

TARP Executive Compensation

Key Points:

- Applicable to recipients of TARP funds (e.g., Capital Purchase Program and Automotive program)
- Interim Final Rule effective June 15, 2009 supersedes all prior guidance as of June 15th; Final Rule expected in August 2009
- Special Master for TARP Executive Compensation appointed (Kenneth R. Feinberg) with role for institutions receiving Exceptional Assistance
- Contractual agreements remain in place if not superseded by the new rules (e.g., contracts limiting deduction for compensation to no more than \$500,000 are not inconsistent with the new rules and are still applicable even though the new rules don't expand the IRS Section 162(m)(5) rules)
- "Bonus" or "Incentive compensation" includes bonus, retention award and incentive compensation but excludes most commissions
- Guidelines for compensation plan reviews:
 - Limit features that could lead CEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient
 - Limit features in employee plans that pose risks to ensure the TARP recipient is not unnecessarily exposed to risks
 - Limit features in employee plans that would encourage behavior focused on short-term results rather than long-term value creation
 - Eliminate features that could encourage the manipulation of reported earnings of the TARP recipient to enhance employee compensation

What Entities are Subject to the Rules?

- "Any entity that has received or will receive financial assistance under the financial assistance provided under the TARP"
- "Will receive" is intended to cover insurance for future losses
- Generally lasts as long as financial assistance provided under TARP remains outstanding (other than warrants)
- Otherwise (e.g., in the case of insurance), through the last date of the TARP purchase authority (currently Dec 31, 2009, but may be extended to Oct 3, 2010)
- If an entity does not engage in financial transactions with Treasury as a counterparty, generally won't be considered "receiving financial assistance" (e.g., TALF borrowers not subject)

What Employees are Subject to the Rules?

- Senior Executive Officers (SEOs) based on SEC Item 402 of S-K definitions:
 - principal executive officer and principal financial officer
 - Next three most highly compensated executive officers
- Other highly compensated employees, depending on the specific rule
- "Potential" covered employees should comply with the standards
- Uses last fiscal year information

Compensation

- Compensation plans must satisfy guidelines
- Bonus limit (subject to existing written contracts dated before February 11, 2009):
 - Bonus may only be in the form of restricted stock
 - No more than 1/3 of annual compensation
 - May not fully vest while Treasury holds investment; vests proportionally to the repayment of the TARP investment
 - Covered employees based on \$ amount of Treasury investment:
 - Up to \$25 million: most highly compensated employee
 - \$25m or more but < \$250m: 5 most highly compensated employees
 - \$250m or more but < \$500m: CEOs and 10 next most highly compensated employees
 - \$500m +: CEOs and 20 next most highly compensated employees
- Previously accrued bonuses in excess of above amounts may not be paid while a TARP recipient
- Clawback:
 - Incentive compensation received during the time the rules apply, may be clawed-back at any time in the future, if received or accrued based on materially inaccurate (1) financial statements or (2) performance metric criteria
 - Applicable to CEOs and 20 most highly compensated employees

Luxury Expenditures

- Board to establish company-wide policy, file the policy with Treasury and post on website
- Address luxury and excessive expenditures and their approval process
- Examples: entertainment, events, office and facility renovations, aviation or other transportation services and other activities or events that are not reasonable expenditures for development or reward of performance
- Must post on website within 90 days of the later of June 15 or the TARP investment date

Golden Parachutes

- CEOs and 5 most highly compensated employees cannot accrue any golden parachute payments during TARP period
- Any payment for departure for any reason (other than payments for services performed or benefits accrued) or upon a change in control

Certifications

- CEO and CFO certify compliance with all rules to SEC (if public) or Treasury (if not public)

Say-on-Pay

- Shareholders have non-binding advisory vote on compensation included in disclosure provided for a meeting to elect directors

Compensation Committee

- Board must have compensation committee comprised solely of independent directors (unless private company and received \$25 million or less from TARP, then full board can act)
- Review and revise compensation plans based on guidelines
- Meet semi-annually with senior risk officers to align policy objectives and all compensation plans
- Annual description of its review and annual certification of review (in SEC filings and to Treasury; to Treasury only for smaller entities and non-public entities)

Special Master for Executive Compensation

- Exceptional Assistance (Targeted Investment Program, Auto Program)
 - Review and approve compensation structures for CEOs, most highly compensated employees subject to the bonus limitation and the compensation structures of all other executive officers and 100 most highly compensated employees
 - Safe Harbor (no review necessary) if compensation of non-CEO executive officers and highly compensated employees is limited to \$500,000 with additional compensation in long-term restricted stock
 - Disclose amount and nature of, and justification for, perks whose total value exceeds \$25,000 for any employee subject to the bonus limitation
 - Disclose if entity, board or compensation committee used a compensation consultant, all services in prior three years, and provide a justification for any benchmarks
 - No tax gross-ups or other tax reimbursements for CEOs and 20 most highly compensated employees for any form of compensation
- Advisory opinion available to TARP recipients not in Exceptional Assistance Programs upon request
- Will conduct review of compensation prior to February 17, 2009 to determine if reimbursements should be negotiated