

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 27, 2020

DYNEX CAPITAL, INC.

(Exact name of registrant as specified in its charter)

Virginia

(State or other jurisdiction of incorporation)

4991 Lake Brook Drive, Suite 100

Glen Allen, Virginia

(Address of principal executive offices)

1-9819

(Commission File Number)

52-1549373

(IRS Employer Identification No.)

23060-9245

(Zip Code)

(804) 217-5800

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	DX	New York Stock Exchange
7.625% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share	DXPRB	New York Stock Exchange
6.900% Series C Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, par value \$0.01 per share	DXPRC	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Adoption of Annual Cash Incentive Plan

On April 27, 2020, the independent directors of Dynex Capital, Inc. (the “Company”) approved the Dynex Capital, Inc. Annual Cash Incentive Plan (the “Cash Incentive Plan”), upon the recommendation of the Compensation Committee of the Board of Directors (the “Committee”) in consultation with its independent compensation consultant. The Cash Incentive Plan was adopted to partially replace the Dynex Capital, Inc. Executive Incentive Plan (the “Executive Incentive Plan”), which contained both an annual incentive component (paid partly in cash and partly in stock) and a long-term incentive component (paid partly in cash and partly in stock). As discussed in the Company’s proxy statement for the Company’s 2020 Annual Meeting of Shareholders, filed with the Securities and Exchange Commission on April 28, 2020, the Committee is in the process of developing a separate long-term equity incentive program (to be paid solely in equity) to replace the long-term incentive component of the Executive Incentive Plan.

The Cash Incentive Plan is an annual bonus plan, to be paid solely in cash, and is effective as of January 1, 2020. It is substantially similar to the annual incentive component of the Executive Incentive Plan. It is intended to provide annual incentives to the Company’s executive officers to achieve corporate and individual objectives and better align their interests with those of shareholders. Individuals serving as executive officers each year will be eligible to participate in the Cash Incentive Plan (a “Participant”). For 2020, the Participants will include Byron L. Boston, Stephen J. Benedetti and Smriti L. Popenoe, each of whom is a named executive officer. Each year, a Participant will be granted an incentive opportunity equal to the following percentages of his/her base salary as of January 1 of that year:

	Target Incentive Opportunity	Maximum Incentive Opportunity
CEO	200%	400%
EVP	150%	300%

Bonuses under the Cash Incentive Plan will be earned by the Participants based on the achievement of various performance goals for the annual period.

The incentive opportunity will consist of the following performance goals, weighted as follows:

Metric	Weighting (of incentive opportunity)
Return on Equity (ROE)	0% - 40%
Book value per common share	0% - 40%
Corporate/individual objectives	0% - 45%
	100%

By no later than February 28 each year (except for the 2020 plan year), the Committee will establish the corporate and individual objectives and applicable weightings, and the minimum, target and maximum goals and applicable weightings of the other performance goals, for each Participant for the 1-year performance period. ROE will be calculated using the Company’s core net operating income per basic common share. The corporate/individual objectives may be different for each Participant and may consist of quantitative or qualitative Company or individual goals, including but not limited to: annual and/or longer-term performance versus a benchmark and/or a select group of peers; general and administrative expense efficiency ratio; attainment of Company strategic objectives; and attainment of personal objectives.

To determine each Participant’s bonus earned, after the end of each 1-year performance period, the Committee will determine the level of performance achieved with respect to each of the performance goals. Performance for each goal can range from 0-200% and will be based on quantitative calculations in the case of the ROE and book value per common share goals. Performance with respect to the corporate/individual objectives will be determined by the Committee in its good faith discretion in accordance with the criteria previously established. Each Participant’s bonus amount will be equal to the performance level achieved for the relevant performance goal, multiplied by the relevant weighting for such goal, multiplied by the Participant’s target incentive opportunity percentage, multiplied by the Participant’s applicable base salary amount.

The cash bonuses earned under the Cash Incentive Plan will be paid no later than the March 15 following the end of each performance period.

Any bonus amount paid under the Cash Incentive Plan will be subject to clawback in the event repayment is required by applicable law or regulation or stock exchange requirement.

The above summary of the Cash Incentive Plan is qualified in its entirety by reference to the full text of the Cash Incentive Plan, which is attached as Exhibit 10.40 to this Current Report on Form 8-K.

Termination of Executive Incentive Plan

In connection with the adoption of the Cash Incentive Plan, effective January 1, 2020, the Executive Incentive Plan was terminated, except with respect to outstanding bonus opportunities under the annual incentive component with a performance period ended December 31, 2019 (which were paid February 28, 2020) and under the long-term incentive component with performance periods ending December 31, 2020 and December 31, 2021 and except with respect to the Committee’s authority to administer the Executive Incentive Plan and the independent directors’ authority to amend the Executive Incentive Plan.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
<u>10.40</u>	<u>Dynex Capital, Inc. Annual Cash Incentive Plan (effective as of January 1, 2020).</u>

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DYNEX CAPITAL, INC.

Date: May 1, 2020

By: /s/ Stephen J. Benedetti
Stephen J. Benedetti
Executive Vice President, Chief Financial Officer and Chief
Operating Officer

DYNEX CAPITAL, INC.
ANNUAL CASH INCENTIVE PLAN
(effective as of January 1, 2020)

1. Purpose. The purpose of the Dynex Capital, Inc. Annual Cash Incentive Plan (the “Plan”) is to attract, retain and motivate key employees by providing annual incentive awards to designated employees of Dynex Capital, Inc. (the “Company”) and its subsidiaries. The Plan is designed to align key employee interests with the interests of the Company’s shareholders and to create value by providing appropriate annual incentives to key employees to achieve corporate and individual performance goals, while appropriately balancing risk with reward.

2. Annual Plan. The Plan is an annual plan and shall remain in effect until terminated by the independent directors of the Board of Directors (the “Independent Directors”). A new plan year shall commence on each January 1 and shall end each December 31. A new incentive opportunity, with a performance period that is the same as the plan year (January 1 through December 31), will be granted under the Plan each plan year only to individuals who are eligible Participants for such plan year (as determined pursuant to Section 4).

3. Administration. The Plan shall be administered by the Compensation Committee (the “Committee”) of the Board of Directors (the “Board”) of the Company. The Committee will have the power and authority to interpret the Plan, establish (except to the extent fixed by the Plan) the corporate/individual objectives, and respective weightings of each, and the minimum, target and maximum targets and applicable weightings of the other performance goals, determine the achievement of performance goals and assess individual performance, determine individual bonus amounts, determine rules for the operation and administration of the Plan and make all other necessary or advisable determinations with respect to the Plan. Subject to the provisions of Section 11, any interpretation or determination by the Committee under the Plan shall be binding on all parties.

4. Participation. Only those individuals who are serving as executive officers as of the first quarter Board meeting each year are eligible to participate in the Plan for that plan year (the “Participants”). In the case of a promotion, an individual must have been promoted to “executive officer” by such first quarter Board meeting in order to participate in the Plan for that plan year.

5. Bonus Opportunity. Each plan year, the Participant will be granted an incentive opportunity equal to the following percentages of his/her base salary as of January 1 of that plan year:

Executive	Target Incentive Opportunity	Maximum Incentive Opportunity
CEO	200%	400%
EVP	150%	300%

6. Performance Goals. Bonuses under the Plan will be earned by the Participants based on the achievement of performance goals established by the Committee for the applicable performance period. Except to the extent fixed by the Plan, no later than February 28 each plan year (except for the 2020 plan year), the Committee will establish performance goals, targets and weightings for the Participants for the performance period beginning in that plan year. The incentive opportunity will consist of the following performance goals for the performance period, weighted as follows:

Metric	Weighting (of incentive opportunity)
Return on Equity (ROE)	0% - 40%
Book value per common share	0% - 40%
Corporate/individual objectives	0% - 45%
	100%

(a) “Return on Equity” shall be computed as the Company’s core net operating income per basic common share (as defined by the Company for the fourth quarter earnings release for the performance period), divided by the Company’s book value per common share at December 31 of the year before the performance period. The Committee will establish the weighting of this goal, as well as minimum, target and maximum targets for this goal for each plan year.

(b) “Book value per common share” shall be computed in accordance with GAAP. The Committee will establish the weighting of this goal, as well as minimum, target and maximum targets for this goal, expressed as a percentage of the prior year end book value per common share and/or in actual dollar amounts, for each plan year. If the prior year end book value per common share amount is restated after the Committee establishes the targets for the plan year, then the Committee shall approve a change to the current year targets to reflect the restated amount.

(c) Corporate/individual objectives. The Committee will establish corporate and individual goals and their respective weightings for each Participant for each plan year. The corporate and individual goals for each Participant will account for up to 45% of each Participant’s incentive opportunity for the plan year but may be different for each Participant. The corporate and individual goals may consist of quantitative or qualitative Company or individual goals, including but not limited to the following: annual and/or longer-term performance versus a benchmark and/or a select group of peers; general and administrative expense efficiency ratio; attainment of Company strategic objectives; and attainment of personal objectives. For each corporate and individual goal, the Committee will also establish the criteria for determining minimum, target and maximum performance with respect to such goal.

7. Determination of Performance. Following the end of the performance period, and no later than its first quarter Committee meeting held on or before March 10, the Committee will determine and certify the level of performance achieved with respect to each of the performance goals for the performance period just ended.

(a) Management will calculate the Company's performance against the previously-established quantitative objectives and targets and present preliminary calculations of the same to the Committee for its review.

(b) Performance with respect to the ROE and Book value per common share goals will be calculated as follows:

(i) If performance is equal to or below the minimum target for the goal, the performance level achieved is 0%.

(ii) If performance is equal to the target for the goal, the performance level achieved is 100%.

(iii) If performance is equal to or above the maximum target for the goal, the performance level achieved is 200%.

(iv) If performance is between the minimum target and target or between the target and maximum target, the performance level achieved will be determined by applying linear interpolation to the performance interval.

(c) Performance (which can range from 0% - 200%) with respect to the corporate/individual objectives will be calculated by the Committee in its good faith discretion in accordance with the weightings and criteria previously established.

(d) The Committee certification of performance will occur no later than March 10 immediately following the end of the performance period but not before the results for the Company have been finalized for the prior year.

8. Determination of Bonus Amounts Payable Each Year. Following the end of the performance period, and no later than its first quarter Committee meeting held on or before March 10, the Committee will determine the bonus amount for each Participant based on the Committee's certification of the performance level achieved during the performance period. The bonus amount will be based on the performance level achieved for the relevant performance goal (from 0% - 200%) for the performance period, multiplied by the relevant weighting (of incentive opportunity) for such goal established for the performance period, multiplied by the target incentive opportunity percentage for the Participant in Section 5, multiplied by the Participant's applicable base salary amount.

Example: Bonus Amount = ([performance level % achieved for ROE] x [weighting] x [target incentive opportunity %] x [applicable base salary]) + ([performance level % achieved for Book value per share] x [weighting] x [target incentive opportunity %] x [applicable base salary]) + ([performance level % achieved for each corp/indiv. objective] x [weighting for each corp/indiv. objective] x [target incentive opportunity %] x [applicable base salary]).

9. Payment of the Bonus Amount. All bonus amounts earned under the Plan will be paid in cash. The bonus amount for each performance period ending on December 31 of any plan

year shall be paid to the Participant (each, a "Payment Date") during the period that begins on January 1 and ends on March 15 of the calendar year immediately following the end of the performance period (the "Designated Payment Period") on such date that is determined by the Committee at the same time the Committee determines the bonus amounts for the performance period. All bonus amounts paid under this Plan shall be subject to all applicable federal, state or local taxes required by law to be withheld.

10. Termination of Employment. Subject to Section 15 to the extent applicable, the following provisions shall apply in the event the Participant's employment terminates prior to a Payment Date under the Plan:

(a) Except as otherwise provided in Section 10(b), the bonus amounts under the Plan shall be paid upon a termination of a Participant's employment as follows:

(i) In the event of termination of the Participant's employment (A) by the Company other than for Cause or (B) by the Participant voluntarily or (C) due to the Participant's death, after the end of the performance period but prior to the Payment Date for such performance period, any bonus amounts for any such completed performance periods will be paid to the Participant in a lump sum cash payment on the earlier of: (1) 60 days following the termination of Participant's employment or (2) the Payment Date.

(ii) In the event of termination of the Participant's employment (A) by the Company for any reason other than for Cause or (B) due to the Participant's death, before the end of the performance period (but only if the termination occurs no earlier than the last day of the first quarter of the performance period), a pro-rata bonus (based on the period of the performance period during which the Participant was employed) will be paid to the Participant in a lump sum cash payment for the performance period based upon: (x) with respect to the ROE and Book value per common share goals, actual performance through the calendar quarter ending on or immediately prior to the date of the Participant's termination and (y) with respect to the corporate/individual objectives, , the Participant's maximum incentive opportunity for such corporate/individual objectives under the Plan for the performance period. The pro-rata bonus will be paid in a lump sum cash payment on the earlier of: (1) 60 days following the termination of Participant's employment or (2) the Payment Date.

(iii) In the event of termination of the Participant's employment (A) by the Company before the last day of the first quarter of the performance period or (B) a voluntary termination by the Participant at any time during a performance period, no bonus amounts will be paid to the Participant for such performance period.

(iv) In the event of termination of the Participant's employment for Cause, all rights under the Plan shall be immediately forfeited and no bonus amounts will be paid to the Participant following such termination.

(b) If the Participant has an employment agreement, or if the Participant does not have an employment agreement, a severance agreement (either, an "Employment Agreement") in place at time of termination of employment, then the Participant's right to receive bonus amounts

under the Plan (if any) shall be governed by the Employment Agreement and, in the event of a conflict between the Plan and the Participant's Employment Agreement, the Participant's Employment Agreement shall control; provided, however, that the time and form of payment of any bonus amount payable under the Plan shall not be changed by the Employment Agreement to the extent such change would either violate Code Section 409A (as defined in Section 15) or cause an otherwise exempt payment to be subject to Code Section 409A.

(c) Cause. For purposes of the Plan, if not defined in the Participant's Employment Agreement, "Cause" shall mean any of the following:

(i) the willful and continued failure of the Participant to substantially perform the Participant's duties with the Company (other than any such failure resulting from incapacity due to physical or mental illness), if, within 30 days of receiving a written demand for substantial performance from the Board or the CEO that specifically identifies the manner in which the Participant has not substantially performed his duties, the Participant shall have failed to cure such non-performance or to take measures to cure the non-performance;

(ii) the willful engaging by the Participant in gross misconduct that is materially and demonstrably injurious to the Company or any subsidiary;

(iii) the willful disclosure to an external party by the Participant without authorization of any confidential information of the Company or any subsidiary; or

(iv) the arrest of the Participant of a felony.

For purposes of this definition, no act or failure to act, on the part of the Participant, shall be considered "willful" unless it is done, or omitted to be done, by the Participant in bad faith or without reasonable belief that the Participant's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or a committee thereof, or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Participant in good faith and in the best interests of the Company. The termination of employment of the Participant shall not be deemed to be for Cause unless and until there shall have been delivered to the Participant a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters (3/4) of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Participant and the Participant is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Participant is guilty of conduct described in subparagraph (i), (ii) or (iii) above, and specifying the particulars thereof in detail.

11. Review Procedure. Any Participant with an issue regarding bonus amounts or the administration of the Plan may file a claim in writing to the Committee within 90 days of the date on which the Participant first knows (or should have known) of the facts on which the claim is based. The Committee shall consider the claim and notify the Participant in writing of the determination and resolution of the issue. The determination of the Committee as to any complaint or dispute will be final and binding.

12. Deferral. Bonus amounts under the Plan may be deferred by the Participant in accordance with any deferred compensation plan adopted by the Company that is available to executive officers, except to the extent such deferral would violate Code Section 409A.

13. Nonassignability. Bonus amounts may not be transferred, alienated or assigned. To the extent any bonus amounts are payable under the terms of the Plan following a Participant's death, such bonus amounts will be paid to the Participant's estate.

14. Nonexclusive Plan. The adoption of the Plan shall not be construed as creating any limitations on the power of the Company or any subsidiary to adopt such other incentive arrangements as it may deem desirable, and such arrangements may be either generally applicable or applicable only in specific cases.

15. Code Section 409A Compliance.

(a) The Plan is intended to comply with Section 409A of the Code and applicable guidance issued thereunder ("Code Section 409A") or comply with an exemption from the application of Code Section 409A and, accordingly, all provisions of the Plan and any award agreements under which any amounts are paid under the Plan (for purposes of this Section 15, the Plan and any applicable award agreement are collectively referred to as the "Plan") shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Code Section 409A. Any right or benefit which is provided pursuant to or in connection with the Plan which is considered to be nonqualified deferred compensation subject to Code Section 409A is hereinafter referred to as a "409A Benefit".

(b) A 409A Benefit shall be provided and paid in a manner, and at such time and in such form, as to comply with Code Section 409A. Notwithstanding any other provision of the Plan, a 409A Benefit shall be paid at the earliest to occur of the following (but in all events subject to any forfeiture provisions if such 409A Benefit is not vested at the time of the payment event): (i) a fixed payment date as set forth in Section 9, separation from service of the Participant as defined under Code Section 409A (see Section 15(c) below), death of the Participant, disability of the Participant as defined under Code Section 409A, or a change with respect to the Participant in the ownership or effective control of the Company or in the ownership of a substantial portion of its assets of the Company as defined under Code Section 409A or, in the discretion of the Committee or its delegate. Neither a Participant nor the Company shall take any action to accelerate or delay a 409A Benefit in any matter that would not be in compliance with Code Section 409A.

(c) A termination of employment shall not be deemed to have occurred for purposes of any provision of the Plan providing for the form or timing of payment of any 409A Benefit and that are paid upon or following a termination of employment unless such termination is also a "separation from service" (within the meaning of Code Section 409A) and, for purposes of any such provision of the Plan under which (and to the extent) a 409A Benefit is paid, references to a "termination" or "termination of employment" or "resign" or "resignation" or like references shall mean separation from service. If the Participant is deemed on the date of separation from service with the Company and any subsidiary to be a "specified employee", within the meaning of that term under Code Section 409A(a)(2)(B) and using the identification methodology

selected by the Company from time to time, or if none, the default methodology, then with regard to any 409A Benefit that is required to be delayed in compliance with Code Section 409A(a)(2)(B), payment of any such amounts shall not be made or provided prior to the earlier of (i) the expiration of the six-month period measured from the date of Participant's separation from service or (ii) the date of the Participant's death.

(d) For purposes of determining the application of Code Section 409A and any exemptions from Code Section 409A, each bonus amount determined for each performance period shall be treated as a separate payment and, to the extent paid in installments, each installment shall be considered a separate payment.

(e) When, if ever, a payment under the Plan specifies a payment period with reference to a number of days (e.g., "payment shall be made within 10 days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company or Committee. For any bonus amount exempt from the requirements of Code Section 409A, payment shall in all events be made by the 15th day of the third month following the end of the first calendar year during which the bonus amount is no longer subject to a substantial risk of forfeiture, subject to the provisions of Treas. Reg. §1.409A-1(b)(4)(ii) (regarding certain allowed delayed payments). For the avoidance of any doubt, any cash bonus amount payable for any performance period is intended to be exempt from Code Section 409A and shall be administered consistent with that intention.

(f) Notwithstanding any of the provisions of the Plan, the Company shall not be liable to the Participant if any payment which is to be provided pursuant to the Plan and which is considered deferred compensation subject to Code Section 409A otherwise fails to comply with, or be exempt from, the requirements of Code Section 409A.

16. Amendment and Termination. The Plan may only be amended or terminated by approval of the Independent Directors, based on the recommendation of the Committee. The Committee shall review the Plan periodically and recommend any amendments thereto which it deems appropriate or desirable, for approval by the Independent Directors. Upon recommendation of the Committee, the Independent Directors may amend or terminate this Plan at any time. Any amendment or termination of the Plan shall be implemented in a manner which complies with any applicable provisions under Code Section 409A (as defined in Section 15).

17. Effectiveness of the Plan. The Plan shall first be effective on January 1, 2020 and shall continue indefinitely, subject to the Independent Directors' right to terminate the Plan.

18. Plan Not a Contract. The Plan shall not be deemed to constitute a contract between the Company and any employee, and nothing contained in the Plan shall confer upon an employee any right to continued employment, nor interfere with the right of the Company or any subsidiary to terminate a Participant's employment with the Company or subsidiary.

19. Clawback. Any bonus amount that a Participant receives under the Plan is subject to repayment to (i.e., clawback by) the Company or a related entity as determined in good faith by the Independent Directors or the Board in the event repayment is required by the terms of the Company's recoupment, clawback or similar policy as may be in effect from time to time or by

applicable federal or state law or regulation or stock exchange requirement, but in no event with a look-back period of more than three (3) years, unless in the opinion of counsel satisfactory to Participant required by applicable federal or state law or regulation or stock exchange requirement. Any recovery of any bonus amount subject to the requirements of Code Section 409A (as defined in Section 15) shall be implemented in a manner which complies with Code Section 409A.

20. Governing Law. The Plan shall be construed and interpreted under the laws of the Commonwealth of Virginia.

Approved by the Independent Directors of the Board of Directors on April 27, 2020.