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

Example 1. TARP recipient sponsors a written restricted stock unit plan. Under the plan, restricted stock units are traditionally granted each July 1, and are subject to a three-year vesting requirement. Employee A, a SEO of TARP recipient, received grants on July 1, 2007, July 1, 2008, and July 1, 2009. The July 1, 2007 and July 1, 2008 grants are excluded from the limitation on payments, because although the awards were subject to a continuing service vesting requirement, Employee A retained a legally binding right to the restricted stock units as of February 11, 2009. However, regardless of the fact that the restricted stock unit program was in existence on February 11, 2009, Employee A did not retain a legally binding right to a restricted stock unit for 2009 as of February 11, 2009, but rather obtained the legally binding right only when the restricted stock unit was granted on July 1, 2009. Accordingly, the July 1, 2009 grant is subject to the limitation and is not permitted to be accrued or paid (unless such grant complies with the exception for certain grants of long-term restricted stock).

Example 2. TARP recipient sponsors an annual bonus program documented in a written plan. Under the bonus program, the board of directors retains the discretion to eliminate or reduce the bonus of any employee in the bonus pool. Employees B and C, both SEOs, are in the bonus pool for 2008. On January 15, 2009, the compensation committee determines the bonuses to which the employees of the division in which Employee B works are entitled, and awards Employee B a $10,000 bonus payable on June 1. Employee B has a legally binding right to the bonus as of February 11, 2009 and payment of the bonus is not subject to the limitation. However, as of February 11, 2009, the board of directors has not met to determine which employees of the division in which Employee C works will be entitled to a bonus or the amount of such bonus. Accordingly, Employee C did not have a legally binding right to a bonus as of February 11, 2009 and may be subject to the bonus payment limitation.

Example 3. TARP recipient sponsors a written stock option plan under which stock options may be granted to SEOs designated by the compensation committee. Designations and grants typically occur at a meeting in August of every year, and no meeting occurred in 2009 before August. Regardless of the existence of the general plan, no SEO had a legally binding right to a stock option grant for 2009 as of February 11, 2009 because no grants had been made under the plan. Accordingly, any 2009 grant will be subject to the limitation and is not permitted to be made.

Example 4. Employee D is an SEO of a TARP recipient. Under Employee D's written employment agreement executed before February 11, 2009, Employee D is entitled to the total of whatever bonuses are made available to Employee E and Employee F. As of February 11, 2009, Employee E had a legally binding right to a $100,000 bonus. Employees E and F are never at any time SEOs or highly compensated employees subject to the limitation. As of February 11, 2009, Employee F had no legally binding right to a bonus, but was eligible to participate in a bonus pool and was ultimately awarded a bonus of $50,000. As of February 11, 2009, Employee D had a legally binding right to a $100,000 bonus, so that bonus is not subject to the limitation. However, as of February 11, 2009, Employee D did not have a legally binding right to the additional $50,000 bonus, so that bonus is subject to the bonus payment limitation and, if not paid before June 15, 2009 is not permitted to be paid.

(f) *Application to private TARP recipients*. The rules set forth in this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws.

§ 30.11 Q–11: Are TARP recipients required to meet any other standards under the executive compensation and corporate governance standards in section 111 of EESA?

(a) *Approval of compensation payments to, and compensation structures for, certain employees of TARP recipients receiving exceptional financial assistance*. For any period during which a TARP recipient is designated as a TARP recipient that has received exceptional financial assistance, the TARP recipient must obtain the approval by the Special Master of all compensation payments to, and compensation structures for, SEOs and most highly compensated employees subject to paragraph (b) of § 30.10 (Q–10). TARP recipients that receive exceptional financial assistance must also receive approval by the Special Master for all compensation structures for other employees who are executive officers (as defined under the Securities and Exchange Act, Rule 3b–7) or one of the 100 most highly compensated employees of a TARP recipient receiving exceptional assistance (or both), who are not subject to the bonus limitations under § 30.10 (Q–10). For this purpose, compensation payments and compensation

structures may include awards or other rights to compensation which an employee has already received but not yet been paid or, in some instances, fully accrued. Accordingly, the Special Master has the authority to require that such compensation payments or compensation structures be altered to meet the standards set forth in § 30.16 (Q–16). However, this approval requirement is not applicable to payments that are not subject to paragraph (a) of § 30.10 (Q–10) due to the application of paragraph (e)(2) of § 30.10 (Q–10) or the effective date provisions of § 30.17 (Q–17), though the Special Master will take such payments into account in reviewing the compensation structure and amounts payable, as applicable, that are subject to review. Notwithstanding any of the foregoing, approval is not required with respect to an employee not subject to the bonus payment limitations to the extent that the employee's annual compensation, as modified in § 30.16 (Q–16) to include certain deferred compensation and pension accruals but to disregard any grant of long-term restricted stock, is limited to $500,000 or less, and any further compensation is provided in the form of long-term restricted stock. For details, *see* § 30.16 (Q–16).

(b) *Perquisite disclosure*—(1) *General rule*. TARP recipients must annually disclose during the TARP period any perquisite whose total value for the TARP recipient's fiscal year exceeds $25,000 for each of the SEOs and most highly compensated employees that are subject to paragraph (a) of § 30.10 (Q–10). TARP recipients must provide a narrative description of the amount and nature of these perquisites, the recipient of these perquisites, and a justification for offering these perquisites (including a justification for offering the perquisite, and not only for offering the perquisite with a value that exceeds $25,000). Such disclosure must be provided within 120 days of the completion of a fiscal year any part of which is a TARP period.

(2) *Location*. A TARP recipient must provide this disclosure to Treasury and to its primary regulatory agency.

(c) *Compensation consultant disclosure*—(1) *General rule*. The compensation committee of the TARP recipient must provide annually a narrative description of whether the TARP recipient, the board of directors of the TARP recipient, or the compensation committee has engaged a compensation consultant; and all types of services, including non-compensation related services, the compensation consultant or any of its affiliates has provided to the TARP recipient, the board, or the compensation committee during the past three years, including any ''benchmarking'' or comparisons employed to identify certain percentile levels of compensation (for example, entities used for benchmarking and a justification for using these entities and the lowest percentile level proposed for compensation). Such disclosure must be provided within 120 days of the completion of a fiscal year any part of which is a TARP period.

(2) *Application to TARP recipients not required to maintain compensation committees*. For those TARP recipients not required to establish and maintain compensation committees under § 30.4(c) (Q–4), the board of directors must provide the disclosure under § 30.4(c)(1).

(3) *Location*. A TARP recipient must provide this disclosure to Treasury and to its primary regulatory agency.

(d) *Prohibition on gross-ups*. Except as explicitly permitted under this part, TARP recipients are prohibited from providing (formally or informally) gross-ups to any of the SEOs and next twenty most highly compensated employees during the TARP period. For this purpose, providing a gross-up includes providing a right to a payment of such a gross-up at a future date, for example a date after the TARP period.

§ 30.12 Q–12: What actions are necessary for a TARP recipient to comply with section 111(d) of EESA (the excessive or luxury expenditures policy requirement)?

To comply with section 111(d) of EESA, by the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, the board of directors of the TARP recipient must adopt an excessive or luxury expenditures policy, provide this policy to Treasury and its primary regulatory agency, and post the text of this policy