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Also admitted in Wisconsin

American Airlines
Credit Union

Sent electronically to: regcomments@ncua.gov

July 22, 2016

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

RE: Notice of Proposed Rulemaking for Incentive-Based Compensation Arrangements – RIN 3133-AE48

Dear Mr. Poliquin:

My name is Faith Lleva Anderson and I am the Senior Vice President and General Counsel for American Airlines Federal Credit Union (AA Credit Union). AA Credit Union is a federally chartered credit union headquartered in Fort Worth, Texas. AA Credit Union has approximately $6 billion in assets, 45 branches and serves over 263,000 members.

The National Credit Union Administration (NCUA) and other federal financial regulators (Agencies) are required by Section 956 of the Dodd-Frank Act (Act) to jointly develop incentive based compensation (IBC) rules. Section 956 of the Act was intended by Congress to specifically address flawed IBC practices of large and unscrupulous companies in the financial industry that it considered as one of the contributing factors that lead to the financial crisis that started in about 2007.

Proposal is Burdensome to Credit Unions

We understand that the Act specifically exempts credit unions that are less than $1 billion in asset size from Section 956 and that NCUA does not have much flexibility in this section. However, Section 956(a)(1) mandates that "[t]he appropriate Federal regulators jointly shall prescribe regulations or guidelines …." (emphasis added).

This proposal is frustrating because Congress, NCUA and the other Agencies are all very well aware that credit unions did not cause the financial crisis. Instead of rewarding credit unions for their prudent actions, credit unions are instead being swept in along with the large unscrupulous financial institutions to ever increasing regulations that are truly unnecessary, costly and burdensome. The ever increasing costs of compliance actually rewards larger financial institutions who have the resources and deep pockets to pay for these expenses, while penalizing credit unions and other small financial institutions who were not part of the financial crisis.

The proposal also puts credit unions at a competitive disadvantage in terms of talent retention and hiring. Credit unions compete for talent within the credit union industry, banking industry and also with other industries such as IT. Putting these requirements on credit unions, places credit unions at a disadvantage because we cannot offer the same type of compensation arrangements as other financial institutions or even other industries.

We strongly request the NCUA and the Agencies to issue guidance instead of regulations. Guidance can be tailored to a particular industry instead of applying a blanket regulation across all financial institutions based on asset size alone, without acknowledging credit unions' unique business, risk and structural models.

Covered Financial Institutions

Section 956 of the Act would prohibit certain employees of covered financial institutions from receiving excessive compensation, fees or benefits that could lead to a material financial loss to covered financial institutions. The proposed rule would apply to credit unions having assets equal or greater than $1 billion that offer IBC to covered persons. Under the rule, credit unions would be assigned to one of three levels based on asset size:

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

Most credit unions affected by this proposal would fall into the Level 3 category.

NCUA already has the authority to examine credit unions' compensation packages to ensure a credit union's safety and soundness through its Examiner's Guide and the components of its CAMEL Rating System. Currently, AA Credit Union already has its Compensation Committee and Board of Directors review and approve its overall IBC plan and those specifically for our officers. The documentation is shared with our NCUA examiners when requested.

As cooperatives and not-for-profit institutions, credit unions' business models are very different from those mega financial institutions who have shareholders, are able to offer stock-based compensation and have paid board members. Credit union are owned by its members, do not have stock to offer as compensation and our board members are primarily made up of unpaid, volunteer members.

Because the proposal applies different requirements to covered credit unions based on asset size alone with each asset size level requiring more burdensome requirements, we would recommend that if the NCUA and Agencies must adopt the proposal that the minimum Level 3 threshold for covered credit unions start at $10 billion in assets and not $1 billion. This better aligns with the threshold of what the credit union industry already considers a "large" credit union to be.

At the $10 billion in asset size and above, these large credit unions already have specific requirements that they have to follow from the NCUA and other regulators. We would also recommend that the maximum size of Level 3 credit unions be increased from $50 billion to $100 billion and that correspondingly the floor for Level 2 institutions be increased to those with $100 billion or more in assets.

We also recommend that instead of just focusing on asset size alone, that the NCUA also review the risk based practices of a credit union being examined. The business practices of a credit union are much better indicators of risk than just relying only on a credit union's asset size alone.

Level 3 Institutions

The proposed rule gives examiners authority to determine what meets the definition of "excessive compensation" and "material financial loss." Section 751.6 would allow examiners to require certain Level 3 credit unions to comply with the rigorous requirements applicable to Level 1 and Level 2 institutions. We strongly object to this section as it gives too much discretion to the examiner.

Performance and compensation are very specific to each credit union based on that credit union's strategies, goals and business model. A credit union's board of directors is much better equipped to understand the credit union's long term goals. The proposal gives too much opportunity for an examiner to micro-manage a credit union. We would request that instead detailed guidance be given to an examiner that he or she must follow before a credit union is subject to more burdensome requirements by being moved up to a higher level. Additionally, the examiner should be required to give the credit union ample notice so that the credit union has time to comply with the more rigorous requirements of the higher level.

Definition of "Covered Persons"

The definition of a "covered person" includes "any executive officer, employee, or director of a credit union." This definition is too broad and needs to be tightened. The proposal is meant to minimize risk taking by those persons who have the power and authority to put a credit union in financial risk. However, as written, the proposal would capture IBC of any credit union employee including those employees who may receive $25 gift cards for a credit union's non-financial goals such as increasing member referrals, cross-marketing opportunities or member satisfaction.

Record Retention

The proposal requires all covered institutions to annually create and retain for seven years documentation regarding the structure of its IBC arrangements. We would recommend that this length of record retention be shortened for Level 3 institutions to two years. It appears that the record retention is to be used as evidence for possible forfeiture and claw back provisions of IBC for those at Levels 1 and 2. We do not believe that it is appropriate for Level 3 credit unions.

This proposal is unnecessary and overreaching. It is a proposal in search of a problem that does not exists at credit unions. Because credit unions were not involved in the financial crisis, are not-for-profit institutions and are owned by its members, we strongly request that any regulatory impact be minimized.

Thank you for the opportunity to comment on this proposal. If you have any questions, please contact me.

Sincerely,

Faith Lleva Anderson

Faith Lleva Anderson
Senior Vice President & General Counsel
American Airlines Federal Credit Union

cc: Cornerstone Credit Union League
CUNA
NAFCU