OHIO CREDIT
UNION LEAGUE

July 22, 2016

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

Re: Incentive-Based Compensation Arrangements
12 CFR Parts 741 and 751
RIN 3133–AE48

Dear Mr. Poliquin:

In the aftermath of the Great Recession, Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") required the National Credit Union Administration (NCUA), collectively with other federal banking and financial regulators, to "jointly prescribe regulations or guidelines" to prohibit incentive-based pay arrangements that encourage inappropriate risk-taking by covered institutions. The agencies collectively determined that a rule best meets these regulatory requirements, rather than issuing guidelines. We respectfully disagree with this conclusion as it applies to credit unions.

As drafted, the proposed rule would (1) prohibit incentive-based payment arrangements that NCUA determines encourage inappropriate risks by providing excessive compensation that could lead to material financial loss; and (2) require credit unions to disclose information concerning incentive-based compensation arrangements to NCUA.

Under the proposed rule, credit unions are divided into three tiers, based on asset size. Currently, there are only a few Ohio credit unions in Tier 3 ($1 billion to $50 billion in assets), and none in either Tier 1 or Tier 2. Credit unions with assets less than $1 billion would be exempt from the proposed rule.

Although we recognize the importance of preventing inappropriate risk-taking, the Ohio Credit Union League (OCUL) urges NCUA to withdraw the proposed rule in favor of issuing guidelines (as permitted under Dodd-Frank) that assure safety and soundness of the credit union system without inappropriately interfering with the internal governance of individual credit unions.

NCUA currently has supervisory authority through its examination program to address any compensation plans that may result in unsafe and unsound practices at a federally-insured credit union. Because this ability to rein in "outliers" paying bonuses or compensating at a level beyond the credit union's ability to safely and soundly operate already exists, no regulation is required. Guidelines published by the agency instead could

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help credit unions with capital needs or earnings challenges understand what the examiners will be reviewing in regard to compensation packages.

Specifically, OCUL has the following concerns:

1. In the case of credit unions, the rule would cover all credit unions, including those privately-insured credit unions chartered by Ohio or any other state. This expansion of federal oversight to credit unions that are otherwise not subject to NCUA supervision is another challenge to the dual-charter system that is a significant strength of the credit union system.

2. The rule as drafted depends upon discretionary interpretation of some terms by the examiner in order to determine whether a credit union is in compliance. Terms such as "inappropriate risk-taking" and "excessive compensation" are inherently individualized to each credit union. They are also dependent upon the interpretation of an individual examiner, which may vary with those of his/her peers, leading to inconsistent application of the rule.

   At the same time, such terms are difficult to define with specificity. The credit union's volunteer board may run afoul of the rules when attempting to attract or retain talent needed to allow the credit union to thrive. By issuing guidelines with a variety of illustrations as part of its supervisory role, instead of a hard-and-fast rule, NCUA could accomplish the goal of preventing incentive compensation that encourages risk-taking in a manner that is more effective and instructive for all parties involved.

3. Another section of the rule leaves too much discretion with examiners. §751.6 would allow the federal regulator to require some Tier 3-covered institutions to comply with some or all of the more rigorous requirements applicable to Level 2. These additional Tier 2 requirements include deferral and clawback requirements for parts of incentive compensation for certain defined senior officials and significant risk-takers. These deferral and clawback provisions are an unnecessary over-complication for a credit union, which generally has a less-sophisticated incentive program. For example, because credit unions are member-owned cooperatives, credit union executives cannot be rewarded with large grants of stock options or other even-more exotic forms of deferred compensation.

4. Although the proposed rule does not apply directly to credit union service organizations (CUSOs), it does state that credit unions may not use CUSOs to avoid its requirements, such as by using a CUSO to maintain non-compliant, incentive-based compensation arrangements. To enforce this provision, NCUA will need to monitor CUSOs in some manner to ensure that CUSOs are complying. This is yet another expansion of the agency's oversight of CUSOs beyond what is outlined in federal law and regulations, and it is not clear how the monitoring could be accomplished.

5. Section 751.4(f) imposes additional record-keeping requirements for credit unions. Under the rule, a credit union must document the structure of all its incentive-based compensation arrangements and demonstrate compliance, creating annual records that must be maintained for a period of at least seven years, to be disclosed to NCUA upon request. At a minimum, these records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls. The proposed rule therefore adds to the increasing amount of detailed record-keeping to which credit unions are already subjected.

Clearly, inappropriate risk-taking was a factor contributing to the Great Recession. Equally clear, however, is the lack of evidence that indicates such risk-taking by those involved in running U.S. credit unions was a significant cause of the financial downturn. Therefore, devising elaborate regulations to prevent non-existent credit-union risk-taking from adversely impacting the U.S. economy appears to be a solution in search of a problem.

The Ohio Credit Union League seeks a regulatory environment that promotes safety and soundness while allowing Ohio's 304 credit unions to serve their almost 3 million members. We offer these suggestions in an effort to improve the efficiency of NCUA as a prudential regulator, share insurer, and partner for Ohio credit unions in providing affordable financial services safely and soundly. We are available to provide additional comments or information if so requested. If you have any questions, please do not hesitate to contact Carole McCallister, Manager of Research & Analysis, at (800)486-2917, ext. 262, or cmccallister@ohiocul.org.

Sincerely,

Carole McCallister

Carole McCallister
Manager, Research & Analysis

cc: Stan Barnes, OCUL Chair
Barry Shaner, OCUL Government Affairs Committee Chair
Credit Union National Association