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**National Association of Federally-Insured Credit Unions**

September 27, 2021

Melane Conyers-Ausbrooks  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

**RE: Digital Assets and Related Technologies RFI**

Dear Melane Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Request for Information and Comment on Digital Assets and Related Technologies (RFI) issued by the National Credit Union Administration (NCUA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 127 million consumers with personal and small business financial service products. NAFCU appreciates the NCUA taking this first step toward addressing the regulatory uncertainty that has chilled credit union innovation in the fast-evolving digital assets environment. Credit unions have a proud history of innovating to not only better serve current members but to be better positioned to more fully engage the unserved and underserved. However, the present regulatory uncertainty results in individual credit unions suffering millions of dollars in net share account outflows to largely unregulated, opaque entities and members being exposed to substantial risks that can be better monitored, assessed, and resolved by credit unions.

NAFCU asks the NCUA to promptly issue a Letter to Credit Unions confirming that a credit union may directly, or in partnership with a credit union service organization (CUSO) or other third-party vendor, host a digital wallet capable of holding digital assets that are not securities and that a credit union may engage a CUSO or other third-party vendor to facilitate a member's buying, holding, selling, transferring, and exchanging of digital assets. NAFCU further encourages the NCUA to adopt a form-agnostic approach to assessing credit unions' adoption of digital assets and related technologies and to develop a digital asset adoption sandbox or pilot program in which credit unions and the NCUA may prudently explore more novel digital asset use cases without significant compliance risks. It may also be advisable that the NCUA collaborate with other federal regulators and credit union industry stakeholders to develop a common digital assets taxonomy.

**General Comments**

The cryptocurrency market did not functionally exist before Bitcoin's genesis block was mined in January 2009. Earlier cryptographic payment systems were comparatively cumbersome and only sparingly utilized, if implemented at all. In early 2016, the most prominent cryptocurrency price aggregators estimated the total cryptocurrency market to have a value of roughly \$7 billion<sup>1</sup>. As

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<sup>1</sup> <https://coinmarketcap.com/charts/>

of mid-September 2021, that estimate has risen to more than \$2 trillion. Average daily exchange trading volume in Bitcoin alone is measured in the hundreds of millions of dollars, and the consensus estimate of Bitcoin ATMs in service around the world is above 20,000<sup>2</sup>.

In the little more than five years in which the cryptocurrency market's value has risen from roughly \$7 billion to more than \$2 trillion, credit unions have seen the number and value of ACH, debit card, and wire transfers from share accounts to cryptocurrency exchange platforms like Coinbase Global, Inc. (Coinbase) increase at an increasing rate, particularly among younger members. Stated plainly, the members with whom credit unions almost uniformly have the greatest difficulty connecting and on whom credit unions', and therefore the National Credit Union Share Insurance Fund's (SIF), long-term viability depend are more frequently transferring ever greater sums from share accounts to cryptocurrency exchange platforms with no connection to their communities and subject to little, if any, regulatory oversight.

Distributed ledger technology (DLT) and other technologies related to digital assets present an increasing array of potential operational efficiencies. For example, smart contracts and the use of digital representations or tokens of traditional assets may have the capacity to reduce credit unions' operational costs, enhance regulatory compliance, and reduce instances of human error, fraud, and other misconduct. Digital identification built on DLT may not only enable credit unions to more robustly contribute to BSA/AML efforts but also more quickly and accurately engage the unserved, underserved, and credit invisible and guide them along the path to financial inclusion.

On January 4, 2021, the Office of the Comptroller of the Currency (OCC) released Interpretive Letter 1174 (OCC Interpretive Letter) permitting national banks and Federal savings associations to use digital assets adopting the term "stablecoin" and related technologies to perform payment activities and other bank-permissible functions. In May 2021, the Federal Deposit Insurance Corporation (FDIC) released an RFI similar to this RFI, and comments received make clear that the net outflows issues faced by credit unions are not unique but are also experienced by for-profit financial institutions, despite their comparative advantage to engage in stablecoin-related activities. While the OCC Interpretive Letter places credit unions at an obvious competitive disadvantage, there remains time for the NCUA and credit unions to decisively lead with respect to the safekeeping of digital wallets, integrations of CUSO and other third-party vendor digital asset exchange capabilities, applications of DLT and other technologies to everyday portfolio management tasks, exploration of digital identification, and the facilitation of faster, less expensive remittances.

### **Direct Custody of Certain Digital Assets**

NAFCU asks the NCUA to issue a Letter to Credit Unions confirming that a credit union may directly, or in partnership with a CUSO or other third-party vendor, host a digital wallet into which

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<sup>2</sup> <https://news.bitcoin.com/number-of-cryptocurrency-atm-locations-24k-worldwide/>

a member could deposit digital assets that are not securities and from which the same member could transfer such digital assets to another digital wallet hosted by the credit union or another legal or natural person. As the NCUA recognized in its 2001 Final Rule on Federal Credit Union Incidental Powers Activities, Congress amended the Federal Credit Union Act (FCU Act) in 1977 to “allow credit unions to continue to attract and retain the savings of their members by providing essential and contemporary services” and because it believed credit unions are entitled to “updated and more flexible authority granting them the opportunity to better serve their members in a highly-competitive and ever-changing financial environment.” It is a core mission of a credit union to serve as a member’s primary financial institution, and hosting a digital wallet as proposed herein would conveniently provide a credit union access to member information that may be a useful means of identifying how the credit union may better serve the member. Too, hosting a digital wallet is a functional equivalent of and bears risks similar to a credit union’s offering its members physical safety deposit boxes, an activity long considered well within the FCU Act’s grant of incidental powers.

As with safety deposit boxes, the credit union would serve a purely custodial role and not obtain any ownership in any assets, digital or otherwise. Just as a credit union is responsible for safeguarding against a safety deposit box’s unauthorized physical access, a credit union would be responsible for safeguarding against a digital wallet’s unauthorized electronic access. And just as the undulating values of gold and silver coins and bars held by a member in a safety deposit box do not impact a credit union, neither would the undulating values of any digital assets held by a member in a digital wallet merely hosted by a credit union.

In this scenario, a member’s digital wallet balance and holdings information could appear in online and mobile banking portals alongside share accounts, savings, loan, credit card, and other asset and liability accounts. A standardized disclosure that digital assets held by a member in a digital wallet hosted by a credit union are not eligible for NCUA share insurance could be appropriate to provide at the creation of a digital wallet and on such periodic basis as applies to other custodian accounts. It may be appropriate for the NCUA to consider whether digital assets held by a member in a digital wallet hosted by a credit union could become subject to a statutory lien.

No federal law or regulation, from the NCUA or any other federal regulator, currently prohibits this activity in whole or in part. However, absent a clear and positive indication from the NCUA that such activity will not result in adverse supervisory consequences, credit unions are likely to continue to refrain from offering these basic custody services to their members. This is despite significant and rapidly growing net share account outflows to Coinbase and similar exchanges and the intended threats to highly valuable member relationships.

### **Engaging a Broker-Dealer to Facilitate a Member’s Digital Asset Purchases and Exchanges**

NAFCU asks the NCUA to issue a Letter to Credit Unions confirming that a credit union may engage a CUSO or other third-party vendor to facilitate a member’s buying, holding, selling,

transferring, and exchanging of digital assets, including those that are securities. This scenario is most closely analogous to a credit union's engaging a CUSO or other third-party vendor to facilitate a member's buying, holding, selling, transferring, and exchanging traditional debt and equity securities in a brokerage account, an activity endorsed by the NCUA in a 2010 Letter to Federal Credit Unions<sup>3</sup>. In such a scenario, a CUSO or other third-party vendor would provide a member both access to a digital assets exchange platform on which the member may purchase or exchange digital assets and a digital wallet in which digital assets may be held, and a credit union would not obtain any ownership in any assets, digital or otherwise.

In both the proposed digital assets brokerage scenario and the already commonplace brokerage scenario, a member may see balance and holdings information appear in online and mobile banking portals alongside share accounts and other asset and liability accounts. However, in both scenarios, a member wishing to buy, sell, transfer, or exchange assets within a brokerage account or digital wallet will be transferred from a credit union's network to a CUSO's or other third-party vendor's network to perform such actions. It may be appropriate for credit unions to adapt already existing CUSO and third-party vendor brokerage account disclosures to explain to members the highly similar partnership contemplated here.

### **Digital Representations of Permissible Investments**

As a general matter, NAFCU encourages the NCUA to adopt a form-agnostic approach to assessing, and perhaps regulating, credit unions' adoption of digital assets and related technologies. That a credit union, CUSO, or other third-party vendor applies DLT or related technology to a traditional asset or operational process and thereby creates a digital representation or token of a traditional asset should not, in isolation, be presumed to heighten or magnify risks commonly observed in a permissible investment. It is a natural extension of the common understanding that digitally represented share account balances should go up for every dollar a member entrusts to a credit union and down for every dollar a credit union returns to a member.

For example, consider a handful of credit unions that routinely trade loan participation interests among themselves and wish to use DLT to streamline the labor- and time-intensive due diligence processes required to trade. Every component of the underlying loan would be digitally represented on a distributed ledger, a copy of which would be maintained by each member of the group. No longer would every trade require duplicative reviews of ownership. Every credit union in the trading group would have access at all times to origination and ownership information about every loan participation interest on the DLT. That purely operational application of DLT would result in the creation of digital representations or tokens of loan participation interests with which the credit unions have extensive due diligence and pricing experience. In such a scenario, operation of the

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<sup>3</sup> <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/sales-nondeposit-investments>

DLT would not involve the use of any cryptocurrency in any way, and the only digital assets created or exchanged would be the digital representations or tokens of permissible investments.

Absent evidence that the utilization of DLT or related technologies demonstrably increases investment risks, NAFCU urges the NCUA to issue a Legal Opinion clarifying that a credit union may create, purchase, and exchange digital representations or tokens of permissible credit union investments identified in 12 CFR 703.14. The NCUA's 2017 Legal Opinion on credit unions' Authority to Issue and Sell Securities clearly articulates 12 CFR 721.2's three-prong test for incidental powers activities. The application of DLT or related technologies to a permissible investment would, like securitization, be a useful and convenient means of providing a credit union important portfolio management flexibility and would represent a logical outgrowth of a core credit union business activity because it would further a credit union's ability to expand affordable access to credit. For the reasons explained above, the application of DLT or related technologies contemplated does not appear to introduce observable new or magnified risks, and utilization of these technologies may help drive significant operational and compliance cost savings that could enable a credit union to more fully serve its members and its broader community.

### **Digital Asset Adoption Sandbox**

As the NCUA has observed when it has worked alongside credit unions in other contexts to understand how innovative financial service products may be prudently offered to members without engendering material risk to the SIF, the insights gained from an informed, hands-on exercise have the power to speed broader, safer implementation than is possible with diligent theorization alone. In that spirit, NAFCU encourages the NCUA to consider a digital assets and related technologies sandbox or pilot program that would permit interested credit unions to explore other digital asset and related technologies use cases without assuming outsized compliance risks.

More specifically, NAFCU recommends that the NCUA consider how digital identity and digital asset remittance sandboxes or pilot programs may better identify and define how credit unions may engage and serve the unserved, underserved, and credit invisible in their communities. The speed and low transmission costs of digital asset remittances may help credit unions guide members, the unserved, underserved, and credit invisible away from unjustifiably expensive check cashing and remittance products pushed by non-depository financial service providers.

### **Common Digital Assets Taxonomy**

If the potential promise of these technologies is to be fully investigated without engendering material risk to the SIF, industry innovators and regulators must closely coordinate their efforts. NAFCU encourages the NCUA to work with other federal regulators and credit union industry stakeholders to develop a common digital assets taxonomy capable of harmonizing any future

digital asset and related technologies regulation. As is evident with the briefest comparison of the OCC Interpretive Letter and the NCUA's and FDIC's respective RFIs, important issues of permissibility turn on a digital asset's classification. To the extent possible, federal regulators should avoid scenarios in which a digital asset held by one depository financial institution may be treated differently than a substantially similar digital asset held by another depository financial institution. The NCUA may find it notable that the OCC permitted national banks and Federal savings associations to use digital assets adopting the term "stablecoin" and related technologies to perform payment activities and other bank-permissible functions without waiting for the FDIC to resolve the issue of whether such digital assets may represent insurable bank deposits.

### **Conclusion**

NAFCU appreciates the opportunity to comment on this RFI. NAFCU further appreciates the step this RFI represents in the NCUA's ongoing efforts to educate itself on fast-evolving environments so that the NCUA may more fully support credit unions and, in turn, their 127 million members as well as the unserved, underserved, and credit invisible. NAFCU encourages the NCUA to immediately make clear the extent to which already existing regulation permits credit unions to provide and facilitate the provision of digital asset financial service products to their members. NAFCU also encourages the NCUA to adopt a form-agnostic approach and common taxonomy when assessing digital assets and the application of related technologies and to provide credit unions sandbox and pilot program opportunities to prudently engage in these environments without assuming outsized compliance risks. If you have any questions or concerns, please do not hesitate to contact me at [dbaker@nafcu.org](mailto:dbaker@nafcu.org) or 703-842-2203.

Sincerely,



Dale Ross Baker  
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