



**America's  
Credit Unions**

**Carrie Hunt**

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April 19, 2024

The Honorable Todd M. Harper  
The Honorable Kyle S. Hauptman  
The Honorable Tanya F. Otsuka  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

**RE: Request for Nondisclosure of Overdraft and Non-Sufficient Funds Fee Data**

Dear Chairman Harper, Vice Chairman Hauptman, and Board Member Otsuka:

On behalf of America's Credit Unions, I am writing to urge the National Credit Union Administration (NCUA) to refrain from publicly disclosing certain data collected in the latest Call Report. Specifically, the revised Call Report requires credit unions to report overdraft and non-sufficient funds (NSF) fees. Data on these fees should not be released publicly. Instead, the NCUA Board should further evaluate the legal and reputational risks that credit unions may face and delay the release of such information. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

Effective March 31, the agency recently added fields to the Call Report requiring credit unions above \$1 billion in assets to report revenue from overdraft and NSF fees.<sup>1</sup> As detailed in a February letter to the Chairman, and shared with the other Board members, America's Credit Unions raised concerns regarding the process through which these changes were made, explaining that the NCUA should have provided direct notice to all credit unions and generally should not pursue significant changes without first notifying the industry of such proposed changes at least two quarters in advance.<sup>2</sup>

Subsequently, we sent a letter to the NCUA Office of General Counsel (OGC) requesting a legal opinion letter regarding the applicability of the Freedom of Information Act (FOIA) to information collected and disclosed publicly as part of the Call Report requirements in Section 741.6(a)(2).<sup>3</sup> It is our position that the agency should refrain from disclosing publicly the Fee Income reported under revised Call Report account code 131, as this information is confidential

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<sup>1</sup> 88 Fed. Reg. 85,327 (Dec. 7, 2023).

<sup>2</sup> America's Credit Unions Letter to NCUA Chairman Harper on Transparency Regarding Call Report Changes (Feb. 28, 2024), <https://www.americascreditunions.org/wp-content/uploads/2024/02/ACU-Letter-to-NCUA-Call-Report-Changes-2.28.2024.pdf>.

<sup>3</sup> America's Credit Unions Letter to NCUA OGC (Mar. 21, 2024), <https://www.americascreditunions.org/wp-content/uploads/2024/04/Letter-Requesting-LoL-and-Nondisclosure-of-Call-Report-Data-re-OD-and-NSF-Fees.pdf>.

business information protected under the FOIA exemptions. We maintain that this information on overdraft and NSF fees is exempt from a FOIA request under FOIA Exemption 4 and therefore should not be made public by the NCUA. If the NCUA is releasing Call Report data under separate authority, we would appreciate that clarification.

Given our significant concerns with the potential release of this information, and the fact that the new Call Report requirements are already effective, I am sending this letter directly to the entire NCUA Board urging you to prevent the public disclosure of the information collected under revised Call Report account code 131. There are significant reputational risks that are likely to quickly arise with the public disclosure of such information. As we have already seen following the release of certain information on overdraft and NSF fees charged by California state-chartered credit unions and banks,<sup>4</sup> this information is likely to be spun in a misleading and potentially inaccurate way, resulting in irreparable harm to the positive reputation credit unions have worked so hard to achieve.

I appreciate the willingness of each Board member to discuss this issue, including during America's Credit Unions' Governmental Affairs Conference. As such, you are likely familiar with our position on collecting and releasing ODP and NSF fee data. Given that the changes have already been made to the Call Report, we stress the significant ramifications that may result. Thus, if the Board is unwilling to prevent disclosure of this fee data indefinitely, we urge, at a minimum, the agency to delay such disclosure until after it has sufficiently assessed the legal and policy concerns with releasing such information.

To best protect the credit union system and consumers, the NCUA should refrain from disclosing such information publicly. Should you have any questions or require any additional information, please do not hesitate to contact me at [chunt@americascreditunions.org](mailto:chunt@americascreditunions.org) or 703-581-4254 or Luke Martone, Senior Director of Advocacy & Counsel at [lmartone@americascreditunions.org](mailto:lmartone@americascreditunions.org) or 202-508-6743.

Sincerely,



Carrie R. Hunt  
Chief Advocacy Officer

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<sup>4</sup> Annual Report of Income from Fees on Nonsufficient Funds and Overdraft Charges (2023), [https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/04/Annual-Report-of-Income-from-Fees-on-Nonsufficient-Funds-and-Overdraft-Charges\\_2023.pdf](https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/04/Annual-Report-of-Income-from-Fees-on-Nonsufficient-Funds-and-Overdraft-Charges_2023.pdf).