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Via Electronic Submission

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 2021
Attn: Comment Processing

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: James P. Sheesley, Assistant Executive Secretary

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

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

RE: Request for Comment on Proposed Regulations for Incentive-Based Compensation Arrangements (Docket ID OCC-2011-0001 [OCC]; RIN 3064-AD86 [FDIC]; (RIN) 2590–AA42 [FHFA]; RIN 3133-AE48 [NCUA])[1]

The American Bankers Association (ABA)[2] appreciates this opportunity to provide the views of our members to the Office of the Comptroller of the Currency (OCC), the Federal Deposit

[1] *See* https://www.fdic.gov/sites/default/files/2024-05/2024-05-03-fed-reg-incentive-based-compensation-agreements_0.pdf.

[2] The American Bankers Association is the voice of the nation's $[24] trillion banking industry, which is composed of small, regional and large banks that together employ approximately [2.1] million people, safeguard $[19] trillion in deposits and extend $[12.4] trillion in loans.

Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), and the National Credit Union Administration (NCUA) (collectively, the Agencies) concerning their recent rerelease (Current Proposal) of a previous proposal to regulate incentive-based compensation. The previous proposal (2016 Proposal) was issued pursuant to Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Section 956).[3] ABA has participated actively in the bank regulatory agencies' efforts to promote prudent risk management through appropriate corporate governance, including promotion of standards for incentive-based compensation. We believe strongly in the importance of sound incentive-based compensation as a key part of prudent risk management.

In connection with previous proposals to implement Section 956, ABA has both joined with other financial industry trade associations and commented separately, expressing the concerns of our members about the content of those proposals and, in the case of the Current Proposal, the process by which it was issued. Most recently, ABA joined with The Bank Policy Institute, the Financial Services Forum, and the Securities Industry and Financial Markets Association[4] to express our common concerns about the Agencies' attempt via the Current Proposal to reissue the 2016 proposal to implement Section 956. As the associations noted, the Agencies are failing to follow the Congressional direction in Section 956 because they are acting without the joint participation of the Board of Governors of the Federal Reserve System and the Securities and Exchange Commission, as the statute requires. In addition, the Current Proposal has yet to be published in the *Federal Register* as required by law, and therefore no official public comment period can commence, a legal prerequisite to promulgating an effective final rule. Finally, by reproposing the text of the 2016 Proposal without modifications, the Agencies are ignoring the significant comments that ABA and other commenters submitted at the time.[5] The "alternatives" discussed in the Current Proposal[6] (some of which we review in more detail below) do not address this disappointing failure to address the substantial concerns our members raised at that time.

In our 2016 comment, ABA supported a principles-based approach to incentive-based compensation supervision and regulation, as reflected in the then- (and still-) current "Guidance on Sound Incentive Compensation Polices," adopted in 2010 by the Federal Reserve, the OCC, the Office of Thrift Supervision, and FDIC (2010 Guidance).[7] The financial services industry has now operated for more than 10 years under the 2010 Guidance, developing incentive-based compensation policies that align with their unique business models, risk appetites and profiles,

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[3] Pub. L. No. 111-203, tit. IX, § 956, 124 Stat. 1905-1906 (2010), *codified at* 12 USC §5641.
[4] *See* https://www.aba.com/-/media/documents/comment-letter/jointclincentivecomp20240618.pdf?rev=7d814a2fc40a4d3b8514ea799beabab5.
[5] *See* https://www.aba.com/-/media/documents/comment-letter/abaincentivecompensationcomment.pdf?rev=533e4eb31fd24389940df77ab8cd38c4.
[6] Proposal at 64.
[7] *See* 75 Fed. Reg. 36,395 (June 25, 2010).

human capital resources, and market positions. They have generally found the 2010 Guidance to be effective in risk management and sufficiently flexible to meet business needs. This deep experience has included extensive dialogue with supervisors, who have generally concurred in the ultimate implementation of the 2010 Guidance and approved of the outcomes.

In keeping with the principles-based approach, ABA notes that one of the alternatives presented in the Current Proposal would involve allowing institutions to designate their own "significant risk takers" under methodologies subject to regulators' review.[8] The Agencies note several other possible variations on this theme. Though ABA members cannot now express detailed views on this nascent concept, we believe the flexibility it would provide could be a starting point for developing a more effective and tailored regulatory framework. By contrast, the remaining alternatives presented in the Current Proposal reject the principles-based approach for a "one-size-fits-all" methodology that is inconsistent with the flexibility required of, and the diversity inherent in, the financial services sector

ABA urges the Agencies to adopt a regulatory approach that balances risk management with the ability to recruit and retain high-quality talent in a competitive, rapidly evolving market and to incent performance effectively. We remain committed to working with the Agencies, the Federal Reserve, and the Securities and Exchange Commission to develop effective incentive-based compensation standards.

Thank you for your attention to these concerns. Should you have any further questions, please do not hesitate to contact the undersigned at hbenton@aba.com or Ashtyn Landen at alanden@aba.com.

Very truly yours,

/s/

Hu A. Benton

Senior Vice President and Policy Counsel

[8] Proposal at 67.