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National Association of Federally-Insured Credit Unions

May 12, 2022

The Honorable Bill Foster
Chairman
Committee on Financial Services
Task Force on Artificial Intelligence
U.S. House of Representatives
Washington, DC 20515

The Honorable Anthony Gonzalez
Ranking Member
Committee on Financial Services
Task Force on Artificial Intelligence
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing: "Keeping Up with the Codes – Using AI for Effective RegTech"

Dear Chairman Foster and Ranking Member Gonzalez:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to share NAFCU's views on granting the NCUA third-party vendor authority in conjunction with tomorrow's hearing. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 million consumers with personal and small business financial service products.

NAFCU and our member credit unions believe that cybersecurity, including the security of vendors that credit unions do business with, is an important issue. However, we are opposed to granting additional authority to the NCUA to examine third parties at this time. NAFCU believes in a strong NCUA, but we also believe that the NCUA should stay focused on where its expertise lies—regulating credit unions. It is important to note that credit unions fund the NCUA budget. Implementing such new authority for the NCUA would require significant expenditures by the agency. The history of the NCUA's budget growth has shown that these costs would ultimately be borne by credit unions and their 130 million members.

There are tools already in place for the agency to get access to information about vendors. We believe the agency's time and resources are better focused on reducing regulatory burden by coordinating efforts among the financial regulators. The NCUA sits on the Federal Financial Institutions Examination Council (FFIEC) with the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve. The FFIEC was created to coordinate examination findings and approaches in the name of consistency, and to avoid duplication.

In September 2020, the NCUA's Office of Inspector General (OIG) released a report titled "[Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations](#)" (the Report).¹ The Report makes several observations regarding the extent to which the NCUA may participate during joint exams of technology service providers (TSPs) led by FFIEC agencies. According to the Report, the other federal banking agencies have adopted a "guiding principles document" for vendor reviews that

¹ NCUA OIG, *Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations* (September 1, 2020), available at <https://www.ncua.gov/files/audit-reports/oig-audit-cusos-vendors-2020.pdf>.

prevents the NCUA from participating in examinations of technology service providers.² It is unclear whether this is the primary barrier the NCUA faces, and NAFCU understands that there have been occasions when the NCUA has obtained access to a joint examination report for a TSP.

The restrictions in the guiding principles document likely derive from a legal opinion letter produced by one or more of the banking agencies sometime between 2013-2014.³ The Report summarizes the legal opinion as concluding that the NCUA lacks the legal authority to accompany federal banking examiners during vendor reviews.⁴ The NCUA has not publicly shared this legal opinion letter. Accordingly, it is difficult to assess whether the NCUA's apparent inability to join FFIEC vendor exams is a true statutory limitation or merely a legal interpretation proffered by another federal banking agency.

A reassessment of the federal banking agencies' position on whether the NCUA can participate during joint exams of TSPs offers a more straightforward and simpler solution than granting the NCUA a new authority with potentially unlimited scope and budgetary impact. As a member of the FFIEC, the NCUA should be able to request the results of an examination of a core processor from the other regulators and not have to send another exam team from the NCUA into their business and duplicate an examination that has already taken place. This would seem to be an unnecessary burden on these small businesses. Additionally, if the NCUA did its own examination, the likelihood of finding anything the other regulators did not would seem to be close to nil.

Recognizing alternatives to vendor authority, Congress should require the NCUA to measure the costs and benefits of developing a parallel vendor supervision program versus obtaining vendor examination reports from the FFIEC agencies. The NCUA should also supply a clear description of the stated objectives and scope of a third-party supervision program. For example, it is unlikely the NCUA will have the resources to supervise every vendor, so a risk-based prioritization framework would need to be developed. The NCUA has offered little indication of how it would tailor such a policy in order to appropriately manage its administrative resources.

More troubling is the NCUA's lack of transparency regarding the overall potential budgetary impact of a new vendor supervision program. In one recent whitepaper, the agency equivocates on the issue of cost: "[w]hile this may increase the NCUA's budget due to the addition of more examiners with specific expertise, the agency does not expect a dramatic increase."⁵ Yet the NCUA provided no specifics or estimates. Furthermore, the NCUA has suggested that the availability of other federal banking agency resources will minimize the cost of implementing a vendor supervision program—a fact that seems to acknowledge that existing resources, rather than new NCUA exams, can generate useful supervisory data at lower cost.⁶

² *See id.* at 14.

³ *See id.* at 20.

⁴ *See id.*

⁵ NCUA, Third-Party Vendor Authority, 10 (March 2022).

⁶ *See id.*

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Page 3 of 3

Instead of granting the NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on exam findings on companies that have already been examined by other regulators. If that option is not available for the NCUA due to the decisions of other regulators, Congress should consider compelling the other regulators to share the information. This would seem to be a much more preferable route than raising costs on credit unions and their 130 million members for the creation of a duplicative NCUA program. Supervisory reports for core providers will likely have significant cross-applicability; according to the NCUA, approximately 5 core processor vendors control approximately 85 percent of credit union data.⁷ Use of existing reports for other TSPs would also address the NCUA's concerns without creating additional costs to credit unions or increasing regulatory burdens on credit unions and small businesses. As such, we urge Congress to oppose granting the NCUA this new authority and urge you to oppose H.R. 7022, the *Strengthening Cybersecurity for the Financial Sector Act of 2022*, in its current form.

Thank you for the opportunity to share our thoughts on this issue of great importance to credit unions. Should you have any questions or require additional information, please do not hesitate to contact me or Chad Adams, NAFCU's Senior Director of Legislative Affairs, at (703) 842-2265 or cadams@nafcu.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Committee

⁷ NCUA OIG, Audit of the NCUA's [Examination and Oversight Authority Over Credit Union Service Organizations](#) at 3.