July 22, 2016

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

RE: Comments on NCUA's Incentive-Based Compensation Arrangements

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 350 credit unions and their more than 10 million members/consumers. The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on the proposed joint agencies' rulemaking for incentive-based compensation arrangements.

The Leagues recognize the NCUA and other federal regulators (collectively, the Agencies) are required to jointly implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 956, Enhanced Compensation Structuring Reporting, generally requires the Agencies issue regulations or other guidelines: (1) Prohibiting incentive-based payment arrangements that the Agencies determine encourage inappropriate risks by certain financial institutions by providing excessive compensation or that could lead to material financial loss; and (2) requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator.

Once again, credit unions have been included with all financial institutions, regardless of our member-owned structure, the fact that credit unions are not the bad actors that these rules are meant to target, and there is no evidence given that shows compensation is responsible for any credit union failures. We repeatedly hear from the NCUA and the Consumer Financial Protection Bureau (CFPB) that credit unions were not the cause of the financial crisis, yet we are continually thrown into the deep end along with all other financial institutions when it comes to rulemaking. We strongly recommend the NCUA minimize the impact of this rulemaking for credit unions, and we offer the following comments.

Guidance versus Rule

As mentioned above, section 956 of the Dodd-Frank Act requires the Agencies to issue regulations or guidance. We strongly urge the Agencies address the requirement by issuing guidance and not by promulgating a new stringent rule that depends heavily on examiner interpretation and will be difficult to apply consistently. By issuing guidance with illustrations and examples credit unions can more readily understand the expectations, boards can approve appropriate compensation plans to attract and retain talent, and the NCUA can meet the requirements of section 956.

Scope

The proposed rule, under 751.1(b), would apply to all credit unions, including privately-insured state chartered credit unions, with average total consolidated assets greater than or equal to $1 billion that offer incentive-based compensation to covered persons.

The Leagues strongly disagree with this overreach to credit unions not subject to NCUA supervision and which have no impact on the safety and soundness of the National Credit Union Share Insurance Fund.

Covered institutions would be assigned to one of three levels based on average total consolidated assets, with larger institutions subject to more rigorous requirements under the proposed rule.

- Level 1 – greater than or equal to $250 billion in average total consolidated assets;
- Level 2 – greater than or equal to $50 billion and less than $250 billion in average total consolidated assets; and
- Level 3 – greater than or equal to $1 billion and less than $50 billion in average total consolidated assets.

Section 956 applies to financial institutions with at least $1 billion in average total consolidated assets; it does not establish other coverage criteria. While we appreciate the Agencies structuring less stringent requirements for smaller institutions, we believe they should further minimize the impact for credit unions. If issued as a final rule, we recommend increasing the Level 2 coverage to institutions greater than or equal to $100 billion.

In addition, under proposed 751.6, the NCUA has the discretion to require a Level 3 credit union with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the requirements of a Level 1 or Level 2 credit union. As stated earlier, there is no evidence given that shows compensation is responsible for any credit union failures. As such, we fervently oppose this element and strongly urge the NCUA remove this proposed ability.

Other NCUA Rules

The NCUA already has existing regulations that prohibit compensation to employees, including: 12 C.F.R. Part 701.21(c)(8) where credit unions are prohibited from compensating employees or volunteers “in connection with any loan made by the credit union;” NCUA’s Part 721.7 prohibits compensation based on incidental powers; and Part 701.23(g) prohibits compensation based on the purchase and sale of eligible obligations.

Should the NCUA finalize this proposed rule that implements internal controls and board oversight of incentive-based compensation plans, we recommend the NCUA amend existing regulations to exclude senior management employees from the prohibitions of the existing rules.

Conclusion

In conclusion, the Leagues believe the proposal goes too far. We recommend the NCUA issue guidance, as permitted under section 956 of the Dodd-Frank Act, rather than a new rigorous rule. Should a final rule be issued, we urge the NCUA to structure it in a way that minimizes the impact on credit unions.

Thank you for the opportunity to comment on the proposal and for considering our views.

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CUNA, CCUL