



**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN: 3133-AE97**

**Compensation in Connection with Loans to Members and Lines of Credit to Members**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The NCUA Board (Board) is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments on ways to improve the agency's regulations limiting a credit union official's and employee's compensation in connection with loans to members and lines of credit to members. These regulations have generated confusion and are likely outdated, burdensome, and at odds with industry standards. The Board is particularly interested in obtaining commenter feedback on how it can 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.

**DATES:** Comments must be received on or before **[INSERT DATE THAT IS 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit written comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web Site: <https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-and-recently-final-regulations>. Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] – Comments on Advance Notice of Proposed Rulemaking: Compensation in Connection with Loans to Members and Lines of Credit to Members” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**Public Inspection:** You can view all public comments on the NCUA’s website at <https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-and-recently-final-regulations> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in the NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546, or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Thomas I. Zells, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548-2478.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**II. Current Standards and Request for Comment**

### **III. Legal Authority**

#### **I. Background**

In August 2017,<sup>1</sup> the Board published and sought comment on the NCUA Regulatory Reform Task Force's (Task Force) first report on implementing the agency's regulatory reform agenda (Agenda). The Agenda identifies those regulations the Board intends to amend or repeal because they are outdated, ineffective, or excessively burdensome.<sup>2</sup> The Board published the Task Force's second and final report in December 2018.<sup>3</sup> The final report contains the Task Force's updated recommendations and a refined blueprint for implementing the Agenda.

One of the Agenda's recommendations specifically suggested that the Board 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 Board recognizes that the NCUA's regulations in this area, which were last updated over 20 years ago, are likely outdated, burdensome, and at odds with industry standards for senior executive compensation plans.<sup>4</sup> As such, the Board is seeking comment on how to update the regulations so that credit unions can offer competitive compensation plans without encouraging inappropriate risks, incentivizing bad loans, or negatively effecting safety and soundness. While the Board is particularly interested in how the agency can update its regulations to provide flexibility with respect to senior executive compensation plans, it would

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<sup>1</sup> 82 FR 39702 (Aug. 22, 2017).

<sup>2</sup> This is consistent with the spirit of the President's regulatory reform agenda and Executive Order 13777.

Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the Board chose to comply with it in spirit and reviewed all of the NCUA's regulations to that end.

<sup>3</sup> 83 FR 65926 (Dec. 21, 2018).

<sup>4</sup> 60 FR 51886 (Oct. 4, 1995).

also like comments on how the regulations governing compensation associated with lending can be modernized generally.

## **II. Current Standards and Request for Comment**

Currently, § 701.21(c)(8)(i) of the NCUA's regulations establishes a blanket prohibition on the direct or indirect receipt of any commission, fee, or other compensation by any credit union official or employee, or an immediate family member of either, in connection with any loan made by their credit union.<sup>5</sup> However, § 701.21(c)(8)(iii) carves out four exceptions to this blanket prohibition. Specifically, § 701.21(c)(8)(iii) permits:

- (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; 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 or activity

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<sup>5</sup> 12 CFR 701.21(c)(8)(i).

performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

In the past, credit unions have been confused about how to interpret the term “overall financial performance” in § 701.21(c)(8)(iii)(B). As noted, § 701.21(c)(8) generally prohibits most credit union employees and officials from receiving compensation made “in connection with any loan” a credit union makes, but provides exceptions, including one that permits incentive compensation to employees based on the credit union’s overall financial performance. Credit unions have expressed uncertainty about whether the NCUA permits loan metrics such as aggregate loan growth to be 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, the Board seeks comment as to how the NCUA should modernize its regulations generally governing the compensation of credit union officials and employees in connection with loans made by credit unions and specifically with respect to defining “overall financial performance.” In addition, the Board specifically requests feedback addressing the following:

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

- What do these plans look like? Are there specific formulas employed to determine terms and conditions? If so, what are the formulas?
- Is the current structure of § 701.21(c)(8), namely a broad prohibition with specific exceptions, the best format for regulating this area?
- Do commenters prefer a bright line test for permissible compensation to regulations that make a more holistic evaluation of individual compensation plans and the incentives they provide? Is a bright line test even possible in this highly fact determinative area? If so, where is that line?
- Are current credit union 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?
- 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?
- 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?
- Should the NCUA provide 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?

### **III. Legal Authority**

The Board has issued this ANPR pursuant to its authority under the Federal Credit Union Act (FCU Act). Under the FCU Act, the NCUA is the chartering and supervisory authority for

federal credit unions and the federal supervisory authority for federally insured credit unions (FICUs).<sup>6</sup> The FCU Act grants NCUA a broad mandate to issue regulations governing both federal credit unions and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.<sup>7</sup> Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.<sup>8</sup> Section 209 of the FCU Act is a plenary grant of regulatory authority to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.<sup>9</sup> Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

By the National Credit Union Administration Board on April 18, 2019.

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Gerard Poliquin

Secretary of the Board

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<sup>6</sup> 12 U.S.C. 1752–1775.

<sup>7</sup> 12 U.S.C. 1766(a).

<sup>8</sup> 12 U.S.C. 1787.

<sup>9</sup> 12 U.S.C. 1789.

