



July 15, 2016

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

*Sent electronically to
regcomments@ncua.gov*

RE: Notice of Proposed Rulemaking for Incentive-based Compensation Arrangements; RIN 3235-AL06

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding notice of proposed rulemaking for Incentive-based Compensation Arrangements. To provide a brief background, the Credit Union Association of the Dakotas represents sixty-seven state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$6 billion and who have more than 450,000 members.

CUAD acknowledges the fact that NCUA is required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to work jointly with other Federal Regulators to implement Section 956 of the Dodd-Frank Act, Enhanced Compensation Structuring Reporting. Section 956 directs that regulations or guidelines be developed “to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure (A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or (B) could lead to material financial loss to the covered financial institution.” Furthermore, section 956(b) prohibits “any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions...”

While NCUA does not have the flexibility to do nothing under section 956, until such time as Congress revisits the Dodd-Frank Act, we urge the NCUA to exercise its authority to adopt

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regulations that are as least restrictive as possible on the credit unions that will be affected by this rule. CUAD echoes Chairman Metsger's remarks during the April 21, 2016 open board meeting when he stated, "Now as we all know, credit unions were not a primary cause of the financial crisis. They were primarily victims..." Credit unions are continually told this message, however, credit unions are continually lumped in the same boat as the bad actors that caused the financial crisis. Credit unions are fundamentally different and should be regulated accordingly.

In the preamble to the proposed rule, the agencies noted that "incentive-based compensation arrangements are critical tools in the management of financial institutions. These arrangements serve several important objectives, including attracting and retaining skilled staff and promoting better performance of the institution and individual employees." *81 FR 37673* CUAD agrees with this statement and urges the NCUA to ensure that incentive-based compensation agreements are not regulated away. Credit unions operate in a very competitive marketplace and continuously face challenges when attempting to hire and retain staff. Credit union pay is generally below other financial institutions. Occasionally, credit union executives are recruited by other financial institutions, sometimes even other industries, which promise compensation arrangements that credit unions cannot compete with.

CUAD has concerns with several of the proposed concepts and how they could be potentially interpreted. For example, proposed section 751.4 sets forth the requirements and prohibitions applicable to all credit unions subject to this part, which are credit unions over \$1 billion. As proposed, a credit union must not "establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the credit union..." While this language mirrors section 956 of the Dodd-Frank Act, the phrase "encourages inappropriate risks" is bound to create interpretations issues and conflict between credit unions and NCUA examiners.

Another example of the potentially unworkable proposed requirements is under section 751.4(d) which requires that the incentive-based compensation arrangement include "financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a credit union and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking..." How does one measure "considerations of risk-taking" or "appropriately weighted to reflect risk-taking"?

Issues involving performance and compensation are very specific to the individual credit union and the people that make up that credit union. This proposed rule is requiring that NCUA micro-manage the credit union. These are issues that should only be handled by the individual credit union's management and board of directors.



CUAD objects to the NCUA's reservation of authority for Level 3 credit unions under proposed 751.6. The proposed rule provides that NCUA may 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 provisions of the proposed rule "if NCUA determines that the Level 3 credit union's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 credit union." A very subjective determination by the NCUA would place new requirements and restrictions on a credit union that was otherwise operating in compliance. This would create uncertainty and unnecessary regulatory burden on credit unions.

While a majority of credit union (more than 95%) are completely exempt from this proposed rule, CUAD still urges NCUA to keep the regulatory burden to the absolute bare minimum to comply with the Dodd-Frank requirements.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

Jeffrey Olson
CEO/President

Amy Kleinschmit
VP of Compliance