ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA®

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Credit Union-Driven Consolidation and Non-Bank Competition Threaten Consumer Harm

The Independent Community Bankers of America, representing community banks across the nation with nearly 50,000 locations, appreciates the opportunity to provide this statement for the record for today's hearing titled: "The Future of Banking: How Consolidation, Non-Bank Competition, and Technology are Reshaping the Banking System." We appreciate the Committee raising the profile of fundamental questions that will determine the future of the American financial services landscape, and we are pleased to share the community bank perspective on these critical questions. **To ensure the hearing is comprehensive in scope, we ask that it also examine the emergence of multi-billion dollar credit unions, new credit union powers that go well beyond the scope of their original, tax-exempt mission, and recent trend of credit unions leveraging their tax-exemption to acquire community banks.**

ICBA believes that President Biden's recent Executive Order, "Promoting Competition in the American Economy," compels this broad examination. Tax-exempt credit union acquisitions of community banks exacerbate consolidation among financial institutions, create larger institutions, and result in branch closures. As the Executive Order notes: "Excessive consolidation raises costs for consumers, restricts credit for small businesses, and harms low-income communities." Because credit unions are exempt from the Community Reinvestment Act, bank acquisitions reduce the population of consumers who are protected by the CRA. More broadly, bank acquisitions flout the original purpose of the credit union tax exemption: to serve people of modest means. In July, a Michigan state-chartered purportedly "low-income" credit union announced the purchase at twice book value of a Florida bank specializing in aircraft financing for high-net-worth individuals. This is just one example in a trend that has increased sharply in recent years. There have been more than 100 credit union-bank purchases since 2003, 20 of which have occurred since 2019, and five of which have occurred in recent weeks. The first acquisition of a bank with more than $1 billion in assets, $1.6 billion Heritage Southeast Bank in Georgia, occurred in March of this year. We fully expect this trend to strengthen in the coming months and years unless Congress exercises appropriate oversight.

ICBA believes this acquisition trend is primarily driven by two factors. First, the credit union tax exemption creates inflated bank purchase offers. Second, the National Credit Union Administration's (NCUA's) permissive oversight of the credit union industry has allowed it to evolve far beyond its original tax-exempt mission. The agency has virtually dissolved field of membership limitations and, more recently, given credit unions authority to raise capital through the sale of subordinated debt securities to venture funds and other outside investors. This subordinated debt is being used to fund bank acquisitions.

As large credit unions – the largest now has assets of well over $100 billion – have prioritized rapid growth and non-traditional financial product offerings, the NCUA has failed to keep pace with the evolving character of the industry. Collectively, credit unions have added $1 trillion in assets in the last six years, and total industry assets recently surpassed $2 trillion. Today's hearing is an opportunity to update Congress's understanding of the industry and its impact on the American financial services landscape.

An NCUA that is truly independent of the industry it oversees, exercises robust supervision, and issues rules that are consistent with statutory authority is in the best interest of consumers, small businesses, and the American economy.

Industrial Loan Companies

The industrial loan company (ILC) has historically been limited and is offered by only a handful of states. A state

chartered ILC has the power to operate nationwide. Prior to 2020, the FDIC had not approved deposit insurance for a new ILC for more than 10 years. We urge Congress to reexamine the significant risks posed by the ILC charter.

The ILC loophole allows commercial companies to own financial institutions that are the functional equivalent of banks and effectively mix banking and commerce. The Dodd-Frank Act included a three-year moratorium on FDIC approval of deposit insurance for new ILCs. However, in the past two years, the FDIC approved the applications of Square and Nelnet. There are currently six applications pending before the agency, including applications from Rakuten and GM Financial, each of which should raise concerns about the mixing of banking and commerce, impartial allocation of credit, consumer privacy and risk to the taxpayer. We can expect more massive technology and social media companies to seek to exploit the ILC loophole. If this exploitation is allowed, it would shift the American financial landscape and give rise to a whole new dimension of risk, a threat not only to our prosperity and economic diversity but to consumer privacy and fraud on a massive scale. What's more, commercial owners of ILCs, unlike bank holding companies, are not subject to consolidated supervision by the Federal Reserve. This constitutes a dangerous gap in financial safety and soundness oversight and new risk to the FDIC insurance fund.

ICBA supports all efforts to close the dangerous ILC loophole including the "Close the ILC Loophole Act," sponsored by Rep. Jesús "Chuy" García, which would amend the Bank Holding Company Act to remove the exemption for ILCs from the definition of a bank with a one-year transition period, thereby permanently closing the ILC loophole. Currently pending applications that may be approved within the next two years would also be grandfathered, though a two-thirds vote of the FDIC Board would be required for approval. ICBA has a number of suggestions for improving the Act, which we are sharing directly with Rep. García.

ICBA would also support a moratorium on ILC applications so that Congress can consider permanent closure of the loophole. The "Bank Charter Review Act," introduced in the last Congress, would create a three-year moratorium on the approval of deposit insurance applications for new ILCs and require and General Accountability Office to carry out a study of various federal and state banking charters. As you know, the Dodd-Frank Act created a three-year moratorium.

De Novo Charters Needed to Offset Consolidation

ICBA supports the Promoting New and Diverse Depository Institutions Act (H.R. 4590), sponsored by Rep. Jake Auchincloss, which would require the Federal banking regulators to conduct a joint study to assess the challenges faced by proposed depository institutions, including proposed minority depository institutions (MDIs), seeking de novo depository institution charters and to provide legislative recommendations to help these proposed institutions successfully obtain charters.

There has been a dearth of de novo charters in the past decade. An infusion of new charters is needed to offset consolidation in the banking sector and create a competitive landscape that will benefit consumers and small businesses. New minority community bank charters in particular will promote inclusiveness and prosperity in vulnerable, hard-to-reach communities and reduce the unbanked population.

Concrete, actionable proposals are needed to turn the tide of stagnant de novo bank formation. ICBA supports measures to spur the creation of de novo banks, such as phasing in capital standards for de novo banks over a period of three years and allowing for greater flexibility to modify the de novo business plan as conditions warrant. Start-up capital is often the greatest impediment to forming a new bank, and these provisions, among others, would help spur the creation of de novos, including MDIs.

ICBA supports the Promoting Access to Capital in Underbanked Communities Act of 2021 (H.R. 2561), sponsored by Rep. Andy Barr, which would lower the primary barrier to the creation of de novo community banks by providing a three-year phase in of capital standards, a three-year phase in of the Community Bank Leverage ratio for rural community banks, and allow for business plan modification, among other provisions. We urge this committee's support for this important legislation to promote competition in financial services.

Closing

To conclude, the American financial services landscape is shifting rapidly and irreversibly as a result of recent trends. These include the rapid growth of credit unions and credit union-bank acquisitions and the chartering of new industrial loan companies. New bank charters are needed to offset ongoing consolidation. We urge Congress to exercise its oversight authority to examine these trends and pass appropriate legislation.

Thank you for your consideration.