International Bancshares Corporation

July 21, 2016

Via Electronic Submission

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
RE: Incentive-Based Compensation Arrangements, Docket No. R–1536 / RIN 7100 AE–50

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RE: Incentive-Based Compensation Arrangements, RIN 3064–AD86

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
RE: Incentive-Based Compensation Arrangements, File Number S7–07–16

Ladies and Gentlemen:

Thank you for this opportunity to comment on the interagency rulemaking on Incentive-Based Compensation Arrangements. I am the Treasurer and CFO of International Bancshares Corporation (IBC)(NASDAQ: IBOC), a Texas bank holding company headquartered in Laredo, Texas, with 4 subsidiary community banks now celebrating our 50th year of operations. I am providing these comments on behalf of IBC and its subsidiaries.

The first IBC Bank was founded in 1966 to meet the needs of small businesses in Laredo, Texas, and today is the largest Hispanic financial holding company in the continental United States with approximately $12 billion in assets. For the past 50 years, IBC has played an important role in the communities it serves, with 206 bank branches throughout Texas and Oklahoma.

We at IBC take a particular interest in the Incentive-Based Compensation Arrangements rule because of the wide-ranging impact it is likely to have on our operations, including in ways that are superfluous to the underlying purpose of the rule.

Overall, we understand that the motivation behind Section 956 of the Dodd-Frank Act and this implementing rule was Congress' desire to curtail excessive risk-taking of the type that contributed to the financial crisis and the failure of individual banks during the time of the crisis. We agree that a well-structured incentive based compensation arrangement can promote the health of a financial institution by aligning the interests of the executives and employees with those of the institution's shareholders. However, in a number of regards, the rule as proposed is overly broad and imprudently imposes burdens on entities and persons that did not cause the financial crisis and do not raise the types of risks the regulation is meant to address. Such additional burdens create uncertainty and cause additional expense for financial institutions with minimal or no benefit to shareholders. It also includes a number of terms that are ambiguous as drafted, increasing the already inordinate burden we carry as we seek to implement policies and procedures to comply with the rule.

In this letter, we are submitting comments on the following aspects of the proposed rule:

- **Definition of "Covered Person" and "Senior Executive Officer"**
- **Definition of "Incentive-Based Compensation"**
- **"Excessive" Compensation and Performance Measures**
- **Reservation of Authority to Treat Level 3 Institutions as Level 1 or 2 Institutions**
- **Treatment of Affiliates and Subsidiaries**
- **Deferral Provisions**
- **Clawback Provisions**
- **Compensation Opportunity Caps**
- **Record Retention**
- **Impact on Community Banks**

We appreciate the Agencies' consideration of these comments.

DEFINITION OF "COVERED PERSON" AND "SENIOR EXECUTIVE OFFICER"

"Covered Person"

The proposed rule defines "covered person" too broadly, with the definition including any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution. In addition, for a "Level 1" or "Level 2" institution, the proposal also imposes specific requirements applicable to two specific groups of employees: "senior executive officers" (SEOs) and "significant risk-takers" (SRTs).

While IBC would be considered a "Level 3" institution under the current proposal, the rule also allows potentially unfettered leeway to regulators to treat a Level 3 institution as a Level 1 or 2 institution, an unfortunate occurrence we see all too often in current regulatory regimes. Therefore, we also take a strong interest in the provisions that would apply for Levels 1 and 2.

In short, the scope of employees embraced by the "covered persons" definition is overly broad. The breadth of this coverage goes beyond what is required by Congress' statutory charge to the regulators in Section 956, as well as beyond the underlying purpose of that statutory provision, which only prohibits what the regulators determine to be "excessive compensation" that "could lead to a material financial loss to the covered institution." Section 956 is motivated by a desire to curtail the type of excessive risk-taking that contributed to the financial crisis and the failure of individual banks during the time of the crisis. By contrast, the proposed regulation covers *any* "employee," including those that are unlikely to be incentivized to take risks that threaten the bank's stability, such as tellers. In so doing, it negatively impacts a bank's ability to reward such workers with performance-based compensation. At IBC, we have long sought to reward all our employees for their excellent performance. Now, we will have to justify and exhaustively document decisions related to such compensation even for employees that have no ability to put our stability or financial performance at risk – which, even then, will remain subject to a regulator's discretion to determine if it is a form of compensation prohibited by the rule.

Therefore, we request that the definition of "covered person" be revised to more closely hew to the statutory charge and limit its application to only those who actually are in a position to have control over and responsibility for decisions that could result in a material financial loss. Perhaps this limitation could be structured to incorporate a required compensation level and/or a threshold limitation similar to that applicable to determining SEOs or SRTs (e.g. the top ten senior executive officers or the top ten highest paid executives). Surely, the legislative intent was not to subject lower-level officers and employees to a process micro-managed by the regulators.

"Senior Executive Officer" ***(Question 2.16)***

The definition of SEO includes, in addition to numerous specific titled persons, "head of a major business line or control function." This language is not only broad, but ambiguous, which is of particular concern since it is implicated in the provisions on mandatory deferral of incentive compensation and clawbacks. It seems logical, in the context of this part of the rule, to conclude that the positions meant to be covered by the SEO definition are "C-suite" type executives and those with financial, audit and control related responsibilities. But as written, the expansive list and broad "business line" and "control function" references could also result in the inclusion of persons heading functions seemingly unrelated to the rule's substance, such as Human Resources or Marketing.

This would expand the group of executives far beyond those traditionally thought of as senior executive officers and covers personnel not intended to be covered by the statute.

In Question 2.16, the Agencies invite comment on the term "major business line," including whether the term as proposed provides enough information to allow a covered institution to identify individuals who are heads of major business lines. The Agencies ask whether the proposed rule should refer instead to a "core business line," as defined in FDIC and FRB rules relating to resolution planning (12 CFR 381.2(d))("those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value"), or to a "principal business unit, division or function," as described in SEC definitions of the term "executive officer" (17 CFR 240.3b–7)("president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant"), or to business lines that contribute greater than a specified amount to the covered institution's total annual revenues or profit.

Of these three choices, the "core business line" definition is 12 CFR 381.2(d) appears the most useful, as it focuses on business lines that could potentially pose material risks to the financial institution, and also allows the institution to determine for itself which business lines meet that standard. However, it also includes "associated operations, services, functions and support," which would seem to sweep in functions such as support personnel including Human Resources, Marketing, and information technology (IT) departments that should not be included.

Therefore, we request the definition of SEO be revised to explicitly specify that it does not include persons acting in a support function such as personnel-related functions, IT functions or marketing functions, even where such persons hold managerial titles and/or responsibilities and even where they, or their larger groups, directly report to functions that would qualify as "major business lines or control functions." We suggest revising proposed ___.2(gg) to include language such as the following:

> Head of a major business line or control function. (1) For purposes of this section, "major business line or control function" means any business line or control function that, in the view of the covered institution, upon failure would result in a material loss of revenue, profit, or franchise value. (2) For purposes of this section, "major business line or control function" shall not include any business line or function that is: (A) limited to performing personnel, human resources, information technology or marketing functions; (B) limited to performing any other function that does not involve: (i) providing financial services on behalf of the institution, or (ii) performing financial transactions, such as investments, on behalf of the institution.

We do not suggest that "major business line" be defined in terms of "business lines that contribute greater than a specified amount to the covered institution's total annual revenues or profit." This would create both uncertainty and unwieldy burden for an institute attempting to understand who is covered by this rule, and would require reevaluation on an annual or more frequent basis.

All these uncertainties will add to the challenge of hiring and retaining qualified officers and employees and will drive up levels of basic compensation to remove the uncertainty posed by incentive compensation; this will impede business success.

DEFINITION OF "INCENTIVE-BASED COMPENSATION" *(Questions 2.40, 2.41)*

"Incentive-based compensation" is sweepingly defined as "any variable compensation, fees, or benefits that serve as an incentive or reward for performance." This definition is overly broad such that it captures more forms of compensation than the authorizing Dodd-Frank provision intends to restrict. At a minimum, additional exclusions are necessary.

Foremost, we agree with the proposed exclusion for fixed compensation that does not vary based on a performance measure, such as a 401(k) contribution based on a fixed percentage of an employee's salary. The final rule should make clear that this exclusion is also intended to cover a profit-sharing plan governed by the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA), specifically including employer contributions to a profit sharing plan qualified under 401(a) that are based on salary, years of service, or a combination of both.

Further, there should be exclusions added to the rule to exclude performance-based compensation, including performance-based commissions, of a type that does not threaten the stability or financial performance of the financial institution or otherwise incent the employee to take undue risks to the institution. For example, assume a financial institution's employee acts as a middleman between the financial institution's customer and an insurance broker. The institution does not insure the underlying product and thus it is not reflected on its balance sheet. The employee earns a permissible referral fee on the referral. In this case, the employee's actions do not – and in fact *cannot* – put the stability or financial performance of the institution at risk, and therefore this type of compensation should not be covered by the rule. The same can be said for an employee of an investment bank who merely connects parties to a transaction, such as a merger, acquisition, or private placement, provides certain services in connection with the transaction, and only earns a fee for its services.

It would also be helpful to include an additional exemption from the definition of incentive compensation for a specific de minimis amount of incentive-based pay, such as $25,000.

"EXCESSIVE" COMPENSATION AND PERFORMANCE MEASURES ***(Question 4.1)***

Under Section ___.4 of the proposed rule, all covered institutions, including Level 3 institutions, are subject to the requirement that they "must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the covered institution: (1) By providing a covered person with excessive compensation, fees, or benefits; or (2) That could lead to material financial loss to the covered institution." The rule provides for specific performance measures and other guidelines to measure whether a compensation practice would contravene this provision.

These steps should not be necessary for certain types of incentive compensation. Already, in certain contexts, there are specific regulatory limitations on the ways that certain bank personnel may be compensated. For instance, under the Loan Originator Compensation Rule provisions of Regulation Z issued by the Consumer Financial Protection Bureau (CFPB) under the Dodd-Frank Act, "loan originators" may not be compensated based on any term of a consumer mortgage loan transaction, or any proxy for such a term. The restrictions under that rule also extend to the amount of profits-based compensation that loan originators may receive, with a general hard limit of 10% of total compensation. Under the rule as proposed, it is not clear that such parameters provide a safe harbor for the compensation of loan originators under this rule. Rather, it appears that compensation of loan originators could still, potentially, be subject to criticism under this rule even if their compensation complies in all regards with the Loan Originator Compensation Rule. Intuitively, it seems that compliance with the Loan Originator Compensation Rule, or any other specific law or regulation limiting compensation practices for a specific type of person, should govern the issue.

Therefore, we suggest the inclusion of language in section ___.4 creating a safe harbor for incentive-based compensation practices that satisfy requirements under other federal laws or regulations to be deemed to satisfy the requirements of such section.

RESERVATION OF AUTHORITY TO TREAT LEVEL 3 INSTITUTIONS AS LEVEL 1 OR 2 INSTITUTIONS ***(Questions 6.1—6.5)***

As proposed, the regulation permits too much discretion on the part of regulators to treat a smaller enterprise, such as IBC, as a much larger institution. The trickle-down effect of such unfettered regulatory oversight can be extremely destructive.

Specifically, the proposed rule includes a reservation of authority that would allow the appropriate federal regulator of a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to require the institution to comply with some or all of the provisions applicable to Level 1 and 2 institutions (sections __.5 and __.7 through ___.11 of the proposed rule) if the agency determines that the complexity of operations or compensation practices of the Level 3 covered institution are consistent with those of a Level 1 or Level 2 covered institution.

This provides way too much discretion to the agency – indeed, almost unfettered discretion. The rule does not appear to restrict the agencies' ability to decide that the complexity of a Level 3 institution's operations or compensation practices "are consistent with those of a Level 1 or 2 institution." Rather, if the agency makes that determination to its own satisfaction, it may treat the Level 3 institution as a Level 1 or 2. As proposed, the provisions applicable to Level 1 and Level 2 institutions go far beyond those applicable to Level 3, and in most cases would be grossly inappropriate to apply to a community bank or other entity falling within the Level 3 asset size parameters. Such discretion could too easily lead to an abuse of power and place potentially dramatically disparate regulatory burdens on competing financial institutions, both within the same "Level," but especially where smaller community banks are being subjected to the much more prescriptive requirements otherwise placed on much larger institutions that have more resources to bear such burdens.

In the preamble, the Agencies state that "The Agencies would consider the activities, complexity of operations, risk profile, and compensation practices to determine whether a Level 3 covered institution's operations or compensation practices warrant application of additional standards pursuant to the proposed rule. For example, a Level 3 covered institution could have significant levels of off-balance sheet activities, such as derivatives that may entail complexities of operations and greater risk than balance sheet measures would indicate, making the institution's risk profile more akin to that of a Level 1 or Level 2 covered institution. Additionally, a Level 3 covered institution might be involved in particular high-risk business lines, such as lending to distressed borrowers or investing or trading in illiquid assets, and make significant use of incentive-based compensation to reward risk-takers. Still other Level 3 covered institutions might have or be part of a complex organizational structure, such as operating with multiple legal entities in multiple foreign jurisdictions."

While this language provides some examples of situations that may (or may not) trigger a regulator's exercise of this authority, it remains unclear just what limits there are on such exercise.

And while "The Agencies expect they only would use this authority on an infrequent basis" and that "This approach has been used in other rules for purposes of tailoring the application of requirements and providing flexibility to accommodate the variations in size, complexity, and overall risk profile of financial institutions," this does not provide sufficient comfort or clarity to level 3 institutions. It is particularly important to understand when and how the heightened treatment could apply, since so much is at stake. Unlike other rules that involve "tailoring" and "flexibility" in less dramatic ways such as requiring a greater level of detail in policies and procedures that are already required, this rule imposes very substantive and prescriptive requirements on Level 1 and 2 institutions that are not imposed at all on Level 3 institutions. Thus, going from Level 3 to Level 1 or 2 is not merely a matter of being expected to increase reporting or to augment activities that the institution is already doing. Rather, it would be a matter of making profound, substantive changes in a disruptive manner, including providing for clawback of compensation and deferring compensation for numerous persons. Such a dramatic change warrants clearer and more predictable standards for when this could occur, with less or no discretion on behalf of regulators – or, alternatively, and more appropriately, an abandonment of such prescriptive measures and an adoption of a more principles-based approach for all institutions regardless of asset size.

We suggest adopting a more principles-based approach for all institutions rather than an arbitrary application based upon asset size, or the removal of any discretion on the part of regulators to treat a smaller enterprise, such as IBC, as a much larger institution. Alternatively, at an absolute minimum, we suggest that this provision of the rule include specific notice and response mechanisms. We request that the agency proposing to treat a Level 3 institution as a Level 1 or 2 institution would have to give the institution written notice of the proposed determination, including a clearly articulated list of the reasons underlying such action, and provide the institution with no less than 90 days to respond to the notice. After the agency reviews and responds to the institution's response, the institution should have at least one additional opportunity to formally respond to the regulator, with no fewer than 60 days to provide the second response. Any final determination the agency makes after receiving the institution's responses should be considered a material supervisory determination that could be appealed through the Ombudsman of the respective agency under the normal procedures applicable to such an appeal. We also suggest that such treatment could not take effect, and could not apply to any aspect of the covered institution's activities, until the compensation year following the year in which the final determination is made after all appeals are exhausted.

TREATMENT OF AFFILIATE & SUBSIDIARY ***(Questions 2.2, 2.3)***

The proposed rule's definition of "affiliate" and "subsidiary" sets too low a threshold to trigger affiliate or subsidiary status. As drafted in the proposal, affiliate status is triggered once there is "control," and subsidiary status is triggered once there is control or any ownership interest – with "control" defined for both purposes to mean the power to vote 25% or more of any class of voting securities, the ability to control the election of a majority of the directors, or where a regulator determines the company directly or indirectly exercises a controlling influence over the management or policies of the company.

As drafted, these terms are inconsistent with respect to the ownership threshold that would apply. In any event, while a 25% threshold for ownership or control may make sense for Bank Holding Company Act purposes, it is unclear that, absent the exercise of management control, ownership below a majority or 51% is a reasonable threshold for purposes of this rule.

We agree with the decision to exclude from the definition of "subsidiary" merchant banking investments that are owned or controlled by a holding company pursuant to Regulation Y or that were acquired in the ordinary course of collecting debt. We request clarification that neither term is intended to include application to passive investments made directly at a bank level, such as a limited partnership or a corporation in which it does not have or perform a management function. Furthermore, it is inapt to focus on stock ownership to the exclusion of other relevant factors. For instance, in the case of entities such as limited partnerships, where the covered institution does not actively participate in the day-to-day operations, including – importantly – the compensation-setting practices of the entity, it seems unhelpful to focus on the percentage of voting securities held (or the fact in itself that voting securities are held) without also considering the extent to which the covered institution is involved in the specific practices covered by this rule.

Therefore, we suggest that the definitions of "affiliate" and "subsidiary" be revised to exclude any entity whose compensation practices the covered institution does not control or influence.

DEFERRAL PROVISIONS ***(Questions 7.1 – 7.9)***

The proposed rule also puts forth certain specific deferral periods and percentages applicable to the incentive-based compensation of SEOs and SRTs at Level 1 and Level 2 institutions, including a four-year deferral of 60% of a Level 1 SEO's "Other Incentive-Based Compensation" and 50% of a Level 1 SRT's "Other Incentive-Based Compensation."

The Agencies have not convincingly explained the underlying rationale for these time periods and percentages, except that they apparently are consistent with some existing industry practices and "consistent with international standards on compensation." It is also not clear why these numbers should differ between Level 1 and 2 institutions. At any rate, they should not apply at all to Level 3 institutions. Requiring such deferrals would place smaller institutions at an even greater disadvantage relative to larger entities, which typically can provide greater amounts of compensation overall. Having to defer significant amounts of what already starts out as a smaller amount of compensation – and for significant amount of time – will further make the prospect of working for a smaller financial institution less appealing to talented candidates who are in high demand.

CLAWBACK PROVISIONS ***(Questions 7.30---7.34)***

As used in the proposed rule, the term "clawback" establishes a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person for a period of 7 years following the applicable vesting date for the underlying compensation.

Thus, when combined with the mandatory deferral provisions in the proposal, a significant portion of a covered person's compensation could be "at risk" and uncertain for a period of 10 or more years. In the proposal, Level 1 and Level 2 covered institutions would be required to include clawback provisions in incentive-based compensation arrangements for senior executive officers and SRTs that, at a minimum, would allow for the recovery of up to 100 percent of vested incentive-based compensation from a current or former SEO or SRT for seven years following the date on which such compensation vests upon the occurrence of certain fault based risk events. Under section ll.7(c) of the proposed rule, under an identified set of circumstances, all vested incentive-based compensation for senior executive officers and significant risk takers, whether it had been deferred before vesting or paid out immediately upon award, would be required to be subject to clawback for a period of no less than seven years following the date on which such incentive-based compensation vests.

The result of the long-term nature of the proposed clawback provision is that a covered person would not have certainty with respect to earned compensation for *over a decade*. Who would want to work under such extreme conditions?

This presents unique issues to the financial institutions industry that could lead to unintended negative consequences, such as qualified employees seeking employment outside the industry, or at smaller banks that are not subject to such onerous restrictions. It could also lead to financial institutions moving what would be incentive compensation into other forms of compensation, such as base salary, in order to attract and retain top performers who might otherwise seek employment in industries not subject to these restrictions.

Such a result in particular would undermine the purpose of incentive compensation and take compensation decisions out of the hands of shareholders and remove incentives for good performance. Amid the negative discussions around incentive compensation related to the financial crisis, it is important to remember that incentive compensation incentivizes actions that *benefit* the financial institution. It allows a financial institution to motivate employees toward outstanding performance, and ensures that employees have "skin in the game" as to how their actions affect the bank. Incentive compensation also functions a retention tool, providing for future benefits if the employee commits to the institution.

While we agree with the fault-based approach to the proposed clawback provision, it should be carefully crafted such that it is not ripe for abuse. For example, it should be drafted such that a different board or set of executives could not arbitrarily decide that an executive "intentionally misrepresented information" used to determine the compensation seven years after the fact.

It is also unclear how a clawback of any duration, particularly 7 years, would work in practice. There are inherent administrative, accounting, and tax issues that must be addressed in connection with any clawback provision (as well as with other aspects of the proposal, such as the adjustment to and deferral of incentive plans). For instance, under Internal Revenue Service (IRS) rules, income must be reported and tax must be paid in the year it is received, even if it is subject to potential recovery, with the employer taking a corresponding tax deduction at that time. Under IRS rules, it is *not administratively possible* to file an amended tax return after a period of 6 years, and repayment on an after-tax basis mathematically gives the employee a slight windfall. Alternatively, the employee could repay the full amount and claim a deduction in the year the compensation is repaid, but absent application of a special remedial provision like IRC § 1341, the employee is left without a full recovery for the tax that was already paid due to phaseouts, tax rate differentials, deduction limitations, and the alternative minimum tax. These potential problems could take many employees "out of the game," so to speak. As proposed, the potential risks associated with incentive compensation would be far too great for any employee to accept, especially for those living paycheck to paycheck. There are similar technical issues related to recovery of any employment taxes and the tax effect to the employer who has already treated the payment as compensation and taken a deduction or the initial payment. Thus, we urge the Agencies to consult and coordinate with the IRS regarding any form of clawback provision to ensure fair treatment of income taxes, deductions, and employment taxes related to the previously reported compensation payment.

It is also important to note that the clawback provisions in the proposed rule differ from those presented in the listing standard proposed by the SEC in 2015, pursuant to Section 954 of Dodd-Frank, regarding recovery of erroneously awarded compensation. That difference will lead to confusion and apparently duplicative administrative obligations.

In particular, we note that we strongly agree with the structure of the clawback in the proposed rule to the extent it does not include a no-fault, strict-liability causation element like that in the SEC's 2015 proposal. However, the 7-year clawback period provided for in this proposal not only is inconsistent with that in the 2015 SEC proposal, it also establishes an impediment for the financial institutions industry that could cause it to lose talented employees to other industries that are not subject to the onerous restrictions in the proposal. The proposed rule and the SEC proposal aim to reach a different set on employees—with the proposed rule subjecting the clawback to SEOs (including the "lead of any business unit") and SRTs, while the SEC's proposal is applicable to "the president, . . . and any vice-president of the issuer in charge of a principal business unit." While we do believe that this definition in the SEC's proposal is too vague and too broad, it is still appears to regulate a more select group than in the Agencies' proposed rule on incentive-based compensation. Having two separate sets of clawback provisions apply to a publicly traded entity is unnecessarily burdensome. Any required clawback provisions required of a publicly traded financial institution should not conflict with one another.

We recommend revisions to the clawback provisions that are carefully crafted to meet the goal of Section 956 of Dodd-Frank without stifling a financial institution's ability to negotiate competitively for employees within the global marketplace or subject it to inconsistent rules. We recommend that any clawback provision be limited to a more reasonable period of time, such as two years.

COMPENSATION OPPORTUNITY CAPS ***(Questions 8.5—8.7)***

In addition to the clawback provisions, the proposed rule would set specific upward limits on the amount of incentive-based compensation that may be paid to SEOs and SRTs – 125% and 150%, respectively, of target amounts for performance measure goals established at the beginning of the relevant performance period. It is unclear why both specific caps *and* clawback provisions are needed. Moreover, it is unclear how and why 125% and 150% were determined. This further chips away at any flexibility the institution and its shareholders have to properly encourage and reward excellent performance. Some institutions operate with lower base pay and have to compensate employees with bonuses or other incentive compensation. As proposed, institutions may have to abandon incentive compensation because of the combined effect of the associated risks imposed on the employee coupled with the excessive compliance burden imposed on the institution.

We suggest the deletion of such caps altogether if the clawback provisions are to be retained.

The Agencies have also specifically asked, in Question 8.7, whether this limitation on maximum incentive-based compensation opportunity should apply to Level 3 institutions. We strongly feel that it should not.

Smaller institutions already face challenges in attracting and retaining high performers, and in compensating them appropriately and competitively vis-à-vis other employers. It is of vital importance to permit employees of smaller institutions to be rewarded for outstanding performance, including extraordinary performance that ends up vastly outpacing the original performance measures and targets. Setting such limits would create disincentives to outperform expectations. This would be true at financial institutions of all sizes, of course, but would be felt particularly acutely at a small institution.

RECORD RETENTION ***(Questions 4.3 – 4.6, 5.1, 5.2)***

The seven-year record retention period is excessively long. It exceeds the record retention period under most other banking regulations, many of which provide for a two-year retention period in order to ensure that records confirming compliance will be available for examiners to review through one or two examination cycles. If, as we suggest, the clawback period is shortened, the record retention period also should be shortened accordingly. Thus, we suggest a two-year record retention period to correspond with a two-year clawback period.

As to the substance of the records required to be maintained, the Agencies have asked whether a template would be helpful. We suggest that a template be provided, the use of which would not be mandatory, but that would provide a safe harbor for compliance for institutions that chose to use it. This would serve the dual purpose of alleviating regulatory burden particularly for small institutions without substantial administrative resources to create and compile records from scratch, giving guidance as to the preferred format and content of such records, while allowing institutions flexibility to use their own forms if they so choose.

IMPACT ON COMMUNITY BANKS

Because this rule would apply only to covered institutions of at least $1 billion in consolidated assets, the Agencies state in the preamble that the rule is not expected to apply to any "small banking organizations" for purposes of the Regulatory Flexibility Act and thus, the Agencies "do not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities" supervised by each agency. Still, the Agencies state that they are specifically seeking comment "on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small institutions and whether there are ways such potential burdens or consequences could be addressed in a manner consistent with section 956 of the Dodd-Frank Act."

While $1 billion in assets may not seem, on its face, to be a number applicable to "small" entities, the fact that the rule measures asset size on a consolidated basis makes a large difference in this regard.

Section 956 of the Dodd-Frank Act specifies only that the rule may not apply to entities with assets less than $1 billion; it does not dictate that such an asset level must be measured on a consolidated basis. Because the Agencies have chosen to categorize institutions based on consolidated assets, the rule captures small community banks and other small entities that, on their own, would never be covered by this rule.

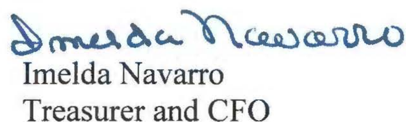
As a result, overall, the rule has an unfair impact on community banks, which did not cause the financial crisis and now are being swept into regulations meant to address the problematic actions and institutions that did.

At IBC, our operations will be affected in numerous ways by this rule as proposed. Even as a Level 3 institution, we will face lengthy recordkeeping requirements, as well as, more broadly, second-guessing by regulators of the compensation programs that have worked very well throughout the 50-year history of IBC. We operate in a highly competitive market for talent and this will further hinder our ability to attract the most outstanding candidates for employment.

The administrative and cost burden imposed by this rule will be significant, and possibly cause elimination of most if not all incentive compensation. Compliance with the rule will require involvement of personnel throughout an enterprise. We again urgently request that the Agencies consider the recommendations we make in this letter to mitigate the unfair impacts that will result from the rule as proposed. We do not believe the compensation payments of institutions under $20 billion are abusive, unreasonable, or excessive, and should not be regulated excessively.

We appreciate the Agencies' consideration of our comments, and welcome the opportunity to discuss any of them further.

Sincerely,



Imelda Navarro
Treasurer and CFO