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601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734

May 31, 2011

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

Re: Incentive-Based Compensation Arrangements; RIN 3133-AD88

Dear Ms. Rupp:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the National Credit Union Administration (NCUA) Board's proposed rule on particular incentive-based compensation practices at financial institutions, which is addressed in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation's 7,500 state and federal credit unions, which serve approximately 93 million members.

The Rule Should Distinguish Between Credit Unions that Have Not Rewarded Undue Risk Taking and Other Financial Entities that Have

The Dodd-Frank Act under § 956 requires the federal financial regulatory agencies¹, including NCUA, to establish rules regarding certain incentive-based compensation practices. More specifically, the Act covers compensation that rewards undue risk-taking on behalf of a financial institution that could lead to material losses.

Unlike others in the financial marketplace, credit unions have generally not provided the kinds of abusive compensation plans that are the subject of this proposal and that encouraged unmanageable risks, thereby contributing to the financial crisis.

¹ The National Credit Union Administration, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, U.S. Securities and Exchange Commission, and the Federal Housing Finance Agency.



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The final rule should acknowledge this important distinction between credit unions on the one hand and certain banks and other financial entities on the other that did engage in such practices. Moreover, in light of those differences, the burdens of this rule on credit unions should be absolutely minimal, and no provision for credit unions—that were not part of the problem—should be any harsher than similar provisions for other institutions that did provide such compensation to encourage undue risk. The discussion below regarding the trigger for compliance with additional disclosure requirements addresses this concern.

We do not believe many credit unions will be covered by the rule because they generally do not provide the type of compensation addressed in the Dodd-Frank Act. Even so, we urge NCUA to work with the other regulators to make important changes in the proposal that will recognize the significant differences between credit unions and other institutions regarding compensation arrangements that are the subject of this proposal.

Generally, the proposed rule would be limited to incentive-based compensation arrangements at a covered financial institution (including credit unions with \$1 billion or more in assets) that encourage executive officers, employees, or directors (“covered persons”) to expose the institution to inappropriate risks by providing the covered person excessive compensation. As a general comment, we urge the Board to explain more clearly that the rule would not cover salaries and it would also exclude performance bonuses or other compensation linked to performance that does not encourage undue risk.

Specific Terms

“Executive officers”: The proposed definition of “executive officers” would encompass any credit union employee who is the “head of a major business line.” We believe the Board should remove this term from the final rule, as the proposed definition of “covered persons” would include all individuals capable of causing the credit union to take excessive risk, even without explicit reference to the “head of a major business line.”

The *Supplementary Information* to the proposed rule states that, “the agencies do not envision that ‘incentive-based compensation’ would include” (1) rewards solely for activities that do not involve risk-taking, such as payments solely for achieving or maintaining a professional certification; and (2) compensation arrangements that are determined based solely on the covered person’s level of fixed compensation, such as employer contributions to a 401(k) plan computed based on a fixed percentage of salary. We believe that such compensation should be expressly excluded from the definition of “incentive-based compensation” and urge the Board to include language to that effect as a provision in the final rule.

In addition, the term “incentive-based compensation” should be clarified to exclude: 457(b) Deferred Compensation Plans and 457(f) Supplemental Retirement Plans, Executive Long-Term Care Plans, and Executive Disability Plans, which are not related to performance and would not materially affect the ongoing operations of the credit union. The Board also should include 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’s or the financial institution’s performance, or both?
- Should the definition specifically include (or exclude) commissions or profit-sharing 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 effective date of the final rule?

Application to Credit Union Service Organizations

As proposed, CUSOs would not be included as covered financial institutions. While there are currently no CUSOs with assets of at least \$1 billion, the agencies specifically request input on whether CUSOs should be included alongside credit unions and banks.

CUSOs do not generally fit the definition of regulated financial institution and we do not agree that they should be included.

Proposed Reporting Requirements for All Covered Credit Unions

In general, a credit union that provides incentive-based compensation as defined under the rule would need to submit an annual report to NCUA that describes the structure of its incentive-based compensation arrangements for covered persons. The report would have to be sufficient to allow NCUA to assess whether the structure or features of those arrangements are (1) *likely to provide covered persons with excessive compensation, fees, or benefits* or (2) *could lead to material financial loss* to the credit union.

The proposal states that a “clear narrative” of the credit union’s covered compensation plan would need to be included. However, the language in the proposal needs to be clearer regarding the kinds of information the agencies are requiring from covered financial institutions.

Also, we recommend the Board provide a form disclosure, which sets forth the factors NCUA is looking for when reviewing the description of the incentive-based compensation arrangements, policies, and procedures. 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. We urge the Board to seek comment on the reporting form from the credit union industry before issuing the final rule.

The proposed rule seeks to limit unnecessary reporting burden on covered financial institutions and leverage the existing supervisory framework for institutions, according to the proposal. NCUA indicated in the *Supplementary Information* to the proposal that it “would likely consult with the appropriate state regulator in cases involving a state-chartered credit union.” We agree that NCUA should work to minimize reporting burden and urge the Board to specifically coordinate with state regulators on this proposal.

Further, in light of the nature of the information that will be provided to the agencies and the purposes for which the agencies are requiring the information, the agencies have indicated they intend to maintain the confidentiality of the information and it would generally be nonpublic. We urge the Board to clarify how it will accomplish this in the final rule.

The final rule would be effective six months after publication in the *Federal Register*, with annual reports due within 90 days of the end of each covered institution’s fiscal year. We believe the timeframe for filing annual reports should be extended from 90 days to at least 180 days of the end of the year.

Proposed Additional Requirements for Credit Unions with \$10 billion or More in Assets

The proposal would impose special requirements on “larger covered financial institutions.” The term “larger covered financial institution” for the other federal agencies includes institutions with assets of \$50 billion or more. For NCUA, all credit unions with total consolidated assets of \$10 billion or more would be “larger covered financial institutions” and subject to additional requirements under the proposal. We strongly oppose this different threshold for credit unions.

CUNA has already raised serious concerns regarding the trigger level for credit unions, and no rationale has been provided by NCUA to justify a threshold for credit unions that is different from the one proposed for banks. Certainly the trigger for credit unions should be no lower than the one for banks. Also, NCUA has deviated from the definition of “larger covered financial institution” applied by the other regulators and has provided no explanation or justification for that deviation. The Board should amend the trigger level of the proposal to be at least \$50 billion for credit unions and apply a consistent definition of “larger covered financial institution.”

Deferral required for executive officers

Under the proposal, any incentive-based compensation arrangement for an executive officer, by a credit union that has total consolidated assets of \$10 billion or more, would need to:

- Defer at least 50% of the annual incentive-based compensation of the executive officer over at least three years; and
- Adjust the amount required to be deferred to reflect actual losses or other aspects of performance that are realized during the deferral period.

We oppose the proposed deferral requirement and urge the Board to seriously consider whether this provision should be included in the final rule. If the Board decides it is necessary to require deferral, in the final rule or *Supplementary Information*, the Board should clarify that it is permissible for credit unions to invest deferred compensation in a prudent and fiduciarily responsible way so as to accommodate the impact of inflation and the lost revenue opportunity to the individual.

Thank you for the opportunity to express our views on the Board's proposed rule on incentive-based compensation arrangements. If you have any questions about our comments, please do not hesitate to give CUNA Senior Vice President and Deputy General Counsel Mary Dunn or me a call at (202) 508-6743.

Sincerely,

A handwritten signature in cursive script that reads "Luke Martone". The signature is written in black ink and is positioned above the printed name and title.

Luke Martone
Assistant General Counsel