



ISSUE BRIEF

## **NCUA 3rd Party Vendor Examination Authority**

## BACKGROUND

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. Granting the NCUA authority over third parties will provide no clear benefit to credit unions and their members but will result in duplicative regulation as other federal agencies already compile and can share this information with the NCUA.

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 in the early 2000s is that there are tools already in place for the NCUA to get access to information about credit union service organizations (CUSOs) and 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 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.

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 five 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 strongly oppose granting the NCUA this new authority to examine third-party vendors.

## **LEGISLATIVE DEVELOPMENTS**

NAFCU opposes legislation that has been introduced to expand the NCUA's authority over credit union vendors. In the House, H.R. 7022, the Strengthening Cybersecurity for the Financial Sector Act of 2022, was introduced by Representative Bill Foster (D-IL) on March 9, 2022, and subsequently marked up and advanced by the House Financial Services Committee by a 24-22 vote in May. In the Senate, S. 4698, the Improving Cybersecurity of Credit Unions Act, was introduced by Senate Banking Committee members - Senators Jon Ossoff (D-GA), Mark Warner (D-VA), and Cynthia Lummis (R-WY). No hearing or action has occurred on the Senate proposal. It is important to note that the two bills are not the same. The House bill also includes a section giving vendor authority to the Federal Housing Finance Agency (FHFA), while the Senate version does not. They also take different approaches, with the Senate version requiring the NCUA Board to hold a budget hearing, consider public comment, and vote to approve any changes made to the NCUA budget in order to examine third-party vendors. However, NAFCU strongly opposes both bills.

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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.

While the House has not acted on the larger bill, the credit union portion of H.R. 7022 (granting the NCUA vendor examination authority) was added as part of an en bloc amendment to H.R. 7900, the National Defense Authorization Act for Fiscal Year 2023 (NDAA) during consideration of the NDAA on the House floor. This means that the House and Senate will ultimately decide as part of the NDAA conference committee between the two chambers if this eexpanded vendor authority for the NCUA will make it in the final version of the NDAA and become law. NAFCU opposes including this language in the final version of the NDAA because of the new costs and burdens it could place on credit unions and their 131 million members. There have been no hearings in the Senate examining this issue or credit union concerns. We believe it would be reckless to move ahead with the provision in the NDAA at this time.

## **OUTLOOK AND ASK**

As the Senate considers its version of the NDAA and ultimately moves to a conference with the House, NAFCU strongly urges Congress to keep the expansion of NCUA vendor examination authority out of the final version the NDAA. There have been no Senate hearings on this issue and the NDAA is not the place to drastically alter the mission and scope of credit unions' primary regulator—the NCUA.

Both H.R. 7022, the Strengthening Cybersecurity for the Financial Sector Act of 2022, and S. 4698, the Improving Cybersecurity of Credit Unions Act, provide the NCUA broad authority and a blank check at the expense of credit unions and their 131 million members. Instead of passing these bills, 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 as a more cost-efficient way to address the NCUA's request.