



Jim Nussle  
President & CEO

Phone: 202-508-6745  
jnussle@cuna.coop

99 M Street SE  
Suite 300  
Washington, DC 20003-3799

October 17, 2019

The Honorable Bill Foster  
Chairman  
Task Force on Financial Technology  
U.S. House of Representatives  
Washington, DC 20515

The Honorable French Hill  
Ranking Member  
Task Force on Financial Technology  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Foster and Ranking Member Hill:

On behalf of America's credit unions, I am writing to express our views ahead of the hearing titled "AI and the Evolution of Cloud Computing: Evaluating How Financial Data is Stored, Protected, and Maintained by Cloud Providers." The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. Thank you for holding this important hearing and including our views in the hearing record.

We agree that cloud computing has had a major impact on the financial services sector, and, like all other forms of technology, it must be adopted and used with clear understanding of the benefits and risks it introduces to a financial institution. Cloud computing like most other technologies almost always requires the use of a third-party vendor. Managing these vendors introduces another set of challenges in which all institutions regardless of size invest significant resources.

Two laws, the Bank Service Company Act (BSCA) and Gramm-Leach-Bliley Act (GLBA), give banking regulators the authority to examine and regulate financial institutions' third-party vendors. The GLBA sets forth data security and privacy requirements on financial institutions and the BSCA gives federal banking regulators the authority to "examine and regulate" third-party vendors used by banks and it establishes parameters on the investments that financial institutions can make in these companies. As the Task Force staff note in the hearing memorandum, the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency (FHFA) do not presently have direct authority to supervise third-party vendors serving the entities that they regulate, and the Task Force is considering legislation to amend the BSCA to extend supervisory authority to these agencies.

We understand why it would be desirable to have all financial institutions' third-party service providers subject to the same level of regulatory scrutiny. On the related issue of data security and data privacy, CUNA has strongly advocated that all business entities in the United States be subject to the same federal data security and privacy requirements because consumers deserve to have their personal information and data protected from theft and misuse no matter the entity that possesses the data. Ultimately, the goal of public policy in this area needs to be ensuring the same level of protection, even if the way that protection is insured recognizes the differences inherent in the characteristics of the regulated entity.

Except for a brief period back at the turn of the century when NCUA was granted additional authority to oversee vendors to address possible issues with the Year 2000 event (Y2K), NCUA has not had direct authority to regulate third-party vendors that the BSCA conveys to bank regulators. History has demonstrated that NCUA has not needed this authority. Indeed, NCUA has successfully managed credit unions use of third-party vendors and credit union service organizations (CUSO) through its current supervisory authority over credit unions, which includes vendor due diligence requirements credit unions must satisfy. This system might not be as efficient as giving NCUA direct authority over third-party vendors but has worked well for the credit union industry.

Insomuch as financial services products have evolved and the delivery of financial services has become ever more dependent on technology, the use of third-party vendors to provide critical services has increased, and there is an argument to be made that all depository institutions should be subject to the same or similar rules for services.

While NCUA does not have direct supervisory authority over CUSOs and other third-party services providers, the current regulatory scheme for credit unions imposes significant statutory investment limitations on credit unions. These investment limitations are more severe than banks' authority to invest in bank service companies. If Congress intends to change the regulatory scheme for third-party credit union providers, it is essential that Congress also address the investment limitations to ensure parity for credit unions to invest in CUSOs and for CUSOs to provide services to credit unions and credit union members. Modernizing laws governing the operation of credit unions is a top CUNA priority and providing structural parity for CUSOs with bank service companies is a major component of modernization.

CUNA members have historically opposed granting the NCUA additional authority to oversee third-party vendors and CUSOs for several reasons. At this time, CUNA cannot support the discussion draft under consideration. Here are some of our concerns:

First, NCUA has exercised very effective regulation of CUSOs and third-party vendors without the authority, rendering the change proposed in the discussion draft a solution in search of a problem. The agency presently has virtually limitless authority to request information regarding CUSOs from the credit union owners of the CUSO; and, the agency has broad authority to adjust the due diligence expectations credit unions must satisfy when engaging third party vendors. Today, the agency has the authority to get whatever information it might need regarding third-parties from the credit unions it supervises.

Second, extending this authority to NCUA could result in the agency increasing its budget to hire personnel with appropriate expertise to supervise these firms. This is a concern to credit unions because credit union member resources are used to fund the agency, and credit unions question why they should be required to send more of their members' savings to NCUA when the agency has demonstrated it is doing a good job absent this authority. If Congress conveys this authority to NCUA, the agency should commit to funding this new authority by reducing expenditures elsewhere.

Third, while NCUA has requested this authority for several years, the agency has yet to develop a clear vision of the scope of this authority or how they would implement it. This has made it impossible for us to assess the impact it would have on credit union operations, including whether it would lead third-party vendors to increase the costs credit unions pay for their services. Would the agency only use this authority to supervise vendors related to information security or would all third-party vendors be subject to supervision? In recent months, we have engaged NCUA on this issue to better understand how the agency envisions using the authority it has requested from Congress. Given that the agency does not have this authority, we would not expect that they would have precise information on their intentions; nevertheless, NCUA has had this request for several years, so the agency must have some idea of how it would be used. Sharing details of their intentions with Congress and the industry would be helpful to us understanding what to expect if NCUA is granted this authority, and it could help allay some of our concerns.

It is possible that extending this authority to NCUA could over time lead to a reduction in credit union costs if such supervision leads to reduced losses to the National Credit Union Share Insurance Fund (NCUSIF) or reduces credit unions due diligence requirements for engaging vendors subject to NCUA supervision. Not knowing how the agency will use this authority makes it difficult for us to see this as a probable outcome.

Despite our reservations with the proposal and our association policy to oppose extending this authority to NCUA, in the interest of ensuring that our nation's information security apparatus is as strong as it needs to be to combat cyberattack and data breach, we are open to continued dialogue regarding proposed amendments to the BSCA that

could augment NCUA's current oversight of third-party vendors and CUSOs. We have discussed this topic in detail with our membership committees and look forward to working with all stakeholders on this issue.

Credit unions' mission is to promote thrift and provide access to credit for provident purposes. This mission, which Congress has established, cannot be achieved unless there are strong structures in place that safeguard data. We applaud the Task Force for taking up this issue and look forward to working with you to find solutions that ensure credit unions can continue to provide services to their members in a safe and efficient manner.

On behalf of America's credit unions and their 115 million members, we look forward to working with this Task Force and the Committee on Financial Services.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large loop at the end of the "e".

Jim Nussle  
President & CEO