June 24, 2019

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

Re: Cooperative Credit Union Association, Inc. Comments on Advance Notice of Proposed Rulemaking on Compensation in Connection with Loans and Lines of Credit

BY EMAIL ONLY

Dear Secretary Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. ("Association"), please accept this letter relative to the National Credit Union Administration's ("NCUA") Advance Notice of Proposed Rulemaking ("ANPR") on compensation in connection with loans and lines of credit. The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire, New Jersey and Rhode Island, serving approximately 200 credit unions which further serve approximately 3.6 million consumer members.

Background and General Concerns

Currently, federally insured credit unions are subject to several confusing and overlapping rules on compensation to board officials, senior management, and other staff. The Association commends the agency for considering improvements to 12 CFR 701.21(c)(8), which generally prohibits compensation such as fees, commissions or bonuses to officials or employees in connection with any loan made by a federally-insured credit union. Salaries, incentives for the "overall financial performance" of the credit union and incentives to staff other than senior management under a written policy adopted and monitored by the credit union's board, are among the kinds of incentives that are permitted.

The main concerns about the regulation of compensation in connection with lending are that the rule is unclear for credit unions and examiners alike and has been applied too broadly. Credit unions must compete with banks, internet, and other lenders for capable staff and the present regulatory and supervisory approaches make it more difficult than necessary for credit unions to attract and maintain superior personnel. NCUA has been concerned that incentives paid directly to senior management involved with lending may result in excessive risk-taking. However, there is also the substantial risk of not being able to assemble needed expertise, a risk exacerbated by the regulation.

In addition, the rule's use of the term "overall financial performance" has not been sufficiently clarified. As a result, a number of credit unions that reasonably sought to include lending results within the set of metrics used to evaluate "overall financial performance" have been cited by their examiners.

At a minimum, the Association urges NCUA to revisit the rule to clarify expressly that criteria such as a credit union's loan growth may be used by federally-insured credit unions when assessing their overall financial performance to provide financial incentives to senior management or others eligible at a credit union to receive such compensation.

Optimally, the Association urges the agency to release guidance in this area as such a format is more appropriate than an NCUA regulation. Moreover, in other financial institution guidance on compensation, it is emphasized that when compensation is evaluated, supervisory objectives should take into account the complexity of the institution.[1] Compared to those of large banks, credit union balance sheets and activities are far less complex, and as a result, supervisory expectations as to the level of detail of compensation policies and systems should be in line with the general, non-complex nature of credit unions' operations.

Responses to NCUA Questions

The ANPR raised several questions and the Association surveyed members for comments. The information below summarizes the responses received.

- Is there a single industry standard or methodology for developing executive compensation plans? Are there multiple standards or methodologies for credit unions of different asset sizes?

  There is not a single standard, although some of the same metrics are used, such as return on assets, with a risk factor adjustment, to create and maintain a pool of funds for bonuses.

- Are the terms and conditions of executive compensation plans developed by credit unions themselves or are the plans crafted by third-party vendors?

  Members use a mixture of options. Credit unions develop their own compensation plans, use third party vendors, and may also modify plans provided by the vendor.

- What do these plans look like? Are there specific formulas employed to determine terms and conditions? If so, what are the formulas?

[1] Fed Reg 36406 (Guidance on Sound Incentive Practices).

Members preferred to address these questions on a general level. Responses supported using loan growth as a factor, taking into account any charge-offs or delinquencies.

- Is the current structure of §701.21(c)(8), namely a broad prohibition with specific exceptions, the best format for regulating this area?

  While clear regulations can be useful in certain areas, the Association questions a documented need for this rule by the agency. Rather than a prohibition with exceptions, a more positive and useful approach would be to develop guidelines that provide examples of reasonable compensation methodologies and metrics. Also, the Association further questions the justification for examiners to review credit union lending compensation plans as part of routine examinations for well-managed credit unions.

- Do commenters prefer a bright line test for permissible compensation to compensation plans similar to, and competitive with, those provided at other financial institutions? If not, how do they differ and what, if anything, in the NCUA's regulations contributes to those differences?

  The bank regulators have issued guidance, referenced above, which provides thoughtful parameters for the construction and maintenance of compensation plans without undue regulatory intrusion in the operation of the plans. In light of the very low level of risk credit unions present in the area of lending generally, the Association suggests that the NCUA's approach in this area is overly strict.

- What limitations, if any, are necessary to prevent individuals from being incentivized to take inappropriate risks that endanger their credit unions? What authorities do credit unions need to enable them to compete for talented executives?

  Limitations should be driven by the board of directors and management of credit unions who seek to run well-managed institutions. Credit unions are generally risk averse. NCUA should afford much more flexibility to well-capitalized, well-run credit unions to develop reasonable, objective, and legal compensation plans to serve their members and employees well.

- To what extent should the NCUA permit loan metrics, such as loan volume, to be a part of compensation plans? How would those metrics be incorporated into the overall plan?

  Whether a credit union wants to include loan metrics in its compensation packages should be a decision of a credit union and not NCUA. Guidelines from NCUA could address this, while encouraging risk factors to also be included.

- Should the NCUA provide additional requirements for compensation related to a line of business that is new for the credit union?

The Association does not think requirements are needed. This matter could be addressed in agency guidance.

Conclusion

NCUA has taken a positive first step to address inadequacies in the regulation and implementation of its rule on lending compensation. The Association appreciates such efforts and encourages the development of proposed guidance that will provide important clarity in this area without needlessly limiting the ability of well-managed credit unions to reward capable staff. I remain happy to further discuss our views and work with the agency in the development of new guidelines that address our members' concerns.

Sincerely,

Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

RM/md/mac/kb