WISCONSIN BANKERS ASSOCIATION

May 31, 2011

VIA EMAIL

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219
Docket ID: OCC-2011-0001
regs.comments@occ.treas.gov

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD56
Comments@FDIC.gov

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
RIN 3133-AD88
regcomments@ncua.gov

Mr. Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA42
Federal Housing Finance Agency, Fourth Floor
1700 G Street, NW.,
Washington, DC 20552
RIN 2590-AA42
RegComments@fhfa.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551
RIN 7100-AD69
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.,
Washington, DC 20552
Attention: OTS-2011-0004
RIN 1550-AC49
regs.comments@ots.treas.gov

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE.,
Washington, DC 20549
RIN 3235-AL06
rule-comments@sec.gov

Re: Interagency Notice of Proposed Rulemaking: Incentive Based Compensation Arrangements: OCC OCC-2011-0001; FRB RIN 7100-AD69; FDIC RIN 3064-AD56; OTS RIN 1550-AC49; NCUA RIN 3133-AD88; SEC RIN 3235-AL06; and FHFA RIN 2590-AA42

Dear Sirs and Madams:

The Wisconsin Bankers Association ("WBA") is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the Interagency Notice of Proposed Rulemaking

regarding Incentive Based Compensation Arrangements. On behalf of our member banks, we are submitting this comment letter in response to the Notice of Proposed Rulemaking. Our comments focus on various issues in the Notice.

Our global comment is that the problems of short term financial incentives causing certain employees to engage in risky behavior that helped bring about the recent recession were a feature of the large investment banks. However, the recent focus on incentive compensation at banks, which includes the Capital Purchase Program executive compensation rules ("CPP"), the recent Banking Agency Guidance ("Guidance") and the current Proposed Rules, cover community and regional banks (which include many banks with at least $1 billion in assets, which are caught by the Proposed Rules). This is unwarranted and unfair. It adds a very significant regulatory burden without producing any meaningful benefit because these smaller banks have not historically made use of risky incentive compensation practices.

Community and regional banks form a critical engine in this nation's economy. These banks fill market gaps left by other types of lenders, such as loans to small businesses, commercial real estate loans, and agriculture loans. The problems at community and regional banks are almost overwhelmingly a function of the general economic crash, and the fact that, because of the reluctance of other types of lenders to make certain loans, community and regional banks tended to have loan concentrations in areas (such as commercial real estate) disproportionately affected by the recession. The problems at community and regional banks did **not** arise because of an overreliance on short term cash bonuses and other incentives. Community and regional banks generally make modest use of incentive compensation. In trying to address incentive compensation risks, the agencies are not sufficiently differentiating between banking institutions and other types of lenders. They are simply heaping an expensive pile of compliance and administrative burdens on a large group of banks where there is no problem to be addressed, and where the banks have a much smaller staff available to fulfill the compliance and administrative requirements.

In addition, the banking agencies have already implemented a set of guidelines to address the risks of incentive compensation at all banks. The Guidance covers all FDIC insured institutions, regardless of size, and adopts a broad, relatively flexible, principles-based approach to incentive compensation. The Guidance focuses on making sure that incentive compensation arrangements at banks appropriately tie rewards to longer-term performance and do not undermine the safety and soundness of the bank or threaten the broader economy. The Guidance applies not only to executive officers, but also to other employees who have the ability to materially affect the risk profile of a bank, either individually or as part of a group. These safety and soundness principles that all banks must now take into account when establishing incentive compensation arrangements are:

1. incentive compensation arrangements should provide employees incentives that appropriately balance risk and financial results in a manner that does not encourage employees to expose their banks to imprudent risk;

2. these arrangements should be compatible with effective controls and risk-management; and

3. these arrangements should be supported by strong corporate governance, including active and effective oversight by the bank's board of directors.

The banking agencies will review incentive compensation under the parameters of the Guidance as part of the standard bank examination process. It should be noted that the regulatory agencies have in fact *always* had the authority to regulate a bank's incentive compensation arrangements as part of the regular safety and soundness/risk management evaluation.

Given the Guidance and regulators' inherent authority to address risks caused by incentive compensation, there is no need to impose the Proposed Rules as an additional regulatory layer on banks at this time. We believe the agencies should at least wait until the banks implement the Guidance and have been examined for compliance and risk before developing additional regulations targeted at bank incentive compensation. Banks have always had to deal with a maze of multiple, overlapping, confusing and often contradictory laws and regulations. With the recent spate of new banking laws, this maze has gotten bigger and more complex. A lot of administrative time and legal expense are committed every year to trying to figure out a bank's compliance obligations. We believe there is no benefit to be gained by adding another layer of overlapping, but not identical, regulation on banks when the Guidance is already in place to address incentive compensation. If the Proposed Rules are enacted, some of our community bank members will have to navigate CPP, the Guidance *and* the Proposed Rules, all of which are different despite claiming to address the exact same risks. Adding more burden, complexity, confusion and uncertainty draws away important administrative time from the business of banking, and will not improve the outcome here. We do not believe these Proposed Rules will result in better monitoring or control of incentive compensation than will result from the Guidance alone. Because the vast majority of community and regional banks simply do not utilize risky incentives, this means adding significant cost to these banks to address a non-existent problem. If it turns out that enforcement of the Guidance is insufficient to prevent inappropriate levels of risk at banks, the next step at that point could be to create additional rules.

One specific component of this increased administrative burden that should be removed from the Proposed Rules for banks is the ongoing reporting requirement. The regulatory agencies are already specifically examining the incentive compensation practices of banks and enforcing the Guidance. This means that, consistent with Dodd-Frank Act, banks already are required to disclose to their appropriate Federal regulators the structure of their incentive-based compensation arrangements sufficient to allow such regulators to determine whether the structure provides excessive compensation, fees or benefits or could lead to material financial loss to the banks. We do not believe that a separate annual written report of the bank's incentive compensation arrangements, policies and procedures, and risk analysis will lead to better understanding and oversight than having the examiners inside the bank looking at the arrangements and talking about them with management. This is unnecessary paperwork, and again, draws valuable administrative time away from the important issues facing these banks. We again suggest letting implementation and enforcement of the Guidance run its course before deciding whether additional process is needed. If the Proposed Rules are enacted, we suggest letting the banking regulators examine compliance with the Proposed Rules along with the Guidance. If it is decided that annual reporting is necessary, we certainly believe the Proposed Rules should provide for streamlined electronic reporting. Reporting and other communications with Treasury under CPP take place exclusively by email, which improves efficiency. We have seen no concerns raised about this process.

We are very opposed to the prohibition in the Proposed Rules on incentive compensation that encourages inappropriate risks by providing "excessive compensation." According to the Proposed Rules, an incentive compensation arrangement provides excessive compensation "when amounts paid are unreasonable or disproportionate to the services performed . . . taking

into consideration" a variety of factors, such as compensation paid by competitors, as well as "other factors" the regulators determine to be relevant. This is an important and detrimental component of the Proposed Rules. We are opposed to any provision that dictates or could be interpreted to dictate the specific amount of compensation that a particular organization should pay in order to bring and retain in a specific employee. The free market, not the government, should be determining appropriate levels of compensation. The underpinning of the Proposed Rules and Guidance (and CPP for that matter) is to ensure that financial institutions do not use incentives that encourage unduly risky behavior to maximize short term personal gain. Therefore, the focus of any regulation of compensation should be on how incentives are structured, not how much an employee receives in the end. If an employee makes so much money that it fundamentally threatens the safety and soundness of the bank, the regulators already have the power to address the threat. As a secondary concern, the prohibition states that regulators in assessing "excessive compensation" can take into account any "other factors" the regulators believe are relevant. Given the significance of the prohibition on "excessive compensation", this undefined, open ended term provides the regulators too much power to arbitrarily set compensation levels.

All provisions that provide bright-line rules for incentive compensation should also be removed from the Proposed Rules. For example, we oppose the requirement imposed on larger covered institutions that at least 50% of incentive based compensation of an executive officer would have to be deferred for at least three years, and that deferred amounts paid must be adjusted for actual losses of the financial institutions or other aspects of performance that are realized or become better known during the deferral period. Although these risk management steps may be appropriate for some institutions, other institutions may prefer different but equally effective risk management steps. Imposing these requirements could mean that a bank will be less attractive to top executives, even when these risk management steps may not be needed to manage the risk that this particular executive position poses for this particular bank. The Proposed Rules should approach incentive compensation through a set of principles, as the Guidance does, and not create one-size-fits-all compensation practices that are imposed uniformly on all covered institutions.

Each bank is unique. What a bank should pay to an employee depends on the size, complexity and current needs of the bank, the skills of the employee, the geographic region, conditions in the market, the future business plan, and the competitive landscape (and banks do not just compete with other banks for top talent). Bank directors and management are in the best position to analyze the bank's employment needs and the appropriate compensation for attracting and retaining desired employees. If we impose too many restrictions on a bank's ability to compensate its employees, top talent will choose to work in other industries. It is to all of our advantage to let the banks compete on even footing with other companies for executives and employees. The Guidance seeks a balance between risk management and the need for companies to make their own determination regarding how to attract and retain employees. The Proposed Rules impose too many restrictions on compensation.

We believe the Proposed Rules should exempt FDIC-insured financial institutions, at least those under the $50 billion threshold which are identified in the Proposed Rules as "larger", until we see how application and enforcement of the Guidance plays out. We believe the Guidance will accomplish the goal of managing the risks posed by incentive compensation. We believe the Proposed Rules will impose an unnecessary additional burden on banks and draw resources and staff away from the other issues facing banks these days, with no corresponding improvement in oversight or risk management. We believe adopting the Guidance without additional requirements as the formal rules applicable to banks would satisfy the Congressional

directive in section 956 of the Dodd-Frank Act. If it is determined that additional incentive compensation rules are warranted for banks at this time, we strongly recommend removing any uniform rigid requirements (such as the deferral requirements), the prohibition on "excessive compensation" as determined by the regulators in their sole discretion, and the reporting obligations.

Once again, WBA appreciates the opportunity to comment on the Agencies' proposal.

Sincerely,

Rose M. Oswald Poels
Interim President/CEO