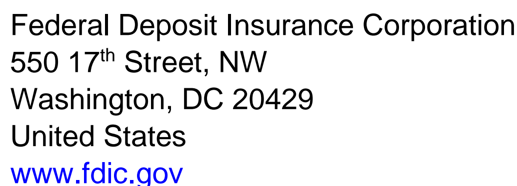

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Chris Barnard

20 July 2024

- 12 CFR Part 372
- RIN 3064-AD86
- Incentive-Based Compensation Arrangements

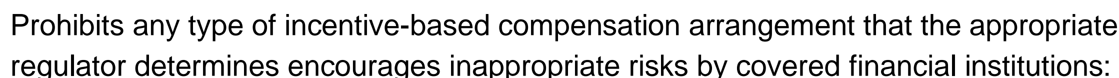
Dear Sir.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking and request for public comment on Incentive-Based Compensation Arrangements.

You are requesting comment on a proposed rule to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act). The statute requires that the appropriate Federal regulators, jointly issue regulations or guidelines: (1) prohibiting incentive-based compensation arrangements at covered financial institutions that encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss; and (2) requiring those covered financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator.

Section 956 of the Dodd-Frank Act implements new disclosure requirements and prohibitions relating to incentive-based compensation arrangements offered by banks, broker-dealers, and other financial institutions. Specifically, Section 956:
Requires each covered financial institution to disclose to its appropriate federal regulator the structure of all incentive-based compensation arrangements offered by the institution to determine whether the compensation structure:

-provides any executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits; or
-could lead to material financial loss to the institution; and



Prohibits any type of incentive-based compensation arrangement that the appropriate regulator determines encourages inappropriate risks by covered financial institutions:

-by providing an employee with excessive compensation, fees, or benefits; or

-that could lead to material financial loss to the institution.

I support your proposed rules, which provide clear discretion to covered institutions in tailoring compensation arrangements that do not provide incentives for inappropriate risk-taking. I also agree with the scope of covered persons, including “senior executive officers” and “significant risk-takers”. For completeness, I would suggest that you strengthen the proposed rules in the following areas:

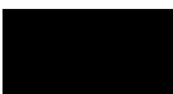
<u>Clawback</u>

The types of conduct that trigger clawbacks should be expanded beyond misconduct, fraud and intentional misrepresentation of information (culpable behavior). In addition, covered institutions should be required to exercise their clawback remedies, not simply “allowed” to do so.

<u>Deferral periods</u>

The minimum required deferral periods are too short. For example, even for a senior executive officer or significant risk-taker of a Level 1 covered institution, the minimum deferral period for deferred qualifying incentive-based compensation is only 4 years. As you have indicated, from 1945 to 2009, the average length of the business cycle in the United States was approximately 5.7 years. In addition, many researchers have found that credit cycles are longer than business cycles. I would recommend that you extend the minimum deferral period to at least six years, which would be more consistent with the average life span of the business cycle in the United States.

Yours faithfully



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