

October 15, 2024

The Honorable Todd M. Harper
Chairman
National Credit Union Administration
1775 Duke Street
Arlington, VA 22314

Dear Chairman Harper:

The American Bankers Association (ABA) commends the National Credit Union Administration (NCUA) for its renewed focus on credit union transparency. As credit unions grow and become more complex, proper disclosure of pertinent information to credit union member-owners and the public gains importance. In addition to recent reporting changes for credit unions with more than \$1 billion in assets regarding fee practices,¹ a new proposal on executive compensation transparency for federal credit unions will provide greater accountability within the credit union system. With the White House Office of Management and Budget indicating that the NCUA may issue a Notice of Proposed Rulemaking as soon as this month,² we urge the NCUA to implement additional transparency requirements relating to the increasingly complex and concerning activities of some credit unions, namely merger transactions involving banks. Specifically, we urge the NCUA to require such credit unions to receive membership approval, disclose financial terms, and demonstrate how combinations with banks might impact consumers, communities, and taxpayers.

In 2007, the NCUA organized an Outreach Task Force in response to inquiries from Congress³ – and a subsequent report by the Government Accountability Office⁴ – on credit unions. Among other topics, the Task Force examined NCUA policies and procedures on senior executive compensation. Although state-chartered credit unions disclose compensation data for key employees through IRS Form 990 like most other nonprofit organizations, federal credit unions are exempt from doing so given their status as federal instrumentalities. In its 2008 report to the NCUA Board, the Task Force concluded that disclosure of senior executive compensation would be “consistent with prevalent public policy and should enhance accountability to the [credit union] members,” and align with “federal credit unions’ member-owned, democratically-controlled status.”⁵

Due to their cooperative structure, credit unions afford their members “the right to vote on strategic federal credit union decisions including the directors, mergers, and conversions.”⁶ Because the results of such votes can directly affect senior executive compensation, the “Task Force concluded members should know or have access to senior executive officer compensation information when deliberating on how to cast their vote.”⁷

¹ NCUA's Harper: Large credit unions will report overdraft data, AMERICAN BANKER (Feb. 6, 2024), <https://www.americanbanker.com/news/ncuas-harper-large-credit-unions-will-report-overdraft-data>.

² National Credit Union Administration RIN 3133-AF60, NCUA (Spring 2024), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=3133-AF60>.

³ *Review of Credit Union Tax Exemption: Hearing Before the Committee on Ways and Means*, 109th Cong. (Nov. 3, 2005), <https://www.govinfo.gov/content/pkg/CHRG-109hhr26372/html/CHRG-109hhr26372.htm>.

⁴ Government Accountability Office, *Credit Unions: Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements* (Nov. 30, 2006), <https://www.gao.gov/assets/gao-07-29.pdf>.

⁵ National Credit Union Administration, *Report to the NCUA Board from the Outreach Task Force (OTF)*, NCUA (February 26, 2008).

⁶ *Id.*

⁷ *Id.*

Given the importance of merger transactions in the life of an organization, transparency about the possible personal incentives of management related to the transaction is especially important.

While mergers between credit unions and the acquisitions of credit unions by banks require membership votes, the acquisitions of banks by credit unions do not.⁸ In December 2023, the NCUA's Director of the Office of Examination and Insurance stated in a memorandum to you that "a credit union's purchase of a bank is typically a strategic action to expand its geographic footprint or to grow a loan program."⁹ The memorandum noted that the NCUA approved 64 bank transactions with credit unions between 2011 and September 30, 2023, "a small portion of the overall consolidation occurring in the financial services marketplace."¹⁰

However, credit union acquisitions of banks now represent a much larger share of total transactions. According to an October 3, 2024 report from the *American Banker*, "about 90 bank sales were announced through September," and "credit union buyers were involved in nearly a fifth of the deals to date this year."¹¹ The 18 deals announced so far in 2024 have already eclipsed the record 16 set in 2022, and total bank assets targeted by credit unions so far this year – more than \$9 billion – have surpassed 2022's record \$5.15 billion.¹² *CNBC* also reported that you are aware of "12 more potential deals that are in the works."¹³

Credit unions have a statutory mission to serve those of modest means connected through a common bond in a local area. That mission of service, and their not-for-profit structure, has justified their exemption from most taxes and the *Community Reinvestment Act* (CRA) for decades. As growth-oriented credit unions pursue new markets and commercial lending via bank acquisitions, legislators, regulators, and even some within the credit union movement have raised objections.

To the detriment of credit union member-owners whose capital is used to finance these transactions, terms are rarely disclosed. For the few credit unions that have publicized such information, cash offers to bank shareholders ranged from \$26.2 million¹⁴ to \$231.2 million¹⁵ this year.

⁸ 12 C.F.R. § 708a.306(c).

⁹ National Credit Union Administration, *NCUA Response to Congressman French Hill's Questions on Credit Union Bank Transactions*, NCUA (Dec. 14, 2023), <https://ncua.gov/foia/library/ncua-response-congressman-french-hill-questions-credit-union-bank-transactions>.

¹⁰ *Id.*

¹¹ *OneAZ Credit Union's bank purchase break's all-time deal tally*, AMERICAN BANKER (Oct. 3, 2024), <https://www.americanbanker.com/creditunions/news/credit-union-bank-merger-oneaz-first-bank-yuma>.

¹² S&P Global Market Intelligence, *Credit union-bank deals reach another record-setting mark in 2024*, S&P Global (Aug. 26, 2024), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/credit-union-bank-deals-reach-another-record-setting-mark-in-2024-83003780>.

¹³ *What's behind the rise in credit union M&A*, CNBC (Sep. 3, 2024), <https://www.cnbc.com/video/2024/09/03/whats-behind-the-rise-in-credit-union-ma.html>.

¹⁴ *Rochester-Based ESL Federal Credit Union Announces Acquisition of Generations Bank*, PR NEWswire (Sep. 24, 2024), <https://www.prnewswire.com/news-releases/rochester-based-esl-federal-credit-union-announces-acquisition-of-generations-bank-302256293.html>.

¹⁵ *Global Credit Union and First Financial Northwest, Inc. Announce Agreement for Global Credit Union to Acquire First Financial Northwest Bank*, GLOBENEWSWIRE (Jan. 11, 2024), <https://www.globenewswire.com/en/news-release/2024/01/11/2808007/9361/en/Global-Credit-Union-and-First-Financial-Northwest-Inc-Announce-Agreement-for-Global-Credit-Union-to-Acquire-First-Financial-Northwest-Bank.html>.

In its newly released bank merger policy statement, the Federal Deposit Insurance Corporation (FDIC) acknowledged that acquisitions of banks by credit unions “may have a negative impact on state and local government budgets and communities, which could necessitate an increase in taxes.”¹⁶ The FDIC specified that it may require credit unions to “provide additional information to enable the FDIC to evaluate the convenience and needs statutory factor, as credit unions are not subject to the CRA.”¹⁷

Several states have also determined that credit unions are unable to acquire banks under state law. Mississippi and Tennessee have enacted legislation on this issue whereas other states have made regulatory determinations.

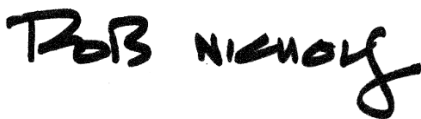
Although the NCUA issued a proposed rule on combination transactions with non-credit unions in January 2020 due to “a desire to add even more transparency,”¹⁸ it neglected to address the need for membership approval, disclosure of financial terms, or the possible ramifications for states and local communities given the eradication of certain tax and CRA obligations. Consumer protection disparities exist as well, which you have recognized.¹⁹

As you asserted earlier this year, “the people who manage the credit union, their interest doesn't always align with that of the members.”²⁰ Credit union member-owners and the public deserve transparency. By building on the Outreach Task Force’s work, you have an opportunity to better align the interests of credit union leaders, credit union members, and the public.

Indeed, we urge the NCUA to go beyond the Task Force’s recommendations on executive compensation transparency for federal credit unions and incorporate additional transparency requirements for credit unions acquiring banks. Such measures will help prevent conflicts of interest and help restore some accountability across the credit union industry.

Thank you for considering our recommendations and for your efforts to improve transparency within our financial system.

Sincerely,



cc: NCUA Vice Chairman Kyle S. Hauptman
NCUA Board Member Tanya F. Otsuka

¹⁶ Final Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 79125 (Sep. 27, 2024), <https://www.govinfo.gov/app/details/FR-2024-09-27/2024-22189>.

¹⁷ *Id.*

¹⁸ Proposed Rule on Combination Transactions with Non-Credit Unions; Credit Union Asset Acquisitions, 85 Fed. Reg. 5336 (Jan. 30, 2020), <https://www.federalregister.gov/documents/2020/01/30/2020-01538/combinations-with-non-credit-unions-credit-union-asset-acquisitions>.

¹⁹ Brookings Institution, *A Conversation with National Credit Union Administration Chairman Todd Harper*, BROOKINGS (Feb. 6, 2024), https://www.brookings.edu/wp-content/uploads/2024/01/20240206_FALK_AconversationwithNationalCreditUnionAdministration_WEBCAST.pdf.

²⁰ *Id.*