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February 8, 2010

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: RIN 3064 –AD56: Advanced Notice of Proposed Rulemaking: Incorporating Employee Compensation Criteria into the Risk Assessment System

Dear Mr. Feldman,

On behalf of People's United Bank, I appreciate this opportunity to comment on the FDIC's Advance Notice of Proposed Rulemaking on Incorporating Employee Compensation Criteria into the Risk Assessment System (the "ANPR"). People's United is a $20.6 billion federal savings bank headquartered in Bridgeport, Connecticut and one of the largest independent banks in New England, with 300 branches in 6 states.

The ANPR contemplates using the risk-based assessment system as a "stick," by imposing penalty premiums on institutions whose incentive compensation programs do not fit within certain specified parameters, regardless of the institution's overall risk profile, size or complexity. Although People's United recognizes the potential risk to safety and soundness associated with poorly-designed compensation programs, we believe that concerns related to inappropriate compensation schemes are more appropriately addressed by the bank regulatory agencies under their existing supervisory and enforcement authority, supplemented if need be by additional supervisory guidance or rulemaking.

Our specific comments concerning the ANPR follow:

1. **Safety and soundness issues stemming from incentive compensation programs are properly addressed by the primary federal regulator through regulation and the examination process.** Banking supervisors are in the best position to evaluate the risks associated with compensation practices in a given institution, because they can look at the compensation structure in the context of the institution's overall business strategy and operations. As front line regulators, charged with the responsibility of examining hundreds or thousands of banks, the supervisory agencies are well positioned not only to identify problematic practices in individual institutions, but also to evaluate whether these practices are widespread within the industry and to respond with rulemaking or

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these practices are widespread within the industry and to respond with rulemaking or supervisory guidance, should they deem this to be necessary or appropriate.

2. **Banking supervisors already have broad authority to deal with unsafe and unsound compensation practices.** Current law and regulation already provides ample basis for banking supervisors to address risky compensation practices, either though supervisory guidance or through the examination process. In addition to general authority to take enforcement action to preserve safety and soundness provided under § 8(b) of the Federal Deposit Insurance Act (the "FDI Act"), the following laws and regulations deal specifically with the relationship between compensation practices and safety and soundness:

   - § 39(a) of the FDI Act, which instructs the banking agencies to establish "standards" related to compensation, fees and benefits;
   - § 39(c) of the FDI Act specifically instructs the federal banking supervisors to prescribe standards "prohibiting as an unsafe and unsound practice any ...compensatory arrangement that...could lead to material financial loss to the institution" and gives the agencies very broad authority to establish standards for determining when compensation is excessive;
   - Interagency Guidance, found in Appendix A to Part 364 of the FDIC's rules and regulations implementing § 39 of the FDI Act, also provides that "any compensation that could lead to material financial loss...is prohibited as an unsafe and unsound practice";
   - The FDIC's golden parachute rules, found in Part 359 of the FDIC's rules and regulations impose more stringent compensation limits on "troubled" financial institutions.

3. **Institutions should not be subject to potentially conflicting supervisory expectations.** The Federal Reserve has recently issued for public comment a "Proposed Guidance on Sound Incentive Compensation Practices." Unlike the ANPR, the Federal Reserve's Proposed Guidance does not attempt to shoehorn all institutions into a "one size fits all" approach to incentive compensation. Instead, it articulates a principles-based strategy that emphasizes the responsibility of the institution's management and directors to develop compensation programs that "do not encourage excessive risk-taking beyond the organization's ability to effectively identify and manage risk...[are] compatible with effective controls and risk management; and...[are] supported by strong corporate governance, including active and effective oversight by the organization's board of directors."

   The Proposed Guidance rightfully places the primary responsibility for effective compensation practices on the board of directors. It also articulates an expectation that directors should tailor their compensation programs to address the specific circumstances prevailing at the institution and that compensation strategy should be considered in light of the institution's overall risk management processes, controls and corporate governance practices. In contrast, the ANPR would require institutions to adhere to a uniform, mechanical standard or face an assessment penalty, without regard

to their overall risk profile, or to the effectiveness of their risk management systems, control mechanisms, or corporate governance.

4. **The ANPR does not provide evidence that incentive compensation has caused bank failures.** The ANPR cites compensation practices as a "contributing factor" in 17 bank failures during 2009. But as Directors Bowman and Dugan indicated[1], these failed banks presented a constellation of problems of which compensation was only a part, and the compensation practices cited generally involved paying incentives for loan originations without any consideration of loan quality.

   The bank regulatory agencies have been assigned the responsibility – through the supervisory, examination and enforcement process - for identifying and addressing a variety of unsatisfactory management practices that can lead to bank failures and loss to the deposit insurance fund (the "DIF"). In addition to poor compensation practices, these can include weak underwriting, fraud and conflicts of interest, inadequate internal controls and lack of effective board oversight. Deficiencies in management practices are reflected in an institution's CAMELS rating, which in turn is a factor used in determining the risk-based deposit insurance assessment. The ANPR has not provided empirical evidence that supports carving out incentive compensation from among a number of management practices that can lead to loss for the DIF and giving it special weight for deposit insurance assessment purposes.

5. **The ANPR is inconsistent with the risk-based approach to determining assessments mandated by § 7(b) of the FDI Act.** The ANPR would penalize institutions whose incentive compensation programs don't conform to certain prescribed parameters, *regardless* of whether the program does in fact create additional risk to the institution or to the DIF. This is inconsistent with §7(b) of the FDI Act, which provides that the assessment system must be risk-based, and which defines a risk-based assessment system as one "based on the probability that the DIF will incur a loss."

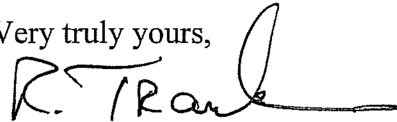
   The capital and supervisory factors currently used by the FDIC to determine assessment rates are clearly and demonstratively related to the risk of loss to the DIF: poorly capitalized institutions, institutions with poor earnings and asset quality and those with unsatisfactory CAMELS ratings do in fact fail at a much greater rate than well-capitalized, well-managed banks. In contrast, the ANPR would provide favorable assessment treatment for a single "approved" incentive compensation structure, without providing any empirical evidence linking the proposed structure to the probability of loss to the DIF and without examining whether it is possible for institutions to craft alternative incentive compensation arrangements that would accomplish the same goal.

[1] Transcript – January 12, 2009 meeting of the Board of Directors of the Federal Deposit Insurance Corporation, page 20.

6. **A "one size fits all" approach doesn't reflect the diversity of the current American banking system and isn't sufficiently flexible**. The proposal would disadvantage mutual banks, banks that are closely-held and small banks, regardless of whether their incentive compensation practices are in fact riskier than those of institutions that provide incentive compensation in the form of restricted stock. Although we understand the FDIC's desire to establish a defined standard that is easy to administrate, this standard should not disadvantage entire classes of institutions solely because of their size or corporate structure. Moreover, the FDIC should not impose a blanket penalty on all other forms of incentive compensation unless it can demonstrate that they actually do increase the risk of loss to the DIF.

Thank you for the opportunity to comment on this important matter. Please do not hesitate to contact me if you have questions concerning this letter or People's United's concerns about the ANPR.

Very truly yours,



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