

June 21, 2019

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

RE: Comments on ANPR: Compensation in Connection with Loans and Lines of Credit to Members; RIN 3133-AE97

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their more than 11 million members.

The NCUA Board is seeking comments on ways to improve the agency's regulations limiting a credit union official's and employee's compensation in connection with loans and lines of credit to members. Based on a recommendation from the NCUA's Regulatory Reform Task Force, the Board is seeking to modify its regulations to *"provide flexibility with respect to senior executive compensation plans that incorporate lending as part of a broad and balanced set of organizational goals and performance measures."*

The Leagues fully support incentive compensation arrangements that appropriately balance risk and financial results without inappropriately or inadvertently incentivizing employees to take imprudent risks.

The Leagues support the current structure of the regulation, that is a blanket prohibition with specific exceptions, and recommend it be maintained. We do not support attempting to define the term "overall financial performance." We respectfully submit the following comments and recommendations.

Background

The NCUA's regulations in this area were last updated over 20 years ago and the Board suggests that they are likely outdated and at odds with industry standards for senior executive compensation plans. Section 701.21(c)(8) of NCUA's rules and regulations generally prohibits officials and employees of a federally-insured credit union, or their immediate family members, from receiving, "directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union."

Section 701.21(c)(8)(iii) carves out four exceptions to this blanket prohibition. One exception is that credit unions are not prohibited from paying an incentive or bonus to an employee in connection with loans made by the credit union, provided that the board of directors establishes written policies and internal controls in connection with such incentives and monitors compliance with such policies at least annually^[1]

This exception does not apply to "senior management employees," which the rule defines as "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)." ^[2]

However, under a separate exception to the blanket prohibition, senior management employees may receive an incentive or bonus based on the credit union's "overall financial performance."^[3]

The NCUA Board states credit unions have been confused about how to interpret the term "overall financial performance" and have expressed uncertainty about whether the NCUA permits loan metrics such as aggregate loan growth to be a factor in assessing overall financial performance.

Comments on the Advanced Notice of Proposed Rulemaking (ANPR)

The Leagues support the current structure of the regulation, that is a blanket prohibition with specific exceptions, and we recommend it be maintained.

The Leagues recommend the Board maintain the current exception in 12 C.F.R. §701.21(c)(8)(iii)(B) that permits payment of an incentive or bonus to any employee, including senior management employees, based on the credit union's overall financial performance.

We recommend the Board avoid attempting to define the term "overall financial performance." Our credit union members indicate this has not been a concern and they believe any attempt to narrowly define the term would be problematic. There is concern that defining the term, such as by listing key performance indicators (KPIs), would result in an overly prescriptive rule. Further, such a prescriptive rule could create unintended incentives and consequences as credit unions try to manage certain KPIs.

The Leagues recommend the Board simply provide guidance or commentary to clarify that "overall financial performance" may include lending as part of a broad and balanced set of organizational goals and performance measures.

Conclusion

The Leagues believe the term "overall financial performance" provides credit union boards with sufficient flexibility and direction to manage and monitor senior executive compensation plans. We recommend the Board refrain from defining the term and creating an overly prescriptive rule.

The Leagues thank the Board for the opportunity to comment on the ANPR and for considering our views and recommendations. If you have any questions regarding our comments, please contact me.

[\[1\]](#) 12 C.F.R. § 701.21(c)(8)(iii)(C)

[\[2\]](#) 12 C.F.R. § 701.21(c)(8)(ii)

[\[3\]](#) 12 C.F.R. §701.21(c)(8)(iii)(B)

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL