

TESTIMONY IN REGARD TO SENATE BILL NO. 2266

January 30, 2023

To: *Committee Chairman Doug Larsen 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.

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”¹ 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.

North Dakota has a dual charter system. We have 18 state chartered credit unions that 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 13 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.

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***

¹ “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 59th Legislative Assembly was SB 2263. It was introduced by Senator Espegard, 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 HB 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, 6 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.

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. At the same time, as federal community charter 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 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 survive.

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 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 the two addendums I have attached in support of my testimony.

The first attachment is a copy of comments made by NCUA Board Chair Todd Harper to North Dakota credit unions during a virtual call on September 14th, 2021. Please refer to the highlighted bullet points:

- ***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 attachment 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 hms 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 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 on their original 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 rule procedures adopted by the State Credit Union Board.

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 state chartered credit unions could apply for an expansion up to 250 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 adding section 4 so that any state chartered credit union can apply for the same Field of Membership allowed to a federally chartered credit union, subject to authorization by the state credit union board. Our intent is to protect our North Dakota credits and allow them to keep pace with any large federally chartered credit unions that expand into our marketplace.

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 250 mile radius of a credit union office. The first revision is to clarify that this could be either the home or branch office. The next revision corrects an error as “geographic” on page 2 line 2 should have been originally struck out, providing that in the event of a merger between credit unions with different fields of membership, the surviving credit union may expand the FOM to include the FOM of the merged credit union. This impacts “closed charter”² credit unions as well as “open charter” credit unions in the event of mergers. Finally, the amendment clarifies that a branch office may expand the geographic FOM of a credit union.

Most importantly, SB 2266 will preserve and expand financial service 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,



Jeff Olson

DakCU President/CEO

² "Closed charter" means a credit union charter issued to serve groups having a common bond of occupation or association. North Dakota Administrative Code 13-03-14-01 (2).



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

- 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

PROPOSED AMENDMENT TO SB 2266

Page 1, line 18, after "of" insert "a"

Page 1, line 18, remove overstrike on "home"

Page 1, line 18, after "home" insert "or branch"

Page 1, line 18, remove overstrike on "office of"

Page 2, line 2, strike "geographic"

Page 2, line 4, remove overstrike on "A branch"

Page 2, line 5, remove overstrike on "office may"

Page 2, line 5, remove overstrike on "expand the geographic field of membership of a credit union"