



May 31, 2022

Comment Intake—Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

**Re: Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders
Docket No. CFPB-2022-0024**

To Whom it May Concern,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 232 credit unions and their 3.1 million members. Of those 232 credit unions, 127 are federally-chartered; 60 state-chartered, federally-insured; and 45 state-chartered, privately-insured, with an average asset size of \$172 million. OCUL appreciates the opportunity to engage the Consumer Financial Protection Bureau (CFPB) on the procedural rule amending its procedures for establishing supervisory authority over a nonbank entity based on a risk determination.

First, OCUL is concerned with the broad, sweeping nature of this rule. Under the current authority, the CFPB could assert that even the most lightly associated, tangential entities of the financial services market could "pose risks to consumers", thus falling under CFPB jurisdiction. While the outspoken intent of this authority is geared toward financial technology (FinTech) companies and cryptocurrency platforms, more specificity on establishing or determining risk to consumers must be provided. The broad language currently suggests credit unions, credit union service organizations (CUSOs), and certain third-party partners connected to financial services could be eventually included. Historically, only credit unions over \$10 billion in assets have been subject to CFPB scrutiny with third-party vendor authority remaining reserved for financial services regulators such as Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA). If unspecific rulemaking is promulgated, the CFPB may eventually and inadvertently be insufficiently prepared and structured to examine such diverse financial service providers, such as CUSOs and other third-party partners.

CUSOs are effectively regulated by NCUA since their inception, without issue, as the credit unions participating in a CUSO model are routinely examined for safety, soundness, and consumer protection compliance. Currently, CUSOs must register with the NCUA and report financial activity, with annual affirmations and updates.¹ Moreover, CUSO activities are limited in scope by law, and the NCUA retains oversight of operational compliance and execution.² Both the NCUA as well as state regulators, while performing routine exams of credit unions, regularly exercise established authority to request information regarding CUSO activity. However, as subsidiaries of prudentially regulated credit union owners, CUSOs can rarely undertake activity or provide information not born from the credit union owners themselves and the routine service activities of the credit union (home ownership

¹ <https://www.ncua.gov/regulation-supervision/regulatory-reporting/cuso-registry>

² <https://www.ecfr.gov/current/title-12/chapter-VII/subchapter-A/part-712/section-712.5>



services and mortgage lending solutions stand as a prominent illustration). As such, the CFPB should consider how overly broad rulemaking may bring unintended regulatory consequences to the current CUSO oversight model. CUSOs, as defined by credit union law, regulations, and prudential regulators, should be excluded from any consideration as nonbank entities under CFPB's rules or procedures.

Additionally, NCUA continuously directs credit unions to routinely complete a comprehensive risk assessment prior to contracting with third-party entities.³ As such, operational partners, such as strategic vendors that assist in delivering financial product and service access to consumers, undergo rigorous due diligence reviews and vendor management processes by their partner credit unions to minimize risk and ensure compliance calibrated to each credit union's unique risk tolerance profile. At times, credit unions will contract with third parties to provide the necessary technology and support to automate and execute due diligence and vendor management processes. OCUL encourages the CFPB to minimize regulatory duplicity by narrowing its risk assessment to third-party vendors not currently reviewed by well-regulated and examined financial institutions, such as credit unions.

While the CFPB theoretically could subject CUSOs or certain third-party vendors to supervision through its risk-based supervisory authority, we strongly recommend the CFPB focus its supervisory resources on influential FinTechs and other entities that are not currently subject to the authority of a federal financial services regulator such as the FDIC, NCUA, or CFPB. NCUA's historically active oversight of CUSOs and direction over third-party due diligence clearly renders additional CFPB oversight redundant and duplicative.

Second, while credit unions welcome innovation in the consumer financial market, OCUL is concerned rapidly evolving FinTech companies and other nonbank actors will outpace or circumvent prudent regulatory oversight and lead to potential consumer harm. In addition, the absence of effective regulatory oversight creates an uneven playing field that materially disadvantages responsible, regulated service providers, particularly insured depositories including credit unions. Credit unions and other well-established providers are heavily regulated for safety and soundness and compliance with consumer protection laws and regulations. Credit unions want to ensure that financial products and services available from FinTech companies, or any other market participants, offer the same protections as those offered by regulated entities.

OCUL appreciates the opportunity to comment on this proposed rule. On behalf of Ohio credit unions, and their more than three million members, we respectfully request a narrowly tailored review and application of the supervisory authority over certain nonbank covered persons and allow credit unions, and their affiliates and partners, to continue serving members absent additional, unnecessary, redundant, and burdensome regulation or supervision.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul L. Mercer".

Paul L. Mercer
President

A handwritten signature in black ink, appearing to read "Sean M. Brown".

Sean M. Brown, Esq.
Director, Regulatory Affairs

³ <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/evaluating-third-party-relationships-0>