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June 24, 2019

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

Via Email to: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Re: Advance Notice of Proposed Rulemaking – Compensation in Connection with Loans and Lines of Credit to Members (RIN 3133-AE97)

Dear Mr. Poliquin,

On behalf of the Board of Directors and the Management Team at Capital Communications Federal Credit Union (Cap Com), we would like to thank the National Credit Union Administration (NCUA) for providing us with the opportunity to comment on the above referenced *Advance Notice of Proposed Rulemaking* (ANPR) regarding compensation in connection with loans. Cap Com is headquartered in Albany, New York with assets of \$1.8 Billion and serving 131,000 members as of May 31, 2019.

While we fully support the efforts of the NCUA Regulatory Reform Task Force's objective of reviewing and modernizing Agency regulations that are outdated or archaic, we are not of the opinion that this particular regulation is one that lends itself to modernization efforts. As we have seen in recent years, the guiderails surrounding incentive programs can easily become impaired in an effort to increase sales or products per consumer.

Of all incentive programs, loan-related incentives would seem to rank among those that carry the greatest degree of risk. To decrease the protections in place and enable senior management officials to participate in loan-based incentive programs, outside of the exceptions already in place, may lead to potential business risk, reputation risk, and safety and soundness concerns.

**Incentive Programs at CAP COM FCU:**

In the ANPR an overview of credit union incentive based programs was requested. At CAP COM we have an incentive program based on overall performance in which all employees participate. In addition, product or department-specific ad-hoc incentive programs also take place throughout the year.

*Incentive Program Based On Overall Performance:*

Each year CAP COM's management team develops a budget forecast including corporate goals that will be in place for the upcoming year and which is approved by the Board of Directors. In 2019 CAP COM has 19 corporate goals which are given point values of 1 point or 2 for a maximum total of 27 points. For each goal attained the point value of that goal is awarded.

A year-end bonus will be awarded based on the number of points achieved during the year. For employees who are not classified as senior management employees, they will receive a 2 week bonus based on their effective pay rate if 17 or 18 points are achieved and a 2.5 week bonus if 19 or more points are achieved.

For employees deemed as senior management, their year-end bonus is based on a combination of the number of corporate goal points achieved combined with their personal performance assessment results. Vice presidents can receive a year-end bonus of up to 15% of their salary; chief officers can received up to 20% and the President/CEO can receive up to 25%. Again, this incentive is based on overall performance and while gross loan production is a corporate goal it is only one of the 19 goals and only has a value of 2 points.

When we started recruiting outside of our organization to hire senior management executives we found that it was necessary to increase the year-end bonus percentages in order to be competitive with the monetary incentives offered by other companies.

*Ad Hoc Incentive Programs:*

CAP COM permits its management staff to develop ad-hoc incentive plans and programs in order to promote a product or service. CAP COM has adopted the CFPB's guidelines for incentive programs as set forth in their compliance bulletin titled, "*Detecting and Preventing Consumer Harm from Production Incentives*". This Guidance requires that incentive plans be designed in a manner that does not pose risk to consumers by requiring that a plan be:

- Aligned to the Credit Union's and/or Subsidiary's strategic, marketing and development strategies;
- Reasonably attainable;
- Based on measurable, quantifiable results;
- Linked to a clear incentive payout plan (monetary or non-monetary) and timeline;
- Calculated using readily available data;
- Paired with a communication effort that clearly and easily conveys the structure and purpose of the program to employees; and
- Straightforward and easy to execute in a timely manner.

To that end, the CAP COM Board of Directors has adopted a policy regarding employee incentive plans and an internal worksheet has been developed to ensure that all incentive plans are properly approved and that the plan aligns with corporate goals.

A copy of CAP COM's *Employee Incentive Program Policy* can be found as Exhibit A and the worksheet that is used internally to assess a proposed incentive plan can be found as Exhibit B.

It is our opinion that if NCUA modifies its regulations to provide flexibility with respect to senior management as it relates to incentives for lending-related goals, it does so judiciously and in a manner that embraces the guidelines and safeguards as set forth by the CFPB. As a standard bright line test would not seem feasible given the vast and varied incentive programs and plans that could be considered, imposing these realistic safeguards could protect both the credit union and the NCUA share insurance fund from suffering a financial loss.

Our credit union's Manager of Corporate Governance, Robert Bascom, is responsible for compliance with our incentive program policy, guidelines and guardrails and is available to speak further with members of the Task Force to discuss the process and procedures in place here at CAP COM. Robert can be reached by email at [rbascom@capcomfcu.org](mailto:rbascom@capcomfcu.org) or by way of telephone at (800) 468-5500 (ext. 3609).

Sincerely,



Christopher McKenna,  
President/CEO

*Attachment A: CAP COM FCU's Employee Incentive Program Policy*  
*Attachment B: CAP COM FCU's Incentive Plan Assessment Worksheet*

Exhibit A

**Employee Incentive Program Policy  
for  
Capital Communications Federal Credit Union and Subsidiaries**

COMM. APPROVAL DATE	CCFCU BOARD APPROVAL DATE	CAP COM GROUP BOARD APPROVAL DATE	REVIEW INTERVAL
SEPTEMBER 2018	SEPTEMBER 2018	SEPTEMBER 2018	Annual

**POLICY STATEMENT**

The Board of Directors of Capital Communications Federal Credit Union and the CAP COM Group Board of Managers (the Boards) supports and fosters a culture of strong member/customer service utilizing provident and productive employee incentive programs to raise consumer awareness of products and services offered as well as a means to attain corporate goals.

All employee incentive programs must ensure that consumers are only offered products or services that are likely to benefit their interests. In addition, all employee incentive programs must be designed in a manner that makes certain the programs do not pose risks to consumers, are in compliance with all applicable state and federal laws and regulations, and do not expose the Credit Union or its Subsidiaries to supervisory action, litigation or reputational risk.

The Boards delegate to Senior Management the authority to ensure that employee incentive programs are properly designed, implemented and monitored in a manner that mitigates any risk to the Credit Union or its Subsidiaries.

**EMPLOYEE INCENTIVE PROGRAM PLAN AND PROCEDURES**

All employee incentive programs must be in writing, comply with the Credit Union's Sales Contests & Incentives Policy, and be approved by the applicable department vice president as well as the President/CEO, Human Resources Management and Compliance. At a minimum, the written plan and/or procedures must be:

- Aligned to the Credit Union's and/or Subsidiary's strategic, marketing and development strategies;
- Reasonably attainable;
- Based on measurable, quantifiable results;
- Linked to a clear incentive payout plan (monetary or non-monetary) and timeline;
- Calculated using readily available data;
- Paired with a communication effort that clearly and easily conveys the structure and purpose of the program to employees; and
- Straightforward and easy to execute in a timely manner.

Under no circumstances shall an incentive program, directly or implicitly:

- Encourage employees to open accounts, apply for loans, or enroll consumers in services without the consumer's consent;
- Encourage employees to promote a product or service to a consumer who may not benefit from it or even qualify for it;
- Encourage employees to (1) place consumers in less favorable products than they qualify for, or (2) steer consumers to loan options with higher interest rates or deposit accounts with lower rates than they are eligible for;
- Set unrealistic quotas or sales goals for financial services which may lead employees to attempt to meet the goals through deceptive means;
- Allow an employee who is responsible for monitoring the program and determining payouts to participate in the incentive program; or
- Violate any state or federal law or regulation.

### **TRAINING**

All employees who shall be eligible for an employee incentive program shall receive training in regard to the program. The degree of training shall be based upon the complexity of the program. Training for those programs that are less complex can be done by email or other type of informal group communication while those that are more complex shall be done in a formal group setting. The type and manner of training shall be left to the discretion of the incentive program coordinator and the coordinator's senior manager.

At a minimum, the training shall include:

- A clearly defined purpose for the incentive program that ties the program to the Credit Union's or Subsidiary's strategies or goals;
- The type of incentive being provided and how the employee is eligible to participate in the program;
- A review of the product or service being promoted as part of the program which includes, as applicable, ancillary training if such training is deemed necessary and appropriate in order to effectively promote the product or service;
- Clear expectations of the employees participating in the program that reiterates the need for transparency and that the employees act in a direct and honest manner with all consumers;
- A mechanism for reporting program violations without the fear of retribution which may include reporting any potential or actual violations to the incentive program coordinator, the applicable vice president, the Vice President of Organizational Development, the Vice President of Risk Management, the Executive Vice President, the President/CEO or reporting potential violations by way of the Credit Union's whistleblower process.

### **INCENTIVE PROGRAM REVIEW, PROHIBITIONS AND STIPULATIONS:**

The determination of permissibility or prohibition of employee incentive programs can often be complex as the ability to offer employee incentives and/or related stipulations and limitations may be governed by federal regulations or New York State law. To that end, any incentive programs where an employee may potentially receive more than a nominal incentive for each individual referral or sale (i.e. in excess of \$25 for each referral or sale)

Rev. SEPTEMBER 2018

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ONLY AND MAY NOT BE REPRODUCED WITHOUT THE WRITTEN PERMISSION OF THE CREDIT UNION.

OR where the total incentive payout for a particular program exceeds \$500 shall require the review and approval of Compliance.

The following stipulations shall apply as they relate to incentive programs:

- No senior management employee is permitted to participate in or receive any compensation from an incentive program in connection with loan and lending related activities. Senior management employees shall include the President/CEO, all chief officers and all vice presidents.
- All non-senior management employees, including lending personnel, shall be permitted to participate in loan and lending related incentive programs providing the incentive program has been approved by senior management and the compliance department, as applicable, and that such programs are reviewed on an ongoing and routine basis.
- All employees are permitted to participate in an incentive program based on the credit union/subsidiaries overall financial performance.
- Generally, all employees involved in the origination of closed-end mortgages are prohibited from receiving any compensation from an incentive program based on the specific terms of the transaction such as basing the incentive on (1) the type of mortgage program the borrower enters into, (2) the interest rate charged on the mortgage, (3) the type of collateral securing the loan, or (4) the amount of origination fees collected. Incentive programs based on the following are permissible:
  - The originator's overall loan volume;
  - Long-term loan performance;
  - Quality/condition of the originator's loan files; and
  - Percentage of applications resulting in closed loans.

This limitation does not apply to open-end credit plans including home equity lines-of-credit.

### **MONITORING**

The program must be monitored by the program coordinator to track key metrics in order to ascertain the success or failure of the program. The program shall also be monitored to expose any anomalies that may become apparent and to further investigate such irregularities for potential improper employee behavior. All determinable anomalies or other irregularities involving an employee's activity shall be reported to the Vice President of Organizational Development and the Vice President of Risk Management immediately upon discovery.

Should any findings appear to pose significant risk to the Credit Union, its Subsidiaries or consumers, such findings must be escalated to Senior Management immediately.

### **CORRECTIVE ACTION**

Corrective action shall be taken promptly to address incentive-related problems and to resolve any deficiencies in the program should they become apparent such as, but not limited to, changes to the incentive program structure, revisions to incentive program payouts or additional product/service training.

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In the event that corrective action may be due to an employee's potential or actual inappropriate activities, the employee may be subject to corrective action up to and including dismissal. Such activity must be reported to the Vice President of Organizational Development and the Vice President of Risk Management who will handle the activity in accordance with the Credit Union's Corrective Action Policy

#### **CONSUMER COMPLAINT MANAGEMENT**

Collecting and analyzing consumer complaints may be beneficial in identifying a root cause of violations or inequities as they relate to employee incentive programs. In accordance with the Complaint Resolution Program, the Corporate Compliance Officer must be notified of all complaints received in order log the receipt and resolution of such complaints and to report complaint-related trends to Senior Management.

#### **EMPLOYEE EVENTS COMMITTEE ACTIVITIES:**

The Employee Events Committee (EEC) organizes and conducts social entertainment opportunities for Credit Union and Subsidiary staff. The EEC functions outside of Credit Union operations and is not a corporate committee. Incentives provided by the Committee are not considered corporate incentives as they do not impact operations nor do they support corporate goals. Since the EEC is considered to be a social committee and not a corporate committee, any incentives provided by the EEC are not subject to this Policy nor are they considered as compensation subject to employment taxes for NYS/IRS reporting.

#### **INTERNAL AUDIT REVIEW:**

The Boards delegate to the Credit Union's Supervisory Committee the authority to have this review conducted. The Supervisory Committee further delegates this responsibility to the Credit Union's Internal Audit Department. The Internal Audit Department is granted the authority to conduct or have conducted regular reviews to ensure that the Credit Union is fully compliant with the requirements set forth in this Policy.

#### **POLICY REVIEW**

This Policy will be reviewed and updated as necessary and appropriate in order to comply with any changes or revisions to existing regulations, which may affect this Policy. Additionally, the Credit Union's Policy Review Committee will review this Policy at least annually to ensure that the Policy is current.

## Employee Incentive Program Worksheet

*(To be completed when an individual employee may receive in excess of \$25.00 per referral/sale or the overall Program payment may exceed \$500.00)*

**Name of Employee Incentive Program:** Click or tap here to enter text.

**Employee Proposing the Incentive Program:** Click or tap here to enter text.

**Today's Date:** Click or tap to enter a date.

**Incentive Program Start Date:** Click or tap to enter a date.      **Incentive Program End Date:** Click or tap to enter a date.

**Potential Incentive Payout:** \$ Click or tap here to enter text. /Employee **or** \$ Click or tap here to enter text. /Overall Program

**Type of Payout:**  Monetary;  PTO/Bee Time; or  Other: Click or tap here to enter text.  
 (Note: Cash incentives over \$25 are processed through payroll and will be reflected in the department salary budget)

**Summary/Overview of the Proposed Plan:** Click or tap here to enter text.

**Describe How Program Aligns with Corporate Goals/Marketing Efforts:** Click or tap here to enter text.

**Explain How Results Will Be Measured/Quantified:** Click or tap here to enter text.

**Type of Program Training/Communication:**  Email;  Group Setting;  Other: Click or tap here to enter text.

**Name of Incentive Program Coordinator/Monitor:** Click or tap here to enter text.

**Incentive Program Self-Assessment Completed By:** Click or tap here to enter text.

Incentive Program Self-Assessment				
The Incentive Program ...	Yes (✓)	No (✓)	The Incentive Program DOES NOT...	(✓)
Aligns with goals/strategies?	<input type="checkbox"/>	<input type="checkbox"/>	Encourage accounts to be opened w/out consumer's consent	<input type="checkbox"/>
Is reasonably attainable?	<input type="checkbox"/>	<input type="checkbox"/>	Encourage services to be established w/out consent	<input type="checkbox"/>
Is based on quantifiable results?	<input type="checkbox"/>	<input type="checkbox"/>	Encourage product promotion to those who don't qualify	<input type="checkbox"/>
Is linked to a clear payout plan/timeline?	<input type="checkbox"/>	<input type="checkbox"/>	Encourage placing consumers in less favorable products	<input type="checkbox"/>
Is calculated using available data?	<input type="checkbox"/>	<input type="checkbox"/>	Set unrealistic sales goals/quotas	<input type="checkbox"/>
Is clear and easy to understand?	<input type="checkbox"/>	<input type="checkbox"/>	Allow for the coordinator/monitor to receive Program payout	<input type="checkbox"/>
Is easy to execute?	<input type="checkbox"/>	<input type="checkbox"/>	Knowingly violate any law or regulation	<input type="checkbox"/>

**Approval Signatures:**

Vice President: \_\_\_\_\_

Human Resources: \_\_\_\_\_

Compliance: \_\_\_\_\_

President/CEO: \_\_\_\_\_

**I understand that this Employee Incentive Plan is designed in a manner that does not pose a risk to consumers and does not expose CAP COM FCU or its subsidiaries to supervisory action, litigation or reputation risk. I have also reviewed the Employee Incentive Program Policy and fully understand the requirements set forth in that Policy.**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*(Forward Completed and Approved Form to Vendor/Records for Filing and Record Retention)*