



The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

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

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

Dear Chairs Waters and Brown and Ranking Members McHenry and Toomey:

As representatives of a wide range of stakeholders including banks and community groups, we jointly write to highlight troubling rulemaking activity at the National Credit Union Administration (NCUA) that warrants immediate oversight from Congress. Notwithstanding bipartisan objections from NCUA's current Democratic Chairman Todd Harper and former Republican Chairman Mark McWatters, the agency is in the process of finalizing rules that would undermine important statutory guardrails designed to protect low-income consumers. We urge Congress to exercise its oversight function over the NCUA, and to schedule a hearing to examine the likely impact of the proposals discussed herein on the provision of tax-subsidized financial services to at-risk communities. Congress should enact legislation subjecting credit unions to the Community Reinvestment Act to ensure credit unions serve all communities.

***“Wild West” Credit Union Payday Lending:*** On October 21, over strenuous objections from NCUA's current Chairman, the agency finalized a proposal that would expand payday and other forms of lending by Credit Union Service Organizations (CUSOs). CUSOs are companies owned by credit unions, either in whole or in part, that provide financial services to credit unions or to their members. Most often, CUSOs providing operational services do so for credit unions, whereas those providing financial services offer them directly to the members of a single credit union. Typically, a CUSO is an LLC with a Board appointed by the stockholders, including the parent credit union (or credit unions).<sup>1</sup> Chairman Harper predicted that providing these third parties (which NCUA lacks supervisory authority over) with full lending powers “will create an unregulated Wild West within the credit union space with little accountability for protecting consumers and credit unions.”<sup>2</sup>

<sup>1</sup> <https://www.nacuso.org/wp-content/uploads/2018/02/History-of-CUSOs-2-7-18.pdf>

<sup>2</sup> <https://www.ncua.gov/newsroom/speech/2021/ncua-chairman-todd-m-harper-statement-credit-union-service-organizations-final-rule>.

Prudential and consumer protection requirements NCUA places on credit unions do not apply to loans made by CUSOs. Recent past provides ample evidence for caution. For example, one recent case led to a \$168 million settlement with the Consumer Financial Protection Bureau and 45 Attorneys General.<sup>3</sup> Expanding CUSO activities, while NCUA cannot directly supervise those activities, could lead to negative consequences for consumers and the broader financial marketplace.

***Proximity to Credit Union Service and the Need for CRA:*** On November 18, two of NCUA’s board members are likely to overrule NCUA’s current Chairman and finalize a proposal that would amplify the need for credit unions to be covered by the Community Reinvestment Act. Outside of the mortgage context, and unlike banks, credit unions are not required to establish the extent to which they are providing financial services to low-and moderate-income individuals and communities. The proposal would make it possible to add groups to a credit union’s field of membership on what is effectively a national basis – without regard to the statutory requirement of the credit union being in “reasonable proximity” to the people they are looking to serve. By enabling credit unions to pick the groups they serve without regard to where they are, the proposal could allow credit unions to more efficiently “cherry pick” their customers and raises a serious concern.

Credit unions are not held accountable to fulfill community reinvestment activities, creating a regulatory inconsistency between banks and credit unions, even though both take deposits and should thus have similar requirements to meet needs and conveniences of the communities where they operate. Absent such expectations, some credit unions are not making efforts to invest in lower-income areas.

***These actions also may be illegal, and raise serious process concerns:*** NCUA’s previous Republican Chairman, Mark McWatters, raised concerns<sup>4</sup> that NCUA’s actions may exceed the letter and spirit of the agency’s statute. “I am troubled,” McWatters wrote, “that the agency may have abandoned ... a rigorous and introspective analysis and its Congressional mandate to stay clearly within the four corners of the Federal Credit Union Act.” Chairman Harper has raised similar concerns about the agency’s legal authority.<sup>5</sup> The entire process for finalizing these rules is highly unusual, with a formal agency action to allow two board members to usurp control of the agency’s staff and board agendas from the current Chairman.<sup>6</sup>

***Swift Congressional Action is Needed:*** Oversight of these actions is vital. We urge Congress to call a hearing at once with all three NCUA Board Members to discuss these actions and ask proponents for these changes to defend them. We are unaware of a NCUA-specific hearing since 2015. A hearing is a necessary event for a \$2 trillion industry safeguarding the financial lives of tens of millions of households. Soon thereafter, Congress should take the logical next step and cover the industry under the Community Reinvestment Act.

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<sup>3</sup> <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-student-cu-connect-cuso-over-itt-private-loan-program/>

<sup>4</sup> <https://www.americanbanker.com/creditunions/opinion/nw-more-than-ever-ncua-needs-a-reset>

<sup>5</sup> <https://www.ncua.gov/newsroom/speech/2020/ncua-board-member-todd-m-harper-statement-shared-service-facilitiesfield-membership-proposed-rule>

<sup>6</sup> <https://www.ncua.gov/files/agenda-items/AG20210923Item4a.pdf>

Credit unions were created to serve a vitally important role, providing access to financial services for those most in need. The significant tax subsidy credit unions receive for this work also warrant that Congress exercise oversight authority to ensure those taxpayer dollars are fulfilling their intended purpose. We hope Congress will encourage NCUA to delay finalizing the upcoming rule, and call a hearing as quickly as possible.

Sincerely,

American Bankers Association  
Independent Community Bankers of America  
National Community Reinvestment Coalition

cc: Members of the House Financial Services Committee  
Members of the Senate Banking, Housing, and Urban Affairs Committee