

New Hampshire Credit Unions



Creating Cooperative Power

January 12, 2022

The Honorable John Hunt
Chairman
House Commerce and Consumer Affairs Committee
LOB 302
107 North Main Street
Concord, NH 03301

BY EMAIL ONLY

Dear Chairman Hunt:

On behalf of New Hampshire credit unions and the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to three bills pending before the House Commerce and Consumer Affairs Committee, each relating to the regulation and framework of digital assets, which are the subject of the public hearing today. The Association is the state credit union trade association, serving 14 federally and state-chartered credit unions that are cooperatively owned by 761,000 consumers as members. Specifically, the pending measures are:

HB 1502-FN, *An Act Relative to Digital Assets and Digital Securities*

HB 1503-FN, *An Act Exempting the Developer, Seller, or Facilitator of the Exchange of an Open Blockchain Token from Certain Securities Laws*

HB 1504-FN, *An Act Relative to Special Purpose Depository Institutions*

New Hampshire credit unions are pleased to offer comments to assist the Committee in its deliberations on the emerging financial services issues of cryptocurrency and digital assets. Credit unions commend this Committee for exploring this important issue so early in the legislative session as cryptocurrency and other digital assets and the platforms that the underlying blockchain technology has created are poised to create major disruptions in the local delivery of financial services. The Association believes that it is prudent for this Committee to understand the impact of this emerging activity on credit unions and the consumer members they serve to ensure that sufficient protections are in place for investors as well as a vibrant market for such services as the use of digital assets and associated products and services are increasingly becoming more mainstream.

I. Credit Union Business Case and Authority

It is undisputed that technology has enhanced credit unions’ ability to deliver financial services to New Hampshire consumers.¹ Credit union members benefit from fresh ideas and new ways to deliver financial services. While broad adoption is forthcoming, a growing number of credit union members are demonstrating interest in cryptocurrencies, including Bitcoin, and are inquiring about the capability to offer and advice provided by their credit union to make such investments. The Association expresses concern that the lack of

¹ One example of this technology locally is the shared branch network that enables credit union members to obtain banking services at thousands of credit union branches that are not owned and operated by the credit union at which they are a member.

an informed answer, attributable in part to gaps in a legislative structure, could jeopardize the well-earned reputation of local credit unions as a local, trusted financial advisor and partner. Furthermore, without action, credit union members may decide to hold greater balances on account with PayPal or similar providers enabling crypto transactions. This type of unregulated asset migration and protection of credit unions members is unsettling.

Credit union members trust their credit union to provide necessary financial services, and the ability to provide new, emerging financial services products and delivery channels is needed for credit unions to fulfill their mission. Moreover, credit unions' focus on financial literacy and financial education is well documented in New Hampshire and can be extended to digital asset related products in order to help credit union members use these new products prudently.

Credit unions have a long history of providing custody and related services for traditional money and other physical property. Given the evolving nature of the financial markets and the increasing interest in purchasing and holding cryptocurrencies, credit unions must be able to offer their members convenient and useful services for the safe-keeping of those digital assets. The ability to maintain traditional accounts and cryptocurrency wallets at the same financial institution helps credit union members streamline their banking needs. The ability of credit unions to offer such services will further strengthen the cryptocurrency markets and promote increased stability and consumer confidence in what has largely been a decentralized financial product.

The framework and authority to allow credit unions to provide custody services for crypto assets exists and is evolving. Federal credit unions are presently regulated in this area under the Federal Credit Union Act ("FCU Act") and its implementing regulations which provide credit unions with incidental powers that encompass the provision of custody services for digital assets, such as cryptocurrencies. The FCU Act authorizes a federal credit union ("FCU") "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated."² Part 721 of the NCUA's regulations implements the incidental powers provision.³

Of particular importance to credit unions is recent guidance released by the federal credit union regulator and insurer, the National Credit Union Administration ("NCUA"). In its recent guidance to all federally-insured state and federal credit unions, NCUA provided clarity about the already existing authority of federally-insured credit unions ("FICUs") to establish relationships with third-party providers that offer digital asset services to the FICUs' members, provided certain conditions are met.⁴ This authority includes third-party provided services to allow FICU members to buy, sell, and hold uninsured digital assets with the third-party provider outside of the FICU. In essence, credit union activity will be evaluated by the NCUA in the same manner as all other third-party relationships and review the exercise of sound judgment and necessary due diligence, risk assessment, and planning when choosing to introduce or bring together an outside vendor with its members. Looking ahead, NCUA also recently published an extended request for information authorizing credit unions to offer digital asset custody services to credit unions members and ensuring that the regulator does not impede credit unions' ability to offer digital asset related services that are permissible under the

² 12 U.S.C. 1757(17).

³ 12 CFR Part 721.

⁴ NCUA Letter to Credit Unions, 21-CU-16, Relationships with Third Parties that Provide Services Related to Digital Assets, December 2021. [Relationships with Third Parties that Provide Services Related to Digital Assets | National Credit Union Administration \(ncua.gov\)](https://www.ncua.gov/Relationships-with-Third-Parties-that-Provide-Services-Related-to-Digital-Assets/National-Credit-Union-Administration-ncua.gov)

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FCU Act. 86 Fed. Reg. 53692 (Sept. 28, 2021). The Association notes that this action is consistent with the goal of HB 1502-FN with emphasis on the custodial role of credit unions. Notably, NCUA also made clear that the authority for federally-insured, state-chartered credit unions to establish these relationships is dependent upon the laws and regulations of their states.

II. Impact on Pending Legislation

The Association is pleased to offer the following comments specific to the pending bills in support and to assist, if and when, the proposals advance and become enacted:

- HB 1502-FN: Establishes a needed framework and new chapter, RSA 397-C, for the delivery of financial services using digital currencies to ensure that consumers are protected similar to if they received financial services from a financial institution by including provisions governing collateralization, perfection of security interests and regulation under Article 9 of the Uniform Commercial Code;
- HB 1502-FN: Mitigates the unique risks of cryptocurrencies through traditional means such as multi-factor authentication and limits on financial institution liability generally for the exercise of reasonable care; and
- HB 1504-FN: Establishes a new Chapter, RSA 383-F, creating a special purpose depository institution and importantly segregates the application fee credited to its subaccount as a separate account from the financial institutions' administration account.

Without question, providing a state framework authorizing local financial institutions to adopt cryptocurrency services can help credit unions engage and serve New Hampshire consumers while harnessing new technological developments. Most importantly, the Association strongly urges the Committee to consider parity amongst local financial institutions in creating a state framework to safely make cryptocurrency available to the residents of the Granite State.

The Association appreciates the opportunity to provide input to the Committee. The Committee's favorable consideration of the views of credit unions as set forth in this letter is respectfully requested. If you or your staff have any questions or require further information, then please do not hesitate to contact the Association at advocacynh@ccua.org.

Sincerely,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

RM/MAC/KB