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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

September 22, 2014

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

RE: Comments on the Proposed Policy Statement with Request for Public Comment  
Regarding Disclosure of Consumer Complaint Narrative Data

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing regarding the Consumer Financial Protection Bureau's (CFPB's) recent proposed policy statement on disclosure of consumer complaint narrative data. NAFCU would like to thank the CFPB for extending the comment period for this proposed policy statement from a 30 day comment period to a 60 day comment period which now ends on September 22, 2014. This is an important and complex issue and the extra 30 days ensures that stakeholders will better be able to provide thoughtful insight and comment on this proposed policy statement. As detailed below, we are laying out current credit union member complaint resolution procedures and then discussing specific issues regarding the proposed policy statement itself.

*Credit Union Member Complaint Resolution Procedures*

To quote CFPB Director Richard Cordray, "Credit unions were the original consumer protectors."

Credit unions are different than other types of financial institutions and have unique relationships with their members. Credit unions also have guidance about internal procedures from our primary regulator (NCUA) for how credit unions should deal with processing member complaints from the credit union's Supervisory Committee down through the staff level. NCUA encourages members to work directly with credit unions to resolve any complaints they may have, but if that does not satisfy the member, NCUA's Office of Consumer Protection (OCP) also has procedures in place to work with the credit union's Supervisory Committee on behalf of

the member. This guidance and procedures are outlined in detail below, but it is important to note that credit unions are already taking care of member complaints internally and in the rare instance that there is failure to resolve the complaint at that stage; NCUA is already an active participant as a regulator in this space on behalf of the member.

#### *Credit Union Internal Complaint Process*

NCUA encourages members to work directly with credit unions to resolve any complaints they may have. In that vein, credit unions have an internal process for handling member complaints as discussed in guidance by NCUA in *section 4.12* of the *Supervisory Committee Guide*. In that section NCUA outlines in detail the investigation procedures that the credit union Supervisory Committee is expected to follow. The Supervisory Committee is expected to complete a thorough, independent and impartial investigation into member complaints. Those procedures include interviewing appropriate credit union officials and/or employees and determining the validity of the complaint. Then for valid complaints, working with the officials in the credit union to develop a plan to correct any improper, unfair, or discriminatory practices, if applicable and make appropriate recommendations. Finally, have corrective action implemented or obtain agreements from appropriate credit union officials and/or employees they will make corrections within a specified time.

In rare instances that a member is not satisfied by the credit unions internal member complaint process, NCUA's OCP also has procedures in place to ensure that members' complaints are resolved amicably.

#### *The National Credit Union Administration (NCUA) Member Complaint Process*

The NCUA OCP and OCP's Division of Consumer Compliance and Outreach (CCO) are responsible for the management of member complaints received by NCUA. *NCUA Letter to Credit Unions 11-CU-17* details the responsibilities of OCP and CCO and also outlines NCUA's process for handling member complaints. NCUA stresses that a member should try to resolve the issue directly with the credit union before submitting a complaint to NCUA. However, when a member is unsuccessful in resolving the issue with the credit union, *NCUA Letter to Credit Unions 11-CU-17* provides procedures for how NCUA's CCO will handle the member complaint.

Once the written complaint and any supporting documentation is sent to the CCO, the CCO sends a letter to the Chairman of the federal credit union's supervisory committee with a request for a response within 21 days from the date of the letter. An acknowledgement letter to the member including the date the supervisory committee is to respond to NCUA is sent at the same time. Once the supervisory committee's response is received, CCO reviews the response to ensure it adequately addresses the member's complaint and that the action(s) taken, if any, are consistent with consumer protection laws and regulations. If the federal credit union did not address all of the member's concerns or there are remaining questions involving regulatory or consumer compliance issues, CCO will request additional information and/or clarification from

the supervisory committee and notify the member that the complaint investigation is still ongoing.

Once all issues associated with the complaint have been adequately addressed by the supervisory committee and analyzed by CCO, NCUA notifies the federal credit union and the member of one of the five following actions: 1) The federal credit union has resolved the issue to the member's satisfaction and the case is being closed; 2) The federal credit union did not violate either a consumer protection law or consumer compliance regulation and the case is being closed; 3) One of the two parties initiated litigation; therefore, the courts will decide the outcome and the case is being closed; 4) Upon further investigation the issue does not involve either a consumer protection law or consumer compliance regulation; therefore, it does not fall under NCUA's purview (Examples of this are complaints involving state contract law, state foreclosure procedures, etc.); or 5) A violation of either a consumer protection law or consumer compliance regulation has occurred. CCO cites the specific violation or the law or regulation and required corrective action(s) to be taken by the federal credit union.

NAFCU believes that the process that credit unions already have in place to deal with member complaints is second to none. When those credit unions are unable satisfactorily resolve a member complaint, NCUA's OCP is a more than adequate advocate for members during this process.

#### *Risks to Consumers*

NAFCU opposes the CFPB's proposed policy statement on disclosure of consumer complaint narrative data for several reasons. As a practical matter, disclosing narrative fields increases the likelihood that personal information will be inadvertently released. Even with CFPB employing the proposed methods to scrub the fields of personally identifiable information, such processes are imperfect. This is all the more problematic for two reasons. First, the information will be disclosed in large quantities. Second, the potential harm to the consumer is quite high. If the scrubbing methods fail, they will fail in spectacular fashion. The potential harm seems to significantly outweigh any potential benefits as discussed below of disclosing the narrative fields.

#### *Reputation Risk and Safety and Soundness Concerns*

The proposed addition of narrative disclosures creates a very specific reputational risk concern for credit unions, in addition to the safety and soundness concerns. First, there is no mechanism to ensure the complaints are valid. Consequently, narrative data accompanying unverified complaints filed against each institution would be misleading and would create reputational risk issues that cannot easily be mitigated. This is all the more true given the publicity that is likely to surround narrative disclosures and the speed with which even inaccurate viral media spreads. The focus is likely to be on both the aggregate number of complaints and unverified stories while little, if any, attention will be given to whether the disclosures present a clear and accurate picture of the number of complaints a credit union actually resolves and the institution's response to those complaints. Again, NAFCU understands the agency is tasked with protecting consumers; however, system-wide reputational risk issues should be addressed before the agency finalizes the proposed policy.

Ultimately, assaults on an institutions reputation could have significant safety and soundness consequences that are unique to financial institutions. Disclosing narrative data along with complaints raises safety and soundness concerns and unduly places financial institutions' reputation at risk. False positives in the form of publicized, unfounded complaints regarding a particular institution could create safety and soundness issues for the institution in question. To be clear, NAFCU, and the entire credit union industry, supports resolution and investigation of member complaints by the credit unions. Credit unions have unique relationships with their members that aren't present for other types of financial institutions. Those relationships extend to how credit unions serve their members and respond to member complaints. We simply want to ensure that the system does not unfairly penalize institutions that may be the occasional victim of unwarranted complaints.

Obviously, the CFPB was created out of a desire to focus on consumer issues, nonetheless, that focus should not come at the complete exclusion of system-wide safety and soundness concerns. For this reason, we request the agency carefully reconsider its proposed policy to add narrative data as a matter of course.

#### *Direct and Indirect Benefits to Consumers*

The CFPB states in the proposed policy statement that the addition of narratives would provide both direct and indirect benefits to consumers as well as benefit for the CFPB itself. NAFCU believes that many of these direct and indirect benefits are unfounded and draw on unsubstantiated and speculative conclusions.

#### *Direct Benefits*

The CFPB states that consumers may want to share their experience and that providing narrative data to the Consumer Complaint Database will offer consumers a direct benefit. For example, the CFPB writes, "Complainants may desire to do so as a means of providing information they deem useful to others who may be considering doing business with a particular financial institution or as a means of letting other who may be experiencing a similar situation know that they are not alone. These needs cannot be served by the Bureau simply by disclosing the non-narrative portions of the complaint" *Disclosure of Consumer Complaint Narrative Data, 79 Fed. Reg. 42765, 42766*. While NAFCU appreciates that some consumers may feel the need to share their experiences both good and bad with others, we have serious reservations about how adding narrative data to the Consumer Complaint Database would provide a direct benefit for the consumer. As proposed, the complaints alone will not allow consumers to make fully informed choices on financial services they might receive.

In order to provide a direct benefit for the consumer that wants to share their experiences with others, the CFPB would need to provide a place for consumers to share both positive and negative experiences. The proposed additions to the Consumer Complaint Database would only provide a place to share negative experiences with others. This does not allow the millions of credit union members who regularly receive exemplary service a place to provide their positive feedback they deem useful to others who may be considering doing business with a particular financial institution.

The CFPB also argues that some consumers may be more inclined to submit a complaint if they could also share their story as part of the complaint. According to this logic, adding narratives would add complaints and more complaints would enhance the value of the Consumer Complaint Database. This logic however is flawed for a number of reasons.

Additional complaints being submitted to the Consumer Complaint Database does not enhance its value or provide direct benefit to consumers. The goal of the Consumer Complaint Database is not to reach as high a number of complaints as possible. The stated goal of the Consumer Complaint Database by the CFPB is to “provide consumers with timely and understandable information about consumer financial products and services, and improve functioning, transparency, and efficiency of markets for such products and services.” *Id.* The CFPB states that adding addition information such as narratives is consistent with and promotes that approach. NAFCU disagrees.

#### *Indirect Benefits*

The CFPB states that “[i]ndirect benefits to consumers and the marketplace would include the effect narratives can have on consumer purchasing decisions.” *Id.* According to the proposed rule, this is based on *research* that has shown that consumer word of mouth is a reliable signal of product quality that consumers consult and act up on when making purchasing decisions. NAFCU believes that this logic is flawed for two reasons. First, the CFPB states that research exists, but does not explain what research they are referring to. Secondly, assuming that the research that the CFPB is referring to is correct, it is likely that word of mouth works to move consumer decision making because the identity of the reviewers (both good and bad) are available to provide credibility that the experience described is accurate. The lack of personally identifiable information from both the complaints and the responses produces an end result that will not provide the benefits intended while certainly harming the reputation of financial institutions.

One indirect consequence that is not explored by the CFPB in this proposed policy statement but should be considered is the result from only providing negative narratives about financial institutions. Only providing a negative narrative could foster distrust in regulated institutions and push consumer to shadow service providers who are not subject to CFPB supervision. This would harm both regulated financial institutions such as credit unions as well as consumers.

#### *President Obama’s Open Government Directive*

The CFPB misreads and improperly cites the White House’s Open Government Directive as a means to justify the addition of the narratives for the Consumer Complaint Database. In the proposed policy statement, the CFPB repeatedly mistakes the call for government agencies to be more open about government activities with openness about activities of regulated entities and their customers. This is explained on the first page of the Open Government Directive, “The three principles of transparency, participation, and collaboration form the cornerstone of an open government. Transparency promotes accountability by providing the public with information about what the Government is doing.” *Memorandum from the Director of the Office of Management and Budget to Heads of Executive Departments and Agencies on the Open*

*Government Directive (Dec. 8, 2009).* NAFCU believes that open government is an extremely important part of a functioning democracy, but it is important not to confuse the purpose of the Directive. The Open Government Directive does not give license for the CFPB to create and operate a *Yelp*-like online message board that posts only unverified complaints and heightens the real possibility of unfounded reputational harm.

#### *No-Win Position*

The intention of the proposed policy statement is to help consumers, however it will actually hurt them and would almost certainly harm financial institutions. We have already discussed the reputational risk that this proposal presents to credit unions, but the proposed policy statement would result in generic statements from credit unions and other financial institutions. This result would not be helpful to consumer. With identifiable information redacted from complaints and responses, financial institutions may not be able to respond effectively. This leaves credit unions in a no-win situation. On one hand, if a credit union were to fail to respond, it would look as though there was no resolution or acknowledgement by the credit union of the customer's complaint. On the other hand, credit unions are concerned about disclosing personally identifiable financial information. This results in responding with a generic response that would not help consumers as the proposed policy statement intends.

In order to comply with privacy laws and the scrubbing of personal and financial information, the addition of the narrative fields will as often confuse the issue and make a coherent response impossible as it might otherwise have provided additional clarity. Consequently, many financial institutions may choose to respond with a bland response that acknowledges the complaint and asks the consumer to contact the institution (for example):

***“[Financial institution] acknowledges receipt of and [has taken steps to address / is taking steps to address / has determined that no further response is warranted] related to this complaint. We encourage our [customer / member] to contact us at [contact information] should they wish discuss the matter further.”***

Alternatively, the institution may choose not respond at all, rationalizing that it is better to remain silent than contribute to this process. While both of these responses are likely to run counter to the direct benefit argued as the reason for this proposed policy statement, credit unions are placed in this no-win position because they do not want to violate privacy laws surrounding their members.

#### *Legitimacy of Complaints and Information Quality*

Before we discuss the additional proposed narratives, we would like to comment on the legitimacy of complaints in the CFPB Consumer Complaint Database as a whole. The CFPB Consumer Complaint Database website states the following, “We don't verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company.” NAFCU encourages the Bureau to implement systems to distinguish legitimate complaints from those that have no justification. Only legitimate complaints should be publicly disclosed. There seems little reason to publicly disclose unfounded complaints. NAFCU encourages the CFPB to implement a system that distinguishes between legitimate complaints

and baseless complaints that are without merit, and to disclose only those complaints that are justified.

Further, disclosing the narrative fields will likely confuse the issue as often as it clarifies the reasons behind the complaint. NAFCU already believes disclosing all complaints as a matter of course is inherently misleading as the agency does not plan to distinguish legitimate complaints from frivolous complaints. These concerns are exacerbated by the influence, briefly discussed above, of viral media. Disclosing narrative data will only compound these problems as the disclosures may have no basis in fact.

Double Efforts

Adding narratives to the CFPB Consumer Complaint Database as a whole would require that credit unions have to respond to complaints twice, resulting in a confusing resolution for their members. Credit unions already have internal member complaint systems in place that respond to member complaints with the goal of helping to resolve issues a member has. It is possible that a member will reach out to a credit union directly as the same time they file a complaint to the CFPB on the same matter. Because most complaints are dealt with quickly, it is likely that the credit union has already resolved the complaint in a satisfactory way long before a credit union is contacted by the CFPB about a complaint filed in the Consumer Complaint Database. For an institution that chooses to respond to the proposed narrative complaints, it must “sync-up” responses to a scrubbed version of a complaint with an unedited complaint it may have already processed internally. In short, an institution is likely to have to respond to a complaint twice resulting in a drain on resources and possibly slowing down any resolution for the member.

NAFCU appreciates the opportunity to comment on this proposed policy statement. If you have any questions or concerns, please feel free to contact me at pjhoffman@nafcuh.org or (703) 842-2212.

Sincerely,



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National Association of Federal Credit Unions