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February 9, 2024

Martin Gruenberg
Chair
Federal Deposit Insurance Corp.
550 17th Street, NW
Washington, DC 20429
Submitted via: comments@FDIC.gov

Re: RIN 3064–AF94, Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More

Dear Chair Gruenberg,

On behalf of more than 500,000 members and supporters of Public Citizen, we provide the following comment on the proposed "Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More" by the Federal Deposit Insurance Corp. (FDIC).[1]

This brief reform applies to larger FDIC-regulated banks, those with more than $10 billion in assets. Generally, the FDIC proposes stronger oversight mechanisms for these important institutions, which we support.

Strong corporate governance serves as one of the pillars of management oversight, and ultimately, bank safety. The failures of regional banks in the spring of 2023 revealed a clear breakdown in governance. At Silicon Valley Bank (SVB), the board of directors and management failed to take necessary responsible steps to respond to what regulators call

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[1] Federal Deposit Insurance Corp, *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More*, FEDERAL REGISTER (Oct. 11, 2023) https://www.govinfo.gov/content/pkg/FR-2023-10-11/pdf/2023-22421.pdf

"matters requiring attention," and "matters requiring immediate attention."[2] Most conspicuously, the board oversaw irresponsible growth of the bank, made possible by Congress' misguided bank deregulation bill, namely, S. 2155, which reduced federal oversight of banks with less than $250 billion in assets (reduced from the previous threshold of $50 billion).[3] Management failed to find solid new projects to fund with the growing level of deposits from venture firms it had previously financed; instead, management invested the money in long-term Treasuries. While Treasuries might seem a prudent solution in a time of stable interest rates, the Federal Reserve embarked on a well-advertised effort to combat inflation with rate increases. This meant that long-term Treasuries paying one or two percent interest plummeted in value, as investors could now find short-term Treasuries paying a higher interest rate. This problem was evident to any outside investors beginning in early 2022; it surely should have been evident to SVB board directors who are well compensated to pay attention to such fundamentals of banking. (SVB director annual pay ranged from $264,000 to $461,000.[4]) Depositors began to withdraw precipitously.

With a collapsing gap between its assets and liabilities, SVB announced om March 8, 2023 that it would sell securities to raise capital. This announcement only exacerbated the run on deposits. On March 10, regulators seized the bank.

How did the board respond? In the hours before this seizure, the board awarded a bonus to senior management, a pecuniary statement of a job well done. Observed Sen. Elizabeth Warren, "S.V.B. executives were busy paying out congratulatory bonuses hours before the Federal Deposit Insurance Corporation rushed in to take over their failing institution — leaving countless businesses and non-profits with accounts at the bank alarmed that they wouldn't be able to pay their bills and employees."[5]

In a postmortem by the Federal Reserve, one of SVB's primary regulators, "Silicon Valley Bank's board of directors and management failed to manage their risks." The bank exposed itself to interest rate risks "in ways that both its board of directors and senior management did not fully appreciate." [6]

With this context, we are pleased to welcome the FDIC's attention to better board oversight. We are especially pleased to see attention to the role of compensation. The FDIC declares that a bank's board should "establish Compensation and Performance Management Programs" Further, it notes that "incentives and compensation programs may pose safety and soundness risks if they encourage noncompliance with laws, regulations, or internal policies to meet business

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[2] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*, FEDERAL RESERVE (April 2023) https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf

[3] Elizabeth Warren *Silicon Valley Bank Is Gone. We Know Who Is Responsible.* NEW YORK TIMES (March 13, 2023) https://www.nytimes.com/2023/03/13/opinion/elizabeth-warren-silicon-valley-bank.html

[4]Silicon Valley Bank, *Proxy Statement,* SECURITIES AND EXCHANGE COMMISSION (April 21, 2022) https://www.sec.gov/Archives/edgar/data/719739/000119312522064940/d299123ddef14a.htm#rom299123_8

[5] Elizabeth Warren, *Silicon Valley Bank Is Gone. We Know Who Is Responsible.* NEW YORK TIMES (March 13, 2023) https://www.nytimes.com/2023/03/13/opinion/elizabeth-warren-silicon-valley-bank.html

[6] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank* , FEDERAL RESERVE (April 2023) https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf

objectives." It observes that compensation that is "excessive . . .. constitutes an unsafe and unsound practice." [7]

Public Citizen supports these guidelines and the specific focus on the role of compensation schemes that can motivate unsafe banking practices.

We also encourage the FDIC to finalize an important rule left from the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, namely Section 956. This legislatively mandated rule bars compensation structures that may lead to "inappropriate" risk taking. Public Citizen reports and testimony demonstrate the connection between inappropriate pay structures and misconduct, which include the reckless decisions behind the regional bank failures of last spring.[8] To reform this dynamic, we propose that a significant portion of incentive compensation for senior bankers be deferred in a collective fund. If the bank fails, or must pay a fine for misconduct, this collective fund is mandated to be used. This deputizes every banker to police one another; their own pay is on the line. The regulators' 2016 proposal comes close to this mechanism.[9]

To conclude, Public Citizen supports the new governance guidelines, and we further urge the FDIC to finalize true banker pay reform.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org

Sincerely,

Public Citizen

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[7] Federal Deposit Insurance Corp, *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More*, FEDERAL REGISTER (Oct. 11, 2023) https://www.govinfo.gov/content/pkg/FR-2023-10-11/pdf/2023-22421.pdf

[8] Bartlett Naylor, *Testimony,* SENATE BANKING COMMITTEE (March 27, 2023) https://www.citizen.org/article/submission-to-banking-housing-and-urban-affairs-committee-re-silicon-valley-bank-compensation/

[9] The collective fund under the 2016 proposal is not automatically forfeited to pay a misconduct fine or to pay creditors after a bank failure but left to the discretion of the board. Public Citizen opposes board discretion for many reasons, including the fact that board failures abet misconduct and failure. Indeed, as noted, the SVB board paid bonuses to SVB executives hours before failure.