3138 10th Street North
Arlington, VA 22201-2149
703.842.2234 | 800.336.4644
gmesack@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

Greg Mesack
Senior Vice President, Government Affairs

August 5, 2022

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Re: S. 4698, the Improving Cybersecurity of Credit Unions Act

Dear Chairman Brown and Ranking Member Toomey:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our concerns with, and opposition to, Congress granting the National Credit Union Administration (NCUA) third-party vendor examination authority such as proposed in S. 4698, the Improving Cybersecurity of Credit Unions Act. 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. We appreciate the opportunity to share our thoughts on this incredibly important issue and how this legislation will hinder credit unions and drastically alter the mission and scope of their primary regulator—the NCUA.

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 131 million members.

We appreciate the sponsors' efforts in S. 4698 to try to minimize duplication of examinations and require an NCUA budget hearing for additional expenses in the bill. However, we still see it as problematic. For example, we think the delegation of examination and need for consultation to avoid duplication should also include state regulatory agencies, as a number of vendors could be regulated at the state level. The NCUA works with state regulators already for state-chartered institutions.

We are also concerned that this is still a wide grant of authority that is not limited to just cybersecurity or other issues listed in the findings. Unfortunately, S. 4698 still appears to be a blank check in terms of authority and even expenditures—as there are no budget parameters beyond the requirement for a hearing.

In the late 1990s, there was widespread concern regarding computer systems' inability to distinguish dates correctly in the year 2000 and the potential for that to disrupt financial services and other industries, an issue known as "Y2K." Due to this potential Y2K crisis, Congress granted the NCUA third-party vendor authority to address this issue with credit union vendors. However, the Y2K authority was only temporary between 1998-2001, included in a larger Y2K financial services package. *Congress included a sunset date that was unique to this specific authority* in the package, and not for the full Act. Congress considered extending the authority in 2001 per the NCUA's request and opted not to act as the case for continuing this authority had not been made. NAFCU still does not think the case has been made by the NCUA to grant this authority again without limits or a sunset.

One of the reasons Congress did not act then is that there are tools already in place for the NCUA to get access to information about vendors. We believe the agency's time and resources are better focused on reducing regulatory burdens 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 approach in the name of consistency, and to avoid duplication. Through its supervision of credit unions, the NCUA is already able to obtain information about credit union service organizations (CUSOs)—which are owned by the credit unions. The agency has successfully used this current authority for a number of years and has not provided any detailed explanation of how this current authority has been insufficient.

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 examinations 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 prevents the NCUA from participating in examinations of TSPs.[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

---

[1] NCUA OIG, *Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations and Vendors* (September 1, 2020), available at https://www.ncua.gov/files/audit-reports/oig-audit-cusos-vendors-2020.pdf.
[2] *See id*. at 14.
[3] *See id*. at 20.
[4] *See id*.

difficult to assess whether the NCUA's apparent inability to join FFIEC vendor examinations is a true statutory limitation or merely a legal interpretation proffered by another federal banking agency.

An encouragement to continue to use its existing supervision of credit unions to gain information on CUSOs and a reassessment of the federal banking agencies' position on whether the NCUA can participate during joint examinations of TSPs offer 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 examination team from the NCUA into that processor's business and duplicate an examination that has already taken place. This would seem to be an unnecessary burden on these small businesses. Additionally, if NCUA did its own examination, the likelihood of finding anything the other regulators did not would be close to nil.

Recognizing alternatives to vendor authority and S. 4698, 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 and how such a program would be limited to cybersecurity. For example, it is unlikely the NCUA will have the resources to supervise every vendor, so a risk-based prioritization framework will 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 provides 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 examinations, can generate useful supervisory data at lower cost.[6]

Instead of granting the NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on examination 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 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

---

[5] NCUA, *Third-Party Vendor Authority*, 10 (March 2022), available at https://www.ncua.gov/files/publications/regulation-supervision/third-party-vendor-authority.pdf.
[6] *See id*.

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 to oppose S. 4698, the Improving Cybersecurity of Credit Unions Act.**

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 Jake Plevelich, NAFCU's Associate Director of Legislative Affairs, at jplevelich@nafcu.org.

Sincerely,

Greg Mesack

cc: Members of the Senate Committee on Banking, Housing, and Urban Affairs

[7] NCUA OIG, *Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations and Vendors*, 3 (September 1, 2020), available at https://www.ncua.gov/files/audit-reports/oig-audit-cusos-vendors-2020.pdf.