

From: [John McKenzie](#)
To: [Regulatory Comments](#)
Subject: Indiana Credit Union League Comment Letter on Notice of Proposed Rulemaking for Incentive-based Compensation Arrangements
Date: Friday, July 22, 2016 1:07:00 PM
Attachments: [image001.png](#)

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

Re: Notice of Proposed Rulemaking for Incentive-based Compensation Arrangements

Dear Mr. Poliquin:

The Indiana Credit Union League appreciates the opportunity to submit comments on the National Credit Union Administration's Proposed Rulemaking on Incentive-based Compensation Arrangements. The ICUL member credit unions represent 97% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.3 million consumers.

The League is very concerned about this proposal, which we do not support. We recognize that the agency is required under Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop a rule on incentive-based compensation, in conjunction with the other federal financial regulators. However, the new proposal still contains a number of deficiencies that we believe will be problematic for compliance as well as enforcement, and we urge you to address them in the final rule. Our concerns are discussed below.

Anytime that a proposed rule uses language that is ambiguous and open to varying interpretation, examination issues are unavoidable. This proposed rule uses several ambiguous terms that can be interpreted differently by many people and by the regulatory agencies crafting the rule. One example of this would be "excessive compensation." While the proposed rule attempts to define what "excessive" is, it does so by including other ambiguous terms such as "relevant factors," while not truly defining what these are. Also, the discussion of relevant factors does not include the actual performance of the credit union. The proposed rule also uses "inappropriate risk-taking" as part of the evaluation of the performance-based compensation plans. Credit unions are in the business of managing risks. Different economic environments require different approaches to managing risk. The risk tolerance of individuals and organizations vary dramatically. As a result, what is considered "inappropriate" could also vary dramatically. Even the definition of a covered person as a person "whose activities may expose the Covered Entity to material financial loss" is a bit ambiguous. What is the definition of a "material financial loss?" CPAs do not agree on what is "material" today in many aspects of accounting, so how is this supposed to be interpreted based on this proposed rule? This just opens the door very wide for confusion and examination issues.

We also urge other changes and improvements to Section 751.2 regarding the definitions of "incentive-based compensation," and the division of credit unions based on three asset levels. The Supplementary Information indicates that "incentive based compensation" does not include salaries, bonuses, or benefits that are provided for general job performance and are not provided as incentives to assume undue risk for the credit union. We think the definition of "incentive-based" compensation should be clarified in the rule, not only in the Supplementary Information, to focus solely on incentives designed to reward excessive risk taking. The definitions set up three levels of compliance responsibilities, based on asset size, which we do not think fit credit unions. The law exempts institutions with assets of \$1 billion or less. For a well-managed credit union with assets over that level, any "incentive-based compensation" should be merely subject to the credit union board's approval and review by the examiner and not subject to the complexities of this proposal. Additional requirements should be only applied to poorly managed credit unions or credit unions in which incentive-based compensation abuses have occurred. In other areas of

the proposal, regulators have varied the provisions that would apply to the institutions they regulate. We urge NCUA to deviate somewhat from the other regulators and change the application of the rule for credit unions.

We also question whether a rule is needed for credit unions, rather than guidelines. Indiana currently has eight credit unions that fall under the proposed Level 3 tier. While limiting the requirements for Level 3 to analyzing, reporting and making available the analysis to the regulator is a vast improvement over the potential burden, we still believe that this is unnecessary in the credit union environment. As member-owned cooperatives, credit unions' focus is on what is in the best interest of the members, not self-enrichment. This regulation is another example of a solution looking for a problem in the credit union environment. There has been no information provided that demonstrates that credit union executive compensation programs have presented a risk to safety and soundness. The broad brush represented by the Dodd-Frank Act will end up impacting institutions that were not then, and are not now part of the problem Dodd-Frank was intended to address. We urge NCUA to approach this area from the framework of providing supervisory guidance related to executive compensation plans, rather than promulgating more regulations.

In addition, we are concerned about the added responsibilities the proposal would create for credit union officials. While not limited to the NCUA, federal regulators continue to promulgate rules that increase the burden placed on the credit union officials, most of whom serve as volunteer board members. The board of directors already oversees the executive officers' overall compensation and incentive plans, and we are not aware of this being an area of excessive negative impact on credit unions or the National Credit Union Share Insurance Fund. The examiners currently scrutinize all aspects of the credit union, including the credit union's budget and ongoing financial performance. We believe that there is already sufficient supervisory authority over this area through the normal examination program.

We believe that the record retention, documentation and monitoring required in the proposed rule are again overreaching and unnecessary, and we do not see where the regulatory "benefits" justify the additional cost and time requirements. For the credit union to "provide for monitoring by an independent body of risks taken and actual outcomes to determine whether incentive-based arrangements should be reduced" is totally unnecessary and would again add costs to the credit union that generate no tangible benefit to the credit union or to its members.

While the purpose of this rule may be well-intended, NCUA has not demonstrated that there is a problem within the credit union environment that requires a regulatory fix. We firmly believe that, at most, NCUA could provide guidance on properly structured performance-based compensation plans, but there is no need for regulations in this area. As proposed, the regulation would more likely result in confusion and disagreement due to the subjective and ambiguous wording used. We are very concerned that the various regulatory agencies will have widely disparate interpretations as well, which could create conflict. We believe that the time and cost to enforce this rule will truly burden the covered credit unions with no tangible benefit to the credit union or NCUA. The NCUA Board has indicated a strategic direction to reduce the regulatory burden on credit unions. We believe this proposed rule goes against that strategic direction, and is unnecessary.

Furthermore, we are concerned that this proposal will be an open invitation for examiners to second guess the entire compensation structure of credit unions, even when the credit union does not award "incentive-based compensation." While we urge the Board to reconsider and revise the proposal, we also urge the Board to develop credit union-specific guidance for credit unions and examiners.

In closing, this proposal seems needlessly complicated and we believe presents significant concerns that we urge the Board to address. Thank you for the opportunity to comment on the Proposed Rulemaking for Incentive-based Compensation Arrangements. If you have any questions about our letter, please do not hesitate to give me a call at (317) 594-5320.

Sincerely,

A handwritten signature in black ink that reads "John McKenzie". The signature is written in a cursive style with a large, stylized "J" and "M".

John McKenzie
President, Indiana Credit Union League