AMERICA'S MUTUAL BANKS
701 8TH STREET NW, SUITE 700. WASHINGTON, D.C. 20001

May 31, 2011

By E-mail: regs.comments@occ.treas.gov

Office of the Comptroller of the Currency
250 E. Street, SW., Mail Stop 2-3
Washington, DC 20219

Re: Docket ID. OCC-2011-0001

By E-mail: comments@FDIC.gov

Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 200429
Attn: Robert E. Feldman, Executive Secretary

Re: RIN 3064-AD56

By E-mail: regs.comments@ots.treas.gov

Office of Thrift Supervision
1700 G Street, NW.
Washington, DC 20552
Attn: Regulation Comments, Chief Counsel's Office

Re: Docket No. OTS-2011-0004

By E-mail: regs.comments@federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
Attn: Jennifer J. Johnson , Secretary

Re: Docket No. R–1410

To Whom It May Concern,

America's Mutual Banks ("AMB") appreciates the opportunity to comment on the above proposal. AMB is a coalition of state- and federally-chartered mutual financial institutions, including some state-chartered members of the Federal Reserve Board and mutual holding companies with no public stockholders, located throughout the United States. Therefore, AMB's members are regulated by all of the agencies above (the "Agencies"). AMB submits this letter in response to the request for comments made by the Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS") the National Credit Union Administration (the "NCUA"), the US Securities and Exchange Commission (the "SEC") and the Federal Housing Finance Agency (the "FHFA") on the notice of proposed rulemaking (the "Proposed Rule") regarding rules relating to incentive-based compensation arrangements to implement Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act").

AMB was formed for the purpose of advocating for issues unique to mutual savings institutions. We are composed of persons and institutions who are committed to the preservation and advancement of mutuality as a viable business model for FDIC depository institutions. Our goal is to be the voice to promote the mutual agenda among Federal and State legislators, regulators and other policymakers. Another major goal is to educate legislators, regulators and other stakeholders on the unique attributes of the mutual form of ownership. We strive to preserve a mutual institution's freedom of choice with respect to Federal or State charter and form of corporate charter. Most importantly, AMB operates on the basis of inclusivity and represents the interests of mutuals regardless of charter, location or size.

AMB's areas of concern are only on those issues which uniquely effect mutual financial institutions. We defer to our national and state trade groups in areas of general industry concern. Our members are sensing that the playing field is increasingly tilting in an unfair direction While not intentional, the actions taken by Congress and the regulators risk putting mutuals in a position of disadvantage. We believe the Proposed Rule does not demonstrate a particular understanding of the mutual savings institution form of organization. It is one of several examples of agencies not adequately considering the peculiar structure of mutual financial institutions in the crush of Dodd-Frank implementing rules.

The Proposed Rule would require the reporting of incentive-based compensation arrangements by a covered financial institution and prohibit incentive-based compensation arrangements at a covered financial institution that provide excessive compensation or that could expose the institution to inappropriate risks that could lead to material financial loss.[1] The Act and the Proposed Rule define "covered financial institution" to include financial institutions with more than $1 billion in assets.[2]

[1] 76 FR 21170.(April 14, 2011).
[2] 12 USC 5641.

However, as stated in the Notice, the proposed rule cannot be read in a vacuum. In particular, last summer shortly before passage of the Act, the Agencies issued interagency guidance to ensure that incentive compensation arrangements at financial organizations take into account risk and are consistent with safe and sound practices (the "Guidance").[3] Unlike the Proposed Rule, the Guidance applies to all financial institutions, regardless of asset size.

The Guidance and the Proposed Rule deal with similar issues relating to incentive-based compensation. This creates potential confusion for financial institutions, especially mutual financial institutions. While the majority of mutual financial institutions are under $1 billion in assets, approximately 35 mutuals have more than $1 billion in assets and will be covered by the Proposed Rule. Of even more concern to our members is the likelihood that many of the principals and requirements of the Proposed Rule will be incorporated by the Agencies' staff to financial institutions under $1 billion in assets in their application of the supervisory process and the Guidance. This is a particular concern to mutual financial institutions in that the neither the Proposed Rule nor the preamble mention mutual savings institutions. This unfortunate omission causes AMB members concern that the principles and practices adopted by the supervisory staff at the Agencies will not be appropriate for mutuals but instead be applied as if they were organized as stock companies. This "one-size-fits-all" concern is particularly acute because of the elimination of the only federal regulator with extensive nationwide mutual institution regulatory experience. Furthermore, there is no basis to believe that the current pay practices at mutual financial institutions have led to excessive risk-taking, as only approximately 12 mutuals have failed during the current financial crisis as compared to over 350 stock financial institutions. Further regulation of mutuals' pay practices is unnecessary and unfairly burdensome to institutions that have proven their safety and soundness during the worst financial crisis since the Great Depression. It is imperative that the Agencies signal their lack of concern as to mutual pay practices in general and afford relief from yet another burdensome new set of rules motivated by the abuses of institutions that have nothing in common with mutual community banks.

We are principally concerned with the provisions of the Proposed Rule dealing with prohibitions on excessive compensation. The Proposed Rule includes standards for determining whether an incentive-based compensation arrangement provides excessive compensation that are comparable to, and based on, the standards established under section 39 of the FDIA, as required by the Act.[4] Many of the factors to be considered by the Agencies in evaluating excessive compensation are inapplicable to mutuals or unclear. For example, the Agencies must taken into account the combined value of all cash and non-cash benefits provided to the covered person.[5] Since mutuals do not issue stock to the public, they do not have stock-based, non-cash compensation. Will this lack of non-cash compensation be considered a negative? We of course believe that the form of compensation is important, but not determinative as to its value. With changes in accounting practices, stock benefits such as options and performance stock grants carry

[3] Guidance on Sound Compensation Policies, 75 CFR 36395 (June 25, 2010).
[4] 12 USC 5641.
[5] Section __.5(a)(ii)(1).

an expense. The Agencies must also take into account comparable compensation practices at comparable institutions.[6] Will mutuals be compared to similarly-sized stock institutions even though mutuals do not have the ability to issue stock to the public and often times board members and executive management of closely-held stock financial institutions can forego compensation since the reduced compensation is realized in increased stock value? Also, will mutuals have access to the compensation practices at comparable institutions? This has traditionally been a problem for mutuals since their compensation data is not publicly available in the same detail as public financial institutions. How will our members know what institutions and compensation practices the supervisory staff is using in the comparison? The Proposed Rule conspicuously omits the classification of the type of institution, such as a mutual, in determining comparability. Without a fully transparent process which includes providing the financial institution access to the information used in the compensation comparison, the process lacks accountability and there exists a potential for misapplication of data.

Though not directly related to the Proposed Rule, the Act requires that adoption of certain rules to all public companies regarding Say-on-Pay, Say-on-Golden Parachute, and Disclosure of Pay versus Performance.[7] As these rules are adopted, the pay practices of public companies, including public financial institutions will be transformed. It remains to be seen what utility these rules would have for financial institutions that are mutual in form. Mutual executive pay practices are subject to the rigorous oversight and scrutiny of their boards of directors. Unlike stock companies, there is no incentive for boards to adopt excessive pay practices in order to encourage management to "swing for the fences" (precisely the risk that the Agencies are attempting to minimize through the Proposed Rule). Mutual directors have no ownership stake that could be enhanced by such practices. There is no benefit and only liability for mutual directors that fail to exercise proper oversight over executive pay practices. We request that the Agencies specifically affirm that these provisions and rules will not be applied to mutuals through the use of "supervisory discretion" in the exam process.

The Proposed Rule and the Guidance both serve to underscore the new level of importance that lawmakers and regulators place on sound compensation practices for financial institutions. While compensation has always been an important matter to the regulators, the Proposed Rule and the Guidance take regulatory oversight of compensation to new heights, particularly for banks that are otherwise well capitalized and well managed. In particular, the new regulatory regime will apply to all banks, whether troubled or not, whether mutual or stock, whether public or not, and regardless of size. The Proposed Rule will have a profound impact on all compensation, including cash and stock benefit plans, retirement plans and employment contracts. It is important that the Agencies recognize the unique structure of mutuals and further clarify the Proposed Rule's application to mutuals. Likewise, it is important that the Agencies specify that the Proposed Rule will not be applied to financial institutions under $1 billion through the supervisory process whether by acknowledging this in the preamble to the final rule or in public examination guidance. Unfortunately, too often the experience

[6] Section __.5(a)(ii)(4).
[7] Section 951 of the Act.

of mutual community banks has been that rules directed at large financial institutions become tomorrow's "best practices" for mutual community banks.

AMB is prepared to provide the staff of each Agency with further detail as to how the application of the Proposed Rule can be improved and made more relevant to mutuals. If you have any questions, please do not hesitate to contact me at 504-569-3441 or Douglas Faucette at 202-220-6961.

Best Regards,

Alton K. McRee
Chairman
America's Mutual Banks
www.americasmutualbanks.com