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National Association of Federally-Insured Credit Unions

**Greg Mesack**  
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July 11, 2022

The Honorable Jim McGovern  
Chairman  
Committee on Rules  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Tom Cole  
Ranking Member  
Committee on Rules  
U.S. House of Representatives  
Washington, DC 20515

**Re: Rules Committee Consideration of H.R. 7900, the *National Defense Authorization Act for Fiscal Year 2023***

Dear Chairman McGovern and Ranking Member Cole:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on amendments before the Committee as you consider H.R. 7900, the *National Defense Authorization Act (NDAA) for Fiscal Year 2023*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 131 million consumers with personal and small business financial service products.

As the Committee considers the myriad of amendments filed to the NDAA, we urge you to follow the general principle of rejecting amendments that stand to place new burdens and hardships on our nation's credit unions or that threaten the ability of our nation's defense credit unions to serve the men and women of America's armed services and our nation's veterans. We generally support efforts that seek to enhance the ability of community institutions, such as credit unions, to serve their members and help those that others in the financial services community have left behind.

We would also like to share our thoughts on several specific amendments under consideration:

**Amendment #107, *Secure and Fair Enforcement (SAFE) Banking Act (Support)***

NAFCU supports amendment #107, authored by Representatives Perlmutter (CO), Velázquez (NY), Davidson (OH), Blumenauer (OR), Joyce (OH), and Lee (CA), which would add the *SAFE Banking Act* to the NDAA.

The vast majority of states have authorized varying degrees of marijuana use, ranging from limited medical use to decriminalization and recreational use at the state level. NAFCU has heard from a number of our member credit unions in these states that they are being approached by their members, or potential members, that have a small business in or are serving the legal cannabis industry in their state and are seeking banking services.

As the cultivation, sale, distribution, and possession of marijuana remains illegal at the federal level under Schedule I of the *Controlled Substances Act*, the majority of credit unions remain hesitant to provide financial services to these members and their small businesses. For financial institutions, such as credit unions, there are additional regulatory challenges that compound the uncertainty of providing financial services to state-authorized marijuana-related businesses (MRBs). These go beyond just concerns about criminal or civil penalties and extend to requirements related to proper Suspicious Activity Report (SAR) and anti-money laundering (AML) filings as required under the *Bank Secrecy Act*, access to federal deposit insurance and a Federal Reserve master account, and even potential issues with the Internal Revenue Service (IRS). Missteps in these areas could prove devastating to an institution. It should be noted that these risks also exist when providing financial services to ancillary businesses that provide products and services to MRBs and fall within the credit union's field of membership, even if the state-authorized MRB does not.

NAFCU does not have, and is not taking, a position on the broader question of the legalization or decriminalization of marijuana to any degree at the federal or state level. However, we do support Congress taking the steps found in the *SAFE Banking Act* to provide greater clarity and legal certainty at the federal level for credit unions that choose to provide financial services to state-authorized MRBs and ancillary businesses that may serve those businesses in states where such activity is legal. While the *SAFE Banking Act* does not address every issue on this front, it seeks to provide a safe harbor for financial institutions that wish to serve such businesses and would be an important step towards improving clarity and addressing what is often perceived as misalignment between federal and state laws. It is with this in mind that NAFCU urges you to support the amendment to include the *SAFE Banking Act* as part of the NDAA.

**Amendment #543, SECURE Notarization Act (Support)**

NAFCU supports amendment #543, authored by Representatives Dean (PA), Armstrong (ND), Perlmutter (CO), Reschenthaler (PA), and Escobar (TX), which would add the *SECURE Notarization Act* to H.R. 7900.

The *SECURE Notarization Act* provides businesses and consumers with the ability to execute critical documents using two-way audiovisual communication. Current requirements for a signer to physically be in the presence of a Notary are often impractical and sometimes impossible due to social distancing constraints resulting from COVID-19, as well as other barriers including military service or work travel. Forty states have already recognized the benefits of Remote Online Notarization (RON) and passed legislation authorizing its use.

The changes in business practices and consumer behaviors in light of COVID-19 have brought on technological solutions and innovations that have proven successful. NAFCU supports including amendment #543 in the NDAA to allow financial institutions to adapt to these changes to which consumers have become accustomed.

**Amendment #739, Central Liquidity Facility Enhancements (Support)**

NAFCU supports the amendment from Financial Services Committee Chairwoman Maxine Waters (CA) to extend the authorities for the Central Liquidity Facility (CLF) granted under the *CARES Act*. On November 29, 2021, all three members of the National Credit Union Administration (NCUA) Board joined together in a bipartisan letter to urge Congress to make permanent, or extend, the enhancements to the CLF made under the *CARES Act*. These enhancements provide the NCUA with a vital tool to ensure the credit union system has access to a critical contingent liquidity source as it responds to the COVID-19 pandemic and beyond. Extending these changes would provide regulatory certainty for federally-insured credit unions and grant the NCUA additional flexibility to safely manage access to emergency liquidity. We urge you to support this amendment.

**Amendment #983, Fair Hiring in Banking Act (Support)**

NAFCU supports the amendment offered by Representative Beatty (OH) that would make it easier for financial institutions, including credit unions, to hire those with minor criminal records for offenses that occurred well in the past. Credit unions and other financial institutions continue to face challenges in filling positions in a tough hiring market, and this would provide additional opportunities for those who have demonstrated that despite minor criminal offenses they can be trusted employees. We urge the Committee to make this amendment in order.

**Amendment #668, Strengthening Cybersecurity for the Financial Sector Act of 2022 (Oppose)**

NAFCU strongly opposes this amendment, offered by Representative Foster (IL). 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. 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 members.

There are other 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), Office of the Comptroller of the Currency (OCC), and the Federal Reserve. The FFIEC was created to coordinate examination findings and approach in the name of consistency and to avoid duplication. This means that 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 that processor's business and duplicate an examination. This would seem to be an unnecessary burden on these small businesses. Additionally, if the NCUA did its own examination, the likelihood of finding

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anything the other regulators did not would be close to nil.

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 the other FFIEC regulators, Congress should consider compelling the other regulators to share the information with the NCUA. This would seem to be a much more preferable route than raising costs on credit unions and their 131 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.<sup>1</sup> Use of existing reports for other technology service providers 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 this amendment and not support its inclusion in the NDAA.

**Amendment #1139, Cybersecurity Reporting (Oppose)**

NAFCU opposes the amendment from Representative Langevin (RI) that would create new cybersecurity reporting requirements and a new office of cybersecurity statistics. We are concerned that this issue has not been vetted in the Committees overseeing industries that would stand to be impacted by this amendment. Furthermore, the database of information collected under this amendment could become a prime target for cybercriminals, a sort of one-stop-shop. While we generally support improving cybersecurity, we do not think this amendment is ready to be considered at this time and urge its rejection from inclusion in the NDAA. Given that the *Strengthening American Cybersecurity Act of 2022* was signed into law only four months ago, we believe it is premature to legislate new cyber reporting requirements until the new law has had the opportunity to be fully implemented.

We thank you for the opportunity to share our thoughts on these important issues. Should you have any questions or require any additional information, please contact me or Brad Thaler, NAFCU's Vice President of Legislative Affairs, at [bthaler@nafcuh.org](mailto:bthaler@nafcuh.org).

Sincerely,



Greg Mesack  
Senior Vice President, Government Affairs

cc: Members of the House Committee on Rules

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<sup>1</sup> NCUA OIG, Audit of the NCUA's [Examination and Oversight Authority Over Credit Union Service Organizations](#) at 3.