Credit Union National Association
CUNA

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The Honorable Orrin Hatch, Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Hatch:

On behalf of the Credit Union National Association (CUNA), I am writing in response to your letter to the National Credit Union Administration dated January 31, 2018. CUNA represents America's credit unions and their 110 million members. Credit unions are Americans' best option for financial services, and the credit union tax status represents one of the best investments that the government makes in its citizens.

In this letter, I will address the seven issues that will help answer questions raised by your letter to the NCUA.

It is perfectly acceptable for credit unions to evolve – the whole financial services industry looks different than it did in 1934. Credit unions need to remain relevant to consumers in order to fulfill their mission, and they're working to remain relevant within a charter that is overly restrictive and burdensome.

At the outset, it is important to establish that the original reason for the credit union tax exemption was based on the cooperative nature of credit unions. Credit unions today continue to exist as financial cooperatives, and their not-for-profit, tax- exempt status helps to assure that credit unions fulfill their role in the U.S. financial sector.

The Federal Credit Union Act of 1934 defines a federal credit union as a cooperative association chartered "for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes," language that has not changed since 1934. Cooperative banking was needed because consumers in the 1930's were not typically served by the commercial banking industry but rather by loan sharks.

The 1934 Senate report on the federal credit union bill stated: "Credit unions also have vast educational values. The fact that credit unions of working men and women, managed by fellow workers have come through the depression without failures, when banks have failed so notably, is a tribute to the worth of cooperative credit and indicates clearly the great potential value of rapid national credit union extension."

Credit unions continue to operate as democratically controlled mutual institutions, serving their members on a not-for-profit basis. Credit unions do not have separate groups of customers and stockholders with competing interests – obtaining reasonably priced financial services versus assuring good stock prices and returns. Rather than distributing net income among stockholders, most of a credit union's income is returned to members in the form of lower loan rates and fees, or higher yields on savings (and credit union dividends paid to members are, of course, taxed). Some earnings are retained by the credit union to comply with statutorily mandated net worth requirements and as a cushion to anticipate future needs.

Credit unions offering new products and services is merely a reflection of the ongoing change in technology and the financial services marketplace. Credit unions have evolved with banks to better serve the member and customer, offering checking accounts, debit cards and online account access. Keeping pace with member demands is something that credit unions have done and continue to do so. We embrace this evolution and government should not stymie such change. While the products and services look different than they were in 1934, the structure and mission of credit unions remain the same.

As federally insured financial institutions, credit unions need to be able to attract and retain high quality talent. Unlike for-profit banks, credit unions cannot issue stock or stock options as part of compensation packages. This should be taken into consideration when evaluating credit union executive compensation.

Executive compensation is decided by the board of directors of each credit union. Credit unions are very different from other tax-exempt organizations that currently are of possible concern. Charities collect money from the public to carry out their charitable missions – without direct, on-going accountability to the specific contributors. Credit union are not collecting money from the general public, but are cooperatives with a membership base. While the general public contributing to a charity can only hope that the charity is using the money wisely and efficiently, a credit union is managed by a board, elected from and accountable to the membership, who oversee the operations of the credit union and determine executive compensation and oversee the overall compensation budget of the credit union. Moreover, unlike charities, credit unions are closely supervised and examined by federal and state government agencies.

Credit union awareness is key to fulfilling the credit union mission. Sponsorships of all levels demonstrate commitment to the community and raise awareness of the availability of safe and affordable financial services. It is in consumers interest to know that there is a credit union option available.

Public awareness of credit unions and the safe and affordable financial services they provide their local communities are key to fulfilling the credit union mission. In a voter survey, more than a quarter of Americans (27%) were unaware of their eligibility for credit union membership. Public awareness campaigns in a given community, including sponsorship opportunities, ensure that consumers are made aware of the affordable, pro-consumer financial services option that credit unions provide in local markets.

Community charter application rejections by the NCUA are likely low because of the work credit unions do with NCUA staff prior to developing proposals for field of membership (FOM) changes.

Your letter posed the question, "What data does the NCUA retain on community charters that have been rejected for having too broad of a geographic field of membership?" In addition to my comments above, community credit unions must develop a detailed and practical business plan. The plan must focus on how the credit union serves the entire community. Community credit unions are expected to regularly "review and to follow…the business plan" which is also subject to review by NCUA examiners.

Throughout most of their history, credit unions have actually been hamstrung in their efforts to serve members of modest means because field of membership rules generally restricted eligibility to occupational groups. It is only in the past couple of decades that smaller employee groups because eligible for credit union service, and even more recently that community charters became relatively accessible for credit unions.

Another issue is how NCUA views "local" as the term applies to the area a community credit union may serve. The fact remains that Congress specifically authorized NCUA to prescribe a regulation defining "well-defined local community" for credit unions that seek to serve a community. NCUA was given this task because it has the relevant expertise developed over decades of implementing field of membership issues.

Community credit unions must meet all legal requirements, including being well-defined by specific geographic boundaries. Under NCUA's policies, "If NCUA does not find sufficient evidence of community interaction and common interests…additional documentation will be required" in order for NCUA to assess whether the community exists and may be rejected if all requirements are not met.

Credit unions pioneered credit life and credit disability insurance products so that the debt dies with the debtor.

The question of credit union offering and services to their members has been the subject of debate at the Internal Revenue Service (IRS). Such products deemed outside of the credit union charter have been subject to unrelated business income tax (UBIT), for state-chartered credit unions.

On March 24, 2014. the Internal Revenue Service essentially accepted the rulings in two court cases brought by credit unions, clearing the way for certain credit union products that the IRS had ruled were subject to UBIT.

The IRS stated specifically that revenue from several income-producing activities is deemed "substantially related income" and not subject to UBIT. Those activities are:

- Sale of checks/fees from a check printing company
- Debit card program's interchange fees
- Credit card program's interchange fees

- Interest from credit card loans
- ATM per-transaction fees from members
- Sale of collateral protection insurance
- Royalty income from the marketing of AD&D insurance (but not ordinary income from direct sales of such insurance)
- Credit life and credit disability insurance
- GAP auto insurance

Income from the last two items are not subject to UBIT if the products are sold to members.

Services offered by credit unions that are beyond the scope of their original mission are done through for-profit credit union services organizations, the profit of which is taxed.

As member owned institutions, credit unions endeavor to offer products and services that their members need and want. And as technology results in more and better offerings, credit unions must respond to meet their members' demands, so long as they permissible by law and regulation.

Over the years, NCUA, like the bank and thrift regulators, has on occasion amended its regulations to permit credit unions more flexibility to serve their members better. While NCUA has made incremental changes to the list of permissible activities for credit unions, Congress has not considered any comprehensive modernization of the Federal Credit Union Act in over 80 years.

By contrast, it is fair to note that the sweeping new authority Congress granted the banking system when it adopted the Gramm-Leach Bliley Act in 1999 does not apply to credit unions, with the exception of the privacy provisions. Under that Act, among other things, affiliations between banks, securities firms and insurance companies were facilitated. In addition, financial holding companies were authorized to engage in a range of activities, including any activity that the Federal Reserve Board determined was financial in nature or incidental to financial activities.

Even without Gramm-Leach-Bliley, credit unions lag far behind banks in the kinds of activities in which they can engage, notwithstanding the fact that credit unions may offer additional services to their membership through credit union service organizations. Credit unions may loan up to 1% of their assets to a CUSO or invest up to 1% of assets in such organizations. A 2001 U.S. Treasury study comparing credit unions with banks makes it clear credit unions face more operational restrictions than other institutions.

> *In general, federal credit unions have more limited powers than national banks and federal savings associations. Most notably, federal credit unions face stricter limitations on their commercial lending and securities activities. In addition, a usury ceiling prevents them from charging more than 18 percent on any loan, and the term of many types of loans may not extend beyond 12 years.*

The Treasury noted a number of activities that are not permissible for credit unions but are allowed for banks. These include the offering of trust accounts, the purchase or sale of derivatives, investments in corporate debt securities and other activities. Unlike banks, credit unions' investments are very limited and include government and agency securities, along with certain insurances of government-sponsored enterprises.

When a credit union purchases a for-profit bank, that transaction ensures that the community continues to receive safe and affordable financial services.
While such purchases are uncommon, a purchase of a bank by a credit union is done with strict regulatory oversight. Struggling banks that are purchased by credit unions actually help the banking system by limiting any loss from the bank's own Deposit Insurance Fund, managed by the Federal Deposit Insurance Corporation. In underserved areas, especially in poor rural or inner-city neighborhoods, the operational continuity of residents' primary financial institution is necessary for them to ensure automatic bill pay arrangements continue without interruption.

On behalf of America's credit unions and their 110 million members, thank you very much for your consideration of our views.

Sincerely,

Jim Nussle
President & CEO