



November 17, 2022

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Re: Floor Consideration of H.R. 7900, the Fiscal Year 2023 National Defense Authorization Act

Dear Leader Schumer and Leader McConnell:

We write today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) and the Defense Credit Union Council (DCUC) to share our perspective on several matters under consideration for inclusion in the Fiscal Year 2023 National Defense Authorization Act (NDAA). Our members include defense credit unions serving active duty military and veterans from around the world. Together we urge the Senate to pass a clean NDAA and reject amendments that stand to place new burdens and hardships on our nation's credit unions or that threaten the ability of our nation's defense credit unions to serve the men and women of America's armed services and our nation's veterans.

Oppose Expanding Interchange Price Caps

We strongly oppose Senate Amendments #6201 and #6174, which would attach the Credit Card Competition Act of 2022 (S. 4674) to the NDAA and commission an interchange fee study. The Credit Card Competition Act would extend debit interchange routing requirements to also cover credit cards, which would function as a backdoor price control on credit card transactions and would affect financial institutions of all sizes, regardless of the proposed exemption, and could greatly increase fraud costs as merchants select cheaper but less secure networks to process transactions. As experience with Section 1075 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, commonly referred to as the Durbin Amendment, has shown, government intervention in the interchange market affects all market participants, even including smaller institutions below what is meant to be an exemption threshold. Those smaller institutions have seen a precipitous erosion of their per-transaction debit interchange revenue as a result of the Durbin Amendment and taking similar steps on credit card interchange would put them at risk.

While the intent of the Durbin Amendment was to prevent card-issuers and networks from unfairly charging merchants higher rates and thus passing higher costs along to consumers, the evidence overwhelmingly suggests that it has not helped everyday Americans. According to Federal Reserve data, this amendment has taken away \$6-8 billion per year from the revenue that banks and credit unions use to serve their customers and members. The erosion of interchange fees is particularly hard on credit unions, which are statutorily limited in what products they may offer and investments they can make. While a bank may be able to turn to capital markets or choose other investments, credit unions have

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very few options to replace this lost income. As not-for-profits, this ultimately hurts what they can do for their members. There is no evidence that merchants have passed along their savings to consumers in the form of price cuts, and the regulatory burden and loss of revenue for banks and credit unions has led to industry consolidation and the difficult choice to charge for services that were once free, such as checking accounts.

Credit unions are committed to serving their members and, as such, must be able to make a reasonable return on payment card programs in order to continue to provide important consumer financial services. Again, we urge the Senate to reject amendments 6201 and 6174 and keep interchange price caps out of the FY 2023 NDAA.

Oppose Granting NCUA Oversight Authority Over Third-Party Vendors

We strongly oppose S. 4698, the Improving Cybersecurity of Credit Unions Act, which would grant the National Credit Union Administration (NCUA) examination authority over credit union third-party vendors, and the House version of that proposal, H.R. 7022, which was included as an amendment to the House-passed NDAA. This legislation has not been vetted by the Senate Banking Committee and the NCUA has not laid out any limits to the new spending or supervisory authority it would entail. We urge the Senate to reject any amendment containing this proposal and to exclude it from the final version of the FY 2023 NDAA.

NAFCU, DCUC, 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. We believe in a strong NCUA, but we also believe that the NCUA should stay focused on where its expertise lies—regulating credit unions. 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 members.

There are other 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 burden 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), 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. This means that 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 exam team from the NCUA into that processor's business and duplicate an examination. This would seem to be an unnecessary burden on the credit unions that will ultimately bear the cost of overlapping exam work. Additionally, if the NCUA did its own examination of an entity already subject to joint FFIEC exams, the likelihood of finding anything the other regulators did not would be close to nil.

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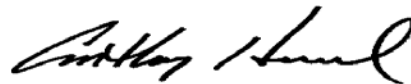
Instead of granting the NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on exam findings on companies that have already been examined by other regulators. If that option is not available for the NCUA due to the decisions of the other FFIEC regulators, Congress should consider compelling the other regulators to share the information with the NCUA. This would seem to be a much more preferable route than raising costs on credit unions and their 133 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.¹ 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 oppose granting the NCUA this new authority.

In conclusion, we thank you for the opportunity to share our thoughts on the range of issues under the Senate's consideration as it completes its work on the FY 2023 NDAA. Should you have any questions or require any additional information, please contact me or Chad Adams, NAFCU's Senior Director of Legislative Affairs, at cadams@nafcu.org.

Sincerely,



B. Dan Berger
President & CEO
NAFCU



Anthony Hernandez
President & CEO
DCUC

cc: Members of the United States Senate

¹ NCUA OIG, Audit of the NCUA's Examination and Oversight Authority Over Credit Union Service Organizations at 3.