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Federal Banking and Other Agencies Propose Incentive-Based Compensation Provisions

On April 14, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, and the Federal Housing Finance Agency, published a notice of proposed rulemaking in the Federal Register to implement the incentive-based compensation provisions of Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The joint proposed rule includes the following provisions that would apply to covered financial institutions with total consolidated assets of $1 billion or more:

- a prohibition on incentive-based compensation arrangements at covered financial institutions that encourage executive officers, employees, directors or principal shareholders (covered persons) to expose the institution to inappropriate risks by providing a covered person with excessive compensation;
- a prohibition on covered financial institutions from establishing or maintaining any incentive-based compensation arrangements, or any feature of any such arrangements, for covered persons that encourage inappropriate risks by the covered financial institution that could lead to material financial loss;
- a requirement that covered financial institutions develop and maintain policies and procedures appropriate to their size, complexity, scope and the nature of their use of incentive-based compensation to ensure and monitor compliance with the proposed rule's requirements and prohibitions; and
- a requirement that covered financial institutions submit annual reports that describe the structure of their incentive-based compensation arrangements.

The joint proposed rule also includes the following provisions applicable to covered financial institutions that have total consolidated assets of $50 billion or more:

- a deferral requirement for a portion of executive officers' incentive-based compensation. (At least 50% of the annual incentive-based compensation of the executive officers must be deferred over a period of no less than three years, with the release of deferred amounts to occur no faster than on a pro rata basis.); and

- a requirement that the board of directors, or a committee thereof, identify covered persons (other than executive officers) who have the ability to expose the covered financial institution to risk of losses that would be substantial in relation to its size, capital, or overall risk tolerance; approve the incentive-based compensation arrangement for the covered persons; and document such approval.

The comment period for the proposed rulemaking action closes on May 31.

Read more.

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