

insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

#### § 29.526 Waiver precluded.

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

### PART 30—TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

Sec.

30.0 Executive compensation and corporate governance.

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

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

30.3 Q-3: How are the SEOs and the most highly compensated employees identified for purposes of compliance with this part?

30.4 Q-4: What actions are necessary for a TARP recipient to comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA (evaluation of employee plans and potential to encourage excessive risk or manipulation of earnings)?

30.5 Q-5: How does a TARP recipient comply with the requirements under § 30.4 (Q-4) of this part that the compensation committee discuss, evaluate, and review the SEO compensation plans and other employee compensation plans to ensure that the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, or that the employee compensation plans pose unnecessary risks to the TARP recipient?

30.6 Q-6: How does a TARP recipient comply with the requirement under § 30.4 (Q-4) of this part that the compensation committee discuss, evaluate, and review the employee compensation plans to ensure that these plans do not encourage the

manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient's employees?

30.7 Q-7: How does a TARP recipient comply with the certification and disclosure requirements under § 30.4 (Q-4) of this part?

30.8 Q-8: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(B) of EESA (the "clawback" provision requirement)?

30.9 Q-9: What actions are necessary for a TARP recipient to comply with the standards established under section 111(b)(3)(C) of EESA (the prohibition on golden parachute payments)?

30.10 Q-10: What actions are necessary for a TARP recipient to comply with section 111(b)(3)(D) of EESA (the limitation on bonus payments)?

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?

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)?

30.13 Q-13: What actions are necessary for a TARP recipient to comply with section 111(e) of EESA (the shareholder resolution on executive compensation requirement)?

30.14 Q-14: How does section 111 of EESA operate in connection with an acquisition, merger, or reorganization?

30.15 Q-15: What actions are necessary for a TARP recipient to comply with the certification requirements of section 111(b)(4) of EESA?

30.16 Q-16: What is the Office of the Special Master for TARP Executive Compensation, and what are its powers, duties and responsibilities?

30.17 Q-17: How do the effective date provisions apply with respect to the requirements under section 111 of EESA?

AUTHORITY: 12 U.S.C. 5221; 31 U.S.C. 321.

SOURCE: 74 FR 28405, June 15, 2009, unless otherwise noted.

#### § 30.0 Executive compensation and corporate governance.

The following questions and answers reflect the executive compensation and corporate governance requirements of section 111 of the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5221) (EESA), with respect to participation in the Troubled Assets Relief Program (TARP) established by

## § 30.1

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).

## 31 CFR Subtitle A (7-1-10 Edition)

*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