ES162439

Congress of the United States
Washington, DC 20515

May 15, 2024

The Honorable Jerome Powell, Chair
Board of Governors of Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, D.C. 20551

The Honorable Michael Barr, Vice Chair for Supervision
Board of Governors of Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, D.C. 20551

The Honorable Gary Gensler, Chair
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Todd Harper
Chairman of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chair Powell, Vice Chair Barr, Chair Gensler, and Chairman Harper:

Almost fourteen years ago, Congress instructed six agencies to issue rules prohibiting compensation arrangements that encourage inappropriate risk-taking at covered financial institutions. As of the first week of May, three out of the six (the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Housing Finance Agency) have, at long last, taken steps to promulgate the required rules by voting to approve a proposed rule.

But the Federal Reserve, the Securities and Exchange Commission, and the National Credit Union Administration have not voted to move forward with this rule.

Section 956 of the Dodd-Frank Act is one of several measures in the 2010 law aimed at reforming banker pay, which Congress and other examiners identified as a core cause of the financial crash of 2008.[1] [2] Congress assigned deadlines to only a handful of the 243 rules embedded in Dodd-Frank, acknowledging the workload of implementing the law. Emphasizing

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, tit. IX, § 956, (codified at 12 U.S.C. 5641)
[2] Financial Crisis Inquiry Commission, "Report" (January 2011) http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf

the importance of compensation reform, Congress did, however, set a deadline for the completion of Section 956. That deadline was April 2011.

In the Spring of 2023, the failures of Silicon Valley Bank (SVB) and other regional banks prompted renewed attention to the relation between compensation structures and misguided, even reckless decision-making by bankers. On April 26, 2023, we wrote to you detailing how SVB's compensation structure encouraged recklessness.[3] We emphasized the importance of completing this rule. Other lawmakers also wrote to federal agencies with the same request.[4] [5]

In addition to our letters, the White House identified the need for banker pay reform as a necessary response to the reckless conduct that caused the regional bank failures.[6] The President specifically called on the agencies to complete rulemaking for Section 956.[7]

Subsequently, the Federal Reserve itself issued a report describing the factors that led to the demise of SVB. The report concluded that "[t]he incentive compensation arrangements and practices at SVBFG encouraged excessive risk taking to maximize short-term financial metrics" and that "[s]tronger or more specific supervisory guidance or rules on incentive compensation … may have mitigated these risks." The 91-page report cites "compensation" 63 times.[8]

In addition to the 2008 crash and the recent regional bank failures, examples abound of compensation structures connected to banking problems: JP Morgan's London Whale loss, Wells Fargo's fake account scandal, and Goldman Sachs' bribery case in Malaysia all stemmed from pay incentives. Public Citizen surveys these and many other cases in the report "Inappropriate."[9]

Finalizing a rule for Section 956 is not discretionary. Understanding the problem and how best to fashion a rule in response will require your careful consideration. In our April 26, 2023, letter, we identified key guardrails that should be included in the final rule, including a ban on stock options and hedging, as well as a lengthy deferral period for incentive compensation. We

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[3] Sen. Chris Van Hollen, Rep. Nydia Velazquez, Letter to Regulators, (April 26, 2023) https://velazquez.house.gov/sites/evo-subsites/velazquez.house.gov/files/evo-media-document/quill-letter-l11221-nmv-cvh-lttr-to-reg-on-sec-956-of-dfa-version-4-04-25-2023-04-15-pm.pdf

[4] Sen. Gary Peters, "Letter" (March 22, 2023) https://www.peters.senate.gov/newsroom/press-releases/peters-urges-federal-regulators-to-swiftly-implement-long-delayed-dodd-frank-rule-to-prohibit-banker-incentives-that-encourage-financial-risk

[5] Rep. Maxine Waters, "Letter" (March 17, 2023) https://democrats-financialservices.house.gov/uploadedfiles/03.17.2023_cmw_ltr_bf-ci2re.pdf

[6] The White House, "FACT SHEET: President Biden Urges Congressional Action to Strengthen Accountability for Senior Bank Executives" (March 17, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/17/fact-sheet-president-biden-urges-congressional-action-to-strengthen-accountability-for-senior-bank-executives/

[7] The White House, "FACT SHEET: President Biden Urges Regulators to Reverse Trump Administration Weakening of Common-Sense Safeguards and Supervision for Large Regional Banks." (March 30, 2023) https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/30/fact-sheet-president-biden-urges-regulators-to-reverse-trump-administration-weakening-of-common-sense-safeguards-and-supervision-for-large-regional-banks/

[8] Federal Reserve, "Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank, " 75 (April 28, 2023) https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf

[9] Naylor, Bartlett, "Inappropriate," Public Citizen, (Sept. 9, 2022) https://www.citizen.org/article/inappropriate/

welcome many of the alternative proposals the agencies included in the Notice of Proposed Rulemaking, including imposing stricter limits on stock options, preventing executives from hedging their executive compensation, and making forfeiture and downward adjustment of deferred compensation mandatory instead of discretionary when certain adverse outcomes occur.

April 2024 marked an unlucky 13 years since Congress mandated completion. We must not tolerate another preventable regional bank failure, another fake account scandal, another bank bribery of a foreign government because the regulators have failed to finalize statutorily mandated reform. And so we say, and not for the first time, that it is time for your agencies to finalize the Section 956 rulemaking.

Sincerely,

Chris Van Hollen
United States Senator

Nydia M. Velázquez
Member of Congress