June 1, 2016

The Honorable Janet Yellen
Chair
Board of Governors of the
Federal Reserve System
20th St. and Constitution Ave., NW
Washington, DC 20551

The Honorable Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the
Currency
400 7th Street SW
Washington, DC 20219

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

The Honorable Martin J. Gruenberg
Chairman, Board of Directors
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Rick Metsger
Chairman
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314

The Honorable Mel Watt
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, 20219

Re: Notice of Proposed Rulemaking Concerning Incentive-based Compensation Arrangements

Dear Chair Yellen, Comptroller Curry, Chair White, Chairman Gruenberg, Chairman Metsger, and Director Watt:

On behalf of thousands of businesses in every region and sector of this country, whose ability to attract and retain talented business professionals would be adversely affected by the notice of proposed rulemaking on incentive-based compensation arrangements (the "NPRM") proposed by your respective agencies, we respectfully request an extension of the comment period to at least 150 days so that the business community and other stakeholders may have ample time to analyze this complex, far-reaching proposal and provide thoughtful comments to your agencies for consideration. An extension is further warranted in light of the disjointed and staggered release of the NPRM, which has left the public with varying, and in some cases short, periods of times to prepare remarks on a proposal that spans hundreds of pages.

The significance of this rule for businesses that compete fiercely in an increasingly globalized market to attract and retain the services of talented individuals cannot be overstated. Human capital is a significant driver of a firm's growth and success. As your agencies' acknowledge in the NPRM, "incentive-based compensation arrangements are critical tools in the management of financial institutions." It is essential that regulators charged with writing compensation rules (or any corporate governance rules, for that matter) leave no stone unturned as they solicit public input, collect data, and analyze the likely effects of their regulations on this highly competitive market. If they don't, business talent may leave certain industries in favor of others or flee to jurisdictions whose regulators more appropriately balance government's interest in discouraging excessive risk-taking with a firm's liberty to make business judgments for the benefit of its owners. Such an outcome could undermine the very stability that section 956 of the Dodd-Frank Act envisions.

Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires the National Credit Union Administration (NCUA), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "FRB," and, together with the FDIC and the OCC, the "Federal Banking Agencies"), the Securities and Exchange Commission ("SEC"), and the Federal Housing Finance Agency ("FHFA") (collectively, the "Agencies") to "jointly prescribe regulations or guidelines" to prohibit incentive-based pay arrangements that encourage inappropriate risk-taking by covered institutions. Despite this requirement to act jointly, however, each of the Agencies proceeded at its own pace, beginning with the NCUA's adoption of the NPRM on April 21 and culminating in FHFA's adoption on May 16—almost an entire month later.

The fragmented adoption of the NPRM by the Agencies has yielded comment periods of different lengths. The NCUA, the first agency to act, set the deadline for public comment at July 22, 2016, which as of the date of proposal gave a 90-day comment period. As the other agencies subsequently adopted the NPRM, they also used the July 22 deadline, resulting in comment periods of less than 90 days. In fact, the timing of FHFA's adoption of the NPRM (May 16) means that the public will have closer to a 60-day comment period. (In fact, even as of the date of this letter—almost two weeks since the last of the six regulators acted—the text has yet to be officially published in the Federal Register.) Despite their adoption of nearly identical text, the Agencies nowhere explain their divergent views on how long the public should have to comment on the NPRM. Why, for example, did the NCUA give a 90-day comment window while the SEC, which added over one hundred pages of economic analysis to the NPRM, gave less time?

The reality is that the public comment period could not have begun in earnest until all of the Agencies had proposed the NPRM. As a legal matter, the statute requires them to act jointly. And as a practical matter, the public has to see all parts of the rule, as proposed by each of the six Agencies, before it can begin to analyze it comprehensively. The fact that NCUA, the first to propose, gave a 90-day public comment period is therefore irrelevant. The relevant metric is the time period between FHFA's adoption of the NPRM and July 22—a mere 67 days.

But even if the agencies *had* jointly proposed the NPRM, as the statute requires, and given a 90-day public comment period, that length of time would not have permitted the business community and other stakeholders to analyze the proposal and prepare the kind of thoughtful, meaningful comments that we are confident the Agencies want to receive to inform their consideration of a final rule on incentive-based compensation arrangements. The NPRM is large and complex; it proposes to regulate compensation arrangements in a broad swath of financial industries. Businesses have only just begun to digest the proposal and explore what it will mean for their companies, and in turn for their customers and clients. It would be a grave and unfortunate mistake if the Agencies, in trying to curb inappropriate risk-taking, were to risk shutting down the comment period before businesses have a full and fair opportunity to study the NPRM and deliver their comments to the Agencies.

The Agencies should extend the comment period to at least 150 days from the date when the rule is eventually published in the Federal Register. There is ample precedent for doing so, including, for example, the SEC's Notice of Proposed Rulemaking entitled "Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers" (SEC-2008-1575-0001), which originally had a 90-day comment period but was extended for an additional 60 days (SEC-2009-0176-0001). The Agencies first proposed an incentive-based compensation rule in 2011, so there clearly is no need to rush this second effort at a rulemaking to the finish line. Businesses and other stakeholders should have sufficient time to analyze the rule and prepare thoughtful comments; 67 days simply isn't enough. (And an extension of the comment deadline would have the additional benefit of bringing unison to the Agencies heretofore scattershot adoptions of the NPRM.)

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The NPRM has a direct and significant impact on the competitiveness of American businesses in a global economy. On behalf of our members, we appreciate your attention and responsiveness to our request for all relevant data and analysis to be made public so that the job creators falling within the scope of the NPRM can have a full and fair opportunity to participate meaningfully in the rulemaking process. We look forward to working with you on a more substantive basis during the comment period.

Sincerely,

American Bankers Association
Financial Services Roundtable
The Center for Executive Compensation
Securities Industry and Financial Markets Association
U.S. Chamber of Commerce