



July 21, 2016

Mr. Gerard Poliquin  
Secretary to the NCUA Board  
1775 Duke Street  
Alexandria, VA 22314

Re: Proposed Joint Rule on Incentive Based Compensation (Proposed Rule)

Dear Mr. Poliquin,

Credit Union of Texas is a \$1.3 billion state-chartered credit union headquartered in Dallas, Texas. We submit the following comments on the joint rule on incentive-based compensation proposed by the U.S. regulatory agencies (Agencies).

Under the Proposed Rule, Credit Union of Texas would be classified as a Level 3 Covered Institution, subject only to the basic set of prohibitions and disclosure requirements. As a credit union just over a significant asset milestone<sup>1</sup> and barely into the threshold of “covered institution” status under the Proposed Rule, we are uniquely aware of the immediate impact of regulations that may be imposed merely due to attaining a certain asset size, even though business operations remain substantially unchanged. Thus, we appreciate the conscientious efforts of the Agencies to tailor the Proposed Rule to the size and complexity of covered institutions, including the NCUA’s determination that the Proposed Rule would not apply to credit union service organizations. At the same time, we also appreciate the Agencies’ effort to provide guidance on their expectations for incentive compensation arrangements, as Credit Union of Texas (as well as most of the industry) cannot ignore the fact that inappropriate incentive compensation undoubtedly contributed to the recent financial crisis.

We would like to point out that the definition of “senior executive” under the Proposed Rule extends further than a definition in existing NCUA rules, notably, the rule on lending-based compensation, 12 CFR §701.21 (c)(8). That definition is as follows:

*Senior management employee* means the credit union's chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).

Other NCUA rules use that same definition.<sup>2</sup> Given the almost certainly less complex structure of Level 3 credit unions, it may be more logical for those credit unions to determine the

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<sup>1</sup> According to the Credit Union National Association, as of year-end 2015, only 253 out of 6,259 credit unions are over \$1 billion in assets.


<sup>2</sup> 12 CFR §701.23 (g) regarding sale of eligible obligations; 12 CFR §721.7 regarding incidental powers; 12 CFR §712.8 regarding merger-related financial arrangements.

reach of the Proposed Rule from an existing definition, rather than trying to pare down which of their staff should be covered under the extremely broad definition in the Proposed Rule. The definition in the Proposed Rule is so broad that it would likely ensnare some fairly lower-level employees at Credit Union of Texas who have little or even no impact on risk decisioning, which we do not believe is the intent of the Proposed Rule.

CUTX has some concerns that risk decisions which result in a loss through no fault of the decision maker would be criticized only because of the benefit of regulatory hindsight. Some prudent risk decisions—even those that follow institutional policy—may result in losses. Indeed, some highly risky decisions won't necessarily cause a loss, because that is a factor of luck sometimes. For losses that are not material losses, we would not like to see a risk decision that causes a later loss to be viewed by the regulators as a prima facie bad decision, with a follow-on determination by the regulator that an incentive "should not" have been paid or an incentive compensation arrangement must become subject to a required amendment. We hope that a Covered Institution, and any regulatory review of incentive plans and their payouts, would be given the deference of business judgement rule-type analysis when reviewing whether a payout should be made.<sup>3</sup>

Thank you for the opportunity to comment on the proposal.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John B. Lederer", with a long horizontal flourish extending to the right.

John B. Lederer  
Chief Executive Officer  
Credit Union of Texas

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<sup>3</sup> The business judgment rule states generally that duties [in this case, of the person making the risk decision] were performed in good faith; with the care that a reasonable person would have used in the same situation; acting in a way that [the decision maker] reasonably believed was in the best interests of the company.