

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Incentive-Based Compensation Arrangements
Part 751 NCUA Rules and Regulations
2016

A. JUSTIFICATION

1. Necessity of Information Collection

Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ requires NCUA, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission to jointly issue guidelines or regulations regarding incentive-based compensation.² The guidelines or regulations must require covered institutions to disclose information concerning incentive-based compensation arrangements to the appropriate regulator so that the regulator can determine whether the compensation structure provides excessive compensation or could lead to material financial loss.³ The rules also must prohibit arrangements that encourage inappropriate risks by covered financial institutions by providing excessive compensation or that could lead to material financial loss.⁴ For credit unions regulated by the NCUA, these information requirements will be codified at 12 CFR 751.

The proposed rule, like the statute, only applies to credit unions and other financial institutions with assets of \$1 billion or more.

NCUA and the other regulators have tailored the collection requirements to the size of the covered institution. The three parts of the collection are summarized below. Covered institutions with assets of \$1 up to \$50 billion are subject only to the first requirement. The second and third requirements apply only to covered institutions with assets of \$50 billion or more.

- Section 751.4 requires all credit unions subject to the proposed rule to annually create, and maintain for at least seven years, records that document the structure of the credit union's incentive-based compensation arrangements. The records must be provided to NCUA upon request and must be sufficiently detailed to demonstrate compliance with the regulation.
- Section 751.5 requires covered credit unions with assets of \$50 billion or more to keep more detailed records that document: (1) the credit union's senior executive officers and significant risk-takers; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers; (3) any forfeiture, downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers;

¹ Pub. L. 1111-203, 124 Stat. 1376 (2010).

² 12 U.S.C. 5641.

³ *Id.* 5641(a)(1).

⁴ *Id.* 5641(b).

and (4) any material changes to the credit union's incentive-based compensation arrangements and policies. The records for credit unions with assets of \$50 billion or more must be created and maintained in a manner that allows for an independent audit of incentive-based compensation arrangements, policies and procedures.

- Section 751.11 requires credit unions with assets of \$50 billion or more to develop and implement policies and procedures for its incentive-based compensation program that, at a minimum, (1) are consistent with the prohibitions and requirements of this part; (2) specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back; (3) require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions; (4) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with section 751.7(a)(1)(iii)(B) and section 751.7(a)(2)(iii)(B)); (5) identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized; (6) describe how discretion is expected to be exercised to appropriately balance risk and reward; (7) require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions; (8) describe how incentive-based compensation arrangements will be monitored; (9) specify the substantive and procedural requirements of the independent compliance program consistent with section 9(a)(2); and (10) ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

The information collection is necessary for credit unions and other covered institutions to demonstrate compliance with the statute's requirement for institutions to disclose information about incentive-based compensation arrangements to the appropriate Federal regulator.

2. Purpose and Use of the Information Collection

The purpose of this information collection is to document that the steps taken by credit unions subject to the requirements of Section 956 of the Dodd-Frank Act comply with the requirements of that section.

The information will be used by NCUA examiners to determine that a covered credit union's incentive-based compensation programs do not encourage inappropriate risks by providing excessive compensation or potentially lead to material financial loss.

3. Consideration Given to Information Technology

Credit unions have the ability retain the information a number of ways including electronically.

4. Duplication

The information collection is unique to each credit union and is not duplicated in other collection requirements.

5. Effect on Small Entities

The collection of information will not impact small businesses or other small entities. The proposed rule would apply only to credit unions with \$1 billion in assets or more (considerably higher than the small entity cutoff of \$100 million for this industry under the Regulatory Flexibility Act⁵). Only 258 of the more than 6,000 insured credit unions have assets of \$1 billion or more.

6. Consequences of Not Conducting Collection

The paperwork burden associated with Part 751 of NCUA rules and regulations is necessary for the proper oversight of incentive-based compensation arrangements. Incentive-based compensation arrangements are critical tools in the management of some credit unions. Well-structured incentive-based compensation programs can promote the health of a credit union by aligning the interests of executives with those of members. Poorly structured programs, however, can provide incentives for executives to take inappropriate risks and threaten the health of a credit union. The interagency proposed rule is designed to allow NCUA and other regulators to ensure that the institutions they supervise do not have incentive-based compensation arrangements that encourage inappropriate risk-taking. Without the information collection, NCUA would not be able to assess compliance with the proposed rule.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

NCUA and the other Agencies are soliciting comment on the collection of information and associated paperwork burdens. NCUA will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift

There is no intent by NCUA to provide payment or gifts for information collected.

10. Confidentiality

Credit union examination reports and any related documents are exempt from the Freedom of Information Act disclosure, pursuant to exemption 8, 5 U.S.C. 552(b)(8).

11. Sensitive Questions

The information collection does not include any sensitive questions or collect any Personally Identifiable Information (PII). As required by Section 956 of the Dodd-Frank Act, the proposed rule specifically states that reporting of actual compensation of particular individuals is not required.

⁵ 80 Fed. Reg. 57512 (Sept. 24, 2015).

12. Burden of Information Collection

The proposed rule would require additional recordkeeping for any credit union with more than one billion dollars in assets. These recordkeeping requirements involve development of policies and procedures related to incentive-based compensation of executives. The level of detail in these records is expected to be related to the size of the credit union.

Section 751.4 requires that records be kept on incentive-based compensation plans and who is subject to such plans in sufficient detail to allow an examiner to assess whether the provisions of the rule are being followed. This requirement applies to any credit union with more than \$1 billion and less than \$50 billion in assets.

Sections 751.5 and 75.11 require more detailed plan development and recordkeeping with specific minimum elements for those credit unions with \$50 billion or more in assets. At this time there is only one credit union that with assets over this threshold.

Because this collection is associated with a new requirement, all credit unions covered by these requirements will face burdens associated with initial development of plans and recordkeeping systems. These are one-time costs and do not recur annually. If additional credit unions surpass the \$1 billion asset threshold in the future, the one-time costs for those respondents will be reflected in the justification for the extension of the clearance for this collection.

Below is an estimate of the burden hours and cost to respondents for the collections of information. The

	Number of Respondents	Number of Responses per Respondent	Hours per Response	Total Burden Hours	Cost to Respondent (based on \$33.00 hourly wage)
Annual Recordkeeping Burden					
Section 751.4 recordkeeping	257	1	20	5140	\$169,620
Section 751.5 and 751.11: recordkeeping and development of policies and procedures for credit unions with more than \$50 billion in assets	1	1	20	20	\$660
TOTAL ANNUAL	258			5160	\$170,280
One-time Set up Costs					
Section 751.4 recordkeeping	257	1	40	10,280	\$339,240
Section 751.5 and 751.11: recordkeeping	1	1	40	20	\$1,320

and development of policies and procedures for credit unions with more than \$50 billion in assets					
TOTAL ONE-TIME	258			10,320	340,560

13. Costs to Respondents

All equipment and materials needed to prepare, manage, and provide this information to NCUA examiners when required used for the customary and usual business of the credit union. There is no special or additional equipment; therefore, there is no additional cost.

14. Costs to Federal Government

There are no costs to the federal government. Any review of the information submission would be included within the customary expectations for credit union oversight responsibilities.

15. Changes in Burden

The proposed rule is a new requirement and increases the burden for those credit unions subject to it. The annual burden increase is 15,540 hours per year.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government’s electronic PRA docket at www.reginfo.gov, as well as in the Federal Register notice of the submission.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

The proposed regulations require covered credit unions to retain records related to incentive-based compensation arrangements and programs for a period of seven years. This longer period is required to facilitate regulatory provisions that would result in actions beyond the standard three year record retention period.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.