



American
Bankers
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FINANCIAL
SERVICES
FORUM



June 18, 2024

Via Electronic Transmission

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064–AD86
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Clinton Jones, General Counsel
Attention: Comments/RIN 2590–AB30
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20219

Re: Incentive-based Compensation Arrangements NPR 2024 (Docket ID OCC-2011-0001, RIN 1557-AD39, RIN 3064–AD86, RIN 3133-AE48, Docket No. 2024-0038, RIN 2590-AA42, RIN 2590-AB30)

To Whom It May Concern:

The Bank Policy Institute, the American Bankers Association, the Financial Services Forum, and the Securities Industry and Financial Markets Association¹ are writing in response to your announcement on May 6, 2024, with respect to “Incentive-Based Compensation Arrangements” pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.² As you appear to acknowledge, while your release is styled as a notice of proposed rulemaking and request for public comment, it does not include other agencies required by statute to participate in any such rulemaking under Section 956.³

¹ A description of the associations is included in the Appendix. ABA and SIFMA are each planning to submit separate letters in response to the issuance.

² See [Incentive-based Compensation Arrangements NPR 2024 \(fdic.gov\)](#). A press release accompanying the issuance of the attempted reproposal issued by the four agencies to whom this letter is addressed stated that the NCUA “is expected to take action on the NPR in the near future.” [Agencies Issue Proposal on Incentive-Based Compensation | NCUA](#). The NCUA published the press release and a link to the attempted reproposal on its website. We understand that the NCUA Board has not yet acted, but we have included the NCUA among the addressees of this letter to that agency under the presumption that the aforementioned assertion regarding imminent future action by the agency remains accurate.

³ The Securities and Exchange Commission and the Board of Governors of the Federal Reserve System have not joined in your attempted reproposal. Indeed, Federal Reserve Board Chair Jerome Powell recently responded to a question about the status of a rulemaking under section 956 by saying “I would like to understand the problem we’re solving and then I would like to see a proposal that addresses that problem.” Committee on Financial

Given that the notice will not be sent to the Federal Register, and therefore will trigger none of the rights and responsibilities of the Administrative Procedure Act, it has no legal effect. We believe that any comprehensive comment at this point would be premature and would validate an ersatz, unprecedented process.

Your document is effectively a republication of the notice of proposed rulemaking issued by the agencies in 2016 and never finalized.⁴ Industry provided robust comments on that proposed rulemaking, and it appears that none of those comments have been reflected in this proposal.⁵ As a reminder, our comments on the 2016 proposal asserted that the proposal strayed beyond the bounds of the agencies' limited statutory authority under Section 956. In particular, we highlighted that:

- While Section 956 requires the agencies to prescribe rules or regulations on incentive-based compensation arrangements, the agencies should do so with a greater recognition that the authority given to them under Section 956 is limited and specific.
 - Section 956 permits the agencies to prohibit incentive-based compensation arrangements that encourage two types of “inappropriate” risks, but the 2016 proposal is largely styled as a rule that would affirmatively require all covered financial institutions to incorporate specific, universal requirements into their compensation arrangements.
 - To claim that the agencies possess the positive authority under Section 956 to require certain terms in compensation arrangements because they logically could forbid all plans that lack those required terms defies the legislative intent of the statute.
 - Congress clearly designed Section 956 to confer the limited power to prohibit plan features that encourage excessive risk. The agencies should abide by that

Services, U.S. House of Representatives, “The Federal Reserve’s Semi-Annual Monetary Policy Report,” Jerome H. Powell Chair Board of Governors of the Federal Reserve System (March 6, 2024).

⁴ [81 Federal Register 37670](#) (June 10, 2016).

⁵ See letter from Gregory A. Baer, President, The Clearing House Association, to the Board of Governors of the Federal Reserve System, et al. re: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (July 22, 2016), [20160722 TCH Incentive Compensation Comment Letter.pdf \(theclearinghouse.org\)](#); see also Letter from Hu Benton, Vice President of Bank Policy, The American Bankers Association, to the Board of Governors of the Federal Reserve System, et al. re: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (July 22, 2016), <https://www.aba.com/advocacy/policy-analysis/incentive-based-compensation>; see also Letter from American Bankers Association, Center on Executive Compensation, Financial Services Roundtable, Securities Industry and Financial Markets Association, The Clearing House, and The U.S. Chamber of Commerce to the Board of Governors of the Federal Reserve System, et al. re: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (July 22, 2016), [s70716-30.pdf \(sec.gov\)](#); see also letter from Kenneth E. Bentsen, President & CEO, the Securities Industry and Financial Markets Association, to the Board of Governors of the Federal Reserve System, et al. re: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (July 22, 2016), [SIFMA Submits Comments on Reproposed Rule on Incentive-Based Compensation Arrangements](#).

approach in any attempt to implement Section 956.

Not only did you fail to consider our prior comments and are attempting to issue a reproposal that does not abide by the constraints Congress mandated, the attempted reproposal includes commentary indicating the four agencies ***are considering a rule that would contain even more prescriptive elements than the 2016 proposal***. The preamble to the four agencies' May 6 issuance includes a description of certain alternative approaches the agencies are considering taking with respect to particular aspects of the 2016 proposal that are even more prescriptive than those in the 2016 proposal. For example, the contemplated alternative regulatory provisions would ***require*** mandatory forfeiture and downward adjustment of incentive compensation for specified adverse outcomes and mandatory clawback of vested incentive compensation under specified circumstances, rather than requiring institutions to consider those actions in the referenced circumstances, as proposed in 2016.⁶

Thus, the attempted reproposal contemplates an even more prescriptive approach to the rulemaking, and thus retains the inherent discrepancies between the limited authority provided to the agencies under Section 956 and the 2016 proposal. Furthermore, your document, like the 2016 proposal, would establish a rigid, one-size-fits-all approach to compensation arrangements that will deprive institutions of the flexibility necessary to implement and adjust compensation practices that are appropriately risk-sensitive for the particular organization's activities and risks.

Finally, while compensation practices in the financial services industry have changed considerably over the past eight years, your proposal contains no analysis of that experience.

We look forward to commenting on any official notice of proposed rulemaking issued by the six agencies that Congress decided were the appropriate rule makers in this case.

Respectfully submitted,

Bank Policy Institute
American Bankers Association
Financial Services Forum
Securities Industry and Financial Markets Association

Cc: The Honorable Michael J. Hsu, Acting Comptroller
Ted Dowd, Acting Senior Deputy Comptroller and Chief Counsel
Lauren Oppenheimer, Senior Deputy Comptroller for Public Affairs
and Chief of Staff for Acting Comptroller Hsu
Grovetta Gardineer, Senior Deputy Comptroller for Bank Supervision Policy
(Office of the Comptroller of the Currency)

⁶ See pgs. 70-72 of the attempted reproposal.

The Honorable Martin J. Gruenberg, Chairman
The Honorable Travis Hill, Vice Chairman
The Honorable Jonathan McKernan, Director
Harrel M. Pettway, General Counsel
Doreen R. Eberley, Director, Division of Risk Management Supervision
(Federal Deposit Insurance Corporation)

The Honorable Rohit Chopra, Director
(Consumer Financial Protection Bureau)

The Honorable Todd M. Harper, Chairman
The Honorable Kyle S. Hauptman, Vice Chairman
The Honorable Tanya F. Otsuka, Board Member
Frank Kressman, General Counsel
(National Credit Union Administration)

The Honorable Sandra L. Thompson, Director
Clinton Jones, General Counsel
(Federal Housing Finance Agency)

The Honorable Jerome H. Powell, Chair
The Honorable Philip N. Jefferson, Vice Chair
The Honorable Michael S. Barr, Vice Chair for Supervision
The Honorable Michelle W. Bowman, Governor
The Honorable Lisa D. Cook, Governor
The Honorable Adriana D. Kugler, Governor
The Honorable Christopher J. Waller, Governor
Mark E. Van Der Weide, General Counsel
Michael S. Gibson, Director, Division of Supervision and Regulation
(Board of Governors of the Federal Reserve System)

The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
(Securities and Exchange Commission)

Appendix

The **Bank Policy Institute** is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

The **American Bankers Association** is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

The **Financial Services Forum** is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, financial inclusion, deep and liquid capital markets, a competitive global marketplace, and a sound financial system.

The **Securities Industry and Financial Markets Association** is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.