FinReg
Davis Polk Insights on Financial Regulation

Bank Pay Rules May Be Resurrected

By Kyoko Takahashi Lin, Margaret E. Tahyar, Veronica M. Wissel & Tyler Senackerib on March 12, 2019

POSTED IN DODD-FRANK, EXECUTIVE COMPENSATION, FDIC, FEDERAL RESERVE, OCC, PROPOSED RULE

U.S. federal banking regulators plan to revive efforts to regulate financial institution incentive compensation, as required under Section 956 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**). The Wall Street Journal **reports** that the current effort is in its "early stages" and is being led by "top officials" of at least the Federal Reserve, the FDIC and the OCC. The article notes, "spokesmen for the Fed and OCC said their agencies are committed to finishing the incentive-compensation rule. An FDIC spokesman declined to comment." In addition to the Federal Reserve, the FDIC and the OCC, the SEC, the National Credit Union Administration and the Federal Housing Finance Agency (collectively, the **Agencies**) would have a vote on any new proposal.

The Wall Street Journal has suggested that discussions are being had at this time in order to finalize a rule under the current administration, in an effort to preempt the possibility of an even more onerous rule going into effect if the Democrats take control of the White House after the 2020 Presidential elections. A final rule on this topic is required under the Dodd-Frank Act.[1]

The latest proposed rule dates from the spring of 2016.[2] We are republishing our 2016 visual memo for those who would like a refresher, available **here**. There is a one-page cheat sheet on page six. An obvious question is the extent to which any re-proposal would, in light of the Economic Growth, Regulatory Relief and Consumer Protection Act (**EGRRCPA**), change the asset thresholds at which the rule requirements would apply. We expect that the asset thresholds would be change in some way, although it is unclear how.

The 2016 re-proposed rule would apply basic requirements to all institutions with $1 billion or more in total consolidated assets and was quite prescriptive for banking institutions with total consolidated assets of $50 billion or more, with additional requirements for banking institutions with total consolidated assets of $250 billion or more. For institutions with total consolidated assets of $50 billion or more, it would require:

- Mandatory deferrals of specified percentages of incentive compensation (as high as 60%, depending on the size of the institution and the affected employee), for up to four years (depending on the size of the institution and the nature of the compensation arrangement);
- A minimum clawback period of 7 years from the time of vesting of the incentive compensation; and
- An incentive compensation leverage factor capped at 125% for senior executive officers (and 150% for significant risk-takers).

We will continue to monitor these developments and provide an update on any such developments.

---

[1] Dodd-Frank Act, Pub. L. No. 111-203, § 956, 124 Stat. 1376, 1905 (2010).

[2] A version of this rule was first proposed in 2011 and re-proposed in 2016.