with lower profitability. These voluntary transactions are subject to regulatory oversight.

When a bank proposes to transfer its deposits to a federal credit union, the NCUA requires a two-step process to establish the membership status of the bank's former customers.

First, the federal credit union must confirm the bank customers are within the federal credit union's field of membership. Second, those customers must become full members of the federal credit union. (For state-chartered credit unions, the state regulatory agency determines field-of-membership eligibility and credit union membership.)

These are a relatively small number of transactions: Since 2012, there have been roughly 30 credit union and bank transactions. By comparison, there were about 250 acquisitions of smaller banks by larger banks in the last year alone. Yet very little is discussed about the potential effects of such acquisitions on competition and access to financial services.

This question of financial inclusion and access to financial services is critical. There needs to be a recognition that these transactions are occurring at a time when options for financial services are dwindling in far too many of our communities.

Credit union and bank transactions may be particularly beneficial for underserved and rural areas, which have seen a severe contraction in access to financial services over the last decade as financial institutions shut down branches.

In November 2019, [a Federal Reserve report](#) detailed the decline of banking services in many American counties from 2012-2017. The majority of U.S. counties lost bank branches during that time frame, but rural counties were particularly hard hit.

The Fed found that 40% of rural counties lost bank branches over that five-year span. The loss of access to financial services was felt particularly by African-American and low-income residents of the affected counties.

When communities lose access to financial services providers, it's like cutting off the oxygen to the local economy: small businesses suffer; jobs are lost; and consumers, particularly in low-income households, are more likely to turn to predatory lenders.

The National Credit Union Administration is taking steps to add clarity to the purchase and assumption process. At its Jan. 23 meeting, the NCUA board [proposed a new rule](#) to codify and clarify oversight of credit union transactions with any non-credit union entity.

Provisions of the proposed rule help protect all stakeholders affected by a potential transaction. This includes an express listing of the statutory requirements for such transactions, clearer direction on credit union membership requirements and other requirements aimed at ensuring full transparency and accountability.

In the meantime, the NCUA will continue to monitor these transactions carefully. And we will continue to take all prudential measures needed to ensure the ongoing safety and soundness of the federally insured credit union industry.

Banks and credit unions are part of the same financial ecosystem and seek to provide quality financial services to Americans. In a time when far too many American households are unbanked or underbanked — and when communities are suffering due to a loss of financial services providers — banks and credit unions should not be pitted against one another.

The top priority should be financial inclusion and access to regulated, affordable financial services.

Rodney Hood

Rodney Hood is the chairman of the National Credit Union Administration.

<https://www.americanbanker.com/opinion/upside-of-bank-sales-to-credit-unions>