

the Department of the Treasury (Treasury) thereunder.

§ 30.1 Q-1: What definitions apply in this part?

Affiliate. The term “affiliate” means an “affiliate” as that term is defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405).

Annual compensation. (1) *General rule.* The term “annual compensation” means, except as otherwise explicitly provided in this part, the dollar value for total compensation for the applicable fiscal year as determined pursuant to Item 402(a) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)). Accordingly, for this purpose the amounts required to be disclosed pursuant to paragraph (c)(2)(viii) of Item 402(a) of Regulation S-K (actuarial increases in pension plans and above market earnings on deferred compensation) are not required to be included in annual compensation.

(2) *Application to private TARP recipients.* For purposes of determining annual compensation, a TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws must follow the requirements set forth in paragraph (1) of this definition.

ARRA. The term “ARRA” means the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

Benefit plan. The term “benefit plan” means any plan, contract, agreement or other arrangement that is an “employee welfare benefit plan” as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans; provided, however, that this term does not include:

(1) Any plan that is a deferred compensation plan; or

(2) Any severance pay plan, whether or not nondiscriminatory, or any other arrangement that provides for payment of severance benefits to eligible employees upon voluntary termination for good reason, involuntary termination, or termination under a window program as defined in 26 CFR 1.409A-1(b)(9)(vi).

Bonus. The term “bonus” means 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 similar periodic rate. Such term generally does not include payments to or on behalf of an employee as contributions to any qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code (26 U.S.C. 4974(c)), benefits under a broad-based benefit plan, bona fide overtime pay, or bona fide and routine expense reimbursements. In addition, provided that the rate of commission is pre-established and reasonable, and is applied consistently to the sale of substantially similar goods or services, commission compensation will not be treated as a bonus. For this purpose, a bonus may include a contribution to, or other increase in benefits under, a nonqualified deferred compensation plan, regardless of when the actual payment will be made under the plan. A bonus may also qualify as a retention award or as incentive compensation.

Bonus payment. For purposes of this part, except where otherwise noted, the term “bonus payment” includes a payment that is, or is in the nature of, a bonus, incentive compensation, or retention award. Whether a payment is a bonus payment, or whether the right to a payment is a right to a bonus payment, is determined 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. For purposes of this part, a bonus payment may include the forgiveness of a loan or other amount that otherwise may be required to be paid by the employee to the employer.

Commission compensation. (1) *Definition.* The term “commission compensation” means:

(i) Compensation or portions of compensation earned by an employee consistent with a program in existence for that type of employee as of February 17, 2009, if a substantial portion of the services provided by this employee consists of the direct sale of a product or service to an unrelated customer, these sales occur frequently and in the ordinary course of business of the TARP

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recipient (but not a specified transaction, such as an initial public offering or sale or acquisition of a specified entity or entities), the compensation paid by the TARP recipient to the employee consists of either a portion of the purchase price for the product or service sold to the unrelated customer or an amount substantially all of which is calculated by reference to the volume of sales to the unrelated customers, and payment of the compensation is either contingent upon the TARP recipient receiving payment from the unrelated customer for the product or service or, if applied consistently to all similarly situated employees, is contingent upon the closing of the sales transaction and such other requirements as may be specified by the TARP recipient before the closing of the sales transaction with the unrelated customer;

(ii) Compensation or portions of compensation earned by an employee that meet the requirements of paragraph (1)(i) of this definition except that the transaction occurs with a related customer, provided that substantial sales from which commission compensation arises are made, or substantial services from which commission compensation arises are provided, to unrelated customers by the service recipient, the sales and service arrangement and the commission arrangement with respect to the related customer are bona fide, arise from the service recipient's ordinary course of business, and are substantially the same, both in term and in practice, as the terms and practices applicable to unrelated customers to which individually or in the aggregate substantial sales are made or substantial services provided by the service recipient; or

(iii) Compensation or portions of compensation earned by an employee consistent with a program in existence for that type of employee as of February 17, 2009, if a substantial portion of the services provided by this employee to the TARP recipient consists of sales of financial products or other direct customer services with respect to unrelated customer assets or unrelated customer asset accounts that are generally intended to be held indefinitely (and not customer assets in-

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tended to be used for a specific transaction, such as an initial public offering, or sale or acquisition of a specified entity or entities), the unrelated customer retains the right to terminate the customer relationship and may move or liquidate the assets or asset accounts without undue delay (which may be subject to a reasonable notice period), the compensation consists of a portion of the value of the unrelated customer's overall assets or 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, or both, or is calculated by reference to a contractual benchmark (such as a securities index or peer results), and the value of the overall assets or account balance and commission compensation is determined at least annually. For purposes of this definition, a customer is treated as an unrelated customer if the person would not be treated as related to the TARP recipient under 26 CFR 1.409A-1(f)(2)(ii) and the person would not be treated as providing management services to the TARP recipient under 26 CFR 1.409A-1(f)(2)(iv).

(2) *Examples.* The following examples illustrate the provisions of paragraph (1) of this definition:

Example 1. Employee A is an employee of TARP recipient. Among TARP recipient's businesses is the sale of life insurance policies, and TARP recipient buys and sells such policies frequently as part of its ordinary course of business. Employee A's primary duties consist of selling life insurance policies to customers unrelated to the TARP recipient. Under a commission program existing for all TARP Recipient employees selling life insurance policies as of February 17, 2009, Employee A is entitled to receive an amount equal to 75% of the total first year's premium paid by an unrelated customer to whom Employee A has sold a life insurance policy. The payments to Employee A under the program constitute commission compensation.

Example 2. The same facts as Example 1, except that under the program, the rate of commission increases to 80% of the total first year's premium paid by a customer once Employee A has sold \$10 million in policies in a year. Provided that 80% is a reasonable commission, the payments to Employee A under the program constitute commission compensation.

Example 3. Employee B is an employee of TARP recipient. Among TARP recipient's businesses is the investment management of unrelated customer asset accounts, and TARP recipient provides such services routinely and in the ordinary course of business. Employee B's primary duties as an employee consist of managing the investments of the asset accounts of specified unrelated customers who have deposited amounts with the TARP recipient. Under a program in existence on February 17, 2009, Employee B is entitled to receive an amount equal to 1% of the aggregate account balances of the assets under management, as determined each December 31. The payments to Employee B constitute commission compensation.

Example 4. TARP recipient employs Employee C. As part of Employee C's duties, Employee C is responsible for specified aspects of any acquisition of an unrelated entity by TARP Recipient. As part of an acquisition in 2009, Employee C is entitled to 1% of the purchase price if and when the transaction closes. Regardless of whether such an arrangement was customary or established under a specific program as of February 17, 2009, the amount is not commission compensation because the compensation relates to a specified transaction, in this case the purchase of the entity. Accordingly, the compensation is incentive compensation.

Example 5. TARP recipient employs Employee D. As part of Employee D's duties, Employee D is responsible for managing the initial public offerings of securities of unrelated customers of TARP recipient. As part of an initial public offering in 2009, Employee D is entitled to 1% of the purchase price if and when the initial public offering closes. Regardless of whether such an arrangement was customary or established under a specific program as of February 17, 2009, the amount is not commission compensation because the compensation relates to a specified transaction, in this case the initial public offering. Accordingly, the compensation is incentive compensation.

Compensation means all remuneration for employment, including but not limited to salary, commissions, tips, welfare benefits, retirement benefits, fringe benefits and perquisites.

Compensation committee. (1) *General rule.* The term "compensation committee" means a committee of independent directors, whose independence is determined pursuant to Item 407(a) of Regulation S-K under the Federal securities laws (17 CFR 229.407(a)).

(2) *Application to private TARP recipients.* For purposes of determining director independence, a TARP recipient that does not have securities registered

with the SEC pursuant to the Federal securities laws must follow the requirements set forth in Item 407(a)(1)(ii) of Regulation S-K under the Federal securities laws (17 CFR 229.407(a)(1)(ii)).

Compensation structure. The term "compensation structure" means the characteristics of the various forms of total compensation that an employee receives or may receive, including the amounts of such compensation or potential compensation relative to the amounts of other types of compensation or potential compensation, the amounts of such compensation or potential compensation relative to the total compensation over the relevant period, and how such various forms of compensation interrelate to provide the employee his or her ultimate total compensation. These characteristics include, but are not limited to, whether the compensation is provided as salary, short-term incentive compensation, or long-term incentive compensation, whether the compensation is provided as cash compensation, equity-based compensation, or other types of compensation (such as executive pensions, other benefits or perquisites), and whether the compensation is provided as current compensation or deferred compensation.

Deferred compensation plan. The term "deferred compensation plan" means

(1) Any plan, contract, agreement, or other arrangement under which an employee voluntarily elects to defer all or a portion of the reasonable compensation, wages, or fees paid for services rendered which otherwise would have been paid to the employee at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals), provided that the TARP recipient either:

(i) Recognizes a compensation expense and accrues a liability for the benefit payments according to GAAP; or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of this trust may be available to satisfy claims of the TARP recipient's creditors in the case of insolvency; or

(2) A nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan established by a TARP recipient:

(i) Primarily for the purpose of providing benefits for a select group of directors, management, or highly compensated employees in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose for providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments).

EESA. The term “EESA” means the Emergency Economic Stabilization Act of 2008, as amended.

Employee. The term “employee” means an individual serving as a servant in the conventional master-servant relationship as understood by the common-law agency doctrine. In general, a partner of a partnership, a member of a limited liability company, or other similar owner in a similar type of entity, will not be treated as an employee for this purpose. However, to the extent that the primary purpose for the creation or utilization of such partnership, limited liability company, or other similar type of entity is to avoid or evade any or all of the requirements of section 111 of EESA or these regulations with respect to a partner, member or other similar owner, the partner, member or other similar owner will be treated as an employee. In addition, a personal service corporation or similar intermediary between the TARP recipient and an individual providing services to the TARP recipient will be disregarded for purposes of determining whether such individual is an employee of the TARP recipient.

Employee compensation plan. The term “employee compensation plan” means “plan” as that term is defined in Item 402(a)(6)(ii) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)(6)(ii)), but only any employee compensation plan in which two or more employees participate and without regard to whether an executive per-

ficer participates in the employee compensation plan.

Exceptional financial assistance. The term “exceptional financial assistance” means 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.

Excessive or luxury expenditures. The term “excessive or luxury expenditures” means excessive expenditures on any of the following to the extent such expenditures are not reasonable expenditures for staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the TARP recipient’s business operations:

- (1) Entertainment or events;
- (2) Office and facility renovations;
- (3) Aviation or other transportation services; and
- (4) Other similar items, activities, or events for which the TARP recipient may reasonably anticipate incurring expenses, or reimbursing an employee for incurring expenses.

Excessive or luxury expenditures policy. The term “excessive or luxury expenditures policy” means written standards applicable to the TARP recipient and its employees that address the four categories of expenses set forth in the definition of “excessive or luxury expenditures” (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 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.

Executive officer. The term “executive officer” means an “executive officer” as that term is defined in Rule 3b-7 of the Securities Exchange Act of 1934 (Exchange Act) (17 CFR 240.3b-7).

Financial assistance. (1) *Definition.* The term “financial assistance” means any funds or fund commitment provided through the purchase of troubled assets under the authority granted to Treasury under section 101 of EESA or the insurance of troubled assets under the authority granted to Treasury under section 102 of EESA, provided that the term “financial assistance” does not include any loan modification under sections 101 and 109 of EESA. A change in the form of previously received financial assistance, such as a conversion of convertible preferred stock to common stock, is not treated as new or additional financial assistance.

(2) *Examples.* The following examples illustrate the provisions of paragraph (1) of this definition:

Example 1. Company A sells \$500,000,000 of preferred stock to Treasury through the Capital Purchase Program. Company A has received financial assistance.

Example 2. Company B posts collateral to and receives a loan from the Federal Reserve special purpose vehicle under the Term Asset-Backed Security Loan Facility program. Company B has neither sold troubled assets to Treasury, nor insured troubled as-

sets through Treasury, and therefore has not received financial assistance.

Example 3. LP C is a limited partnership established for the purpose of participating in the Public Private Investment Program. LP C has a general partner (GP) that makes management decisions on behalf of LP C. A limited liability company controlled by an affiliate of GP (LLC partner) raises \$55,000,000 from twenty investors, with each investing equal shares, joins LP C as a limited partner, and invests those funds for a 55% equity interest in LP C. LP C sells a \$45,000,000 equity interest to Treasury. LP C, at the direction of the GP, will buy and sell securities as investments and manage those investments. LP C will contract for investment advice from an investment advisor that is an affiliate of GP. LP C has received financial assistance. LLC partner has received financial assistance because it is treated as the same employer as LP C according to the standards set forth in paragraph (1)(ii) of the definition of “TARP recipient”. The investors in the LLC partner have not received financial assistance because they are not treated as the same employer as LP C according to the standards set forth in paragraph (1)(ii) of the definition of “TARP recipient”. GP is not an employee of LP C pursuant to the definition of “employee” in this rule, and is not treated as the same employer as LP C according to the standards set forth in paragraph (1)(ii) of the definition of “TARP recipient”. The investment advisor-contractor to LP C has not received financial assistance. Entities that sell securities to or buy securities from LP C have neither sold troubled assets to Treasury nor insured troubled assets through Treasury, and therefore have not received financial assistance.

Example 4. Company D, a servicer of mortgage loans or mortgaged-backed securities, issues a financial instrument to Treasury's financial agent in which Company D commits to modify mortgages it is servicing consistent with guidelines established by Treasury under the Home Affordable Modification Program. Treasury, through its financial agent, commits to pay up to \$800,000,000 in incentive payments and credit enhancements for Company E's commitment to modify mortgages. Company E has not received financial assistance.

GAAP. The term “GAAP” means U.S. generally accepted accounting principles.

Golden parachute payment. (1) *General rule.* The term “golden parachute payment” means any payment for the departure from a TARP recipient for any reason, or any payment due to a change in control of the TARP recipient or any entity that is included in a group of entities treated as one TARP

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recipient, except for payments for services performed or benefits accrued. For this purpose, a change in control includes any event that would qualify as a change in control event as defined in 26 CFR 1.280G-1, Q&A-27 through Q&A-29 or as a change in control event as defined in 26 CFR 1.409A-3(i)(5)(i). For this purpose, a golden parachute payment includes the acceleration of vesting due to the departure or the change in control event, as applicable. A golden parachute payment is treated as paid at the time of departure or change in control event, and is equal to the aggregate present value of all payments made for a departure or a change in control event (including the entire aggregate present value of the payment if the vesting period was not otherwise completed but was accelerated due to departure, regardless of whatever portion of the required vesting period the employee had completed). Thus, a golden parachute payment may include a right to amounts actually payable after the TARP period.

(2) *Exclusions.* For purposes of this part, a golden parachute payment does not include any of the following:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made by reason of the departure of the employee due to the employee's death or disability; or

(iii) Any severance or similar payment which is required to be made pursuant to a State statute or foreign law (independent of any terms of a contract or other agreement) which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria).

(3) *Payments for services performed or benefits accrued.* (i) *General rules.* Except as otherwise provided for payments made under a deferred compensation plan or a benefit plan in paragraph (4) of this definition, a payment made, or a right to a payment

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arising under a plan, contract, agreement, or other arrangement (including the acceleration of any vesting conditions) is for services performed or benefits accrued only if the payment was made, or the right to the payment arose, for current or prior services to the TARP recipient (except that an appropriate allowance may be made for services for a predecessor employer). Whether a payment is for services performed or benefits accrued is determined based on all the facts and circumstances. However, a payment, or a right to a payment, generally will be treated as a payment for services performed or benefits accrued only if the payment would be made regardless of whether the employee departs or the change in control event occurs, or if the payment is due upon the departure of the employee, regardless of whether the departure is voluntary or involuntary (other than reasonable restrictions, such as the forfeiture of the right to a payment for an involuntary departure for cause, but not restrictions relating to whether the departure was a voluntary departure for good reason or subsequent to a change in control).

(ii) *Examples.* The following examples illustrate the general rules in paragraph (3)(i) of this definition:

Example 1. Employee A is a SEO of Entity B at all relevant times. On September 1, 2007, Employee A received a stock appreciation right granting him the right to appreciation on the underlying shares that would vest 25% for every twelve months of continued services. Under the terms of the grant, the stock appreciation right would be immediately exercised and payable upon termination of employment. Entity B becomes a TARP recipient in December 2008. On September 1, 2009, Entity B involuntarily terminates Employee A, at which time Employee A receives a payment equal to the post-September 1, 2007 appreciation on 50% of the shares under the stock appreciation right (the portion of the shares that had vested before the termination of employment). The payment is treated as a payment for services performed and does not constitute a golden parachute payment.

Example 2. The facts are the same as the facts in Example 1, except that under Employee A's employment agreement, Employee A is entitled to accelerate vesting if Employee A is terminated involuntarily

other than for cause. If Entity B pays Employee A the post-September 1, 2007 appreciation on 100% of the shares under the stock appreciation right, the portion of the payment representing the additional 50% accelerated vesting due to the termination of employment would not be for services performed and would be a golden parachute payment.

(4) *Payments from benefit plans and deferred compensation plans.* A payment from a benefit plan or a deferred compensation plan is treated as a payment for services performed or benefits accrued only if the following conditions are met:

(i) The plan was in effect at least one year prior to the employee's departure;

(ii) The payment is made pursuant to the plan and is made in accordance with the terms of the plan as in effect no later than one year before the departure and in accordance with any amendments to the plan during this one year period that do not increase the benefits payable hereunder;

(iii) The employee has a vested right, as defined under the applicable plan document, at the time of the departure or the change in control event (but not due to the departure or the change in control event) to the payments under the plan;

(iv) Benefits under the plan are accrued each period only for current or prior service rendered to the TARP recipient (except that an appropriate allowance may be made for service for a predecessor employer);

(v) Any payment made pursuant to the plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than one year before the departure or the change in control event; and

(vi) With respect to payments under a deferred compensation plan, the TARP recipient has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of this trust may be available to satisfy claims of the TARP recipient's creditors in the case of insolvency and payments pursuant to the plan are not in

excess of the accrued liability computed in accordance with GAAP.

Gross-up. The term "gross-up" means any reimbursement of taxes owed with respect to any compensation, provided that a gross-up does not include a payment under a tax equalization agreement, which is an agreement, method, program, or other arrangement that provides payments intended to compensate an employee for some or all of the excess of the taxes actually imposed by a foreign jurisdiction on the compensation paid by the TARP recipient to the employee over the taxes that would be imposed if the compensation were subject solely to U.S. Federal, State, and local income tax, or some or all of the excess of the U.S. Federal, State, and local income tax actually imposed on the compensation paid by the TARP recipient to the employee over the taxes that would be imposed if the compensation were subject solely to taxes in the applicable foreign jurisdiction, provided that the payment made under such agreement, method, program, or other arrangement may not exceed such excess and the amount necessary to compensate for the additional taxes on the amount paid under the agreement, method, program, or other arrangement.

Incentive compensation. The term "incentive compensation" means compensation provided under an incentive plan.

Incentive plan. (1) *Definition.* The term "incentive plan" means an "incentive plan" as that term is defined in Item 402(a)(6)(iii) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)(6)(iii)), and any plan providing stock or options as defined in Item 402(a)(6)(i) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)(6)(i)) or other equity-based compensation such as restricted stock units or stock appreciation rights, except for the payment of salary or other permissible payments in stock, stock units, or other property as described in paragraph (2) of this definition. An incentive plan does not include the payment of salary, but does include an arrangement under which an employee would earn compensation in the nature of a commission, unless

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such compensation qualifies as commission compensation (as defined above). Accordingly, an incentive plan includes an arrangement under which an employee receives compensation only upon the completion of a specified transaction, such as an initial public offering or sale or acquisition of a specified entity or entities, regardless of how such compensation is measured. For examples, see the definition of “commission compensation,” above. An incentive plan, or a grant under an incentive plan, may also qualify as a bonus or a retention award.

(2) *Salary or other permissible payments paid in property.* The term “incentive plan” does not include an arrangement under which an employee receives salary or another permissible payment in property, such as TARP recipient stock, provided that such property is not subject to a substantial risk of forfeiture (as defined in 26 CFR 1.83-3(c)) or other future period of required services, the amount of the payment is determinable as a dollar amount through the date such compensation is earned (for example, an agreement that salary payments will be made in stock equal to the value of the cash payment that would otherwise be due), and the amount of stock or other property accrues at the same time or times as the salary or other permissible payments would otherwise be paid in cash. The term “incentive plan” also does not include an arrangement under which an employee receives a restricted stock unit that is analogous to TARP recipient stock, that otherwise meets the requirements of the previous sentence. For this purpose, a unit is analogous to stock if the unit is based upon stock of the TARP recipient, or is applied as if the applicable entity, division, or other unit were a corporation with one class of stock and the number of units of stock granted is determined based on a fixed percentage of the overall value of this corporation, and the term “TARP recipient stock” with respect to a particular employee recipient means the stock of a corporation (or the entity, division, or other unit the value of which forms the basis for the unit) that is an “eligible issuer of service recipient stock” under 26 CFR 1.409A-

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1(b)(5)(iii)(E) (applied by analogy to non-corporate entities).

(3) *Examples.* The following examples illustrate the provisions of paragraph (2) of this definition.

Example 1. Employee is an employee of TARP recipient. For 2010, TARP recipient agrees to pay a salary of \$15,000, payable monthly. At each salary payment date Employee will receive a \$10,000 payment in cash, and be transferred a number of shares of common stock of TARP recipient equal to \$5,000 divided by the fair market value of a share of common stock on the salary payment date. The arrangement is for the payment of salary, and is not an incentive plan.

Example 2. Same facts as *Example 1*, except that pursuant to a valid elective deferral election, Employee elects to defer 20% of each salary payment into a nonqualified deferred compensation plan. At each salary payment date Employee will receive an \$8,000 payment in cash, be transferred a number of shares of common stock of TARP recipient equal to \$4,000 divided by the fair market value of a share of common stock on the salary payment date, and a \$3,000 contribution to an account under a nonqualified deferred compensation plan. The arrangement is for the payment of salary, and is not an incentive plan.

Example 3. Employee is an employee of TARP recipient. For 2010, TARP recipient agrees to pay a salary of \$15,000, payable monthly. At each salary payment date, Employee will receive a \$10,000 payment in cash, and accrue a right to a number of shares of common stock of TARP recipient equal to \$5,000 divided by the fair market value of a share of common stock on the salary payment date. At the end of the year, TARP recipient will transfer the total number of accrued shares to Employee, subject to a multi-year holding period (a restriction that the shares may not be transferred or otherwise disposed of by Employee for a specified number of years). If Employee’s employment with the TARP recipient terminates during the holding period, the termination will not affect the duration or application of the holding period or Employee’s right to retain the shares and to transfer or otherwise dispose of them at the end of the holding period. The arrangement is for the payment of salary, and is not an incentive plan. The arrangement would also be for the payment of salary, and not an incentive plan, if the arrangement provided that the holding period was to last until the later of a specified time period or a specified time following Employee’s retirement or other termination of employment.

Example 4. Employee is an employee of TARP recipient. For 2010, TARP recipient agrees to pay a salary of \$15,000, payable

monthly. At each salary payment date, Employee will receive a \$10,000 payment in cash, and accrue a right to a contribution to an account equal to \$5,000 divided by the fair market value of a share on the salary payment date. The account balance will be subject to notional gains and losses based on the investment return on TARP recipient common stock. The amount will be payable upon the last day of the second year immediately following the year the services are performed. The arrangement is for the payment of salary, and is not an incentive plan. However, the arrangement generally will provide deferred compensation for purposes of section 409A of the Internal Revenue Code.

Internal Revenue Code. The term “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

Long-term restricted stock. The term “long-term restricted stock” means restricted stock or restricted stock units that include the following features:

(1) The restricted stock or restricted stock units are issued with respect to common stock of the TARP recipient. For this purpose, a restricted stock unit includes a unit that is payable, or may be payable, in cash or stock, provided that the value of the payment is equal to the value of the underlying stock. With respect to a specified division or other unit within a TARP recipient or a TARP recipient that is not a stock corporation, a unit analogous to common stock may be used. For this purpose, a unit is analogous to common stock if applied as if the entity, division, or other unit were a corporation with one class of common stock and the number of units of common stock granted is determined based on a fixed percentage of the overall value of this corporation. Notwithstanding the foregoing, with respect to a particular employee recipient, the corporation the stock of which is utilized (or the entity, division, or other unit the value of which forms the basis for the unit) must be an “eligible issuer of service recipient stock” under 26 CFR 1.409A-1(b)(5)(iii)(E) (applied by analogy to non-corporate entities).

(2) The restricted stock or restricted stock unit may not become transferable (as defined in 26 CFR 1.83-3(d)), or payable as applied to a restricted stock unit, at any time earlier than permitted under the following schedule (except as necessary to reflect a merg-

er or acquisition of the TARP recipient):

(i) 25% of the shares or units granted at the time of repayment of 25% of the aggregate financial assistance received.

(ii) An additional 25% of the shares or units granted (for an aggregate total of 50% of the shares or units granted) at the time of repayment of 50% of the aggregate financial assistance received.

(iii) An additional 25% of the shares or units granted (for an aggregate total of 75% of the shares or units granted) at the time of repayment of 75% of the aggregate financial assistance received.

(iv) The remainder of the shares or units granted at the time of repayment of 100% of the aggregate financial assistance received.

(3) Notwithstanding the foregoing, in the case of restricted stock for which the employee does not make an election under section 83(b) of the Internal Revenue Code (26 U.S.C. 83(b)), at any time beginning with the date upon which the stock becomes substantially vested (as defined in 26 CFR 1.83-3(b)) and ending on December 31 of the calendar year including that date, a portion of the restricted stock may be made transferable as may reasonably be required to pay the Federal, State, local, or foreign taxes that are anticipated to apply to the income recognized due to this vesting, and the amounts made transferable for this purpose shall not count toward the percentages in the schedule above.

(4) The employee must be required to forfeit the restricted stock or restricted stock unit if the employee does not continue performing substantial services for the TARP recipient for at least two years from the date of grant, other than due to the employee's death or disability, or a change in control event (as defined in 26 CFR 1.280G-1, Q&A-27 through Q&A-29 or as defined in 26 CFR 1.409A-3(i)(5)(i)) with respect to the TARP recipient before the second anniversary of the date of grant.

(5) Nothing in paragraphs (1), (2), (3), and (4) of this definition is intended to prevent the placement on such restricted stock or restricted stock unit

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of any additional restrictions, conditions, or limitations that are not inconsistent with the requirements of these paragraphs.

Most highly compensated employee. (1) In general. The term “most highly compensated employee” means the employee of the TARP recipient, other than the CEOs of the TARP recipient, whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, for this purpose, a former employee who is no longer employed as of the first day of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.

(2) *Application to new entities.* For an entity that is created or organized in the same year that the entity becomes a TARP recipient, a most highly compensated employee for the first year includes the person that the TARP recipient determines will be the most highly compensated employee for the next year based upon a reasonable, good faith determination of the projected annual compensation of such person earned during that year. This determination must be made as of the later of the date the entity is created or organized or the date the entity becomes a TARP recipient, and must be made only once. However, a person need not yet be an employee to be treated as a most highly compensated employee, if it is reasonably anticipated that the person will become an employee of the TARP recipient during the first year.

Obligation. (1) *Definition.* The term “obligation” means a requirement for, or an ability of, a TARP recipient to repay financial assistance received from Treasury, as provided in the terms of the applicable financial instrument and related agreements, through the repayment of a debt obligation or the redemption or repurchase of an equity security, but not including warrants to purchase common stock of the TARP recipient.

(2) *Examples.* The following examples illustrate the provisions of paragraph (1) of this definition.

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Example 1. TARP recipient sells \$500 million of preferred stock to Treasury, and provides warrants to Treasury for the purchase of \$75 million of common stock. The TARP recipient has an ability to redeem the preferred stock and thus maintains an outstanding obligation to Treasury.

Example 2. Same facts as *Example 1*, except that TARP recipient redeems the \$500 million of preferred stock, so that Treasury holds only the \$75 million of warrants to purchase common stock outstanding. TARP recipient does not maintain an outstanding obligation to Treasury.

Example 3. TARP recipient sells \$120 million of securities backed by Small Business Administration-guaranteed loans to Treasury through the Consumer and Business Lending initiative, and provides warrants to Treasury for the purchase of \$10 million of common stock. Because the TARP recipient does not as a result of this transaction owe a debt obligation or have a requirement or right to redeem or repurchase an equity security (other than the warrants to purchase common stock provided to the Treasury), the TARP recipient does not have an outstanding obligation to Treasury as a result of this transaction.

PEO. The term “PEO” means the principal executive officer or an employee acting in a similar capacity.

Perquisite. The term “perquisite” means a “perquisite or other personal benefit” the amount of which is required to be included in the amount reported under Item 402(c)(2)(ix)(A) of Regulation S-K under the Federal securities laws (17 CFR 229.402(c)(2)(ix)(A)) (Column (i) of the Summary Compensation Table (All Other Compensation)), modified to also include any such perquisite or other personal benefit provided to a most highly compensated employee subject to §30.11(b) (Q–11).

PFO. The term “PFO” means the principal financial officer or an employee acting in a similar capacity.

Primary regulatory agency. The term “primary regulatory agency” means the Federal regulatory agency that has primary supervisory authority over the TARP recipient. For a TARP recipient that is a State-chartered bank that does not have securities registered with the SEC pursuant to the Federal securities laws, the primary regulatory agency is the TARP recipient’s primary Federal banking regulator. If a TARP recipient is not subject to the supervision of a Federal regulatory

agency, the term “primary regulatory agency” means the Treasury.

Repayment. The term “repayment” means satisfaction of an obligation.

Retention award. (1) *General definition.* The term “retention award” means any payment to an employee, other than a payment of commission compensation, a payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code (26 U.S.C. 401), a payment made pursuant to a benefit plan, or a payment of a fringe benefit, overtime pay, or reasonable expense reimbursement that:

(i) Is not payable periodically to an employee for services performed by the employee at a regular hourly, daily, weekly, monthly, or similar periodic rate (or would not be payable in such manner absent an elective deferral election);

(ii) Is contingent on the completion of a period of future service with the TARP recipient or the completion of a specific project or other activity of the TARP recipient; and

(iii) 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.

(2) *New hires.* With respect to newly hired employees, a payment that will be made only if the new hire continues providing services for a specified period generally constitutes a retention award. For example, a signing bonus that must be repaid unless the newly hired employee completes a certain period of service is a retention award. Similarly, a “make-whole” agreement under which a newly hired employee is provided benefits intended to make up for benefits foregone at his former employer, where these new benefits are subject to a continued service period vesting requirement (such as a continuation of the vesting period at the former employer), is a retention award.

(3) *Deferred compensation plans.* Whether a benefit under a deferred compensation plan that is subject to a service vesting period is a retention award depends on all the facts and cir-

cumstances. However, to the extent an employee continues to accrue, or becomes eligible to accrue, a benefit under a plan the benefits under which have not been materially enhanced for a significant period of time prior to the employee becoming an SEO or most highly compensated employee (including through expansion of the eligibility for such plan), the benefits accrued generally will not be a retention award. However, to the extent the plan is amended to materially enhance the benefits provided under the plan or to make such employee eligible to participate in such plan, and such benefits are subject to a requirement of a continued period of service, such an amendment generally will be a retention award.

SEC. The term “SEC” means the U.S. Securities and Exchange Commission.

Senior executive officer or SEO. (1) *General definition.* The term “senior executive officer” or “SEO” means a “named executive officer” as that term is determined pursuant to Instruction 1 to Item 402(a)(3) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)) who is an employee of the TARP recipient.

(2) *Application to smaller reporting company.* A TARP recipient that is a smaller reporting company must identify SEOs pursuant to paragraph (1) of this definition. Such a TARP recipient must identify at least five SEOs, even if only three named executive officers are provided in the disclosure pursuant to Item 402(m)(2) of Regulation S-K under the Federal securities laws (17 CFR 229.402(m)(2)), provided that no employee must be identified as a SEO if the employee’s total annual compensation does not exceed \$100,000 as defined in Item 402(a)(3)(1) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)(3)(1)).

(3) *Application to private TARP recipients.* A TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws must identify SEOs in accordance with rules analogous to the rules in paragraph (1) of this definition.

SEO compensation plan. The term “SEO compensation plan” means “plan” as that term is defined in Item 402(a)(6)(ii) of Regulation S-K under the Federal securities laws (17 CFR

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229.402(a)(6)(ii)), but only with regard to a SEO compensation plan in which a SEO participates.

Senior risk officer. The term “senior risk officer” means a senior risk executive officer or employee acting in a similar capacity.

Smaller reporting company. The term “smaller reporting company” means a “smaller reporting company” as that term is defined in Item 10(f) of Regulation S-K under the Federal securities laws (17 CFR 229.10(f)).

Sunset date. The term “sunset date” means the date on which the authorities provided under EESA section 101 and 102 terminate, pursuant to EESA section 120, taking into account any extensions pursuant to EESA section 120(b).

TARP. The term “TARP” means the Troubled Asset Relief Program, established pursuant to EESA.

TARP fiscal year. The term “TARP fiscal year” means a fiscal year of a TARP recipient, or the portion of a fiscal year of a TARP recipient, that is also a TARP period.

TARP period. The term “TARP period” means the period beginning with the TARP recipient’s receipt of any financial assistance and ending on the last date upon which any obligation arising from financial assistance remains outstanding (disregarding any warrants to purchase common stock of the TARP recipient that the Treasury may hold).

TARP recipient. (1) *General definition.* The term “TARP recipient” means

(i) Any entity that has received or holds a commitment to receive financial assistance; and

(ii) Any entity that would be treated as the same employer as an entity receiving financial assistance based on the rules in sections 414(b) and 414(c) of the Internal Revenue Code (26 U.S.C. 414(b) or (c)), but modified by substituting “50%” for “80%” in each place it appears in section 414(b) or 414(c) and the accompanying regulations. However, for purposes of applying the aggregation rules to determine the applicable employer, the rules for brother-sister controlled groups and combined groups are disregarded (including disregarding the rules in section 1563(a)(2) and (a)(3) of the Internal

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Revenue Code (26 U.S.C. 1563(a)(2) and (a)(3)) with respect to corporations and the parallel rules that are in 26 CFR 1.414(c)-2(c) with respect to other organizations conducting trades or businesses).

(2) *Certain excluded entities.* Neither any entity receiving funds under TARP pursuant to section 109 of EESA nor any Federal Reserve bank as that term is used in the Federal Reserve Act (12 U.S.C. 221 *et seq.*) will be treated as a TARP recipient subject to section 111 of EESA and any rules and regulations promulgated thereunder.

(3) *Anti-abuse rule.* Notwithstanding paragraph (1) of this definition, the term “TARP recipient” means any entity that has received, or holds a commitment to receive, financial assistance; and any entity related to such TARP recipient to the extent that the primary purpose for the creation or utilization of such entity is to avoid or evade any or all of the requirements of section 111 of EESA or these regulations.

Treasury. The term “Treasury” means the U.S. Department of the Treasury.

Valid employment contract. The term “valid employment contract” means a written employment contract that is:

(1)(i) A material contract as determined pursuant to Item 601(b)(10)(iii)(A) of Regulation S-K under the Federal securities laws (17 CFR 229.601(b)(10)(iii)(A)); or

(ii) A contract that would be deemed a material contract as determined pursuant to Item 601(b)(10)(iii) of Regulation S-K under the Federal securities laws (17 CFR 229.601(b)(10)(iii)), but for the fact that the material contract relates to one or more employee who is not an executive officer; and

(2) Is enforceable under the law of the applicable jurisdiction.

§ 30.2 Q-2: To what entities does this part apply?

This part applies to any TARP recipient, provided that the requirements of sections 111(b) (portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable, § 30.6 (Q-6), and § 30.8 (Q-8) through § 30.11 (Q-11), and § 30.15 (Q-15)), and section 111(e) (§ 30.13 (Q-13)) apply only