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May 31, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

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

Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

Re: Incentive-Based Compensation Arrangements-(Fed Docket No. R-1410, RIN 7100-AD69; FDIC RIN 3064-AD56; OCC Docket ID OCC-2011-0001; OTS-2011-0004)

Dear Sir and Madam:

The Independent Community Bankers of America¹ (ICBA) welcomes the opportunity to comment on the banking agencies proposed rules regarding incentive-based compensation arrangements. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires the banking agencies to jointly prescribe

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

regulations with respect to incentive-based compensation practices at covered financial institutions.

Specifically, Section 956 of the Dodd-Frank Act requires that the banking agencies prohibit incentive-based arrangements at a covered financial institution that the agencies determine encourages inappropriate risks by a financial institution by providing excessive compensation or that could lead to material financial loss. Under the Act, a covered financial institution also must disclose to its appropriate federal regulator the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides “excessive compensation, fees, or benefits” or “could lead to material financial loss” to the institution. The Act defines a “covered financial institution” to include depository institutions or depository institution holding companies that have \$1 billion or more in assets.

ICBA’s Comments

The proposed rules would require each covered financial institution to maintain “policies and procedures” supporting their incentive compensation arrangements that would be appropriate to the size of the institution and the complexity of their arrangements. **ICBA commends this tiered approach to regulating incentive compensation structures. Smaller, less complex covered depository institutions (i.e. those with assets of \$15 billion or less) should not be expected to have as detailed or extensive policies and procedures in place as larger covered financial institutions with complex compensation arrangements. Similarly, the degree of Board of Directors oversight over incentive compensation arrangements should also be commensurate with the size and complexity of the institution and the complexity of its compensation arrangements.**

Furthermore, while ICBA supports requiring deferral arrangements in compensation arrangements for executive officers of larger covered financial institutions (i.e., generally those with \$50 billion or more in total consolidated assets), **we do not think the deferral arrangement requirement should become the standard for all incentive compensation arrangements.** There are many types of incentive compensation arrangements without deferral provisions that are perfectly safe and do not pose a risk of material loss to an institution. Ordinary bonus plans, for example, do not encourage executive officers to take inappropriate risks even though they may not have a deferral period. **It would be unreasonable for the regulators to adopt as a de facto standard that all incentive compensation arrangements of covered financial institutions must have a deferral arrangement before they can be considered in compliance with the new regulations. This would discourage the use of ordinary bonus plans that are an important component of community bank arrangements for attracting and retaining key executives.**

Covered institutions would also be prohibited under the proposed regulations from maintaining incentive-based compensation arrangements that expose the institution to

inappropriate risks by providing any “covered person” with excessive compensation. Whether compensation is excessive is determined based on facts and circumstances, including the value of the compensation, the compensation history of the individual, the financial condition of the institution, comparable practices at peer companies, any bad acts by the covered person, and any other facts that are relevant.

ICBA recommends that the agencies further clarify what compensation arrangements are considered “excessive” so that this is not left entirely to the subjectivity of the bank examiners. This would provide more certainty with regard to the use of compensation arrangements, and would allow community banks to continue to use ordinary and appropriate incentive compensation arrangements such as golden parachutes or other types of change-in-control agreements that help community banks attract and retain their key employees.

The proposed rules would also require each covered financial institution to submit annual reports to the appropriate regulator in a format specified by the regulator, disclosing the structure of all incentive-based compensation arrangements, including a narrative description of the components of the arrangements and a description of the institution’s policies and procedures with respect to such arrangements. **We commend the agencies for requiring more disclosures for larger covered institutions (i.e., those over \$50 billion in assets) and for taking into account that substantially all of the covered financial institutions are already supervised and/or subject to examination by one or more of the agencies.**

We further recommend that smaller covered financial institutions (those with assets of \$15 billion or less) with few incentive compensation arrangements be subject to less disclosure requirements. For instance, smaller covered institutions should not have to justify on an annual basis why the structure of their incentive-based compensation plans do not encourage inappropriate risks, especially if material provisions of the plans have not changed. If these smaller covered institutions only have a few incentive compensation arrangements, then it should be sufficient to require the justification be disclosed to the regulators no more than once every two years. This would relieve unnecessary disclosure burden for the smaller covered institutions.

Finally, although ICBA endorses a principles-based definition of “incentive-based compensation,” we recommend that the definition be more specific so it is clear as to what arrangements are covered. As proposed, the definition of “incentive-based compensation” would cover any variable compensation that serves as an incentive for performance. This is a far too broad and general a definition that would sweep in even modest bonus plans that never exceed more than 20% of an executive’s salary. We recommend that in the case of those smaller covered institutions (i.e., less than \$50 billion in assets) the proposed rule clearly exclude those bonus programs that are modest in scope and that would not under any circumstances pose a risk of a material financial loss to the institution. A specific exclusion for plans based on some quantifiable criteria (i.e., a specific percentage of salary) would be particularly helpful.

Conclusion

ICBA commends the proposed tiered approach to regulating incentive compensation structures. We recommend further that smaller, less complex covered depository institutions (i.e. those with assets of \$15 billion or less) not be expected to have as detailed and extensive policies and procedures in place as larger covered financial institutions and that the oversight by the Board of Directors also be commensurate with the size and complexity of the institution.

While ICBA supports requiring deferral arrangements in compensation arrangements for executive officers of larger covered financial institutions (i.e., generally those with \$50 billion or more in total consolidated assets), we do not think this requirement should be required for all incentive compensation arrangements including those for institutions under \$50 billion. This would discourage the use of ordinary bonus plans that are important component of community bank arrangements for attracting and retaining key executives.

ICBA recommends that the agencies further clarify what compensation arrangements are considered “excessive” so that this is not left entirely to the subjectivity of the bank examiners. This would provide more certainty with regard to the use of compensation arrangements, and not discourage the use of golden parachutes or other types of change-in-control agreements that help community banks attract and retain their key employees. We further recommend that smaller covered financial institutions (those with assets of \$15 billion or less) with few incentive compensation arrangements be subject to less frequent and less extensive disclosure requirements.

Finally, we recommend that the definition of “incentive based compensation” be more specific so that, in the case of smaller covered institutions, it would clearly exclude those bonus programs that are modest in scope and that would not under any circumstances pose a risk of a material financial loss to the institution.

ICBA appreciates the opportunity to comment on the banking agencies’ proposed rules regarding incentive-based compensation arrangements. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel