



May 31, 2011

Via Email to: regcomments@ncua.gov

Mary Rupp, Esq.
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Ohio Credit Union League Comments on
"Notice of Proposed Rulemaking for Incentive-Based
Compensation Arrangements"

Dear Ms. Rupp:

The Ohio Credit Union League (OCUL) represents nearly 300 federally- and state-chartered credit unions in Ohio. OCUL appreciates this opportunity to provide comments on the National Credit Union Administration's (NCUA) proposed rule 12 CFR 751 – Incentive Based Compensation. The comments below reflect the position of the Ohio Credit Union League.

OCUL understands that NCUA, along with other financial regulatory agencies, must adopt standards governing incentive-based compensation pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The intent of the proposed rule is to prohibit a covered financial institution from establishing or maintaining any incentive-based compensation arrangements that encourage inappropriate risk-taking by the covered financial institution that could lead to material financial loss. However, financial regulatory agencies presently have the legal ability to prohibit any type of compensation arrangement considered to be an unsafe and unsound business practice that may lead to a material financial loss to the credit union when evaluating the management component of the institutions composite CAMEL rating.

While OCUL is strongly and firmly in support of regulation designed to restrain imprudent risk taking, we would like to note that the actions of the nation's credit unions are reflective of our strong ties and dedication to our philosophy of people helping people. As a result of this foundational tenet, the nation's credit unions have always acted prudently and conservatively in representing the best interests of its member owners, the 'Average Joe' people of Main Street USA, not Wall Street, and believe that credit unions should be exempt from this type of supervisory review under the Dodd-Frank Act.

§751.3 Definitions

Covered Person

Under the proposal, the term "covered person" is defined as "any executive officer, employee, or director of a credit union." OCUL believes that including any employee who might be eligible to receive incentive-based compensation is overly broad. For example, what of MSRs or Tellers who are eligible to receive negligible incentive-based



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compensation that does not pose a risk of material loss to the credit union for the cross-selling of such items as Share Certificate Accounts or Reward Checking Accounts? Perhaps the definition should be amended to exclude categories of employees who receive incentive-based compensation which will not pose a risk of material loss to the credit union.

The term covered person also includes a “director of a credit union.” Under NCUA Rules and Regulations 701.33(b)(1), only one board officer, if any, may be compensated as an officer of the board, as specified by the credit union’s bylaws. Thus, the definition of covered person should be amended to reflect this.

One other alternative that OCUL suggests be considered is to narrow the definition of “covered person” to the top 10% of a credit union’s wage earners.

Incentive-Based Compensation

OCUL believes the term incentive-based compensation, defined as “any variable compensation that serves as an incentive for performance,” to be overly broad. Credit union CEOs, boards of directors and executive officers have a fiduciary responsibility to strive for the sustained growth and long-term viability of the credit union and should not be penalized for taking necessary business risks after undertaking appropriate due diligence and review. And, as stated previously, this definition would also mean that any credit union employee, even those who receive negligible incentive-based compensation amounts, would be subject to the reporting under the proposed regulation.

The regulation should provide clear guidance or examples as to the categories and types of compensation that should be included or excluded from the definition. For example:

- Is incentive-based compensation strictly tied to financial performance markers of the credit union?
- Does incentive-based compensation include deferred compensation benefits (i.e. retirement packages and contributions)?
- Why are the examples [below] of specific types of compensation to be excluded from the definition only included in the supplemental information and not included in the regulation itself?
 - ✓ Compensation that is awarded solely for, and the payment of which is solely tied to, continued employment (e.g., salary) would not be considered incentive-based compensation.
 - ✓ A compensation arrangement that provides rewards solely for activities or behaviors that do not involve risk-taking (for example, payments solely for achieving or maintaining a professional certification or higher level of educational achievement) would not be considered incentive-based compensation under the proposal.
 - ✓ Compensation arrangements that are determined based solely on the employee’s level of fixed compensation and do not vary based on one or more performance

metrics (e.g., employer contributions to a 401(k) retirement savings plan computed based on a fixed percentage of an employee's salary).

- ✓ The proposed definition also would not include dividends paid and appreciation realized on stock or other equity instruments that are owned outright by a covered person. However, stock or other equity instruments awarded to a covered employee under a contract, arrangement, plan or benefit would not be considered owned outright while subject to any vesting or deferral arrangement (irrespective of whether such deferral is mandatory).

§751.4 Required Reports to Regulators

Credit unions will be required to submit a report annually to, and in the format directed by, the NCUA, with minimum standards outlined by 751.4(c).

- Will credit unions have an opportunity to comment or review the proposed format prior to adoption by the NCUA?
- The fact that the annual reports would be due within 90 days of the end of each covered institution's fiscal year should be clearly delineated in the rule.
- What constitutes a "clear, narrative description of any incentive-based compensation arrangements?"
- Will a credit union's incentive policy, agreement or memorandum suffice or must it also include supporting documentation for business decisions that are made with regard the defense or justification or its risk management practices?
- How do changes to incentive-based compensation arrangements get reported and within what timeframe?
- Does the credit union have authority to implement an incentive-based compensation plan submitted to NCUA or must it wait for NCUA's approval prior to implementation?

The proposal would impose special requirements for "larger covered financial institutions." The term "larger covered financial institutions" for the federal banking agencies and the SEC means those covered financial institutions with total consolidated assets of \$50 billion or more. For the NCUA, all credit unions with total consolidated assets of \$10 billion or more would be larger covered financial institutions. OCUL believes that the establishment of a lower implementation threshold than those of other types of financial institutions is unfair and without merit and creates more onerous reporting requirements for credit unions.

Confidentiality

The proposed rule fails to provide information that sensitive, proprietary and confidential information, policies and practices will remain confidential and not be subjected to public access.

§751.5 Prohibitions

OCUL believes 751.5(a)(2) provides NCUA with unlimited authority to assess subjective, rather than objective, factors in determining if incentive-based compensation is excessive. This methodology will permit individual examiners to impose individual standards when evaluating the incentive-based compensation arrangements. OCUL believes NCUA should adopt objective criteria upon which examiners will be required to use during the evaluation process.

Credit unions are encouraged to utilize deferral of payments as a way to balance risk and financial reward. However, credit union boards do not typically possess the financial savvy to understand the legal and financial complexities required by this type of undertaking due to provisions under the Internal Revenue Code. If NCUA will be responsible for advising credit unions down this path, they should also be willing to shoulder the responsibility for providing detailed guidance, as credit unions that choose this path at NCUA's urging may be subject to significant tax liabilities and penalties.

§751.6 Policies

Section 751.6(b) sets forth the standards which must be contained within the credit union policies and procedures. Specifically, 751.6(b)(3) calls for the monitoring by a "group or person independent of the covered person...to determine whether incentive compensation payments...are reduced to reflect adverse risk outcomes." As previously noted, NCUA rules and regulations prohibit the compensation of more than one board member, thus, the review and oversight of the credit union's incentive-based compensation arrangements should fall to the purview of the credit union's board of directors and not the credit union's supervisory committee, which has limited or no knowledge in this area. Thus, the final rule should be amended to clearly grant this authority to a credit union's board of directors.

Conclusion

The Ohio Credit Union League is in favor of regulation designed to inhibit irresponsible risk taking but believes the regulation should be targeted to those in the financial industry who have acted with blatant disregard for the welfare of its members. Federal and state regulatory agencies have wisely and diligently acted as the watchman on the wall concerning enterprise-wide and concentration risk-management practices of our nation's credit unions. We hope the agencies will take our concerns into consideration when evaluating the proposed rule.

Thank you for your consideration of our concerns regarding the proposal and its potential effects on credit unions. The Ohio Credit Union League appreciates the opportunity to present comments on behalf of Ohio's credit unions to the NCUA on its proposed rulemaking for incentive-based compensation arrangements, respectfully requests consideration of the comments presented, and will provide additional information if requested. Thank you for your consideration. If you have any questions, please contact me at (614) 923-9766 or jkozlowski@ohiocul.org.

Sincerely,



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