May 31, 2011

VIA EMAIL

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments, Federal Deposit
Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD56
Comments@FDIC.gov

Re: Interagency Notice of Proposed Rulemaking: Incentive Based Compensation Arrangements: FRB RIN 7100-AD69; FDIC RIN 3064-AD56

Our global comment is that the recent focus on incentive compensation at banks, which includes the Capital Purchase Program executive compensation rules ("CPP"), the recent Banking Agency Guidance ("Guidance") and the current Proposed Rules, cover community and regional banks (which will shortly include us, and currently includes many other banks with at least $1 billion in assets, which are caught by the Proposed Rules). We are a community bank with at least $1 billion in assets, and therefore we will be caught by the Proposed Rules. This is unwarranted and unfair. It adds a very significant regulatory burden without producing any meaningful benefit because these smaller banks have not historically made use of risky incentive compensation practices.

Community and regional banks form a critical engine in this nation's economy. These smaller banks fill market gaps left by the large ones, such as loans to small businesses, commercial real estate loans, and agriculture loans. The problems at these banks are almost overwhelmingly a function of the general economic crash, and the fact that, because of the reluctance of the giant banks to make certain loans, the smaller banks tended to have loan concentrations in areas (such as commercial real estate) disproportionately affected by the recession. The problems at smaller banks did **not** arise because of an overreliance on short term cash bonuses and other incentives. Community and regional banks generally make modest use of incentive compensation. In trying to address incentive compensation risks, the agencies are not sufficiently differentiating between banking institutions. They are simply heaping an expensive pile of compliance and administrative burdens on a large group of banks, including our bank, where there is no problem to be addressed, and where the banks have a much smaller staff available to fulfill the compliance and administrative requirements.

In addition, the banking agencies have already implemented a set of guidelines to address the risks of incentive compensation at all banks. The Guidance covers all FDIC insured institutions, regardless of size, and adopts a broad, relatively flexible, principles-based approach to incentive compensation. The Guidance focuses on making sure that incentive compensation arrangements at banks appropriately tie rewards to longer-term performance and do not undermine the safety and soundness of the bank or threaten the broader economy. The Guidance

applies not only to executive officers, but also to other employees who have the ability to materially affect the risk profile of a bank, either individually or as part of a group. These safety and soundness principles that all banks must now take into account when establishing incentive compensation arrangements are:

1. incentive compensation arrangements should provide employees incentives that appropriately balance risk and financial results in a manner that does not encourage employees to expose their banks to imprudent risk;

2. these arrangements should be compatible with effective controls and risk-management; and

3. these arrangements should be supported by strong corporate governance, including active and effective oversight by the bank's board of directors.

The banking agencies will review incentive compensation under the parameters of the Guidance as part of the standard bank examination process. It should be noted that the regulatory agencies have in fact *always* had the authority to regulate a bank's incentive compensation arrangements as part of the regular safety and soundness/risk management evaluation.

Given the Guidance and regulators' inherent authority to address risks caused by incentive compensation, there is no need to impose the Proposed Rules as an additional regulatory layer on banks at this time. We believe the agencies should at least wait until the banks implement the Guidance and have been examined for compliance and risk before developing additional regulations targeted at bank incentive compensation. Banks have always had to deal with a maze of multiple, overlapping, confusing and often contradictory laws and regulations. With the recent spate of new banking laws, this maze has gotten bigger and more complex. A lot of administrative time and legal expense are committed every year to trying to figure out a bank's compliance obligations. We believe there is no benefit to be gained by adding another layer of overlapping, but not identical, regulation on us and other banks when the Guidance is already in place to address incentive compensation. If the Proposed Rules are enacted, our bank will have to navigate CPP, the Guidance *and* the Proposed Rules, all of which are different despite claiming to address the exact same risks. Adding more burden, complexity, confusion and uncertainty draws away important administrative time from the business of banking, and will not improve the outcome here. We do not believe these Proposed Rules will result in better monitoring or control of incentive compensation than will result from the Guidance alone. Because the vast majority of community and regional banks simply do not utilize risky incentives, this means adding significant cost to these banks to address a non-existent problem. If it turns out that enforcement of the Guidance is insufficient to prevent inappropriate levels of risk at banks, the next step at that point could be to create additional rules.

One specific component of this increased administrative burden that should be removed from the Proposed Rules for banks is the ongoing reporting requirement. The regulatory agencies are already specifically examining the incentive compensation practices of banks and enforcing the Guidance. This means that, consistent with Dodd-Frank Act, banks already are required to disclose to their appropriate Federal regulators the structure of their incentive-based

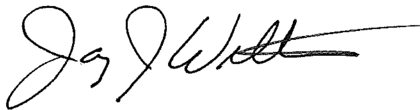
compensation arrangements sufficient to allow such regulators to determine whether the structure provides excessive compensation, fees or benefits or could lead to material financial loss to the banks. We do not believe that a separate annual written report of the bank's incentive compensation arrangements, policies and procedures, and risk analysis will lead to better understanding and oversight than having the examiners inside the bank looking at the arrangements and talking about them with management. This is unnecessary paperwork and overhead, and again, draws valuable administrative time away from the important issues facing all banks today. We again suggest letting implementation and enforcement of the Guidance run its course before deciding whether additional process is needed. If the Proposed Rules are enacted, we suggest letting the banking regulators examine compliance with the Proposed Rules along with the Guidance. If it is decided that annual reporting is necessary, we certainly believe the Proposed Rules should provide for streamlined electronic reporting. Reporting and other communications with Treasury under CPP take place exclusively by email, which improves efficiency. We have seen no concerns raised about this process.

We are very opposed to the prohibition in the Proposed Rules on incentive compensation that encourages inappropriate risks by providing "excessive compensation." According to the Proposed Rules, an incentive compensation arrangement provides excessive compensation "when amounts paid are unreasonable or disproportionate to the services performed . . . taking into consideration" a variety of factors, such as compensation paid by competitors, as well as "other factors" the regulators determine to be relevant. This is an important and detrimental component of the Proposed Rules. We are opposed to any provision that dictates or could be interpreted to dictate the specific amount of compensation that a particular organization should pay in order to bring and retain in a specific employee. The free market, not the government, should be determining appropriate levels of compensation. The underpinning of the Proposed Rules and Guidance (and CPP for that matter) is to ensure that financial institutions do not use incentives that encourage unduly risky behavior to maximize short term personal gain. Therefore, the focus of any regulation of compensation should be on how incentives are structured, not how much an employee receives in the end. If an employee makes so much money that it fundamentally threatens the safety and soundness of the bank, the regulators already have the power to address the threat. As a secondary concern, the prohibition states that regulators in assessing "excessive compensation" can take into account any "other factors" the regulators believe are relevant. Given the significance of the prohibition on "excessive compensation", this undefined, open ended term provides the regulators far too much power to arbitrarily set compensation levels.

Each bank is unique. What we or any other bank should pay to an employee depends on the size, complexity and current needs of the bank, the skills of the employee, the geographic region, conditions in the market, the future business plan, and the competitive landscape (and banks do not just compete with other banks for top talent). Bank directors and management are in the best position to analyze the bank's employment needs and the appropriate compensation for attracting and retaining desired employees. If we impose too many restrictions on a bank's ability to compensate its employees, top talent will choose to work in other industries. It is to all of our advantage to let banks compete on even footing with other companies for executives and employees. The Guidance seeks a balance between risk management and the need for companies to make their own determination regarding how to attract and retain employees. The Proposed

Rules impose too many restrictions on compensation. The Proposed Rules should approach incentive compensation through a set of principles, as the Guidance does, and not create one-size-fits-all compensation practices that are imposed uniformly on all covered institutions.

We believe the Proposed Rules should exempt FDIC-insured financial institutions, at least those under the $50 billion threshold which are identified in the Proposed Rules as "larger", until we see how application and enforcement the Guidance plays out. We believe the Guidance will accomplish the goal of managing the risks posed by incentive compensation. We believe the Proposed Rules will impose an unnecessary additional burden on banks and draw resources and staff away from the other issues facing banks these days, with no corresponding improvement in oversight or risk management. We believe adopting the Guidance without additional requirements as the formal incentive compensation rules applicable to banks would satisfy the Congressional directive in section 956 of the Dodd-Frank Act. If it is determined that additional incentive compensation rules are warranted for banks at this time, we strongly recommend removing any uniform rigid requirements (such as the deferral requirements), the prohibition on "excessive compensation" as determined by the regulators in their sole discretion, and the reporting obligations.



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