



April 7, 2011

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

Re: Proposed Rule: Incentive-Based Compensation Arrangements

Dear Ms. Rupp:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the NCUA and other applicable Agencies to implement regulations that would establish disclosure requirements related to incentive-based compensation arrangements. The proposal was issued with a 45-day comment period.

The proposal would require disclosure of all incentive-based compensation arrangements within 90 days of a final rule being approved by the NCUA. Tinker Federal Credit Union (TFCU) does not believe this is adequate time to comply with a new, untested federal regulation. Although it is hard to predict the number of hours that would be required to prepare disclosures as the proposed rule does not state how the disclosures will be provided (i.e., NCUA form, report), this short timeframe would almost certainly require that employees cease their current activities and devote time to preparing the required disclosures.

Tinker Federal Credit Union appreciates the opportunity to provide the following comments concerning the proposal.

Section 751.3 – Definitions

The proposed rule provides a definition of “compensation” that does not appear to include items such as back pay, front pay, vacation pay, sick pay, holiday pay or severance pay. In addition, the definition is inconsistent with the definition of “wages” found in the Department of Labor and Internal Revenue Service definitions, which encompass the term “compensation” as part of wages.

The proposal defines “covered financial institution” as any institution with total assets of \$1 billion or more and does not include Credit Union Service Organizations (CUSOs). TFCU agrees that CUSOs should not be covered in this rule. Currently, no CUSO has more than \$1 billion in assets and thus would not be subject to the rule as proposed.

The proposal defines a “covered person” as any executive, officer, employee, director or principal shareholder of a covered financial institution. For credit unions only one director could be a “covered person” as the Federal Credit Union Act permits only one board member to receive compensation. TFCU believes this definition is extremely broad and will

result in the credit union submitting a report of incentive plans for all executives as well as tellers, customer service representatives, etc., who may receive an incentive for opening an account or receiving a consumer loan application that is approved and do not pose a risk of material financial loss to the credit union. In consideration of this definition, some comments to consider are:

- Should there be specific exclusions to the definition of “covered persons,” specifically excluding employees who receive compensation less than a certain amount or who do not pose a risk of material financial loss to the credit union?
- Does the proposed rule intend to specifically exclude non-executive employees’ incentive-based compensation plans from reporting requirements? If so, there appears to be no clear exclusion in the proposed rule.

The proposed definition for “incentive-based compensation” appears to be extremely broad. The NCUA should consider including specific examples and exceptions to this definition, such as:

- Does the incentive for performance, as noted in the definition, have to be based on the individual or financial institution’s performance or both?
- Should the definition specifically include (or exclude) commissions, profit-sharing plans or stock option plans?
- Does the definition exclude discretionary bonuses, which can be based on numerous factors, including individual or company performance, and are not promised before payment or used as an incentive for performance?
- Does the definition exclude any plans or contracts in existence prior to the enactment of the proposed/final rule? Or, is the intent of the proposed rule to cover existing contracts, even if the contract does not comply with incentive-based compensation rules?
- Is the credit union required to put all incentive-based compensation plans on hold until the plan has been approved by regulators? Or, can the credit union continue the incentive-based compensation plan if, after submitting its report to the NCUA, the NCUA determines the plan complies with the rules?

Section 751.4 – Required Reports

Credit unions with more than \$1 billion in assets are required to submit an annual report to the NCUA disclosing the structure of its incentive-based compensation arrangements with all covered persons. Section 751.4 of the proposed rule sets forth the items required to be provided in the reports. Upon review of that section, TFCU offers the following comments and questions to consider:

- Can the policy alone satisfy the requirements for “a clear, narrative description” and “succinct description” of the incentive-based compensation, or is the NCUA looking for separate explanations of the arrangements, which generally include the policy governing the arrangements?
- What factors of specifics is the NCUA looking for when it asks for a “clear, narrative description of any incentive-based compensation arrangements”?

- Will there be a form disclosure provided by the NCUA which sets forth the factors the NCUA is looking for when reviewing the description of the incentive-based compensation arrangements and the policies and procedures?
- Is the NCUA looking for a disclosure that reports a justification or defense of the incentive-based compensation? If so, what are the objective factors or issues that the report should address?
- Is the disclosure intended to address the protections the credit union has in place against risk when implementing the incentive plan? For example, should the report include compliance reports, risk evaluations and other factors reviewed by regulators?
- Is the report requiring a definition of “covered person” as understood by the credit union in Section 751.3 - Definitions when asking the credit union to specify “the type of covered persons”?
- Can material changes to the incentive-based compensation arrangement be addressed by providing the old policy stating the terms of the arrangement?
- Does this requirement include all the protections against financial loss, risk, or possible checks and balances systems established by the credit union to avoid inappropriate risk, etc.?

TFCU believes there are alternative methods to reporting the information that would present less of a burden on credit unions. For example, providing the incentive policy, agreement or memorandum documenting the incentive plan would significantly decrease the work hours required to complete a separate report with all the same information. As an alternative, the NCUA could provide credit unions with a form to complete which specifies the objective factors, questions and issues that the NCUA must consider to determine if the incentive-based compensation complies with the executive compensation rules. The form could require inclusion of supporting documents such as the current arrangements, previous arrangements if there were any material changes, or reports on the financial condition of the credit union, compensation history, etc.

Section 751.5 - Prohibitions

It appears the NCUA will examine fairly subjective factors to determine if compensation is excessive. In TFCU’s opinion, an objective approach would better enable the credit union to determine the standard for appropriate incentive-based compensation arrangements and allow credit unions to determine the parameters of the requirements for an appropriate incentive-based compensation plan. If the NCUA relies solely on subjective factors, each credit union will be held to a different standard based on the examiner or individual evaluating the arrangements. Some objective factors to consider include:

- Length of employee’s service with the credit union.
- If the employee is a commercial lender, did the employee comply with all regulations, policies and procedures when closing commercial loans?

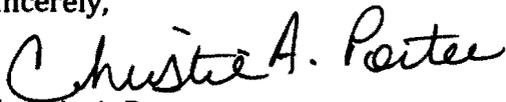
The proposal includes a provision to require deferral of 50 percent of incentive-based compensation for individuals at credit unions with more than \$10 billion in assets. Several issues may arise with this requirement:

- By requiring deferred compensation, the NCUA is subjecting the credit union to additional scrutiny and requirements established by the IRS for deferred compensation. Does the NCUA intend for the executive compensation rules on deferred compensation to be subject to IRS regulations?
- This requirement subjects larger credit unions to increased time and costs related to drafting the incentive-based compensation plans, accounting for deferred compensation, hiring attorneys to ensure compliance with NCUA and IRS regulations and tax preparation.
- This requirement may unfairly subject executives who receive deferred compensation to higher taxes on the deferred compensation.
- Are employees permitted to allocate the deferred compensation to qualified compensation plans or non-qualified compensation plans?

In addition to the above comments, TFCU believes the deferral proposal may have a negative impact on larger covered institutions. Due to the complicated nature and potential increase of income taxes because of deferred compensation, larger financial institutions may be less attractive employers for executives. Furthermore, larger financial institutions would be subject to increased costs and scrutiny, which would be to the detriment, rather than the benefit, of its members.

Once again, Tinker Federal Credit Union appreciates the opportunity to comment on the proposed rule. Please direct any questions concerning the above comments to me at (405) 319-2365 or porterc@tinkerfcu.org or to Susan Rogers, Senior Vice President, Director of Human Resources, at (405) 319-2340 or rogerss@tinkerfcu.org.

Sincerely,



Christie A. Porter
Senior Vice President, Compliance

cc: National Association of Federal Credit Unions
Credit Union National Association