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National Association of Federal Credit Unions | [nafcu.org](http://nafcu.org)

June 29, 2016

The Honorable James Lankford  
Chairman  
Senate Homeland Security and Gov't  
Affairs Subcommittee on Regulatory  
Affairs and Federal Management  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Heidi Heitkamp  
Ranking Member  
Senate Homeland Security and Gov't  
Affairs Subcommittee on Regulatory  
Affairs and Federal Management  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: Examining the Use of Agency Regulatory Guidance**

Dear Chairman Lankford and Ranking Member Heitkamp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing in advance of tomorrow's hearing, "Examining the Use of Agency Regulatory Guidance, Part II." Thank you for continuing to examine this important topic. While not the focus of tomorrow's hearing, we appreciate the opportunity to share how "regulatory guidance" continues to have an impact on credit unions.

First, the National Credit Union Administration (NCUA), the prudential regulator of credit unions, routinely provides "guidance" in any one of a number of different forms to credit unions. Some NCUA examiners treat the guidance as just that - a tool to be used for credit unions to comply with regulations or implement best practices. Some examiners, however, treat the "guidance" as if it were part of the regulation itself, and consider failure to comply with the guidance as something roughly equal to failing to comply with the regulation. There can be an inconsistency from examiner to examiner, creating confusion for institutions. We believe Congress should encourage regulators to ensure that all examiners treat both regulations and guidance consistently and for the purpose each was issued.

Second, in attempting to understand ambiguous sections of Consumer Financial Protection Bureau (CFPB) rules, NAFCU and many of its members have reached out to the CFPB to obtain legal opinion letters (written guidance) as to the agency's interpretation of its regulations. Many other financial agencies such as NCUA, FTC, FDIC, and others, issue legal opinion letters so as to help institutions and other agencies understand otherwise ambiguously written rules. The CFPB has declined to do so. What they have done is set up a help line where financial institutions can call for guidance from the agency. While this is helpful, there are reports of conflicting guidance being given depending on who answers the phone. This is not just

unhelpful, but can be confusing when NCUA examines credit unions for compliance with CFPB regulations. NAFCU would appreciate the CFPB establishing procedures for institutions to get much needed official written legal advisory opinions to provide clearer guidance. Setting up such a process within the CFPB would be beneficial to credit unions and other financial institutions.

Once again, thank you for holding this important hearing and for the opportunity to share our comments. If my colleagues or I can be of assistance to you, or if you have any questions regarding regulatory guidance for our nation's credit unions, please feel free to contact myself, or NAFCU's Senior Associate Director of Legislative Affairs, Chad Adams, at (703) 842-2265.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Thaler', with a long horizontal flourish extending to the right.

Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the Subcommittee