Credit Union National Association
CUNA

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June 24, 2019

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

Re: Compensation in Connection with Loans to Members and Lines of Credit to Members; RIN 3133–AE97

Dear Mr. Poliquin:

On behalf of America's credit unions, I am writing about the National Credit Union Administration's (NCUA) advance notice of proposed rulemaking (ANPR) regarding compensation in connection with loans to members and lines of credit to members. The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members.

We support the overall intent of this regulation, which is generally to appropriately limit undue risk to credit unions regarding lending. However, to remain competitive with our banking counterparts, we believe changes to the regulation allowing additional types of compensation to senior executives is appropriate, so long as there is an appropriate balance that incorporates sufficient risk management.

Current Standard

Currently, section 701.21(c)(8) of the NCUA's regulations establishes a blanket prohibition on any commission, fee, or other compensation to any credit union official or employee, or an immediate family member of either, in connection with any loan made by their credit union. However, this section carves out the following exceptions to the blanket prohibition:

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 establishes written policies

and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually; and

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 performed outside the credit union.

Request for Comment

Among the recommendations by the NCUA's Regulatory Reform Task Force is for the agency 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 NCUA is seeking comments on ways to improve the agency's regulation limiting a credit union official's and employee's compensation in connection with loans to members and lines of credit to members.

We appreciate the NCUA's inquiry into this regulation and we believe changes are appropriate. We agree this regulation has generated confusion and is outdated, burdensome, and at odds with industry standards. Further, while we support the current structure of the regulation (*i.e.*, a broad prohibition with specific exceptions), we believe it can be updated to allow credit unions to offer competitive compensation plans without encouraging inappropriate risks, incentivizing bad loans, or negatively affecting safety and soundness.

Credit Union v. Bank Compensation

In order to attract and retain top talent, it is critical that credit unions be able to offer compensation plans that are competitive with those offered by banks. As the NCUA assesses this regulation and considers ways to ensure such competitiveness, it should have an accurate picture of how credit union compensation compares to that of banks.

Based on a CUNA study on executive compensation at credit unions versus banks, we found that executive compensation at banks is significantly higher than at credit unions.[1] On average, overall compensation of bank Chief Executive Officers (CEOs) is approximately 10% higher than credit union CEOs at similarly-sized institutions. Furthermore, bank CEO compensation packages consist of a significantly larger percentage of performance-based compensation: approximately 24% of bank CEO compensation is variable (bonus, stocks, and options) versus only 8% at credit unions; and the vast majority of small credit unions do not offer any type of bonus. In addition, annual compensation—which the study defines as base pay plus performance-based compensation—is 15.7% higher among bank CEOs relative to credit union CEOs.

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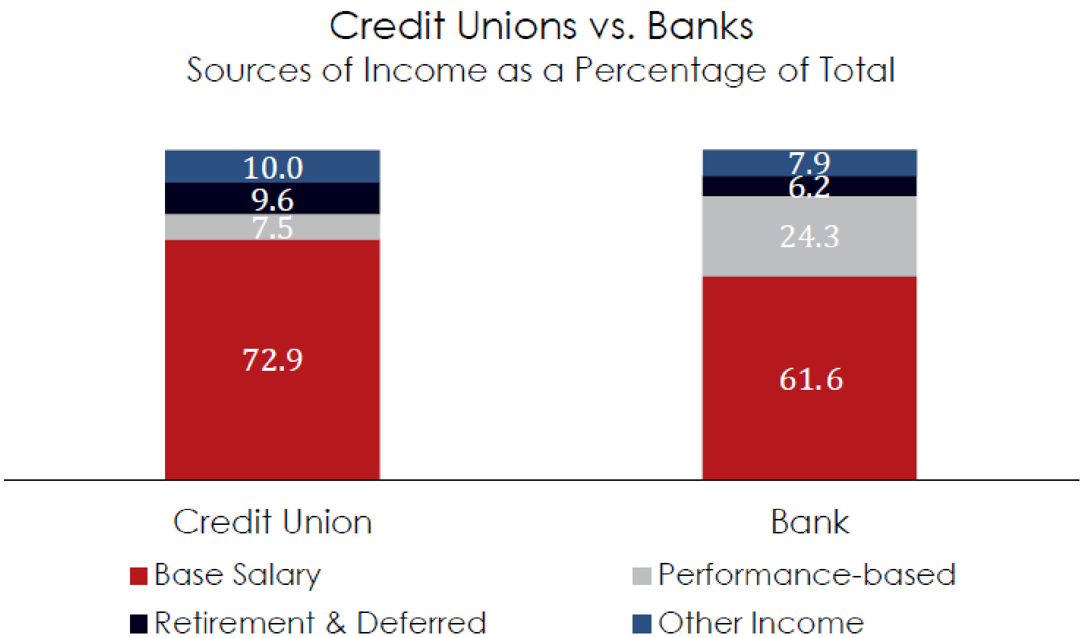
[1] CUNA Policy Analysis Issue Brief, Executive Compensation at Credit Unions vs. Banks (Aug. 2018), *available at* https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/Policy%20Brief%20-%20Executive%20Compensation%20-%202018.pdf. Note that this study is limited to CEO compensation and does not include other senior executives.



Lastly, controlling for asset size, regional differences, and macroeconomic time trends, our study finds that performance-based income is approximately five times higher for bank CEOs relative to credit union CEOs.

"Overall financial performance"

In the past, credit unions have noted confusion about how to interpret the term "overall financial performance" in section 701.21(c)(8)(iii)(B). Credit unions have expressed uncertainty about whether the NCUA permits loan metrics, such as aggregate loan growth, as a factor in assessing overall financial performance. They also have asserted that the regulation is subject to varying interpretations and levels of enforcement across the NCUA's regions.

Given the degree of confusion and uncertainty this regulation has caused, we believe credit unions would benefit from either a formal definition or other clarification on exactly what the term entails. The current regulation provides some examples of what is and is not considered to be in connection with lending, and there are several NCUA legal opinion letters over the years addressing incentive compensation. However, the overall lack of guidance in this area has led to confusion.

As the agency examines how to clarify "overall financial performance," we expect it will consider the term as being an aggregate across all loan types to mitigate risk. However, we believe the NCUA should also consider an approach that limits the term to performance of a single type of loan (*e.g.*, "overall financial performance" of a senior vice president of a lending program would incorporate performance in a particular channel, which would be lending in this example). We believe concern with limiting the scope of the term can be properly addressed with sufficient risk mitigation.

Again, these are issues and suggestions for the agency to analyze and consider as it continues its review of this regulation and proceeds with a formal proposed rulemaking. Assuming the NCUA moves forward with a proposal, we look forward to providing detailed input in response to the general structure and specific language of the rulemaking.

Conclusion

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our comments on the ANPR regarding compensation in connection with loans to members and lines of credit to members. While we support the intent of this regulation to limit undue risk to credit unions regarding lending, to remain competitive with our banking counterparts, we believe changes to the regulation allowing additional types of compensation to senior executives is appropriate, so long as there is an appropriate balance that incorporates sufficient risk management. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743.

Sincerely,

Luke Martone

Luke Martone
Senior Director of Advocacy & Counsel