

agency and post the amended policy on its Internet Web site, if the TARP recipient maintains a company Web site. This disclosure must continue through the TARP period (if the TARP recipient has an obligation), or through the last day of the TARP recipient's fiscal year that includes the sunset date (if the TARP recipient has never had an obligation).

**§ 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)?**

As provided in section 111(e) of EESA, any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient that occurs during the TARP period must permit a separate shareholder vote to approve the compensation of 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). To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC that are applicable to the TARP recipient.

[74 FR 63992, Dec. 7, 2009]

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

(a) *Special rules for acquisitions, mergers, or reorganizations.* In the event that a TARP recipient (target) is acquired by an entity that is not an affiliate of the target (acquirer) in an acquisition of any form, including a purchase of substantially all of the assets of the target, such that the acquirer after the transaction would have been treated as a TARP recipient if the target had received the TARP funds immediately after the transaction, acquirer will not become subject to section 111 of EESA merely as a result of the acquisition. If the acquirer is not subject to section 111 of EESA immediately after the transaction, then any employees of the acquirer immediately after the transaction (including target employees who were SEOs or most highly compensated

employees immediately prior to the transaction and became acquirer employees as a result of the transaction) will not be subject to section 111 of EESA.

(b) *Anti-abuse rule.* Notwithstanding the provisions of paragraph (a) of this section, 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 the requirements of section 111 of EESA, the acquirer will be treated as a TARP recipient immediately upon such acquisition. In such a case, the SEOs and the most highly compensated employees to whom any of the requirements of section 111 of EESA and this Interim Final Rule apply shall be redetermined as of the date of the acquisition. The redetermined SEOs and most highly compensated employees of the post-acquisition acquirer shall consist of the PEO and PFO of the post-acquisition acquirer, plus the applicable number of next most highly compensated employees determined by aggregating the post-acquisition employees of the acquirer (to include the pre-acquisition employees of the target employed by the acquirer, or anticipated to be employed by the acquirer), and ranking such employees in order of compensation for the immediately preceding fiscal year of the pre-acquisition target or pre-acquisition acquirer, as appropriate. In the case of an asset acquisition, the entity or entities to whom the target's assets are transferred shall be treated as the direct recipient of the financial assistance for purposes of determining which other related entities are treated, in the aggregate, as the TARP recipient under the definition of "TARP recipient" in § 30.1 (Q-1).

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

(a) *Certification Requirements—(1) General.* To comply with section 111(b)(4) of EESA, the PEO and the PFO of the TARP recipient must provide the following certifications with respect to the compliance of the TARP recipient with section 111 of EESA as implemented under this part:

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(2) *First Fiscal Year Certification.* (i) Within ninety days of the completion of the first annual fiscal year of the TARP recipient any portion of which is a TARP period, the PEO and the PFO of the TARP recipient must provide certifications similar to the model provided in appendix A to this section.

(ii) If the first annual fiscal year of a TARP recipient any portion of which is a TARP period ends within thirty days after the closing date of the applicable agreement between the TARP recipient and Treasury, the TARP recipient shall have an additional sixty days beginning on the day after the end of the fiscal year during which it can establish the compensation committee, if not already established, and during which the compensation committee shall meet with senior risk officers to discuss, review, and evaluate the CEO compensation plans and employee compensation plans in accordance with § 30.4 (Q-4) of this part. The certifications of the PEO and the PFO of the TARP recipient must be amended to reflect the timing of the establishment and reviews of the compensation committee.

(3) *Years Following First Fiscal Year Certification.* Within ninety days of the completion of each TARP fiscal year of the TARP recipient after the first TARP fiscal year, the PEO and the PFO of the TARP recipient must provide a certification similar to the model provided in appendix B to this section.

(4) *Location.* A TARP recipient with securities registered with the SEC pursuant to the Federal securities law must provide these certifications as an exhibit (pursuant to Item 601(b)(99)(i) of Regulation S-K under the Federal securities laws (17 CFR 229.601(b)(99)(i)) to the TARP recipient's annual report on Form 10-K and to Treasury. To the extent that the PEO or the PFO of the TARP recipient is unable to provide any of these certifications in a timely manner, the PEO or the PFO must provide Treasury an explanation of the reason such certification has not been provided. These certifications are in addition to the compensation committee certifications required by § 30.5 (Q-5) of this part.

(5) *Application to private TARP recipients.* The rules provided in this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws, except that the certifications under appendix A, paragraph (x) and appendix B, paragraph (x) of this section are not required for such TARP recipients. A private TARP recipient must provide these certifications to its primary regulatory agency and to Treasury.

(6) *Application to TARP recipients that have never had an obligation.* For those TARP recipients that have never had an obligation, the PEO and PFO must provide the certifications pursuant to this paragraph (a) only with respect to the requirements applicable to a TARP recipient that has never had an obligation (generally certain compensation committee reviews of employee compensation plans and the issuance of, and compliance with, an excessive or luxury expenses policy).

(b) *Recordkeeping requirements.* The TARP recipient must preserve appropriate documentation and records to substantiate each certification required under paragraph (a) of this section for a period of not less than six years after the date of the certification, the first two years in an easily accessible place. The TARP recipient must furnish promptly to Treasury legible, true, complete, and current copies of the documentation and records that are required to be preserved under paragraph (b) of this section that are requested by any representative of Treasury.

(c) *Penalties for making or providing false or fraudulent Statements.* Any individual or entity that provides information or makes a certification to Treasury pursuant to the Interim Final Rule or as required pursuant to 31 CFR part 30 may be subject to 18 U.S.C. 1001, which generally prohibits the making of any false or fraudulent statement in a matter within the jurisdiction of the Federal government. Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of Federal law, Treasury

shall refer such information to the Department of Justice and the Special Inspector General for the Troubled Asset Relief Program.

APPENDIX A TO § 30.15—MODEL CERTIFICATION FOR 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 the period beginning on the later of September 14, 2009, or ninety days after the closing date of the agreement between the TARP recipient and Treasury and ending with the last day of the TARP recipient’s fiscal year containing that date (the applicable period), the senior executive officer (SEO) compensation plans and the 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 the applicable period any features of the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient], and during that same applicable period has identified any features of the employee compensation plans that pose risks to [identify TARP recipient] and has 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 the applicable period, the terms of each employee compensation plan and identified any features of the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee, and has limited any such features;

(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 included 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, as defined in the regulations and guidance established under section 111 of EESA (bonus payments), of the SEOs and twenty next most highly compensated employees 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 an SEO or any of the next five most highly compensated employees during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient’s fiscal year containing that date;

(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 the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient’s fiscal year containing that date, [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) The board of directors of [identify TARP recipient] has established an excessive or luxury expenditures policy, as defined in the regulations and guidance established under section 111 of EESA, by the later of September 14, 2009, or ninety days after the closing date of the agreement between the TARP recipient and Treasury; this policy has been provided to Treasury and its primary regulatory agency; [identify TARP recipient] and its employees have complied with this policy during the applicable period; and any expenses that, pursuant to this policy, required 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

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related to SEO compensation paid or accrued during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date;

(xi) [Identify TARP recipient] will disclose the amount, nature, and justification for the offering during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date of any perquisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds \$25,000 for any employee who is 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 [TARP recipient] has engaged during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date, 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 SEOs and the next twenty most highly compensated employees during the period beginning on the later of the closing date of the agreement between the TARP recipient and Treasury or June 15, 2009 and ending with the last day of the TARP recipient's fiscal year containing that date;

(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) [Identify TARP recipient] has submitted to Treasury a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year and the most recently completed fiscal year, with the non-SEO ranked in descending order of level of annual compensation, and with the name, title, and employer of each SEO and most highly compensated employee identified; 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. (*See, for example, 18 U.S.C. 1001.*)”

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### 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 any features of the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient] and has identified any features of the employee compensation plans that pose risks to [identify TARP recipient] and has 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 any features of the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee, and has limited any such features;

(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 any expenses that, pursuant to the policy, required 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 SEO 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 any employee who is 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 dur-

ing 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 SEOs 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) [Identify TARP recipient] has submitted to Treasury a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year, with the non-SEO ranked in descending order of level of annual compensation, and with the name, title, and employer of each SEO and most highly compensated employee identified; 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. (See, for example 18 U.S.C. 1001.)”

[74 FR 28405, June 15, 2009, as amended at 74 FR 63992, Dec. 7, 2009]

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

(a) *The Office of the Special Master for TARP Executive Compensation.* The Secretary of the Treasury shall establish the Office of the Special Master for TARP Executive Compensation (Special Master). The Special Master shall serve at the pleasure of the Secretary, and may be removed by the Secretary without notice, without cause, and prior to the naming of any successor Special Master. The Special Master shall have the following powers, duties and responsibilities:

(1) *Interpretative authority.* The Special Master shall have responsibility for interpreting section 111 of EESA, these regulations, and any other applicable guidance, to determine how the requirements under section 111 of EESA, these regulations, and any other