



September 20, 2022

The Honorable Jack Reed
Chairman
Armed Services Committee
United States Senate
Washington, D.C. 20510

The Honorable James Inhofe
Ranking Member
Armed Services Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Reed and Ranking Member Inhofe,

As representatives of America's credit unions, we are writing regarding certain financial services provisions to the National Defense Authorization Act (NDAA) for Fiscal Year 2023. As the Senate Armed Services Committee considers amendments to the NDAA, we ask that you consider the views of our 135 million credit union members outlined below.

Oppose Third Party Vendor Authority Amendments

Our associations do not support the inclusion of *S.4698, the Improving Cybersecurity of Credit Unions Act*, introduced by Senator Jon Ossoff (D-GA) and amendment #668 of the House-passed NDAA, offered by Representative Bill Foster (D-IL), which includes the text of *H.R. 3958, the Strengthening Cybersecurity for the Financial Sector Act*. We would strongly oppose their inclusion as amendments to the final FY23 NDAA conference report and urge you to reject addressing this issue, which has not been properly vetted by the Senate Banking Committee, in the FY23 NDAA conference report.

For the better part of the last two decades, the National Credit Union Administration (NCUA) has exercised very effective regulation of Credit Union Service Organizations (CUSO) and third-party vendors without the authority, rendering the change proposed in both S. 4698 and amendment #668 a solution in search of a problem. The agency presently has extensive authority to request information regarding CUSOs from the credit union owners of the CUSO; and, the agency has broad authority to adjust the due diligence expectations credit unions must satisfy when engaging third party vendors. Today, the agency has the authority to obtain necessary information regarding third-parties from the credit unions it supervises.

We are concerned that extending additional supervisory authority over these firms to NCUA would require the agency to increase its budget to hire personnel with appropriate expertise. This is a concern to credit unions because credit union member resources fund the agency, and credit unions question why they should be required to send more of their members' savings to NCUA when the agency has demonstrated it is effectively regulating CUSOs and third-party vendors absent this authority. If Congress conveys this authority to NCUA, the agency should commit to funding this authority by reducing expenditures elsewhere.

While NCUA has requested this authority for several years, the agency has yet to develop a clear vision of the scope of this authority or how they would implement it. This has made it impossible for us to assess the impact it would have on credit union operations, including whether it would lead third-party vendors to increase the costs credit unions pay for their services. Would the agency only use this authority to supervise vendors related to information security or would all third-party vendors be subject to supervision? We have engaged NCUA on this issue to better understand how the agency

envisions using the authority it has requested from Congress. Given that the agency does not have this authority, we would not expect them to have precise information on their intentions; nevertheless, NCUA has proffered this request for several years, so the agency must have some idea of how it would be used. Sharing details of their intentions with Congress and the industry is necessary to understanding what to expect if NCUA is granted this authority, and it could help allay some of our concerns.

It is possible that extending this authority to NCUA could over time lead to a reduction in credit union costs if such supervision leads to reduced losses to the National Credit Union Share Insurance Fund (NCUSIF) or reduces credit unions due diligence requirements for engaging vendors subject to NCUA supervision. Not knowing how the agency will use this authority makes it difficult for us to see this as a probable outcome.

While cybersecurity is an important issue to our associations and our credit union members, we do not believe that NCUA has made a clear case on how this new authority would enhance cybersecurity beyond where it is now for credit unions. Thus, we strongly oppose inclusion of expanded NCUA vendor authority as an amendment to the NDAA.

Support the SAFE Banking Act

Additionally, our associations support the SAFE Banking Act to the NDAA that passed overwhelmingly as an amendment in the House of Representatives. In recent years, as various states have legalized cannabis for medicinal and recreational use, participants in the market have sought out financial institutions to provide safe and affordable financial services. In recent years, 36 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have approved medical marijuana and other cannabis programs.

We take no position on legalizing or decriminalizing medicinal or recreational cannabis at either the state or federal level. However, financial institutions operating in states where it is legal have businesses and individuals involved in the cannabis market who need access to traditional depository and lending services, the absence of which creates a significant public safety issue.

Additionally, even those financial institutions that choose not to bank the cannabis industry risk unknowingly serving cannabis-adjacent businesses in states where cannabis is legal. Indirect connections are often difficult to identify and avoid because, like any other industry, those offering cannabis-related services work with vendors and suppliers. Under current law, a financial institution that does business with any one of these indirectly affiliated entities could unknowingly violate federal law.

The SAFE Banking Act puts in place necessary protections to bring revenue from state-sanctioned cannabis businesses into the financial services mainstream. Legal cannabis businesses would no longer be forced to deal exclusively in cash, which makes them vulnerable to violent robbery and puts customers, employees, and the public at risk. The SAFE Banking Act will help keep our communities safe.

Support the Central Liquidity Facility Enhancement Act

In addition, we support inclusion of language for *H.R. 3958, the Central Liquidity Facility Enhancement Act*, which would make the provisions in the Coronavirus Aid, Relief and Economic Security (CARES) Act related to NCUA Central Liquidity Facility (CLF) permanent.

The CLF is a quasi-government corporation created to improve the financial stability of credit unions. This is accomplished by serving as a lender to credit unions experiencing unexpected liquidity



shortfalls. The CLF exists within the NCUA, and member credit unions own the facility. Prior to the enactment of the CARES Act, the CLF had the authority to borrow at 12 times the subscribed capital stock and surplus of the CLF. The CARES Act increased the multiplier from 12 to 16, meaning that, for every \$1 of capital and surplus, the CLF can now borrow \$16.

Additionally, the CARES Act made it easier for credit unions to join the CLF through their corporate credit union. These enhancements were originally set to expire in December 2020 but were extended through the end of 2021 through the Consolidated Appropriations Act of 2021.

The CARES Act provisions represent a recognition that existing law does not afford credit unions sufficient access to emergency liquidity during times of crisis. It is inefficient and could prove unsafe to allow the CLF to return to its previous level of borrowing authority and credit union access, which will happen if this legislation is not enacted. This will better protect credit unions from unexpected liquidity issues now and in the future.

Support the Fair Hiring in Banking

Lastly, our associations strongly support inclusion of H.R. 5911, the Fair Hiring in Banking Act, which would allow for greater employment opportunities at federally insured financial institutions by reducing barriers to employment based on past criminal offenses.

Credit unions are always in search of potential employees who are committed to the credit union mission of serving communities by improving financial well-being for all. We support efforts to reduce barriers to recruiting employees and retaining talent. This amendment expands employment opportunities at banks and credit unions by reducing barriers to employment based on past minor criminal offenses.

Thank you for your leadership and your consideration of our views.

Sincerely,

Handwritten signature of Jim Nussle in black ink.

Jim Nussle
President and CEO
CUNA

Handwritten signature of Anthony Hernandez in black ink.

Anthony Hernandez
President and CEO
DCUC

Handwritten signature of B. Dan Berger in black ink.

B. Dan Berger
President and CEO
NAFCU

Cc: Chairman Sherrod Brown, Ranking Member Toomey, Chairwoman Maxine Waters, Ranking Member Patrick McHenry