

Summary of New TARP Restrictions – February 17, 2009

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), which contains new restrictions on executive compensation for recipients of funds under the Troubled Assets Relief Program (TARP). These restrictions reiterate as well as override certain restrictions amended on February 4, 2009, are retroactive to include all current and future TARP recipients, and will remain as such until further amendments are implemented.

Section 1

Note: “Senior Executive Officer” means one of the top five most highly compensated executives.

The “TARP Obligation Period” is the period in which TARP obligations are outstanding. However, this does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

The following restrictions apply to all TARP participants:

- During the TARP Obligation Period, each institution will be subject to section 162(m)(5) of the Code, “as applicable”, which was enacted as part of the Emergency Economic Stabilization Act of 2008 and caps the annual deduction for compensation at \$500,000 (1).
 - Prohibits payment of any bonus, retention, or incentive compensation *except* for long-term restricted stock awards.
 - The exception for restricted stock awards is limited to certain employee groups depending on the amount of assistance received under TARP.
 - Restricted stock award restrictions are further defined in Section 2.
- Restricted stock awards may **not**:
 - Fully vest during the period which any financial obligation under TARP remains outstanding.
 - Have a value greater than 1/3 of total annual compensation.
 - For example, if Executive A has a salary of \$500,000, his maximum portion paid in restricted stock would be \$250,000, or 1/3 of total annual compensation of \$750,000. He will also be subject to any other terms and conditions the Treasury determines are in the public interest.

- No golden parachute payments for Senior Executive Officers or any of the next five most highly compensated employees. The ARRA defines a “Golden Parachute” as “any payment (other than for services performed or benefits accrued) relating to an executive’s departure from the TARP participant for any reason.”
- No incentives for Senior Executive Officers to take unnecessary and excessive risks that threaten the value of the institution during the TARP Obligation Period.
- A provision requiring the clawback of any bonus, retention award, or incentive compensation paid to a Senior Executive Officer and any of the next twenty most highly compensated employees based on statements of earnings, revenues, gains, or other criteria later found to be materially inaccurate.
- A ban on any compensation plan that would encourage manipulation of reported earnings to enhance the compensation of any of its employees.
- Compensation Committee must meet at least semiannually to discuss and evaluate the risk involved in employee compensation plans.
- The CEO and CFO (or equivalents) must provide written certification of compliance of the above restrictions to a.) The SEC (publicly traded companies) or b.) Treasury (privately held companies).
- At each annual meeting of shareholders, the institution must permit a separate shareholder vote to approve executive compensation plans.
 - The shareholder vote will not be binding on the Board of Directors of the company.
- Limitations on luxury expenditures:
 - Company-wide policy must be in place regarding luxury or excessive expenditures, which include:
 - Entertainment or events;
 - Office and facility renovations;
 - Aviation or other transportation services, and
 - Other activities that may be seen as excessive and outside the scope of normal business operations.
- The Treasury Secretary will review bonuses, retention awards, and other compensation paid to the Senior Executive Officers and the next twenty most highly compensated employees of each institution receiving TARP assistance before the date of enactment of the ARRA, to determine whether any such payments were inconsistent with the purposes of ARRA or TARP or were otherwise contrary to the public interest, and seek appropriate reimbursements.

- Subject to consultation with the appropriate Federal banking agency, an institution may repay any TARP funds without regard to whether the institution has replaced such funds.

(1) This prohibition does not include any bonus payment required to be paid pursuant to any employment agreement executed on or before February 11, 2009.

Section 2

Restricted stock awards may not have a value greater than 1/3 of total annual compensation. Depending on the amount of TARP assistance, this affects a specific number of executives. The provisions do not specify how non-executives are identified.

	Amount of TARP Assistance			
	\$25 Million or Less	Greater Than \$25 Million and Less Than \$250 Million	Greater Than \$250 Million and Less Than \$500 Million	Greater Than \$500 Million
Executives Affected	The most highly compensated executive.	All senior executive officers (top five) or such higher number as is determined by Treasury.	All senior executive officers and the next ten most highly compensated employees or such higher number as is determined by Treasury.	All senior executive officers and the next twenty most highly compensated employees or such higher number as is determined by Treasury.