

SUMMARY OF TARP STANDARDS
FOR
COMPENSATION AND CORPORATE GOVERNANCE

June 15, 2009

I. Introduction

The Department of Treasury's ("Treasury") release of an interim final rule¹ (official publication date June 15, 2009) pursuant to sections 101(a)(1), 101(c)(5), and 111 of the Emergency Economic Stabilization Act of 2008 ("EESA"), as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA"), provides much needed and anticipated regulatory guidance on the executive compensation restrictions that apply to those entities receiving financial assistance under the Troubled Asset Relief Program ("TARP").

Notably, the new regulations add several new executive compensation restrictions/requirements and have an immediate effective date.

Treasury will solicit comments for 60 days on the new regulations. This summary is subject to change pending Treasury's receipt of comments and finalization of the regulations.

Last week, Treasury also issued several "fact" sheets describing the way in which executive compensation will be determined for public companies, including TARP participants. The proposals outline forthcoming legislation requiring mandatory shareholder "say on pay" votes with respect to executive compensation as well as authorization for the Securities and Exchange Commission to require compensation committees to meet heightened independence requirements.

II. Application of the Executive Compensation Restrictions

The executive compensation requirements set forth under the regulations apply to all TARP recipients ("any entity that has received or will receive financial assistance under the financial assistance provided under the TARP). EESA section 111(a)(3)).

- Note that entities posting collateral to and receiving loans from the Federal Reserve Term Asset-Backed Securities Loan Facility (TALF) are not receiving "financial assistance provided under the TARP" and are not TARP recipients.

The restrictions also generally apply to any entity of which the TARP recipient owns at least 50%, or which owns at least 50% of the TARP recipient. Section 30.1 (Q-1). These restrictions also may apply to a related entity if the primary purpose for the creation or utilization of such entity is to avoid or evade some or all of the compensation restrictions. Section 30.1 (Q-1).

- These requirements generally apply for the period during which any obligation arising from financial assistance under the TARP remains outstanding, except the period during which the federal government only holds warrants to purchase common stock of the TARP recipient. *See* definition of "TARP Period." Section 30.1 (Q-1).

¹ Section references are to the Interim Final Rule "TARP Standards for Compensation and Corporate Governance" (Federal Register, Vol. 74, Number 113, June 15, 2009), 31 CFR Part 30.

A. *Senior Executive Officer (“SEO”) Determination*

The determination of SEOs (and most highly compensated employees) is based on the executive compensation disclosure requirements in Item 402 of Regulation S-K under the federal securities laws. SEO is defined to include the PEO, the PFO, and the three most highly compensated executive officers (other than the PEO and the PFO). Section 30.1 (Q-1).

The compensation of the 3 most highly compensated executive officers is based on annual reportable compensation for the last completed fiscal year (and defines annual compensation pursuant to Item 402(a) of Regulation S-K).

Reportable compensation is intended to reflect the “economic reality” of compensation earned rather than on includible compensation as reported for income tax purposes. Thus, compensation will reflect currently received amounts as well as the value of stock options and deferred salary/bonuses.

- For purposes of the TARP compensation restrictions, the use of the term “most highly compensated employee” includes an employee who is not an executive officer. (The regulations do not limit application of the requirements to executive officers because ARRA’s statutory language refers to most highly compensated employees, rather than most highly compensated executive officers).

The compensation for the most highly compensated employees is calculated in the same manner as for the 3 most highly compensated executive officers.

Note that a most highly compensated employee does not include an employee who is not employed on the first day of the fiscal year for which the determination is being made.

- Smaller reporting companies (as defined in Item 10 of Regulation S-K) must identify five SEOs, even if only three named executive officers are required to be identified pursuant to Item 402(m) of Regulation S-K. TARP recipients that do not have securities registered with the SEC pursuant to the federal securities laws must identify five SEOs in a similar fashion to the rules described above. Section 30.1 (Q-1).

III. **Executive Compensation Restrictions**

A. *Clawback*

TARP recipients must ensure that “any bonus, retention award, or incentive compensation” paid or accrued to an SEO or one of the next twenty most highly compensated employees is subject to recovery or “clawback” if the payments or accruals were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria. EESA Section 111(b)(3)(B), Section 30.8(Q-8).

- Bonuses, retention awards, and incentive compensation are paid or accrued to a SEO or any one of the next twenty most highly compensated employees during the TARP period when the SEO or one of the next twenty most highly

compensated employees obtains a legally binding right to that payment during the TARP period.

Note, in contrast to the more limited Sarbanes Oxley clawback provision (section 304), the TARP clawback –

- applies to the three most highly compensated executive officers and the next twenty most highly compensated employees in addition to the PEO and the PFO;
- applies to both public and private TARP recipients;
- applies to retention awards;
- is not exclusively triggered by a requirement to prepare an accounting restatement due to material noncompliance of the issuer as a result of misconduct;
- does not limit the recovery period;
- and covers not only material inaccuracies relating to financial reporting but also material inaccuracies relating to other performance metrics used to calculate bonus payments.

Section 30.8 (Q-8).

B. Golden Parachute

TARP recipients are prohibited from making any golden parachute payment to a CEO or the next five most highly compensated employees during the TARP period. EESA Section 111(b)(3)(C), Section 30.9 (Q-9).

- A “golden parachute payment” is defined as a payment for departure from a TARP recipient for any reason, other than a payment for services performed or benefits accrued.

The regulations clarify that a golden parachute payment also includes any payment due upon a change in control event of the TARP recipient (without regard to separation from service/departure).

Golden parachute payments do not include –

- qualified retirement plans payments/distributions
- payments due to an employee’s death or disability
- severance payments required by state statute or foreign law.

Section 30.9 (Q-9).

Note, a golden parachute payment is treated as paid at the time of the employee’s departure or upon the change of control event, regardless of when the amount is actually paid. TARP

recipients may not avoid the restriction by deferring payment of a golden parachute payment past the end of the TARP period.

C. Bonus, Incentive Compensation, Retention Award Limitation

TARP recipients are prohibited from paying or accruing any bonus, retention award, or incentive compensation during the TARP period to certain employees. EESA Section 111(b)(3)(D), Section 30.10 (Q-10).

The amount of financial assistance received determines the number of employees subject to this prohibition as follows –

- less than \$25,000,000 - applies only to the most highly compensated employee (determined without regard to title or executive officer status)
- at least \$25,000,000 but less than \$250,000,000 - applies to at least the five most highly compensated employees (determined without regard to title or executive officer status)
- at least \$250,000,000 but less than \$500,000,000 – applies to the CEOs and at least the ten next most highly compensated employees (determined without regard to title or executive officer status)
- \$500,000,000 or more – applies to the CEOs and at least the twenty next most highly compensated employees (determined without regard to title or executive officer status).

Note, the bonus limitations are based on the total amount of financial assistance outstanding under the TARP - if additional financial assistance would result in additional employees becoming subject to the prohibition, the prohibition on the additional employees will not be effective until the fiscal year following the year during which the additional financial assistance is received. See Section 30.10 (Q-10)

“Bonus, incentive compensation or retention award” is defined to mean any payment in addition to any amount payable to an employee for services performed by the employee at a regular hourly, daily, weekly, monthly or other periodic rate. Whether a payment (or a right to a payment) is a bonus payment is based upon all the facts and circumstances, and a payment may be a bonus payment regardless of the characterization of such payment by the TARP recipient or the employee.

A bonus may include –

- a contribution to, or other increase in benefits under, a nonqualified deferred compensation plan (regardless of when payment will be made)
- the forgiveness of a loan or other amount that otherwise may be required to be paid by the employee to the employer.

A bonus does not include –

- contributions to ERISA qualified plans
- benefits under a broad-based benefit plan
- bona fide overtime pay
- business expense reimbursements.

Commission Compensation is not a bonus if the rate of commission is pre-established and reasonable, and is applied consistently to the sale of substantially similar goods or services.

1. *Bonus Accrual*

Bonus payments may not be simply delayed until after the employee is no longer subject to the bonus prohibition or granting retroactive service credit after the employee is no longer subject to the prohibition. If, after the bonus prohibition goes away, an employee is paid an amount, or provided a legally binding right to the payment of an amount, based upon services performed or compensation received during the period the employee was subject to the bonus prohibition, the employee will be treated as having accrued a bonus in violation of the prohibition.

- Note, certain bonus, retention or incentive compensation that is earned over multiple years can be credited and carried forward during the bonus prohibition period provided that no additional benefit is accrued while bonuses are prohibited and the credited amount is not paid until the bonus prohibition is lifted.
 - For example, assume a retention bonus of \$50,000 that is earned/accrued after 5 years of continuous service. Exec. A has two years of service at time of TARP assistance. TARP Period (and bonus prohibition applicable to Exec A) runs for three years during which time Exec A continues his employment. When bonus prohibition is lifted following year 3, Employer could pay Exec A \$20,000 (2/5ths of bonus credited/earned prior to bonus prohibition). *Note that it is not clear whether or not Employer could credit interest or other investment return on the \$20,000 retention amount during the bonus prohibition.

A bonus, a retention award, or incentive compensation that an employee accrues while the employee is not subject to the bonus prohibition but becomes payable at a time when the employee is subject to the bonus prohibition, may not be paid until the employee is not subject to the bonus prohibition.

2. *Commissions*

Commissions are outside of the bonus prohibition provided that –

- a substantial portion of the services provided by the employee are direct sales of a product or service to unrelated customers in the ordinary course of business of the TARP recipient,

- the amount paid to the employee represents a portion of the purchase price for the product or service sold or an amount substantially all of which is calculated by reference to the volume of sales, and
- they are consistent with a program in existence for that type of employee as of February 17, 2009

Commissions on brokerage sales of financial products or other direct customer services with respect to unrelated customer assets/asset accounts are outside the bonus prohibition provided that such assets are intended to be held indefinitely, the customer retains the right to terminate the customer relationship and may move or liquidate the assets or asset accounts without undue delay, the compensation consists of a portion of the value of the unrelated customer's overall assets/asset account balance, an amount substantially all of which is calculated by reference to the increase in the value of the overall assets or account balance during a specified period.

- Thus, commissions earned by registered representatives, investment advisors, and agents of a TARP recipient's broker-dealer, investment advisory, and insurance divisions ordinarily will be permissible without regard to the bonus prohibition. However, fees earned from sales to entities within the affiliated group, investment banking, or proprietary trading would not be commission compensation excluded from the definition of a bonus/incentive compensation. Similarly, commissions earned on mortgage originations would not appear to be excluded from the definition of bonus/incentive compensation.

3. *Incentive Compensation*

Incentive compensation (within the meaning of the bonus prohibition) is defined to include –

- Compensation plans/arrangements intended to serve as an incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the TARP recipient (or an affiliate), its stock price, or any other performance measure (Item 402(a)(6)(iii) of Regulation S-K).
- Stock and stock option plans/arrangements (Item 402(a)(6)(i) of Regulation S-K)
- Other equity-based compensation such as restricted stock units or stock appreciation rights.

Incentive compensation does not include an arrangement under which an employee receives employer stock (or other permissible payment in property) provided that such stock –

- Is vested (i.e. not subject to a substantial risk of forfeiture or other required future service),
- The amount of the payment is determinable as a dollar amount through the date such compensation is earned, and

- The stock accrues at the same time or rate as the salary or other permissible payments would if paid in cash.

Note that permissible stock payments may be subject to holding periods or transferability restrictions, such as not permitting the stock to be transferred for a specified number of years, until a specified event occurs (such as the employee's retirement, or a specified number of years after an employee's retirement or other termination of employment), or until certain TARP fund repayment hurdles are met. The same analysis applies to a grant of a stock unit (such as phantom stock or a restricted stock unit) with similar characteristics to a vested stock grant in lieu of cash salary.

4. *Retention Awards*

A retention award is defined as any payment that is –

- Not payable periodically for service performed by an employee at a regular hourly, daily, weekly, monthly, or similar periodic rate,
 - Is contingent on the completion of future services with the TARP recipient (or the completion of a specific project or other activity of the TARP recipient), and
 - Is not based on the performance of the employee (other than a requirement that the employee not be separated from employment for cause) or the business activities or value of the TARP recipient.
- Note that retention awards include certain sign-on and “make whole” awards to new hires.

Retention awards do not include –

- Contributions to or payments made from a qualified retirement plan,
- A payment from a benefit plan
- Payment of a fringe benefit
- Overtime pay
- Reasonable expense reimbursement
- Amounts accrued under a nonqualified deferred compensation plan, to the extent the amounts are accrued in the normal course of the employee's service at the TARP recipient and are not accrued by reason of a material enhancement of such benefits.

IV. Corporate Governance/Review

A. *Compensation Committee Creation and Review*

Pursuant to EESA Sections 111(b)(3)(A), 111(b)(3)(E), and 111(b)(3)(F), TARP recipients are required to establish a compensation committee composed of independent members of the board of directors before the later of ninety (90) days after the closing date of the agreement between Treasury and the TARP recipient or ninety (90) days after publication of this Interim Final Rule. Sections 30.1 (Q-1), 30.4 (Q-4).

TARP recipients without securities registered pursuant to the Securities Exchange Act that receive \$25,000,000 or less in TARP assistance to (i) establish a compensation committee of independent directors or (ii) delegate, as appropriate, to the board of directors the duties of the compensation committee as described below. Section 30.4 (Q-4).

At least once every six months compensation committee is required to discuss, evaluate, and review with its senior risk officers, the Company's SEO compensation plans and employee compensation plans and the risks these plans pose to the TARP recipient. Section 30.5 (Q-5).

As part of its review, the committee must identify and limit any features in its -

- SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the company
- Employee compensation plans that pose risks to the company to ensure that it is not unnecessarily exposed to risks
- SEO and employee compensation plans that would encourage behavior focused on short-term results rather than long-term value creation
- Employee compensation plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee.

Section 30.5 (Q-6).

On an annual basis, the compensation committee must prepare a narrative description of how it limited the risks described above (unnecessary and excessive risks, behavior focused on short-term results, unnecessarily being exposed to risk and encouraging manipulation of reported earnings). The compensation committee must certify that it has completed the reviews of the SEO compensation plans and the employee compensation plans as outlined above. Sections 30.4 (Q-4) and 30.7 (Q-7).

- SEC-registered TARP recipients must provide the above disclosures and certifications in the Compensation Committee Report required pursuant to Item 407 of Regulation S-K under the federal securities laws (17 CFR 229.407) and to Treasury. Smaller reporting companies (or those that do not have securities registered with the SEC pursuant to the federal securities laws) must provide the disclosures and certifications to their primary regulatory agency and to Treasury.

- See Appendix A for the “model” annual certification set forth in the regulations.

B. NEW Executive Compensation Restrictions

Pursuant to statutory authority, the Treasury Secretary is authorized to establish additional executive compensation and corporate governance standards. EESA Sections 111(h), 111(b)(2). Pursuant to that authority, the regulations set forth four additional standards not set forth in the statute.

1. Compensation review for entities receiving exceptional financial assistance (“EFF”)

Exception financial assistance is defined to include any financial assistance provided under the Programs for Systemically Significant Failing Institutions, the Targeted Investment Program, the Automotive Industry Financing Program, and any new program designated by the Secretary as providing exceptional financial assistance.

TARP recipients receiving EFF must submit the compensation payments and compensation structures of the CEO and most highly compensated employees subject to the bonus payment limitation, and the compensation structures of all other executive officers and the 100 most highly compensated employees, for approval by the Office of the Special Master for TARP Executive Compensation. Section 30.11(a) (Q-11).

- However, if a TARP recipient receiving EFF agrees to limit the annual compensation for any executive who is not a CEO or a most highly compensated employee subject to the bonus limitation provision to a maximum of \$500,000 annually (excluding long-term restricted stock awards), the compensation structure is not required to be submitted to the Special Master for approval.

2. Annual “Perk” Disclosure

A TARP recipient is required to disclose to Treasury and its primary federal regulator on an annual basis perquisites with a total value over \$25,000 for any employee who is subject to the bonus prohibition. Section 30.11(b) (Q-11). Such disclosure must identify the amount and nature of the perquisites and disclose a justification for offering these perquisites.

- Note, existing federal securities regulations require public companies only to identify for any of the top five executive officers or members of the boards of directors the type of perquisite if the total value of all perquisites exceeds \$10,000 for an individual officer or director; and the value of any perquisite if the value exceeds the greater of \$25,000 or 10% of the total amount of perquisites for an individual officer or director.

3. Annual Compensation Consultant Disclosure

On an annual basis, a TARP recipient is required to disclose to Treasury and its primary federal regulator whether it (the board, or the compensation committee) has engaged a compensation consultant and must indicate the types of services the compensation consultant or any of its affiliates has provided during the past three years, including any “benchmarking” or comparisons employed to identify certain percentile levels of compensation (for example, other peer group companies used for benchmarking and a justification for using these companies, and the lowest percentile level of other companies’ employee compensation considered for compensation proposals). Section 30.11(c) (Q-11).

4. *Prohibition on Tax Gross-Ups*

TARP recipients are prohibited from providing tax gross-ups or other reimbursements for the payment of taxes to CEOs and next twenty most highly compensated employees relating to severance payments, perquisites, or any other form of compensation. Section 30.11(d) (Q-11).

- Note, existing federal securities regulations only require public companies to disclose gross-ups.

C. *Office of the Special Master for TARP Executive Compensation*

The regulations establish an Office of the Special Master for TARP Executive Compensation (Special Master) intended to conduct compensation reviews and to ensure that the compensation rules are applied consistently and equitably. Section 30.16 (Q-16).

The Special Master is appointed by, and serves at the pleasure of, the Treasury Secretary. The scope of the Special Master’s authority and responsibility is limited to compensation and corporate governance matters under EESA Section 111 with respect to TARP recipients.

The Treasury Secretary has delegated to the Special Master the authority to –

1. Interpret the application of the restrictions on executive compensation and corporate governance requirements for TARP recipient employees under EESA, these regulations, and any other applicable guidance, to specific facts and circumstances;
2. Review bonuses, retention awards, and other compensation paid before February 17, 2009 to employees of each entity receiving TARP assistance, to determine whether any such payments were inconsistent with the purposes of EESA section 111 or the TARP, or otherwise contrary to the public interest, and which further requires that, if the Secretary makes such a determination, the Secretary seek to negotiate with the TARP recipient and the employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses;
3. Approve compensation payments to, and compensation structures for, certain employees of TARP recipients receiving EFF;

4. Provide opinions, as requested or otherwise as appropriate, regarding payments to, or compensation structures for, other employees of TARP recipients; and
5. Perform such other duties as the Treasury Secretary may delegate from time to time.

Section 30.16 (Q-16).

D. Excessive or Luxury Expenditure Policy

TARP recipients are required to adopt an excessive or luxury expenditures policy by the later of ninety days after the closing date of their agreement with Treasury or 90 days after publication of the regulations. EESA Section 111(d) and Section 30.12 (Q-12).

The board of directors must formally adopt and provide the policy to Treasury and its primary regulatory agency.

- If the Company maintains a company website, it is required to post the text of the policy on its website.

Following adoption of the policy, the TARP recipient must maintain the policy during the remaining TARP period. Material amendments to the policy must be disclosed within ninety days of adoption by the board.

An “excessive or luxury expenditure policy” refers to written standards applicable to the company’s employees that address the four categories of expenses (entertainment or events, office and facility renovations, aviation or other transportation services, and other similar items, activities or events), and that are reasonably designed to eliminate excessive and luxury expenditures. Such expenditures must be reasonable expenditures for staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the company’s business operations.

Such written standards must –

1. Identify the types or categories of expenditures which are prohibited (which may include a threshold expenditure amount per item, activity, or event or a threshold expenditure amount per employee receiving the item or participating in the activity or event)
2. Identify the types or categories of expenditures for which prior approval is required (which may include a threshold expenditure amount per item, activity, or event or a threshold expenditure amount per employee receiving the item or participating in the activity or event)
3. Provide reasonable approval procedures under which an expenditure requiring prior approval may be approved
4. Require PEO and PFO certification that the approval of any expenditure requiring the prior approval of any SEO, any executive officer of a substantially similar level of responsibility, or the TARP recipient’s board of directors (or a

committee of such board of directors), was properly obtained with respect to each such expenditure

5. Require the prompt internal reporting of violations to an appropriate person or persons identified in this policy, and
6. Mandate accountability for adherence to this policy.

Sections 30.1 (Q-1), 30.12 (Q-12).

E. Shareholder Vote (“Say on Pay”)

TARP recipients must permit a separate shareholder vote to approve the compensation of its executives, as required to be disclosed pursuant to the federal securities laws (including the compensation discussion and analysis, the compensation tables, and any related material) in any proxy or consent or authorization for an annual or other meeting of the shareholders which occurs during the TARP period. EESA Section 111(d) and Section 30.13 (Q-13).

- To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC for such proxy votes.

In connection with most acquisitions of a TARP recipient (target) by an unrelated entity (acquiror), an acquiror typically will not become subject to the executive compensation restrictions discussed herein. However, an anti-abuse rule may trigger a redetermination of the SEOs and applicability of the executive compensation restrictions discussed herein if the primary purpose of a transaction involving the acquisition, in any form, of a TARP recipient is to avoid or evade the application of any of these executive compensation requirements.

V. Conclusion

The new regulations generally should be well received by existing TARP recipients that have been struggling to comply with certain of EESA’s executive compensation restrictions. While the new rules do not address all of the open question TARP recipients have under these sweeping restrictions, the rules do address a number of key areas including treatment of commissions and multi-year bonuses, calculation of compensation for SEOs and the full scope of “most highly compensated employees.”

More troubling under the new rules is the inclusion of four new restrictions/limitations including compensation consultant and “perks” disclosures, a tax gross up prohibition and compensation review for entities receiving exceptional financial assistance.

TARP participants should begin the process of reviewing existing compensatory policies and guidelines to ensure compliance with the new rules.

APPENDIX A

Appendix B to § 30.15

Model Certification for Years Following First Fiscal Year Certification

“I, [identify certifying individual], certify, based on my knowledge, that:

(i) The compensation committee of [identify TARP recipient] has discussed, reviewed, and evaluated with senior risk officers at least every six months during any part of the most recently completed fiscal year that was a TARP period, senior executive officer (SEO) compensation plans and employee compensation plans and the risks these plans pose to [identify TARP recipient].;

(ii) The compensation committee of [identify TARP recipient] has identified and limited during any part of the most recently completed fiscal year that was a TARP period the features in the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient] and identified any features in the employee compensation plans that pose risks to [identify TARP recipient] and limited those features to ensure that [identify TARP recipient] is not unnecessarily exposed to risks;

(iii) The compensation committee has reviewed at least every six months during any part of the most recently completed fiscal year that was a TARP period the terms of each employee compensation plan and identified the features in the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee and has limited these features that would encourage the manipulation of reported earnings of [identify TARP recipient];

(iv) The compensation committee of [identify TARP recipient] will certify to the reviews of the SEO compensation plans and employee compensation plans required under (i) and (iii) above;

(v) The compensation committee of [identify TARP recipient] will provide a narrative description of how it limited during any part of the most recently completed fiscal year that was a TARP period the features in

(A) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient];

(B) Employee compensation plans that unnecessarily expose [identify TARP recipient] to risks; and

(C) Employee compensation plans that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee;

(vi) [Identify TARP recipient] has required that bonus payments to SEOs or any of the next twenty most highly compensated employees, as defined in the regulations and guidance established under section 111 of EESA (bonus payments), be subject to a recovery or “clawback” provision during any part of the most recently completed fiscal year that was a TARP period if the bonus payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria;

(vii) [Identify TARP recipient] has prohibited any golden parachute payment, as defined in the regulations and guidance established under section 111 of EESA, to a SEO or any of the next five most highly compensated employees during any part of the most recently completed fiscal year that was a TARP period;

(viii) [Identify TARP recipient] has limited bonus payments to its applicable employees in accordance with section 111 of EESA and the regulations and guidance established thereunder during any part of the most recently completed fiscal year that was a TARP period [*for recipients of exceptional assistance*: and has received or is in the process of receiving approvals from the Office of the Special Master for TARP Executive Compensation for compensation payments and structures as required under the regulations and guidance established under section 111 of EESA, and has not made any payments inconsistent with those approved payments and structures];

(ix) [Identify TARP recipient] and its employees have complied with the excessive or luxury expenditures policy, as defined in the regulations and guidance established under section 111 of EESA, during any part of the most recently completed fiscal year that was a TARP period, and that any expenses requiring approval of the board of directors, a committee of the board of directors, an SEO, or an executive officer with a similar level of responsibility, were properly approved;

(x) [Identify TARP recipient] will permit a non-binding shareholder resolution in compliance with any applicable federal securities rules and regulations on the disclosures provided under the federal securities laws related to CEO compensation paid or accrued during any part of the most recently completed fiscal year that was a TARP period;

(xi) [Identify TARP recipient] will disclose the amount, nature, and justification for the offering during any part of the most recently completed fiscal year that was a TARP period of any perquisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds \$25,000 for for each employee subject to the bonus payment limitations identified in paragraph (viii);

(xii) [Identify TARP recipient] will disclose whether [identify TARP recipient], the board of directors of [identify TARP recipient], or the compensation committee of [identify TARP recipient] has engaged during any part of the most recently completed fiscal year that was a TARP period a compensation consultant; and the services the compensation consultant or any affiliate of the compensation consultant provided during this period;

(xiii) [Identify TARP recipient] has prohibited the payment of any gross-ups, as defined in the regulations and guidance established under section 111 of EESA, to the CEOs and the next twenty most highly compensated employees during any part of the most recently completed fiscal year that was a TARP period;

(xiv) [Identify TARP recipient] has substantially complied with all other requirements related to employee compensation that are provided in the agreement between [identify TARP recipient] and Treasury, including any amendments;

(xv) The following employees are the CEOs and the twenty most highly compensated employees for the current fiscal year, with the non-CEOs ranked in order of level of annual compensation starting with the greatest amount: [identify name, title, and employer of each CEO]; and

(xvi) I understand that a knowing and willful false or fraudulent statement made in connection with this certification may be punished by fine, imprisonment, or both.