CREDIT UNION ASSOCIATION OF THE DAKOTAS

June 24, 2019

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

Submitted via email
to regcomments@ncua.gov

RE: RIN 3133–AE97; Comments on Advance Notice of Proposed Rulemaking: Compensation in Connection with Loans to Members and Lines of Credit to Members

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding its Advanced Notice of Proposed Rulemaking (ANPR) Compensation in Connection with Loans to Members and Lines of Credit to Members.

First, CUAD wants to again sincerely thank the NCUA for establishing a Regulatory Reform Task Force (Task Force) in March 2017 and charging them with the daunting review of the NCUA's rules and regulations to identify areas where regulatory burden could be alleviated. While the NCUA was not subject to President Trump's Executive Order 13777, we appreciate the NCUA's willingness to voluntarily take steps to comply with the spirit of the Order.

In the initial Regulatory Reform Agenda published for comment on August 22, 2017, the Task Force identified section 701.21(c)(8) as an area needing clarification. Specifically recommending, "Modify 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." *82 FR 39705* The final report of the Task Force, published December 2018, recommended adopting the first report's recommendation and prioritization.

Currently, 12 CFR 701.21(c)(8)(i) provides, "Except as otherwise provided herein, no official or employee of a Federal credit union, or immediate family member of an official or employee of a Federal credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union. (iii) This section does not prohibit: (A) Payment, by a Federal credit union, of salary to employees; (B) Payment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance; (C) Payment, by a Federal credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, provided that the board of directors of the credit union establishes written policies and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually. (D) Receipt of compensation from a person outside a Federal credit union by a volunteer official or non-senior-management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member."

CUAD fully supports the Task Force's recommendation and the NCUA's goal to provide more flexibility under section 12 CFR 701.21(c)(8) relating to "senior executive compensation plans that incorporate lending as part of a broad and balanced set of organizational goals and performance measures." *84 FR 16796*

CUAD believes credit unions should have more flexibility to offer their senior management employees compensation plans that reflect the credit union's organizational goals and performance measures. One-size-fits-all rules are not ideal given the varied nature of our credit unions. In North and South Dakota alone, the 71 credit unions range in size from $1.4 million in assets to $1.3 billion in assets and offer a variety of products and services. The board of directors of an individual credit union is in the best position to craft a plan to meet its needs, and they should be given freedom to incorporate lending incentives as appropriate without undue regulatory restrictions as a way to attract and retain talent in sometimes very rural areas.

The NCUA inquires whether it should mandate additional requirements for compensation related to a line of business that is new for the credit union or one in which the credit union lacks substantial experience or expertise. CUAD does not believe this is necessary as other regulations already require qualified lending personnel and therefore would mitigate risk. For example, 12 CFR 723.3 (b)(2) requires that a federally insured credit union must employ qualified staff with experience for the type(s) of commercial lending in which the federally insured credit union is engaged. While the credit union might be new to the line of business, they can hire experience or use a third-party such as a credit union service organization.

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

Respectfully,

Amy Kleinschmit

Amy Kleinschmit
Chief Compliance Officer