



Summary of Significant Executive Compensation Restrictions for Companies Participating in TARP



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Authority	EESA (10/08)	EESA (10/08)	AIFP (12/08)	Treasury Guidance (2/4/09)	Treasury Guidance (2/4/09)	Treasury Guidance (2/4/09)	ARRA (2/17/09)
Name of Program	Capital Purchase Program	Systemically Significant Failing Institutions Program	Auto Industry Financing Program	Generally Available Capital Access Program	Exceptional Financial Recovery Assistance Program	Reform Suggested for Companies Not Seeking Assistance	Section 7001
Status	Amended by ARRA	Amended by ARRA	Unclear	Never adopted	Never adopted	Never adopted	Amends and replaces CPP and SSFIP restrictions
Application	Prospective	Prospective	Prospective	Prospective	Prospective	Prospective	Retrospective*
Review of Incentives Tied to Risk	SEOs	SEOs	SEOs	SEOs and all executives	SEOs	Compensation Committees should review and disclose how all compensation programs relate to risk and long-term value	SEOs Also prohibits plans that would encourage manipulation of reported earnings to enhance compensation
Clawbacks for bonuses or retention awards made based on financials found to be materially inaccurate	SEOs	SEOs	SEOs	Top 25 executives	Top 25 executives		Top 25 executives
Severance	Limited to 3x for SEOs	Prohibited to SEOs	Prohibited to SEOs	Limited to 1x for SEOs	Prohibited for top 10 executives; limited to 1x for next 25 executives	None	Prohibited to top 10
Deductibility Limitation under 162(m)(5) to \$500,000; no exception for performance-based pay	SEOs	SEOs	SEOs	SEOs	SEOs	None	SEOs
Cap on Annual Cash	None	None	None	\$500,000 for SEOs unless it is disclosed with say on pay resolution (if requested)	\$500,000 for SEOs	None	None

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Prohibition on Bonus and Retention Payments	None	None	Prohibited for top 25	None	None	None	Not allowed (with exception for RS, below) for certain positions which vary based on assistance level: - <25M = Most "highly compensated" employee only - \$25M – 250M = Top 5 most "highly compensated" - \$250M - \$500M = Top 15 "most highly compensated" - >\$500M = Top 25 "most highly compensated" - <u>Caveat</u> : more executives may be under the ban in each bracket if Treasury determines it to be in the public interest - <u>Exception</u> : Does not include bonus payment required to be executed on or before 2/11/09, if the contract is determined to be "valid" by Treasury
Limit on Restricted Stock	None	None	None	No payout to CEOs until debt paid unless it is disclosed with say on pay resolution (if requested)	No payout to CEOs until debt paid	Focus on long-term perspective with share holding requirements	Limited to 1/3 of the total amount of "annual compensation" and cannot vest until after debt repaid, with other conditions as determined by Treasury
Say on Pay	None	None	None	Non-binding vote as requested to qualify for exception to Annual Cash Cap/Restricted Stock rule	Non-binding vote required on structure and rationale of compensation policies	Mandatory non-binding vote on pay	Required for any company filing on or after 2/17/09 to "approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material)"

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Perquisites	None	None	Must divest of aircraft interest	Company policy and disclosure	Company policy and disclosure		Company policy for "excessive or luxury expenditures" which may include entertainment or events, office or facility renovations, aviation or other transportation services, other activities that are not reasonable
Certifications/ Compliance	Required	Required	Required	Required	Required		Required. For public companies, must be made by CEO/CFO to SEC, and for private to the Treasury
Compensation Committee requirements							Members must be independent and committee must meet at least 2x a year to assess risk vis a vis compensation (for private companies receiving <\$25M, the duties of this committee may be carried out by the full Board)
Review of Prior Payments	None	None	None	None	None		Treasury has ability to review compensation paid to top 25 before date of enactment to determine "whether any such payments were inconsistent with the purposes of TARP or contrary to public interest" and has power to renegotiate reimbursements to government
Withdrawal Rights	None	None	None	None	None		Liberalized ability to pay back assistance and withdraw from program although Treasury may exercise discretion on terms of payback

The shaded area represents guidance from the Treasury that was not implemented. *Treasury has not yet issued regulations to clarify these provisions Thus as of May 4th 2009 it is unclear as to the applicability of date of any of these provisions (other than the Say on Pay).

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Pearl Meyer & Partners
Comprehensive Compensation®

www.pearlmeyer.com

NEW YORK

570 Lexington Avenue
New York, NY 10022
(212) 644-2300
newyork@pearlmeyer.com

ATLANTA

One Alliance Center
3500 Lenox Road, Suite 1708
Atlanta, GA 30326
(770) 261-4080
atlanta@pearlmeyer.com

BOSTON

132 Turnpike Road, Suite 300
Southborough, MA 01772
(508) 460-9600
boston@pearlmeyer.com

CHARLOTTE

3326 Siskey Parkway, Suite 330
Matthews, NC 28105
(704) 844-6626
charlotte@pearlmeyer.com

CHICAGO

123 N. Wacker Drive, Suite 1225
Chicago, IL 60606
(312) 242-3050
chicago@pearlmeyer.com

HOUSTON

Three Riverway, Suite 1575
Houston, TX 77056
(713) 568-2200
houston@pearlmeyer.com

LOS ANGELES

550 S. Hope Street, Suite 1600
Los Angeles, CA 90071
(213) 438-6500
losangeles@pearlmeyer.com