May 31, 2011

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Chair, Federal Deposit Insurance Commission

Mary Shapiro
Chair, Securities and Exchange Commission

John Walsh
Acting Comptroller, Office of the Comptroller of the Currency

Timothy Geithner
Secretary, Department of the Treasury

Ben Bernanke
Chairman, Federal Reserve Board

Debbie Matz
Chair, National Credit Union Administration

Edward DeMarco
Acting Director, Federal Housing Finance Agency

All, care of: Via Email
Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: *Incentive-Based Compensation Arrangements,* Rin-3064-AD56

Dear Secretary, Chairs, Acting Comptroller, and Acting Director:

On behalf of more than 225,000 Public Citizen members and supporters, we are pleased to comment on the Proposed Rule regarding incentive-based compensation.

Section 956 of the Dodd-Frank Wall Street Reform Act aims at reconstructing compensation packages and incentives. The provision's key passage is clear: regulators must "prohibit any types incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions." We hope to provide helpful guidance on the technical issues that arise under this language.

We appreciate the opportunity to share our views with the Agencies on this important issue. If you have any questions, or need additional information, please so not hesitate to contact Bartlett Naylor, at bnaylor@citizen.org, (703) 786-7286.

Sincerely,

Bartlett Naylor, Financial Policy Advocate

David Arkush, Director

Public Citizen's Congress Watch division

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INTRODUCTION

Seven agencies (the "Agencies") have proposed a rule to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" or the "Act").[1] Section 956 requires the Agencies to prohibit incentive-based compensation arrangements that encourage inappropriate risk at a financial institution by providing excessive compensation or that could lead to material financial loss.[2]

Generally, we applaud the Agencies for identifying the principles that should guide the implementation of section 956, as well as some of the major tools to be used. But in several respects the proposal falls far short of realizing those principles or applying the tools properly. Below, we discuss several aspects of the proposal.

COMMENT

A. Definition of Covered Institutions

We urge that the Agencies include off-balance sheet activities when determining an institution's size for purposes of the final rule.

Two aspects of the proposal turn on the size of a financial institution. First, Dodd-Frank § 956 states that financial institutions with less than $1 billion in assets are exempt from section 956.[3] In addition, the Agencies propose different rules for institutions with more than $50 billion in assets.[4] We encourage the Agencies to include off-balance-sheet assets in the calculation of each asset threshold.

Without including off-balance-sheet assets, the thresholds could easily understate institutions' true size, as well as its risk, thereby undermining the purposes of the proposed rule. FDIC Chairman Sheila Bair testified before the Financial Crisis Inquiry Commission that "off-balance sheet activities can seriously harm the finances of the consolidated organization and the economy more widely."[5] For example, such liabilities contributed to the financial distress experienced by Citigroup. The value of Citicorp's off-balance-sheet assets constituted 50% of the value of the company's assets on

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[1] 76 Fed. Reg. 21,170 (Apr. 14, 2011).
[2] Dodd-Frank § 956; 12 U.S.C. § 5641.
[3] Dodd-Frank § 956(f); 12 U.S.C. § 5641(f).
[4] *See, e.g.*, 76 Fed. Reg. 21,206 (OCC proposed § 42.5(b)(3) ("Specific requirements for covered financial institutions with $50 billion or more in total consolidated assets.")).
[5] Statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation on the Causes and Current State of the Financial Crisis before the Financial Crisis Inquiry Commission," Jan. 14, 2010 (available at http://www.fdic.gov/news/news/speeches/chairman/spjan1410.html).

the balance sheet dated March 31, 2008.[6] At the end of 2008, the off-balance-sheet assets Bank of America, Citigroup, JPMorgan Chase and Wells Fargo, totaled $5.2 trillion.[7]

Subsequent accounting and regulatory changes tightened rules on off-balance-sheet treatment, rendering this potentially less attractive. To the extent off-balance-sheet treatment remains attractive, basing the Proposed Rule's coverage on only the amount of assets reflected on financial institutions' balance sheets would undermine the Proposed Rule's effectiveness in constraining risk-taking behavior at institutions whose stability is important to the financial system.[8]

B. Definition of Covered Persons

We applaud the Agencies for recognizing that section 956 requires a broad definition of "covered person" that includes "any executive officer, employee, director, or principal shareholder of a covered financial institution,"[9] and for declining to carve out any class of individuals. The definition of "covered person" should be maximally broad, reaching anyone who makes decisions for or works for a covered financial institution. The important question is not an individual's job title or technical job description, but rather whether his or her compensation arrangement provides the wrong incentives regarding risk. The text of section 956 reflects this policy, in that it does not define covered persons but provides a list of persons that appears intended to be exhaustive (executive officer, employee, director, or principal shareholder of a covered financial institution).[10]

To fulfill this statutory intent, the Agencies should modify the proposed definition of "covered person" to make clear that it reaches anyone who works for a covered financial institutions or participates in managing it, in the broadest sense of those phrases. For example, an independent contractor would not be exempt merely because he or she is not an "employee." The Agencies apparently agree with this position in their discussion of the anti-evasion section, where they state that financial institutions should not be able to evade the rule by converting employees to

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[6] *See* Bradley Keoun, "Citigroup's $1.1 Trillion of Mysterious Assets Shadows Earnings," Bloomberg, July 13, 2008 (available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a1liVM3tG3aI&refer=home)) .

[7] David Reilly, "Banks' Hidden Junk Menaces $1 Trillion Purge," Bloomberg, Mar. 25, 2009) Merrill Lynch CEO John Thain admitted in a June 11, 2008 investor call that "[t]he riskiest assets we had, our CDOs, weren't even on our balance sheet." (Keoun, *supra*)

[8] We are particularly concerned about the $50 billion threshold for larger financial institutions, because there is evidence that compensation incentive effects have tended to be substantially stronger for large bank CEOs than small bank CEOs. DeYoung et al., discussed *supra*, found that large bank CEO compensation *vega*—the change in wealth with respect to changes in stock return volatility—was up to five times stronger than small bank CEO compensation *vega* during the 1994-2006 period analyzed in the study. CEO compensation *delta*—the sensitivity of wealth to changes in the firm's stock price—at large banks was at least three times larger on average than small bank *delta* during most of that period. (DeYoung, supra at 23).

[9] 76 Fed. Reg. 21,205.

[10] *See, e.g.*, Dodd-Frank § 956(b)(1); 12 U.S.C. § 5641(b)(1).

independent contractors.[11] We urge the Agencies to make clear that the definition of "covered persons" is maximally broad to curb potential attempts at evasion.

C. Definition of Incentive-Based Compensation

We applaud the Agencies for proposing to define incentive-based compensation broadly (as "any variable incentive that serves as an incentive for performance)"[12] and for clarifying that the form of compensation is irrelevant to the question whether it should be considered incentive-based.[13]

We also believe the Agencies rightly focus on the practical effect of compensation arrangements rather than the intent behind them, as reflected in the use of the phrase "serves as an incentive." What is important is whether an arrangement happens to "serve as" an incentive, not whether it was intended to do so.

However, we are concerned that some will argue for a contrary reading of the definition, and therefore we urge the Agencies to clarify that intent is irrelevant to whether compensation is "incentive based." We are concerned that some might argue that the phrase "serves as" requires subjective intent on the part of the financial institution, the employee or both. The rule would be dramatically weakened if the Agencies had to prove intent on the part of a financial institution before a compensation arrangement could be deemed "incentive-based." Equally problematic, boards of directors and the Agencies might fail to recognize as incentive-based many arrangements that do not look like traditional incentive compensation arrangements.

Two examples illustrate the latter problem: First, companies commonly award stock to an executive who is moving from another firm. Companies often justify such awards as necessary to attract talented executives. Similarly, a financial institution might grant options or award stock with a value calculated solely by reference to the recipient's base salary, conditioning vesting or lapsing of restrictions solely on continued employment. In either instance, a financial institution may contend that such a grant or award is not incentive-based compensation, even though its future value to the employee turns on the price of the financial institution's stock, which turns, in part, on the employee's actions and therefore provides the employee the incentive to act in ways that boost the stock price, whether safely or in a manner that is inappropriately risky.

We urge a number of modifications for anti-evasion prophylactic. The final rule should define incentive-based compensation in a manner that clearly turns on compensation arrangements' potential effects on individual conduct, without regard to the intent of whomever designed or granted the compensation. One possibility would be to define incentive-based compensation as compensation whose current or future financial value to the recipient may vary to some extent as a result of the recipient's decisions, statements, or actions, as well as the performance of the financial

[11] 76 Fed. Reg. 21,183.
[12] *See* 76 Fed. Reg. 21,204 (defining "incentive based compensation" as "any variable incentive that serves as an incentive for performance").
[13] 76 Fed. Reg. 21,175.

institution as a whole (including, but not limited to, the value of the financial institution's securities). This definition would encompass the equity-based compensation arrangements described above because, regardless of the firm's intention in paying the compensation, the value to the employee will be determined by the stock price, which turns in part on the employee's actions.

Further, the Proposed Rule should identify arrangements that will always be considered incentive-based compensation, while making clear that the list is not intended to be exhaustive and that financial institutions must analyze all compensation arrangements using the principles-based definition. We suggest that stock options and stock awards would be appropriate arrangements to include in such a list.

We also suggest that the Agencies consider banning stock options outright for some covered institutions and employees. Former Federal Home Loan Bank/San Francisco General Counsel Bart Dzivi has written of the value of compensation in attracting capable managers. But he contends that "stock options create all the wrong incentives for managers of highly leveraged corporations" because they produce an "asymmetrical benefit." While the beneficiary shares the upside of equity price increases, the manager suffers "no out-of-pocket losses as equity prices decrease." Dzivi observes that such stock option plans were "expressly designed to make senior managers take legitimate risks." While only about 1% of all publicly traded companies maintained broad-based stock option plans in 1987, and were criticized for being too risk averse on decisions on new capital expenditures and new projects, analysts advised corporations to provide bigger potential payoffs for managers who made risky decisions. By 2000, an estimated 15% of publicly traded companies maintained broad-based stock option plans. A form of compensation that was created and propounded to encourage risk-taking has little or no appropriate role at financial institutions subject to section 956—institutions in which the Congress and the regulators are attempting to curb risk-taking.

Finally, financial institutions should be required, in their reports to the Agencies, to identify the compensation arrangements that they do *not* consider incentive-based. The Agencies can follow up this reporting with specific questions about any compensation arrangement whose classification as not incentive-based seems potentially erroneous.

D. Methods of Making Compensation More Sensitive to Risk

As stated in the proposal, the regulations focus on risk taking incentives that arise out of annual compensation flows. The Agencies identify four methods that currently are often used to make compensation more sensitive to risk. Below we comment briefly on one of the four methods, risk adjustment of awards, then provide general comments on methods of making compensation more sensitive to risk.

<u>1. Risk Adjustment of Awards.</u> Under this method, the amount of the person's incentive-based compensation award is adjusted based on measures that take into account the risk the covered person's activities pose to the covered financial institution. Such measures may be quantitative, or

the size of a risk adjustment may be based on managerial judgment, subject to appropriate oversight.

> Response: Consider aligning compensation with an institution's bond price, the average credit default swap spread, or the spread at the time at which payout is determined, or a metric devised by regulators that might derive from the firm's stress test.

2. General Comments on Making Compensation More Sensitive to Risk. Regulations should aim to assess all economic incentives that may lead to executives taking excessive risk. For instance, executives may have incentives to engage in excessive risks from their equity holdings in a covered financial institution that is leveraged. Similarly, incentives to take excessive risk can come from vested or unvested option grants or stock grants from prior years, or more generally, from shares and options beneficially owned by managers. Put another way, risk taking incentives from restricted stock that will vest next month can be substantial but so can risk taking incentives arising out of shares already vested. Effective risk regulation demands coverage of both sources of incentives.

Moreover, elements of the executive's personal portfolio can alter incentives for risk taking. We recommend a strict ban on hedging. This should also cover defined benefit pension plans or severance packages ("golden handshakes") that are liabilities of the firm, which would be in jeopardy and become impaired should the firm fail. These liabilities, often called "inside debt" by the finance academics, can attenuate incentives for risk taking. We address hedging in a final section.

Finally, we propose requiring claw backs of all incentive compensation based on performance that proves, over time, to have been based on excessive risk-taking gone south. Because of practical problems in recognizing and penalizing violations, claw backs may prove one of the most realistic and effective ways of enforcing section 956. For example, imagine that a financial institution's board (and perhaps one of the Agencies) fails to recognize that a compensation arrangement encourages employees to expose the institution to material financial loss until the institution has been rendered insolvent by the risky activities that the compensation arrangement encouraged. In this situation, the Agencies may see little benefit in fining the institution for the board's failure, given that the institution is insolvent. A claw back provision, in contrast, would appropriately take back the compensation gained through reckless conduct. In addition, the possibility of such a claw back would provide a counterweight to any bad incentives built into a given compensation package.

E. Special Provisions for Executives of Larger Financial Institutions

The proposal would require larger financial institutions to defer a minimum of 50% of executives' incentive compensation for a minimum of 3 years. We applaud the agencies for recognizing that deferred compensation is a critical tool to curb inappropriate incentives and acknowledging the value of a minimum floor of deferral for some employees. But we believe the proposal falls far short of what is needed. First we discuss the importance of deferrals, then we discuss the problems with the Agencies' approach.

1. The Value of Deferred Payments

The AFSCME Employees Pension Plan was the first U.S. institutional investor to formally advocate this type of arrangement—often referred to as "bonus banking"—at financial institutions, using the shareholder proposal process. A mandatory deferral would create a longer-term focus for executives and would help ensure that they are not compensated for what the University of Chicago's Raghuram Rajan calls "fake alpha": "appearing to create excess returns but in fact taking on hidden tail risks, which produce a steady positive return most of the time as compensation for a rare, very negative, return." Encouraging the creation of true alpha, Rajan says, requires that "[s]ignificant portions of compensation [be] held in escrow to be paid only long after the activities that generated the compensation occur."[14]

Mandatory deferral would also bring U.S. financial institutions into line with evolving global practice. We support the contours of the deferral outlined in the Proposed Rule. We believe, however, that using a single deferral period for all executive officers of larger financial institutions may not be ideal. The purpose of the deferral is to align employees' incentives with the risk they undertake. It seems unlikely that the risks undertaken by all executive officers at a financial institution (or, more accurately, undertaken under executive officers' supervision) can be fully assessed within a three-year period. Instead, the deferral would best accomplish its objectives if it were based on an average time horizon for evaluating the risks for which the executive officer is accountable. At the highest levels of management, such an average might be calculated across the entire institution. For business line heads, the average would be limited to particular business lines. Deferred payouts may be altered according to risk outcomes either formulaically or based on managerial judgment, though extensive use of judgment might make it more difficult to execute deferral arrangements in a sufficiently predictable fashion to influence the risk-taking behavior of a covered person.

To be most effective in ensuring balance, the deferral period should be sufficiently long to allow for the realization of a substantial portion of the risks from the covered person's activities, and the measures of loss should be clearly explained to covered persons and closely tied to their activities during the relevant performance period. We recommend deferral and vesting rules that match executive payouts to the time horizon over which the covered institution can precisely assess the performance of the assets put in place by the executive. If managers make decisions or invest in assets that have a five-year horizon, covered institutions should require executives to have "skin-in-the-game" for the entire five years. We believe that a three-year time period is too brief, as many ill-advised loans might remain in a "performing" status due to favorable market conditions for this period. We recommend that the minimum deferral period for incentive-based compensation be equal to the average maturity of the assets held by the covered institution. In particular, we stress that the rule should cover both the on-balance sheet assets and the off-balance sheet assets, such as derivatives, including an assessment of counterparty risks and the notional value of the derivatives to which the covered institution is counterparty.

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[14] Raghuram Rajan, "Bankers' Pay is Deeply Flawed," FT.com, Jan. 8, 2008) (Available at http://www.ft.com/cms/s/0/18895dea-be06-11dc-8bc9-0000779fd2ac.html#axzz1N5ryAT1n).

2. Problems with the Agencies' Proposed Floor of Deferred Payments for Executives at the Largest Financial Institutions.

On its face, the proposal purports to require a minimum deferral of 50% of incentive compensation for three years for executives at the largest financial institutions. The proposal is deeply flawed. First, speaking broadly, deferral of 50 percent is too little, three years is too short, and executives at the largest financial institutions constitute too small a class to be regarded under this deferral regime. The agencies provide no evidence that such arrangements are sufficient to deter inappropriate risk-taking.

Second, the proposal is severely flawed even if one accepts that a three-year deferral of 50% of incentive compensation would be effective. That is because the proposal would permit *pro rata* distribution of the "deferred" amount over the three year deferral period.[15] In other words, if an employee receives $300,000 of incentive pay, such that $150,000 must be "deferred" over 3 years, the employee can receive $50,000 in each of the three years rather than waiting until the end of three years to receive $150,000. There are several problems with this approach:

a. It would mean that only one-third of the incentive compensation is really deferred at all. In a given year, the executive would receive 50% of his or her incentive compensation, and one-third of the 50% that is supposed to be deferred, for a total of two-thirds of his or her incentive compensation (3/6 + 1/6 = 4/6 = 2/3).

b. It would mean that incentive compensation is deferred a maximum of only two years rather than three. One-sixth of the incentive compensation would be granted the year it is earned, and one-sixth would be granted each of the next two years.

c. If we assume static base pay and static bonuses, by the third year the individual will be receiving in each year the equivalent of a full year's incentive pay, as the following chart illustrates:

Year	Non-deferred Incentive Pay	"Deferred" Incentive Pay			Total Incentive Pay Received
1	150,000	50,000 (from yr 1)			200,000
2	150,000	50,000 (from yr 2)	50,000 (from yr 1)		250,000
3	150,000	50,000 (from yr 3)	50,000 (from yr 2)	50,000 (from yr 1)	300,000
4	150,000	50,000 (from yr 4)	50,000 (from yr 3)	50,000 (from yr 2)	300,000
5	Etc.	Etc.	50,000 (from yr 4)	50,000 (from yr 3)	
6	Etc.	Etc.	Etc.	50,000 (from yr 4)	

[15] 76 Fed. Reg. 21,180; *id*., at 21,205.

d. *Pro rata* distribution ensures that five-sixths of a given year's incentive compensation is paid out by year 3. In other words, if something happens that triggers the withholding of the deferred payment in the third year, the executive will have received five-sixths of the incentive compensation already—and stands to lose only one-sixth of it. The Agencies provide no evidence to support the proposition that a three-year deferral of 50% of incentive compensation was sufficient in the first instance. There provide absolutely no justification for weakening that requirement to a one-sixth (or 16.6%) deferral for three years.

e. Finally, consider the hypothetical in which an executive drives up his or her compensation by engaging in risky behavior, even though it likely will cause material financial loss to his or her financial institution (this is the very type of act that section 956 is intended to stop). In Year 1, the executive has every incentive to increase his or her pay by engaging in a risky practice, so long as the additional benefit outweighs the value of any deferred payments that are ultimately withheld. Under a *pro rata* distribution, the executive has an incentive to engage in an activity that is *certain* to cause material financial loss to his or her financial institution within three years, and *certain* to result in the withholding of the remaining deferred compensation, so long as the activity increases the executive's incentive compensation by just over 20%. The following chart illustrates this problem:

	Original Incentive Comp.	**Granted Immediately**	**"Deferred"**	**Granted Yr 1**	**Granted Yr 2**	**Granted Yr 3**	**Total Granted**
No Reckless Practice	$300,000	$150,000	$150,000	$50,000	$50,000	$50,000	$450,000
Reckless Practice	$360,000*	$150,000	$180,000	$60,000	$60,000	0	$450,000

For these reasons, the Agencies' proposal is grossly inadequate to deter inappropriate risk-taking by executives at financial institutions.

F. Reliance on Boards of Directors to Determine Which Individuals Are Covered and the Propriety of Their Compensation Arrangements

What the Proposed Rule gives with an appropriately broad definition of "covered person," it later takes away by leaving to the board of directors of each covered financial institution to determine which individuals are truly "covered" by the rule. The proposal would require boards to identify which covered persons other than executive officers have the ability to expose the institution to possible losses that are substantial in relation to the institution's size, capital or overall risk tolerance, and to approve those individuals' compensation packages and maintain documentation of approval.[16]

[16] 76 Fed. Reg. 21,207.

The proposal effectively would outsource decisions regarding proper incentive compensation to the very actors whose failures to design proper pay packages created the need to regulate compensation. In other words, if Congress thought the boards of directors of financial institutions should be trusted to establish sound compensation arrangements, there would have been no reason to enact section 956.

Compounding this problem, the proposal gives boards very little guidance and near-total discretion in identifying the employees who will be included, as well as the propriety of a given compensation arrangement. The Proposed Rule provides only one example of individuals other than executives whose pay should be subject to the rule—that of traders with large position limits relative to the institution's overall risk tolerance. Many other individuals can create substantial risk as well; for example, loan originators stand out for their role in the recent financial crisis.

We urge the Agencies to adopt measures such as the following, or other measures to provide more guidance and effective requirements, rather than leaving so much to the discretion of boards:

1. Provide non-exclusive bright-line standards to guide boards. Functional standards would, we think, be more useful than standards focusing on particular job titles. For example, the Agencies might stipulate that anyone who serves on a committee (not a board committee) or similar body at a covered institution that has input into administers or allows exceptions to the institution's risk tolerance should be identified in connection with this requirement.

2. Establish minimum rules not just for executives, but for anyone who receives incentive pay and could contribute substantially (whether individually or in a group of employees) to inappropriate risk.

3. Require regulatory approval of the compensation practices, or random audits by regulators, after which the Agencies order changes or publish guidance on required modifications at the given institution and for all similarly situated institutions and individuals, which would create clear, enforceable duties.

G. Corporate Governance

"Strong and effective corporate governance is critical to the establishment and maintenance of sound compensation practices," observes the request for comment. "The proposed rule mandates that the board, or a committee thereof, should actively oversee the development and operation of a covered financial institution's incentive-based compensation systems and related control processes." As the front line in determining the architecture of executive compensation, the board of directors must be engaged. That boards have occasionally fallen short in exercising successful diligence in the execution of their oversight can be observed in numerous failed corporate decisions, from takeovers unwound by succeeding CEOs, failed product launches, and even accounting fraud. We believe there is a widespread belief that executive compensation generally has inflated well beyond what is justified by the general success of American corporations,

providing further evidence that boards have failed to bridle the area that may be of most keen interest to management.

We ask the Agencies to exercise diligence to ensure that boards engage themselves vigorously in the implementation of section 956. One manifestation of true engagement will be split votes. Too often, boards rubber stamps the recommendations of an outside pay consultant, generally hired by the CEO himself. Public Citizen recently held in-person conversations with five directors of Dominion Resources Corp. at that company's shareholder meeting, and asked if how many split votes they remembered. That is, how many times the board vote and at least one member did registered a dissenting vote? None of the directors, some of whom had served Dominion for more than ten years, could remember any split votes. Yet the current Dominion CEO is essentially undoing many of the acquisitions of the previous CEO. This current board essentially declared that its own decisions under the previous CEO were incorrect—because the new CEO said so. Accordingly, the regulators should ask to see the record of votes on incentive compensation, with a view to inspecting the votes for evidence of rigor. In both split and unanimous votes, regulators should ask for an explanation that should be detailed and specific, not boilerplate.

H. Required Reports

The Proposed Rule requires covered financial institutions to submit annual reports to their regulators disclosing the structure of incentive-based compensation arrangements, including descriptions of policies and procedures, material changes to compensation arrangements since the last annual report and the "specific reasons why the covered financial institution believes the structure of its incentive-based compensation plan does not encourage appropriate risks by the covered financial institution . . . ."[17]

In our view, narrative disclosures such as those set forth in the Proposed Rule are of limited utility in evaluating the level of risk created by compensation arrangements. Our experience with the narrative Compensation Discussion and Analysis section of the proxy statement, which requires some disclosures that are similar to those contained in the Proposed Rule, is that such descriptions tend to be heavily lawyered and convey little meaningful information.

The Agencies need to be able to monitor the risk created by compensation arrangements on an institution-by-institution basis and across regulated institutions; in both cases, the Agencies also need to be able to track trends over time. To do so, Agencies need specific structural data from covered financial institutions, in a uniform format to allow data aggregation and analysis, about specific compensation arrangements. We suggest that the Agencies should receive data on median stock option grants, stock awards and stock and option holdings to allow the Agencies to calculate measures of the sensitivity of pay to risk and performance at covered institutions. Data on the median amount of compensation paid under short-term incentive plans, as well as the median amount of compensation subject to deferral, would also be useful.

[17] 76 Fed. Reg. 21,204.

The data should cover a group of employees beyond executive officers to provide a full picture of compensation arrangements at an institution. We recognize that even larger financial institutions have widely varying numbers of employees, making it difficult to select a single number of employees for all covered institutions. Accordingly, we suggest that structural data be required about a specified percentage of employees.

One possibility is to focus on the most highly compensated employees at a financial firm (outside of executive officers) or those who receive the largest amounts under short-term incentive plans. Our calculations indicate that, based on data from the 2008 Cuomo Report on financial firm bonuses, the median TARP financial firm recipient paid bonuses of $1 million or more to approximately 0.2% of its employees in 2008. It seems likely that financial institutions are already generating data on highly compensated employees as part of their own analyses of compensation and risk, if not for more generic human resources purposes. Accordingly, we urge the Agencies to specify a percentage of employees and require detailed structural data on compensation arrangements within that group.

In content, the principle should be to demand details so that the regulators have sufficient data to quantify risk-taking incentives and act on them. Thus, the detailed structure of compensation contracts, particularly incentives, should be obtained. The information should include stock grants, stock options, cash bonuses, cash and non-cash deferred compensation including stock appreciation rights and pensions, severance packages, etc. In each case, the firm should detail the contract maturity as well as the vesting schedule whether time or performance dependent (if so, the exact contingencies). These disclosures should also extend to the shares and options beneficially owned by executives and shares or options not vested, as discussed above.

In format, the data should be provided electronically and follow standardized markup fields and formatting. The goal should be to facilitate analytic processing by the regulators and academics assessing risk taking incentives. Standardization is especially important to avoid large scale data dumps in non-standard formats that may not contain essential information for risk assessment or mask such information amidst unnecessary detail or excessive verbosity.

I. Excessive Compensation

The Dodd-Frank Act prohibits a covered financial institution from having incentive-based compensation arrangements that may encourage inappropriate risks by providing excessive compensation. The Proposed Rule defines “excessive compensation” as compensation that is “unreasonable or disproportionate” in relation to the services being performed by a covered person. Under the Proposed Rule, the Agencies may consider a list of enumerated factors in determining whether compensation is excessive and may also consider any unlisted factor they determine to be relevant. The factors listed in the Proposed Rule are unobjectionable. We believe, however, that (a) additional factors should be included and (b) clarification regarding certain factors is necessary. The most notable omission is any consideration of risk.

Regarding risk, we believe the single most important risk category to consider must be systemic. While the Agencies properly identify the prevention of systemic risk as one of the goals of their implementation of section 956,[18] and the text of 956(b) provides ample basis for doing so, we see little or nothing in the proposal that addresses the problem.

The most obvious places to address systemic risk under 956 are as part of a definition of "inappropriate risk" or, more to the point, in the interplay between the phrases "inappropriate risk" and "excessive compensation." One manner in which a compensation arrangement can "encourage inappropriate risks by a financial institution by providing excessive compensation"[19] is by providing compensation for activities that create systemic risk. That is, we believe the final rule should state that any compensation that incentivizes any covered person to engage in activities that destabilize the financial system should be deemed "excessive" under 956(b)(1). The rule also should effectuate this portion of the statute with all of the tools used under 956(b)(2)—deferrals, reduced sensitivity to short-term performance, and so forth.

The Proposed Rule identifies compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the institution's operations and assets, as a factor in the excessiveness analysis. We believe that additional guidance should be provided on what constitutes a "comparable" institution. There is ample evidence that companies skew the selection of peer group companies identified in the proxy statement for executive compensation purposes and a recent study showed that such manipulation is associated with abnormally high compensation amounts. The Agencies' familiarity with firms within their jurisdiction afford a solid basis for defining comparable institutions.

The Agencies should also clarify what is included in a covered person's compensation history. In our view, the Proposal Rule should be revised to state that the excessiveness of compensation should be analyzed in the context of all of the compensation paid to a covered person during his employment, as well as the unrealized wealth he has accumulated during that time.

For example, a financial institution might conclude that another large stock award to an executive officer with a long tenure at the institution, who has amassed substantial holdings of the institution's stock (and enjoyed substantial appreciation in the value of that stock) is excessive compensation, even though the same award to an executive who is new to the institution might not be considered excessive. This kind of analysis, sometimes referred to as "accumulated wealth" analysis, is used by some compensation consultants to help boards move beyond a purely year by year approach to deciding how much compensation is too much as well as how best to motivate future performance.

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[18] See 76 Fed. Reg. 21,173 ("[F]lawed incentive compensation practices in the financial industry were one of the many factors contributing to the financial crisis that began in 2007."); *id*., at 21,180 (explaining that one reason for the regulator's decision to require a floor of deferred compensation for executives at large financial institutions is that "in enacting the Dodd-Frank Act, Congress recognized that larger organizations may pose a greater risk to the financial system . . . .").

[19] This is the Agencies paraphrase of the interplay between sections 956(b) and 956(b)(1). *See* 76 Fed. Reg. 21,172.

A study examining CEO compensation from 2000-20008, much of which derived from stock options, at the fourteen largest financial firms, showed that CEOs gained a net $648 million, or roughly $45 million each.

Value of CEO stock holdings 2000 ....$6,846,638,948

Total net CEO trades, 2000-2008..........................$1,771,403,737

Total cash compensation 2000-2008 .... $891,237,300

CEO realized cash gains..$2,662,641,037

Estimated value lost (unrealized losses) .... -$2,013,683,157

Net CEO Payoff, 2000-2008 .... $648,957,880

Estimated value of holdings, end of 2008.......... $939,328,179[20]

In other words, from the perspective of remuneration, the lesson learned from this risk-taking enterprise, despite the crash that erased one of the firms from legal existence (Lehman Brothers), may have been (short of reconstructive compensation rules) to return to this rubric of incentivized risk-taking. That is to say, the payments have been simply so large, that whether or not boards claim to incentivize stock performance, bankers appear financially motivated to engage in risk-taking venture.[21]

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[20] http://leeds-faculty.colorado.edu/bhagat/BankComp-Capital-Jan2011.pdf, p. 45.

[21] Ken Feinberg, Special Master for Troubled Asset Relief Program, for Executive Compensation, listed five reforms:

1. Reform Pay Practices for Top Executives to Align Compensation With Long-Term Value Creation and Reject cash bonuses based on short-term performance, as required by statute, in favor of company stock that must be held for the long term. Restructure existing cash “guarantees” into stock that must be held for the long term.
2. Significantly Reduce Compensation Across the Board Average cash compensation down by more than 90 percent. Approved cash salary limited to $500,000 for more than 90 percent of relevant employees. Average total compensation down by more than 50 percent. Exceptions where necessary to retain talent and protect taxpayer interests.
3. Require Salaries to Be Paid in Company Stock Held Stock Over the Long Term. Stock is immediately vested, requiring executives to invest their own funds alongside taxpayers Stock may only be sold in one-third installments beginning in 2011-or, if earlier, when TARP is repaid-aligning executives’ interests with those of taxpayers
4. Require incentive compensation to be paid in the form of Long Term Restricted Stock - and to be Contingent on Performance and on TARP Repayment. Require executives to meet goals set in consultation with the Special Master, and certification of achievement of goals by an independent compensation committee Any incentives granted paid only in stock that requires three years of service and can be cashed in only when TARP is repaid
5. Require Immediate Reform of Practices Not Aligned with Shareholder and Taxpayer Interests

J. Personal Hedging Strategies

We are grateful that the Agencies appreciate the potential for "covered" individuals to engage in personal hedging strategies that alter the appropriate risk-reward balance in compensation arrangements. The worst case scenario: when individuals end up locking in all the upside and walk away from the downside, exacerbating incentives for excessive risk-taking. We ask that the Agencies enforce a strict ban on such strategies. We believe that hedging would essentially undermine the point of linking the executives' pay with the promotion of prudential banking. Senators Merkley, Menendez and Lautenberg have written: "We strongly believe that hedging strategies used by highly-paid executives on their own incentive-based compensation should be prohibited. Quite simply, the use of hedging takes the "incentive" out of incentive-based compensation, undermining accountability of the executives who engage in these tactics." [22]

Forensic accountant Carr Bettis of Gradient Analytics noted that 1,181 executives at 911 firms engaged in hedging in the ten-year period from 1996-2006. "There is no question these transactions should be a red flag for investors," Bettis has noted. "The evidence is pretty compelling that hedges tend to be used before bad news hits the market." Bettis' research has found that in the year after executives and directors had engaged in hedging, their company's stock often dropped markedly.[23]

Limits "other" compensation and perquisites. No further accruals under supplemental executive retirement plans or severance plans. http://www.foxnews.com/politics/2009/10/22/raw-data-pay-czars-rulings-compensation-bailed-executives/

[22] Letter to Robert Feldman, FDIC, March 31, 2011, from Sens. Robert Menendez, Jeff Merkley and Frank Lautenberg.

[23] From Business Week, quoted in Letter to Robert Feldman, FDIC, March 31, 2011

APPENDIX

COMMENT LETTERS FROM CONCERNED INDIVIDUALS

Below are fifteen comment letters from individuals filed with regulators regarding the importance of 956 that we have reviewed. We calculate that more than 900 such letters have been filed with the Agencies. We make no representation that these fifteen letters are either representative, or are in anyway the “best,” or most articulate. We present them, simply, to impress upon the Agencies that 956 must answer a very real problem the American people.

http://www.sec.gov/comments/s7-12-11/s71211-316.htm

Subject: Comments for File Number S7-12-11

A. From: Laura Martin

May 23, 2011

I am writing to you because my I wanted you to hear my story due to and since the Wall Street collapse of 2008.

In 2008, I was a happy single mom. I had a good job and was able to modestly provide for my two children. We were able to afford the necessities of life such as food, medicine, shelter, etc. I was able to pay our bills and have a little left over for a movie or some type of inexpensive entertainment. We were not wealthy by any means, but life was good!

Then the economic tsunami hit in 2008. As a consequence, I lost my job. I was unable to find another job. I had to apply for unemployment. I kept hoping over time that something would turn up in the job market, but time after time I was turned down. I had worked all of my life and felt worthless now. I lost my health insurance not just for myself but for my children. After my unemployment benefits ran out, I had to go on welfare. In the meantime, I was diagnosed with a terminal disease. My hope for the attainment of the American dream is over. I eventually got a job which paid a little more than minimum wage. I do not make enough money to support my children and my medicine is so expensive that I sometimes just go without.

My family has suffered greatly due to the recklessness and greed of Wall Street. I believe that compensation should be based upon how many communities you help with small business loans, home loans, etc. The banks were supposed to lend the money, not keep it for themselves. There should be no compensation whatsoever unless Americans are being helped in some fashion. They have destroyed the dream for so many people, now they should be placed in a position to do something about that, something positive. The American people were looted by greedy Wall Street pirates whose actions have caused consequences the magnitude of foreign terrorists.

Compensation should be based upon making your particular community better by lending money to consumers, depositors and by investing some of their money in schools and job education.

Laura Martin

http://www.sec.gov/comments/s7-12-11/s71211-297.htm

Subject: File No. S7-12-11

B. From: Gregory Bryant

May 23, 2011

I have been out of work since late September of 2008. Though the financial crisis was not the cause of my loss of employment, it definitely is the cause of my inability to secure meaningful employment.

I have an advanced degree, which should make it simple to find employment in my field. Or so one would think. In 2009, the state of Ohio severely cut its funding to state institutions, such as public colleges and universities. The major educational institution in the Cincinnati area, the University of Cincinnati, froze or withdrew all open positions. I was the prime candidate for one of those positions, until it was withdrawn due to a budget shortfall in the state, caused by the current financial crisis.

Private colleges and universities were also affected. They saw a loss of student enrollments, which also impacted their operating budgets.

Still, I kept looking. At least I was entitled to unemployment insurance, though the various games that the politicians played with it did lead to periods of no income. Finally, unemployment insurance ran out for me in December, 2010. Since that time, I have managed to pay my bills through withdrawals from an IRA retirement account. The sad thing is that retirement account was supposed to help me through my retirement years. Now its gone, and either I will have to replenish it, and / or work much later in life than I planned to work.

That is, if I ever do find work. I have lowered my expectations, applying for jobs for which I am capable of performing the tasks, but also for which I am very overqualified. I think it is because of this latter fact that I have not been hired for these jobs – because I am overqualified.

I have approximately three months before I am unable to pay my mortgage and other bills. Just to be clear, I have gone on an emergency budget. But then again, I have always been frugal, so there was little to cut out of my budget. I do work with a local social service agency to negotiate with the bank regarding my mortgage, but this process has taken forever. I also work with the local vocational rehabilitation office to qualify for services because of personal disabilities.

As I continue to read the news, I look at how various states are cutting or attempting to cut unemployment benefits and other safety net benefits for those of us impacted by the financial crisis.

And then I read about the corporations, banks, financial institutions and their highly paid, no, obscenely paid officers – people who caused this financial crisis to begin with. They continue to take home huge salaries, stock options, bonuses, and so on. I read how some of them have multiple houses, while I soon face losing the one house that I own.

Their pay practices MUST be reformed, so that they do not have the financial incentive to cause this sort of crisis again. They must be held accountable, and their actions must not let this sort of crisis happen ever again.

Thank you for your consideration,
Greg Bryant

http://www.sec.gov/comments/s7-12-11/s71211-241.htm

Subject: Comments for File Number S7-12-11

C. From: Joseph Spector

May 23, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again. I was lured into getting a $250,000 mortgage in 2005 I couldn't afford by an economic system that said not only that home prices would never fall, they would only level off, but if people just graduating college like myself should hurry and buy or we may get priced out of the market. Also, financial advisers at the time said to extend yourself a little further than you were able to since it was such a good investment. Come to find out within a year after I had purchased a home I couldn't afford and since the value dropped so rapidly, I was stuck in it for 30 years. Then the government bailed out the banks and left the homeowner hanging so in order to stay afloat I used readily available credit cards and student loans to supplement my income, incurring massive debt. For years I stayed current on my mortgage while sinking further and further into debt. Finally when I maxed out all my options, I tried to start working with the bank, including applying to government "assistance" programs like the Making Homes Affordable Program. Amazingly, the limits were so strict and unreasonable I didn't qualify for anything. I tried to work with government and the bank to stay current and work something out that would be beneficial to everyone but once again the system failed me. I was advised, by the bank and the government that I had to be late on payments before they would work with me. Eventually I did and eventually had to start foreclosure hearings before they finally approved my short sale for $90,000, after 20 months of constantly resubmitting "lost" and outdated personal information. To summarize it was absolutely the most stressful thing in my life and I wouldn't wish it on anyone.

Wall Street greed and outrageous pay practices were a major cause of the collapse since the drive to get more and more mortgages drove everyone to take advantage of the inexperienced public. One way to change the incentives so they don't collapse our economy again would be to delay the

bonuses for several years, at least five or seven. That way, we'll know if the loans they made in year one remain good. In the bad days, bankers paid themselves on the volume of loans (mortgages) they generated, not on their quality. Or better yet, why not limit executive pay, so unbridled greed doesn't take over again, creating the potential for any regulation that's put in place to be circumvented in the future. Regulate the entire mortgage/finance/investmen industry so people aren't taken advantage of. Create and enforce standards for mortgage approval. Force banks to work with people who are in trouble. The most important thing you could ever do is to prosecute those responsible for this enormous crime against millions of people!

Thank you for considering my comment,

Joseph Spector

http://www.sec.gov/comments/s7-12-11/s71211-239.htm

Subject: Comments for File Number S7-12-11

D. From: Charla Hatton

May 23, 2011

The economic collapse of 2008 affected us all. In our case, the housing market collapse coincided with my husband's heart attack, and we lost our home. After a lifetime of never even being late on a payment for anything, much less missing one, we had to declare bankruptcy. Our son-in-law lost his job, and our grandson can't find his first job after completing a community college certificate program.

We have fended off bitterness, but we feel justifiably angry that the system which broke so calamitously and caused so much pain might be allowed to survive intact. Surely it's time to put in place reforms that will create disincentives for recklessness.

I am no expert, but I trust you are. The apologists who claim that salaries and bonuses must be obscenely high to attract the best and brightest are an offense to moral people everywhere. The implication is that money and only money motivates bright people. Please prove them wrong. You're bright, and I trust you to find a way to rebalance the system so that the vast majority of us don't suffer when a rapacious few play fast and loose with our economy.

Thank you for listening...and for doing the right thing.

Charla Hatton

http://www.sec.gov/comments/s7-12-11/s71211-226.htm

Subject: Comments for File Number S7-12-11

E. From: Mary Jo Carey

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again. I am writing to let you know what has happened to me and my loved ones and how it has affected me.
I was a Loan Officer in a small brokerage in my home town of Taos, NM. My plan was to retire when I turned 65. The good news is that the entire world of mortgages fell apart, shortly before I had planned on retiring anyway. The bad news is that I was retiring and hoping to live on Social Sec. and small withdrawals from my savings which were diversified in stocks, bonds, mutual funds and CD's. I watched my portfolio slip (yet again, it did so in 2000 etc.) by at least one third. THE DAY WE PRIVATISE SOCIAL SECURITY WILL BE THE END OF THE ELDERLY. MOST OF US WILL DEPEND UPON WELFARE AND CHARITABLE HAND OUTS. WE WILL LOSE OUR HOMES, CARS AND OUR PURCHASING POWER. I retired a few months early because I got dressed every morning, went to work, and tried so hard to make some mortgages happen. Almost all of my clients (purchasers and refinancers) made it just about to Closing, when the lender either disappeared or changed the rules. It was so discouraging. Day after day going to work and trying to make something happen. But, you see, I couldn't because the big boys from B of A, Countrywide, Indy Mac etc. etc. were so greedy and selfish and dishonest they screwed everyone under them. I have absolutely no sympathy for these disgusting people! I have had fantasies of meeting them as they come out of a meeting and squirting a paint ball at them. I am sure there are people who share these sorts of fantasies. Why? Because they have left the PEOPLE between a rock and a hard place. AND they obviously don't care or they would not accept the bonuses. You know, I probably hold stock in some of these despicable companies, and I have my mortgage with one of them. BUT I am helpless as far as changing mortgage companies (I don't trust any of them and don't want any of them to profit from my interest payments.) And, of course, I am now living on Soc. Sec. and not touching my dwindled, slowly recovering investments and would not qualify for a refinance.

My son and my daughter – in – law are teachers. They are excellent teachers. My son worked hard, raising children, teaching etc. and somehow managed to get his Masters Degree. The last few years, thanks to the economy and the fact that the State revenues are way down, my son has had his salary lowered…thanks to all his experience and education. And yet, these bankers and Wall Street big boys are getting larger and larger bonuses, and their profits are up even though no regular citizen can get a loan. THERE IS SOMETHING TERRIBLY WRONG WITH THIS SCENARIO!

As a person who refuses to take all this lying down, all I can do is pull my accounts from the big banks and go to the local banks. I can try to pay larger principal on my mortgage so the banks don't get as much interest from me. I worry every day about my future and my life savings. I have cancelled my Citi credit card because Citi is one of the worst! But all of the above are pathetic. The middle class is slipping away. Soon we will have no money to buy goods or services. My supplemental health insurance has risen, as has my home insurance. All of these slight raises in prices (food and gas too!) have brought most of us to our knees. I guess the ultimate revenge will be that no one will be able to buy anything. In my small town I have seen many small businesses close. No one is buying anything. The Consignment Clothing shops are doing OK.

My goal is to spend no extra money (restaurants, movies, airline tickets, plants…all those "frills"). I am sure I am not alone. And so, I ask you to consider the future calamity of no one of the middle class able to purchase anything, except the bare essentials. If something isn't done to curb the abject greed of Wall Street and Big Banks the United States will be filled with angry, powerless people! I watch the revolts in Egypt, Tunisia etc. and think…that will be us someday. We are run by rich guys.

Our political arena is a joke; run by rich guys. (Yes, I vote every time.) If any of them call themselves Christians I would laugh out loud at their hypocrisy. I don't know how they can sleep at night. They probably have a noise machine that says "Ca Ching, Ca Ching".

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be for regulators to use a *safety index* for incentive compensation, instead of a profit index.

Currently, most bankers receive stock options. So if they can generate more profits, the stock price goes up, and their options become more valuable. This is insane! This will just cause another collapse. Instead, what if they used the bank's bond price, which measures the overall ability of the bank to repay its own debt? Another measure of bank stability is the spread on credit default swaps (the insurance-like policies that are essentially bets, where one gambler bets with another that a particular firm will fail). The closer a bank comes to failing (such as in failing to pay of its bond debt), the bigger the spread on credit default swaps. Something MUST be done. Something that has taken us, the tax payer, into account. There should be no special audience with the Wall Street boys. No one ever asks us to come and testify or plea our case in front of you! Please do something....SOON!

Thank you for considering my comment,

Mary Jo Carey

ttp://www.sec.gov/comments/s7-12-11/s71211-216.htm

Subject: Comments for File Number S7-12-11

F. From: Helena Liber

May 21, 2011

I'm writing because I have been affected by the economic collapse of 2008, and I don't want it to happen again. I became unemployed and unable to find work in 2008. When my savings ran out I became homeless. The stress of homelessness triggered mental health issues and now I am on SSI. I am still homeless, but looking for housing. Housing is impossible to afford on the amount of SSI.

When I hear of people on Wall Street getting millions and billions of dollars, I get a little bitter. There is not enough money for homes for the homeless or food for the hungry, but people on Wall Street take millions and billions for themselves. Does any one person or family ever need that much for just themselves while others live in the street and/or go hungry?

Wall Street greed and outrageous pay practices were a major cause of the collapse. Wake up and change the way things are done. Maybe you can't solve all the problems of this world, but why add to the woes of others out of greed and selfishness?

One way to change the incentives so they don't collapse our economy again would be to delay the bonuses for three, five or more years. That way, we'll know if the loans they made in year one remain good. In the bad days, bankers paid themselves on the volume of loans (mortgages) they generated, not on their quality.

Thank you for considering my comment,

Helena Liber

http://www.sec.gov/comments/s7-12-11/s71211-211.htm

Subject: Comments for File Number S7-12-11

G. From: Diane Hallum

May 21, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again.

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be to delay the bonuses for three, five or more years. That way, we'll know if the loans they made in year one remain good. The focus should be on quality, not quantity.

Thank you for considering my comment. There needs to be greater clarity in gauging banks and investments firms, as well as their products.

Overall, I am disgusted by what I view as total lack of moral, ethical and rational business practices that reward the banker, but offer harm to the shareholder, investor, loan holders and depositors.

Since this recent economic collapse, my own investments lost 2/3 of their value, my home is 1/2 its 2006 market value (before home prices went through the roof), and 1/4 of the houses on my street have gone into foreclosure either because of bad mortgagees, bad mortgages, or jobs that are drying up like crazy, some because banks stopped lending to any and everybody. I now live in a city where half the vacant homes have had their copper pipes, water heaters and meters stolen for scrap metal, but, because of a reduced tax base due to foreclosures and job losses, a smaller police force to respond to this growing crime. I did nothing wrong and am suffering. But, hey. . the bankers can reward themselves for a job well done. They had to work hard to NOT see the real estate bubble, the bad mortgages, the bad mortgage borrowers, the lack of mortgage paperwork, the bizarre investment vehicles, the risk of mixing banking with investing, and then to cry for a bail out and nag politicians to thwart any ideas of new regulations!!

They did everything wrong, and some how no one saw it coming?!

Diane Hallum

http://www.sec.gov/comments/s7-12-11/s71211-205.htm

Subject: Comments for File Number S7-12-11

H. From: Susan Byers Paxson

May 20, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again.

Because of Wall Street, our 401K was gutted.

Because of Wall Street, my son graduated a good school into a bankrupt economy. He is teaching T-ball and waiting tables for a living -- jobs for a teenager, not a college graduate.

Because of Wall Street, my husband, a free-lance musician, has seen his concerts cut back and has lost students as their parents lose THEIR jobs and can no longer afford music lessons for their children.

And because of Wall Street, I lost my job in December, and have still not managed to find another, 6 months later. Our health insurance is about to end, and at 57 I am looking at a future that appears awfully bleak.

Wall Street greed and outrageous pay practices were a major cause of this collapse. One way to change the incentives so they don't collapse our economy again would be to delay their bonuses for several years, at least five or seven. That way, we'll know if the loans they made in year one remain good. In the bad days, bankers paid themselves on the volume of loans (mortgages) they generated, not on their quality.

Thank you for considering my comment,

Susan Byers Paxson Dorchester, Mass.

http://www.sec.gov/comments/s7-12-11/s71211-193.htm

Subject: Comments for File Number S7-12-11

I. From: Lynn A.

May 20, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again.

I'm shocked and appalled that our government continues to allow these crooks to operate "business as usual." They are a menace to society and threaten economic stability and threaten capitalism with their greed. I have lost all confidence in the markets and in my ELECTED officials.

My brother-in-law lost his business as a building contractor. He and my sister lost their home and at 42 years old my brother-in-law joined the ARMY just so he could support his family. As a result, my 19 year old niece was left in one state to go college on a scholarship, but struggled daily with perceived loss of family. My nephew, only 10 years old, has been moved from school to school as the family must travel where the military sends them. Now I understand this was the choice they made, but being ethical and stoic people they did not rely on the government for support without giving back. Unlike the wall street "professionals" have who continue to line their pockets and bask in the sunlight of uber plush spas and resorts. All this while my BIL risks his life to fight for this country, and those A-holes freedoms.

Due to the housing crisis, my friend who was an ethical lender, developed cancer and to support his family had to work three jobs. While battling his disease, he went from job to job sleeping in his car on the street for an hour or two before the next work hour began. All this while wall street basks in the sun....

I myself worked for a bank and lost my job. As a result, I had to go back to school at 37. As a direct result of the failure of our government to protect its citizens, my family too was split apart. A single mom, I had to send my child to live with my parents in a different state while I also begged and borrowed, from friends, not the government. Why is it that as a product citizen of this country with morals and ethics I couldn't get a bailout? Why do I pay more in federal taxes than GE? I am now a nurse and HELP people. What if I decided to act like one of these crooks? That's a dangerous thought. But yet I have to live with this anger and fear??? WHY? There are countless stories I could tell of people I personally know who have been robbed of their savings and jobs, but I think you get my point.

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be to delay the bonuses for three, five or more years. That way, we'll know if the loans they made in year one remain good. In the bad days, bankers paid themselves on the volume of loans (mortgages) they generated, not on their quality.

Thank you for considering my comment,

Lynn A.

http://www.sec.gov/comments/s7-12-11/s71211-185.htm

Subject: Comments for File Number S7-12-11

J. From: Jean-Marie Woods-Ray

May 19, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again. My husband lost his job due to the financial collapse. I was pregnant with my second child and had to return to work prematurely in order for our family to have a steady paycheck and to continue to receive benefits. It is disheartening to see the same people who destroyed our economy reaping in large bonuses and yet the average person is still struggling. . I have watched my friends who have masters degrees apply for food stamps

As a teacher, it is terrible to now be blamed for collapsing the economy. I chose a profession that would enable me to reach out to children and to educate them. I wanted to excite the next generation to seek out knowledge and to understand the world around them. I understood from the start that I would never make a great deal of money but I would have benefits and job security. I have a degree from an Ivy League school. I have the potential to earn a great deal more money instead I chose a profession that I love. However, since politicians place me as the blame instead of the Wall Street Banksters, it up to you to ensure that this type of collapse never happens again. The American people bailed out Wall Street and the Banks yet the average person continues to suffer. You must ensure that legislation that has been created is followed and people are protected. Morality and accountability, not greed and deceptive practices, must become the norm. One way to change the incentives so Wall Street doesn't collapse our economy again would be for regulators to set up a way for shareholders to grab back ill-gotten gains. If it turns out that the profits in a given year were built on shoddy practices that become clear in the out-years, those bonus payments should be forfeited.

Thank you for considering my comment,

Jean-Marie Woods-Ray

http://www.sec.gov/comments/s7-12-11/s71211-180.htm

Subject: Comments for File Number S7-12-11

K. From: Mara Schoner

May 19, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again. We have a business where we review small businesses for homeowners. I do the sales and I can tell you that in the fall of 2008 it was scary out there. People I called were saying to me they were losing their homes, their businesses, everything. We nearly lost our business in 2008. Next came my Dad who lost a third of his retirement. He has downsized considerably and is lucky to be able to live on a downsized budget. Then came my sister who lost her job as an environmental scientist after 20 years in the industry. She spent nearly 2 years unemployed, sold her condominium to help support her two teen boys, went through every penny

of her savings and her equity from her apartment, moved in with a friend and finally got a job as a secretary about a year ago. She is 55. Not a great time to be facing an uncertain future. The stories go on and on. Last week I was at the house of a friend of my son's. The mother was hosting a lunch for the kids in his Spanish class for fun. I complimented her on her house. She had apparently just lost it. B of A had sold it by accident - and they even admitted this - to Fannie Mae, while she was in the process of refinancing. She is a single mom and does not have the funds to hire an attorney to fight this, so she is trying desperately to reason with the bank. REASON with a BANK?

What has this country come to? It makes me sick. Bankers making a killing off of the people who pay the taxes that made them whole.

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be for regulators to use a *safety index* for incentive compensation, instead of a profit index.

Currently, most bankers receive stock options. So if they can generate more profits, the stock price goes up, and their options become more valuable.

Instead, what if they used the bank's bond price, which measures the overall ability of the bank to repay its own debt? Another measure of bank stability is the spread on credit default swaps (the insurance-like policies that are essentially bets, where one gambler bets with another that a particular firm will fail). The closer a bank comes to failing (such as in failing to pay of its bond debt), the bigger the spread on credit default swaps.

Thank you for considering my comment,

Mara Schoner

L. From: Marcia Segura

May 19, 2011

I'm writing because my family, my friends, and I were affected by the economic collapse of 2008, and we don't want it to happen again.

My mother and father lost over $250,000 in their retirement funds. They're middle class people and had been saving for decades. My mom may never be able to retire now.

The collapse happened about a month after I finished graduate school with an MA in clinical psychology. In order to get a license to practice in my state, CA, you have to do 3000 hours of internship- and 95% of the internship venues pay nothing, not one cent. Those that do pay barely pay minimum wage. Because of the economic collapse my dear friend who graduated with me lost almost $500,000 in stocks. He had planned to use that money to allow himself to complete his internships while still being able to feed his wife and child and pay his mortgage. Since he lost all

that money he has been forced to give up his dream of being a therapist and seek a job back in the industry he was trying to leave. He has still not been able to make any progress towards his internship hours and all of the time, love, and money he put towards his education may be totally lost.

Although I did not lose any money in the financial crisis (because I never had any) I had planned to leave my job as a paralegal and get a job as a waitress in a fine dining restaurant that would pay enough for me to pay my rent and bills but allow me to work at night so I could do my internship hours in the daytime. Sadly, the financial meltdown has caused many fine restaurants and SF to close and those that are still open are either not hiring or simply don't get enough customers for the wait staff to make any money. I have also been unable to pursue my dream of becoming a therapist and fell into a deep depression when I relaixed that the $100,000 of financial aid I took out was coming due. I'm currently making payments of $500/month on the same income I had before.

I've not had a raise since 2007 because the law firm I work for has lost over half of our clients due to the fiancial crisis. Our clients are small to medium sized nonprofit businesses. When nonprofits have to cut their budgets they cut off their attorneys and the boards and Executive Directors start doing their own legal work. This is not only bad for their attorneys and their attorney's taffs (like me) but it's bad for the nonprofits themselves because,as I'm sure you know, you can get into a lot of trouble doing your own legal work.

I am finally ready to take the plunge and cut back my hours at my paid job to begin an unpaid internship with the SF Unified School district providing free therapy to middle school children. I will have a hard time making ends meet even though I will be working over 60 hours per week between my internship and my paid work. This isn't just bad for me, it's bad for the public schools and poor children. When people such as myself and my friend, who would normally be able to provide this therapy for free to the schools and to low-income children are unable to do so in large numbers (as is the case now) the schools and the children suffer.

Everyone is effected. All of this is connected. I do not believe that it is reasonable to grant financial industry executives outlandish pay, obscene bonuses, and truly ludicrous "retirement" bonuses when they personally ruined this many lives. It's obscene, truly obscene. If the companies that hire these executives are unwilling or unable to tie executive pay to executive performance then I demand that Congress step in.

As a pre-licensed therapist I can promise you that any behavior that gets rewarded WILL BE REPEATED. There is no wiggle room in that statement. It's not up for debate. It's been proven 10,000 times in rigorous scientific studies. If you get paid millions of dollars in salary and tens of millions in bonuses even though your unethical business practices have tanked the world's economy then you have the incentive (10's of millions of dollars of incentive) to continue those same unethical practices. To eliminate bad behavior one must remove ALL rewards for that behavior and institute punishments that are: swift, certain, and strong. At this point swift and certain are out the window- but we can at least make the punishment strong. Please.

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be for regulators to use a *safety index* for incentive compensation, instead of a profit index.

Currently, most bankers receive stock options. So if they can generate more profits, the stock price goes up, and their options become more valuable.

Instead, what if they used the bank's bond price, which measures the overall ability of the bank to repay its own debt? Another measure of bank stability is the spread on credit default swaps (the insurance-like policies that are essentially bets, where one gambler bets with another that a particular firm will fail). The closer a bank comes to failing (such as in failing to pay of its bond debt), the bigger the spread on credit default swaps.

Thank you for considering my comment,

Marcia Segura

http://www.sec.gov/comments/s7-12-11/s71211-151.htm

Subject: Comments for File Number S7-12-11

M. From: Amy Anderson

May 19, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, which should never have happened, and which should never happen again as long as the banks and the SEC are kept in check.

My mother, depending on her supposedly safe investments, entered an expensive retirement center where she and her husband would be taken care of for life, because she didn't want to end up being a burden on her children. Thanks to the crash, they may not be able to stay there for much longer, and because they don't actually own their apartment, may end up poor and a burden on their children after all, and none of us have enough resources to help them.

One of my brothers has the severe form of MS and cannot afford the treatments he needs which would lesson his pain and discomfort, and which Medicare will not pay for. I myself am disabled and suffer similar circumstances. I had a part-time job which kept me from being totally impoverished, but because of the crash I was laid off 16 months ago and have been forced to max out my credit cards because of the scarcity of Section VIII housing vouchers. Now I finally got a voucher, but am told that I can "only afford" so much, which is not enough to rent the kind of place that I desperately need because of my special needs as a disabled person. I cannot find another part-time job that I'm physically capable of doing because jobs are so terribly scarce. Some of my basic needs continue to be unmet.

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be to delay the bonuses for three, five or more years. That way, we'll know if the loans they made in year one remain good. In the bad days, bankers paid themselves on the volume of loans (mortgages) they generated, not on their quality.

Please understand that our "democracy" is in a shambles thanks to corporate influence, that the banks and other large corporations don't care about the citizens of the United States (as has been amply demonstrated by their actions in the past and since the bailout), and that we must do everything in our power to keep them in check. Right now THEY OWE US--not the other way around.

Thank you for considering my comment.

Amy Anderson

http://www.sec.gov/comments/s7-12-11/s71211-19.htm

Subject: File No. S7-12-11

N. From: Arline DeMaio

May 16, 2011

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again.

As a patriotic American I will not go easy to my death. I will fight with my last breath for truth, justice and the American way. I grew up in the shadow of Lady Liberty. 30 years I worked for a corporation that I believed would keep their word. As a condition of my retirement I was made to sign things that violated my constitutional rights as an American. They basically said they own our brains.

I'm writing because my family and I were affected by the economic collapse of 2008, and we don't want it to happen again. I'd like you to know what my family has suffered. My 401k was destroyed by Wall Street practices. A company called Ardent sold me a mortgage on my house. They added exorbitant fees to the loan. They told me I'd be able to change the arm mortgage for a fixed mortgage. They should not be able to charge outlandish interest rates to people who can least afford it but continue to do so. They told me my mortgage would be sold to another bank. Next Ameriquest had our mortgage but they disappeared and turned our payments over to America Services who told us they had no idea who held the mortgage. Wells Fargo kept sending us offers of personal loans to make mortgage payments in the exact amount we needed to pay them. We tried getting another broker to refinance us. America services lied to them saying we had not paid them money they were holding in a separate account that was never listed on the statements we were sent. We lost our chance to refinance.
We hired a lawyer who told us they only way to find the Mortgage holder was to stop making payments. American Services jumped in and prepaid our taxes and raised the monthly payments beyond our ability to pay. Ardent finally identified them self as holder of the Mortgage and we found out America Services, Ameriquest, Ardent and Wells Fargo are one in the same. A group of thieves who's intention it was to fleece us of every cent they could ring out of us; calling us telling us to borrow from relatives and friends. We've been fighting them for 4 years.

They claim they are trying to offer us a modification I'll believe that when I see it. We've been back to the court 9 times at 2 to 3 month intervals because they and the law firm representing them can't get their paperwork straight. Currently they pay all taxes and insurance. My children lost their jobs. My grandson attending college on a grant and student loans has been unable to find part-time employment. Our lives are a never ending nightmare. It' been nine years of fighting with so called bank Wells Fargo. The deck has been stacked against us from the beginning where is the justice in this country. The bankers and their lawyers break all the rules while the public suffers. It's not just us. It's our extended family, our neighbors. Those in congress try to end unemployment. I paid into it for over 30 years never collecting a dime. I think it's only fair that those who need it now get the help I helped pay for. The rich, the corporations and the bankers don't deserve a free ride at our expense. This country was built on the backs of the working class who are being paid in empty promises. Five major affiliated banks are responsible for this mess and should be the ones paying the bill. Not workers, homeowners, seniors, children, students and taxpayers. Seniors are supporting both children and grown grandchildren like me.

Wall Street greed and outrageous pay practices were a major cause of the collapse. One way to change the incentives so they don't collapse our economy again would be for regulators to use a *safety index* for incentive compensation, instead of a profit index.

Currently, most bankers receive stock options. So if they can generate more profits, the stock price goes up, and their options become more valuable.

Instead, what if they used the bank's bond price, which measures the overall ability of the bank to repay its own debt? Another measure of bank stability is the spread on credit default swaps (the insurance-like policies that are essentially bets, where one gambler bets with another that a particular firm will fail). The closer a bank comes to failing (such as in failing to pay of its bond debt), the bigger the spread on credit default swaps.

Thank you for considering my comment,

Arline DeMaio

http://www.sec.gov/comments/s7-12-11/s71211-18.htm

Subject: File No. S7-12-11

O. From: Jonathan Netherton

May 16, 2011

I'm writing because my family and I were affected by the economic collapses of 2000 and 2008, and we don't want it to happen again.

After turning my grandfather's pension into a 401(k), his company invested it in a mutual fund with tech stocks and derivatives. After the crash of 2000, my whole family lost everything. Part of it was

my college fund. He died old, broken and alone. I haven't gotten the chance to go to a college long enough to get a degree. This happened to my father's savings account as well, destroying all he had managed to build up for himself after returning home from Vietnam. He turned to cocaine to ease his depression and left my family. These people have destroyed my family and any future my family could've provided me.

One way to change the incentives so Wall Street doesn't collapse our economy again would be for regulators to set up a way for shareholders to grab back ill-gotten gains.

If it turns out that the profits in a given year were built on shoddy practices that become clear in the out-years, those bonus payments should be forfeited.

Thank you for considering my comment,

Jonathan Netherton