



October 5, 2018

Chairman Mike Crapo
Ranking Member Sherrod Brown
Committee Members
Senate Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Response to Request from National Credit Union Administration for Unrestricted Regulatory and Supervisory Authority over all Credit Union Vendors

Dear Chairman Crapo, Ranking Member Brown and Committee Members:

The National Association of Credit Union Service Organizations (NACUSO) is the only nationwide membership-based organization exclusively representing credit union service organizations or CUSOs. CUSOs are collaboratively owned and operated businesses that the law and regulation allows credit unions to invest in to provide services to their members, as well as to other credit unions, for the purposes of risk sharing, cost savings and income generation to better and more effectively invest in enhanced and innovative member services.

It is our understanding that, in testimony before your committee, the Chairman of the National Credit Union Administration (NCUA) asked for the committee's consideration of legislation to expand NCUA's direct regulatory and supervisory authority beyond that of regulating and supervising credit unions – which it has held since the agency's creation in 1970 - and into the unlimited and virtually unrestricted arena of regulating and examining any business that does business with a credit union. Labeled “vendor authority” by NCUA, this unprecedented expansion of the agency's authority is of concern to CUSOs because of the potential impact upon the collaborative model we represent among credit unions that have chosen the CUSO structure to share the risk associated with costly innovation and to enhance the delivery of credit union services to more members from all walks of life.

In our view, NCUA lacks the expertise to regulate and examine any and all businesses that interact with credit unions. The necessary investment of agency resources to hire or contract with the broad level of expertise required to examine every technology service, communications contractor, statement processor, ATM servicer, check provider, building construction company, accounting firm, advertising agency, insurance agency, broker/dealer, lawn care company, etc. that enters into a contract with a credit union will bring about a dramatic and unnecessary increase in the size, budget and staffing of this federal agency. The average number of vendors for a single credit union can easily exceed one hundred, two hundred in the case of some larger credit unions.

How many new NCUA employees will be needed to review these thousands of credit union vendors doing business with over five thousand credit unions nationwide? It should be noted that, while the number of full time employees of the FDIC has decreased in response to the shrinking number of banks, the number of full time employees of NCUA has not, even as credit unions have decreased from 12,000 to 5,600 over the past fifteen years.

NCUA is funded by assessments levied on the member-owned non-profit cooperative credit unions they regulate and insure. This means, simply, that it is the credit union members themselves who pay for the resources of NCUA – and any significant expansion of the agency. Prior to any such action dramatically expanding the scope of NCUA’s regulatory power and imposing yet more costs on credit union members, the question from our perspective should be whether the expansion of the scope and the resultant increase in costs is necessary and justified. NACUSO sees this request for unlimited vendor regulatory and supervisory authority for NCUA as an unjustifiable expansion of the agency’s authority that is, frankly, not needed, can be handled in another way and is being overseen effectively under existing authority.

NCUA promulgated a CUSO rule in 2013 that essentially gives the agency “review” authority over all credit union service organizations. This rule has been in effect for five years under what the agency considers existing NCUA statutory authority. As a condition of the authority of a credit union to invest in a CUSO, a CUSO must provide NCUA with full access to its books and records. NCUA has repeatedly exercised this power. In addition to this established review process, the agency has at the same time developed and created a mandatory CUSO registry to require reporting of all CUSOs, including their individual credit union ownership, so that NCUA can gather necessary data on the performance of the CUSO through its (NCUA’s) existing supervisory authority over the credit unions with ownership interest in the CUSOs.

In our view, these regulatory and supervisory actions within its existing authority seem to indicate that NCUA is in a position to gather the data it has stated that it needs for risk evaluation purposes through the credit unions it currently regulates and supervises (that are also the owners of the CUSOs) and within its existing authority. If NCUA has a problem with a risk posed by a CUSO, it has the power to compel changes through the CUSO’s owner credit unions. While NCUA has complained about the indirect nature of this authority, there is no contention that has or can be made that it is not effective. CUSO losses to credit unions since 2013 are virtually non-existent. There is no reason to extend statutory authority that could go far beyond what is currently required to protect the safety and soundness of credit unions and to essentially turn NCUA into a *de facto* Federal Trade Commission of the credit union industry.

The stated area of concern that NCUA expressed to the committee, even though they are seeking from Congress **unlimited** vendor regulatory and supervisory authority, seemed to be related to and primarily limited to the area of cyber security. While indeed cyber security is a recognized area of risk for all financial institutions (and, interestingly, there are CUSOs assisting credit unions in dealing with this area of risk), it would seem that cyber security could be addressed with a more rifled approach to regulation and supervision without opening the floodgates of additional regulation and supervision of every other type of credit union vendor – many of which are CUSOs and most that are not.

In fact, NCUA concedes in their testimony before the committee that one justification for their expanded authority request to have unlimited regulatory and supervisory authority over all credit union vendors stems at least partly from a case of regulator envy with their banking

counterparts such as the FDIC and OCC that have been allowed some self-limited vendor authority by Congress. This authority, coveted by NCUA for decades with no action by Congress to grant it despite the agency's continued requests, enables the FDIC and OCC to examine cyber security issues at many of the larger and most widely utilized technology companies that serve financial institutions, both banks and credit unions. To add to these existing FDIC and OCC examinations, NCUA would like to add another set of regulatory and supervisory eyes. We find it unnecessary and counter intuitive to believe that the presence of a handful of NCUA examiners will find cyber security weaknesses at a leading data technology provider that could not be found by the examiners from the FDIC and OCC already examining them.

It would be the position of NACUSO that – if indeed cyber security is their primary focus as stated at the hearing before your committee – NCUA should take advantage of its affiliation with the Federal Financial Institutions Examination Council (FFIEC) to gain access to the examinations that are already being conducted by the FDIC and OCC of these technology providers. A separate examination is not necessary because the providers also serve credit unions. One of the purposes of the FFIEC is to coordinate the examination process for financial institutions of various types to eliminate costly duplication and redundancy.

In conclusion, NACUSO sees no justification for the expansion of NCUA's authority from the very successful and relatively efficient credit union regulatory and supervisory agency they have proven to be into a mega agency with authority over every business that does business with a credit union. This authority, if granted, would unquestionably increase agency costs and expand the burdensome nature of NCUA regulation and supervision outside the scope of what the agency was originally created to do – regulate, insure and maintain the safety and soundness of the credit union system. And it would do so to accomplish a stated purpose – cyber security evaluation – that is already taking place by other federal financial regulatory agencies in a position to share their findings with their counterparts at NCUA.

While NACUSO sees much merit in the other areas of credit union statutory authority referenced in the recent testimony by the NCUA Chairman, for the reasons listed herein we encourage the committee to give very serious evaluation of this particular NCUA request for expansion of the agency's regulatory and supervisory authority into unlimited oversight of every business that might enter into a contract with a credit union. It is, in our view, an overreach that cannot be currently justified at the level it is requested in order to address an issue that has existing options the agency could utilize to achieve its purposes.

We thank you for your careful and studied consideration of this important matter. If we can be a source of any further information on this or any other matter of importance to the committee, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in blue ink that reads "Jack M. Antonini". The signature is fluid and cursive, with a large, sweeping initial "J".

Jack M. Antonini
President of NACUSO