U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

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Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7TH Street SW
Washington, DC 20219

Sandra L. Thompson
Director
Federal Housing Finance Agency
400 7th Street SW,
Washington, DC 20024

Todd M. Harper
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chairman Gruenberg, Acting Comptroller Hsu, Director Thompson, and Chairman Harper:

The U.S. Chamber of Commerce ("Chamber") is deeply concerned with the proposal your agencies have announced to implement incentive-based compensation rules ("proposal"). The Chamber believes that the proposal violates Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("section 956" and "Dodd-Frank Act.")[1] .

Sec. 956 expressly states that "... the appropriate Federal regulators *jointly shall* prescribe regulations *or guidelines* ..." pertaining to enhanced disclosure and reporting of compensation arrangements.[2] [emphasis added] The underlying statute by which your agencies are pursuing this exercise does not leave room for ambiguity; all six of the "appropriate" Federal regulators must participate. The "appropriate Federal Regulators" is defined in the statute as: the Board of Governors of the Federal Reserve System ("Federal Reserve"); the Office of the Comptroller of the Currency ("OCC"); the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"); the National Credit Union Administration Board ("NCUA"); the Securities and Exchange Commission ("SEC"); and the Federal Housing Finance Agency ("FHFA").[3] The "proposing release" published by your agencies does not conform with section 956, as it does not include the Federal Reserve and the SEC. Furthermore, as of this date, the proposal was not published in the Federal Register.

As a matter of legal construction, "shall" is mandatory. A failure of all the agencies enumerated in section 956 to participate in the process to develop and approve the proposal would render any effort to finalize the section 956 proposal invalid. Any rules or guidance to

[1] *See*: Press release from Office of the Comptroller of the Currency, May 6, 2024. *Available at*: https://www.occ.treas.gov/news-issuances/bulletins/2024/bulletin-2024-12.html
[2] 12 USC 5641
[3] *Ibid* at (e)(1)

implement section 956 should be rooted in a careful study of current corporate practices around executive compensation.

The Chamber is concerned that rules promulgated under section 956 could adversely impact the competitiveness of the U.S. banking system if they are not informed by such an analysis.[4] Banks must be provided the appropriate flexibility to offer compensation to attract and retain high-performing talent. If not based on careful consideration of current compensation practices and talent needs, implementing executive compensation based on an eight-year old proposed rule, released two administrations ago, could jeopardize the banking system that the Dodd-Frank Act seeks to protect.

The 2010 Interagency Guidance on Incentive Compensation[5] provides a more appropriate framework than simply rehashing the overly prescriptive 2016 proposal. In addition, no sufficient reason has been articulated to repeal and replace this guidance. Any action – rule or guidance – based on section 956 should be reflective of current executive compensation practices and justified by meaningful cost-benefit analysis.

Finally, section 956 of the Dodd-Frank Act does not require the six implicated agencies to implement *regulations* on executive compensation practices. Rather, it provides those agencies an option to issue *guidance* to satisfy its requirements. Indeed, this is the path that the agencies pursued in 2010 Interagency Guidance on best practices, policies and procedures. All six enumerated agencies should consider if guidance is a more appropriate tool where relevant, and, if updated guidance is not pursued, should provide a reasoned explanation as to why updated guidance was determined to be insufficient.

The Chamber appreciates your agencies' consideration of these views and stands ready to serve as a resource on this important topic.

Sincerely,

[redacted]

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

cc: The Honorable Gary Gensler, Chair, Securities and Exchange Commission; The Honorable Jerome Powell, Chair, Board of Governors of the Federal Reserve System

[4] *See*: Testimony before the Senate Banking Committee from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce. May 2, 2023. *Available at:* https://www.banking.senate.gov/imo/media/doc/Quaadman%20Testimony%205-4-23.pdf

[5] *See*: OCC Bulletin 2010-24. Incentive Compensation: Interagency Guidance on Sound Incentive Compensation Policies. June 30, 2010. *Available at*: https://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-24.html