

## HOUSE IBL - TESTIMONY IN REGARD TO SENATE BILL NO. 2266

March 29, 2023

**To: *Committee Chairman Scott Louser and members of the committee***

**From: *Jeff Olson, President/CEO Dakota Credit Union Association***

The Dakota Credit Union Association (DakCU) represents 66 credit unions in North and South Dakota and over half a million credit union members. I am submitting this written testimony on behalf of our 18 state chartered credit unions and our 214,000 credit union members in North Dakota (ND).

North Dakota has a dual charter system. Today, 18 state chartered credit unions follow North Dakota Century Code as it pertains to credit union powers and under the oversight of the North Dakota Department of Financial Institutions (DFI). Our 14 federally chartered credit unions operate under the Federal Credit Union Act which is administered by the National Credit Union Administration (NCUA). Both ND state chartered credit unions and federally chartered credit unions are insured by the NCUA.

North Dakota state chartered credit unions are operating under a strict Field of Membership (FOM) statute, particularly in comparison to how federally chartered credit unions can operate. Since “open charter”<sup>1</sup> credit unions can only serve consumers who live within their FOM, our North Dakota credit unions are at a disadvantage, and many North Dakotans are being left behind or have limited options for locally owned and controlled financial services.

In 2005 there was an amendment passed that significantly impacted ND credit unions and amended NDCC 6-06-07. The current FOM statute reflects this 2005 amendment and provides: ***“Credit union membership is limited to groups having a common bond of occupation or association or to groups residing within a geographic area that does not extend beyond a seventy-five mile radius of the home office of the credit union. Except as provided by this***

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<sup>1</sup> “Open charter” means a credit union charter issued to serve groups within a geographical boundary. North Dakota Administrative Code 13-03-14-01 (5).

***section, an office of a credit union that has a field of membership defined by geography may not be located more than seventy-five miles from the credit union main office.”***

The amendment continues, ***“After December 31, 2004, a credit union may not establish and operate a new branch office that is outside the credit union's field of membership. A branch office may not expand the geographic field of membership of a credit union.”***

The bill that came out the 59<sup>th</sup> Legislative Assembly was SB 2263. It was introduced by Senator Espgaard, a retired bank president from Grand Forks. This bill was passed with very little input from the North Dakota credit union industry and contrary to what you have been told, it was not cooperatively negotiated or collaboratively agreed upon. In fact, a number of North Dakota credit unions spoke out in opposition to this bill in 2005. The final amendment was more of a “compromised surrender.” It deeply divided our movement, and it took years to heal and bring all our credit unions back into our collaborative system. The bill clearly was meant to curb credit union growth and expansion in the state.

Under SB 2263, as reflected in the current statute, the only way for North Dakota open charter credit unions to expand beyond the 75-mile radius is to merge with another credit union. ***“In the event of a merger between credit unions with different geographic fields of membership, the surviving credit union may expand the field of membership to include the geographic field of membership of the merged credit union.”***

There were 55 credit unions operating in the state in 2005, of which 35 were state chartered credit unions. Within three years (2006 to 2009) following the passage of this amendment, six state chartered credit unions were absorbed or merged into larger credit unions, all before the financial crisis hit. Today, we have half the number (18) state chartered credit unions operating in our state.

This restrictive statute in North Dakota has hobbled North Dakota credit unions, while neighboring states' credit unions experienced double-digit increases in membership growth ever since this bill was enacted 18 years ago. (Please refer to addenda A & B). Since 2005, North Dakota credit unions have experienced a nine percent growth in membership. In comparison, membership growth in both Minnesota and Montana have exceeded 25 percent, Nebraska 33

percent, South Dakota 35 percent, and Iowa has grown by 81 percent. It should also be noted that all but three of Iowa's 80 credit unions are state chartered.

Addendum B refers to the specific state FOM from those states. This information was compiled in 2018 by the National Association of State Credit Union Supervisors (NASCUS). The author of this study was Bruce Jolly, partner in Reed and Jolly PLLC in Oakton, VA. Mr. Jolly has advised us that he is currently updating this study for NASCUS, and he submitted his comments and support for SB 2266 during the Senate IBL hearing in January. I have included those comments in this written submission under addendum C. Please refer to the 3<sup>rd</sup> and 4<sup>th</sup> paragraphs in his comments, where Mr. Jolly shares:

- *I am also a proponent of parity between state and federally chartered financial institutions, having authored in 1975 for the American Banker's Association, a chapter on parity statutes which was the first such 50-state analysis of those laws.*
- *I am convinced the changes proposed in SB 2266 will strengthen the dual chartering system in North Dakota by allowing state-chartered credit unions to address their fields of membership much the way Federal credit unions may form and grow their fields of membership in North Dakota.*

Instead of promoting a cooperative industry, the current statute threatens small credit unions in addition to leaving some areas of North Dakota underserved by a credit union unless a federal credit union expands into that underserved area. In comparison, federally chartered community or "open charter" credit unions are allowed to serve Combined Statistical Areas (CSA) of up to 2.5 million people or up to one million people in rural districts. A federally chartered credit union in North Dakota (or one from another state) could potentially expand their FOM to include the entire state. While SB 2266 would not prevent this, it would put our North Dakota state chartered credit unions in a better position to serve more North Dakotans.

NCUA continually makes updates to its FOM rule to modernize and facilitate consumer access to credit unions and enhance their delivery of services. One of the recent changes to FOM included amendments in 2016 to address the lack of financial access which was especially prevalent in rural communities due to the withdrawal of national financial institutions over the last decade.

So, why don't North Dakota credit unions just convert to a federal charter then? That's a fair question, and I ask you to refer to two addenda I have attached in support of my testimony.

The first is a copy of comments made by NCUA Board Chair Todd Harper to North Dakota credit unions during a virtual call on September 14<sup>th</sup>, 2021. Please refer to the highlighted bullet points: (Addenda D & E).

- ***To protect the Fund, we (NCUA) are actively monitoring certain segments of the system, including credit unions closely connected to the oil and gas industry and the agricultural sectors, among others.***
- ***We are also focusing on credit unions with elevated risks, such as those with large concentrations of commercial real estate loans relative to assets.***

The second (Addendum E) is a draft of the agency's four-year strategic plan, see page 12, under Climate Related Financial Risks, and note their mention of the need for FOM expansion, something that isn't possible under current state laws:

- ***Changing weather patterns will disproportionately affect farming communities. Over time, climate change will likely affect the value of collateral, including homs and vehicles. To remain resilient credit unions may, need to consider adjustments to their fields of membership as well as the types of loan products they offer. Efforts to combat climate change will likely give rise to new regulations, potentially increasing costs for credit unions as they adapt and respond.***

A clear advantage of a state charter is having a local regulator that understands our state's rural economy and market trends. Because of the prompt reaction of our association with the help of the DFI Commissioner, North Dakota credit unions were able to engage Governor Burgum, Agriculture Commissioner Goehring, and our federal representatives, to convince the NCUA to revise their climate related risk statement altogether to avoid harsh exam oversight and additional scrutiny on agricultural lending, leading to clarification in their finalized strategic plan:

- ***The agency does not intend to micromanage credit union lending decisions for climate financial risk, including lending to family farms and others in the agricultural sector as well as businesses tied to the fossil fuel industry. The NCUA Board underscores that nothing in this Strategic Plan should be construed as discouraging activities related to agriculture or fossil fuels.***

Clearly, preserving the state charter keeps oversight local, from the policy making process of the North Dakota legislative assembly to the safety and soundness oversight by ND DFI, and the administrative rules adopted by the State Credit Union Board.

### **An unlevel playing field:**

This bill will give our member owned state-chartered credits unions much needed similarity with the Federal FOM rules.

### **Credit unions are exempt from state and federal income tax.**

North Dakota state chartered credit unions are cooperative, nonprofit associations organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.

These member-owned, member-controlled, nonprofit associations return their earnings back to their members. As nonprofits, with no source of secondary investment capital, North Dakota credit unions are exempt from federal and state income taxes.

### **Who really is paying the banks' taxes?**

In 2016, the American Legislative Exchange Council (ALEC) published a report to state lawmakers that said; *"Hardworking individual taxpayers pay the true burden of business taxes. Regardless of the political rhetoric, keep in mind the well documented economic axiom: Businesses don't pay taxes, people do."*

The credit union tax status is not based on the size of credit unions or the products and services that they offer; it is based on the credit union cooperative structure.

This rationale for the tax-exempt status has been ratified several times by Congress. 1935, 1936, 1937, 1951, 1998, 2005, 2008 and most recently in 2014 (House Ways and Means Committee tax reform proposal).

North Dakota credit unions pay property taxes, payroll taxes, and sales tax. North Dakota's 214,00 credit union members paid an estimated \$3.5 billion in state and federal income taxes in the in most recent tax year. In contrast, North Dakota credit unions provide nearly \$22 million in annual financial benefits to both members and non-members in the state in the following ways:

- \$.3 million in higher yields on savings

- \$1.8 million in lower fees (competition benefits non-members as well)
- \$19.8 million in lower loan rates (competition benefits non-members as well)
- Overall, because credit unions are in the marketplace there is \$8.5 million savings to non-members. (Addendum G)

If credit unions were taxed, the revenue would account for .03% of federal spending, funding federal government operations for ONLY 3.0 hours. (Addendum G)

**Community Reinvestment Act (CRA):** The Community Reinvestment Act was established by Congress in 1977. The Community Reinvestment Act (CRA) is a federal law enacted to encourage depository institutions to meet the credit needs of the communities where they are chartered, including low- and moderate-income neighborhoods.

Credit Unions are not subject to CRA. Congress has confirmed that “including credit unions under CRA is counter-intuitive given the member-owned nature of credit unions.”

**Credit unions are already serving low-income North Dakotans.**

Today, over 50 percent of North Dakota state chartered credit unions are designated low income and are already helping the underserved. In fact, North Dakota credit unions approved nearly 76 percent of mortgage applications from low/moderate income borrowers. (Addendum F)

**Unlevel playing field in market share – North Dakota banks own 90 percent of market.**

Community banks like to blame credit unions for their decline; however, national data clearly points to the largest 100 banks. Community banks had nearly 60 percent of the market share in 1992; today that market share is just under 17 percent while the largest 100 banking institutions has grown to nearly 75 percent. Over the same period, credit unions have only increased by 3 percent to today’s 8 percent market share. (Addendum G, source FDIC, NCUA, CUNA)

North Dakota banks have 90 percent of the market share. Today there are 428 branches in the state compared to 121 in-state credit union branches. In fact, there are almost as many out-of-state bank branches (88) as there are credit unions. (Addendum H)

**As of September 30, 2022, North Dakota banks reported \$41 billion in assets; North Dakota credit unions reported \$4.7 billion.**

In the House Government Operations Division committee hearing in January of this year, DFI Commissioner Kruse testified, “our banks are expanding outside of North Dakota borders.” Today, 30 percent of state chartered bank deposits come from out of state while assets from the state banks increased 17 percent. In fact, in the last decade alone, North Dakota bank assets have grown by 173 percent compared to credit unions’ 89 percent. (Addendum I)

SB 2266 would amend NDCC 6-06-07, Membership in a credit union, to ensure that North Dakota state chartered credit unions have similarity to federally chartered credit unions by allowing an individual to join an “open charter” credit union if they work or attend school in the geographic FOM, instead of being limited to “residing” as is the current statute. We are also asking the legislature to approve an increase in the FOM radius. Currently, state “open” chartered credit unions are limited to 75-mile radius from the home office; under SB 2266 before you today, state chartered credit unions could apply for an expansion up to 125-mile radius of any office of the credit union, allowing our more rural credit unions to expand and diversify their FOM to address safety and soundness issues.

We are preserving section 3 of NDCC 6-06-07 which allows a process for interested parties, including banks and credit unions, to submit comments, views or arguments concerning a FOM expansion application.

We are also bringing an amendment today to clarify potential interpretation issues. As already noted above, our intent is for an “open charter” credit union to be able to apply for a FOM expansion to their geographic area that does not extend beyond 125-mile radius of a credit union office. The first revision is to Page 1, line 14, replaces the second “or” with “and” which would allow a credit union to have a field of membership that could consist of both groups having a common bond of occupation and groups residing, working or attending school within a geographic area. Or in other words, a combined “closed” and “open” field of membership.

The intent of the next amendment with regard to Page 1, line 23, strike “geographic”, and Page 1, line 24, strike “geographic” is in the event a credit union with a field of membership based on a common bond of occupation or association, or “closed” charter merges with the either another “closed” charter or “open” charter credit union, the continuing credit union can expand its field of membership to include the field of membership of the merged credit union.

Most importantly, SB 2266 will preserve and expand financial choice for all North Dakotans. Our state's credit unions and our 214,000 members deserve an operating environment that is fair, modern, and able to compete with other financial service providers, especially at a time when many regional banks have shifted to less agricultural related lending.

Let's protect our North Dakota credit unions and financial choice for all North Dakotans. I humbly ask for the committee's do pass recommendation on SB 2266.

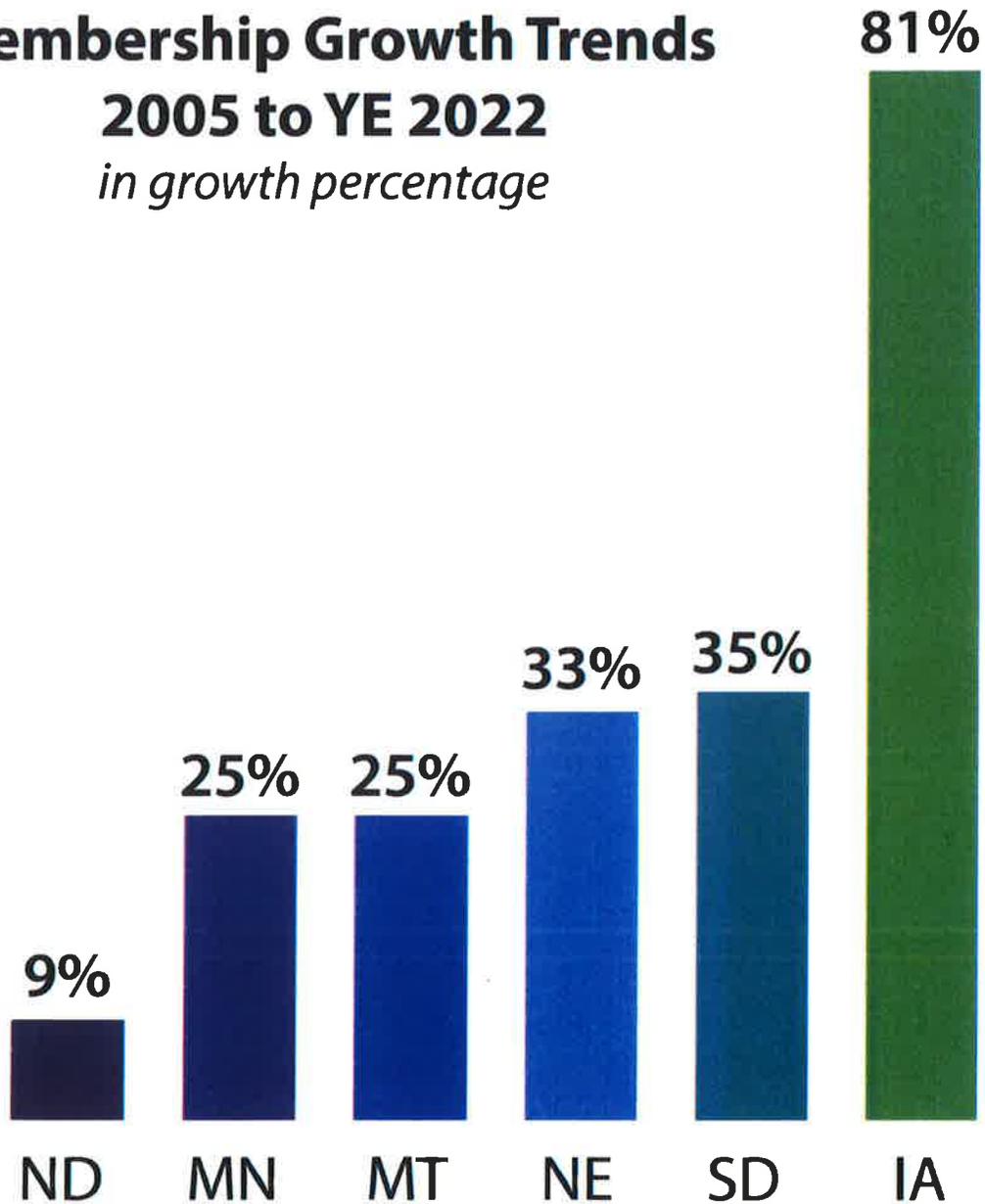
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeff Olson". The signature is written in a cursive, flowing style.

Jeff Olson

DakCU President/CEO

**Credit Union State  
Membership Growth Trends  
2005 to YE 2022**  
*in growth percentage*



***Data compiled by the Credit Union National Association  
& The National Credit Union Administration***



The National Voice of the State Credit Union System

### **Credit Union Field of Member – neighboring States.**

Compiled from by Bruce Jolly. Reed and Jolly PLLC –

Sponsored by NASCUS (National Association of State Credit Unions Supervisors, Arlington, VA)

#### **Minnesota:**

“persons within one or more groups or any combination of groups having a common bond of occupation, association, or community. "Community" means an identifiable local neighborhood, community, rural district, or other geographically well-defined area in which individuals have common interests or interact. "Well-defined" means the proposed area has specific geographic boundaries, including a school district, city, township, county, or clearly identifiable neighborhood, but does not include the state as a whole.”

\*includes live or work - Field of membership amendments, that parallel those allowed federal credit unions, are permitted based on parity provisions of Minnesota Statutes,

#### **Montana:**

“common bond of similar occupation, association, or interests or groups within a well-defined neighborhood, community, or rural district or employees of a common employer and members of the immediate family of such persons.”

#### **Nebraska:**

“groups of both large and small membership having a common bond of occupation or association, including religious, social, or educational groups, employees of a common employer, or members of a fraternal, religious, labor, farm, or educational organization and the members of the immediate families of such persons.”

\* includes community-wide or county-wide geographic memberships.

#### **South Dakota:**

All credit unions are federal chartered and follow the NCUA’s FOM guidelines. Today, SD credit unions could qualify for state-wide FOM under the NCUA’s Rural district guidelines.

#### **Iowa:**

“Residence within specified geographic boundaries - Community common bond shall be based on residence, employment or principal place of business in a specific geographic boundary - bylaw - "persons who reside in or who work for an entity in"

\*Changes in the common bond may be made by the board of directors.

## Addendum C

**From:** Bruce Jolly <[Bruce@reedandjolly.com](mailto:Bruce@reedandjolly.com)>

**Sent:** Friday, February 3, 2023 9:22 AM

**To:** [douglarsen@ndlegis.gov](mailto:douglarsen@ndlegis.gov) <[douglarsen@ndlegis.gov](mailto:douglarsen@ndlegis.gov)>

**Subject:** Senate Bill 2266 - to amend the Field of Membership provisions of the North Dakota Credit Union Law

Senator Doug Larsen, Chairman  
Senate Industry and Business Committee  
North Dakota Senate

Good morning, Chairman Larsen:

It has been called to my attention that a chart I prepared for the National Association of State Credit Union Supervisors (NASCUS) has been introduced as an exhibit to testimony relating to SB 2266, and my name listed as opposed to the proposed legislation. [https://www.ndlegis.gov/assembly/68-2023/regular/bill-testimony/bt2266.html?bill\\_year=2023&bill\\_number=2266](https://www.ndlegis.gov/assembly/68-2023/regular/bill-testimony/bt2266.html?bill_year=2023&bill_number=2266)

Please accept this communication as a request to be listed in support of the changes to the field of membership laws proposed in SB 2266.

I was the Expert Witness in the Senate's consideration of the Credit Union Membership Access Act, adopted by Congress which now forms the basis of the field of membership provisions of the Federal Credit Union Act. I testified in favor of those changes and have consistently supported field of membership proposals which allow credit unions, both state and federal, to reach those within a field of membership without regard to confining geographic boundaries.

I am familiar with North Dakota, having conducted compliance seminars for credit unions in Bismarck, Minot and Fargo upon occasion. I am also a proponent of parity between state and federally chartered financial institutions, having authored in 1975 for the American Banker's Association, a chapter on parity statutes which was the first such 50-state analysis of those laws.

I am convinced the changes proposed in SB 2266 will strengthen the dual chartering system in North Dakota by allowing state-chartered credit unions to address their fields of membership much the way Federal credit unions may form and grow their fields of membership in North Dakota.

I appreciate your attention to this request and would be pleased to answer any questions.

Best,  
Bruce O. Jolly, Jr., Esq.  
Reed & Jolly PLLC  
PO Box 3917  
Oakton, VA 22124  
Office: 703-241-5858  
Cell: 703-501-7962

If you have received this communication in error please notify Reed & Jolly PLLC at once at: [Bruce@ReedandJolly.com](mailto:Bruce@ReedandJolly.com) or by calling Bruce Jolly at 703-241-5858.

## Dakota Credit Union Association's Virtual Hike the Hill

The Honorable Todd M. Harper

Chairman, National Credit Union Administration (NCUA)

Tuesday, September 14, 2021

10:15 AM to 10:45 AM Eastern

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- I hope that all of you, your families, and your credit unions have safely emerged from what has been a truly extraordinary 18 months.
- Despite many challenges, credit unions have pressed forward, doing their part to support their members and the communities they serve.
- But I must caution everyone that we are not out of the woods just yet.

### The Economic Outlook

- Over the last few months, the near-term economic outlook has improved, and the credit union industry as a whole remains relatively strong.
- Despite the improving outlook, credit unions may still face a difficult environment in the months ahead.
- As supplemental unemployment benefits, forbearance programs, eviction moratoriums and other COVID-related relief efforts end – and, in fact, some of these things recently expired – many households will experience financial stress, especially those low-income households and communities of color that were acutely affected by the pandemic and recession.
- With many households likely to experience financial stress in the months ahead, I urge all of you to continue working with your members in need.
- To support your efforts, the NCUA has instructed its examiners to refrain from criticizing your efforts to provide prudent relief to members, when conducted in a reasonable manner with proper controls and management oversight.
- Additionally, targeted relief measures, like our recently finalized capitalization of interest rule, give you additional tools to assist your members.

### The NCUA's Response to COVID-19

- The top priority for the NCUA Board has been, and continues to be, ensuring the credit union system and the Share Insurance Fund are prepared to weather any economic fallout related to the pandemic.
- To protect the Fund, we are actively monitoring certain segments of the system, including credit unions closely connected to the oil and gas industry and the agricultural sectors, among others.
- We are also focusing on credit unions with elevated risks, such as those with large concentrations of commercial real estate loans relative to assets.
- And, as the pandemic evolves, the NCUA will continue to adjust its supervision and examination program to address potential risks to the Share Insurance Fund and the broader system.

### Consumer Financial Protection

- Equally vital to credit union members is consumer financial protection and fair and equitable access to credit.



union system assets and 7 percent of credit union system membership. By 2021, credit unions with less than \$50 million in assets represented 52 percent of all credit unions and accounted for only 2 percent of all credit union system assets and only 4 percent of credit union system membership.

If these long-running consolidation trends continue, there will be fewer credit unions in operation in 2026 and those that remain will be considerably larger and more complex. In the first quarter of 2021, there were 677 federally insured credit unions with assets of at least \$500 million, 37 percent more than five years earlier. These 677 credit unions represented just 13 percent of all credit unions but accounted for 78 percent of credit union system membership and 83 percent of credit union system assets. Large credit unions tend to offer more complex products, services, and investments. Increasingly complex institutions will pose management challenges for the institutions themselves as well as the NCUA, as the risks posed by individual, large institutions become more significant to the Share Insurance Fund.

### Climate-Related Financial Risks

Climate change is accelerating and the number – and cost – of climate-related natural disasters is rising. The economic effects of these events are clear. Each year, natural disasters like hurricanes, wildfires, droughts, and floods impose a substantial financial toll on households and businesses alike. The physical effects of climate change along with efforts to address climate change and transition to a low-carbon economy pose significant risks to the U.S. economy and the U.S. financial system.

Credit unions need to consider climate-related financial risks and how they could affect their membership and institutional performance. For instance, a credit union’s field of membership is often tied to a particular industry or community. Some industries, like the energy and auto industries, may be disproportionately affected by climate change and the transition away from fossil fuels towards renewable forms of energy. Changing weather patterns will disproportionately affect farming communities. Over time, climate change will likely affect the value of collateral, including homes and vehicles. To remain resilient credit unions may need to consider adjustments to their fields of membership as well as the types of loan products they offer. Efforts to combat climate change will likely give rise to new regulations, potentially increasing costs for credit unions as they adapt and respond.

Climate change presents several complex conceptual and practical challenges not only for credit unions but also for the NCUA. The agency will need to adapt its risk monitoring framework to account for climate-related threats to financial stability, the credit union system, and the Share Insurance Fund.

### Challenges in Critical Lending Markets

## Consumers choose North Dakota credit unions as their best financial partner

As not-for-profit, member-owned financial institutions, credit unions know and work for their members, not bank shareholders.

Consumers are 1.5x more likely to report feeling their credit union cares about their financial well-being compared to for-profit financial institutions. That's why America's member-owned, democratically-controlled credit unions remain an extremely popular financial alternative for more than 130 million people.

### North Dakota credit unions APPROVED

# 75.7%

of total mortgage applications from low/moderate income borrowers.

### Responding through local ownership and control

Subchapter S status allows many for-profit banks to enjoy a similar tax advantage to credit unions. However, while credit unions pass this saving to average consumers through features like lower fees and higher savings yields, Subchapter S banks pass the value of their tax advantage through to their shareholders.

**Nationally:**  
1,584 Subchapter S banking institutions account for \$681.0 billion in assets

**North Dakota:**  
44 Subchapter S banking institutions account for \$19.1 billion in assets

**U.S. Federal Revenue Losses due to Bank Subchapter S Election**

# \$17.8 BILLION

since 1997

Source: CUNA Estimates & FDIC

### North Dakota credit unions deliver big financial benefits

\$0.3M higher yields on savings

\$1.8M lower fees

\$19.8M lower loan rates

\$8.5M savings to non-members

North Dakota credit unions provide

**\$21.9M** in annual financial benefit.

If North Dakota banks were structured like credit unions, the **\$2.0 billion** they paid in shareholder dividends over the past decade would have instead been paid to small depositors.

### Serving America's tax payers

Taxing credit unions is a direct additional tax on consumers-owners who already bear substantial income tax burdens.

# 213,706

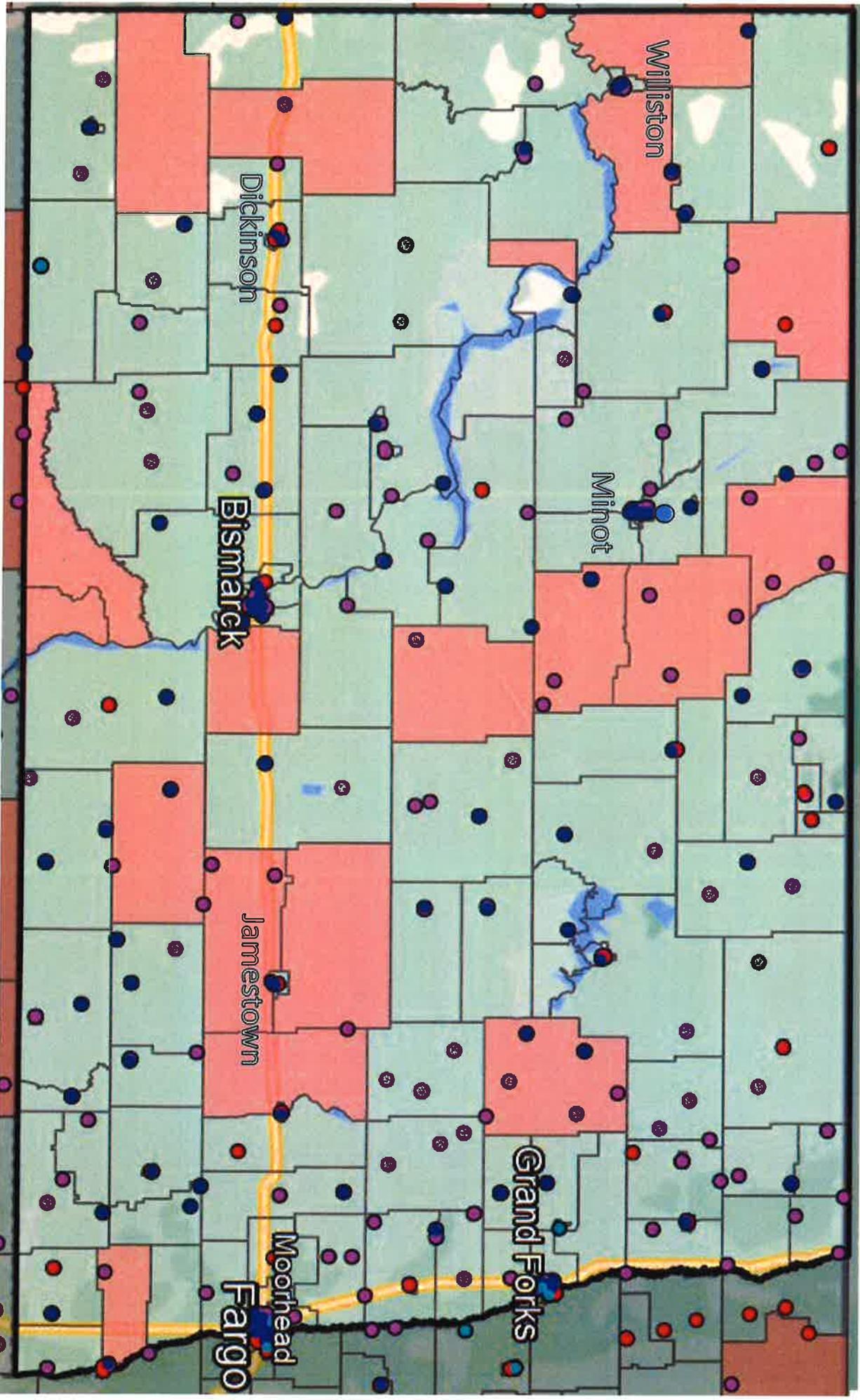
North Dakota credit union members paid an estimated **\$3.5 Billion** in state and federal income taxes in the most recent federal tax year.

If credit unions were taxed, the revenue would only account for **0.03%** of federal spending, funding federal government operations for **ONLY 3.0 hours**.

# Financial Institutions / Branches in North Dakota

## Addendum G

- Banking Desert
- NO Branches within 10 Miles of Population center
- ND Bank = 330
- Bank Out-of-State = 88
- Credit Union = 121
- Credit Union Out-of-State = 5
- Total Bank Branches = 428**
- Total Credit Union Branches = 126**



**2012 to 2022 North Dakota Bank to  
North Dakota Credit Union Asset Growth**  
*in growth percentage*

