

H. R. 1424

One Hundred Tenth Congress of the United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

To provide authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

DIVISION A—EMERGENCY ECONOMIC STABILIZATION

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This division may be cited as the “Emergency Economic Stabilization Act of 2008”.

(b) **TABLE OF CONTENTS.**—The table of contents for this division is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—TROUBLED ASSETS RELIEF PROGRAM

- Sec. 101. Purchases of troubled assets.
- Sec. 102. Insurance of troubled assets.
- Sec. 103. Considerations.
- Sec. 104. Financial Stability Oversight Board.
- Sec. 105. Reports.
- Sec. 106. Rights; management; sale of troubled assets; revenues and sale proceeds.
- Sec. 107. Contracting procedures.
- Sec. 108. Conflicts of interest.
- Sec. 109. Foreclosure mitigation efforts.
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- Sec. 111. Executive compensation and corporate governance.
- Sec. 112. Coordination with foreign authorities and central banks.
- Sec. 113. Minimization of long-term costs and maximization of benefits for taxpayers.
- Sec. 114. Market transparency.
- Sec. 115. Graduated authorization to purchase.
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- Sec. 117. Study and report on margin authority.
- Sec. 118. Funding.
- Sec. 119. Judicial review and related matters.
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- Sec. 121. Special Inspector General for the Troubled Asset Relief Program.
- Sec. 122. Increase in statutory limit on the public debt.
- Sec. 123. Credit reform.
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- Sec. 201. Information for congressional support agencies.
- Sec. 202. Reports by the Office of Management and Budget and the Congressional Budget Office.
- Sec. 203. Analysis in President's Budget.
- Sec. 204. Emergency treatment.

TITLE III—TAX PROVISIONS

- Sec. 301. Gain or loss from sale or exchange of certain preferred stock.
- Sec. 302. Special rules for tax treatment of executive compensation of employers participating in the troubled assets relief program.
- Sec. 303. Extension of exclusion of income from discharge of qualified principal residence indebtedness.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States; and
- (2) to ensure that such authority and such facilities are used in a manner that—
 - (A) protects home values, college funds, retirement accounts, and life savings;
 - (B) preserves homeownership and promotes jobs and economic growth;
 - (C) maximizes overall returns to the taxpayers of the United States; and
 - (D) provides public accountability for the exercise of such authority.

SEC. 3. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

- (1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of Congress” means—
 - (A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and
 - (B) the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.
- (2) **BOARD.**—The term “Board” means the Board of Governors of the Federal Reserve System.
- (3) **CONGRESSIONAL SUPPORT AGENCIES.**—The term “congressional support agencies” means the Congressional Budget Office and the Joint Committee on Taxation.
- (4) **CORPORATION.**—The term “Corporation” means the Federal Deposit Insurance Corporation.
- (5) **FINANCIAL INSTITUTION.**—The term “financial institution” means any institution, including, but not limited to, any

- (B) reduction of loan principal; and
- (C) other similar modifications.

(3) **TENANT PROTECTIONS.**—In the case of mortgages on residential rental properties, modifications made under paragraph (1) shall ensure—

(A) the continuation of any existing Federal, State, and local rental subsidies and protections; and

(B) that modifications take into account the need for operating funds to maintain decent and safe conditions at the property.

(4) **TIMING.**—Each Federal property manager shall develop and begin implementation of the plan required by this subsection not later than 60 days after the date of enactment of this Act.

(5) **REPORTS TO CONGRESS.**—Each Federal property manager shall, 60 days after the date of enactment of this Act and every 30 days thereafter, report to Congress specific information on the number and types of loan modifications made and the number of actual foreclosures occurring during the reporting period in accordance with this section.

(6) **CONSULTATION.**—In developing the plan required by this subsection, the Federal property managers shall consult with one another and, to the extent possible, utilize consistent approaches to implement the requirements of this subsection.

(c) **ACTIONS WITH RESPECT TO SERVICERS.**—In any case in which a Federal property manager is not the owner of a residential mortgage loan, but holds an interest in obligations or pools of obligations secured by residential mortgage loans, the Federal property manager shall—

(1) encourage implementation by the loan servicers of loan modifications developed under subsection (b); and

(2) assist in facilitating any such modifications, to the extent possible.

(d) **LIMITATION.**—The requirements of this section shall not supersede any other duty or requirement imposed on the Federal property managers under otherwise applicable law.

SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

(a) **APPLICABILITY.**—Any financial institution that sells troubled assets to the Secretary under this Act shall be subject to the executive compensation requirements of subsections (b) and (c) and the provisions under the Internal Revenue Code of 1986, as provided under the amendment by section 302, as applicable.

(b) **DIRECT PURCHASES.**—

(1) **IN GENERAL.**—Where the Secretary determines that the purposes of this Act are best met through direct purchases of troubled assets from an individual financial institution where no bidding process or market prices are available, and the Secretary receives a meaningful equity or debt position in the financial institution as a result of the transaction, the Secretary shall require that the financial institution meet appropriate standards for executive compensation and corporate governance. The standards required under this subsection shall be effective for the duration of the period that the Secretary holds an equity or debt position in the financial institution.

(2) **CRITERIA.**—The standards required under this subsection shall include—

(A) limits on compensation that exclude incentives for senior executive officers of a financial institution to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position in the financial institution;

(B) a provision for the recovery by the financial institution of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; and

(C) a prohibition on the financial institution making any golden parachute payment to its senior executive officer during the period that the Secretary holds an equity or debt position in the financial institution.

(3) **DEFINITION.**—For purposes of this section, the term “senior executive officer” means an individual who is one of the top 5 highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

(c) **AUCTION PURCHASES.**—Where the Secretary determines that the purposes of this Act are best met through auction purchases of troubled assets, and only where such purchases per financial institution in the aggregate exceed \$300,000,000 (including direct purchases), the Secretary shall prohibit, for such financial institution, any new employment contract with a senior executive officer that provides a golden parachute in the event of an involuntary termination, bankruptcy filing, insolvency, or receivership. The Secretary shall issue guidance to carry out this paragraph not later than 2 months after the date of enactment of this Act, and such guidance shall be effective upon issuance.

(d) **SUNSET.**—The provisions of subsection (c) shall apply only to arrangements entered into during the period during which the authorities under section 101(a) are in effect, as determined under section 120.

SEC. 112. COORDINATION WITH FOREIGN AUTHORITIES AND CENTRAL BANKS.

The Secretary shall coordinate, as appropriate, with foreign financial authorities and central banks to work toward the establishment of similar programs by such authorities and central banks. To the extent that such foreign financial authorities or banks hold troubled assets as a result of extending financing to financial institutions that have failed or defaulted on such financing, such troubled assets qualify for purchase under section 101.

SEC. 113. MINIMIZATION OF LONG-TERM COSTS AND MAXIMIZATION OF BENEFITS FOR TAXPAYERS.

(a) **LONG-TERM COSTS AND BENEFITS.**—

(1) **MINIMIZING NEGATIVE IMPACT.**—The Secretary shall use the authority under this Act in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the direct outlays, potential long-term returns on assets purchased, and the overall economic benefits of the program, including economic benefits due to improvements in economic activity and the availability of credit, the impact

the basis of which in the hands of the applicable financial institution at the time of the sale or exchange is the same as the basis in the hands of the person which held such stock on such date, or

(2) the applicable financial institution is a partner in a partnership which—

(A) held such stock on September 6, 2008, and later sold or exchanged such stock, or

(B) sold or exchanged such stock during the period described in subsection (b)(2)(B).

(c) REGULATORY AUTHORITY.—The Secretary of the Treasury or the Secretary's delegate may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this section.

(f) EFFECTIVE DATE.—This section shall apply to sales or exchanges occurring after December 31, 2007, in taxable years ending after such date.

SEC. 302. SPECIAL RULES FOR TAX TREATMENT OF EXECUTIVE COMPENSATION OF EMPLOYERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF PROGRAM.

(a) DENIAL OF DEDUCTION.—Subsection (m) of section 162 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(5) SPECIAL RULE FOR APPLICATION TO EMPLOYERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF PROGRAM.—

“(A) IN GENERAL.—In the case of an applicable employer, no deduction shall be allowed under this chapter—

“(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

“(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—

“(I) the executive remuneration for such applicable taxable year, plus

“(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

“(B) APPLICABLE EMPLOYER.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘applicable employer’ means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds \$300,000,000.

“(ii) DISREGARD OF CERTAIN ASSETS SOLD THROUGH DIRECT PURCHASE.—If the only sales of troubled assets

by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

“(iii) AGGREGATION RULES.—Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

“(C) APPLICABLE TAXABLE YEAR.—For purposes of this paragraph, the term ‘applicable taxable year’ means, with respect to any employer—

“(i) the first taxable year of the employer—

“(I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and

“(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds \$300,000,000, and

“(ii) any subsequent taxable year which includes any portion of such period.

“(D) COVERED EXECUTIVE.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘covered executive’ means, with respect to any applicable taxable year, any employee—

“(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

“(II) who is described in clause (ii).

“(ii) HIGHEST COMPENSATED EMPLOYEES.—An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

“(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

“(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

“(iii) **EMPLOYEE REMAINS COVERED EXECUTIVE.**—If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

“(E) **EXECUTIVE REMUNERATION.**—For purposes of this paragraph, the term ‘executive remuneration’ means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.

“(F) **DEFERRED DEDUCTION EXECUTIVE REMUNERATION.**—For purposes of this paragraph, the term ‘deferred deduction executive remuneration’ means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

“(G) **COORDINATION.**—Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

“(H) **REGULATORY AUTHORITY.**—The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.”

(b) **GOLDEN PARACHUTE RULE.**—Section 280G of the Internal Revenue Code of 1986 is amended—

- (1) by redesignating subsection (e) as subsection (f), and
- (2) by inserting after subsection (d) the following new subsection:

“(c) **SPECIAL RULE FOR APPLICATION TO EMPLOYERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF PROGRAM.**—

“(1) **IN GENERAL.**—In the case of the severance from employment of a covered executive of an applicable employer during the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 of such Act), this section shall be applied to payments to such executive with the following modifications:

“(A) Any reference to a disqualified individual (other than in subsection (e)) shall be treated as a reference to a covered executive.

“(B) Any reference to a change described in subsection (b)(2)(A)(i) shall be treated as a reference to an applicable severance from employment of a covered executive, and any reference to a payment contingent on such a change

shall be treated as a reference to any payment made during an applicable taxable year of the employer on account of such applicable severance from employment.

“(C) Any reference to a corporation shall be treated as a reference to an applicable employer.

“(D) The provisions of subsections (b)(2)(C), (b)(4), (b)(5), and (d)(5) shall not apply.

“(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection:

“(A) DEFINITIONS.—Any term used in this subsection which is also used in section 162(m)(5) shall have the meaning given such term by such section.

“(B) APPLICABLE SEVERANCE FROM EMPLOYMENT.—The term ‘applicable severance from employment’ means any severance from employment of a covered executive—

“(i) by reason of an involuntary termination of the executive by the employer, or

“(ii) in connection with any bankruptcy, liquidation, or receivership of the employer.

“(C) COORDINATION AND OTHER RULES.—

“(i) IN GENERAL.—If a payment which is treated as a parachute payment by reason of this subsection is also a parachute payment determined without regard to this subsection, this subsection shall not apply to such payment.

“(ii) REGULATORY AUTHORITY.—The Secretary may prescribe such guidance, rules, or regulations as are necessary—

“(I) to carry out the purposes of this subsection and the Emergency Economic Stabilization Act of 2008, including the extent to which this subsection applies in the case of any acquisition, merger, or reorganization of an applicable employer,

“(II) to apply this section and section 4999 in cases where one or more payments with respect to any individual are treated as parachute payments by reason of this subsection, and other payments with respect to such individual are treated as parachute payments under this section without regard to this subsection, and

“(III) to prevent the avoidance of the application of this section through the mischaracterization of a severance from employment as other than an applicable severance from employment.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending on or after the date of the enactment of this Act.

(2) GOLDEN PARACHUTE RULE.—The amendments made by subsection (b) shall apply to payments with respect to severances occurring during the period during which the authorities under section 101(a) of this Act are in effect (determined under section 120 of this Act).



One Hundred Eleventh Congress of the United States of America

AT THE FIRST SESSION

*Began and held at the City of Washington on Tuesday,
the sixth day of January, two thousand and nine*

An Act

Making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Recovery and Reinvestment Act of 2009".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

DIVISION A-- APPROPRIATIONS PROVISIONS

- TITLE I-- AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
- TITLE II-- COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
- TITLE III-- DEPARTMENT OF DEFENSE
- TITLE IV-- ENERGY AND WATER DEVELOPMENT
- TITLE V-- FINANCIAL SERVICES AND GENERAL GOVERNMENT
- TITLE VI-- DEPARTMENT OF HOMELAND SECURITY
- TITLE VII-- INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
- TITLE VIII-- DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES
- TITLE IX-- LEGISLATIVE BRANCH
- TITLE X-- MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES
- TITLE XI-- STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS
- TITLE XII-- TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES
- TITLE XIII-- HEALTH INFORMATION TECHNOLOGY
- TITLE XIV-- STATE FISCAL STABILIZATION FUND
- TITLE XV-- ACCOUNTABILITY AND TRANSPARENCY
- TITLE XVI-- GENERAL PROVISIONS--THIS ACT

DIVISION B-- TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

- TITLE I-- TAX PROVISIONS
- TITLE II-- ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES
- TITLE III-- PREMIUM ASSISTANCE FOR COBRA BENEFITS
- TITLE IV-- MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY, MISCELLANEOUS MEDICARE PROVISIONS
- TITLE V-- STATE FISCAL RELIEF
- TITLE VI-- BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM
- TITLE VII-- LIMITS ON EXECUTIVE COMPENSATION

SEC. 3. PURPOSES AND PRINCIPLES.

(a) STATEMENT OF PURPOSES.--The purposes of this Act include the following:

(2) The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include—

(A) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(B) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;

(C) an evaluation of the status of deployment of broadband service, including progress of projects supported by the grants made pursuant to this section; and

(D) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

(3) In developing the plan, the Commission shall have access to data provided to other Government agencies under the Broadband Data Improvement Act (47 U.S.C. 1301 note).

(4) The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than 2 years after the date of the enactment of this Act, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the National Telecommunications and Information Administration in a form that is interactive and searchable.

(5) The Assistant Secretary shall have the authority to prescribe such rules as are necessary to carry out the purposes of this section.

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

SEC. 7000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

Sec. 7000. Table of contents.

Sec. 7001. Executive compensation and corporate governance.

Sec. 7002. Applicability with respect to loan modifications.

SEC. 7001. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended to read as follows:

"SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) SENIOR EXECUTIVE OFFICER.—The term 'senior executive officer' means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

"(2) GOLDEN PARACHUTE PAYMENT.—The term 'golden parachute payment' means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

"(3) TARP RECIPIENT.—The term 'TARP recipient' means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

"(4) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(5) PERIOD IN WHICH OBLIGATION IS OUTSTANDING; RULE OF CONSTRUCTION.—For purposes of this section, the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

"(b) EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.—

"(1) ESTABLISHMENT OF STANDARDS.—During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

"(A) the standards established by the Secretary under this section; and

"(B) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

"(2) STANDARDS REQUIRED.—The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

"(3) SPECIFIC REQUIREMENTS.—The standards established under paragraph (2) shall include the following:

"(A) Limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

"(B) A provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate.

"(C) A prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period in which any

obligation arising from financial assistance provided under the TARP remains outstanding.

"(D)(i) A prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, except that any prohibition developed under this paragraph shall not apply to the payment of long-term restricted stock by such TARP recipient, provided that such long-term restricted stock—

"(I) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding;

"(II) has a value in an amount that is not greater than 1/4 of the total amount of annual compensation of the employee receiving the stock; and

"(III) is subject to such other terms and conditions as the Secretary may determine is in the public interest.

"(ii) The prohibition required under clause (i) shall apply as follows:

"(I) For any financial institution that received financial assistance provided under the TARP equal to less than \$25,000,000, the prohibition shall apply only to the most highly compensated employee of the financial institution.

"(II) For any financial institution that received financial assistance provided under the TARP equal to at least \$25,000,000, but less than \$250,000,000, the prohibition shall apply to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

"(III) For any financial institution that received financial assistance provided under the TARP equal to at least \$250,000,000, but less than \$500,000,000, the prohibition shall apply to the senior executive officers and at least the 10 next most highly compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

"(IV) For any financial institution that received financial assistance provided under the TARP equal to \$500,000,000 or more, the prohibition shall apply to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

"(iii) The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

"(E) A prohibition on any compensation plan that would encourage manipulation of the reported earnings of such

TARP recipient to enhance the compensation of any of its employees.

"(F) A requirement for the establishment of a Board Compensation Committee that meets the requirements of subsection (e).

"(4) CERTIFICATION OF COMPLIANCE.—The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the requirements of this section—

"(A) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

"(B) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

"(c) BOARD COMPENSATION COMMITTEE.—

"(1) ESTABLISHMENT OF BOARD REQUIRED.—Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

"(2) MEETINGS.—The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

"(3) COMPLIANCE BY NON-SIC REGISTRANTS.—In the case of any TARP recipient, the common or preferred stock of which is not registered pursuant to the Securities Exchange Act of 1934, and that has received \$25,000,000 or less of TARP assistance, the duties of the Board Compensation Committee under this subsection shall be carried out by the board of directors of such TARP recipient.

"(d) LIMITATION ON LUXURY EXPENDITURES.—The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

"(1) entertainment or events;

"(2) office and facility renovations;

"(3) aviation or other transportation services; or

"(4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

"(e) SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

"(1) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

"(2) NONBINDING VOTE. A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling

a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

"(3) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of enactment of the American Recovery and Reinvestment Act of 2009, the Commission shall issue any final rules and regulations required by this subsection.

"(f) REVIEW OF PRIOR PAYMENTS TO EXECUTIVES.—

"(1) IN GENERAL.—The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before the date of enactment of the American Recovery and Reinvestment Act of 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

"(2) NEGOTIATIONS FOR REIMBURSEMENT.—If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

"(g) NO IMPEDIMENT TO WITHDRAWAL BY TARP RECIPIENTS.—Subject to consultation with the appropriate Federal banking agency (as that term is defined in section 3 of the Federal Deposit Insurance Act), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary shall liquidate warrants associated with such assistance at the current market price.

"(h) REGULATIONS.—The Secretary shall promulgate regulations to implement this section."



U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

FOR IMMEDIATE RELEASE: June 10, 2009
CONTACT: Treasury Public Affairs (202) 622-2960

For a copy of the regulations, click [link](#).

Interim Final Rule on TARP Standards for Compensation and Corporate Governance

1. ***Limits Executive Compensation for Certain Executives and Highly Compensated Employees at Companies Receiving TARP Funds***
 - Limits Bonus Payments to Protect Taxpayer Investments
 - Curtails the Payment of Golden Parachutes
 - Imposes a Clawback for Any Bonus Based on Materially Inaccurate Performance Criteria
2. ***Appoints a Special Master to Review Compensation Plans At Firms Receiving Exceptional Assistance***
 - Responsible for Reviewing Any Compensation for Senior Executive Officers and Most Highly Paid Employees At Firms Receiving Exceptional Assistance – With Authority to Disapprove Plans Where Salary or Other Compensation Is Inappropriate, Unsound or Excessive
 - Must Approve Compensation Structure for Any Executive Officers and the 100 Most Highly Paid Employees at Those Firms
 - Possesses Authority to Negotiate Reimbursements on Payments Made Before February 17, 2009
 - Makes Determinations Based on A Clear Set of Principles
3. ***Implements and Expands Upon Key Recovery Act Provisions Consistent With February 4th Proposals***
 - Extends Required Risk Analysis of Compensation to All Employees of TARP Firms
 - Requires Luxury Expenditure Policies for All TARP Firms
 - Institutes “Say on Pay” Requirement for All TARP Firms
4. ***Sets Additional Compensation and Governance Standards to Improve Accountability and Disclosure***
 - Prohibits Tax Gross-Ups
 - Requires Additional Perk Disclosure
 - Mandates Disclosure of Compensation Consultants

1. ***Limitations on Executive Compensation for Companies Receiving TARP Assistance:*** The interim final rule establishes certain standards for executive compensation practices at firms receiving TARP assistance, in order to fully protect the interests of taxpayers and mandate compensation practices that maximize the value of the firm for shareholders.
 - ***Limits Bonus Payments to Senior Executive Officers and Highly Compensated Employees to Protect Taxpayer Investments:*** The new regulations limit bonuses paid to senior executive officers – defined to include the “named executive officers” identified in the company’s annual compensation disclosures – and to a specified number of the most highly compensated employees of TARP recipients to one-third of total compensation, implementing the provisions passed by Congress. (The rule defines “most highly compensated” employees by reference to total annual compensation as calculated under the securities regulations, in order to most accurately capture the amounts earned by these executives each year. The number of most highly compensated employees covered by the limit depends upon the amount of financial assistance the company has received. For those institutions receiving over \$500 million in assistance, the five senior executive officers and the 20 most highly compensated employees are covered.) At the same time, the rules encourage firms to pay salary in the form of stock that must be held for a long period of time and may not be entirely converted to cash until TARP funds are repaid, aligning executives’ incentives with those of shareholders and taxpayers and effectively ensuring that executives experience a “clawback” effect if positive results prove illusory and the stock drops in value.
 - o ***Prevents Abuse of the Exception for Commissions:*** Although the rule contains an exception from the bonus limitation for payments of certain types of “commissions,” the rule also minimizes abuse of the exception by limiting commissions to amounts payable under programs similar to commission programs already in place as of February 17, 2009. At firms receiving “exceptional assistance” under TARP, these payments and compensation structures for executive officers and the most highly compensated employees will also be subject to review by the newly appointed Special Master for TARP Executive Compensation.
 - ***Curtails the Payment of “Golden Parachutes.”*** The Recovery Act expanded the original EESA’s limits on golden parachutes, prohibiting any golden parachute payment to a senior executive officer or any of the next 5 most highly compensated employees. While the Recovery Act limited the definition of golden parachutes to payments for an employee’s departure for any reason, today’s rule also includes payments made in connection with a change in control of the company.
 - ***Imposes a Clawback for Any Bonus Based on Materially Inaccurate Performance Criteria.*** Although the original EESA required a clawback provision applicable only to amounts paid to senior executive officers, the Recovery Act mandates that bonuses paid to senior executive officers and next 20 most highly compensated employees be subject to a clawback if the payment was based on materially inaccurate performance criteria. Today’s rule also requires that the TARP recipient actually exercise its clawback rights in such a case unless the TARP recipient can demonstrate that it would be unreasonable to do so (for example, if the expense of enforcing the clawback right exceeds the benefits of doing so).

2. **Appoints a Special Master to Ensure Compensation Plans Are Consistent with the Public Interest:** As part of the rule, we'll be announcing the appointment of Kenneth R. Feinberg as the Special Master for TARP Executive Compensation. In this role, Mr. Feinberg – a highly-respected mediator widely praised for his leadership of the September 11th Victim Compensation Fund – will review payments and compensation plans for the executives and the 100 most highly compensated employees of TARP recipients that have received exceptional assistance to ensure that compensation is structured in a way that gives those employees incentives to maximize long-term shareholder value and protect taxpayer interests. Companies receiving exceptional financial assistance include those receiving assistance under the Programs for Systemically Significant Failing Institutions, the Targeted Investment Program, the Automotive Industry Financing Program, and currently include AIG, Citigroup, Bank of America, Chrysler, GM, GMAC and Chrysler Financial.
- ***Responsible for Reviewing Any Compensation for Senior Executive Officers and Next 20 Most Highly Compensated Employees at Firms Receiving Exceptional Assistance:*** At firms receiving exceptional assistance, the Special Master will be charged with reviewing and approving any compensation proposed to be paid to any employee subject to the Recovery Act's bonus restrictions (for these firms, this generally will include the five senior executive officers and the 20 next most highly paid executives).
 - ***Must Approve Compensation Structure for Senior Executive Officers and the 100 Most Highly Paid Employees at Those Firms:*** In light of the need for long-term reform of the structure of executive compensation and the incentives that pay gives to top executives, the Special Master will also be empowered to review and approve the structure of compensation for the 100 most highly paid employees that are not subject to the bonus restrictions and any executive officers that are not among the 100 most highly paid employees. Where the Special Master finds that the structure of compensation is inconsistent with the purposes of EESA, the TARP or the public interest, the Special Master may disapprove the plan and require the company to resubmit.
 - ***Authority to Disapprove Compensation Arrangements for Companies with Exceptional Assistance Where Salary or Other Compensation Is Found to be Inappropriate, Unsound or Excessive:*** If the Special Master finds the salaries or any other compensation of those executives or employees subject to the bonus limitations in companies receiving exceptional assistance to be excessive, inappropriate or designed to encourage unsound risk-taking, the Special Master has the authority to disapprove the arrangement and require the company to resubmit taking account of the deficiencies found by the Special Master. For any other of the executive officers and the 100 most highly paid employees, the Special Master may review the structure of the entire compensation package.
 - ***"Safe Harbor" Guidance on Compensation Payments and Structure:*** Consistent with the Treasury's February 4 guidance on executive compensation at TARP recipients, the Special Master will automatically approve proposed compensation to employees of TARP recipients receiving exceptional assistance so long as the employee's total annual compensation is not more than \$500,000, with any additional compensation paid in the form of long-term restricted stock. Providing recipients with a clear "safe harbor" rule will encourage TARP recipients to use compensation structures that link compensation to long-term firm value.

- ***Entrusted With Negotiating Reimbursements for Taxpayers:*** The Special Master will also oversee the review of bonuses, retention awards, and other compensation paid before February 17, 2009 by TARP recipients, and, where appropriate, negotiate appropriate reimbursements to the Federal Government.
 - ***Issuing Determinations Based on a Clear Set of Principles:*** The IFR sets out a clear set of general principles that the Special Master will use to help determine whether TARP participants receiving exceptional assistance have designed executive compensation to maximize shareholder value and protect taxpayer interests, summarized as follows:
 - o ***Risk:*** Compensation should avoid incentives that reward employees for short-term or temporary increases in value that may not ultimately result in an increase in the long-term value of the TARP recipient;
 - o ***Taxpayer Return:*** Compensation should reflect the need for the TARP recipient to remain a competitive enterprise and ultimately repay TARP obligations;
 - o ***Appropriate Allocation:*** Compensation should be appropriately allocated among each element of pay (*e.g.* salary, short- and long-term incentive pay, and current and deferred compensation or retirement pay);
 - o ***Performance-Based Compensation:*** Compensation should be performance-based, and determined through tailored metrics that encompass individual performance and/or the performance of the TARP recipient or relevant business unit;
 - o ***Comparable Payments:*** Compensation should be consistent with, and not excessive in comparison to, pay for those in similar roles at similar entities; and
 - o ***Employee Contribution:*** Compensation should reflect the current or prospective contributions of the employee to the value of the TARP recipient.
3. ***Implements and Expands Upon Key Recovery Act Provisions Consistent with February 4th Proposals:*** The rule expands upon key Recovery Act provisions in light of Treasury’s February 4th proposals and the clear need for shareholders and directors to work together to ensure that compensation practices at TARP recipients are reformed over the long term.
- ***Extends Required Risk Analysis of Compensation to All Employees:*** The original EESA included a requirement that compensation plans for senior executive officers be limited to avoid incentives for unnecessary risk-taking, and the Recovery Act expanded that provision to all employee compensation plans, and also to require that no employee compensation plan encourage the manipulation of earnings. Today’s rule expands upon those important provisions by requiring that the compensation committee of the financial institution provide a narrative explanation of its analysis, allowing shareholders to determine and evaluate directors’ reasoning with respect to the risks presented by compensation plans.
 - ***Requires Luxury Expenditure Policies for All TARP Firms:*** The rule implements the Recovery Act’s requirement that the board of directors of each TARP recipient put in place a company-wide policy on luxury or excessive expenditures. To help ensure that the top executives of each company keep close watch over these types of expenditures, the rule also requires that the CEO and the CFO of each TARP recipient certify that any

expenditure requiring the approval of the board of directors or a senior executive officer or any executive officer of a substantially similar level of responsibility, was properly approved, and requires that the policy mandate prompt internal reporting of any violations of the policy.

- ***Institutes “Say on Pay” Requirement at All TARP Recipients:*** Consistent with our February 4th proposals, the Recovery Act requires that TARP recipients provide an annual shareholder vote on a non-binding resolution to approve executive compensation packages. Today’s rule requires TARP recipients to permit such a vote consistent with regulations or guidance promulgated by the SEC.

4. **Sets Additional Compensation and Governance Standards to Improve Accountability and Disclosure for TARP Recipients:** Beyond new guidance on the provisions explicitly required by Congress, today’s rule includes the following additional requirements to further protect shareholder value and enhance transparency at TARP firms:

- ***Prohibits Tax Gross-Ups:*** The rule prohibits the payment to senior executive officers and the 20 next most highly compensated employees of a tax “gross-up,” or a payment to cover taxes due on compensation such as golden parachutes and perquisites. Studies indicate that the costs of these payments generally outweigh the benefits they provide to executives, and this additional requirement reflects the need for the structure of compensation arrangements to maximize shareholder value.
- ***Requires Additional Disclosure of Perks:*** Expanding upon SEC disclosure requirements, TARP recipients will be required to disclose any perquisites provided to any employee subject to the Recovery Act’s bonus limitations with total value exceeding \$25,000. TARP recipients will also be required to provide a narrative description of, and justification for, the benefit. Existing SEC rules require disclosure of perquisites to the five named executive officers of the company. By expanding the disclosure to include all employees subject to the bonus limitation, and by requiring a narrative discussion of the basis for providing the benefit, the rule will help the owners of the company better understand why directors have provided perquisites to employees — and whether these perquisites are likely to maximize shareholder value.
- ***Mandates the Disclosure of Compensation Consultants:*** In light of the extensive involvement of compensation consultants in setting pay for top executives, the rule requires TARP recipients to disclose whether the company or its compensation committee engaged a compensation consultant. In order to give shareholders a more clear sense of the consultant’s influence over pay and any possible conflict of interest, the rule requires TARP recipients to provide a narrative description of the services provided by any such consultant, including any non-compensation related services provided by the consultant or any of its affiliates, as well as a description of the use of any “benchmarking” procedures in the consultant’s analysis.

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Federal Register

**Monday,
June 15, 2009**

Part III

Department of the Treasury

**31 CFR Part 30
TARP Standards for Compensation and
Corporate Governance; Interim Final Rule**

DEPARTMENT OF THE TREASURY**31 CFR Part 30**

RIN 1505-AC09

TARP Standards for Compensation and Corporate Governance

AGENCY: Domestic Finance, Treasury.

ACTION: Interim final rule.

SUMMARY: This interim final rule, promulgated pursuant to sections 101(a)(1), 101(c)(5), and 111 of the Emergency Economic Stabilization Act of 2008 (EESA), as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), provides guidance on the executive compensation and corporate governance provisions of EESA that apply to entities that receive financial assistance under the Troubled Asset Relief Program (TARP). Section 111 of EESA requires entities receiving financial assistance (TARP recipients) from the Department of the Treasury (Treasury) to meet appropriate standards for executive compensation and corporate governance. This interim final rule includes standards for TARP recipients that implement the provisions of section 111 of EESA, as well as certain additional standards adopted pursuant to the authority granted the Treasury under section 111(b)(2) to promulgate such additional standards.

DATES: *Effective Date:* These regulations are effective on June 15, 2009. *Comment due date:* August 14, 2009.

ADDRESSES: Treasury invites comments on the topics addressed in this interim final rule. Comments may be submitted to Treasury by any of the following methods: Submit electronic comments through the Federal government e-rulemaking portal, <http://www.regulations.gov> or by e-mail to executivecompensationcomments@do.treas.gov or send paper comments in triplicate to Executive Compensation Comments, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, Treasury will post all comments to <http://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official

business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622-0990. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim final rule contact the Office of Domestic Finance, Treasury, at (202) 927-6618.

SUPPLEMENTARY INFORMATION:**Executive Summary**

This Interim Final Rule sets forth the following standards, which generally apply to all TARP recipients in the programs under the TARP, subject to certain exceptions for TARP recipients that do not hold outstanding obligations: (1) Limits on compensation that exclude incentives for senior executive officers (SEOs) to take unnecessary and excessive risks that threaten the value of the TARP recipient; (2) provision for the recovery of any bonus, retention award, or incentive compensation paid to a SEO or the next twenty most highly compensated employees based on materially inaccurate statements of earnings, revenues, gains, or other criteria; (3) prohibition on making any golden parachute payment to a SEO or any of the next five most highly compensated employees; (4) prohibition on the payment or accrual of bonus, retention award, or incentive compensation to SEOs or certain highly compensated employees, subject to certain exceptions for payments made in the form of restricted stock; (5) prohibition on employee compensation plans that would encourage manipulation of earnings reported by the TARP recipient to enhance an employee's compensation; (6) establishment of a compensation committee of independent directors to meet semi-annually to review employee compensation plans and the risks posed by these plans to the TARP recipient; (7) adoption of an excessive or luxury expenditures policy; (8) disclosure of perquisites offered to SEOs and certain highly compensated employees; (9) disclosure related to compensation consultant engagement; (10) prohibition on tax gross-ups to SEOs and certain highly compensated employees; (11) compliance with Federal securities rules and regulations regarding the submission of a non-binding resolution

on SEO compensation to shareholders; and (12) establishment of the Office of the Special Master for TARP Executive Compensation (Special Master) to address the application of these rules to TARP recipients and their employees. Among the duties and responsibilities of the Special Master with respect to TARP recipients of exceptional assistance is to review and approve compensation payments and compensation structures applicable to the SEOs and certain highly compensated employees, and to review and approve compensation structures applicable to certain additional highly compensated employees. TARP recipients that are not receiving exceptional assistance may apply to the Special Master for an advisory opinion with respect to compensation payments and structures. For further discussion of the Special Master's responsibilities, see section III.B of this preamble. Finally, this interim final rule also establishes compliance reporting and recordkeeping requirements regarding the rule's executive compensation and corporate governance standards. This interim final rule generally affects TARP recipients, their SEOs, and certain of their highly compensated employees.

I. Background

In October, 2008, the Department of the Treasury (Treasury) established the Troubled Asset Relief Program (TARP) under the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5021 *et seq.*) (EESA). EESA provided immediate authority and facilities that the Secretary of the Treasury (Secretary) could use to restore liquidity and stability to the financial system. Section 101(a) of EESA authorizes the Secretary to establish the TARP to "purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary."

On February 13, 2009, Congress enacted the American Recovery and Reinvestment Act of 2009 (ARRA), which the President signed into law on February 17, 2009. Title VII of Division B of the ARRA amended in its entirety section 111 of EESA. Section 111 of EESA provides that certain entities that receive financial assistance from Treasury under the TARP (TARP recipients) will be subject to specified executive compensation and corporate governance standards to be established by the Secretary.

II. Previous Rulemaking

A. October 2008 Interim Final Rule

On October 20, 2008, Treasury published in the **Federal Register** an interim final rule (73 FR 62205) adding 31 CFR Part 30 under section 111 of EESA (prior to its later amendment by ARRA) (October 2008 Interim Final Rule). The October 2008 Interim Final Rule established the original executive compensation standards for financial institutions participating in the Capital Purchase Program (CPP), a financial stability program implemented under the TARP in October 2008. These standards generally applied to the senior executive officers (SEOs) of the CPP participant, that is, the principal executive officer (PEO), the principal financial officer (PFO), and the three most highly compensated executive officers in addition to the PEO and the PFO.

Section 111(b)(2)(A) of EESA, prior to the amendment by ARRA, required “limits on compensation that exclude incentives for senior executive officers of a financial institution to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position in the financial institution.” With respect to section 111(b)(2)(A), the October 2008 Interim Final Rule required the financial institution’s compensation committee to identify the features in the financial institution’s SEO incentive compensation arrangements that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the financial institution. The October 2008 Interim Final Rule required that the compensation committee review (no more than ninety days after the purchase under the CPP and annually thereafter) the SEO incentive compensation arrangements with the financial institution’s senior risk officers to ensure that SEOs were not encouraged to take such risks. The compensation committee was then required to certify that it had completed those reviews.

Section 111(b)(2)(B) of EESA required “a provision for the recovery by the financial institution of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate.” With respect to this section, the October 2008 Interim Final Rule required the SEO bonus and incentive compensation paid while Treasury holds an equity or debt position acquired under the CPP to be

subject to a provision for recovery or “clawback” by the financial institution if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria.

Section 111(b)(2)(C) of EESA required “a prohibition on the financial institution making any golden parachute payment to its senior executive officer during the period that the Secretary holds an equity or debt position in the financial institution.” In accordance with this section, the October 2008 Interim Final Rule prohibited a financial institution from making any golden parachute payment to a SEO during the period Treasury holds an equity or debt position acquired under the CPP. The October 2008 Interim Final Rule defined a golden parachute payment as any payment in the nature of compensation to (or for the benefit of) a SEO made on account of an applicable severance from employment to the extent the aggregate present value of such payments equals or exceeds an amount equal to three times the SEO’s base amount of compensation.

The October 2008 Interim Final Rule also set forth an additional standard for executive compensation and corporate governance under the authority of section 111(b)(1) of EESA. This standard required the financial institution to forgo any deduction for compensation for Federal income tax purposes in excess of \$500,000 for each SEO that would not be deductible if section 162(m)(5) of the Internal Revenue Code (26 U.S.C. 162(m)(5)) applied to the financial institution.

B. Other Guidance

At the same time of the release of the October 2008 Interim Final Rule, Treasury also published guidance relating to other financial stability programs under TARP. Treasury Notice 2008–PSSFI addressed the provisions under section 111(b) of EESA as applicable to financial institutions participating in programs for systemically significant failing institutions. Treasury Notice 2008–PSSFI included the same standards as the October 2008 Interim Final Rule with one exception: It prohibited the financial institution from making any golden parachute payment (defined more strictly under Treasury Notice 2008–PSSFI as any payment made on account of an applicable severance from employment) to a SEO.

In addition, Treasury issued two notices on executive compensation requirements applicable to auction programs for purchasing troubled assets. First, pursuant to section 111(c) of

EESA, Notice 2008–TAAP prohibited any financial institution selling more than \$300,000,000 in troubled assets through an auction program from entering into a new SEO employment agreement with a golden parachute provision through the length of the program. Second, I.R.S. Notice 2008–94, addressing certain tax provisions in section 302 of EESA applicable to SEO compensation, required financial institutions selling more than \$300,000,000 in troubled assets through an auction program to forgo any deduction for compensation for Federal income tax purposes in excess of \$500,000 for each SEO under newly added section 162(m)(5) of the Internal Revenue Code (26 U.S.C. 162(m)(5)) and any deduction for certain SEO golden parachute payments under newly added section 280G(e) of the Internal Revenue Code (26 U.S.C. 280G(e)). In addition, I.R.S. Notice 2008–94 subjected SEOs to a 20-percent excise tax on these golden parachute payments.

On January 16, 2009, Treasury announced amendments to the October 2008 Interim Final Rule to include reporting and recordkeeping requirements under the executive compensation standards for the CPP. However, these amendments were returned from the **Federal Register** and never published and, thus, will never be effective.

The provisions of the ARRA and this interim final rule (Interim Final Rule) supersede the October 2008 Interim Final Rule, Notice 2008–PSSFI, and Notice 2008–TAAP, for periods for which the ARRA provisions described in this rule are effective. For a more detailed discussion of the effective dates, including the effective date of this Interim Final Rule, see § 30.17 (Q–17) of the Interim Final Rule, and the discussion of § 30.17 (Q–17) in section III.B of this preamble.

In addition, on February 4, 2009, Treasury issued new guidance on the executive compensation restrictions under EESA (February 2009 Treasury Guidance). The February 2009 Treasury Guidance provided financial institutions participating in the TARP with reporting and recordkeeping guidance, including guidance for compensation committees in preparing an explanation of how SEO compensation arrangements do not encourage excessive and unnecessary risk-taking.

For entities participating in an exceptional assistance program under the TARP, the February 2009 Treasury Guidance proposed to (1) limit the annual compensation of senior executives to \$500,000 other than

restricted stock or other similar long-term incentive arrangements; (2) require the vesting schedule of this restricted stock to be based on the financial institution's satisfying repayment obligations, protecting taxpayer interests, and meeting lending and stability standards; (3) require full disclosure of executive compensation structure and strategy and a non-binding shareholder resolution approving or disapproving the structure and strategy; (4) require provisions for clawback of bonuses and incentive compensation awarded to SEOs if based on materially inaccurate financial statements or performance metrics; (5) require provisions for the clawback of bonuses and incentive compensation awarded to the next twenty executive officers if based on materially inaccurate financial statements or performance metrics and the executive officers had knowingly engaged in providing inaccurate information relating to those financial statements or performance metrics; (6) limit the payment of any golden parachute payments to the SEOs and the next five executive officers; (7) prohibit the payment of any golden parachute payments greater than one year's compensation to the next twenty-five executive officers; and (8) provide guidance for boards of directors in adopting a luxury expenditures policy.

For entities participating in a generally available capital access program under the TARP, the February 2009 Treasury Guidance proposed to (1) limit SEO annual compensation to \$500,000 with any additional pay in the form of restricted stock or other similar long-term incentive arrangements carrying the same restrictions as for entities participating in an exceptional assistance program; (2) allow entities to waive this limitation only by disclosure of SEO compensation and, if requested, a non-binding shareholder resolution on that SEO compensation; (3) require provisions for clawback of bonuses and incentive compensation awarded to SEOs if based on materially inaccurate financial statements or performance metrics; (4) require provisions for clawback of bonuses and incentive compensation awarded to the next twenty executive officers if based on materially inaccurate financial statements or performance metrics and if the executive officers knowingly engaged in providing inaccurate information relating to those financial statements or performance metrics; (5) prohibit the payment of any golden parachute payments greater than one year's compensation to the SEOs; and (6) provide guidance for boards of

directors in adopting a luxury expenditures policy.

The February 2009 Treasury Guidance provided that the guidelines would not apply retroactively to existing investments or to previously announced programs. The February 2009 Treasury Guidance also anticipated a public comment period before implementation of the guidelines for generally available capital access programs. Before the full implementation of the February 2009 Treasury Guidance, Congress enacted the ARRA. The ARRA prescribes new executive compensation standards different from the Treasury Guidance (except for the similar provisions with respect to required clawback provisions and excessive or luxury expenditures policies), and requires Treasury to establish these standards by promulgating regulations to implement section 111. This Interim Final Rule complies with this statutory requirement to promulgate standards that implement the ARRA provisions, consolidates all of the executive-compensation-related provisions that are specifically directed at TARP recipients into a single rule (superseding all prior rules and guidance), and utilizes the discretion granted to the Secretary under the ARRA to adopt additional standards, some of which are adapted from principles set forth in the February 2009 Treasury Guidance.

III. The Interim Final Rule

This Interim Final Rule revises in its entirety 31 CFR Part 30, which comprises Treasury's regulations implementing section 111 of EESA.

A. Overview of Statutory Provisions

Generally, section 111 of EESA, as amended by ARRA, imposes corporate governance and executive compensation requirements on TARP recipients and requires Treasury to establish certain corporate governance and executive compensation standards with which TARP recipients must comply. Section 111 outlines several specific standards, and requires Treasury to establish these standards by promulgating regulations. Section 111 also authorizes Treasury to establish additional standards by regulation.

Section 111(b)(1) of EESA provides that a TARP recipient shall be subject to the standards established by the Secretary under that section and the provisions of section 162(m)(5) of the Internal Revenue Code, as applicable. The October 2008 Interim Final Rule required that all TARP recipients forgo any deduction for Federal income tax purposes for compensation that would

not be deductible if section 162(m)(5) of the Internal Revenue Code (26 U.S.C. 162(m)(5)) were to apply to the TARP recipient. Thus, TARP recipients generally agreed in their applicable contracts with Treasury under TARP not to claim a deduction for compensation during a taxable year in excess of \$500,000 for a SEO. This Interim Final Rule does not impose additional tax related restrictions beyond those that already apply under section 162(m)(5). However, because these contractual terms are not inconsistent with any provisions of this Interim Final Rule, the contractual provisions remain in effect, in accordance with their terms, and accordingly, TARP recipients continue to be required to forgo the applicable deduction. See § 30.17 (Q-17), and the discussion of § 30.17 (Q-17) in section III.B of this preamble. In addition, Treasury anticipates requiring this condition in any future agreements to provide TARP assistance.

Section 111(b)(3)(A) requires that Treasury promulgate standards limiting SEO compensation to exclude incentives for SEOs to take unnecessary and excessive risks threatening to the TARP recipient's value.

Section 111(b)(3)(B) requires Treasury to establish standards mandating that TARP recipients institute a provision to recover any bonus, retention award, or incentive compensation paid to a SEO and any of the next twenty most highly compensated employees of the TARP recipient if the compensation was based on materially inaccurate statements of earnings, revenues, gains, or other criteria (a provision sometimes referred to as a "clawback").

Section 111(b)(3)(C) requires Treasury to establish standards prohibiting TARP recipients from making golden parachute payments (defined in Section 111(a)(2) as any payment for "departure from a company for any reason, except for payments for services performed or benefits accrued") to a SEO or any of the next five most highly compensated employees.

Section 111(b)(3)(D) requires Treasury to establish standards prohibiting TARP recipients from paying or accruing any bonus, retention award, or incentive compensation to certain highly compensated employees or SEOs. This prohibition has two exceptions: (1) TARP recipients can pay or accrue such amounts if the amounts are payable as long-term restricted stock, provided that the stock does not fully vest until the repayment of TARP assistance, has a value that is no greater than one-third of the total annual compensation, and is subject to such other terms and conditions as the Secretary may

determine to be in the public interest; and (2) TARP recipients can make bonus payments required to be paid under written employment contracts executed on or before February 11, 2009 and determined to be valid by the Secretary. The number of employees to which this prohibition applies depends upon the amount of financial assistance provided to the TARP recipient.

Section 111(b)(3)(E) requires Treasury to establish standards prohibiting any employee compensation plan that would encourage manipulation of the reported earnings of the TARP recipient to enhance the compensation of any of its employees.

Section 111(b)(3)(F) and Section 111(c) require Treasury to mandate that the TARP recipient establish a compensation committee of its board of directors comprised entirely of independent members of the board of directors to meet at least semi-annually to review, discuss, and evaluate employee compensation plans in light of any assessment of any risks these plans pose to the TARP recipients. Section 111(c)(3) provides that the board of directors of a TARP recipient that has no common or preferred stock registered pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Exchange Act) and has received \$25,000,000 or less in financial assistance is required to carry out the duties of the compensation committee as described above.

Section 111(d) requires a TARP recipient's board of directors to put in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, and that may include excessive expenditures on entertainment or events, office and facility renovations, aviation or other transportation services, or other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the TARP recipient's business operations.

Section 111(e) requires that any proxy or consent or authorization for an annual or other meeting of the TARP recipient shareholders, as long as any obligation arising from TARP assistance remains outstanding, permit a separate nonbinding shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Securities and Exchange Commission (SEC). Section 111(e)(3) directs the SEC to issue any final rules and regulations necessary to implement this requirement not later than February 17, 2010.

Section 111(b)(4) requires the chief executive officer and the chief financial officer of the TARP recipient (or equivalents thereof) to provide a written certification of compliance with the requirements of section 111 to the SEC, if the TARP recipient has publicly traded securities, or to the Secretary, if the TARP recipient does not have publicly traded securities.

Section 111(f) requires the Secretary to review bonuses, retention awards, and other compensation paid to CEOs and the next 20 most highly compensated employees of each TARP recipient before the date of enactment of the ARRA to determine whether any such payments were inconsistent with the purposes of section 111 of EESA or TARP or were otherwise contrary to the public interest, and if such a determination is made, to seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursement.

Section 111(h) requires the Secretary to promulgate regulations to implement section 111.

B. Description of the Interim Final Rule

The major provisions of the Interim Final Rule, to be codified at 31 CFR Part 30, are as follows:

Section 111 specifies executive compensation and corporate governance standards applicable to TARP recipients. The standards are written in question and answer format.

Definitions used in the Interim Final Rule are set forth in § 30.1 (Q-1) of the Interim Final Rule. The executive compensation and corporate governance requirements under the Interim Final Rule apply to all TARP recipients, defined in section 111(a)(3) as "any entity that has received or will receive financial assistance under the financial assistance provided under the TARP." These restrictions will also generally apply to any entity of which the TARP recipient owns at least 50%, or which owns at least 50% of the TARP recipient, determined using certain provisions of sections 414(b) and (c) of the Internal Revenue Code, 26 U.S.C. 414(b) and (c), if those provisions were applied using a 50% ownership threshold instead of an 80% ownership threshold. In addition, these restrictions may apply to a related entity if the primary purpose for the creation or utilization of such entity is to avoid or evade some or all of the restrictions under section 111. These requirements generally apply for the period during which any obligation arising from financial assistance under the TARP remains outstanding (TARP period), except any period during which the

Federal government only holds warrants to purchase common stock of the TARP recipient. For TARP recipients that never hold an obligation, however, the more limited requirements generally apply through the last date of the TARP purchase authority.

The Interim Final Rule defines financial assistance to include direct financial transactions between Treasury and private sector participants in programs under the TARP. Although some determinations may be fact specific, entities that do not engage in financial transactions with Treasury as a counterparty generally will not be deemed to be receiving "financial assistance." As illustration, for purposes of the Interim Final Rule, financial institutions that sell preferred stock to Treasury through the Capital Purchase Program are receiving financial assistance and therefore are TARP recipients subject to the provisions of the Interim Final Rule. By contrast, entities that post collateral to and receive loans from the Federal Reserve Term Asset-Backed Securities Loan Facility (TALF) are not receiving "financial assistance provided under the TARP" and, therefore, are not TARP recipients under the Interim Final Rule. In the TALF program, Treasury has posted a subordinated loan to the Federal Reserve Bank of New York special purpose vehicle (SPV), which accepts forfeited collateral from TALF lending. Although the SPV has engaged in a financial transaction with Treasury, Treasury has not interpreted ARRA to require that the Federal Reserve Bank of New York, as a non-profit government instrumentality, be deemed to be receiving financial assistance. Importantly, Federal Reserve banks fulfill their governmental function by returning their annual profits to Treasury, which limits the extent to which a transaction with Treasury could be deemed to be financial assistance.

These requirements apply to CEOs and certain most highly compensated employees, as defined in § 30.1. Section 30.1 (Q-1) of the Interim Final Rule bases the determination of the CEOs on the executive compensation disclosure requirements in Item 402 of Regulation S-K under the Federal securities laws (17 CFR 229.402), which generally applies to the PEO, the PFO, and the three most highly compensated executive officers (other than the PEO and the PFO). Section 30.1 (Q-1) of the Interim Final Rule bases the identification of the three most highly compensated executive officers on annual compensation for the last completed fiscal year and defines annual compensation as it is determined

pursuant to Item 402(a) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)). To be consistent with the determination of the three most highly compensated executive officers, § 30.1 (Q-1) of the Interim Final Rule also defines the most highly compensated employees according to their annual compensation for the last completed fiscal year, as it is determined pursuant to Item 402(a) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)). However, a most highly compensated employee may be an employee who is not an executive officer. The Interim Final Rule does not limit application of the requirements to executive officers because the ARRA statutory language refers to most highly compensated employees, rather than most highly compensated executive officers, and therefore does not limit the coverage in this manner. A most highly compensated employee does not include a former employee of the TARP recipient who is not employed by the TARP recipient on the first day of the fiscal year for which the determination is being made (as opposed to the preceding fiscal year), unless such employee is reasonably anticipated to return to employment with the TARP recipient during the fiscal year.

The Interim Final Rule defines annual compensation in this manner for several reasons. Both the ARRA and the original EESA executive compensation provisions require that the senior executive officers be determined according to the compensation disclosure requirements under Federal securities regulations; it would be anomalous to treat the determination of most highly compensated employee compensation in a different manner. In addition, the compensation required to be disclosed under Federal securities regulations more closely reflects the economic reality of the compensation that the employee actually earned during the year by reporting compensation regardless of whether it was includible in income for income tax purposes during that year (for example, including the value of a stock option, deferred salary and bonuses when earned) in contrast to annual compensation reported as Form W-2 compensation, which reflects only compensation that was includible in income for income tax purposes during the calendar year regardless of when that compensation was earned (for example, including income from stock options generally at the time of exercise and including in income deferred salary and bonuses only when those amounts

are actually paid in a future year). Finally, public companies and investors are familiar with this SEC total annual compensation measurement, which was developed through an extensive notice and comment process and has been in effect since 2006 as part of the SEC's final revised executive compensation disclosure rule.

Because the most highly compensated employees are determined based on annual compensation earned in the prior year, the issue has been raised that a TARP recipient might be able to intentionally cycle employees in and out of most highly compensated employee status in alternate years to guarantee periods of complete exclusion for certain employees from the executive compensation limitations applicable to most highly compensated employees. Some methods that might mitigate, though not eliminate, this possibility include identifying the most highly compensated employees based on an averaging of the preceding two or three years' annual compensation, or requiring that some or all of the most highly compensated employees identified for one year remain subject to the limitations for a prescribed number of additional years, regardless of their subsequent level of compensation. The Treasury invites comment on this issue, including on the extent to which intentional cycling of most highly compensated employee status is likely to occur given that there is no overall compensation limitation on most highly compensated employees under the Interim Final Rule, potential methods of addressing the issue (including the methods previously mentioned), how such methods would be effective in deterring, eliminating, or limiting intentional cycling, and the extent of any additional administrative burdens that the application of such methods might create.

Section 30.1 (Q-1) of the Interim Final Rule requires that TARP recipients that are smaller reporting companies, as that term is defined in Item 10 of Regulation S-K under the Federal securities laws (17 CFR 229.10), identify five SEOs, even if only three named executive officers are required to be identified pursuant to Item 402(m) of Regulation S-K under the Federal securities laws (17 CFR 229.402(m)). Analogous rules apply to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws.

Prior to the annual identification of the SEOs, who are typically identified in the TARP recipient's annual report on Form 10-K or annual meeting proxy statement, and the most highly

compensated employees, § 30.3 (Q-3) of the Interim Final Rule requires that the TARP recipient ensure that a potential SEO or most highly compensated employee comply with the relevant executive compensation and corporate governance standards.

Several requirements under the Interim Final Rule relate to the compensation committee of the TARP recipient's board of directors, and its duties. Pursuant to section 111(b)(3)(A), section 111(b)(3)(E), and section 111(b)(3)(F), § 30.4 (Q-4) of the Interim Final Rule requires the TARP recipient to establish a compensation committee composed of independent members of the board of directors before the later of ninety days after the closing date of the agreement between Treasury and the TARP recipient or ninety days after June 15, 2009 to fulfill a number of duties. Many public company TARP recipients already maintain compensation committees of independent directors pursuant to stock exchange listing standards, and § 30.4 (Q-4) of the Interim Final Rule allows for the continued maintenance of already-established compensation committees. Section 30.4 (Q-4) of the Interim Final Rule also, in accordance with section 111(c)(3), provides an exception for certain private company TARP recipients. Thus, § 30.4 (Q-4) of the Interim Final Rule allows TARP recipients that have no securities registered pursuant to the Exchange Act and have received \$25,000,000 or less in financial assistance to either establish a compensation committee of independent directors or to delegate, as appropriate, to the board of directors the duties of the compensation committee as described below.

Each TARP recipient faces different material risks given the unique nature of its business and the markets in which it operates. Thus, § 30.5 (Q-5) of the Interim Final Rule requires the compensation committee to discuss, evaluate, and review at least every six months with senior risk officers SEO compensation plans and employee compensation plans and the risks these plans pose to the TARP recipient; identify and limit the features in the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient; and identify and limit any features in the employee compensation plans that pose risks to the TARP recipient to ensure that the TARP recipient is not unnecessarily exposed to risks, including any features in these SEO compensation plans or the employee compensation plans that would encourage behavior focused on

short-term results rather than long-term value creation. In addition, § 30.6 (Q-6) of the Interim Final Rule requires that the compensation committee discuss, evaluate, and review at least every six months the terms of each employee compensation plan and identify and eliminate the features in the plan that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee.

Sections 30.4 (Q-4) and 30.7 (Q-7) of the Interim Final Rule require the compensation committee to provide annually a narrative description of how it limited the features in (1) SEO compensation plans that could encourage SEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient, including how these SEO compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, (2) employee compensation plans to ensure that the TARP recipient is not unnecessarily exposed to risks, including how these employee compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, and (3) employee compensation plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee.

Sections 30.4 (Q-4) and 30.7 (Q-7) of the Interim Final Rule require that the compensation committee certify annually that it has completed the reviews of the SEO compensation plans and the employee compensation plans as outlined above. Section 30.7 (Q-7) of the Interim Final Rule also provides that TARP recipients with securities registered with the SEC pursuant to the Federal securities laws must provide these disclosures and certifications in the Compensation Committee Report required pursuant to Item 407 of Regulation S-K under the Federal securities laws (17 CFR 229.407) and to Treasury. Section 30.7 (Q-7) of the Interim Final Rule requires that TARP recipients that are smaller reporting companies or do not have securities registered with the SEC pursuant to the Federal securities laws provide the disclosures and certifications to their primary regulatory agency and to Treasury.

Pursuant to section 111(b)(3)(B), § 30.8 (Q-8) of the Interim Final Rule requires a TARP recipient to ensure that any bonus, retention award, or incentive compensation paid or accrued during the TARP period to a SEO or one of the next twenty most highly compensated

employees is subject to a provision for recovery or “clawback” by the TARP recipient if the payments or accruals were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria. Section 30.8 (Q-8) of the Interim Final Rule deems that bonuses, retention awards, and incentive compensation are paid or accrued to a SEO or any one of the next twenty most highly compensated employees during the TARP period when the SEO or one of the next twenty most highly compensated employees obtains a legally binding right to that payment during the TARP period.

This clawback provision differs from the clawback provision required under section 304 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (Pub. Law No. 107-204). Section 304 of Sarbanes-Oxley requires the forfeiture by a public company’s chief executive officer or the chief financial officer of any bonus, incentive-based, or equity-based compensation received during the twelve-month period following a materially non-compliant financial report and any profits from sales of the company’s securities during that period. In contrast, the standard established under section 111(b)(3)(B) of EESA applies to the three most highly compensated executive officers and the next twenty most highly compensated employees in addition to the CEO and the CFO; applies to both public and private TARP recipients; applies to retention awards; is not exclusively triggered by a requirement to prepare an accounting restatement due to material noncompliance of the issuer as a result of misconduct; does not limit the recovery period; and covers not only material inaccuracies relating to financial reporting but also material inaccuracies relating to other performance metrics used to calculate bonus payments.

Pursuant to section 111(b)(3)(C), § 30.9 (Q-9) of the Interim Final Rule prohibits a TARP recipient from making a golden parachute payment to a SEO or the next five most highly compensated employees during the TARP period. Under the Interim Final Rule, a golden parachute payment includes a payment for departure from a TARP recipient for any reason, other than a payment for services performed or benefits accrued. Pursuant to the authority granted the Secretary under section 111(b)(2) and section 111(h), the Interim Final Rule also treats as a golden parachute payment and amount due upon a change in control event of the TARP recipient. Section 30.1 (Q-1) of the Interim Final Rule excludes from the

definition of golden parachute payment qualified retirement plans and similar foreign retirement plans, as well as payments due to an employee’s death or disability and severance payments required by State statute or foreign law. Given the language of the ARRA, there is no longer any exception for any amount of a golden parachute payment, such as was allowed under the October 2008 Interim Final Rule. In addition, a golden parachute payment is treated as paid at the time of the employee’s departure, regardless of when the amounts are actually paid. Therefore, TARP recipients and employees may not avoid the restriction by deferring payment of the golden parachute payment past the end of the TARP period.

Pursuant to section 111(b)(3)(D), § 30.10 (Q-10) of the Interim Final Rule prohibits a TARP recipient from paying or accruing any bonus, retention award, or incentive compensation during the TARP period to certain employees. The TARP recipient’s amount of financial assistance determines the number of employees subject to this prohibition. This prohibition applies to the most highly compensated employee of any TARP recipient that has received less than \$25,000,000 in financial assistance; to at least the five most highly compensated employees of any TARP recipient that has received at least \$25,000,000 but less than \$250,000,000; the CEOs and at least the ten next most highly compensated employees of any TARP recipient that has received at least \$250,000,000 but less than \$500,000,000; and the CEOs and at least the twenty next most highly compensated employees of any TARP recipient that has received \$500,000,000 or more. Section 30.10 (Q-10) of the Interim Final Rule states that TARP recipients will be subject during the TARP period to the bonus limitation requirements based on the total amount of financial assistance outstanding under the TARP. If additional financial assistance would result in additional employees becoming subject to the prohibition, the prohibition on the additional employees will not be effective until the fiscal year following the year during which the additional financial assistance is received.

Section 30.1 (Q-1) of the Interim Final Rule includes definitions of a bonus, incentive compensation or retention award. A 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. Generally a bonus would not include a contribution to a

qualified plan, benefits under a broad-based benefit plan, bona fide overtime pay, and bona fide and routine expense reimbursements. Section 30.10 (Q-10) contains rules defining when bonuses will be treated as accruing or paid. Notably, section 30.10 (Q-10) contains an anti-abuse rule, intending to address circumstances in which a bonus that was not permitted to accrue during the year an employee was covered by the bonus limitation is paid to the employee in the subsequent year when the employee is not covered by the bonus limitation, but is designated as some other form of payment such as a salary increase or a stock option grant. In such a case, the payment in the subsequent year may be recharacterized as a payment of the bonus that was not permitted to accrue in the previous year.

Section 30.1 (Q-1) of the Interim Final Rule excepts from the definition of a bonus certain commission compensation for sales to, and investment management services for, unrelated parties. Many TARP recipients have broker-dealer, investment advisory, and insurance divisions, where registered representatives, investment advisors, and agents typically receive commissions based on the amount of sales of financial products or the value of assets under management. In this context, commission payments characteristically are viewed as a component of base salary rather than bonus compensation. However, fees earned from sales to entities within the affiliated group, investment banking, or proprietary trading are not considered commission compensation and the Interim Final Rule does not except these fees from the definition of a bonus or incentive compensation.

Section 30.1 (Q-1) of the Interim Final Rule generally defines an incentive compensation plan by reference to the Federal securities regulations. However, for purposes of this Interim Final Rule, an incentive compensation plan also includes a stock option or stock plan, regardless of whether those plans are subject to performance-based vesting. The inclusion of these arrangements is consistent with the statute's classifying the grant of a limited amount of long-term restricted stock as an exception to the bonus, incentive compensation, and retention award restrictions.

This inclusion of a stock plan in the definition of an incentive compensation plan does not restrict the TARP recipient's ability to pay salary or other permissible payments in the form of stock or other property, even if the stock is issued pursuant to a stock plan. In

addition, the payment may be made in stock that is subject to holding periods or transferability restrictions, such as not permitting the stock to be transferred for a specified number of years, until a specified event occurs (such as the employee's retirement, or a specified number of years after an employee's retirement or other termination of employment), or until certain TARP fund repayment hurdles are met. However, the payment must still be payment of salary or another permissible amount. Accordingly, the amount of the future payment must be denominated in dollars, rather than in a number of shares. For example, an employee could be entitled to a salary of \$5,000 per week, half payable in cash and half payable in stock valued at \$2,500 on each salary payment date. In addition, as salary, the stock or other property cannot be subject to a substantial risk of forfeiture or any requirement of future services (and thus the grant of such stock will not be treated as a retention award either), as distinguished from a restriction on transferability. The same analysis would apply to a grant of a stock unit (such as phantom stock or a restricted stock unit) with similar characteristics to the salary payment arrangement described above, in lieu of a grant of the same number of shares. Accordingly, the stock unit could not be subject to a substantial risk of forfeiture or other requirement of continued services, and would be payable at a fixed date in the future (and the arrangement would otherwise need to comply with the requirements of section 409A of the Internal Revenue Code (26 U.S.C. 409A)). However, such a structure generally will not be feasible during 2009 due to the restrictions under section 409A of the Internal Revenue Code (26 U.S.C. 409A).

Section 30.1 (Q-1) generally defines a retention award as any payment to an employee that is not payable periodically to an employee for service performed by the employee at a regular hourly, daily, weekly, monthly, or similar periodic rate, 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 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. Exceptions are provided for a contribution to or payment made from a qualified plan, or a payment from a benefit plan, overtime pay or reasonable expense reimbursement. An exception

is also made for amounts accrued under a nonqualified deferred compensation plan, to the extent the amounts are accrued in the normal course of the employee's service at the TARP recipient and are not accrued by reason of a material enhancement of such benefits. An exception is not provided, however, for awards to new hires, including awards as part of a "make-whole" agreement intended to provide a newly hired employee a continuation of benefits accruing at a prior employer. Such awards are not structurally materially different from retention awards granted to current employees, which are intended to be subject to these restrictions.

Pursuant to section 111(b)(3)(D)(i), § 30.10 (Q-10) of the Interim Final Rule provides two exclusions from this prohibition on the payment or accrual of bonus, retention award, or incentive compensation. The TARP recipient is permitted to award long-term restricted stock to the employees subject to this prohibition. Because many TARP recipients, especially smaller, family-owned community banks as well as private financial institutions, would be unwilling or unable to award restricted stock, § 30.1 (Q-1) of the Interim Final Rule defines long-term restricted stock to include both restricted stock and restricted stock units, which can be settled in stock or cash, and which may be designed to track a specific unit or division within a TARP recipient.

Section 30.10 (Q-10) of the Interim Final Rule describes the restrictions imposed upon this stock. Pursuant to section 111(b)(3)(D)(i)(I), § 30.11 (Q-11) of the Interim Final Rule states that the value of the long-term restricted stock can be no greater than $\frac{1}{3}$ of the employee's total annual compensation. For purposes of determining annual compensation under the long-term restricted stock exception, all equity-based compensation granted will be included in the calculation only in the year in which it is granted, and will be included at its total fair market value on the grant date, so all equity-based compensation granted in fiscal years ending prior to June 15, 2009 will not be included in the calculation of annual compensation. In determining the value of the long-term restricted stock grant, the long-term restricted stock will be included in the calculation only in the year in which the restricted stock is granted, and will be included at its total fair market value on the grant date. This calculation of total annual compensation differs from the calculation used to determine the CEOs and most highly compensated employees each year, which is

determined pursuant to Item 402(a) of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)). This is necessary to avoid a failure to comply with the Interim Final Rule, for instance, if other aspects of the employee's annual compensation decrease in a subsequent year, so that if the grant were included in compensation over multiple years, the one-third annual compensation limit could be exceeded merely due to such decrease.

Pursuant to section 111(b)(3)(D)(i)(II), § 30.10 (Q-10) of the Interim Final Rule states that the excepted long-term restricted stock must not fully vest until the repayment of all financial assistance by the TARP recipient. Section 30.10 (Q-10) of the Interim Final Rule requires that the employee provide services to the TARP recipient for at least two years after the date of the grant of the long-term restricted stock to vest in this stock, and prescribes a schedule under which such stock may become transferable (or in the case of a restricted stock unit, payable). Specifically, Section 30.10 (Q-10) of the Interim Final Rule establishes the following schedule, subject to the further requirements outlined below, for the long-term restricted stock: For each 25% of total financial assistance repaid, 25% of the total long-term restricted stock granted may become transferable, until the final repayment, at which time the remaining long-term restricted stock may become transferable. Because, in the case of restricted stock (but not a restricted stock unit), the fair market value of the stock may be subject to inclusion in income for income tax purposes before the stock becomes transferable, an exception to the transferability restriction is provided to the extent necessary to pay the applicable taxes. Nothing in the Interim Final Rule, however, prohibits vesting based on longer service periods or additional performance-based requirements.

Pursuant to section 111(b)(3)(D)(iii), § 30.10 (Q-10) of the Interim Final Rule also excludes from this prohibition any bonus, retention award, or incentive compensation payment required to be paid under a valid written employment contract executed on or before February 11, 2009 if the employee has a legally binding right under the contract to this payment. For purposes of determining whether an employee had a legally binding right to a payment, the Interim Final Rule uses rules specified in 26 CFR 1.409A-1(b)(1). In addition, the payment must be made in accordance with the terms of the contract as of February 11, 2009, such that any

amendment to the contract to increase the amount payable, accelerate any vesting conditions, or otherwise materially enhance the benefit available to the employee under the contract will result in the payment being treated as not made under the employment contract executed on or before February 11, 2009. The waiver by the employee of any benefits available to the employee under the terms of the contract will not result in the payment of other benefits under the contract being treated as made other than under the employment contract executed on or before February 11, 2009.

Whether an employee has accrued bonus, retention award, or incentive compensation is determined based on the facts and circumstances. However, to avoid circumvention of the Interim Final Rule by merely delaying bonus payments until after the employee is no longer subject to the prohibition, or granting retroactive service credits after the employee is no longer subject to the prohibition, if after the employee is no longer a SEO or most highly compensated employee, the employee is paid an amount, or provided a legally binding right to the payment of an amount, based upon services performed or compensation received during the period the employee was a SEO or most highly compensated employee, the employee will be treated as having accrued the amount during the period the employee was a SEO or most highly compensated employee.

Certain bonus, retention award, or incentive compensation may relate to a multi-year service period, during some portion of which the employee is subject to the prohibition and during some portion of which the employee is not subject to the prohibition. In such circumstances, the employee will not be treated as having accrued the bonus, retention award, or incentive compensation during the portion of the service period the employee was subject to the limitation, if the bonus, retention award, or incentive compensation is reduced to reflect at least the portion of the service period that the employee was subject to the prohibition. However, if the employee is subject to the prohibition at the time the amount would otherwise be paid, the amount still may not be paid until the payments to the employee are permitted.

A bonus, a retention award, or incentive compensation that an employee accrues while the employee is not subject to the prohibition on accrual or payment and is payable at a time when the employee has become subject to the prohibition, may not be paid until the employee is no longer subject to the

prohibition. In addition, as part of the conditions to a TARP recipient's receiving financial assistance under the TARP set forth in the contract between Treasury and the TARP recipient, the Federal government may require that certain other bonus, retention award, or incentive compensation not be paid during a designated period, such as the period during which the TARP recipient retains any financial assistance provided under TARP, or until some other condition related to the TARP recipient's financial health is satisfied. The issue has arisen as to whether the failure to pay such bonus, retention award, or incentive compensation would be treated as a subsequent deferral election that fails to comply with the requirements of section 409A of the Internal Revenue Code (26 U.S.C. 409A) or whether it would convert a payment that would otherwise be a short-term deferral, within the meaning of 26 CFR 1.409A-1(b)(4), into a payment of deferred compensation that would be subject to the restrictions in section 409A. Treasury and Internal Revenue Service officials have advised that the delay of the payment until such time as the recipient of the payment is no longer subject to the prohibition will not result in a failure to comply with the requirements of section 409A and will not result in a payment that otherwise would have been a short-term deferral being treated as a payment of deferred compensation, so long as the payment is made promptly following the first date upon which the payment could be made without violating the terms of the agreement between the TARP recipient and Treasury and in accordance with the Interim Final Rule. Accordingly, for purposes of the issuance of a restricted stock unit intended to qualify as long-term restricted stock as an exception to the bonus payment limitation, the unit may be structured with a payment date no later than the later of the end of the short-term deferral period or the first date upon which the payment is permissible under these rules and the applicable terms of the agreement between the TARP recipient and Treasury, and the unit will not be subject to section 409A provided the payment terms are satisfied.

Pursuant to section 111(d), § 30.12 (Q-12) of the Interim Final Rule requires that the board of directors of the TARP recipient adopt an excessive or luxury expenditures policy, file this policy with Treasury, and post the text of this policy on its Internet Web site, if the TARP recipient maintains a company Web site, before the later of ninety days after the closing date of the

agreement between Treasury and the TARP recipient or ninety days after June 15, 2009. Section 30.1 (Q-1) of the Interim Final Rule defines an excessive or luxury expenditures policy to require the inclusion of standards to ensure appropriate review and approval of potentially excessive and luxury expenditures. Section 30.1 (Q-1) of the Interim Final Rule requires that the policy (1) Identify the types and categories of expenses prohibited or requiring prior approval; (2) adopt approval procedures for those expenses requiring prior approval; (3) mandate PEO and PFO certification of the prior approval of any expenditures requiring the prior approval of any SEO, other similar executive officers, or the board of directors; (4) mandate prompt internal reporting of any violation of this policy; and (5) mandate accountability for adherence to this policy.

Section 30.12 (Q-12) of the Interim Final Rule requires that the board of directors of each TARP recipient determine what are excessive and luxury expenditures and establish a set of requirements specific to the TARP recipient under this policy. This is similar to the method by which public companies adopted a code of ethics under section 406 of Sarbanes-Oxley. Under the Federal securities regulations promulgated under section 406 of Sarbanes-Oxley (17 CFR 229.406), the SEC presented a general framework for a code of ethics, but the public company itself was required to adopt standards specific to the company using this general framework as a guide.

Pursuant to section 111(e), TARP recipients are required to permit a nonbinding shareholder resolution on SEO compensation as provided pursuant to the compensation disclosure rules under the Federal securities laws. Section 111(e) authorizes the SEC to promulgate any necessary final rules or regulations relating to this requirement. The Interim Final Rule requires TARP recipients to comply with any SEC guidance, rules, or regulations promulgated with respect to section 111(e).

Pursuant to section 111(h), and section 111(b)(2), the Secretary is authorized to establish additional executive compensation and corporate governance standards. The Secretary has determined to adopt four additional standards. First, § 30.11(a) (Q-11) of the Interim Final Rule requires that TARP recipients receiving exceptional financial assistance submit for approval the compensation payments and compensation structures of the SEO and most highly compensated employees

subject to the bonus payment limitation, and the compensation structures of all other executive officers and 100 most highly compensated employees, for approval by the Office of the Special Master for TARP Executive Compensation. However, if a TARP recipient limits the annual compensation for any executive who is not a SEO or a most highly compensated employee subject to the bonus limitation provision to \$500,000, with any additional compensation in long-term restricted stock, the compensation structure is not required to be submitted for approval. For this purpose, annual compensation and the value of the long-term restricted stock are determined in the same manner as provided in the long-term stock exception in § 30.10 (Q-10) of the Interim Final Rule.

Second, § 30.11(b) (Q-11) of the Interim Final Rule requires a TARP recipient to disclose to Treasury and its primary Federal regulator annually any perquisites whose total value exceeds \$25,000 for any employee who is subject to the limitations on bonus payments. TARP recipients are required to identify the amount and nature of the perquisites and disclose a justification for offering these perquisites. Existing Federal securities regulations require public companies only to identify for any of the top five executive officers or members of the boards of directors the type of perquisite if the total value of all perquisites exceeds \$10,000 for an individual officer or director; and the value of any perquisite if the value exceeds the greater of \$25,000 or 10% of the total amount of perquisites for an individual officer or director.

Third, § 30.11(c) (Q-11) of the Interim Final Rule requires a TARP recipient to disclose to Treasury and its primary Federal regulator annually whether the TARP recipient, the board, or the compensation committee has engaged a compensation consultant and all types of 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, other peer group companies used for benchmarking and a justification for using these companies, and the lowest percentile level of other companies' employee compensation considered for compensation proposals). Existing Federal securities regulations require only that public companies identify compensation consultants and their role in setting executive and director compensation; whether the

compensation committee directly engages the compensation consultant; the nature and scope of the compensation consultant's assignment; and the material elements of the compensation consultant's duties under the engagement.

Fourth, § 30.11(d) (Q-11) of the Interim Final Rule prohibits TARP recipients from providing tax gross-ups or other reimbursements for the payment of taxes to any of the SEOs and next twenty most highly compensated employees relating to severance payments, perquisites, or any other form of compensation. Existing Federal securities regulations require only that public companies disclose "gross-ups" or other reimbursements to the SEOs for the payment of taxes. The Interim Final Rule excludes from this prohibition certain international tax equalization arrangements intended to compensate an employee for certain different taxes on account of an overseas assignment.

Section 30.14 (Q-14) of the Interim Final Rule includes a special rule for cases in which a TARP recipient (target) is acquired by an entity (acquirer) that is not a TARP recipient in an acquisition of any form. Under this rule, the acquirer does not become subject to section 111 of EESA as a result of the acquisition. In addition, the employees of the target who are SEOs or most highly compensated employees subject to section 111 immediately prior to the acquisition who continue employment with the acquirer will no longer be subject to section 111 of EESA after the acquisition. However, if the primary purpose of the acquisition is to avoid or evade application of section 111 of EESA, then the acquirer will be treated as a TARP recipient. For purposes of determining the affected employees, the principal executive officer and the principal financial officer of the post-acquisition acquirer are treated as SEOs. For purposes of identifying the most highly compensated employees, the acquirer employees and the pre-acquisition target employees who are employed at the acquirer (or anticipated to be employed at the acquirer) are aggregated and their most highly compensated employee status determined based upon the compensation earned during the most recently completed fiscal year at either the pre-acquisition acquirer or target, as appropriate.

Pursuant to section 111(b)(4), § 30.15 (Q-15) of the Interim Final Rule establishes a compliance reporting regime relating to the executive compensation requirements set forth in the Interim Final Rule. The Interim Final Rule requires that the PEO and the

PFO of the TARP recipient provide the following certifications within ninety days of the completion of each fiscal year any part of which is a TARP period: (1) The compensation committee has met at least every six months during the prior fiscal year with the senior risk officers of the TARP recipient to discuss and evaluate SEO compensation plans and employee compensation plans and the risks these plans pose to the TARP recipient; (2) the compensation committee has identified and limited the features in the SEO compensation plans that could lead SEOs to take unnecessary or excessive risks that could threaten the value of the TARP recipient, has identified any features in the employee compensation plans that pose risks to the TARP recipient, and has limited those features to ensure that the TARP recipient is not unnecessarily exposed to risks; (3) the compensation committee has reviewed at least every six months the terms of each employee compensation plan and identified and limited the features in the plan that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee; (4) the compensation committee will certify to these reviews; (5) the compensation committee will provide a narrative description of how it limited the features in (i) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the TARP recipient, (ii) employee compensation plans to ensure that the TARP recipient is not unnecessarily exposed to risks, and (iii) employee compensation plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of an employee; (6) the TARP recipient has required that all bonuses, retention awards, and incentive compensation of the SEOs and next twenty most highly compensated employees be subject to a provision for recovery or "clawback" by the TARP recipient if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria; (7) the TARP recipient has prohibited any golden parachute payment to the SEOs and the next five most highly compensated employees; (8) the TARP recipient has limited bonuses, retention awards, and incentive compensation paid to or accrued by employees to whom the bonus payment limitation applies; (9) for a TARP recipient that has securities registered with the SEC under the Federal securities laws, it will permit a

non-binding shareholder resolution on the SEO compensation disclosures provided under the Federal securities laws in accordance with any guidance, rules, and regulations promulgated by the SEC; (10) the TARP recipient has adopted and maintains an excessive or luxury expenditures policy and has provided this policy to Treasury in each case in accordance with the requirements under the Interim Final Rule; (11) the TARP recipient will disclose the amount, nature, and justification for the offering of any perquisites whose total value exceeds \$25,000 for each of the employees subject to the bonus payment limitations; (12) the TARP recipient will disclose whether the TARP recipient, the board, or the compensation committee has engaged a compensation consultant, and the services the compensation consultant or any affiliate provided; (13) the TARP recipient has prohibited any tax gross-ups on compensation to the SEOs and the next twenty most highly compensated employees; (14) the TARP recipient has substantially complied with any compensation requirements set forth in the agreement between the TARP recipient and the Treasury, as may have been amended; (15) certain employees named in the certification are the SEOs and most highly compensated employees for the current fiscal year based on their compensation during the prior fiscal year; and (16) the officer certifying understands that a knowing and willful false or fraudulent statement made in connection with the certification may be punished by fine, imprisonment, or both (*See*, for example 18 U.S.C. 1001). In addition, the PEO and the PFO of a TARP recipient receiving exceptional financial assistance must certify that the TARP recipient has either limited annual compensation to \$500,000 (excluding grants of long-term restricted stock but including certain pension benefits and deferred compensation accruals otherwise excluded from annual compensation) for any executive officer or one of the 100 most highly compensated employees who is not subject to the bonus payment limitations and has or will pay any additional compensation in the form of long-term restricted stock, or to the extent not so limited the TARP recipient has had the compensation structure of those employees approved by the Office of the Special Master for TARP Executive Compensation.

Section 30.15 (Q-15) of the Interim Final Rule requires that TARP recipients that have securities registered with the

SEC pursuant to the Federal securities laws provide these certifications on Exhibit 99.1 in their annual report on Form 10-K and to Treasury, and that a TARP recipient that does not have securities registered with the SEC under the Federal securities laws provide these certifications to its primary regulatory agency and to Treasury. The TARP recipient must also preserve appropriate documentation and records to substantiate each certification for no less than six years after the date of the certification, the first two years in an easily accessible place, and must furnish promptly to Treasury any documentation and records requested by Treasury.

Section 30.15 (Q-15) of the Interim Final Rule also affirms that any individual or entity making or providing false information or certifications to Treasury pursuant to the Interim Final Rule or as required pursuant to this part may be subject to the criminal penalties under title 18 of the U.S. Code or other provision of Federal law.

To comply with EESA Section 111 and this Interim Final Rule, TARP recipients generally will need to modify compensation structures. For a small number of TARP recipients—those receiving exceptional assistance—the new compensation structures and compensation payments for SEOs and the most highly paid employees are subject to review and approval by the Office of the Special Master for TARP Executive Compensation (described below). In other instances, TARP recipients may find it helpful to have guidance as to how the rules apply to their particular circumstances, or confirmation that their modified compensation arrangements are compliant. In addition, under section 111(f), the Secretary is charged with reviewing bonuses, retention awards, and other compensation paid before February 17, 2009 to SEOs and the next twenty most highly compensated employees, and is required to determine whether any such payments were inconsistent with the purposes of EESA section 111 or the TARP, or were otherwise contrary to the public interest.

To conduct these reviews most efficiently, and to ensure that the rules are applied consistently and equitably, this Interim Final Rule establishes an Office of the Special Master for TARP Executive Compensation (Special Master). As described in Section 30.16 (Q-16) of the Interim Final Rule, the Special Master will be appointed by, and serve at the pleasure of, the Secretary. The Secretary may remove the Special Master without notice,

without cause, and before the naming of any successor Special Master. The scope of the Special Master's authority and responsibility is limited to compensation and corporate governance matters under section 111 with respect to TARP recipients, and the Special Master has no authority to provide guidance or review any submissions with respect to matters other than compensation and corporate governance matters under section 111, or to provide guidance or review any submissions with respect to compensation or corporate governance matters of employers that are not TARP recipients. The Secretary has delegated to the Special Master the authority to (1) interpret the application of the restrictions on executive compensation and corporate governance requirements for TARP recipient employees under EESA, these regulations, and any other applicable guidance, to specific facts and circumstances; (2) administer section 111(f) of EESA, which requires the Secretary to review bonuses, retention awards, and other compensation paid before February 17, 2009 to employees of each entity receiving TARP assistance, to determine whether any such payments were inconsistent with the purposes of EESA section 111 or the TARP, or otherwise contrary to the public interest, and which further requires that, if the Secretary makes such a determination, the Secretary seek to negotiate with the TARP recipient and the employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses; (3) approve compensation payments to, and compensation structures for, certain employees of TARP recipients receiving exceptional financial assistance; (4) provide opinions, as requested or otherwise as appropriate, regarding payments to, or compensation structures for, other employees of TARP recipients; and (5) perform such other duties as the Secretary may delegate from time to time to the Special Master relating to executive compensation issues under the TARP, including the specific application of any terms or conditions in a contract between the Treasury and a TARP recipient. Section 30.16 (Q-16) also outlines a set of principles that the Special Master is required to follow in conducting these reviews.

Treasury requests comments on potential procedures and terms under which employees may return compensation to the TARP recipient or the TARP recipient may reimburse Treasury either for compensation paid that the Special Master has determined

is inconsistent with the purposes of EESA section 111 or the TARP, or otherwise contrary to the public interest, or for compensation that was paid contrary to the requirements of EESA section 111 and this Interim Final Rule.

Section 30.17 (Q-17) of the Interim Final Rule states that the standards under the Interim Final Rule are effective upon June 15, 2009, except with respect to certain sections of the ARRA amendments that were effective immediately upon enactment of the statute (for example, amended section 111(d) requiring a nonbinding shareholder vote on executive compensation). Accordingly, the bonus payment limitations under the Interim Final Rule will not apply to bonuses, retention awards, and incentive compensation paid or accrued by TARP recipients or their employees prior to June 15, 2009, and the enhanced golden parachute prohibition will not apply to amounts paid prior to June 15, 2009. In addition, as discussed above, the bonus payment limitations under the Interim Final Rule will not apply to bonuses, retention awards, and incentive compensation required to be paid pursuant to a written employment contract executed on or before February 11, 2009 (a grandfathered arrangement), that is paid on or after June 15, 2009. However, the Special Master may provide an advisory opinion on either or both of these categories of payments, stating whether such payments are consistent with ARRA or EESA, or otherwise contrary to the public interest, under the same standards applied to the Special Master's review of compensation paid to certain employees prior to the enactment date of ARRA, and may seek reimbursement of such payments where appropriate. Finally, the Special Master will take into account any payment made prior to June 15, 2009, or any payment made or that may be made pursuant to a grandfathered arrangement, as part of the Special Master's review of the compensation payments and structures required to be approved by the Special Master for certain employees of TARP recipients receiving exceptional assistance, and for any advisory opinion the Special Master may issue with respect to a compensation structure for, or compensation payment to, a TARP recipient employee.

In addition, for the period before June 15, 2009, the provisions of the October 2008 Interim Final Rule, Notice 2008-PSSFI, and Notice 2008-TAAP, remained in effect. Subject to ARRA and this Interim Final Rule, all contractual provisions to which a TARP recipient

agreed prior to the enactment of ARRA or the publication of this Interim Final Rule also continue in effect.

IV. Procedural Requirements

Justification for Interim Rulemaking

The Interim Final Rule is promulgated pursuant to EESA, as amended, which immediately provides for authority and facilities that the Secretary can use to restore liquidity and stability to the financial system of the United States. Specifically, the Interim Final Rule implements certain provisions of section 111 of EESA, which directs Treasury to establish executive compensation and corporate governance standards for entities receiving financial assistance under the TARP.

To encourage entities to choose or continue to participate in the TARP, those entities must have timely and reliable information with respect to the applicable executive compensation and corporate governance rules that apply under the TARP. Accordingly, because of exigencies in the financial markets, Treasury finds that it would be contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), to delay the issuance of the Interim Final Rule pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the Interim Final Rule to become effective immediately upon publication. While the Interim Final Rule is effective immediately upon publication, Treasury is inviting public comment on the Interim Final Rule during a sixty-day period and will consider all comments in developing a final rule.

Regulatory Planning and Review

The Interim Final Rule is designated as a "significant regulatory action" as defined in Executive Order 12866. The agency has not prepared a regulatory impact analysis consistent with the OMB Circular A-4 that examines the likely benefits and costs associated with this interim rule. The agency plans to prepare such analysis when it promulgates a final rule that will supersede this rulemaking.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Interim Final Rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C chapter 6).

Paperwork Reduction Act

The information collection contained in the Interim Final Rule has been submitted to the Office of Management

and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 35) and OMB approval is pending. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by e-mail to oira_submission@omb.eop.gov) with a copy to Executive Compensation Comments, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

List of Subjects in 31 CFR Part 30

Executive compensation, Troubled assets.

■ Accordingly, under the authority of 12 U.S.C. 5221, for the reasons set out in the preamble, Treasury amends 31 CFR Subtitle A by revising part 30 to read as follows:

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.

§ 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 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 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 intended 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 officer 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 assets 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 of 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 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 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 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-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 merger 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 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.

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 circumstances. 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 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 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 during the period during which any obligation to the Federal government arising from financial assistance provided under the TARP remains outstanding. The requirements of section 111(c) (including portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable) and section 111(d) (§ 30.12 (Q-12)) apply through the later of the last day of the period during which any obligation to the Federal government arising from financial assistance provided under the TARP remains outstanding for TARP recipients with an obligation, or the last day of the TARP recipient’s fiscal year including the sunset date for a TARP recipient that has never had an obligation. For this purpose, an obligation includes the ownership by the Federal government of common stock of a TARP recipient.

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

(a) *Identification.* The SEOs for a year are the “named executive officers” who are employees and are identified in the TARP recipient’s annual report on Form 10-K or annual meeting proxy statement for that year (reporting the SEOs’ compensation for the immediately preceding year). These employees are considered the SEOs throughout that entire year. For purposes of the standards in this part applicable to the

most highly compensated employees, the determination of whether an employee is a most highly compensated employee in a current fiscal year looks back to the annual compensation for the last completed fiscal year without regard to whether the compensation is includible in the employee’s gross income for Federal income tax purposes.

(b) *Compliance.* Regardless of when during the current fiscal year the TARP recipient determines the SEOs or the most highly compensated employees, the TARP recipient must ensure that any of the SEOs or employees potentially subject to the requirements in this part for the current fiscal year complies with the requirements in this part as applicable.

§ 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)?

(a) *General rule.* 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, a TARP recipient must establish a compensation committee by the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, and maintain a compensation committee during the remainder of the TARP period. If a compensation committee is already established before the later of the closing date or September 14, 2009, the TARP recipient must maintain its compensation committee. During the remainder of the TARP period after the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, the compensation committee must:

(1) Discuss, evaluate, and review at least every six months with the TARP recipient’s senior risk officers the SEO compensation plans to ensure that the SEO compensation plans do not encourage SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient;

(2) Discuss, evaluate, and review with senior risk officers at least every six months employee compensation plans in light of the risks posed to the TARP recipient by such plans and how to limit such risks;

(3) Discuss, evaluate, and review at least every six months the employee compensation plans of the TARP recipient 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;

(4) At least once per TARP recipient fiscal year, provide a narrative description of how the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, including how these SEO compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, the risks posed by employee compensation plans and how these risks were limited, including how these employee compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, and how the TARP recipient has ensured that the employee compensation 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; and

(5) Certify the completion of the reviews of the SEO compensation plans and employee compensation plans required under paragraphs (a)(1), (2), and (3) of this section.

(b) *Exclusion of TARP recipients with no employees or no affected employees.* For any period during which a TARP recipient has no employees, or has no SEO or compensation plan subject to the review process, the TARP recipient is not subject to the requirements of paragraph (a) of this section.

(c) *Application to private TARP recipients.* The rules provided in paragraph (a) of this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws. A TARP recipient that does not have securities registered with the SEC pursuant to the Federal securities laws and has received \$25,000,000 or less in financial assistance is subject to paragraph (a) of this section, except that, in lieu of establishing and maintaining a compensation committee, such a TARP recipient is permitted to ensure that all the members of the board of directors carry out the duties of the compensation committee as described in paragraph (a) of this section. However, such a TARP recipient will be required to establish and maintain a compensation committee satisfying the requirements of paragraph (a) of this section for the first fiscal year following a fiscal year during which the TARP recipient either registers securities with the SEC pursuant to the Federal securities laws or has received more than \$25,000,000 in financial assistance,

and during subsequent years of the TARP period.

(d) *Application to TARP recipients that have never had an outstanding obligation.* For TARP recipients that have never had an outstanding obligation, only paragraphs (a)(2), (a)(4), (a)(5) (but for the narrative and certification requirements of (a)(4) and (a)(5), applied only to the requirements of paragraph (a)(2)), (b) and (c) of this § 30.4 (Q-4) shall apply.

§ 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 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 do not pose unnecessary risks to the TARP recipient?

At least every six months, the compensation committee must discuss, evaluate, and review with the TARP recipient's senior risk officers any risks (including long-term as well as short-term risks) that the TARP recipient faces that could threaten the value of the TARP recipient. The compensation committee must identify the features in the TARP recipient's SEO compensation plans that could lead SEOs to take these risks and the features in the employee compensation plans that pose risks to the TARP recipient, including any features in the SEO compensation plans and the employee compensation plans that would encourage behavior focused on short-term results and not on long-term value creation. The compensation committee is required to limit these features to ensure that the SEOs are not encouraged to take risks that are unnecessary or excessive and that the TARP recipient is not unnecessarily exposed to risks.

§ 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?

The compensation committee must discuss, evaluate, and review at least every six months the terms of each employee compensation plan and identify and eliminate the features in these plans that could encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any employee.

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

(a) *Certification.* The compensation committee must provide the certifications required by § 30.4 (Q-4) of this part stating that it has reviewed, with the TARP recipient's senior risk officers, the SEO compensation plans to ensure that these plans do not encourage SEOs to take unnecessary and excessive risks, the employee compensation plans to limit any unnecessary risks these plans pose to the TARP recipient, and the employee compensation plans to eliminate any features of these plans that would encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any employee. For any period during which no obligation arising from financial assistance provided under the TARP remains outstanding, the requirements under this paragraph shall be modified to be consistent with § 30.4(d) (Q-4(d)). Providing a statement similar to the following and in the manner provided in paragraphs (c) and (d) of this section, as applicable, would satisfy this standard: "The compensation committee certifies that:

(1) It has reviewed with senior risk officers the senior executive officer (SEO) compensation plans and has made all reasonable efforts to ensure that these plans do not encourage SEOs to take unnecessary and excessive risks that threaten the value of [identify TARP recipient];

(2) It has reviewed with senior risk officers the employee compensation plans and has made all reasonable efforts to limit any unnecessary risks these plans pose to the [identify TARP recipient]; and

(3) It has reviewed the employee compensation plans to eliminate any features of these plans that would encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of any employee."

(b) *Disclosure.* At least once per TARP recipient fiscal year, the compensation committee must provide a narrative description identifying each SEO compensation plan and explaining how the SEO compensation plan does not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient. The compensation committee must also identify each employee compensation plan, explain how any unnecessary risks posed by the employee compensation plan have been limited, and further explain how the employee

compensation plan does not encourage the manipulation of reported earnings to enhance the compensation of any employee.

(c) *Location.* For TARP recipients with securities registered with the SEC pursuant to the Federal securities law, the compensation committee must provide these certifications and disclosures in the Compensation Committee Report required pursuant to Item 407(e) of Regulation S-K under the Federal securities laws (17 CFR 229.407(e)) and to Treasury. These disclosures must be provided in the Compensation Committee Report for any disclosure pertaining to any fiscal year any portion of which is a TARP period (for a TARP recipient with an obligation), or for any disclosure pertaining to any fiscal year including a date on or before the sunset date (for a TARP recipient that has never had an obligation). Within 120 days of the completion of a fiscal year during any part of which is a TARP period (for a TARP recipient with an obligation), or the completion of a fiscal year including a date on or before the sunset date (for a TARP recipient that has never had an obligation), a TARP recipient that is a smaller reporting company must provide the certifications of the compensation committee to its primary regulatory agency and to Treasury.

(d) *Application to private TARP recipients.* The rules provided in paragraphs (a), (b), and (c) of this section are also applicable to TARP recipients that do not have securities registered with the SEC pursuant to the Federal securities laws. Within 120 days of the completion of the fiscal year during any part of which is a TARP period (for a TARP recipient with an obligation), or the completion of a fiscal year including a date on or before the sunset date (for a TARP recipient that has never had an obligation), a private TARP recipient must provide the certification of the compensation committee (or board of directors, as applicable under § 30.4 (Q-4)) to its primary regulatory agency and to Treasury.

§ 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)?

To comply with the standards established under section 111(b)(3)(B) of EESA, a TARP recipient must ensure that any bonus payment made to a SEO or the next twenty most highly compensated employees during the TARP period is subject to a provision for recovery or “clawback” by the TARP

recipient if the bonus payment was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Whether a financial statement or performance metric criteria is materially inaccurate depends on all the facts and circumstances. However, for this purpose, a financial statement or performance metric criteria shall be treated as materially inaccurate with respect to any employee who knowingly engaged in providing inaccurate information (including knowingly failing to timely correct inaccurate information) relating to those financial statements or performance metrics. Otherwise, with respect to a performance criteria, whether the inaccurate measurement of the performance or inaccurate application of the performance to the performance criteria is material depends on whether the actual performance or accurate application of the actual performance to the performance criteria is materially different from the performance required under the performance criteria or the inaccurate application of the actual performance to the performance criteria. The TARP recipient must exercise its clawback rights except to the extent it demonstrates that it is unreasonable to do so, such as, for example, if the expense of enforcing the rights would exceed the amount recovered. For the purpose of this section, a bonus payment is deemed to be made to an individual when the individual obtains a legally binding right to that payment.

§ 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)?

(a) *Prohibition on golden parachute payments.* To comply with the standards established under section 111(b)(3)(C) of EESA, a TARP recipient must prohibit any golden parachute payment to a SEO and any of the next five most highly compensated employees during the TARP period. A golden parachute payment is treated as paid at the time of departure and is equal to the aggregate present value of all payments made for a departure. Thus, a golden parachute payment during the TARP period may include a right to amounts actually payable after the TARP period.

(b) *Examples.* The following examples illustrate the provisions of paragraph (a) of this section:

Example 1. Employee A is a SEO of a TARP recipient. Employee A is entitled to a

payment of three times his annual compensation upon an involuntary termination of employment or voluntary termination of employment for good reason, but such amount is not payable unless and until the TARP period expires with respect to TARP recipient. Employee A terminates employment during the TARP period. Because, for purposes of the prohibition on golden parachute payments, the payment is made at the time of departure, Employee A may not obtain the right to the payment upon the termination of employment.

Example 2. Employee B involuntarily terminated employment on July 1, 2008, at which time Employee B was a SEO of a financial institution. Employee B's employment agreement provided that if Employee B were involuntarily terminated or voluntarily terminated employment for good reason, Employee B would be entitled to a series of five equal annual payments. After the first payment, but before any subsequent payment, the entity became a TARP recipient. Because, for purposes of the prohibition on golden parachute payments, all of the five payments are deemed to have occurred at termination of employment and because, in this case, termination of employment occurred before the beginning of the applicable TARP period, the payment of the four remaining payments due under the agreement will not violate the requirements of this section.

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

(a) *General rule.* To comply with section 111(b)(3)(D) of EESA, pursuant to the schedule under paragraph (b) of this section and subject to the exclusions under paragraph (e) of this section, a TARP recipient must prohibit the payment or accrual of any bonus payment during the TARP period to or by the employees identified pursuant to paragraph (b) of this section.

(b)(1) *Schedule.* The prohibition required under paragraph (a) of this section applies as follows to:

(i) The most highly compensated employee of any TARP recipient receiving less than \$25,000,000 in financial assistance;

(ii) At least the five most highly compensated employees of any TARP recipient receiving \$25,000,000 but less than \$250,000,000 in financial assistance;

(iii) The SEOs and at least the ten next most highly compensated employees of any TARP recipient receiving \$250,000,000 but less than \$500,000,000 in financial assistance; and

(iv) The SEOs and at least the twenty next most highly compensated employees of any TARP recipient receiving \$500,000,000 or more in financial assistance.

(2) *Changes in level of financial assistance.* The determination of which

schedule in paragraph (b) of this section is applicable to a TARP recipient during the TARP period is determined by the gross amount of all financial assistance provided to the TARP recipient, valued at the time the financial assistance was received. Whether a TARP recipient's financial assistance has increased during a fiscal year to the point in the schedule under paragraph (b) of this section that the SEOs or a greater number of the most highly compensated employees will be subject to the requirements under paragraph (a) of this section is determined as of the last day of the TARP recipient's fiscal year, and the increase in coverage is effective for the subsequent fiscal year.

(3) *Application to first year of financial assistance.* For employers who become TARP recipients after June 15, 2009, the bonus payment limitation provision under this paragraph (b) does not apply to bonus payments paid or accrued by TARP recipients or their employees before the first date of the TARP period. Certain bonus payments may relate to a service period beginning before and ending after the first date of the TARP period. In these circumstances, the employee will not be treated as having accrued the bonus payment on or after the first date of the TARP period if the bonus payment is reduced to reflect at least the portion of the service period that occurs on or after the first date of the TARP period. However, if the employee is a SEO or most highly compensated employee at the time the amount would otherwise be paid, the bonus payment amount as reduced in accordance with the previous sentence still may not be paid until such time as bonus payments to that employee are permitted.

(c) *Accrual.* (1) *General rule.* Whether an employee has accrued a bonus payment is determined based on the facts and circumstances. An accrual may include the granting of service credit (whether toward the calculation of the benefit or any vesting requirement) or credit for the compensation received (or that otherwise would have been received) during the period the employee was subject to the restriction under paragraph (a) of this section. For application of this rule to the fiscal year including June 15, 2009, see § 30.17 (Q-17).

(2) *Payments or accruals after the employee is no longer a SEO or most highly compensated employee.* If after the employee is no longer a SEO or most highly compensated employee, the employee is paid a bonus payment or provided a legally binding right to a bonus payment that is based upon

services performed or compensation received during the period the employee was a SEO or most highly compensated employee, the employee will be treated as having accrued such bonus payment during the period the employee was a SEO or most highly compensated employee. For example, if the employee is retroactively granted service credit under an incentive plan (whether for vesting or benefit calculation purposes) for the period in which the employee was a SEO or most highly compensated employee, the employee will be treated as having accrued that benefit during the period the employee was a SEO or most highly compensated employee.

(3) *Multi-year service periods.* Certain bonus payments may relate to a multi-year service period, during some portion of which the employee is a SEO or most highly compensated employee subject to paragraph (a) of this section, and during some portion of which the employee is not. In these circumstances, the employee will not be treated as having accrued the bonus payment during the period the employee was a SEO or most highly compensated employee if the bonus payment is at least reduced to reflect the portion of the service period that the employee was a SEO or most highly compensated employee. If the employee is a SEO or most highly compensated employee at the time the net bonus payment amount after such reduction would otherwise be paid, the amount still may not be paid until such time as bonus payments to that employee are permitted.

(d) *Examples.* The following examples illustrate the rules of paragraphs (a) through (c) of this section:

Example 1. Employee A is a SEO of a TARP recipient in 2010, but not in 2011. The TARP recipient maintains an annual bonus program, generally paying bonus payments in March of the following year. Employee A may not be paid a bonus payment in 2010 (for services performed in 2009 or any other year). In addition, Employee A may not be paid a bonus payment in 2011 to the extent such bonus payment is based on services performed in 2010.

Example 2. Same facts as in *Example 1*, provided further that Employee A receives a salary increase for 2011. The salary increase equals the same percentage as similarly situated executive officers, with an additional percentage increase which, over the course of twelve months, equals the bonus that would have been payable to Employee A in 2011 (for services performed in 2010), except for application of paragraph (a) of this section. Under these facts and circumstances, the additional percentage increase will be treated as a bonus payment accrued in 2010 and Employee A may not be paid this bonus payment.

Example 3. Same facts as in *Example 1*, provided further that on March 1, 2011,

Employee A is granted a stock option under the TARP recipient stock incentive plan with a value approximately equal to the bonus that would have been payable to Employee A in 2011 (for services performed in 2010), except for application of paragraph (a) of this section. Other similarly situated employee not covered by the bonus limitation for 2010 do not receive such a grant. Under these facts and circumstances, the stock option grant will be treated as a bonus payment accrued in 2010 and will not be permitted to be paid to Employee A.

Example 4. Employee B is not a SEO or a most highly compensated employee of a TARP recipient during 2009. On July 1, 2009, Employee B is granted the right to a bonus payment of \$50,000 if Employee B is employed by the TARP recipient through July 1, 2011 (two years). Employee B is a SEO of a TARP recipient during 2010, but is not a SEO or a most highly compensated employee of the TARP recipient during 2011. Employee B is employed by the TARP recipient on July 1, 2011. Thus, Employee B was a SEO or most highly compensated employee during one-half of the two-year required service period. Provided that Employee B is paid not more than half of the otherwise payable bonus payment, or \$25,000, Employee B will not be treated as having accrued a bonus payment while Employee B was a SEO or a most highly compensated employee.

(e) *Exclusions—(1) Long-term restricted stock—(i) General rule.* The TARP recipient is permitted to award long-term restricted stock to the employees whose compensation is limited according to the schedule under paragraph (b) of this section, provided that the value of this grant may not exceed one third of the employee's annual compensation as determined for that fiscal year (that is, not using the look-back method for the prior year). For purposes of this paragraph, in determining an employee's annual compensation, all equity-based compensation granted in fiscal years ending after June 15, 2009 will only be included in the calculation in the year in which it is granted at its total fair market value on the grant date, and all equity-based compensation granted in fiscal years ending prior to June 15, 2009 will not be included in the calculation of annual compensation for any subsequent fiscal year. For purposes of this paragraph, in determining the value of the long-term restricted stock grant, the long-term restricted stock granted in accordance with this paragraph will only be included in the calculation in the year in which the restricted stock is granted at its total fair market value on the grant date.

(ii) *Example.* During 2008, Employee A receives compensation of \$1 million salary and a \$1,200,000 long-term restricted stock grant subject to a three-year vesting period. During 2009, Employee A received

compensation of \$1 million salary and no grant of long-term restricted stock. During 2010, Employee A receives compensation of \$600,000 salary and a \$300,000 long-term restricted stock grant subject to a three-year vesting period. Under the general SEC compensation disclosure rules used to define annual compensation in § 30.1 (Q-1) of this part, the compensation related to the long-term restricted stock grants would be allocated over the vesting period. Assume for this purpose, that for 2010, \$400,000 of the 2008 long-term restricted stock grant is allocated as compensation, and \$100,000 of the 2010 long-term restricted stock grant is allocated as compensation, so that the total annual compensation is \$1,100,000 (\$600,000 salary + \$400,000 + \$100,000). However, for purposes of determining Employee A's annual compensation to apply the limit on the value of the long-term restricted stock that may be granted to Employee A in 2010, the entire \$300,000 value of the 2010 grant is included but the \$400,000 value attributed to the 2008 grant is excluded. Accordingly, Employee A's adjusted annual compensation is \$900,000 (\$1,100,000 - \$100,000 + \$300,000 - \$400,000). In addition, the entire fair market value of the 2010 long-term restricted stock grant is included for purposes of determining whether the limit has been exceeded. Because the \$300,000 adjusted value of the long-term restricted stock grant does not exceed one-third of the \$900,000 adjusted annual compensation, the grant complies with paragraph (e)(1)(i).

(2) *Legally binding right under valid employment contracts*—(i) *General rule.* The prohibition under paragraph (a) of this section does not apply to bonus payments required to be paid under a valid employment contract if the employee had a legally binding right under the contract to a bonus payment as of February 11, 2009. For purposes of determining whether an employee had a legally binding right to a bonus payment, see 26 CFR 1.409A-1(b)(i). In addition, the bonus payment must be made in accordance with the terms of the contract as of February 11, 2009 (which may include application of an elective deferral election under a qualified retirement plan or a nonqualified deferred compensation plan), such that any subsequent amendment to the contract to increase the amount payable, accelerate any vesting conditions, or otherwise materially enhance the benefit available to the employee under the contract will result in the bonus payment being treated as not made under the employment contract executed on or before February 11, 2009. However, amendment of a valid employment contract executed on or before February 11, 2009 under which an employee has a legally binding right to a bonus payment to reduce the amount of the bonus payment or to enhance or include service-based or performance-based

vesting requirements or holding period requirements will not result in this treatment. The amended employment contract would still be deemed a valid employment contract and the employee would still be treated as having a legally binding right to the bonus payment under the original employment contract. The TARP recipient and the employees of the TARP recipient should be cognizant of the restrictions under section 409A of the Internal Revenue Code (26 U.S.C. 409A) in the case of an amendment described in the preceding sentence.

(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 CEO 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 CEOs, 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 CEOs 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 CEO 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 CEO 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 CEOs 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, CEOs 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 CEOs 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 CEOs 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 on its Internet Web site, if the TARP recipient maintains a company Web site. After adoption of the policy, the TARP recipient must maintain the policy during the remaining TARP period (if the TARP recipient has an obligation), or through the last day of the TARP recipient's fiscal year including the sunset date (if the TARP recipient has never had an obligation). If, after adopting an excessive or luxury expenditures policy, the board of directors of the TARP recipient makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and its primary regulatory 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)?

(a) *General rule*. 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.

§ 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 CEOs 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 CEOs

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:

(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 SEO 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 the certifications under paragraphs (a)(2)(x) and (a)(3)(x) of this section are not required. 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 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, 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 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, the features in the SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that could threaten the value of [identify TARP recipient] and identified any features in the employee compensation plans that pose risks to [identify TARP recipient] and 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 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, the terms of each employee compensation plan and identified the features in the plan that could encourage the manipulation of reported earnings of [identify TARP recipient] to enhance the compensation of an employee and has limited those 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, has provided this policy to Treasury and its primary regulatory agency, and [identify TARP recipient] and its employees have complied with this policy 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, and that any expenses requiring 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 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 prerequisites, as defined in the regulations and guidance established under section 111 of EESA, whose total value exceeds \$25,000 for each employee subject to the bonus payment limitations identified in paragraph (vii);

(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) The following employees are 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 order of level of annual compensation starting with the greatest amount: [identify name, title, and employer of each SEO and most highly compensated employee]; 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.)"

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

(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 that any expenses requiring 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 for each employee 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 during 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) The following employees are the SEOs and the twenty most highly compensated employees for the current fiscal year, with the non-SEO ranked in order of level of annual compensation starting with the greatest amount: [identify name, title, and employer of each SEO]; 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.)”

§ 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 applicable guidance, apply to particular facts and circumstances. Accordingly, the Special Master shall make all determinations, as required, as to the meaning of such guidance and whether such requirements have been met in any particular circumstances. In addition, a TARP recipient or a TARP recipient employee may submit a request, in accordance with paragraph (c)(3) of this section, for an advisory opinion with respect to the requirements under section 111 of EESA, these regulations and any other applicable guidance.

(2) *Review of prior payments to employees.* Section 111(f) of EESA provides that the Secretary shall review bonuses, retention awards, and other compensation paid before February 17, 2009, to employees of each entity receiving TARP assistance before February 17, 2009, to determine whether any such payments were inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. Section 111(f) of EESA provides that, if the Secretary makes

such a determination, the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses. The Special Master shall have the responsibility for administering these provisions, including the identification of the payments that are inconsistent with the purposes of EESA or TARP, or otherwise contrary to the public interest, and the Special Master shall have responsibility for the negotiation with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses. The Special Master shall make this determination by application of the principles outlined in paragraph (b) of this section. The Special Master's administration of these provisions may provide for the scope of review by the Special Master of a payment, including a limited review or no review, depending on the payment amount, the type of payment, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master may determine, where the Special Master determines that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest, or that renegotiation of such payments is not in the public interest. The Special Master may request in writing any information from TARP recipients necessary to carry out the review of prior compensation required under section 111(f) of EESA. TARP recipients must submit any requested information to the Special Master within 30 days of the request.

(3) *Approval of certain payments to employees of TARP recipients receiving exceptional financial assistance.* (i) *SEOs and most highly compensated employees.* The Special Master shall determine whether the compensation structure for each SEO or most highly compensated employee of a TARP recipient receiving exceptional assistance, including the amounts payable or potentially payable under such compensation structure, will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest. The Special Master shall make such determinations by applying the principles outlined in paragraph (b) of this section, subject to the requirement

that the compensation structure and payments satisfy the applicable limitations under § 30.10 (Q-10). This requirement shall apply to any compensation accrued or paid during any period the SEO or most highly compensated employee is subject to the limitations under § 30.10 (Q-10). Initial requests for such approval must be submitted no later than August 14, 2009. The Special Master's administration of these provisions may provide for the Special Master's scope of review, including a limited review or no review, of a portion of a compensation structure or payment depending on the amount of such payments, the type of such payments, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other factors as the Special Master determines, if the Special Master has determined that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. The Special Master shall issue a determination within 60 days of the receipt of a substantially complete submission. The TARP recipient must make a further request for approval to the extent the compensation structure for any SEO or most highly compensated employee, including the amounts that are or may be payable, for any SEO or highly compensated employee is materially modified. In reviewing compensation structures and compensation payments for any period subject to Special Master review, the Special Master may take into account other compensation structures and other compensation earned, accrued or paid, including such compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA pursuant to section 111(b)(3)(D)(iii) (see § 30.10(e)(2) (Q-30.10(e)(2) (certain legally binding rights under valid written employment contracts)), and amounts that were accrued or paid prior to June 15, 2009 and are therefore not subject to review by the Special Master.

(ii) *Other executive officers and most highly compensated employees.* With respect to any employee who is either an executive officer (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 is not subject to the bonus limitations under § 30.10 (Q-10), the Special Master shall determine whether the compensation

structure for such employees will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest. The Special Master shall make such determination through application of the principles outlined in paragraph (b) of this section. With respect to the scope of the required review, the Special Master shall determine only whether the compensation arrangements are adequately structured, and is not required to rule with respect to the amounts that are or may be payable thereunder. However, the TARP recipient may also request an advisory opinion with respect to the amounts that are or may be payable, which the Special Master may provide in his sole discretion. Notwithstanding the foregoing, if the total annual compensation to an employee complies with the rules applicable to an SEO under § 30.10 (Q-10) applied without any limits on the grant of long-term restricted stock, and the annual compensation other than long-term restricted stock does not exceed \$500,000 (or for 2009, \$500,000 prorated to reflect the remaining portion of 2009 after June 15, 2009), the compensation structure will automatically be deemed to meet the requirements and no prior approval by the Special Master will be required. For purposes of the \$500,000 limit, in determining annual compensation, all equity-based compensation granted in fiscal years ending after June 15, 2009 will be included in the calculation only in the year in which they are granted at their total fair market value on the grant date and all equity-based compensation granted in fiscal years ending prior to June 15, 2009 will not be included in the calculation of annual compensation. In addition, solely for purposes of applying the limit (and not for purposes of identifying the most highly compensated employees), the term annual compensation includes amounts required to be disclosed under paragraph (viii) of Item 402(a) of Regulation S-K of the Federal securities laws (change in the actuarial present value of benefits under a pension plan and above-market earnings on deferred compensation). The Special Master's administration of these provisions may provide for limited or no review of a portion of a compensation structure by the Special Master depending on the amount of potential payments, the type of such payments, the overall compensation earned by the employee during the relevant period, a combination thereof, or such other

factors as the Special Master determines, where the Special Master has determined that such factors demonstrate that such payments are not, or are highly unlikely to be, inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. Initial requests for such approval must be submitted no later than 120 days after publication of the final rule. Separate requests need not be submitted for each individual covered employee, but should be submitted for identified groups of employees subject to the same compensation structures to the extent possible as long as sufficient detail regarding individual compensation awards are provided as necessary to evaluate such employee's compensation structure. The Special Master shall issue a determination within 60 days of the receipt of a substantially complete submission. The TARP recipient must make a further request for approval to the extent the compensation structure, including the amounts that are or may be payable, for any executive officer is materially amended. In reviewing compensation structures for any period subject to Special Master review, the Special Master may take into account other compensation structures and other compensation earned, accrued or paid, including such compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA pursuant to section 111(b)(3)(D)(iii) (see § 30.10(e)(2) (Q-30.10(e)(2) (certain legally binding rights under valid written employment contracts)), and amounts that were accrued or paid prior to June 15, 2009 and are therefore not subject to review by the Special Master.

(iii) *Period from June 15, 2009 through final determination.* For the period from June 15, 2009 through the date of the Special Master's final determination, the TARP recipient will be treated as complying with this section if, with respect to employees covered by paragraph (a)(3)(i) of this section, the TARP recipient continues to pay compensation to such employees in accordance with the terms of employment as of June 14, 2009 to the extent otherwise permissible under this Interim Final Rule (for example, continued salary payments but not any bonus payments) and if, with respect to employees covered by paragraph (a)(3)(ii) of this section, the TARP recipient continues to pay compensation to such employees under the compensation structure established as of June 14, 2009, and if in addition the TARP recipient promptly complies

with any modifications that may be required by the Special Master's final determination. However, the Special Master may take into account the amounts paid to an employee during such period in determining the appropriate compensation amounts and compensation structures, as applicable, for the remainder of the year.

(4) *Advisory opinions on compensation structures or compensation payments to employees of TARP recipients.* A TARP recipient or TARP recipient employee may request an advisory opinion from the Special Master as to whether a compensation structure is, or will or may result in payments that are, inconsistent with the purposes of EESA or TARP, or otherwise contrary to the public interest. In addition, the Special Master may become aware of compensation structures or payments at any TARP recipient for which it may be useful to provide an advisory opinion as to whether such structure or payments meets this standard. Accordingly, the Special Master shall have the authority to render advisory opinions upon request or at the Special Master's initiative, as to whether a compensation structure is, or will or may result in payments to an employee that are inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest, or whether a compensation payment made, or to be made, was or will be inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest. If the Special Master renders an adverse opinion, the Special Master shall have the authority to seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the TARP recipient or the Federal government. Any advisory opinion shall reflect the Special Master's application of the principles outlined in paragraph (b) of this section. The Special Master shall not be required to render an advisory opinion in every instance, but may do so only where the Special Master deems appropriate and feasible in the context of the Special Master's other responsibilities. In any case, the Special Master shall render an opinion, or affirmatively decline to render an advisory opinion, within 60 days of the receipt of a substantially complete submission. The Special Master shall not be required to explain any decision to decline to render an advisory opinion.

(5) *Other designated duties and powers.* The Special Master shall have such other duties and powers related to

the application of compensation issues arising in the administration of EESA or TARP as the Secretary or the Secretary's designate may delegate to the Special Master, including, but not limited to, the interpretation or application of contractual provisions between the Federal government and a TARP recipient as those provisions relate to the compensation paid to, or accrued by, an employee of such TARP recipient.

(b) *Determination of whether compensation is inconsistent with the purposes of section 111 of EESA or TARP or is otherwise contrary to the public interest—(1) Principles.* In reviewing a compensation structure or a compensation payment to determine whether it is inconsistent with the purposes of section 111 of EESA or TARP or is otherwise contrary to the public interest, the Special Master shall apply the principles enumerated below. The principles are intended to be consistent with sound compensation practices appropriate for TARP recipients, and to advance the purposes and considerations described in EESA sections 2 and 103, including the maximization of overall returns to the taxpayers of the United States and providing stability and preventing disruptions to financial markets. The Special Master has discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment under consideration, such as whether a payment occurred in the past or is proposed for the future, the role of the employee within the TARP recipient, the situation of the TARP recipient within the marketplace and the amount and type of financial assistance provided. To the extent that two or more principles may appear inconsistent in a particular situation, the Special Master will determine the relative weight to be accorded each principle. In the case of any review of payments already made under paragraph (c)(2) of this section, or of any rights to bonuses, awards, or other compensation already granted, the Special Master shall apply these principles by considering the facts and circumstances at the time the compensation was granted, earned, or paid, as appropriate.

(i) *Risk.* The compensation structure should avoid incentives to take unnecessary or excessive risks that could threaten the value of the TARP recipient, including incentives that reward employees for short-term or temporary increases in value, performance, or similar measure that

may not ultimately be reflected by an increase in the long-term value of the TARP recipient. Accordingly, incentive payments or similar rewards should be structured to be paid over a time horizon that takes into account the risk horizon so that the payment or reward reflects whether the employee's performance over the particular service period has actually contributed to the long-term value of the TARP recipient.

(ii) *Taxpayer return.* The compensation structure, and amount payable where applicable, should reflect the need for the TARP recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the TARP recipient's future success, and ultimately to be able to repay TARP obligations.

(iii) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary, short-term and long-term incentives, as well as the extent to which compensation is provided in cash, equity or other types of compensation such as executive pensions, other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. The appropriate allocation may be different for different positions and for different employees, but generally, in the case of an executive or other senior level position a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers.

(iv) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the TARP recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. The appropriate allocation and the appropriate performance metrics may be

different for different positions and for different employees, but generally a significant portion of total compensation should be performance-based compensation, and generally that portion should be greater for positions that exercise higher levels of responsibility.

(v) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization.

(vi) *Employee contribution to TARP recipient value.* The compensation structure, and amount payable where applicable, should reflect the current or prospective contributions of an employee to the value of the TARP recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the TARP recipient.

(2) *Further guidance.* The Secretary reserves the discretion to modify or amend the foregoing principles through notice, announcement or other generally applicable guidance, provided that such guidance shall apply only prospectively from its date of publication and shall not provide a basis for reconsideration of a determination of the Special Master, except as the Special Master deems appropriate in light of such modification or amendment.

(c) *Special Master determinations—*
(1) *Initial determinations.* The Special Master shall provide an initial determination in writing, within 60 days of the receipt of a substantially complete submission, setting forth the facts and analysis that formed the basis for the determination. The TARP

recipient shall have 30 days to request in writing that the Special Master reconsider the initial determination. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determination. The Special Master must provide a final determination in writing within 30 days, setting forth the facts and analysis that formed the basis for the determination. If a TARP recipient does not request reconsideration within 30 days, the initial determination shall be treated as a final determination.

(2) *Final determinations.* In the case of any final determination that the TARP recipient is required to receive, the final determination of the Special Master shall be final and binding and treated as the determination of the Treasury.

(3) *Advisory Opinions.* An advisory opinion of the Special Master shall not be binding upon any TARP recipient or employee, but may be relied upon by a TARP recipient or employee if the advisory opinion applies to the TARP recipient and the employee and the TARP recipient and employee comply in all respects with the advisory opinion.

(d) *Submissions to the Special Master—*(1) *Submission procedures.* Submissions to the Special Master may be made under such procedures as the Special Master shall determine. The Special Master may reserve the right to request further information at any time and a submission shall not be treated as substantially complete unless the Special Master has so designated.

(2) *Disclosure procedures.* Materials submitted to the Special Master and the initial and final determinations of the Special Master are subject to disclosure under the standards provided in the Freedom of Information Act (FOIA, (5 U.S.C. 552 *et seq.*)). In addition, the final determinations of the Special Master shall be disclosed to the public. The Special Master shall promulgate procedures for ensuring that disclosed materials have been subject to appropriate redaction to protect personal privacy, privileged or

confidential commercial or financial information or other appropriate redactions permissible under the FOIA, which may include a procedure for the person or entity making the submission to request redactions and to review and request reconsideration of any proposed redactions before such redacted materials are released.

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

(a) *General rule.* The requirements under this part with respect to sections 111(b), 111(c), 111(d) and 111(f) are effective upon June 15, 2009. The guidance under this part with respect to those sections supersedes any previous guidance applicable to a TARP recipient to the extent that guidance is inconsistent with those requirements, but supersedes that guidance only as of June 15, 2009. To the extent previous contractual provisions are not inconsistent with ARRA or the guidance under this part, those contractual provisions remain in effect and continue to apply in accordance with their terms.

(b) *Bonus payment limitation.* The bonus payment limitation provision under § 30.10 (Q–10) of this part does not apply to bonus payments paid or accrued by TARP recipients or their employees before June 15, 2009. Certain bonus payments may relate to a service period beginning before and ending after June 15, 2009. In these circumstances, the employee will not be treated as having accrued the bonus payment on or after June 15, 2009 if the bonus payment is at least reduced to reflect the portion of the service period that occurs after June 15, 2009. If the employee is an SEO or most highly compensated employee at the time the net bonus payment after such reduction would otherwise be paid, the amount still may not be paid until such time as bonus payments to that employee are permitted.

Andrew Mayock,

Executive Secretary.

[FR Doc. E9–13868 Filed 6–12–09; 8:45 am]

BILLING CODE 4810–25–P

constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*)

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or Tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon

the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2009.

Allen D. Klein,
Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 19, 2009	December 7, 2009	UCA § 40–10–11, 40–10–17/Deletion of repeal dates for remining provisions.

[FR Doc. E9–29108 Filed 12–4–09; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 30

RIN 1505–AC09

TARP Standards for Compensation and Corporate Governance

AGENCY: Domestic Finance, Treasury.

ACTION: Interim final rule; correction.

SUMMARY: This document contains corrections to the preamble of an interim final rule that was published in the **Federal Register** on Monday, June 15, 2009 (74 FR 28394), relating to certain standards for compensation and corporate governance applicable to financial institutions receiving funds under the Troubled Assets Relief Program (TARP).

FOR FURTHER INFORMATION CONTACT:
Office of Domestic Finance, Treasury (202) 927–6618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The interim final rule the preamble of which is subject to these corrections is under section 111 of the Emergency Economic Stabilization Act of 2008, as amended.

Need for Correction

As published, the preamble to the interim final rule contains errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the interim final rule, which was the subject of FR Doc. E9–13868, published on June 15, 2009 (74 FR 28394), is corrected as follows:

1. On page 28399, column 3, in the preamble under the heading **SUPPLEMENTARY INFORMATION**, the first paragraph, line 26 the language “Section 30.10 (Q–10) of the Interim Final Rule states that TARP recipients will be subject during the TARP period to the bonus limitation requirements based on the total amount of financial assistance outstanding under the TARP.” is corrected to read “Section 30.10 (Q–10) of the Interim Final Rule states that TARP recipients will be subject during the TARP period to the bonus limitation requirements based on the gross amount of all financial assistance provided to the TARP recipient, valued at the time the financial assistance was received.”

2. On page 28403, column 2, in the preamble under the heading **Supplementary Information**, the carryover paragraph, line 33 the language “(15) certain employees named in the certification are the CEOs and most highly compensated employees for

the current fiscal year based on their compensation during the prior fiscal year;" is corrected to read "(15) an accurate list of the employees who are the SEOs and most highly compensated employees for the current fiscal year has been provided to the Treasury;"

Dated: November 30, 2009.

Herbert M. Allison, Jr.,

Assistant Secretary for Financial Stability.

[FR Doc. E9-29026 Filed 12-4-09; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

31 CFR Part 30

RIN 1505-AC09

TARP Standards for Compensation and Corporate Governance; Correction

AGENCY: Domestic Finance, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to an interim final rule that was published in the **Federal Register** on Monday, June 15, 2009. The rule relates to certain standards for compensation and corporate governance applicable to financial institutions receiving funds under the Troubled Asset Relief Program (TARP).

DATES: *Effective date:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT:

Office of Domestic Finance, Treasury (202) 927-6618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2009, Treasury published an interim final rule (74 FR 29394) entitled TARP Standards for Compensation and Corporate Governance. The interim final rule implemented certain provisions of section 111 of the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5221) (EESA), which directs Treasury to establish executive compensation and corporate governance standards for entities receiving financial assistance under the TARP. This document makes several technical amendments to that interim final rule.

Need for Correction

As published, the interim final rule contains errors that may prove to be misleading and are in need of correction. Section 30.1 of the interim final rule contained definitions applicable for purposes of the interim final rule. The definition of "most highly compensated employee" had provided that, for purposes of identifying a most highly compensated

employee, senior executive officers (SEOs) were excluded. If this definition were applied literally with respect to Sections 30.10(b)(1)(i) and (ii), the definition would have the effect of exempting SEOs from the bonus limitations applicable to certain most highly compensated employees. Such a result would be contrary to the intent of the regulation and the language of EESA. Accordingly, this provision is corrected to provide that the terms "most highly compensated employee" or "most highly compensated employees" mean the employee or employees of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, solely for purposes of identifying the employees who are subject to any rule applicable to both the SEOs and one or more of the most highly compensated employees of the TARP recipient, SEOs of the TARP recipient are excluded when identifying the most highly compensated employee(s). So, for instance, if a provision is applicable only to the most highly compensated employee of the TARP recipient, the most highly compensated employee of the TARP recipient is subject to the provision regardless of whether the employee is also a SEO. In contrast, if a provision is applicable to the SEOs and a certain number of the most highly compensated employees of the TARP recipient, the SEOs (because they are already subject to the provision) are excluded for purposes of determining the most highly compensated employees that are also subject to the provision.

Section 30.2 of the interim final rule provides that the requirements of section 111(c) (generally relating to the establishment and maintenance of an independent compensation committee and that committee's review of employee compensation plans, as well as the establishment of a company-wide excessive and luxury expenditures policy) apply through the last day of the TARP period for recipients with an obligation, and through the last day of the recipient's fiscal year including the sunset date (which is 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)) for recipients that never had an obligation. However, the interim final rule erroneously stated that the requirements apply through the later of these dates. Because only one of these dates is potentially applicable to any specific TARP recipient, the "later of" language is inoperative, but may render

the provision confusing. Accordingly, Section 30.2 is revised to more clearly state the applicable time periods.

Section 30.13 of the interim final rule, relating to the requirement to permit a shareholder vote to approve certain executive compensation, is clarified to provide that TARP recipients must comply with the rules and regulations promulgated by the Securities and Exchange Commission (SEC) with respect to that requirement, but only to the extent the rules and regulations are applicable to the TARP recipient. Accordingly, a TARP recipient that is not subject to those rules because, for example, the TARP recipient is not required to register any securities with the SEC, is not required to permit such a vote.

Section 30.15 of the interim final rule, relating to certain certifications that the principal executive officer and the principal financial officer must provide, is revised to provide that the certification must state that the TARP recipient has provided the Treasury Department a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year, with the non-SEOs ranked in descending order of level of annual compensation. Accordingly, a list of the names of the SEOs and the twenty next most highly compensated employees is not required to be provided in the certification, but may be provided separately. Section 30.15 is also corrected so that the model certification language reflects the deadlines set forth elsewhere in the regulation, and to correct certain cross-references.

Procedural Matters

The June 15, 2009 interim final rule was promulgated pursuant to EESA, as amended, which provides for authority and facilities that the Secretary of the Treasury can use immediately to restore liquidity and stability to the financial system of the United States. Because of exigencies in the financial markets and to encourage entities to choose or continue to participate in the TARP, Treasury issued the interim final rule without prior notice and comment and without a delayed effective date pursuant to 5 U.S.C. 553(b)(B) and (d)(3). Treasury invited interested members of the public to submit comments on the rule and will carefully consider all comments in developing a final rule. The comment period for the interim final rule closed on August 14, 2009.

This document makes technical amendments to the Code of Federal Regulations that do not otherwise

the current fiscal year based on their compensation during the prior fiscal year;" is corrected to read "(15) an accurate list of the employees who are the SEOs and most highly compensated employees for the current fiscal year has been provided to the Treasury;"

Dated: November 30, 2009.

Herbert M. Allison, Jr.,

Assistant Secretary for Financial Stability.

[FR Doc. E9-29026 Filed 12-4-09; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 30

RIN 1505-AC09

TARP Standards for Compensation and Corporate Governance; Correction

AGENCY: Domestic Finance, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to an interim final rule that was published in the **Federal Register** on Monday, June 15, 2009. The rule relates to certain standards for compensation and corporate governance applicable to financial institutions receiving funds under the Troubled Asset Relief Program (TARP).

DATES: *Effective date:* December 7, 2009.

FOR FURTHER INFORMATION CONTACT:

Office of Domestic Finance, Treasury (202) 927-6618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2009, Treasury published an interim final rule (74 FR 29394) entitled TARP Standards for Compensation and Corporate Governance. The interim final rule implemented certain provisions of section 111 of the Emergency Economic Stabilization Act of 2008, as amended (12 U.S.C. 5221) (EESA), which directs Treasury to establish executive compensation and corporate governance standards for entities receiving financial assistance under the TARP. This document makes several technical amendments to that interim final rule.

Need for Correction

As published, the interim final rule contains errors that may prove to be misleading and are in need of correction. Section 30.1 of the interim final rule contained definitions applicable for purposes of the interim final rule. The definition of "most highly compensated employee" had provided that, for purposes of identifying a most highly compensated

employee, senior executive officers (SEOs) were excluded. If this definition were applied literally with respect to Sections 30.10(b)(1)(i) and (ii), the definition would have the effect of exempting SEOs from the bonus limitations applicable to certain most highly compensated employees. Such a result would be contrary to the intent of the regulation and the language of EESA. Accordingly, this provision is corrected to provide that the terms "most highly compensated employee" or "most highly compensated employees" mean the employee or employees of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, solely for purposes of identifying the employees who are subject to any rule applicable to both the SEOs and one or more of the most highly compensated employees of the TARP recipient, SEOs of the TARP recipient are excluded when identifying the most highly compensated employee(s). So, for instance, if a provision is applicable only to the most highly compensated employee of the TARP recipient, the most highly compensated employee of the TARP recipient is subject to the provision regardless of whether the employee is also a SEO. In contrast, if a provision is applicable to the SEOs and a certain number of the most highly compensated employees of the TARP recipient, the SEOs (because they are already subject to the provision) are excluded for purposes of determining the most highly compensated employees that are also subject to the provision.

Section 30.2 of the interim final rule provides that the requirements of section 111(c) (generally relating to the establishment and maintenance of an independent compensation committee and that committee's review of employee compensation plans, as well as the establishment of a company-wide excessive and luxury expenditures policy) apply through the last day of the TARP period for recipients with an obligation, and through the last day of the recipient's fiscal year including the sunset date (which is 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)) for recipients that never had an obligation. However, the interim final rule erroneously stated that the requirements apply through the later of these dates. Because only one of these dates is potentially applicable to any specific TARP recipient, the "later of" language is inoperative, but may render

the provision confusing. Accordingly, Section 30.2 is revised to more clearly state the applicable time periods.

Section 30.13 of the interim final rule, relating to the requirement to permit a shareholder vote to approve certain executive compensation, is clarified to provide that TARP recipients must comply with the rules and regulations promulgated by the Securities and Exchange Commission (SEC) with respect to that requirement, but only to the extent the rules and regulations are applicable to the TARP recipient. Accordingly, a TARP recipient that is not subject to those rules because, for example, the TARP recipient is not required to register any securities with the SEC, is not required to permit such a vote.

Section 30.15 of the interim final rule, relating to certain certifications that the principal executive officer and the principal financial officer must provide, is revised to provide that the certification must state that the TARP recipient has provided the Treasury Department a complete and accurate list of the SEOs and the twenty next most highly compensated employees for the current fiscal year, with the non-SEOs ranked in descending order of level of annual compensation. Accordingly, a list of the names of the SEOs and the twenty next most highly compensated employees is not required to be provided in the certification, but may be provided separately. Section 30.15 is also corrected so that the model certification language reflects the deadlines set forth elsewhere in the regulation, and to correct certain cross-references.

Procedural Matters

The June 15, 2009 interim final rule was promulgated pursuant to EESA, as amended, which provides for authority and facilities that the Secretary of the Treasury can use immediately to restore liquidity and stability to the financial system of the United States. Because of exigencies in the financial markets and to encourage entities to choose or continue to participate in the TARP, Treasury issued the interim final rule without prior notice and comment and without a delayed effective date pursuant to 5 U.S.C. 553(b)(B) and (d)(3). Treasury invited interested members of the public to submit comments on the rule and will carefully consider all comments in developing a final rule. The comment period for the interim final rule closed on August 14, 2009.

This document makes technical amendments to the Code of Federal Regulations that do not otherwise

impose or amend any requirements. Accordingly, Treasury finds that it would be contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), to delay the issuance of these technical amendments pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the amendments to become effective immediately upon publication.

This document is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 31 CFR Part 30

Executive compensation, Troubled assets.

■ Accordingly, 31 CFR part 30 is corrected by making the following correcting amendments:

PART 30—TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE

■ 1. The authority citation for part 30 continues to read as follows:

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

■ 2. In § 30.1, revise paragraph (1) of the definition of "most highly compensated employee" to read as follows:

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

* * * * *

Most highly compensated employee. (1) *In general.* The terms "most highly compensated employee" or "most highly compensated employees" mean the employee or employees of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, solely for purposes of identifying the employees who are subject to any rule applicable to both the CEOs and one or more of the most highly compensated employees of the TARP recipient, CEOs of the TARP recipient are excluded when identifying

the most highly compensated employee(s). For this purpose, a former employee who is no longer employed as of the first date 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.

* * * * *

■ 3. In § 30.2, revise the second sentence to read as follows:

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

* * * For a TARP recipient that has had an obligation to the Federal government arising from financial assistance provided under the TARP, and no further financial assistance under the TARP, the requirements of section 111(c) (including portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable) and section 111(d) (§ 30.12 (Q-12)) apply through the last day of the period during which that obligation remains outstanding; for a TARP recipient that has never had an obligation to the Federal government arising from financial assistance provided under the TARP, the requirements of section 111(c) (including portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable) and section 111(d) (§ 30.12 (Q-12)) apply through the last day of the TARP recipient's fiscal year including the sunset date. * * *

■ 4. Revise § 30.13 to read as follows:

§ 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.

■ 5. In § 30.15, revise the first sentence of paragraph (a)(5), Appendix A, paragraphs (i), (ii), (iii), (ix), (xi) and (xv) and Appendix B, paragraphs (ii), (iii), (ix), (xi) and (xv) to read as follows:

§ 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?

* * * * *

(a) * * *

(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.

* * *

* * * * *

Appendix A to § 30.15—Model Certification for First Fiscal Year Certification

* * * * *

(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;

* * * * *

(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;

* * * * *

(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 prerequisites, 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);

* * * * *

(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's 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[.]

* * * * *

Appendix B to § 30.15—Model Certification for Years Following First Fiscal Year Certification

* * * * *

(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;

* * * * *

(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;

* * * * *

(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 prerequisites, 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);

* * * * *

(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's 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".

* * * * *

Dated: November 30, 2009.

Herbert M. Allison, Jr.,

Assistant Secretary for Financial Stability.

[FR Doc. E9-29027 Filed 12-4-09; 8:45 am]

BILLING CODE 4810-25-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2009-0638; FRL-9088-8]

Determinations of Attainment of the One-Hour and Eight-Hour Ozone Standards for Various Ozone Nonattainment Areas in New Jersey and Upstate New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that various ozone nonattainment areas in New York and New Jersey have attained the one-hour and eight-hour National Ambient Air Quality Standards (NAAQS) for ozone. For the one-hour standard, the areas are the Atlantic City and Warren County areas in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York. For the 1997 eight-hour standard, the areas are Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County in New York. These determinations are based upon certified ambient air monitoring data that show each area has monitored attainment of ozone NAAQS based on complete, quality-assured ambient air monitoring data for the three-year period ending in 2008. These data demonstrate that the one-hour and eight-hour ozone standards have been attained in these areas. These areas that have attained the one-hour standard have completed their

progress toward achieving the one-hour health standard. For the areas that have attained the eight-hour standard, the requirements for the State to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the ozone standards are suspended for as long as the areas continue to attain the eight-hour ozone standard. These determinations of attainment are not redesignations of these areas to attainment. Redesignations must meet additional requirements, including an approved plan to maintain compliance with the air quality standard for ten years after redesignation. In addition, preliminary data for 2009 show that these areas continue to attain the standard.

DATES: *Effective Date:* This rule is effective on January 6, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R02-OAR-2008-0638. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866. To make your visit as productive as possible, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-4249, fax number (212) 637-3901, e-mail kelly.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

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**Frequently Asked Questions (FAQs)
Troubled Asset Relief Program (TARP) Standards for
Compensation and Corporate Governance**

Section 111 of the Emergency Economic Stabilization Act of 2008 (EESA), as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), prescribes certain standards for compensation and corporate governance for recipients of financial assistance under the TARP. On June 15, 2009, the Treasury Department published an Interim Final Rule under section 111 of EESA, setting forth the applicable compensation and corporate governance standards (see 74 Fed. Reg. 28,394 (June 15, 2009)).

This guidance responds to certain questions frequently asked by affected TARP recipients, and highlights and explains the technical corrections to the Interim Final Rule published in conjunction with this guidance.

1. How do the requirements of the Interim Final Rule apply with respect to an obligation that arises and is extinguished on the same day?

With respect to an obligation that arises and is extinguished on the same day (for example, if a senior debt instrument issued in satisfaction of section 113(d) of EESA is extinguished immediately upon the closing of the transaction), a TARP recipient is treated as having received financial assistance in the form of an obligation to the Federal government, but is treated as having no TARP period and a period during which the obligation was outstanding of zero days. Thus, the requirements of the Interim Final Rule that apply only during the TARP period, or the period during which an obligation remains outstanding, would not apply to the TARP recipient.

2. Section 30.11(b) (Q-11) of the Interim Final Rule sets forth certain requirements with respect to the disclosure of perquisites, and Section 30.11(c) (Q-11) of the Interim Final Rule sets forth requirements with respect to the disclosure of services of compensation consultants. For what periods do these requirements apply?

Section 30.11(b) requires that TARP recipients annually disclose during the TARP period any perquisite whose total value for the TARP recipient's fiscal year exceeds \$25,000 for any SEO or most highly compensated employee that is subject to paragraph (a) of §30.10 (Q-10). This disclosure must include a narrative description of the amount and nature of these perquisites, the recipient of the perquisites, and a justification for offering the perquisites, and must be provided to Treasury and to the TARP recipient's primary regulatory agency within 120 days of the completion of a fiscal year any part of which is a TARP period.

Section 30.11(c) requires that the compensation committee of the TARP recipient 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 consultants or any of its affiliates provided to the TARP recipient. This disclosure must be provided to Treasury and to the TARP recipient's primary regulatory agency within 120 days of the completion of a fiscal year any part of which is a TARP period.

These disclosure requirements apply only during the TARP period. Thus, for example, a TARP recipient that had no TARP period (for example, for the reasons given in FAQ 1 above) would not be subject to these requirements.

3. For a TARP recipient to comply with the certification requirements of section 111(b)(4) of EESA and §30.15 (Q-15) of the Interim Final Rule, what periods must be covered by the certifications?

Under §30.15 (Q-15), the principal executive officer (PEO) and principal financial officer (PFO) of each TARP recipient must certify compliance with section 111 of EESA as implemented by the standards set forth in 31 C.F.R. Part 30. Thus, to satisfy the requirements of §30.15 (Q-15), the PEO and PFO each must certify compliance with each standard for the period during which the standard was applicable to the TARP recipient.

With respect to any standard that was never applicable to, or any action that was not required to be completed by or was not completed by, the TARP recipient, to satisfy the requirements of §30.15 (Q-15), the certification must state that the standard was never applicable to the TARP recipient. Thus, if a TARP recipient that had an outstanding obligation as of June 15, 2009 and received no other financial assistance under the TARP no longer has an outstanding obligation as of August 15, 2009, the requirements of §30.4(a) (Q-4) (establishment or maintenance of a compensation committee) and §30.12 (Q-12) (establishment of an excessive or luxury expenditures policy), that require such TARP recipients to take certain action no later than ninety days following June 15, 2009, will not be required to be met by the TARP recipient. Therefore, if the TARP recipient has not completed those actions, to satisfy the requirements of §30.15 (Q-15) the TARP recipient will be required to certify with respect to those standards only that those standards are not required to be met by the TARP recipient.

4. Section 111 of EESA, and §30.1 (Q-1), define the term “senior executive officer” (SEO). If an individual served as the principal executive officer (PEO) or principal financial officer (PFO) of a TARP recipient during a fiscal year any part of which was a TARP period but was not employed by the TARP recipient on the first day of that fiscal year, is the PEO or PFO a SEO for purposes of that fiscal year?

Yes. Section 111(a)(1) of EESA defines a “senior executive officer” as an individual who is one of the top five most highly paid executives of a public company whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934. Section 30.1 (Q-1) provides that “senior executive officer” means a “named executive officer,” as defined pursuant to Item 402(a)(3) of Regulation S-K under the Federal securities laws (17 C.F.R. 229.402(a)), who is an employee of the TARP recipient. Item 402(a)(3) of Regulation S-K provides that the “named executive officers” with respect to a fiscal year include all individuals serving as the PEO or PFO as well as the three most highly compensated executive officers other than the PEO or PFO.

Under Item 402(a)(3) of Regulation S-K, an individual that served as the PEO or PFO of a TARP recipient during a fiscal year any part of which was a TARP period, regardless whether the individual was employed by the TARP recipient on the first day of that fiscal year, will

necessarily be among the executives whose compensation is required to be disclosed by the TARP recipient pursuant to the Securities Exchange Act of 1934 with respect to that fiscal year. Thus, an individual who served as the PEO or PFO of a TARP recipient during a fiscal year any part of which was a TARP period who was not employed by the TARP recipient on the first day of the fiscal year is a SEO for purposes of that fiscal year.

In contrast, an executive officer who did not serve as the PEO or PFO of a TARP recipient during a fiscal year any part of which was a TARP period, and who was not employed by the TARP recipient on the first day of that year, may or may not be among the executives whose compensation is required to be disclosed by the TARP recipient pursuant to the Securities Exchange Act of 1934 with respect to that fiscal year. Thus, an executive officer who did not serve as the PEO or PFO of a TARP recipient during a fiscal year any part of which was a TARP period, and who was not employed by the TARP recipient on the first day of that fiscal year, is not a SEO for purposes of that fiscal year, even if the executive officer is, with respect to that fiscal year, one of the three most highly compensated executive officers other than the PEO or PFO and is therefore a SEO for purposes of the immediately following fiscal year.

5. Sections 111(b)(3)(D)(ii)(I) and (II) of EESA, and §§30.10(b)(1)(i) and (ii) (Q-10 (b)(1)(i) and (ii)) of the Interim Final Rule provide that for TARP recipients that have received certain levels of financial assistance, only the most highly compensated employee or the five most highly compensated employees, respectively, of the TARP recipient are subject to certain limitations on bonus payments. For this purpose, how are the most highly compensated employees identified?

For purposes of this standard, as well as any other standard that applies solely to one or more of the most highly compensated employees of a TARP recipient (and not also to senior executive officers (SEOs)), the “most highly compensated employee” is the employee whose annual compensation is determined to be highest among all employees of the TARP recipient, regardless whether that employee is also a SEO. Thus, for example, a SEO whose annual compensation is the fourth highest among all employees of a TARP recipient is included in the employees described in §30.10(b)(1)(ii) (the five most highly compensated employees of certain TARP recipients, who are the only employees of those TARP recipients who are subject to the limitations on bonus payments), but a SEO whose total annual compensation is the sixth highest among all employees of a TARP recipient is not included in that group of employees. The technical correction to §30.1 of the Interim Final Rule clarifies the definition of “most highly compensated employee” for this purpose.

6. Section 111(e) of EESA and §30.13 (Q-13) of the Interim Final Rule provide that 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. For purposes of compliance with §30.13 (Q-13), must a TARP recipient that is not required to register any securities with the Securities and Exchange Commission (SEC) permit this shareholder vote to approve certain executive compensation?

No. To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC that apply to the TARP recipient. Thus, a TARP recipient that is not subject to such rules, regulations, or guidance because, for example, the TARP recipient is not required to register any securities with the SEC, is not required to permit such a vote. The technical correction to §30.13 (Q-13) clarifies the rule for this purpose.

7. Section 30.1 (Q-1) of the Interim Final Rule contains the definition of “long-term restricted stock.” Section 111(b)(3)(D) of EESA, and §30.10 (Q-10) of the Interim Final Rule, require that any bonus, retention award, or incentive compensation paid to specified employees be paid in the form of long-term restricted stock having a value not greater than one-third of the employee’s annual compensation. Section 30.10(e)(1)(i) (Q-10) of the Interim Final Rule provides that, for this purpose, the value of long-term restricted stock should be included in the calculation in the year in which it is granted. If long-term restricted stock is granted solely in connection with services provided during a particular year, for purposes of §30.10(e)(1)(i) (Q-10), in which year should the value of the long-term restricted stock be included?

Solely for purposes of §30.10(e)(1)(i) (Q-10), when determining whether long-term restricted stock granted to specified employees has a value greater than one-third of the employee’s annual compensation, if the facts and circumstances demonstrate that a grant of long-term restricted stock relates solely to services provided during a particular TARP recipient fiscal year, and the grant of long-term restricted stock occurs no later than the 15th day of the third month following the end of that fiscal year, such long-term restricted stock will be treated as granted in the year in which the services were provided. The grant of long-term restricted stock must also comply in all respects with the requirements of the Interim Final Rule related to the terms and conditions of long-term restricted stock.

Thus, for example, if an employee at a TARP recipient with a December 31 fiscal year end receives 2009 compensation of \$500,000 in cash salary (and no other compensation), and on March 1, 2010 also receives, solely for services performed during 2009, a grant of long-term restricted stock with a fair market value of \$250,000, for purposes of §30.10(e)(1)(i) (Q-10) the long-term restricted stock will be treated as granted in fiscal year 2009. Thus, the grant of long-term restricted stock with a fair market value of \$250,000 does not exceed one-third of the employee’s annual compensation attributable to 2009 (\$500,000 + \$250,000) for purposes of complying with §30.10 (Q-10). In addition, for purposes of calculating the fair market value of long-term restricted stock that may be granted to the employee for services provided in fiscal year 2010 under §30.10 (Q-10), the fair market value of the long-term restricted stock granted on March 1, 2010 must not be included in the employee’s annual compensation for fiscal year 2010.

8. Section 111(c) of EESA sets forth certain requirements related to the establishment or maintenance of a compensation committee of the board of directors of a TARP recipient, and certain actions that the compensation committee must take in discussing, evaluating, and reviewing employee and SEO compensation plans. Section 111(d) of EESA requires that the board of directors have in place a company-wide policy regarding excessive or luxury expenditures. For a TARP recipient that has had an obligation to the Federal

government arising from financial assistance under the TARP, but no further financial assistance under the TARP, for what periods do these requirements apply?

The Interim Final Rule sets forth the requirements of section 111(c) through portions of §30.4 (Q-4), §30.5 (Q-5), and §30.7 (Q-7)). Section 30.4(a) (Q-4(a)) requires that the TARP recipient establish a compensation committee meeting certain requirements by the later of September 14, 2009 or ninety days after the closing date of the agreement between the TARP recipient and Treasury, and maintain the compensation committee during the remainder of the TARP period. If a compensation committee meeting the applicable requirements is already established before the later of September 14, 2009 or ninety days after the closing date, the TARP recipient must maintain it during the remainder of the TARP period.

For purposes of these provisions, the applicable deadlines refer to the date by which the required actions must be completed. If a TARP recipient that has had an obligation to the Federal government arising from financial assistance under the TARP, and no further financial assistance under the TARP, no longer has an outstanding obligation on the date of the applicable deadline, the action is not required to be completed. Thus, for example, a TARP recipient that had an obligation to the Federal government arising from financial assistance under the TARP as of June 15, 2009, but no longer has an obligation on September 14, 2009, is not required to establish or maintain the compensation committee. Similarly, if the obligation of the TARP recipient is outstanding on September 13, 2009, but the TARP recipient no longer has an obligation on March 13, 2010, the TARP recipient would be required to establish or maintain the compensation committee from September 14, 2009 through March 12, 2010, but the compensation committee would not be required to complete the actions required to be completed every six months pursuant to §30.4(a)(1), (2), and (3) (Q-4(a)(1), (2), and (3)).

The Interim Final Rule sets forth the requirements of EESA section 111(d) through §30.12 (Q-12). Section 30.12 (Q-12) requires that, by the later of September 14, 2009, or ninety days after the closing date of the agreement between the TARP recipient and Treasury, the board of directors of the TARP recipient adopt an excessive or luxury expenditures policy, provide this policy to Treasury and the TARP recipient's primary regulatory agency, and post the text of the policy on its Internet website, if the TARP recipient maintains a company website.

These dates refer to the deadlines by which the required actions must be completed. If a TARP recipient that has had an obligation to the Federal government arising from financial assistance under the TARP, and no further financial assistance under the TARP, no longer has an outstanding obligation on the date of the applicable deadline, the action is not required to be completed. Thus, for example, a TARP recipient that had an obligation to the Federal government arising from financial assistance under the TARP as of June 15, 2009, but no longer has an obligation on September 13, 2009, is not required to adopt or maintain an excessive or luxury expenditures policy.

The technical corrections to §§30.2 (Q-2) and 30.15 (Q-15) reflect this guidance. With respect to the certification requirements of §30.15 (Q-15), see FAQ 9 below.

9. What information must be included in certifications provided pursuant to § 30.15 (Q-15) with respect to the identification of the SEOs and twenty next most highly compensated employees of the TARP recipient?

To satisfy the requirements of §30.15 (Q-15), a certification must state that the 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 respect to a certification for the first fiscal year of the TARP period) or the current fiscal year (with respect to a certification for a fiscal year following the first fiscal year of the TARP period), with the non-SEOs ranked in order of level of annual compensation starting with the greatest amount. The list, including the name, title, and employer of each SEO and most highly compensated employee, may be provided to Treasury separately from the certification.

The technical correction to the Interim Final Rule corrects Appendix A and Appendix B to §30.15 (Q-15) for this purpose.

10. Is a TARP recipient required to provide a certification pursuant to §30.15 (Q-15) with respect to a fiscal year that ended prior to June 15, 2009?

No. The requirements of the Interim Final Rule with respect to sections 111(b), 111(c), 111(d) and 111(f) of EESA, including §30.15 (Q-15), were effective on June 15, 2009 (the date of publication of the Interim Final Rule), and superseded any previous guidance with respect to those requirements. To satisfy the requirements of §30.15 (Q-15), and any previous guidance with respect to those requirements, a TARP recipient is required to provide the appropriate certification only with respect to a fiscal year ending on or after June 15, 2009.

11. Section 30.7 (Q-7) of the Interim Final Rule requires that the compensation committee of each TARP recipient provide the certifications required by §30.4 (Q-4) in the Compensation Committee Report required pursuant to Item 407(e) of Regulation S-K under the Federal securities laws (17 CFR 229.407(e)), where applicable, and to Treasury. Section 30.12 (Q-12) of the Interim Final Rule requires that the board of directors of each 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 on its Internet website. Section 30.15 (Q-12) of the Interim Final Rule requires that the PEO and PFO of the TARP recipient provide certain certifications with respect to the compliance of the TARP recipient with section 111 of EESA as an exhibit to the TARP recipient's annual report on Form 10-K, where applicable, and to Treasury. How should a TARP recipient provide Treasury with the information required by these provisions?

The information may be submitted to Treasury via email at TARP.Compliance@do.treas.gov. Alternatively, the information may be submitted to Treasury by regular mail addressed to: Chief Compliance Officer; United States Department of the Treasury, Office of Financial Stability; 1500 Pennsylvania Avenue, NW; Washington, D.C. 20220.

A TARP recipient that, prior to November 30, 2009, submitted this information to Treasury via another method is not required to resubmit the information. However, the TARP recipient must

provide Treasury, in accordance with this FAQ 11, with a description of the information provided, the date on which the information was provided, and the means by which the information was submitted. This information must be provided, in accordance with the instructions in this FAQ 11, within ninety days of the completion of the fiscal year of the TARP recipient that included November 30, 2009.

12. Section 30.1 (Q-1) defines an “obligation” to mean a requirement for, or ability of, a TARP recipient to repay financial assistance received from Treasury, and defines the “TARP period” for a TARP recipient to mean 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. Due to administrative requirements at the Treasury Department, a TARP recipient may not be permitted to make a repayment for a short period following the receipt of all necessary approvals from its regulators. How do the requirements of the Interim Final Rule apply to a TARP recipient that has received all necessary approvals from its regulators to repay an obligation, and repays the obligation on the next available date upon which Treasury permits the TARP recipient to make the repayment?

A TARP recipient that has received all necessary approvals from its regulators to repay an obligation will be treated as having repaid the obligation on the date upon which all necessary approvals have been confirmed by Treasury, provided that the TARP recipient repays the obligation on the next available date upon which Treasury permits the TARP recipient to make a repayment. Thus, for purposes of determining such a TARP recipient’s TARP period under the Interim Final Rule, the date upon which all necessary approvals are confirmed by Treasury is treated as the last date upon which the obligation remains outstanding.

13. Section 30.1 (Q-1) of the Interim Final Rule defines annual compensation as 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)). On December 23, 2009, the SEC published in the Federal Register a final rule amending Item 402 of Regulation S-K (see 74 Fed. Reg. 68,334 (December 23, 2009)). Those amendments are effective February 28, 2010. How should a TARP recipient calculate annual compensation with respect to a fiscal year beginning prior to February 28, 2010?

For purposes of applying the amendments to Item 402 of Regulation S-K under the Federal securities laws (17 CFR 229.402(a)) to the calculation of annual compensation, a TARP recipient (whether or not it has securities registered with the SEC) may refer to SEC guidance, including the Compliance and Disclosure Interpretation issued by the SEC on December 22, 2009, with respect to the voluntary application of those amendments to securities filings made prior to the effective date of the amendments.

Please check back regularly for postings of additional FAQs.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 5, 2010

P. Nicholas Kourides, Esq.
Deputy General Counsel
American International Group, Inc.
70 Pine Street
New York, NY 10270

Ralph R. Gonzalez, Esq.
Senior Vice President and General Counsel
American Life Insurance Company
600 North King Street
Wilmington, DE 19801

Re: *MetLife's Purchase of American Life Insurance Company*

Dear Messrs. Kourides and Gonzalez:

I am in receipt of your letter, dated March 3, 2010, requesting an advisory opinion confirming your analysis of the treatment of a corporate transaction under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"). Under the Rule, the Special Master for TARP Executive Compensation has the responsibility for determining how the requirements under Section 111 of the Emergency Economic Stabilization Act of 2008, as amended, and the Rule apply to particular facts and circumstances, and may issue advisory opinions with respect to these requirements. *See* 31 C.F.R. § 30.16(a)(1).

The Office of the Special Master has reviewed the description of the transaction in your letter, which is attached as ***Exhibit I***, and the relevant provisions of the Rule. Based on that description, I concur with your analysis of the implications of the transaction under the Rule.

This letter is being issued pursuant to the authority granted to the Special Master under the Rule. *Id.* The opinion is limited to the facts described in ***Exhibit I***, and shall not be relied upon with respect to any other facts or circumstances. The opinion has relied upon, and is qualified in its entirety by, the accuracy of those facts and the absence of any material misstatement or omission in ***Exhibit I***.

Very truly yours,

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

AMERICAN INTERNATIONAL GROUP, INC.
70 Pine Street
New York, NY 10270



American Life Insurance Company
600 North King Street
Wilmington, DE 19801



March 3, 2010

Kenneth R. Feinberg, Esq.
Office of the Special Master for TARP Executive Compensation
US Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

MetLife's Purchase of American Life Insurance Company

Dear Mr. Feinberg:

American International Group, Inc. ("AIG") currently owns all of the common interests in a special purpose company that owns all of the issued and outstanding capital stock (the "ALICO Stock") of American Life Insurance Company, a global seller of life and health insurance ("ALICO"). AIG plans to enter into a transaction with MetLife, Inc ("MetLife"), pursuant to which MetLife will acquire ALICO Stock for a combination of cash, common shares of MetLife and other securities that convert into common shares of MetLife. As a result of the transaction and conversion of the convertible securities, AIG will own, directly or indirectly, MetLife common shares representing not more than 23.5% of the voting power or value of MetLife.

As you know, AIG has received financial assistance under the Troubled Asset Relief Program ("TARP") established under the Emergency Economic Stabilization Act of 2008, as amended. Accordingly, AIG is a "TARP recipient" as defined in the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"). Because of AIG's ownership, ALICO and its majority-owned subsidiaries are also TARP recipients, although they have not directly received any financial assistance under TARP.

MetLife is not currently affiliated with AIG or any of its subsidiaries and is not itself a TARP recipient.

Our analysis of the treatment of the transaction under the Rule is that, upon the closing of the acquisition, ALICO and its majority-owned subsidiaries will no longer be TARP

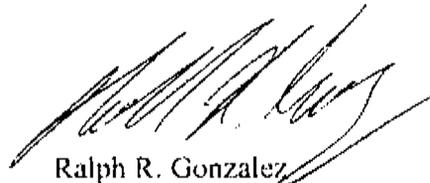
recipients for purposes of the Rule, because they will no longer be owned 50% or more by a TARP recipient. MetLife will also not be a TARP recipient as a result of the transaction because the percentage of MetLife's voting power and value owned directly or indirectly by a TARP recipient will be less than 50%.

We respectfully request your advisory opinion confirming our analysis of the consequences of the transaction under the Rule.

Very truly yours,



P. Nicholas Kourides
Deputy General Counsel
American International Group, Inc.



Ralph R. Gonzalez
Senior Vice President and General Counsel
American Life Insurance Company



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

TESTIMONY OF
KENNETH R. FEINBERG

Special Master for TARP Executive Compensation
House Committee on Oversight and Government Reform

October 28, 2009

Mr. Chairman:

I thank you and the Committee for the opportunity to testify today. The subject of executive compensation continues to be a top priority of the American people and the international business community, so I welcome your invitation and look forward to participating in this hearing.

As you know, in June of this year, I was asked to serve as Special Master for TARP Executive Compensation by the Secretary of the Treasury. In that capacity, I have a number of responsibilities under the relevant statutory¹ and regulatory² authority. These responsibilities include interpreting the regulations, and evaluating and making determinations regarding compensation payments to, and compensation structures for, certain employees of TARP recipients receiving exceptional financial assistance.

In these capacities, I have spent the past five months carefully considering the terms and conditions of the 2009 executive compensation for senior executives at those seven corporations that received exceptional financial assistance from the federal government: AIG, Bank of America, Citigroup, Chrysler, Chrysler Financial, General Motors and GMAC. These executives include five "senior executive officers" and the twenty "most highly compensated employees." My mandatory jurisdiction under the regulations is limited to the senior executives at these seven companies and only these seven companies. Although I do have interpretive authority under the Standards, and advisory authority under the law to make recommendations and nonbinding

¹ See Section 111 of the Emergency Economic Stabilization Act of 2008, *as amended* by the American Recovery and Reinvestment Act of 2009.

² See TARP Standards for Compensation and Corporate Governance, 31 C.F.R. § 30.1 *et seq.*

determinations as to officials of other companies who received TARP financial assistance. I have no legal authority to make final determinations pertaining to executive compensation for any companies other than these seven.

Mr. Chairman, I refer you and the Members of the Committee to the Report of the Special Master for TARP Executive Compensation: 2009 Executive Compensation Determinations for the TARP Exceptional Assistance Recipients, dated October 22, 2009, a copy of which is included with my prepared testimony. This Report includes my compensation determinations concerning senior executives at each of the seven companies referenced above, and provides a comprehensive explanation and analysis of the reasoning which underlies such determinations. I welcome any inquiries you may have concerning my Report.

In your letter of October 15, 2009, inviting me to testify, you raised three questions for me to focus on during my appearance here today. I treat these questions in the order you presented them in your letter.

I. What standards and considerations are you using to evaluate employee compensation at the seven companies that submitted such plans for review?

I was guided by the rules and principles in the statute and the Treasury regulations in evaluating employee compensation at the seven companies. For example, the Treasury regulations expressly make clear that I must consider competitive market forces in determining compensation levels that will permit the seven companies to remain in business, to thrive financially, and to eventually repay the taxpayers for TARP financial assistance. These companies must be able to attract sufficient talent to prosper. At the same time, however, the law requires me to take into account whether the terms and conditions of compensation are performance-based and tie compensation to the companies' prospective performance and financial success. In addition, the regulations make clear that my compensation determinations should be made in such a way that considers whether senior executives are provided incentives to avoid taking excessive risks to receive greater amounts of compensation. The law also anticipates that a portion of compensation be tied to the repayment of TARP financial assistance, and requires

companies to “claw back” incentive compensation that is based upon inaccurate financial statements or performance metrics.

In sum, the standards and considerations I used in evaluating employee compensation at the seven companies can be found in the statute and the accompanying Treasury regulations: in these laws, Congress and the Treasury provided me the guidance needed to make my final determinations. Based on this guidance, I determined that a new compensation regimen should be implemented at these seven companies: guaranteed compensation is to be replaced by performance-based compensation designed to tie individual executives’ financial opportunities to the long term overall financial success of each company. Short-term profits must give way to longer-term financial stability and success.

II. What specific proposals have been received from the seven companies and what specific actions have you taken with respect to those proposals?

Mr. Chairman, I refer you and the Members of the Committee to my Report (attached) which details the individual submissions made by each of the seven companies, and also describes in comprehensive fashion my response to each of these submissions. The general conclusions I reached after careful evaluation and analysis of the submissions were the same for six of the seven companies—I concluded, pursuant to the statute and the Treasury regulations, that each submission would result in payments contrary to the “Public Interest Standard,” and should, therefore, be rejected. The “Public Interest Standard” is the term I used in my Report to describe the regulatory standards that I am required to apply in making determinations. Instead, as my Report spells out, I made important revisions to the submissions as a precondition to approving compensation structures and payments for each individual covered executive at these six TARP recipients. (Chrysler Financial has unique circumstances, and I determined that its proposal was appropriate in light of them.)

I can summarize the flaws in the six individual company submissions as follows:

1. The companies requested excessive guaranteed cash – salaries and bonuses – for company executives;
2. The companies requested that stock issued to these executives be either immediately redeemable or redeemable without a sufficient waiting period;
3. Many of the companies did not sufficiently tie compensation to performance-based benchmarks and metrics;
4. Many of the companies did not sufficiently limit or restrict financial “perks,” such as private airplane transportation, country club dues, golf outings, etc., and in some cases provided excessive levels of severance and executive retirement benefits;
5. The companies did not make sufficient effort to fold guaranteed compensation contracts – entered into prior to the enactment of the current compensation regulations – into 2009 performance-based compensation.

In modifying these six submissions in order to satisfy the “Public Interest Standard,” I made important changes designed to tie compensation to prospective company performance:

1. I greatly reduced the amount of 2009 guaranteed cash compensation made available to senior executives. On the whole, cash (which, in the past, included cash base salaries and cash bonuses) was reduced by approximately 90%. Overall total compensation was reduced by approximately 50%.
2. In place of cash, I substituted “stock salary” which, in accordance with Treasury regulations, vests immediately upon issuance but may only be

redeemed in three equal, annual installments beginning in 2011, with each installment redeemable one year early if TARP obligations are repaid.

The objectives are clear – to tie individual compensation to longer-term performance metrics, and to encourage senior executives to remain at the company for a period of years to maximize their personal benefit from the overall profitability of the company itself. The value of “stock salary” will depend on the companies’ financial success in coming years. At the same time, I also permitted incentive payments of “long-term restricted stock.” This long-term incentive stock vests only if executives remain employed for three years after grant, and it can be cashed in only in 25% increments for each 25% of TARP obligations repaid by their employer. Again, the goal is to tie individual compensation to the overall financial success of the company.

3. By implementing the ideas of “stock salary” and “long-term restricted stock,” only redeemable after multiple years of company performance, I tied individual compensation to long-term company success.
4. I reined in “perks” by expressly requiring that any such perks beyond \$25,000 per individual must first receive the approval of the Office of the Special Master. No longer will senior executives be entitled to excessive use of private planes and other compensation-related financial benefits. I also prohibited additional company contributions to executive retirement programs.
5. I succeeded in almost all cases in getting the companies to agree to restructure guaranteed contracts and other forms of guaranteed compensation into prospective, performance-based compensation packages. These companies agreed, in almost all cases, to transfer guaranteed forms of compensation – entered into with company officials before the enactment of current legal requirements – into “stock salary.” I am very reluctant to even attempt to invalidate the sanctity of contracts

entered into well before enactment of the current law; however, I did work closely with the companies in an attempt, cooperatively, to restructure these “grandfathered” financial guarantees by making them part of my 2009 final compensation determinations.

Mr. Chairman, I refer you and the Members of the Committee, to my Report which spells out in further detail how we modify company submissions to comply with the “Public Interest Standard.”

III. What recommendations do you have for oversight of TARP recipient employee compensation schemes in the future?

The Treasury regulations speak quite clearly to this question.

First, the Standards require that the Office of the Special Master now turn its attention to reviewing compensation structures for the remaining executive officers, and 75 next most highly compensated employees, in each of the seven companies. The regulations do not require the Special Master to make individual compensation determinations for these individuals; instead, the regulations require that the Special Master approve the compensation structure for these individuals. The law affords me 60 days to do this from the time that I deem the company submissions with respect to these individuals “substantially complete.” I have received all of these pertinent submissions from each of the seven companies but have not yet concluded that they are “substantially complete,” thereby triggering the 60-day limitation.

Second, the Office of the Special Master must soon turn its attention to the process for determining the 2010 compensation for the senior executives at each of the seven TARP exceptional assistance companies. I believe we have made important progress in this regard as a result of completed efforts at 2009 compensation. Nevertheless, there will undoubtedly be new compensation issues which will confront us in 2010. (For example, we anticipate dealing once again with claims of “grandfathered” retention contracts and other guaranteed forms of compensation which will have to be considered by the Special Master as part of 2010 submissions for the senior executives; in addition, it is anticipated that the list of senior executives for each Company will undergo

some modification, requiring a new evaluation of certain individual compensation packages submitted by each company.)

Finally, I do not recommend that my responsibilities related to compensation determinations for senior executives, as currently defined by Treasury regulations, be expanded beyond the current seven companies receiving exceptional TARP financial assistance. I believe Congress and the Treasury have already spoken with respect to the compensation restrictions that apply beyond this group of firms. My limited mandatory jurisdiction involving just these seven companies is justified by the fact that the American taxpayers have a vested interest as particularly significant stakeholders in these seven companies. But, the federal government should not enter the business of micromanaging compensation practices beyond these seven companies by expanding my jurisdiction or broadening my discretionary authority. Hopefully, the individual final compensation determinations I make may yet be used, in whole or in part, by other companies in modifying their individual compensation practices. I believe the final compensation determinations I make and discuss in my Report are a useful model to guide others in the private marketplace. But that is where my authority should end. I do not believe it necessary or wise to broaden my jurisdiction or make my legal authority more pervasive.

Mr. Chairman, this concludes my formal written statement, and I welcome any questions from you and the Members of this distinguished Committee.

Thank you.

TESTIMONY OF
KENNETH R. FEINBERG
Special Master for TARP Executive Compensation

U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON FINANCIAL SERVICES
FEBRUARY 25, 2010

Mr. Chairman and Members of the Committee:

I thank you for the opportunity to testify today. The subject of executive compensation continues to concern the American people and the international business community, so I welcome your invitation and look forward to participating in this hearing.

As you know, in June of 2009 I was asked to serve as the Special Master for TARP Executive Compensation by Secretary Geithner. In that capacity, under the relevant statutory¹ and regulatory² authority, I have a number of responsibilities related to the oversight and review of financial industry compensation.

My primary responsibilities include making determinations regarding the compensation of certain employees of TARP recipients that have received exceptional financial assistance. There were originally seven recipients of exceptional financial assistance. Currently, five companies have outstanding “exceptional assistance” from the American taxpayer: AIG, Chrysler, Chrysler Financial, GM and GMAC. (Two companies that were previously under my jurisdiction—Bank of America and Citigroup—have repaid their “exceptional” taxpayer assistance, although Citigroup will continue to be subject to the rules applicable to all TARP recipients until it completes its repayment of all TARP obligations.) Under pertinent Treasury regulations, I am required to determine individual compensation for the “top 25” executives at these five companies, and to make determinations on compensation structures—but not individual payments—for executive officers and 75 additional employees who are not in the “top 25” group. This mandatory jurisdiction applies only to the “exceptional assistance” recipients and does not extend to employees of any other financial institutions or

¹ See Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (EESA).

² See TARP Standards for Compensation and Corporate Governance, 31 C.F.R. § 30.1 *et seq.*

corporations. Although I do have discretion to make recommendations and render nonbinding determinations concerning other TARP recipients, this jurisdiction is purely advisory and not mandatory, and I have no legal authority to make binding determinations pertaining to executive compensation for any companies other than the exceptional assistance recipients.

The Committee has asked me to focus on three separate inquiries.

First, you noted the necessity that I balance the competing obligations of reining in excessive compensation to protect the public good and allowing compensation sufficient to maximize the public's investment in the financial industry. The tension between reining in excessive compensation and allowing necessary compensation is, of course, a very real difficulty that I have faced and continue to face in making individual compensation determinations. Under Treasury regulations, my primary directive in overseeing compensation structures and payments within my jurisdiction is to determine whether the structures or payments in question were, are or may be "inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." In my determinations I have referred to this directive as the Public Interest Standard; to meet it, a compensation package must balance appropriately the competing obligations you described.

Because achieving this balance is a fundamental component of the Public Interest Standard, it has played a determinative role in each of the rulings issued by the Office of the Special Master. In particular, the October 22, 2009, Determination Memoranda, which addressed compensation structures and payments for the "top 25" executives of the exceptional assistance recipients, and the December 11, 2009, Determination Memoranda, which addressed compensation structures for executive officers not in the "top 25" and up to 75 additional most highly compensated employees, were designed to balance the need to protect the public good while allowing necessary compensation in appropriate cases. Likewise, whether compensation structures and payments meet the Public Interest Standard will be the basis of my forthcoming 2010 determinations for the five remaining exceptional assistance recipients.

Second, you asked for a description of the variables and considerations at issue when determining whether compensation levels or structures are appropriate. Treasury

regulations require that, when I determine whether a payment or compensation structure meets the Public Interest Standard, I consider the following six principles:³

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the company, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the company. Compensation packages should be aligned with sound risk management.
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the company to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the company will ultimately be able to repay its TARP obligations.
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded.
- (4) *Performance-based compensation*. An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the company or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met.
- (5) *Comparable structures and payments*. The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization.
- (6) *Employee contribution to TARP recipient value*. The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the company, taking into account multiple factors such

³ See 31 C.F.R. § 30.16(b)(i-vi).

as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient.

Under the regulations, I have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular executive, which I must often exercise when two or more principles are in conflict in a particular situation.

To actually apply these principles and make my compensation determinations, I have relied on numerous sources. Empirical compensation data has been provided to me by the exceptional assistance recipients, and additional data has been secured by my office through independent means.⁴ My office includes a special detail of Treasury personnel, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation. I have also benefitted from the input and sound advice of outside academic experts—including world-renowned executive compensation experts Lucian A. Bebchuk of Harvard Law School and Kevin J. Murphy of the University of Southern California’s Marshall School of Business—who were retained by my office to help guide me in making my individual and structural compensation decisions. My objective in employing each of these resources is a thorough application of the mandated principles to assure that my compensation determinations are consistent with the Public Interest Standard.

By application of the principles to the facts and circumstances underlying my determinations to date, I have developed a number of generally applicable, practical prescriptions under the Public Interest Standard, including the following:

- (1) Guaranteed income (including guaranteed bonuses) is rejected, except for cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. These generally should not exceed \$500,000 per year, except in exceptional cases for good cause shown.

⁴ In particular, my office obtained access to independent compensation data from the *U.S. Mercer Benchmark Database-Executive* as well as Equilar’s *ExecutiveInsight* database (which includes information drawn from public securities filings) and *Top 25 Survey Summary Report* (which includes information from a survey on pay of highly compensated employees).

- (2) The value of any remaining compensation must be tied to performance. Accordingly, the majority of each employee's compensation should be paid in stock rather than cash. Under Treasury regulations, this stock will immediately vest, but will only be transferable in three equal, annual installments beginning on the second anniversary of grant—with each installment redeemable a year earlier if the company repays its obligations to the American taxpayer.
- (3) Incentive compensation should be paid if—and only if—an executive achieves objective performance criteria approved by a compensation committee comprised solely of independent directors. Incentive compensation should be delivered in a mix of cash and stock, payable over time and subject to “clawback” if the performance resulting in the compensation is later discovered to be inaccurate.
- (4) Each individual's total compensation must reflect the employee's value to the company and be appropriate when compared with the total compensation of similarly situated employees at similar companies. Total pay should generally not exceed the 50th percentile of total compensation for similarly situated employees.
- (5) Employees should be prohibited from engaging in any hedging, derivative or other transactions that undermine the long-term performance incentives created by a company's compensation structures.
- (6) Significant amounts should not be allocated to compensation components that are not performance-based and are difficult for shareholders to value, such as outsized perquisites and executive retirement plans.

Finally, Mr. Chairman, you asked that I identify the variables or considerations that are unique to my office. Aside from the principles previously articulated in my testimony above, and among the many distinctive aspects of our work, I wish to emphasize three unique characteristics of my limited mandate.

First, our office is charged with assuring both that the companies subject to our determinations thrive in the marketplace so that they can repay the American taxpayer and that those same companies avoid excessive risk taking that could threaten their long-term viability. To balance those objectives, we have emphasized that the bulk of compensation must be performance-based, and depend on the long-term performance of the company rather than short-term gains. We have also insisted that total compensation must be appropriately allocated and weighted heavily towards long-term structures that are tied to performance and easily understood by shareholders and the public.

Second, a distinctive and critical part of my work is the recognition that the authority of the Special Master is limited. In particular, under the pertinent statute and

regulations, I do not have the authority to unilaterally alter “grandfathered” contracts that companies entered into with employees prior to the enactment of the Recovery Act. I am, however, permitted to pursue voluntary restructuring of these contracts, and my office has had some success in doing so. For example, the October 22, 2009, Determination Memoranda covering Bank of America and Citigroup provided Special Master approval of restructured contracts in which employees agreed to forgo “grandfathered” guaranteed cash payments for a combination of reasonable cash salaries and long-term stock holdings in their companies. We have, however, been unable to restructure such agreements in other instances. In those cases, Treasury regulations permit me to take these payments into account when determining appropriate prospective compensation structures. For example, in my October 22, 2009, Determination Memorandum covering AIG, I took “grandfathered” retention contracts into account when setting prospective compensation. In particular, as a result of officials’ refusals to restructure their cash retention payments, I refused to approve cash salary amounts proposed by the company, which, in light of the retention payments, would have resulted in an excessive level of cash compensation. Attempting to renegotiate these agreements—and, where necessary, taking payments under “grandfathered” contracts into account when setting prospective compensation—has been a unique challenge.

Third, a very unique aspect of my work is the fact that Treasury regulations give me the unprecedented responsibility of balancing the principles set forth in the regulations to actually make individual compensation determinations for 25 individual officials employed by the exceptional assistance firms, and setting the compensation structures that will apply to the 26 to 100 individual officials and executive officers. I believe that much of the attention focused on my work is directly attributable to this fact—not only has my office promulgated generally applicable compensation principles and prescriptions, but we have shown that these principles can work in practice by calculating individual compensation packages for officials in these companies. I believe this is the most “unique” aspect of my work and will hopefully have the most permanent impact.

Mr. Chairman, I thank you and the other members of the Committee. This statement constitutes my formal testimony.

The Special Master for TARP Executive Compensation Issues First Rulings

Thursday, October 22, 2009

Today, the Special Master for TARP Executive Compensation Kenneth R. Feinberg released determinations on the compensation packages for the top executives at firms that received exceptional TARP assistance. Under the Emergency Economic Stabilization Act (EESA) as amended in 2009, the Special Master has a mandate to review all forms of compensation for five most senior executive officers and the next 20 most highly compensated employees at the seven firms that received exceptional TARP assistance (AIG, Citigroup, Bank of America, Chrysler, GM, GMAC and Chrysler Financial).

The determinations announced today for the top 25 most highly paid at the seven firms receiving exceptional assistance:

1. ***Reform Pay Practices for Top Executives to Align Compensation With Long-Term Value Creation and Financial Stability***
 - Reject cash bonuses based on short-term performance, as required by statute, in favor of company stock that must be held for the long term
 - Restructure existing cash “guarantees” into stock that must be held for the long term
2. ***Significantly Reduces Compensation Across the Board***
 - Average cash compensation down by more than 90 percent
 - Approved cash salary limited to \$500,000 for more than 90 percent of relevant employees
 - Average total compensation down by more than 50 percent
 - Exceptions where necessary to retain talent and protect taxpayer interests
3. ***Require Salaries to Be Paid in Company Stock Held Stock Over the Long Term***
 - Stock is immediately vested, requiring executives to invest their own funds alongside taxpayers
 - Stock may only be sold in one-third installments beginning in 2011—or, if earlier, when TARP is repaid—aligning executives’ interests with those of taxpayers
4. ***Require Incentive Compensation to be Paid in the Form of Long Term Restricted Stock – and to be Contingent on Performance and on TARP Repayment***
 - Require executives to meet goals set in consultation with the Special Master, and certification of achievement of goals by an independent compensation committee
 - Any incentives granted paid only in stock that requires three years of service and can be cashed in only when TARP is repaid
5. ***Require Immediate Reform of Practices Not Aligned with Shareholder and Taxpayer Interests***
 - Limits “other” compensation and perquisites
 - No further accruals under supplemental executive retirement plans or severance plans

1. ***Reforms Pay Practices for Top Executives to Align Compensation Practices With Long-Term Value Creation and Financial Stability:*** The Special Master’s rulings represent a fundamental transformation from the pay practices of the past. These decisions will significantly alter the way that executives covered by the Special Master’s decisions—including the senior executive officers and next 20 most highly compensated employees of each of the seven recipients of “exceptional” assistance under the TARP (AIG, Citigroup, Bank of America, Chrysler, GM, GMAC and Chrysler Financial)—are paid.

- ***Rejects Cash Payments Based on Short-Term Performance, as required by statute:*** Traditionally, compensation for these employees has included large cash amounts, including significant cash bonuses. These payments gave executives incentives to take short-term risks and little reason to protect the long-term the health of the company or financial stability. After today’s rulings, as required by statute and Treasury regulations, these executives will receive the overwhelming majority of their pay in company stock that may only be sold over the long term, aligning their interests with those of taxpayers and shareholders.
 - ***Restructures Existing “Guaranteed” Cash Payments into Stock Held For the Long Term:*** Under the pay practices of the past, several executives in this group were awarded cash “guarantees” in 2009. Guaranteed minimum amounts give employees little downside risk in the event of poor performance—but upside when times are good. The Special Master required these agreements to be restructured. Under today’s rulings, these amounts will be paid in company stock that must be held over the long term.
 - ***Citigroup and Phibro:*** At Phibro, Citigroup’s commodities trading unit, the Chief Executive Officer was to receive a significant cash bonus based on the short-term results of significant risk-taking. The Special Master rejected this approach, and Citigroup agreed to sell Phibro to a company that has not received taxpayer funds. Under today’s ruling, nothing may be paid to the Phibro CEO until the sale is complete.
2. **Significantly Reduces Compensation Across the Board:** To break from the pay practices of the past, the Special Master has reduced compensation across the board—both in terms of cash and the total compensation executives will receive.
- ***On Average, Cash Compensation Decreased by More Than 90 percent:*** The Special Master rejected cash payments based on short-term results that may prove illusory, and cash guarantees that separate pay from performance. Overall, the Special Master reduced cash pay by more than 90 percent from 2008 levels—and, as required by Treasury regulations, cash bonuses may no longer be paid to any of these employees.
 - ***Approved cash salary generally limited to \$500,000:*** Consistent with the Administration’s February 4 guidance on executive compensation at TARP recipients, the Special Master approved base salaries of \$500,000 or less for more than 90 percent of the employees in this group. Base salaries greater than \$1 million were approved in just three cases: for the new CEO of AIG, as previously announced, and for two employees of Chrysler Financial, which will wind down its operations in the near term and cannot grant employees long-term incentives.
 - ***On Average, Total Compensation Decreased by More Than 50 percent:*** Even including the value of stock that must be held for the long term, the Special Master reduced the total compensation packages for executives in this group to less than half of 2008 levels.
 - ***Exceptions Where Necessary to Retain Talent and Protect Taxpayer Interests:*** Although the Special Master’s rulings generally emphasize decreases in both cash and total compensation across the seven companies, increases in compensation were permitted where shown to be necessary to retaining key talent critical to a company’s long-term success—and, ultimately, ability to repay the taxpayer.

3. **Requires Salaries to be Paid in Company Stock Held Over the Long Term:** The Special Master’s rulings fundamentally change the structure of compensation at these firms. Rather than cash, today’s rulings require that the majority of salaries be paid in stock that must be held for the long term—giving executives incentives to pursue long-term value creation and financial stability.
 - ***Stock is Immediately Vested, Requiring Executives to Put Their Own Funds at Stake:*** Rather than just cash, executives will earn base salaries in the form of vested stock in their companies. In effect, the Special Master is requiring each executive to invest their base salary in the long-term future of the firm, alongside taxpayers. These structures ensure that executives do not have incentives to take the excessive risks that contributed to the financial crisis.
 - ***Stock May Only Be Sold in One-Third Installments, Beginning in Two Years:*** Unlike the pay practices of the past, which allowed executives to sell stock in their companies immediately, the Special Master’s rulings require stock to be held for the long term. Stock received as salary may only be sold in one-third installments that will not begin until 2011, unless the taxpayer is repaid earlier.

4. **Require Incentive Compensation to be Paid in the Form of Long Term Restricted Stock – and to be Contingent on Performance and on TARP Repayment:** As the Secretary noted in his June 10 statement, incentive pay can be undermined by compensation practices that set the performance bar too low or simply reward rising tides. The Special Master’s rulings require that incentives be paid only if executives reach objective goals agreed upon in consultation with the Special Master—and only if TARP is repaid.
 - ***Requires Achievement of Goals Set in Consultation with the Special Master:*** The Special Master’s rulings permit these executives to receive incentive pay only if the executives attain objective, predetermined performance goals set in consultation with the Special Master. Achievement of these goals must be certified by each company’s compensation committee—which, under Treasury regulations, must be composed solely of directors fully independent from management.
 - ***Requires Three Years of Service, and TARP Repaid, Before Payment:*** To ensure that taxpayers continue to receive the benefits of the executives’ talents, the Special Master’s ruling requires that any incentive awards be paid only if the employee provides at least three years of service to the company after the award is made. And, under Treasury regulations, the awards must be paid in the form of restricted stock that may not be paid unless the company repays its TARP obligations.

5. **Requires Immediate Reform of Practices Not Aligned With Shareholder Interests:** As the Secretary noted in his June 10 statement, in some cases golden parachutes and supplemental executive retirement plans have expanded beyond their original purpose, and may not enhance the long-term value of the firm or allow shareholders to easily ascertain the full value of the “walkaway” pay an executive will receive when departing the firm. The Special Master’s rulings place tough new restrictions on these payments—as well as perquisites and other personal benefits—for executives at companies that have received exceptional taxpayer assistance.
 - ***Caps perquisites and “other” compensation:*** Several experts, including the Conference Board Task Force on Executive Compensation, have concluded that executives—and not

companies—should generally cover the costs of personal expenses. The Special Master’s rulings generally cap these types of payments at \$25,000, with limited exceptions for unusual circumstances that can be justified to the Special Master.

- ***Additional limitations on “golden parachute” payments:*** Large “golden parachute” or severance payments often serve to enrich executives rather than provide reasonable compensation during unemployment, and often do not enhance the long-term value of a company. Tough new Treasury regulations prohibit these payments to the senior executive officers and five most highly compensated employees at all companies that have received taxpayer assistance. The Special Master’s rulings go further, however, and prohibit companies from increasing the amount of any “golden parachute” payable to any of the top 20 most highly compensated executives during 2009.
- ***Freezing supplemental executive retirement plans:*** Supplemental executive retirement benefits can provide substantial cash guarantees to departing executives, regardless of performance. And, as the Secretary noted on June 10, these complex benefits can make it difficult for shareholders—and, in the case of exceptional assistance companies, taxpayers—to ascertain the full amount of pay an executive will receive upon retirement. The Special Master’s rulings conclude that that executives should provide for their retirements with wealth based on performance while they are employed, rather than being guaranteed substantial retirement benefits beyond those provided to everyday workers. As a result, the Special Master’s decisions prohibit additional accruals under supplemental executive pension programs and company credits to other non-qualified deferred compensation plans following the release of today’s rulings.

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Mr. Robert Benmosche
President and Chief Executive Officer
American International Group, Inc.
70 Pine Street
27th Floor
New York, NY 10270

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. Benmosche:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and most highly compensated employees of American International Group, Inc. ("AIG"). Attached as ***Annex A*** is a Determination Memorandum (accompanied by ***Exhibits I*** and ***II***) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

Pursuant to the Interim Final Rule, the Special Master is required to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for AIG's senior executive officers and most highly compensated employees generally must comport with the following important standards:

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Such good cause will not exist in any case in which the employee is to be paid a substantial cash amount pursuant to a previously existing agreement between AIG and the employee. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In AIG's case, cash compensation for these employees will decrease 91% from 2008 levels.
- Rather than cash, the majority of each individual's base salary will be paid in the form of stock units reflecting the value of a "basket" of four AIG insurance

subsidiaries that the Company, the Federal Reserve Bank of New York, and the Department of the Treasury have identified as critical to the future of the company. These units will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of the date they are earned, with each installment redeemable one year early if AIG repays its TARP obligations. This structure encourages employees to remain employed by AIG and to maximize the value of the businesses most important to its long-term stability while avoiding incentives for unnecessary risk-taking. Other terms and conditions of these stock units, including any alterations to the structure of the “basket” to maintain appropriate incentives for employees, will be determined by the AIG, subject to the Special Master’s approval.

- Total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities. Overall, total compensation must be significantly reduced from the amounts paid in 2008. In AIG’s case, total compensation for these employees will decrease 58% from 2008 levels.
- If—and only if—the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for long-term incentive awards. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with AIG for at least three years following grant, and may only be redeemed in 25% installments for each 25% of AIG’s TARP obligations that are repaid. Such long-term incentive awards may not exceed one third of total annual compensation.
- Employees of AIG Financial Products will receive only cash base salaries through the balance of 2009. Employees who pledged to return amounts paid pursuant to previously existing retention awards must immediately repay the pledged amount.
- Any and all incentive compensation will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all “other” compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown to the satisfaction of the Special Master).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.

- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other “non-qualified deferred compensation” plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), AIG must adopt policies applicable to these executive officers and employees as follows:

- The achievement of any performance objectives must be certified by the Compensation and Management Resources Committee of AIG’s Board of Directors, which is composed solely of independent directors, as part of AIG’s securities filings. These performance objectives must be reviewed and approved by the Office of the Special Master.
- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by their compensation structures.
- AIG may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Compensation and Management Resources Committee must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten AIG’s value.

These requirements are described in further detail in the attached Determination Memorandum.

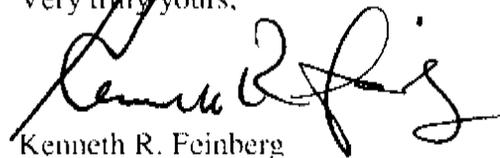
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to AIG’s compensation structures:

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on AIG’s performance, and ties the financial incentives of AIG employees to the overall performance of the company. A majority of the salary paid to employees under these structures will be paid in the form of stock units reflecting the value of four subsidiaries critical to AIG’s long-term stability; and, because the stock will only be redeemable in equal, one-third installments beginning on the second anniversary of the date the stock salary is earned (in each case subject to acceleration by one year if AIG repays its TARP obligations), the ultimate value realized by the employee will depend on AIG’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).

- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for AIG to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with those provided to persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to AIG employees is weighted heavily towards long-term structures that are tied to AIG's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to AIG employees should consist only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If AIG does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
TARP Executive Compensation

Attachment

cc: Anastasia D. Kelly, Esquire
Marc R. Trevino, Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

American International Group, Inc. (“AIG,” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to three employees that the Company has identified as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and nine employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s proposed compensation structures pursuant to the principles set forth in the Rule. This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with AIG officials and Company counsel. During these discussions, the Office of the Special Master informed AIG about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and AIG explored potential compensation structures for the Covered Employees.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including AIG, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required AIG to submit data describing its proposed compensation structures, and the payments that would result from the structures, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). AIG was required to submit competitive market data indicating how the amounts payable under AIG's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. AIG was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

AIG submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that AIG's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of AIG's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees);

- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Treftz's Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether AIG's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation.

deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. AIG Proposals

AIG has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the “Proposed Structures”).

AIG supported its proposal with detailed assessments of each Covered Employee’s tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a “peer group” of entities selected by the Company.

1. AIG Corporate and Operating Units

AIG has proposed compensation structures for each of three Senior Executive Officers, as well as for four Most Highly Compensated Employees, each of whom serves as an executive in AIG’s corporate offices or as a senior executive at an AIG subsidiary.¹

AIG’s proposed compensation structures for each of the seven executives in this group generally emphasized increases in cash base salary and substantial base salary paid in the form of vested AIG stock and did not include any compensation payable on the basis of individual performance.

a. Cash Salary and Cash “Retention” Awards

AIG generally proposed to increase cash base salaries for employees in this group. AIG’s submission asserted that these base salaries could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

AIG also proposed to pay “retention” awards to three of these employees, in amounts ranging from \$1,500,000 to \$2,400,000, that AIG argued were due under agreements providing for legally binding rights under valid written employment contracts, *see* 31 C.F.R. § 30.10(e)(2), and thus were not subject to the review of the Special Master.

¹ On August 16, 2008, AIG entered into a Letter Agreement with Robert H. Benmosche pursuant to which Mr. Benmosche was appointed Chief Executive Officer of AIG. The Special Master separately reviewed the Letter Agreement and determined that the compensation structure under the Letter Agreement was consistent with the Public Interest Standard. *See* Office of the Special Master, Letter to Compensation and Management Resources Committee, American International Group, Oct. 2, 2009, *available at* <http://www.financialstability.gov/docs/RobertBenmoscheDeterminationLetter.pdf>. Accordingly, Mr. Benmosche’s compensation package is not addressed in this Determination Memorandum.

b. Stock Salary

AIG proposed that employees in this group receive substantial compensation in the form of vested AIG common stock delivered on the Company's payroll schedule. AIG proposed that 50% of the stock be transferable *immediately* by the employee. AIG proposed to deliver stock salary in amounts ranging from \$250,000 to \$4,600,000 to employees in this group.

c. Annual Long-Term Incentive Awards

AIG did not propose that employees in this group be granted any compensation subject to the achievement of performance measures. Specifically, AIG's Proposed Structures did not include grants of long-term incentive awards granted in compliance with the requirements of the Rule.

d. "Other" Compensation and Perquisites

AIG's submission included payments of "other" compensation as well as perquisites to the Covered Employees. The proposed payments varied in value.

e. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

AIG also proposed that certain Covered Employees receive compensation in the form of accruals under a "non-qualified deferred compensation" plan.

f. Severance Plans

AIG's submission to the Office of the Special Master also indicated that, in some cases, the Proposed Structures would result in increases in amounts payable to these employees pursuant to severance arrangements.

2. *Covered Employees at AIG Financial Products*

AIG has also proposed compensation structures for five Covered Employees employed by AIG Financial Products, a subsidiary of the Company. AIG's proposed compensation structure for each of these five employees included significant increases in cash base salary, accompanied by a promise, secured by a segregated pool of cash, to pay the employees substantial amounts based on their performance. In summary, AIG's proposed compensation structures for these employees included the following principal elements:

- Cash base salaries, delivered on a *mnw pro mnw* basis effective January 1, 2009, ranging from \$285,000 to \$950,000.
- Payments from the segregated cash pool ranging from \$1,115,000 to \$2,612,182.

- Total proposed 2009 compensation for five employees of \$13,200,000.

In addition, in the course of discussions with the Office of the Special Master, AIG acknowledged that certain employees of AIG Financial Products had pledged to repay amounts paid in early 2009 in connection with certain bonuses. AIG had further acknowledged that four of these five employees made such pledges and failed, as of the date of AIG's submission to the Office of the Special Master, to honor those pledges. The remaining Covered Employee at AIG Financial Products did not pledge to return any of the amounts received in early 2009.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review and analysis, the Special Master has determined that both the structural design of AIG's proposals and the amounts potentially payable to Covered Employees under the proposals would be inconsistent with the Public Interest Standard, and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1 AIG Corporate and Operating Units

a. Cash Salary and Cash "Retention" Awards

The Special Master reviewed AIG's proposal with respect to cash salary and "retention" awards in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities," *id.* § 30.16(b)(1)(v). AIG's cash salary proposals for these employees generally exceeded the 50th percentile of amounts paid to persons in similar positions or roles at similar entities. The Special Master has concluded that, for Covered Employees at Exceptional Assistance Recipients, cash salaries generally should target the 50th percentile as compared to persons in similar positions or roles at similar entities because such levels of cash salaries balance the need to attract and retain talented employees with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients. Accordingly, the Special Master has concluded that AIG's proposed cash salaries are inconsistent with the Public Interest Standard, because the proposed amounts cannot be supported by reference to amounts payable to persons in similar positions or roles at similar entities.

The Special Master also reviewed AIG's proposed cash salaries in light of the principle that an "appropriate portion of...compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). AIG proposed that cash

salaries constitute significant proportions of total compensation, although cash salaries are not performance-based. The Special Master has concluded that performance-based compensation should constitute the primary portion of these employees total compensation packages, and therefore that AIG's proposed salaries are inconsistent with the Public Interest Standard because the proposed cash amounts would have constituted too significant a proportion of the employee's total pay.

In addition, the Special Master may take into account compensation structures, such as legally binding rights under valid employment contracts, that are not subject to review by the Special Master. *Id.* § 30.16(a)(3). AIG proposed cash salaries for three employees that, AIG asserted, were also entitled to substantial cash payments in 2009 pursuant to previously existing "retention" awards. Although the Office of the Special Master negotiated for the restructuring of similar arrangements at other Exceptional Assistance Recipients, discussions with AIG officials did not lead to an agreed upon restructuring of these "retention" awards. After consulting with officials at the Federal Reserve Bank of New York and officials at Treasury, and considering their opinions, the Special Master has concluded that, due to the unique circumstances currently found to exist at AIG, and the need to retain the services of these three employees who are deemed to be particularly critical to AIG's long-term financial success, restructuring these "retention" contracts would not be consistent with the Public Interest Standard. Instead, the Special Master has considered these retention awards when determining an appropriate reduction in proposed 2009 cash salaries for these employees.

The Special Master has determined that cash salaries of less than \$500,000 are generally consistent with the Public Interest Standard. In particular, the cash salaries of the three employees receiving payments pursuant to previously existing "retention" awards must not exceed this amount. The cash salaries that the Special Master has determined to be consistent with the Public Interest Standard for these employees are described in further detail in *Exhibits I* and *II*.

b. Stock Salary

First, the Special Master reviewed the amounts of compensation to be granted in the form of stock salary in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities," *id.* § 30.16(b)(1)(v). In general, the Special Master has concluded that AIG's proposed amounts are consistent with the Public Interest Standard. These amounts, adjusted to reflect each employee's responsibilities and role with respect to any change in the financial health or competitive position of AIG, *id.* § 30.16(b)(1)(v), are described in further detail in *Exhibits I* and *II*.

Second, the Special Master reviewed the structure of AIG's stock salary proposal in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *See id.* § 30.16(b)(1)(i). The Special Master has concluded that AIG's proposal, which contemplates that 50% of stock salary will be transferable *immediately* by the employee, does not provide sufficient alignment with long-term value creation.

The Special Master also reviewed the structure of AIG's stock salary proposal in light of the principle that an appropriate portion of compensation should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Stock salary that is transferable immediately permits an employee to liquidate his or her investment in the stock immediately rather than over a period designed to reflect performance.

Accordingly, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard would not permit immediate transferability or sale of stock salary. Instead, stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if AIG repays its TARP obligations.

Finally, the Special Master reviewed AIG's proposed stock salary in light of the principle that AIG must be able to maintain and attract the necessary employees to remain competitive in the marketplace. *See id.* § 30.16(b)(1)(ii). During this review, the Special Master consulted with officials at the Federal Reserve Bank of New York and officials at Treasury and considered their views. Based on this input, the Special Master has determined that the compensation structures consistent with the Public Interest Standard shall include stock units reflecting the value of a "basket" of four AIG insurance subsidiaries: American International Assurance Co. Ltd., American Life Insurance Co., Chartis, and AIG Domestic Life & Retirement Services Group. The value of each subsidiary, and therefore of the units, is to be determined on the basis of an adjusted book value measure that will exclude extraordinary events and give employees incentives to focus their efforts on the earnings generated by these critical businesses. Other terms and conditions of the "basket" units, including any alterations to the structure of the "basket" to maintain appropriate incentives for employees, will be determined by AIG subject to the approval of the Office of the Special Master.³ The units are described in further detail in *Exhibits I* and *II*.

³The Covered Employees generally may not be paid a "bonus," or receive payments pursuant to an "incentive plan," except in limited circumstances prescribed by the Rule. The provisions of the Rule addressing compensation in the form of salary paid in property (such as stock) indicate that such payments will not constitute an "incentive plan" for purposes of the Rule if the payments are made pursuant to "an arrangement under which an employee receives a restricted stock unit that is analogous to TARP recipient stock," 31 C.F.R. § 30.1. Under the Rule, "a unit is analogous to stock if...the term "TARP recipient stock" with respect to a particular employee recipient means the stock of a corporation...that is an "eligible issuer of service recipient stock" for purposes of certain federal taxation regulations, *id.* The Rule also provides that "[t]he Special Master shall have responsibility for interpreting" the Rule. *Id.* § 30.16(a)(1). AIG's proposed "basket" units are designed to reflect the value of businesses that comprise over 90% of AIG's overall value, and to give employees incentives, in AIG's unique circumstances, to maximize the value of those businesses and thus the value of the Company as a whole, while avoiding incentives for excessive risk taking. Accordingly, under these limited, unique circumstances, and without determining whether the "basket" units comprise "stock of a corporation...that is an "eligible issuer of service recipient stock" under the Rule, the Special Master has concluded that AIG's proposed subsidiary "basket" units constitute "restricted stock unit[s] that are analogous to TARP recipient stock" for purposes of the Rule. *Id.* § 30.1.

c. Annual Long-Term Incentive Awards

The Special Master also reviewed AIG's proposals in light of the principle that an "appropriate portion of the compensation should be performance-based," *id.* § 30.16(b)(1)(iv), and based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* AIG's proposals did not include any amounts payable to employees in this group on the basis of the achievement of performance measures. As described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria developed and reviewed in consultation with the Office of the Special Master.

The Special Master also evaluated AIG's proposals in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle in the Rule providing that performance-based compensation should be payable "over a relevant performance period," *id.* Accordingly, the Special Master has concluded that, to meet the Public Interest Standard, restricted stock granted in connection with these awards should not vest unless the employee remains employed until the third anniversary of grant. Finally, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of AIG's TARP obligations that are repaid. These awards are described in further detail in *Exhibits I* and *II*.

d. "Other" Compensation and Perquisites

AIG has proposed substantial payments of "other" compensation, as well as perquisites, to the Covered Employees. (AIG's submission included proposed payments of "other" compensation exceeding \$1,500,000 and perquisites exceeding \$900,000 to certain employees.) The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

e. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

AIG proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top employee upon leaving the Company.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum.

f. Severance Plans

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

2. Covered Employees at AIG Financial Products

The Office of the Special Master evaluated AIG’s proposed compensation structures for these employees in light of the principle that compensation structures should, where appropriate, reflect “the role [an] employee may have had with respect to any change in the financial health or competitive position of the TARP recipient,” *id.* § 30.16(b)(1)(vi). The performance of AIG Financial Products has contributed

significantly to the deterioration in AIG's financial health. Accordingly, the Special Master has determined that AIG's proposed compensation structures for these employees are inconsistent with the Public Interest Standard, because they do not adequately reflect the role of AIG Financial Products in the change in the financial health and competitive position of AIG.

In addition, the Special Master may take into account compensation structures, such as legally binding rights under valid employment contracts, that are not subject to review by the Special Master. *Id.* § 30.16(a)(3). These employees received significant bonus payments in early 2009 notwithstanding AIG Financial Products' role in the events necessitating taxpayer intervention. Accordingly, taking into account the payments made to these employees in early 2009, as well as the other principles set forth in the Rule, the Special Master has concluded that only the payment of these employees' base salaries as in effect on December 31, 2008, and no further amounts of any kind, is consistent with the Public Interest Standard. These amounts are described in further detail in *Exhibits I* and *II*.

The Office of the Special Master is engaged in ongoing discussions with the Company with respect to these employees. These discussions have emphasized the importance of the repayment of the entire pledged amount by each Covered Employee who pledged to return bonus amounts paid in 2009. Until the Special Master's consideration of those matters is complete, no payments of compensation in 2009 to these employees, other than continuation of the cash salaries in effect on December 31, 2008, would be consistent with the Public Interest Standard.

3. Departed Employees

Thirteen employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to those employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and "other" compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part III, above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period." 31 C.F.R. § 30.16(b)(iv). In light of the importance of this principle, AIG must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), long-term incentive awards may not be granted unless the AIG Compensation and Management Resources Committee determines to grant such an award in light of the employee’s performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, AIG’s securities filings. In addition, the Committee must retain discretion with respect to each employee, to reduce (but not to increase) the amount of any incentive award on the basis of its overall evaluation of the employee’s or AIG’s performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV, above, and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in AIG. It is critical that these compensation structures achieve the Rule’s objective of “appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity,” *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, AIG is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* AIG must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with AIG’s senior risk officers any risks that could threaten the value of AIG. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) CEO compensation plans that could lead CEOs to take unnecessary and excessive risks that threaten the value of AIG; (2) the CEO or other employees’ compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) the employee compensation plans that could encourage the manipulation of AIG’s reported earnings to enhance the compensation of any of the employees. *Id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The compensation committee must disclose to Treasury an annual narrative description of whether

AIG, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(e).

- (3) *Disclosure of Perquisites.* As noted in Part IV, AIG must provide to Treasury an annual disclosure of any perquisite whose total value for AIG’s fiscal year exceeds \$25,000 for each of the Covered Employees. AIG 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). *Id.* § 30.11(b).
- (4) *Clawback.* AIG must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. AIG must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Say-on-Pay.* AIG 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). *Id.* § 30.13. AIG conducted its first such vote in July 2009.
- (6) *Policy Addressing Excessive or Luxury Expenditures.* AIG was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on AIG’s website. If AIG’s board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on the company website. *Id.* § 30.12.
- (7) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, AIG is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (8) *CEO and CFO Certification.* AIG’s chief executive officer and chief financial officer must provide to the Securities and Exchange Commission written certification of the Company’s compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by AIG require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If AIG does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES

2009 Compensation

Company Name: American International Group, Inc.

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based. The stock vests at grant and is redeemable in three equal annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based. Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.) ¹
1	\$3,000,000	\$4,000,000	\$3,500,000	\$10,500,000
110	\$350,000	\$100,000	\$225,000	\$675,000
137	\$125,000	\$0	\$0	\$125,000
145	\$177,799	\$0	\$0	\$177,799
150	\$425,000	\$0	\$0	\$425,000
157	\$125,000	\$0	\$0	\$125,000
163	\$350,000	\$3,104,167	\$833,333	\$4,558,333
182	\$144,000	\$0	\$0	\$144,000
188	\$100,000	\$0	\$0	\$100,000
206	\$450,000	\$4,691,667	\$2,000,000	\$7,600,000
209	\$425,000	\$0	\$0	\$425,000
255	\$450,000	\$0	\$0	\$450,000
267	\$375,000	\$3,566,666	\$1,750,000	\$6,108,333

Comparison of 2009 compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$34.4M or 90.8%
Total Direct Compensation decreased by \$28.4M or 57.8%

2007 Cash decreased by \$29.0M or 89.2%
Total Direct Compensation decreased by \$26.3M or 55.7%

Note 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

Note 3: The terms and conditions of the stock salary and long-term restricted stock to be awarded to Employee 1, the Chief Executive Officer, differ from those described in these Exhibits. See *varia* Determination Memorandum note 1.

Note 4: For employees of AIG Financial Products, "Total Direct Compensation" reflects only the go-forward rate effective as of November 1, 2009.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Cash base salary.** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- **Stock salary.** As described in Part IV, stock salary will be granted in the form of stock units reflecting the value of a "basket" of four AIG insurance subsidiaries: American International Assurance Co. Ltd., American Life Insurance Co., Chartis, and AIG Domestic Life & Retirement Services Group. The value of each subsidiary, and therefore of the units, will be determined on the basis of an adjusted book value measure that will exclude extraordinary events. The units will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if AIG repays its TARP obligations. Other terms and conditions of the "basket" units, including any alterations to the structure of the "basket" to maintain appropriate incentives for employees, will be determined by AIG subject to the approval of the Office of the Special Master.

Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value of a share on the date of award.

- **Long-term restricted stock.** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Compensation and Management Resources Committee of AIG's Board of Directors. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.

- ***Supplemental executive retirement plans and non-qualified deferred compensation plans.*** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other “non-qualified deferred compensation” plans, as defined by pertinent SEC regulations.
- ***Qualified Plans.*** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22 2009

Mr. J. Steele Alphin
Chief Administrative Officer
Bank of America Corporation
100 N. Tryon Street
NCI-007-58-22
Charlotte, North Carolina 28255-001

**Re: *Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. Alphin:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and certain most highly compensated employees of Bank of America Corporation ("BoFA"). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*,) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for senior executive officers and certain most highly compensated employees of BoFA generally must comport with the following standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master. Cash guarantees payable in 2009 pursuant to previously existing agreements must be restructured to be payable in stock awards that may only be liquidated over time.
- Rather than cash, the majority of each individual's base salary will be paid in the form of stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if BoFA repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In BofA's case, cash compensation for these employees will decrease 94% from 2008 levels
- Total compensation for each individual must both reflect the individual's value to BofA and be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities. Overall, total direct compensation must be significantly reduced from 2008 amounts. In BofA's case, total direct compensation for these employees will decrease 62% from 2008 levels. *Id.* § 30.16(a)(3)(i).
- If—and only if—the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, employee may be eligible for long-term incentive awards. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with BofA for at least three years following grant, and may only be redeemed in 25% installments for each 25% installment of BofA's TARP obligations that are repaid. Such long-term incentive awards may not exceed one-third of total annual compensation.
- Any and all incentive compensation paid to employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other "non-qualified deferred compensation" plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), BofA must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Compensation and Benefits Committee of BofA's Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.

- The employees will be prohibited from engaging in any hedging or derivative transactions involving BofA stock that would undermine the long-term performance incentives created by the compensation structures.
- BofA may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Compensation and Benefits Committee of BofA’s Board of Directors must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten BofA’s value.

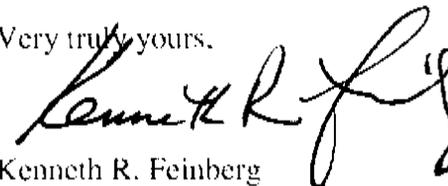
These requirements are described in further detail in the attached Determination Memorandum.

The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to BofA’s compensation structures:

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on BofA’s performance, and ties the financial incentives of BofA employees to the overall performance of the company. A majority of the salary paid to employees under these structures will be paid in the form of stock; and, because the stock salary will become transferable only in three equal, annual installments beginning on the second anniversary of the date the salary stock is earned (with each installment redeemable one year earlier if BofA repays its TARP obligations), the ultimate value realized by the employee will depend on BofA’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for BofA to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that the approved compensation structures are competitive when compared to those provided to similarly situated employees of similarly situated companies. Overall, the compensation structures generally provide for total compensation packages that target the 50th percentile when compared to other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate Allocation.* The total compensation payable to BofA employees is weighted heavily toward long-term structures that are tied to BofA’s performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to BofA employees should consist only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, the Company may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth R. Feinberg". The signature is fluid and cursive, with a large, stylized initial "K".

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Mr. Thomas M. Ryan
Jana J. Litsey, Esquire
Mr. Mark Behnke

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or “the Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

Bank of America Corporation (“BoFA” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to 3 employees that the Company has identified as Senior Executive Officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 11 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s proposals for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with BoFA officials. During these discussions, the Office of the Special Master informed BoFA about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and BoFA explored potential compensation structures for the Covered Employees.

The Rule required that each Exceptional Assistance Recipient submit proposals for each Senior Executive Officer and Most Highly Compensated Employee no later than

August 14, 2009. *Id.* § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including BofA, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required BofA to submit data describing its proposals, and the payments that would result from the proposals concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). BofA was required to submit competitive market data indicating how the amounts payable under BofA's proposals relate to the amounts paid to similarly situated employees at similarly situated financial institutions. BofA was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

BofA submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that BofA's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of BofA's proposals for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees);
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman

Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and

- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefitzs Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part II below, when evaluating the Company's proposals for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether BofA's proposed compensation structures, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives which encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure and amount payable should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. BofA Proposals

BofA has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts potentially payable under the compensation structure for each Covered Employee (the "Proposed Structures").

BofA supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to similarly situated employees at a "peer group" of entities selected by the Company.

1. Covered Employees Generally

The following structures were proposed by BofA for the Covered Employee generally, with the exception of BofA's Chief Executive Officer ("CEO") and an employee with an existing arrangement that provides a cash guarantee; each of those employees are addressed separately.

a. Cash Salary

Except for the Company's CEO, BofA proposed increasing the cash salary of each Covered Employee to annualized amounts of either \$700,000 or \$950,000. The Company's proposal asserted that cash salaries at such levels could be justified by reference to the compensation of similarly situated employees at similarly situated companies.

b. Stock Salary

BofA proposed that Covered Employees receive substantial "stock salary," in annualized amounts ranging from \$1,966,667 to \$19,050,000. Stock salary would be delivered on the Company's regular payroll dates in the form of fully vested stock units, which would then "settle" into regular shares and become transferable 40% on the first anniversary of grant and 30% each on the second and third anniversaries.

c. Annual Long-Term Incentive Awards

BofA proposed that the Covered Employees be eligible in 2009 for substantial grants of annual long-term incentive awards, with total potential values ranging from \$1,333,334 to \$10,000,000. Under the proposal, the amount of an employee's award would be calculated based on achievement of corporate and/or business unit financial goals. Awards would be paid in the form of long-term restricted stock with vesting subject to the employee providing two years of service from the date of award, and actual

payment in 25% installments for each 25% repayment of the Company's TARP obligations.

After submitting the Proposed Structures, the Company informed the Office of the Special Master that neither the CEO nor any of his direct reports who were serving in leadership positions at either legacy BofA or Merrill Lynch during 2008 (including those among the Covered Employees) would be eligible for an annual long-term incentive award in 2009.

d. "Other" Compensation and Perquisites

BofA proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

e. Non-Qualified Deferred Compensation

BofA also proposed that certain Covered Employees receive compensation in the form of accruals under a "non-qualified deferred compensation" plan.

2. *Certain other Covered Employees*

a. Covered Employee with a Cash Guarantee

BofA included a proposal with respect to a Covered Employee who is party to an agreement with the Company providing for a substantial guaranteed cash payment in 2009. BofA believed this agreement created a legally binding right under a valid written employment contract, *see* 31 C.F.R. § 30.10(e)(2). BofA proposed that the amount of cash that would otherwise be delivered to this Covered Employee be instead delivered as a \$700,000 cash salary, with the remainder of the guaranteed amount paid in salary stock provided on the same terms that BofA proposed for salary stock generally. The Covered Employee agreed to waive his right to the guaranteed cash payment in exchange for the proposed structure.

b. CEO

As initially submitted by BofA, the Proposed Structure for the CEO included cash salary of \$950,000 (reduced from his 2008 salary of \$1,500,000), stock salary of \$7,050,000 and eligibility for an annual long-term incentive award of up to \$4,000,000.

On September 30, 2009, the CEO announced his retirement from the Company, effective December 31, 2009. Following this announcement, the Company proposed instead that the CEO be paid no stock salary or long-term incentive award for 2009 and a prospective cash salary of \$0 from the date of this Determination Memorandum through his last day of employment.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part II above. In light of this review and analysis, the Special Master has determined that both the structural design of BofA's proposals and the amounts potentially payable to Covered Employees under the proposals would be inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Covered Employees Generally

a. Cash Salary

The Special Master has reviewed the cash salary proposals in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." *Id.* § 30.16(b)(1)(v). The Special Master has concluded generally that, for Covered Employees at Exceptional Assistance Recipients, cash salaries should generally target the 50th percentile. Such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

In conducting the review of the proposed amounts of cash salaries, the Special Master made use of the resources described in Part II. Based on this review, the Special Master has concluded that BofA's proposed cash salaries are inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to cash salaries provided to similarly situated employees of similar companies.

In addition, the Special Master has considered whether BofA's proposed salaries reflect the current or prospective contributions of an employee to the value of the [company]," *id.* § 30.16(b)(1)(vi). Under the BofA proposal, each Covered Employee would receive either a \$700,000 or \$950,000 cash salary. The Special Master has concluded that the proposed salaries are inconsistent with the Public Interest Standard because they do not differentiate among employees in a manner that reflects their individual values to the Company.

Finally, because cash salaries do not create incentives for employees to pursue long-term value creation or financial stability, the amount of cash salary provided to a Covered Employee must be considered in comparison to the portion of compensation that is "performance-based over a relevant period." *Id.* § 30.16(b)(1)(iv). The Special Master

has concluded that the portion of the Covered Employee's compensation that may be allocated to cash salary should in most cases not exceed \$500,000. See *id.* § 30.16(b)(1)(iii).

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined to be consistent with the Public Interest Standard compare appropriately to those paid to similar employees at similar firms, and are generally less than \$500,000.

The Special Master has also concluded that, for cash salaries payable to certain employees to be consistent with the Public Interest Standard, further reductions are required in consideration of "other compensation earned, accrued, or paid" by BofA in 2009. *Id.* § 30.16(a)(3). These adjustments apply to certain employees who received cash bonus payments in 2009 that were excessive in light of bonuses provided to "persons in similar positions or roles at similar entities," *id.* § 30.16(b)(1)(v), and the "prospective contributions of [the employee] to the value of the exceptional assistance recipient, taking into account multiple factors such as...corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient." *Id.* § 30.16(b)(1)(vi).¹

b. Stock Salary

The Special Master has reviewed the amount of stock salary BofA proposed to pay the Covered Employees in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." *Id.* § 30.16(b)(1)(v). Based on this review, the Special Master has concluded that the amount of stock salary BofA proposed paying to the Covered Employees is excessive and that the proposals are inconsistent with the Public Interest Standard. The compensation structures that the Special Master has determined are consistent with the Public Interest Standard provide lesser amounts of stock salary, as described in further detail in *Exhibits I* and *II*.

The Special Master also has concluded that, for the amount of stock salary potentially payable to certain employees to be consistent with the Public Interest Standard, further reductions were required in consideration of "other compensation earned, accrued, or paid" by BofA in 2009. *Id.* § 30.16(a)(3). These adjustments apply to certain employees who received cash bonus payments in 2009 that were excessive in light of bonuses provided to "persons in similar positions or roles at similar entities," *id.*

¹ The Special Master's determinations regarding such "other compensation earned, accrued, or paid" considered only the extent to which the amounts of such compensation should be considered in the analysis with respect to whether the amounts potentially payable to the Covered Employees were consistent with the Public Interest Standard. See 31 C.F.R. § 30.16(a)(3)(i). The determinations are not, and should not be construed as an analysis, opinion, or determination under any other legal standard applicable to the payment or receipt of such compensation or to any act arising from or relating to such payment or receipt, including, without limitation, the Special Master's authority under 31 C.F.R. § 30.16(a)(3) to review whether such payments were "inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest." *Id.*

§ 30.16(b)(1)(v), and the “prospective contributions of [the employee] to the value of the exceptional assistance recipient, taking into account multiple factors such as . . . corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient.” *Id.* § 30.16(b)(1)(vi).²

The Special Master has also reviewed the structure of BofA’s stock salary proposal. The Rule requires that the Special Master consider whether an appropriate portion of an employee’s compensation is allocated to long-term incentives. *Id.* § 30.16(b)(1)(iii). Stock salary that can be liquidated too soon would not be performance-based over the relevant performance period to provide such a long-term incentive. *See Id.* § 30.16(b)(1)(iv). Instead, such stock salary could incentivize employees to pursue short-term results instead of long-term value creation by paying excessive benefits to employees for short-term increases in share price. *See Id.* § 30.16(b)(1)(i). Under the Company’s proposal, 40% of stock salary would be redeemable one-year after being granted. The Special Master has concluded that a one year holding period is insufficient to provide a long-term incentive and could result in payments that would be inconsistent with the Public Interest Standard.

As described in *Exhibit I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard require that, at a minimum, stock salary only become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if BofA repays its TARP obligations.

c. Annual Long-Term Incentive Awards

The Special Master has reviewed BofA’s proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met.” *Id.* § 30.16(b)(1)(iv). The Special Master, also has evaluated BofA’s proposed awards by application of recently adopted international standards that provide that incentive compensation should generally be payable over a period of three years, as well as the Rule’s principle that performance-based compensation should be payable “over a relevant performance period.” *id.*

Although BofA proposed individually tailored performance metrics to calculate the size of long-term restricted stock awards, which the Special Master concluded are generally consistent with the Public Interest Standard, the restricted stock would vest after only two years of service. The Special Master has concluded that BofA’s proposed annual long-term incentive awards are inconsistent with the Public Interest Standard because a two-year period of service is insufficient.

As described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance

² See *supra*, note 1.

criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of BofA's TARP obligations that are repaid.

d. "Other" Compensation and Perquisites

BofA proposed limited payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, and the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

e. Non-Qualified Deferred Compensation

BofA proposed that certain Covered Employees receive compensation in the form of accruals under a "non-qualified deferred compensation" plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee's compensation package should be allocated to compensation structures that are "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). Payments under the Company's "non-qualified deferred compensation" plans do not depend upon "individual performance and/or the performance of the [Company] or a relevant business unit," *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top executive upon leaving the firm.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance

during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum.

f. Severance Arrangements

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

2. *Certain other Covered Employees*

The proposals for two Covered Employees were reviewed and analyzed by the Special Master separately because of one employee’s existing cash guarantee and the other’s unique role in the Company, respectively.

a. Covered Employee with a Cash Guarantee

The Special Master has concluded that guaranteed cash payments are not “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Indeed, the principles identified in the Rule are generally inconsistent with the payment of large guaranteed cash amounts. BofA proposed that the Covered Employee’s guarantee be restructured into a \$700,000 cash salary, with the remainder delivered as a stock salary with the same terms as the stock salary proposal for other Covered Employees.

Such a restructuring would be consistent with the principle that cash guarantees are generally disfavored, but inconsistent with the Special Master’s conclusion that the cash portion of a Covered Employee’s compensation that is not performance-based generally should not exceed \$500,000. See *Id.* § 30.16(b)(1)(iii). As a result, the proposed restructuring is inconsistent with the Public Interest Standard.

The Special Master has determined that, with respect to this employee, a restructuring of the cash guarantee providing a cash salary of less than \$500,000, with the remainder of the “guarantee” paid as stock salary, would be consistent with the Public Interest Standard. In addition, the Covered Employee’s compensation structures, will also be subject to the limitations described in Parts IV.A.4 (“other” compensation and perquisites), IV.A.5 (non-qualified deferred compensation), and IV.A.6 (severance plans) above.

b. CEO

The CEO has publicly announced his retirement from the Company. In addition, it is anticipated that he will receive a very substantial retirement compensation package consisting of cash, equity and other payments, all agreed upon during the CEO's lengthy tenure with the Company and its predecessors. Accordingly, the Special Master has determined that the payment of any amount of compensation to the CEO for 2009 is inconsistent with the Public Interest Standard.

3. *Departed Employees*

In addition, eleven employees that would have been Covered Employees had remained employed are no longer employed by the Company. With respect to those employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and "other" compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part II above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period." 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, BofA must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are "measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv), long-term incentive awards may not be granted unless the Compensation and Benefits Committee of BofA's Board of Directors determines to grant such an award in light of the employee's performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, BofA's securities filings. In addition, the Committee must retain discretion with respect to each employee to reduce (but not to increase) the amount of any incentive award on the basis of its overall evaluation of the employee's or BofA's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in BofA. It is critical that these compensation structures achieve the Rule's objective of "appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity," *id.* § 30.16(b)(iii).

BofA must have in effect a policy that would prohibit an employee from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I and II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, BofA is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* BofA must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with BofA's senior risk officers any risks that could threaten the value of BofA. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that threaten the value of BofA; (2) SEO or other employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employees' compensation plans that could encourage the manipulation of BofA's reported earnings to enhance the compensation of any of the employees. *Id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The compensation committee must disclose to Treasury an annual narrative description of whether the Company, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).
- (3) *Disclosure of Perquisites.* BofA must provide to Treasury an annual disclosure of any perquisite whose total value for BofA's fiscal year exceeds \$25,000 for each of the Covered Employees. BofA 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). *Id.* § 30.11(b).

- (4) *Clawback.* BofA must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. BofA must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Say-on-Pay.* BofA 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). *Id.* § 30.13.
- (6) *Policy Addressing Excessive or Luxury Expenditures.* BofA was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on the Company's website. If BofA's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on BofA's Internet website. *Id.* § 30.12.
- (7) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, BofA is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (8) *CEO and CFO Certification.* BofA's CEO and chief financial officer must provide to the Securities and Exchange Commission written certification of BofA's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by BofA require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, BofA may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this

Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If BofA does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by BofA to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES

2009 Compensation

Company Name: Bank of America Corporation

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.)
1678	\$0	\$0	\$0	\$0
1029	\$500,000	\$1,750,000	\$1,125,000	\$3,375,000
1055	\$403,847	\$5,412,180	\$2,851,923	\$8,555,770
1108	\$412,500	\$1,914,583	\$1,106,250	\$3,318,750
1123	\$300,000	\$4,483,333	\$2,350,000	\$7,050,000
1143	\$500,000	\$9,316,667	\$0	\$9,900,000
1164	\$500,000	\$5,640,000	\$3,001,250	\$9,003,750
1227	\$352,500	\$4,797,917	\$2,526,250	\$7,578,750
1562	\$500,000	\$5,250,000	\$0	\$6,000,000
1564	\$412,500	\$5,114,583	\$2,706,250	\$8,118,750
1714	\$403,847	\$4,612,180	\$2,451,923	\$7,355,770
1787	\$412,500	\$2,114,583	\$1,206,250	\$3,618,750
1850	\$500,000	\$3,950,000	\$0	\$4,700,000

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$89.3M or 94.5%
Total Direct Compensation decreased by \$149.2M or 65.5%

2007 Cash decreased by \$49.8M or 92.2%
Total Direct Compensation decreased by \$112.6M or 63.3%

Note: 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note: 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Cash base salary.** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- **Stock salary.** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- **Long-term restricted stock.** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Compensation and Benefits Committee of the Company's Board of Directors. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Ms. Nancy Rae
Executive Vice President, Human Resources
Chrysler Group, LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, MI 48326-2766

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Ms. Rae:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and certain most highly compensated employees of Chrysler Group, LLC ("Chrysler"). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for Chrysler's senior executive officers and certain most highly compensated employees generally must comport with the following standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Rather than cash, a significant portion of each individual's base salary will be paid in the form of stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if Chrysler repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown.
- Total compensation for each individual must both reflect the individual's value to Chrysler and be appropriate when compared with total compensation of persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees.
- Employees may be eligible to vest in long-term incentive awards if—and only if—objective performance metrics developed and reviewed in consultation with the Office of the Special Master are achieved. All such awards must be payable in the form of restricted stock that will be forfeited unless the employee stays with Chrysler for at least three years following grant and may only be redeemed in 25% installments for each 25% installments of Chrysler's TARP obligations that are repaid. Such long-term incentive awards may not exceed one-third of total annual compensation.
- Any and all incentive compensation paid to employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the Company to other "non-qualified deferred compensation" plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), Chrysler must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Compensation and Leadership Committee of Chrysler's Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.
- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.

- At least once every year, Chrysler's compensation committee must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten Chrysler's value.

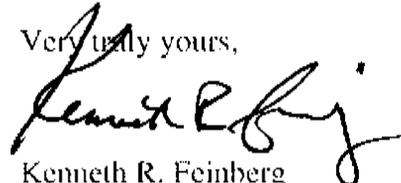
These requirements are described in further detail in the attached Determination Memorandum.

The Special Master's review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to Chrysler's compensation structures:

- *Performance-based compensation.* A substantial amount of approved compensation depends on Chrysler's performance, and ties the financial incentives of Chrysler employees to the overall performance of the Company. Portions of the salary paid to employees under these structures will be paid in the form of stock; and, because the stock salary will become transferable only in three equal, annual installments beginning on the second anniversary of the date the stock salary is earned (with each installment redeemable one year earlier if Chrysler repays its TARP obligations), the ultimate value realized by the employee will depend on Chrysler's performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for Chrysler to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that the approved compensation structures are competitive when compared to those provided to similarly situated employees of similarly situated companies. Overall, the compensation structures generally provide for total compensation packages that are well below the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).

Pursuant to the Interim Final Rule, Chrysler may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Chrysler does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Holly E. Leese, Esquire
Lawrence Cagney, Esquire

ANNEX A
DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or “the Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

Chrysler Group, LLC (“Chrysler” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to five employees that the Company has identified as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 20 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with Chrysler officials. During these discussions, the Office of the Special Master informed Chrysler about the nature of the Office’s work and the authority of the Special Master under the Rule. These

discussions continued for a period of months, during which the Special Master and Chrysler explored potential compensation structures for the Covered Employees.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including Chrysler, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required Chrysler to submit data describing its proposals, and the payments that would result from the Proposed Structures, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). Chrysler was required to submit competitive market data indicating how the amounts payable under Chrysler's Proposed Structures relate to the amounts paid to persons in similar positions or roles at similar entities. Chrysler was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

Chrysler submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that Chrysler's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of Chrysler's proposal for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submissions to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report*

(which includes information from a survey on the pay of highly compensated employees):

- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Treftitzs Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether Chrysler's proposals, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives which encourage executive officers and employees to take unnecessary or excessive risks that could threaten the value of the exceptional assistance recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the exceptional assistance recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the exceptional assistance recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits or perquisites, based on the specific role of the employee and other

relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the exceptional assistance recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. Chrysler Proposals

Chrysler provided the Office of the Special Master with detailed information concerning its proposals for the Covered Employees, including amounts potentially payable under the compensation structure for each Covered Employee.

Chrysler supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company.

1. *Chief Executive Officer*

Chrysler's chief executive officer (the "CEO") also serves as the chief executive officer of Fiat S.p.A, a minority shareholder of the Company. Fiat, according to the Company's submission, has and will continue to provide for the CEO's 2009 compensation, and Chrysler has not proposed to pay him any compensation whatsoever in 2009.

2. *Covered Employees Generally*

Chrysler's proposals for this group of Covered Employees, (which excludes the CEO and three departing employees, who are covered separately below), ranged from \$311,503 to \$719,340 and consisted of three primary components—cash salaries, stock salaries, and annual long-term incentive awards—plus additional payments in the form of "non-qualified deferred compensation" accruals, perquisites, and "other" compensation.

a. Cash Salary

Chrysler proposed increasing the cash salary of these Covered Employees to annualized amounts ranging from \$276,672 to \$603,000. The Company's proposal asserted that cash salaries at such levels could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

b. Stock Salary

Chrysler proposed that these Covered Employees receive 20% of their total salaries going forward as stock salary, in annualized amounts ranging from \$56,000 to \$122,000 on an annual basis. On each regular payroll date, Covered Employees would earn fully vested "deferred phantom units," each representing an equal portion of the Company's equity, which would then settle in two tranches of 50% each on the second and third anniversaries of the grant date, respectively.

c. Annual Long-Term Incentive Awards

Chrysler proposed that these Covered Employees be eligible for annual long-term incentive awards equal to one third of total compensation received from and after September 1, 2009, with total potential values ranging from \$56,001 to \$122,002. Awards would be paid in the form of “long-term restricted stock” with 25% vesting after two years of service and 75% vesting on the later to occur of the second anniversary of the grant date or a public offering by the Company. Actual payment would be made in 25% installments for each 25% repayment of the Company’s TARP obligations.

d. “Other” Compensation and Perquisites

Chrysler proposed payments of “other” compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

e. Non-Qualified Deferred Compensation

Chrysler also proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review and analysis, the Special Master has determined that both the structural design of Chrysler’s proposals and the amounts potentially payable to Covered Employees under the proposals would be inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Chief Executive Officer

Because they are provided by a minority shareholder of the company, the proposals for Chrysler’s CEO and amounts potentially payable under such structures, which would generally be subject to the Special Master’s review and analysis, are instead outside the Special Master’s purview. As a result, the Special Master has made no determination as to whether any payments made or proposed to be made to Chrysler’s CEO are consistent with the Public Interest Standard. 31 C.F.R. § 30.1.

2. Covered Employees Generally

a. Cash Salary

The Special Master reviewed the cash salary proposals in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities.” *Id.* § 30.16(b)(1)(v). The Special Master has concluded generally that cash salaries for employees at Exceptional Assistance Recipients, cash salaries should generally target the 50th percentile because such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

The Special Master made use of the resources described in Part II and concluded that Chrysler’s proposal would generally deliver cash salaries that would place the Covered Executives at or below the 50th percentile of compensation provided to persons in similar positions or roles at similar entities.

In addition, because cash salaries do not create incentives for employees to pursue long-term value creation or financial stability, the amount of cash salary provided to a Covered Employee must be considered in comparison to the portion of compensation that is “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that the portion of the Covered Employee’s compensation that is not performance-based and should instead be allocated to cash salary should in most cases not exceed \$500,000. *See id.* § 30.16(b)(1)(iii).

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined to be consistent with the Public Interest Standard compare appropriately to those paid to persons in similar positions or roles at similar entities, and are generally less than \$500,000.

b. Stock Salary

The Special Master reviewed the amount of stock salary Chrysler proposed to pay the Covered Employees. This review was analogous to the comparative review of proposed cash salaries, described above. The Special Master determined that Chrysler’s stock salary proposal would convey amounts of equity compensation in 2009 that would place the Covered Employees at or below the 50th percentile of compensation provided to persons in similar positions or roles at similar entities. These amounts are described in further detail in *Exhibits I* and *II*.

The Special Master also reviewed the structure of Chrysler’s stock salary proposal. The Rule requires that the Special Master consider whether an appropriate portion of an employee’s compensation is allocated to long-term incentives *Id.* § 30.16(b)(1)(iii). Stock salary that can be liquidated too soon would not be performance-based over the relevant performance period to provide such a long-term incentive. *See Id.* § 30.16(b)(1)(iv). Instead, such stock salary could incentivize employees to pursue

short-term results instead of long-term value creation by paying excessive benefits to employees for short-term increases in share price. See *Id.* § 30.16(b)(1)(i). Under the Company's proposal, 50% of stock salary would be redeemable by the employee after two years and the remaining 50% of stock salary would be redeemable after three years, which the Special Master has concluded is an insufficient holding period to provide an appropriate long-term incentive and could result in payments that would be inconsistent with the Public Interest Standard. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard require that stock salary become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if Chrysler repays its TARP obligations.

c. Annual Long-Term Incentive Awards

The Special Master reviewed Chrysler's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(1)(iv). Although Chrysler's proposal for the vesting condition for 75% of the annual-incentive awards was based on a substantial goal related to the performance of the Company, *id.*, 25% of the awards required only continued employment for two years. A two-year service requirement does not provide Covered Employees with tailored metrics that encompass individual performance. *Id.* In addition, in light of recently adopted international standards providing that incentive compensation should be payable over a period of three years and the Rule's requirement that performance-based compensation be payable "over a relevant performance period," *id.*, the Special Master has concluded that awards of long-term restricted stock should not vest unless the employee remains employed through the third anniversary of grant.

As described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of Chrysler's TARP obligations that are repaid.

d. "Other" Compensation and Perquisites

Chrysler proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. See *id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most

Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in “other” compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

c. Non-Qualified Deferred Compensation

Chrysler also proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum.

In addition, Chrysler proposed that amounts already accrued by the Covered Employees in 2009 under executive retirement plans be paid out to the employees in January 2010. Such payments would effectively constitute a short-term cash guarantee that is not “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). The Special Master has determined that the proposed timing of the payment of the existing retirement accruals is not consistent with the Public Interest Standard and that modifying the existing retirement accruals to provide for payment on a post-retirement basis would be consistent with the Public Interest Standard.

f. Severance Arrangements

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II*, to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these executives do not result in an increase in the amounts payable pursuant to these arrangements.

3. *Departing Employees*

Chrysler has also proposed that three Covered Employees whose employment will terminate prior to December 31, 2009, should receive only continuation of their existing cash salaries until their date of departure. With respect to two of those employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and “other” compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

With respect to the third Covered Employee, who has an annual cash salary of \$2,583,336, the Special Master has determined that, in light of “compensation earned, accrued, or paid” to this employee in 2009, *id.* § 30.16(a)(3), the payment of any additional cash after the date of this Determination Memorandum would be inconsistent with the Public Interest.

V. CORPORATE GOVERNANCE

As noted in Part IV above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period.” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, the Company must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), long-term incentive awards may not vest unless the Company’s compensation committee determines that the applicable level of performance—as measured against objective performance criteria that the compensation committee has developed and reviewed in

consultation with the Office of the Special Master—has been met. This determination must be certified by the compensation committee to the Office of the Special Master or, subject to the approval of the Special Master, in such other manner as is determined by the compensation committee.

In addition, as noted in Part IV, above and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in the Company. It is critical that these compensation structures achieve the Rule's objective of "appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity," *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, the Company is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Chrysler must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with the Company's senior risk officers any risks that could threaten the value of the Company. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that threaten the value of the Company; (2) SEO or other employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employees' compensation plans that could encourage the manipulation of the Company's reported earnings to enhance the compensation of any of the employees. *id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The compensation committee must disclose to Treasury an annual narrative description of whether the Company, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(e).
- (3) *Disclosure of Perquisites.* As noted in Part IV, Chrysler must provide to Treasury an annual disclosure of any perquisite whose total value for Chrysler's fiscal year exceeds \$25,000 for each of the Covered Employees. Chrysler 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). *Id.* § 30.11(b).

- (4) *Clawback.* Chrysler must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Chrysler must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Policy Addressing Excessive or Luxury Expenditures.* Chrysler was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on the Company's website. If Chrysler's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- (6) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, Chrysler is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (7) *CEO and CFO Certification.* Chrysler's CEO and chief financial officer must provide written certification of Chrysler's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by Chrysler require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II*, in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, Chrysler may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a

factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If Chrysler does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(e)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by Chrysler to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

**EXHIBIT 1
COVERED EMPLOYEES**

2009 Compensation

Company Name: Chrysler Group LLC

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new rate + stock salary + long term restricted stock.)
TRP001	\$0	\$0	\$0	\$0
TRP002	\$500,000	\$34,001	\$102,002	\$644,336
TRP003	\$0	\$0	\$0	\$2,150,000
TRP004	\$485,000	\$197,253	\$0	\$694,756
TRP005	\$485,000	\$105,000	\$107,002	\$626,175
TRP006	\$455,000	\$84,000	\$102,002	\$620,175
TRP007	\$440,000	\$29,334	\$88,002	\$503,169
TRP008	\$435,000	\$29,001	\$87,002	\$463,503
TRP009	\$410,000	\$27,334	\$82,002	\$490,169
TRP010	\$410,000	\$27,334	\$82,002	\$511,003
TRP011	\$410,000	\$27,334	\$82,002	\$511,003
TRP012	\$405,000	\$27,000	\$81,001	\$508,835
TRP013	\$400,000	\$0	\$0	\$391,667
TRP014	\$479,300	\$25,667	\$77,002	\$503,393
TRP015	\$370,000	\$0	\$0	\$365,833
TRP016	\$335,000	\$22,334	\$67,002	\$416,003
TRP017	\$315,000	\$21,000	\$63,001	\$394,835
TRP018	\$315,000	\$21,000	\$63,001	\$357,341
TRP019	\$310,700	\$20,714	\$62,141	\$389,388
TRP020	\$310,000	\$20,667	\$62,002	\$380,169
TRP021	\$295,000	\$19,667	\$59,001	\$369,501
TRP022	\$290,000	\$19,334	\$58,001	\$334,018
TRP023	\$280,000	\$18,667	\$56,001	\$350,501
TRP024	\$280,000	\$18,667	\$56,001	\$350,501
TRP025	\$310,000	\$20,667	\$62,002	\$390,336

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$1.5M or 17.9%
Total Direct Compensation increased by \$2.1M or 24.2%

2007 Cash increased by \$0.9M or 14.0%
Total Direct Compensation increased by \$1.5M or 72.3%

Note: 1. Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 41 C.F.R. § 30.10(e)(2).

Note: 2. The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Cash base salary.** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- **Stock salary.** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of units based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- **Long-term restricted stock.** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Company's compensation committee. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Ms. Tracy Hackman, Esquire
Vice President, General Counsel and Secretary
Chrysler Financial
27777 Inkster Road
CIMS 405-27-16
Farmington Hills, MI 48334

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Ms. Hackman:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and certain most highly compensated employees of Chrysler Financial. Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

Pursuant to the Interim Final Rule, the Special Master is required to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for Chrysler Financial's senior executive officers and certain most highly compensated employees generally must comport with the following important standards:

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In Chrysler Financial's case, cash compensation for these employees will decrease 30% from 2008 levels.
- Total compensation for each individual must be appropriate when compared with total compensation of persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for comparable employees. Overall, total compensation must be significantly reduced from the

amounts paid in 2008. In Chrysler Financial's case, total compensation for these employees will decrease 56% from 2008 levels.

- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown to the satisfaction of the Special Master).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), Chrysler Financial must adopt policies applicable to these employees as follows:

- Chrysler Financial may not provide a tax "gross up" of any kind to these employees.
- At least once every year, Chrysler Financial's compensation committee must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten Chrysler Financial's value.

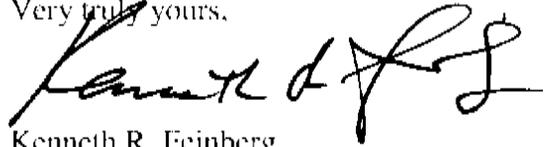
These requirements are described in further detail in the attached Determination Memorandum.

The Special Master's review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principle was of particular importance to the Special Master in his determinations with respect to Chrysler Financial's compensation structures:

- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for Chrysler Financial to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. Overall, the compensation structures provide for total compensation packages that target the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).

Pursuant to the Interim Final Rule, Chrysler Financial may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If Chrysler Financial does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(e)(1).

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth R. Feinberg". The signature is fluid and cursive, with a large initial "K" and "F".

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Thomas F. Gilman

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

Chrysler Financial, one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to five employees that the Company has identified as Senior Executive Officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and seventeen employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “most highly compensated employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s proposed compensation structures pursuant to the principles set forth in the Rule. *Id.* Section 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with Chrysler Financial officials and Company counsel. During these discussions, the Office of the Special Master informed Chrysler Financial about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period

of months, during which the Office of the Special Master and Chrysler Financial explored potential compensation structures for the Covered Employees.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including Chrysler Financial, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s compensation structures. The request required Chrysler Financial to submit data describing its proposed compensation structures, and the payments that would result from the proposed structures, concerning each Covered Employee. In addition, Chrysler Financial was required to submit competitive market data indicating how the amounts payable under Chrysler Financial’s proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. Chrysler Financial was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

Chrysler Financial submitted this information to the Office of the Special Master on August 13, 2009. Following a preliminary review of the submission, and the submission of certain additional information, the Special Master determined that Chrysler Financial’s submission was substantially complete on August 31, 2009. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of Chrysler Financial’s proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;

- External information on comparable compensation structures extracted from Equilar’s *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar’s *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees);
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the department of finance and business economics at the University of Southern California’s Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company’s proposed compensation structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether Chrysler Financial’s proposed compensation structures, including amounts payable under the compensation structure, “will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the “Public Interest Standard”). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives which encourage executive officers and employees to take unnecessary or excessive risks that could threaten the value of the exceptional assistance recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient’s future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(ii).

- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, and other financial benefits or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation

earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. Chrysler Financial Proposals

Chrysler Financial has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for pertinent executive officers and employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the “Proposed Structures”).

Chrysler Financial supported its proposal with detailed assessments of each Covered Employee’s tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a “peer group” of entities selected by the Company.

Chrysler Financial is currently following Treasury’s directive to liquidate its business in an orderly fashion. Accordingly, Chrysler Financial is currently pursuing a successful wind-down of its operations by December 31, 2011, and the repayment of its lenders and investors. Chrysler Financial’s proposed compensation structures therefore emphasize that the Company’s unique business objectives—to wind down, rather than to grow, its operations—render the use of traditional business metrics in the determination of appropriate compensation impractical. Rather, Chrysler Financial’s submission asserts that its success in the wind-down of operations and repayment of lenders and investors is largely dependent upon maintaining critical talent to enable the Company to service and manage its portfolio during the wind-down process. The Company also contends that the risk of employee departures must be minimized because Chrysler Financial has publicly stated that it intends to wind-down its operations and will have difficulty attracting new employees.

1. Cash Salary

Chrysler Financial’s Proposed Structures included proposed annual cash base salaries ranging from \$175,872 to \$1,500,000. The proposal reflects cash decreases from 2008 levels for each employee ranging from 10% to 67%.

2. “Other” Compensation and Perquisites

Chrysler Financial also proposed payments of “other” compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review and analysis, the Special Master has determined that both the structural design of Chrysler Financial’s proposals and the amounts potentially payable to Covered Employees under the proposals are consistent with the Public Interest Standard.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II*, to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard except as noted below.

1. Cash Salary

The Special Master reviewed Chrysler Financial’s proposals with respect to cash salary in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities,” 31 C.F.R. § 30.16(b)(1)(v). This review made use of the resources and analysis described in Part II. The Special Master generally has concluded that, for Covered Employees at Exceptional Assistance Recipients, cash salaries should generally target 50th percentile because such levels of cash salaries balance the need to attract and retain talented with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

In addition, the Special Master reviewed the Company’s proposal in light of the principle that compensation structures must “reflect the need for the TARP recipient to remain a competitive enterprise...and ultimately to be able to repay TARP obligations.” *Id.* § 30.16(b)(1)(ii). As noted above, the Company’s submission emphasized that its business objectives—including an orderly wind-down of the Company’s operations that would permit lenders and investors to be repaid—required cash base salaries that would give employees clear incentives to remain with the firm during this period.

In general, the principles set forth in the Rule emphasize compensation structures that are performance-based, *id.* § 30.16(b)(1)(iv), and payable over the long term, *id.* Unlike other Exceptional Assistance Recipients, however, Chrysler Financial’s stated business objective, developed in consultation with Treasury, is to wind down its business in the near term. Under these unique circumstances, providing employees incentives over the appropriate compensation horizon, *see id.* § 30.16(b)(1)(i), may require cash compensation payable in base salary rather than longer-term incentives based on the performance of the Company.

In light of these considerations, the Special Master has concluded that Chrysler Financial's Proposed Structures and the amounts potentially payable under them are consistent with the Public Interest Standard. The amounts payable pursuant to these structures are described in further detail in *Exhibits I* and *II*.

2. "Other" Compensation and Perquisites

Chrysler Financial also proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

3. Severance Arrangements

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

4. Departed Employees

In addition, three employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to these employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and "other" compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the

Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

Pursuant to the requirements of the Rule, Chrysler Financial is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Chrysler Financial must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with Chrysler Financial's senior risk officers any risks that could threaten the value of Chrysler Financial. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee's compensation plans to identify and limit the features in (1) CEO compensation plans that could lead CEOs to take unnecessary and excessive risks that threaten the value of Chrysler Financial; (2) CEO or other employees' compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employees' compensation plans that could encourage the manipulation of Chrysler Financial's reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The committee must disclose to Treasury an annual narrative description of whether Chrysler Financial, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(e).
- (3) *Disclosure of Perquisites.* As noted in Part IV, Chrysler Financial must provide to Treasury an annual disclosure of any perquisite whose total value for the Company's fiscal year exceeds \$25,000 for each of the Covered Employees. Chrysler Financial 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 prerequisite, and not only for offering the perquisite with a value that exceeds \$25,000). *Id.* § 30.11(b).
- (4) *Clawback.* Chrysler Financial must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Chrysler Financial must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.

- (5) *Policy as to excessive or luxury expenditures.* Chrysler Financial must adopt an excessive or luxury expenditure policy, provide that policy to Treasury, and post it on Chrysler Financial's website. If, after adopting an excessive or luxury expenditures policy, Chrysler Financial's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on the Company's Internet website. *Id.* § 30.12.
- (6) *Prohibition on tax gross-ups.* Except as explicitly permitted under the Rule, Chrysler Financial is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (7) *CEO and CFO Certification.* Chrysler Financial's chief executive officer and chief financial officer must provide to the Securities and Exchange Commission (the "SEC") written certification of the Company's compliance with the various requirements of section 111 of EESA, including all the requirements listed in this section. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by Chrysler Financial are generally consistent with the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II*, in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, Chrysler Financial may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If Chrysler Financial does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The

determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES

2009 Compensation

Company Name: Chrysler Financial

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based. The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on FARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.)
A216G8	\$1,500,000	\$0	\$0	\$875,000
A224F7	\$216,000	\$0	\$0	\$216,000
A272C1	\$800,000	\$0	\$0	\$466,667
A288A8	\$400,000	\$0	\$0	\$218,667
A296A7	\$432,000	\$0	\$0	\$252,500
B225F8	\$1,350,000	\$0	\$0	\$704,167
B233F7	\$410,000	\$0	\$0	\$246,753
B241E6	\$415,000	\$0	\$0	\$250,767
B249D5	\$490,000	\$0	\$0	\$265,167
C250D6	\$216,000	\$0	\$0	\$216,000
C258D5	\$490,000	\$0	\$0	\$268,587
C298A9	\$400,000	\$0	\$0	\$245,667
D203H4	\$194,436	\$0	\$0	\$194,436
E212G4	\$182,496	\$0	\$0	\$182,496
E220G3	\$410,000	\$0	\$0	\$272,083
E236E1	\$500,000	\$0	\$0	\$500,003
E245E1	\$410,000	\$0	\$0	\$246,533
E253D9	\$443,000	\$0	\$0	\$234,263
G206H7	\$490,000	\$0	\$0	\$261,667
H207H8	\$175,872	\$0	\$0	\$175,872
H231F5	\$425,000	\$0	\$0	\$237,833
H279B8	\$600,000	\$0	\$0	\$300,000

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$4.3M or 29.9%
Total Direct Compensation decreased by \$8.1M or 56.0%

2007 Company was created August 3, 2007. There is not enough data for a full year 2009 vs 2007 comparison

Note: 1 – Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note: 2 – The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- ***Cash base salary.*** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- ***Other compensation and perquisites.*** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- ***Qualified Plans.*** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D. C. 20220

October 22, 2009

Mr. Michael S. Helfer, Esquire
General Counsel &
Corporate Secretary
Citigroup Inc.
399 Park Avenue
New York, NY 10022

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. Helfer:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and certain most highly compensated employees of Citigroup Inc. ("Citigroup"). Attached as ***Annex A*** is a Determination Memorandum (accompanied by ***Exhibits I*** and ***II***) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

Pursuant to the Interim Final Rule, the Special Master is required to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for Citigroup's senior executive officers and certain most highly compensated employees generally must comport with the following important standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master. Cash guarantees payable in 2009 pursuant to previously existing agreements must be restructured to be payable in stock awards that may only be liquidated over time. In Citigroup's case, this will require the restructuring of several agreements between Citigroup and its employees, and the deferral of payments to certain employees of Phibro, LLC until such time as Phibro is no longer a subsidiary of Citigroup.

- Rather than cash, the majority of each individual's base salary will be paid in the form of Citigroup stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if Citigroup repays its TARP obligations. This structure encourages employees to remain employed by Citigroup and to maximize its long-term value.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In Citigroup's case, cash compensation for these employees will decrease 96% from 2008 levels.
- Where applicable, compensation should reflect the employee's role, if any, with respect to the change in Citigroup's financial health during 2008, and may take into account payments not subject to the review of the Special Master, including payments pursuant to legally binding rights under previously existing valid employment contracts. *Id.* § 30.16(a)(3)(i).
- Total compensation for each individual must be appropriate when compared with the total compensation for persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for comparable employees. Overall, total compensation must be significantly reduced from the amounts paid in 2008. In Citigroup's case, total compensation for these employees will decrease 70% from 2008 levels.
- If—and only if—the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for long-term incentive awards. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with Citigroup for at least three years following grant, and may only be redeemed in 25% installments for each 25% of Citigroup's TARP obligations that are repaid. Such long-term incentive awards may not exceed one third of total annual compensation.
- Any and all incentive compensation paid to these employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown to the satisfaction of the Special Master).

- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other “non-qualified deferred compensation” plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), Citigroup must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Personnel and Compensation Committee of Citigroup’s Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.
- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- Citigroup may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Personnel and Compensation Committee of Citigroup’s Board of Directors must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten Citigroup’s value.

These requirements are described in further detail in the attached Determination Memorandum.

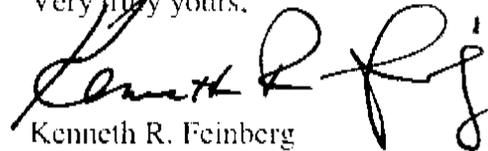
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to Citigroup’s compensation structures:

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on Citigroup’s performance, and ties the financial incentives of Citigroup employees to the overall performance of the company. A majority of the salary paid to employees under these structures will be paid in the form of stock; and, because the stock will only be redeemable in equal, one-third installments beginning on the second anniversary of the date the stock salary is earned (in each case subject to acceleration by one year if Citigroup repays its TARP obligations), the ultimate value realized by the employee will depend on Citigroup’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).

- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for Citigroup to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. Overall, the compensation structures provide for total compensation packages that generally target the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to Citigroup employees is weighted heavily toward long-term structures that are tied to Citigroup's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to Citigroup employees should consist only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, Citigroup may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If Citigroup does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Lewis B. Kaden, Esquire
Mr. Paul McKinnon

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

Citigroup Inc. (“Citigroup,” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to three employees that the Company has identified as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and eighteen employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s proposed compensation structures for the Covered Employees pursuant to the principles set forth in the Rule. § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with Citigroup officials. During these discussions, the Office of the Special Master informed Citigroup about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and Citigroup explored potential compensation structures for the Covered Employees.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including Citigroup, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required Citigroup to submit data describing its proposed compensation structures, and the payments that would result from the proposals, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). Citigroup was required to submit competitive market data indicating how the amounts payable under Citigroup's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. Citigroup was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

Citigroup submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that Citigroup's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of Citigroup's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees);

- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether Citigroup's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation,

deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. Citigroup Proposals

Citigroup has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the "Proposed Structures").

Citigroup supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company.

1. Citigroup Corporate and Operating Units

Citigroup has proposed compensation structures for each of two Senior Executive Officers,¹ as well as for 11 Most Highly Compensated Employees, each of whom serves as an executive in Citigroup's corporate offices or as a senior executive of a Citigroup subsidiary.²

a. Cash Salary

With the exception of the Chief Executive Officer, who has agreed to continue receiving an annual base salary of \$1 during 2009, Citigroup generally proposed to increase cash salaries for employees in this group. The proposed increases included cash base salaries as high as \$800,000 per year. Citigroup's submission to the Office of the Special Master asserted that base salaries at this level could be justified by reference to the compensation of comparable employees at comparable financial institutions.

b. Stock Salary

Citigroup proposed that employees in this group receive substantial compensation in the form of vested Citigroup stock delivered on the Company's payroll schedule. Citigroup proposed that one-third of the stock be transferable upon grant; one-third be transferable on the first anniversary of the grant date; and one-third be transferable on the

¹ Citigroup had three Chief Financial Officers during 2009. Because "an individual who served as the [CFO] of a TARP recipient... is a CEO for purposes of that fiscal year," each of these three individuals is included in Citigroup's Covered Employees during 2009. See Frequently Asked Questions, Troubled Asset Relief Program Standards for Compensation and Corporate Governance, FAQ #4, available at <http://www.financialstability.gov/docs/IIrFAQSPartI.pdf>.

² Compensation for Covered Employees at two specific Citigroup subsidiaries, Citigroup Derivatives Markets, Inc. ("CDMI") and Phibro LLC, are addressed in further detail in Parts IV.A.2. and IV.A.3.

second anniversary of the grant date. Citigroup proposed to deliver annualized amounts ranging from \$2,311,667 to \$5,525,000 to employees in this group.

e. Annual Long-Term Incentive Awards

Citigroup proposed that employees in this group be eligible, in the discretion of the Company, for grants of substantial incentive awards with total value ranging from under \$1,393,333 to \$3,000,000. Citigroup proposed that the awards be payable in the form of restricted Citigroup stock that vested if the employee remained employed by Citigroup on the second anniversary of the grant date.

d. "Other" Compensation and Perquisites

Citigroup proposed payments of "other" compensation, as well as perquisites, to the employees in this group. These proposed payments varied in value.

e. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

Citigroup proposed that certain employees in this group receive compensation in the form of accruals under a "non-qualified deferred compensation" plan.

f. Severance Plans

Citigroup's submission to the Office of the Special Master indicated that the Proposed Structures would, in some cases, result in increases in amounts payable to these employees pursuant to severance arrangements. These arrangements generally provide for amounts payable upon termination of employment, including termination in light of the employee's performance.

2. Covered Employees Party to Certain Agreements
(Citigroup's CDMI & Investment and Advisory Subsidiaries)

Citigroup has also proposed compensation structures for six Covered Employees who are party to written employment agreements with Citigroup.³ Citigroup argued that the agreements provided for legally binding rights under valid employment contracts, *see* 31 C.F.R. § 30.10(e)(2). Under the Rule, amounts payable pursuant to such agreements are generally not subject to the review of the Special Master, although such amounts may be taken into account by the Special Master in connection with determinations with respect to prospective compensation payable to the employee, *id.* § 30.16(a)(3)(i).

Citigroup's proposed compensation structure for each of the six employees in this group emphasized the payment of small cash salaries accompanied by large cash payments reflecting the terms of the existing agreements.

³ Three of the Covered Employees are employed by Citigroup's CDMI subsidiary. The remaining three employees serve as the senior employees of Citigroup investment and advisory subsidiaries.

3. Covered Employees at Phibro, LLC

Citigroup has also proposed compensation structures for two Covered Employees employed by Phibro, LLC, a subsidiary engaged in commodities trading. In connection with the submission of its proposed compensation structures for these employees, Citigroup provided the Office of the Special Master with a detailed description of the historical compensation practices at this subsidiary. Generally, these practices called for Phibro to establish cash “bonus pools” in amounts based upon Phibro’s annual trading profits, and for these pools to be allocated in the discretion of Phibro’s Chief Executive Officer.

Each of the two Covered Employees employed by Phibro has historically participated in these bonus pools. As noted above, Citigroup argued that the employees’ participation in these bonus pools reflected legally binding rights under valid employment contracts, *see id.* § 30.10(e)(2), and thus were not subject to the review of the Special Master. Accordingly, Citigroup’s proposed compensation structure for each of these two employees emphasized the payment of small cash salaries accompanied by large cash payments from Phibro’s bonus pools.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review and analysis, the Special Master has determined that both the structural design of Citigroup’s proposals and the amounts potentially payable to Covered Employees under the proposals would be inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Citigroup Corporate and Operating Units

a. Cash Salary

The Special Master reviewed Citigroup’s proposal with respect to cash salary in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities,” *id.* § 30.16(b)(1)(v). The Special Master has concluded generally that, for Covered Employees at Exceptional Assistance Recipients, cash salaries should generally target the 50th percentile because such levels of cash salaries balance the need to attract and retain talented with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients. Citigroup proposed annual cash salaries in excess of \$800,000 for the three employees in this group. The Special Master

has concluded that the proposed cash salaries are inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities.

Accordingly, the Special Master has determined that Citigroup's proposed cash base salaries for these employees are inconsistent with the Public Interest Standard. As described in further detail in *Exhibits I* and *II*, the cash salaries for these employees that the Special Master has determined to be consistent with the Public Interest Standard are comparable to those amounts for persons in similar positions or roles at similar entities, and are generally less than \$500,000.

b. Stock Salary

First, the Special Master reviewed the amounts of compensation to be granted in the form of stock salary in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." *Id.* § 30.16(b)(1)(v). The Special Master has concluded that the proposed amounts to be delivered in stock salary are inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to the compensation payable to persons in similar positions or roles at similar entities. The Special Master has concluded that lesser amounts payable in the form of stock salary are consistent with the Public Interest Standard. These amounts are described in further detail in *Exhibits I* and *II*.

Second, the Special Master reviewed the structure of Citigroup's stock salary proposal in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *See id.* § 30.16(b)(1)(i). The Special Master has concluded that Citigroup's proposal, which contemplates that one third of stock salary will be transferable *immediately* by the employee, does not provide sufficient alignment with long-term value creation.

The Special Master also reviewed the structure of Citigroup's stock salary proposal in light of the principle that an appropriate portion of compensation should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Stock that is immediately transferable permits an employee to liquidate his or her investment in the stock immediately rather than over a period designed to reflect performance. Accordingly, the Special Master has determined that the structure of Citigroup's stock salary proposal is inconsistent with the Public Interest Standard.

Accordingly, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard would not permit immediate transferability or sale of stock salary. Instead, stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if Citigroup repays its TARP obligations.

c. Annual Long-Term Incentive Awards

The Special Master evaluated Citigroup's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(1)(iv). Citigroup's proposed awards would have been granted in the discretion of the Company rather than based on performance metrics. The Special Master has concluded that the proposed incentive awards are inconsistent with the Public Interest Standard because they could be granted without respect to the achievement of objective, measurable performance metrics.

The Special Master also evaluated Citigroup's proposed awards in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle in the Rule providing that performance-based compensation should be payable "over a relevant performance period," *id.* Restricted stock granted in connection with Citigroup's proposed awards would have vested on the second anniversary of the grant date. Accordingly, the Special Master has concluded that the proposed incentive awards are inconsistent with the Public Interest Standard because they would have vested over a period too short to be relevant to the long-term performance of the Company.

Accordingly, as described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of Citigroup's TARP obligations that are repaid.

d. "Other" Compensation and Perquisites

Citigroup proposed limited payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments

exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.⁴

e. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

Citigroup also proposed that certain Covered Employees receive limited compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top employee upon leaving the Company.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum.

f. Severance Plans

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

⁴ Citigroup has, however, identified four employees subject to expatriate arrangements providing for the payment of certain “other” compensation in excess of this limitation. The Special Master has reviewed these arrangements and has concluded that such payments, not to exceed \$350,000 per employee, are consistent with the Public Interest Standard.

2. Covered Employees Party to Certain Agreements *(Citigroup's CDMI & Investment and Advisory Subsidiaries)*

The Special Master reviewed Citigroup's proposed compensation structures for these employees in light of the principle that compensation structures should be "performance-based over a relevant performance period." *id.* § 30.16(b)(1)(iv). Citigroup's proposals for these employees generally provided for the payment of substantial guaranteed minimum cash amounts. The Special Master has concluded that the proposal is inconsistent with the Public Interest Standard because the payment of a large cash lump sum is not adequately linked to the performance of the Company over a relevant performance period.

The Special Master also reviewed the proposals in light of the requirement that compensation structures "avoid incentives to take unnecessary or excessive risks," *id.* §30.16(b)(1)(i). A guaranteed minimum amount provides the employee with little downside risk in the event of poor performance, but potentially unlimited gain in the event that substantial risk-taking leads to significant profits. Accordingly, the Special Master has concluded that the proposal is inconsistent with the Public Interest Standard because the presence of a guaranteed minimum amount may lead to incentives to take unnecessary or excessive risks.

During discussions with the Company, the Office of the Special Master conveyed the view that the proposals were inconsistent with the Public Interest Standard. Citigroup asserted that these payments were to be made under agreements providing for legally binding rights under valid written employment contracts. *see id.* § 30.10(e)(2). Following extensive discussions, all six of the employees in this group agreed to waive their rights to the cash payments reflected in the Company's proposals.

Accordingly, these payments will be restructured to be consistent with the Public Interest Standard and will include the following:

- Cash base salaries no greater than \$475,000.
- Grants of vested stock salary redeemable only in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if Citigroup repays its TARP obligations.
- Subject to the achievement of objective, specified performance metrics developed in consultation with the Office of the Special Master, an annual long-term incentive award, granted in the form of Citigroup restricted stock that will be forfeited unless the employee stays with Citigroup for at least three years following grant, and may only be redeemed in 25% installments for each 25% of Citigroup's TARP obligations that are repaid.⁵

⁵ Stock granted pursuant to such awards, if any, for these three employees may vest if the employee is terminated by Citigroup without "cause" prior to the third anniversary of the grant date.

The compensation structures for these employees will also be subject to the limitations described in Parts IV.B.1.d., (“other” compensation and perquisites), IV.B.1.e. (non-qualified deferred compensation), and IV.B.1.f. (severance plans) above.

3. Covered Employees at Phibro, LLC

The Special Master reviewed the proposals for these two employees in light of the principle that compensation arrangements should not “reward employees for short-term or temporary increases in value,” *id.* § 30.16(b)(1)(i). Citigroup’s proposal with respect to these employees called for the payment of substantial bonuses based upon Phibro’s performance during a fifteen-month period. Accordingly, the Special Master concluded that the proposals were inconsistent with the Public Interest Standard because they could provide substantial rewards for short-lived increases in value.

The Special Master also reviewed the proposals in light of the requirement that compensation structures should “avoid incentives to take unnecessary or excessive risks,” *id.* §30.16(b)(1)(i). Citigroup’s proposal called for the payment of cash bonuses based on the short-term results of a trading operation involving, according to Citigroup’s analysis, long-term risk-taking that could result in losses exceeding several billion dollars. Accordingly, the Special Master concluded that the proposals were inconsistent with the Public Interest Standard because they could provide the employees with incentives to take unnecessary or excessive risks.

In addition, the Special Master reviewed the proposals in light of the principle that “amounts payable...should be consistent with, *and not excessive taking into account*, compensation structures and amounts for persons in similar positions or roles.” *Id.* § 30.16(b)(1)(v) (emphasis added). Citigroup’s proposal for one of these employees involved the payment of a 2009 bonus in excess of \$95,000,000. The Special Master concluded that this amount was excessive taking into account compensation amounts for persons in similar positions or roles at similar entities.

During discussions with the Company, the Office of the Special Master conveyed the view that the proposal was inconsistent with the Public Interest Standard. Citigroup asserted that these payments were to be made under agreements providing for legally binding rights under valid written employment contracts, *see id.* § 30.10(c)(2). During these discussions, and while the proposals were under consideration by the Special Master, Citigroup informed the Special Master that the Company had entered into a definitive agreement providing for the sale of Phibro to Occidental Petroleum, Inc., which has not received assistance under the TARP. Accordingly, the compensation structures of both Covered Employees at Phibro will no longer be subject to the review of the Special Master in 2010.

One of the Covered Employees at Phibro entered into an agreement providing that no amounts will be paid to that employee for 2009 until Phibro is no longer a subsidiary of Citigroup, and that the amounts will not be payable in cash until January 2011. With respect to 2009, the Special Master has concluded that, to be consistent with the Public

Interest Standard, that employee's compensation structure must provide for no compensation of any kind during 2009. Accordingly, amounts paid to the employee prior to the date of this Determination Memorandum shall be repaid to Citigroup.

The second Covered Employee at Phibro was determined not to have a legally binding right to the proposed amounts. *See id.* § 30.10(e)(2). Accordingly, the Office of the Special Master engaged in discussions with the Company to ensure that no payments would be made to this employee that would be inconsistent with the Public Interest Standard. The compensation structures for this employee that the Special Master has determined to be consistent with the Public Interest Standard will be structured in accordance with the conclusions of the Special Master described in Part IV.B.2. above. The compensation structures for this employee will also be subject to the limitations described in Parts IV.B.2.d., ("other" compensation and perquisites), IV.B.2.e. (non-qualified deferred compensation), and IV.B.2.f. (severance plans) above. Further detail is provided in *Exhibits I and II*.

4. Departed Employees

In addition, three employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to those employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and "other" compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period," 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, Citigroup must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are "measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv), long-term incentive awards may not be granted unless the Personnel and Compensation Committee of Citigroup's Board of Directors determines to grant such an award in light of the employee's performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special

Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, Citigroup's securities filings. In addition, the Committee must retain discretion with respect to each employee, to reduce (but not to increase) the amount of any incentive award on the basis of its overall evaluation of the employee's or Citigroup's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part III, above and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in Citigroup. It is critical that these compensation structures achieve the Rule's objective of "appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity," *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, Citigroup is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Citigroup must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with Citigroup's senior risk officers any risks that could threaten the value of Citigroup. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) CEO compensation plans that could lead CEOs to take unnecessary and excessive risks that threaten the value of Citigroup; (2) CEO or other employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employees' compensation plans that could encourage the manipulation of Citigroup's reported earnings to enhance the compensation of any of the employees. *Id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The compensation committee must disclose to Treasury an annual narrative description of whether Citigroup, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).

- (3) *Disclosure of Perquisites.* As noted in Part IV, Citigroup must provide to Treasury an annual disclosure of any perquisite whose total value for Citigroup's fiscal year exceeds \$25,000 for each of the Covered Employees. Citigroup 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). *Id.* § 30.11(b).
- (4) *Clawback.* Citigroup must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Citigroup must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Say-on-Pay.* Citigroup 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). *Id.* § 30.13.
- (6) *Policy Addressing Excessive or Luxury Expenditures.* Citigroup was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on Citigroup's website. If Citigroup's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on the company website. *Id.* § 30.12.
- (7) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, Citigroup is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (8) *CEO and CFO Certification.* Citigroup's chief executive officer and chief financial officer must provide to the Securities and Exchange Commission written certification of the Company's compliance with the various requirements of section III of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by Citigroup require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section

30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, Citigroup may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If Citigroup does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES

2009 Compensation

Company Name: Citigroup Inc.

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.)
100001	\$1	\$0	\$0	\$1
100004	\$475,000	\$5,433,333	\$2,850,000	\$8,550,000
100005	\$500,000	\$3,400,000	\$1,950,000	\$5,850,000
100006	\$0	\$0	\$0	\$0
100007	\$475,000	\$5,629,167	\$3,000,000	\$9,000,000
100008	\$475,000	\$3,733,333	\$2,000,000	\$6,000,000
100009	\$475,000	\$3,979,167	\$2,133,333	\$6,400,000
100010	\$475,000	\$5,699,390	\$3,000,000	\$9,000,000
100011	\$475,000	\$4,683,333	\$2,475,000	\$7,425,000
100013	\$475,000	\$5,399,390	\$2,850,000	\$8,550,000
100014	\$475,000	\$5,733,333	\$3,000,000	\$9,000,000
100015	\$475,000	\$4,400,000	\$2,333,333	\$7,000,000
100017	\$475,000	\$3,200,000	\$1,733,333	\$5,200,000
100019	\$475,000	\$3,000,000	\$1,633,333	\$4,900,000
100020	\$475,000	\$2,845,833	\$1,556,250	\$4,668,750
100021	\$475,000	\$1,775,000	\$1,000,000	\$3,000,000
100022	\$475,000	\$2,520,000	\$1,393,333	\$4,180,000
100023	\$475,000	\$3,733,333	\$2,000,000	\$6,000,000
100025	\$475,000	\$250,000	\$237,500	\$712,500
100075	\$500,000	\$5,062,500	\$2,666,667	\$8,000,000
100107	\$500,000	\$2,916,666	\$1,666,667	\$5,000,000

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$244.9M or 96.4%
Total Direct Compensation decreased by \$272M or 69.7%

2007 Cash decreased by \$78.4M or 89.6%
Total Direct Compensation decreased by \$217.3M or 64.7%

Note: 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(c)(2).

Note: 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- ***Cash base salary.*** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- ***Stock salary.*** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- ***Long-term restricted stock.*** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Personnel and Compensation Committee of Citigroup's Board of Directors. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- ***Other compensation and perquisites.*** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- ***Supplemental executive retirement plans and non-qualified deferred compensation plans.*** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- ***Qualified Plans.*** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D. C. 20530

December 21, 2009

Michael S. Helfer, Esquire
General Counsel & Corporate Secretary
Citigroup Inc.
399 Park Avenue
New York, NY 10022

***Re: Technical Corrections Regarding 2009 Compensation Payments and Structures
for Senior Executive Officers and Most Highly Compensated Employees***

Dear Mr. Helfer:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), on October 22, 2009, the Special Master issued an initial determination (the "Initial Determination") with respect to compensation payments for the senior executive officers and next 20 most highly compensated employees ("Top 25 Employees") of Citigroup Inc. ("Citigroup"). 31 C.F.R. § 30.16(a)(3)(i).

Under the Rule, an initial determination of the Special Master is treated as final unless the TARP recipient requests reconsideration within 30 days. Because Citigroup did not request reconsideration, the Initial Determination became final effective November 21, 2009. It has come to the attention of the Office of the Special Master, however, that the Initial Determination contained two technical errors. Attached as ***Exhibit I*** to this letter are corrections to the errors, which, together with the memorandum issued on October 22, 2009, set forth the determinations of the Special Master.

The Initial Determination, as modified by this letter, is limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of any compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by Citigroup to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Lewis B. Kaden, Esquire
Mr. Paul McKinnon

EXHIBIT I
CITIGROUP 2009 COMPENSATION DETERMINATIONS
TECHNICAL CORRECTIONS

1. In Part IV.B.1.d. (on page A10) of the Initial Determination, in footnote 4, replace the first sentence, which reads, "Citigroup has, however, identified four employees subject to expatriate arrangements providing for the payment of certain 'other' compensation in excess of this limitation." with:

"Citigroup has, however, identified five employees subject to expatriate arrangements providing for the payment of certain 'other' compensation in excess of this limitation."

2. Replace the first sentence of Part V.B., item (4) (on page A15) of the Initial Determination with:

"Citigroup must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria, or if the employee is terminated due to misconduct that occurred during the period in which the incentive award was earned."



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20230

October 22, 2009

Mr. Gregory E. Lau
Executive Director – Global Compensation
General Motors Company
300 Renaissance Drive
MC 482-C32-B61
Detroit, MI, 48265-3000

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. Lau:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the Senior Executive Officers and certain Most Highly Compensated Employees of General Motors Company ("GM"). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for GM's senior executive officers and certain most highly compensated employees generally must comport with the following standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Rather than cash, the majority of each Corporate Employee's base salary will be paid in the form of stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GM repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In GM's case, cash compensation for these employees will decrease 31.0% from 2008 levels.
- Total compensation for each individual must both reflect the individual's value to GM and be appropriate when compared with the total compensation provided to persons in similar positions or roles at similar entities, and should target the 50th percentile of total compensation for such similarly situated employees. Overall, total direct compensation must be reduced from 2008 amounts. In GM's case, total direct compensation for these employees will decrease 20.4% from 2008 levels.
- If, and only if, the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for long-term incentive awards. All such awards must be payable in the form of restricted stock that will be forfeited unless the employee stays with GM for at least three years following grant, and may only be redeemed in 25% installments for each 25% installment of GM's TARP obligations that are repaid. Such long-term incentive awards may not exceed one-third of total annual compensation.
- Any and all incentive compensation paid to employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other "non-qualified deferred compensation" plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), GM must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Executive Compensation Committee of GM's Board of Directors, which is composed solely of independent directors, to the Office of the Special Master or, subject to the approval of the Special Master, in such other manner as is

determined by the compensation committee. These performance objectives must be reviewed and approved by the Office of the Special Master.

- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- GM may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Executive Compensation Committee of GM’s Board of Directors must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten GM’s value.

These requirements are described in further detail in the attached Determination Memorandum.

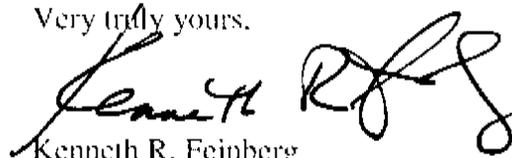
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GM’s compensation structures:

- *Performance-based compensation.* The majority of approved compensation depends on GM’s performance, and ties the financial incentives of GM employees to the overall performance of the Company. A majority of the salary paid to employees under these structures will be paid in the form of stock; and, because the stock salary will become transferable only in three equal, annual installments beginning on the second anniversary of the date the stock salary is earned (with each installment redeemable one year earlier if GM repays its TARP obligations), the ultimate value realized by the employee will depend on GM’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. 31 *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for GM to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that the approved compensation structures are competitive when compared to those provided to persons in similar positions or roles at similar entities. Overall, the compensation structures generally provide for total compensation packages well below the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate Allocation.* The total compensation payable to GM employees is weighted heavily toward long-term structures that are tied to GM’s performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to GM employees should consist

only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If GM does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth R. Feinberg". The signature is written in a cursive style with a large, stylized "K" and "F".

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Ms. Mary T. Barra

ANNEX A
DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

General Motors Company (“GM” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3) of the Rule. These proposals apply to three employees that the Company has identified as Senior Executive Officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and seventeen employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Covered Employees comprise two business unit categories: GM corporate employees (“Corporate Employees”) and employees of GM’s asset management unit (“Promark Employees”). The relatively heavy concentration of Promark Employees among the Covered Employee group—fifteen of the twenty employees—resulted from the method used to calculate a Most Highly Compensated Employee’s compensation under the Rule. As a result of the accounting technique used to value equity compensation under this method, GM corporate employees who otherwise may have been Most Highly Compensated Employees saw their compensation reduced greatly because of the stock performance of GM’s predecessor in 2008.

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and the Department of the Treasury employees working in the Office of the Special Master, conducted extensive discussions with GM officials. During these discussions, the Office of the Special Master informed GM about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and GM explored potential compensation structures for the Covered Employees.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including GM, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s compensation structures. The request required GM to submit data describing its proposed compensation structures, and the payments that would result from the proposed structures, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). GM was required to submit competitive market data indicating how the amounts payable under GM’s Proposed Structures relate to the amounts paid to persons in similar positions or roles at similar entities. GM was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GM submitted this information to the Office of the Special Master on August 7, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that GM’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of GM’s Proposed Structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;

- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees);
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part II below, when evaluating the Company's Proposed Structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether GM's Proposed Structures, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives which encourage executive officers and employees to take unnecessary or excessive risks that could threaten the value of the exceptional assistance recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the exceptional assistance recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).

- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the exceptional assistance recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular

employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. GM Proposals

GM provided the Office of the Special Master with detailed information concerning its 2009 Proposed Structures for the Covered Employees, including amounts potentially payable under the Proposed Structures for each Covered Employee (the "Proposed Structures").

GM's proposals for Corporate Employees and Promark Employees reflected the significant differences between the businesses and their customary compensation structures. The Corporate Employees generally manage the Company's automotive business and their compensation structure is weighted more heavily toward stock salary than the Promark Employees, who manage GM and third-party pension trust fund and other assets.

GM supported its Proposed Structures with detailed assessments of each Covered Employee's tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company. Separate peer groups were provided for the Corporate Employees and the Promark Employees.

1. Cash Salary

GM proposed raising the cash salary of each Covered Employee to annual rates of up to \$1,800,000 million for Corporate Employees and up to \$658,000 for Promark Employees. Under GM's proposal, all Covered Employees' salaries would increase for the remainder of 2009 to the levels at which they were paid prior to across-the-board salary reductions earlier in 2009.

2. Stock Salary

GM proposed that certain Covered Employees receive substantial stock salary over the remainder of 2009, in amounts of up to \$2,235,000. On each regular payroll date, Covered Employees would earn fully vested stock units, which would then settle in their entirety on January 2, 2011.

3. Annual Long-Term Incentive Awards

GM proposed that the Covered Employees receive annual long-term incentive awards, in amounts ranging from \$145,733 to \$1,815,000. Under the proposal, employees would receive awards generally equal to one third of total 2009 compensation, payable in long-term restricted stock that would vest on the last to occur of a public offering, the second anniversary of the award date and GM's repayment of its TARP obligations.

4. "Other" Compensation and Perquisites

GM proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

GM also proposed that certain Covered Employees receive compensation in the form of accruals under a "non-qualified deferred compensation" plan.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part II above. In light of this review and analysis, the Special Master has determined that both the structural design of GM's proposals and the amounts potentially payable to Covered Employees under the proposals are inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed the cash salary proposals in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has concluded generally that, for Covered Employees at Exceptional Assistance Recipients, cash salaries should generally target the 50th percentile because such levels of cash salaries balance the need to attract and retain

talented with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

In conducting the review of proposed cash salary amounts, the Special Master made use of the resources described in Part II. Based on this review, the Special Master has concluded that GM's proposed cash salaries for certain Corporate Employees and certain Promark Employees would be inconsistent with the Public Interest Standard because these amounts cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities.

In addition, because cash salaries do not create incentives for employees to pursue long-term value creation or financial stability, the amount of cash salary provided to a Covered Employee must be considered in comparison to the portion of compensation that is "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that the cash portion of the Covered Employee's compensation is not performance-based and generally should not exceed \$500,000. See *Id.* § 30.16(b)(1)(iii).

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined are consistent with the Public Interest Standard compare appropriately to those paid to persons in similar positions or roles at similar entities, and are generally less than \$500,000.

2. Stock Salary

The Special Master performed a review of the amount of stock salary GM proposed to pay the Covered Employees. The Special Master determined that GM's stock salary proposal would place the Covered Employees at or below the 50th percentile of compensation for persons in similar positions or roles at similar entities. These amounts are described in further detail in *Exhibits I* and *II*.

The Special Master also reviewed the structure of GM's stock salary proposal. The Rule requires that the Special Master consider whether an appropriate portion of an employee's compensation is allocated to long-term incentives *Id.* § 30.16(b)(1)(iii). Stock salary that can be liquidated too soon could incentivize employees to pursue short-term results instead of long-term value creation. See *Id.* § 30.16(b)(1)(i). Under the Company's proposal, all stock salary would be redeemable by the employee in slightly more than one year after being granted. The Special Master has concluded that one year is an insufficient holding period to provide an appropriate long-term incentive.

As described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard require that stock salary become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GM repays its TARP obligations.

3. Annual Long-Term Incentive Awards

The Special Master reviewed GM's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(1)(iv). GM's proposed annual long-term incentive awards included overall business goals. Neither the amounts of the awards allocated to individual employees nor the percentage of the awards that would vest would be calculated by the level of individual achievement. As a result, the Special Master has concluded that GM's proposed annual long-term incentive awards are inconsistent with the Public Interest Standard because they do not include tailored performance metrics.

The Special Master also evaluated GM's proposal in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the Rule's principle providing that performance-based compensation should be payable "over a relevant performance period," *id.* Under GM's proposal, the restricted stock could become fully vested after only two years of service. Accordingly, the Special Master has concluded that GM's proposed annual long-term incentive awards are inconsistent with the Public Interest Standard because they may vest over a period too short to be relevant to the long-term performance of the Company.

As described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of GM's TARP obligations that are repaid.

4. "Other" Compensation and Perquisites

GM proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments

exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

5. Non-Qualified Deferred Compensation

GM also proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top executive upon leaving the firm.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum.

6. Severance Arrangements

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

7. Departed Employees

In addition, three employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to these employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and “other”

compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, GM must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), long-term incentive awards may not vest unless the Company’s compensation committee determines that the applicable level of performance—as measured against objective performance criteria that the compensation committee has developed and reviewed in consultation with the Office of the Special Master—has been met. This determination must be certified by the compensation committee to the Office of the Special Master or, subject to the approval of the Special Master, in such other manner as is determined by the compensation committee.

In addition, as noted in Part IV, above and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in the Company. It is critical that these compensation structures achieve the Rule’s objective of “appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity,” *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, the Company is required to institute the following corporate governance reforms:

- (1) *Executive Compensation Committee; Risk Review.* GM must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with GM's senior risk officers any risks that could threaten the value of GM. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) CEO compensation plans that could lead CEOs to take unnecessary and excessive risks that threaten the value of the GM; (2) CEO or other employees' compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employee compensation plans that could encourage the manipulation of GM's reported earnings to enhance the compensation of any of the employees. *Id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The Executive Compensation Committee must disclose to Treasury an annual narrative description of whether GM, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the Executive Compensation Committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).
- (3) *Disclosure of Perquisites.* As noted in Part IV, GM must provide to Treasury an annual disclosure of any perquisite whose total value for GM's fiscal year exceeds \$25,000 for each of the Covered Employees. GM 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). *Id.* § 30.11(b).
- (4) *Clawback.* GM must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. GM must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Policy Addressing Excessive or Luxury Expenditures.* GM was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on GM's website. If GM's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- (6) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, GM is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).

(7) *CEO and CFO Certification.* GM's chief executive officer and chief financial officer must provide written certification of GM's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GM require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GM does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by GM to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES

2009 Compensation

Company Name: General Motors Company

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.)
	\$950,000	\$2,421,667	\$1,815,000	\$5,445,000
	\$400,000	\$88,317	\$233,408	\$700,225
	\$450,000	\$137,717	\$224,908	\$674,725
	\$353,333	\$11,567	\$172,533	\$517,600
	\$750,000	\$436,467	\$493,858	\$1,481,575
	\$276,667	\$96,041	\$183,021	\$549,062
	\$500,000	\$316,222	\$426,994	\$1,280,883
	\$433,333	\$312,894	\$314,342	\$943,025
	\$500,000	\$576,667	\$630,000	\$1,881,000
	\$443,333	\$194,594	\$241,475	\$724,425
	\$326,667	\$123,091	\$190,296	\$570,887
	\$313,333	\$131,357	\$181,928	\$545,785
	\$233,333	\$61,967	\$145,733	\$437,200
	\$500,000	\$353,300	\$365,158	\$1,095,475
	\$426,667	\$186,817	\$277,658	\$832,975
	\$500,000	\$279,778	\$353,889	\$1,061,667
	\$306,667	\$79,517	\$173,008	\$519,025
	\$294,500	\$38,967	\$166,733	\$500,200
	\$276,667	\$187,250	\$204,875	\$614,625
	\$500,000	\$409,222	\$526,319	\$1,578,958

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$3.9M or 31.0%
Total Direct Compensation decreased by \$5.6M or 24.7%

2007 Cash decreased by \$7.4M or 46.0%
Total Direct Compensation decreased by \$4.4M or 16.9%

Note: 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note: 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that these structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- ***Cash base salary.*** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- ***Stock salary.*** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value of a share on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- ***Long-term restricted stock.*** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Compensation and Benefits Committee of the Company's Board of Directors. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- ***Other compensation and perquisites.*** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- ***Supplemental executive retirement plans and non-qualified deferred compensation plans.*** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- ***Qualified Plans.*** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Mr. Al de Molina
Chief Executive Officer
General Motors Acceptance
Corporation Financial Services
420 Toringdon Way
Suite 400
Charlotte, NC, 28277

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. de Molina:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and certain most highly compensated employees of General Motors Acceptance Corporation Financial Services ("GMAC"). Attached as ***Annex A*** is a Determination Memorandum (accompanied by ***Exhibits I*** and ***II***) providing the determinations of the Special Master with respect to 2009 compensation for those employees. *Id.* § 30.16(a)(3).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for GMAC's senior executive officers and certain most highly compensated employees generally must comport with the following standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Rather than cash, the majority of each individual's base salary will be paid in the form of stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GMAC repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In GMAC's case, cash compensation for these employees will decrease 50% from 2008 levels
- Total compensation for each individual must both reflect the individual's value to GMAC and be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees. Overall, total direct compensation must be significantly reduced from 2008 amounts. In GMAC's case, total direct compensation for these employees will decrease 86% from 2008 levels.
- If—and only if—the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, employees may be eligible for long-term incentive awards. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with GMAC for at least three years following grant, and may only be redeemed in 25% installments for each 25% installment of GMAC's TARP obligations that are repaid. Such long-term incentive awards may not exceed one third of total annual compensation.
- Any and all incentive compensation paid to employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown to the satisfaction of the Special Master).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other "non-qualified deferred compensation" plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of *Id.* § 30.16(a)(3), GMAC must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified in the company's securities filings by the Compensation, Nomination and Governance Committee of GMAC's Board of Directors, which is composed solely of

independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.

- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect involving company stock that would undermine the long-term performance incentives created by the compensation structures.
- GMAC may not provide a tax “gross up” of any kind to these employees.
- At least once every year, GMAC’s compensation committee must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten GMAC’s value. These requirements are described in further detail in the attached Determination Memorandum.

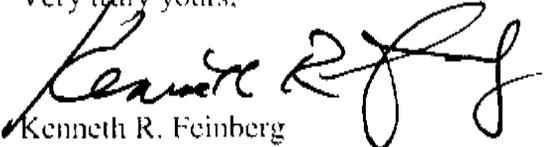
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GMAC’s compensation structures:

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on GMAC’s performance, and ties the financial incentives of GMAC employees to the overall performance of the Company. A majority of the salary paid to employees under these structures will be paid in the form of stock units; and, because the stock salary will become transferable only in three equal, annual installments beginning on the second anniversary of the date stock salary is earned (with each installment redeemable one year earlier if GMAC repays its TARP obligations), the ultimate value realized by the executive will depend on GMAC’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for GMAC to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that the approved compensation structures are competitive when compared to those provided to persons in similar positions or roles at similar entities. Overall, the compensation structures generally provide for total compensation packages that target the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate Allocation.* The total compensation payable to GMAC employees is weighted heavily towards long-term structures that are tied to GMAC’s performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to GMAC employees

should consist only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, the Company may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Mr. Kim Fennebresque
William B Solomon, Jr., Esquire
Drema M. Kalajian, Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

General Motors Acceptance Corporation Financial Services (“GMAC” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to five employees that the Company has identified as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 17 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s proposed compensation structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with GMAC officials. During these discussions, the Office of the Special Master informed GMAC about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and GMAC explored potential compensation structures for the Covered Employees.

The Rule required that each Exceptional Assistance Recipient submit proposed compensation structures for each senior executive officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including GMAC, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required GMAC to submit data describing its proposed compensation structures, and the payments that would result from the proposed structures, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). GMAC was required to submit competitive market data indicating how the amounts payable under GMAC's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. GMAC was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GMAC submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that GMAC's submission was substantially complete for purposes of the Rule. *Id.* The Office of the Special Master then commenced a formal review of GMAC's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the U.S. Mercer Benchmark Database-Executive;
- External information on comparable compensation structures extracted from Equilar's ExecutiveInsight database (which includes information drawn from publicly filed proxy statements) and Equilar's Top 25 Survey Summary Report (which includes information from a survey on the pay of highly compensated employees);

- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with of Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part II below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether GMAC's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives which encourage executive officers and employees to take unnecessary or excessive risks that could threaten the value of the exceptional assistance recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the exceptional assistance recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the exceptional assistance recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation.

deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. GMAC Proposals

GMAC has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts potentially payable under the compensation structure for each Covered Employee (the "Proposed Structures").

GMAC supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company.

1. Cash Salary

GMAC proposed increasing the cash salary of each Covered Employee to annualized amounts ranging from \$380,000 to \$1,000,000. The Company's proposal asserted that cash salaries at such levels could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

2. Stock Salary

GMAC proposed that Covered Employees receive substantial stock salary, in annualized amounts ranging from \$400,000 to \$5,330,000. On each regular payroll date, Covered Employees would earn fully vested stock units, which would then settle in two tranches of 50% each on March 15, 2011, and March 15, 2012, respectively.

3. Annual Long-Term Incentive Awards

GMAC proposed that the Covered Employees be eligible in 2009 for substantial grants of annual long-term incentive awards, with total potential values ranging from \$400,000 to \$3,170,000. Under the proposal, the amount of an employee's award would be calculated based on achievement of individual performance goals, as assessed by the GMAC's compensation committee in consultation with the Company's chief executive officer. Awards would be paid in the form of long-term restricted stock with 50% vesting after two years of service and 50% vesting after three years of service. Actual payment would be made in 25% installments for each 25% repayment of GMAC's TARP obligations.

4. "Other" Compensation and Perquisites

GMAC proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

GMAC proposed that certain Covered Employees receive substantial compensation in the form of accruals under a “non-qualified deferred compensation” plan.

6. Severance Arrangements

GMAC’s submission to the Office of the Special Master indicated that, in some cases, the proposed compensation structures would result in increases in amounts payable to these employees pursuant to existing severance arrangements. These arrangements generally provide for cash amounts payable upon termination of employment, including termination in light of the employee’s performance.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part II above. In light of this review and analysis, the Special Master has determined that both the structural design of GMAC’s proposals and the amounts potentially payable to Covered Employees under the proposals would be inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed the cash salary proposals in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities.” 31 C.F.R. § 30.16(b)(1)(v). The Special Master has concluded that, for Covered Employees at Exceptional Assistance Recipients, cash salaries generally should target the 50th percentile as compared to persons in similar positions or roles at similar entities because such levels of cash salaries balance the need to attract and retain talented employees with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

In conducting this review, the Special Master made use of the resources described in Part II. Based on this review, the Special Master has concluded that GMAC’s proposed cash salaries would be inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities.

..

In addition, because they do not create incentives for employees to pursue long-term value creation or financial stability, the amount of cash salary provided to a Covered Employee must be considered in comparison to the portion of compensation that is “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that the cash portion of the Covered Employee’s compensation should in most cases not exceed \$500,000. See *Id.* § 30.16(b)(1)(iii).

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined to be consistent with the Public Interest Standard compare appropriately to those paid to persons in similar positions or roles at similar entities, and are generally less than \$500,000.

2. Stock Salary

The Special Master reviewed the amounts of stock salary proposed by GMAC and found that they were not comparable to payments provided to persons in similar positions or roles at similar entities. The Special Master has concluded that the amounts of stock salary GMAC proposed paying to certain Covered Employees is excessive and that such payments would be inconsistent with the Public Interest Standard. The compensation structures that the Special Master has determined are consistent with the Public Interest Standard provide lesser amounts of stock salary, as described in further detail in *Exhibits I* and *II*.

The Special Master also reviewed the structure of GMAC’s stock salary proposal. The Rule requires that the Special Master consider whether an appropriate portion of an employee’s compensation is allocated to long-term incentives *Id.* § 30.16(b)(1)(iii). Stock salary that can be liquidated too soon could incentivize employees to pursue short-term results instead of long-term value creation by paying excessive benefits to employees for short-term increases in share price. See *Id.* § 30.16(b)(1)(i). Under the Company’s proposal, 50% of stock salary would be redeemable slightly more than one year after being granted, and 100% of stock salary would be redeemable slightly more than two years. The Special Master has concluded that one year is an insufficient holding period to provide an appropriate long-term incentive.

As described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard require that, at a minimum, stock salary only become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GMAC repays its TARP obligations.

In addition, GMAC proposed that certain restricted stock unit awards granted to Covered Employees in 2009 would be canceled in consideration of compensation provided to such employees under the Proposed Structures. The Special Master has concluded that the cancellation of such employees’ restricted stock unit awards in consideration of eligibility to receive stock salary is consistent with the Public Interest

Standard, and that the determination that payment of stock salary to such employees is consistent with the Public Interest Standard is conditioned upon such cancellation.

3. Annual Long-Term Incentive Awards

The Special Master reviewed GMAC's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(1)(iv). The Special Master also evaluated GMAC's proposed awards by application of recently adopted international standards that provide that incentive compensation should generally be payable over a period of three years as well as the Rule's principle that performance-based compensation should be payable "over a relevant performance period," *id.*

Although GMAC proposed individually tailored performance metrics to calculate the size of long-term restricted stock awards, once awarded the restricted stock would partially vest after only two years of service. In addition, the restricted stock would vest immediately upon a Covered Employee's involuntary employment termination without "cause" either between the second and third anniversary of the grant date, or in the year following a change in control of GMAC. Accordingly, the Special Master has concluded that GMAC's proposed annual long-term incentive awards would be inconsistent with the Public Interest Standard because they may vest over a period too short to be relevant to the long-term performance of the Company.

As described in *Exhibits I and II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of GMAC's TARP obligations that are repaid.

4. "Other" Compensation and Perquisites

GMAC proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I and II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and

perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

5. Non-Qualified Deferred Compensation

GMAC also proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top executive upon leaving the firm.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum..

6. Severance Arrangements

GMAC’s submission to the Office of the Special Master indicated that, in some cases, the proposed compensation structures would result in increases in amounts payable to these employees pursuant to existing severance arrangements. These arrangements generally provide for cash amounts payable upon termination of employment, including termination in light of the employee’s performance.

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the

Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

7. Departed Employees

In addition, three employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to these employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and "other" compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period," 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, GMAC must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are "measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv), long-term incentive awards may not be granted unless the Company's compensation committee determines to grant such an award in light of the employee's performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed in, and certified by the committee as part of, the Company's securities filings. In addition, the committee must retain discretion with respect to each executive to reduce (but not to increase) the amount of any incentive award on the basis of its overall evaluation of the executive's or the Company's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part III, above and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in GMAC. It is critical that these compensation structures achieve the Rule's objective of "appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity," *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, GMAC is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* GMAC must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with GMAC's senior risk officers any risks that could threaten the value of GMAC. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) CEO compensation plans that could lead CEOs to take unnecessary and excessive risks that threaten the value of GMAC; (2) the CEO or other employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) the employees' compensation plans that could encourage the manipulation of GMAC's reported earnings to enhance the compensation of any of the employees. *Id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The compensation committee must disclose to Treasury an annual narrative description of whether GMAC, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(e).
- (3) *Disclosure of Perquisites.* As noted in Part III, GMAC must provide to Treasury an annual disclosure of any perquisite whose total value for GMAC's fiscal year exceeds \$25,000 for each of the Covered Employees. GMAC 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). *Id.* § 30.11(b).
- (4) *Clawback.* GMAC must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. GMAC must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.

- (5) *Policy Addressing Excessive or Luxury Expenditures.* GMAC was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on the Company's website. If GMAC's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on GMAC's Internet website. *Id.* § 30.12.
- (6) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, GMAC is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (7) *CEO and CFO Certification.* GMAC's chief executive officer and chief financial officer must provide to the Securities and Exchange Commission written certification of GMAC's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GMAC require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GMAC does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance

of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by GMAC to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

**EXHIBIT I
COVERED EMPLOYEES**

2009 Compensation

Company Name: GMAC Financial Services

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new rate + stock salary + long-term restricted stock.)
582903	\$850,000	\$4,491,667	\$2,816,667	\$8,158,334
129881	\$400,000	\$588,333	\$415,000	\$1,403,333
151695	\$500,000	\$1,858,333	\$1,088,000	\$3,446,333
172265	\$500,000	\$2,730,000	\$1,615,000	\$4,845,000
197253	\$500,000	\$1,941,667	\$1,050,000	\$3,491,667
250095	\$500,000	\$4,137,500	\$2,500,000	\$7,137,500
265383	\$375,000	\$445,833	\$100,000	\$1,200,000
353403	\$365,000	\$646,111	\$500,000	\$1,511,111
391076	\$450,000	\$1,133,333	\$725,000	\$2,308,333
398005	\$450,000	\$625,833	\$500,000	\$1,575,833
501828	\$450,000	\$1,850,000	\$1,150,000	\$3,450,000
509014	\$400,000	\$852,278	\$618,000	\$1,870,278
513416	\$450,000	\$880,000	\$665,000	\$1,995,000
546145	\$500,000	\$1,641,667	\$1,216,667	\$3,358,334
555076	\$480,000	\$1,029,167	\$750,000	\$2,259,167
682168	\$600,000	\$3,083,333	\$1,716,667	\$5,400,000
699403	\$380,000	\$483,783	\$420,000	\$1,283,783
725547	\$450,000	\$1,220,833	\$825,000	\$2,495,833
805106	\$500,000	\$2,208,333	\$1,300,000	\$3,908,333
921597	\$400,000	\$1,149,872	\$665,000	\$2,070,000
936790	\$400,000	\$1,141,667	\$725,000	\$2,266,667
964006	\$450,000	\$2,391,667	\$1,400,000	\$4,241,667

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$10.4M or 50.2%
Total Direct Compensation decreased by \$413.3M or 85.6%

2007 Cash decreased by \$5.0M or 42.5%
Total Direct Compensation decreased by \$185.9M or 78.2%

Note: 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.106(r)(2).

Note: 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Cash base salary.** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- **Stock salary.** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value of a share on the date of award. Stock or stock units granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- **Long-term restricted stock.** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Company's compensation committee. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.

The Special Master for TARP Executive Compensation Rules on Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees 26 – 100

Friday, December 11, 2009

Today, the Special Master for TARP Executive Compensation, Kenneth R. Feinberg, released his second round of rulings on executive compensation packages for firms that received exceptional TARP assistance. These determinations cover compensation structures for the 26 – 100 most highly compensated employees plus executive officers, who were not subject to the Special Master’s October 22, 2009, decisions. Unlike the October rulings, which addressed specific amounts payable to “Top 25” executives, Treasury regulations require the Special Master to address compensation structures for executives in this second round of decisions.

The determinations cover four companies: AIG, Citigroup, GM, and GMAC. Chrysler and Chrysler Financial were exempt from the Special Master’s review during this round because total pay for their executives does not exceed the \$500,000 “safe harbor” limitation in Treasury’s compensation regulations. Because Bank of America repaid its TARP obligations on December 9, 2009, its 26 – 100 most highly compensated employees plus additional executive officers are not subject to the Special Master’s review.

The compensation structures announced today for certain executive officers and most highly compensated employees 26 – 100 for firms receiving TARP exceptional assistance:

- 1. *Reform compensation to protect long-term value creation and financial stability***
 - Incentives paid only if real performance measures are achieved, putting an end to pay without performance
 - A majority of pay must be held over three years, focusing executives on long-term value creation rather than short-term gains—in most cases at least 50% of compensation must be long-term.
 - As mandated by EESA, companies continue to set pay levels under the compensation structures approved by the Special Master.
- 2. *Restrict the use of short-term cash compensation***
 - Cash salaries generally limited to \$500,000—except in exceptional cases
 - Overall, cash is limited in most cases to 45 percent of total; all other pay must be in company stock
 - Cash “guarantees” are rejected
- 3. *Forbid incentive compensation without real achievement of objective goals***
 - Total incentives are limited to a fixed pool, requiring companies to carefully choose who to reward
 - Incentives paid if—and only if—objective performance goals are achieved
 - All incentive pay subject to “clawback” if results prove illusory
- 4. *Restructure pay to focus executives on the long term***
 - At least 50 percent of compensation must be held for three years or more
 - At least 50 percent of any incentive pay must be granted in long-term stock
 - Any cash incentives must be delivered over two years—large lump-sum cash bonuses rejected
- 5. *End pay practices that are not aligned with shareholder and taxpayer interests***
 - Limits excessive perquisites; forbids tax “gross ups”
 - Freezes gold-plated executive severance and retirement pay

1. **Reform Compensation Structures to Protect Long-Term Value Creation and Financial Stability:**

The Special Master's rulings restructure pay to focus executives on objective measures of long-term value and financial stability rather than short-term gains. The decisions, which must be implemented immediately, significantly alter the way the four companies covered by the Special Master's rulings—AIG, Citigroup, GM, and GMAC—can structure pay for their 26 – 100 most highly paid employees and additional executive officers.

- ***Incentives paid only if performance measures are achieved, putting an end to pay without performance:*** The rulings put an end to the practice of paying routine “bonuses” regardless of performance. The Special Master's decisions permit incentives to be paid only if the company sets—and the executive achieves—objective performance measures, reviewed by the Special Master, that align executives' interests with those of shareholders and taxpayers.
- ***A majority of pay must be held over three years, focusing executives on long-term value creation rather than short-term gains:*** The rulings require that **at least 50%** of each executive's pay be held for **at least three years**, aligning the pay each executive actually receives with the long-term value of the firm. Under today's decisions, the practice of rewarding short-term gains with outsized rewards is replaced with structures that align compensation with financial stability.
- ***Bank of America Repaid:*** Because Bank of America repaid all of its TARP obligations on December 9, 2009, today's rulings do not affect compensation for their 26 – 100 most highly paid employees and additional executive officers employees, and 2010 compensation will not be subject to the Special Master's review. However, Bank of America's executives will still be subject to the Special Master's October 22, 2009, ruling on pay for its “Top 25” most highly paid executives for 2009.
- ***Chrysler and Chrysler Financial Exempt:*** Treasury's compensation regulations contain a “safe harbor” that exempts executives receiving total compensation of less than \$500,000 from the Special Master's review. Because executives at Chrysler and Chrysler Financial, with one exception, will receive less than the “safe harbor” amount, they were exempt from this round of review.
- ***Special Master sets structures, companies have flexibility to set individual pay:*** Unlike the Special Master's October ruling, which addressed specific amounts payable to senior-most executives, today's determinations set the compensation “structures” for covered employees 26 – 100, as required by EESA and the governing Treasury regulations. Companies and their independent compensation committees will have the flexibility to assess individual performance and set individual levels of pay—but only using methods approved by the Special Master.

2. **Restrict the use of short-term cash compensation:** The Special Master's rulings limit cash payments based on short-term results, instead weighting compensation heavily towards company stock that must be held over the long-term.

- ***Cash salaries limited to \$500,000—except in exceptional cases:*** Consistent with the Administration's February 4, 2009, guidance on executive compensation at TARP recipients and the Special Master's previous determinations, the Special Master has again limited cash salaries to \$500,000 or less, other than in exceptional cases as specifically certified by the company's independent compensation committee. To date, the companies have identified about twelve exceptional cases.
- ***Overall, cash limited in most cases to 45 percent of total; all other pay must be in company stock:*** Under today's rulings, the majority of total compensation must be paid in company stock

to align executives' interests with long-term value creation and financial stability, and therefore taxpayer interests. Companies will deliver stock as "stock salary," which requires the executive to invest in the company with every paycheck, or as long-term stock incentives—rather than in cash.

- **Cash "guarantees" are rejected:** Like the October rulings, today's decisions reject the use of cash "guarantees" that separate pay from performance. Compensation packages based on guaranteed income must be restructured to conform to the Special Master's approved structures.

3. **Forbid incentive compensation without real achievement of objective goals:** As the Secretary noted in his June 10, 2009, statement on compensation, incentive pay can be undermined by compensation practices that set the bar too low or reward all executives for generally rising tides. Today's rulings reject the longstanding practice of pay without performance. After today's rulings, incentives will be paid at these companies only if objective performance measures are achieved.

- **Total incentives limited, requiring companies to carefully choose who to reward:** The total incentives for all of the covered executives will be strictly limited to an aggregate "pool" based on a specified percentage of eligible earnings or other metrics determined by the compensation committee and reviewed by the Special Master. A larger payment to one executive will require a smaller payment to another—so companies will be forced to make careful assessments as to which executives performed best and deserve a bigger slice of the pie.
- **Incentives paid if—and only if—objective performance goals are achieved:** The Special Master's rulings require that the compensation committee of each company identify objective performance measures reflecting the interests of shareholders and taxpayers—and subject those measures to the Special Master's review. Incentives may be paid only if those performance measures are achieved.
- **All incentive pay subject to "clawback" if results prove illusory:** Under today's rulings, any incentive compensation paid to the covered executives will be subject to clawback if the results giving rise to the payment do not hold up over the long term or an executive engages in misconduct. The decisions put an end to the practice of providing substantial rewards for short-term gains.

4. **Restructure pay to focus executives on the long term:** Today's decisions fundamentally restructure pay to emphasize the long term. The Special Master's decisions generally require executives to receive at least half of their compensation in a form that cannot be sold or otherwise redeemed for at least three years.

- **At least 50 percent of compensation must be held for three years or more:** As the Secretary also noted in his June 10, 2009, statement, compensation must account for the time horizon of risks. The Special Master's decisions require that at least half of each executive's pay be delivered in a form that may not be transferred to the executive for at least three years—so that any pay eventually received by the executive reflects the long-term value and stability of the company over that period.
- **At least 50 percent of incentive compensation must be long-term stock grants:** Historically, many firms have permitted executives to cash in company stock immediately. Instead, the Special Master's rulings require that at least half of the incentive compensation be paid in the form of company stock that must be held for at least three years. Other stock compensation, such as stock salary, must be held for at least one year from the date it is earned.

- ***Any cash incentives must be delivered over two years—large lump-sum cash bonuses rejected:*** Breaking from the pay practices of the past, the Special Master’s rulings require that employees who receive cash incentive payments must defer 50 percent or more of the payment for at least one year, to discourage executives from placing risky bets in the hope of short-term windfall payments and to allow the company time to confirm that performance assessments are accurate.
5. ***End pay practices not aligned with shareholder and taxpayer interests:*** As the Secretary noted in his June 10, 2009, statement, in some cases golden parachutes and supplemental executive retirement plans have expanded beyond their original purpose. Like the October 22, 2009, decisions, today’s rulings place tough new restrictions on these payments, extending the limitations applicable to the “Top 25” executives to the entire “Top 100.”
- ***Limits excessive perquisites; forbids tax “gross-ups”:*** As with the “Top 25,” employees in this group will be limited to \$25,000 in perquisites, cannot receive tax gross-ups, and cannot accrue additional gold-plated severance and executive retirement pay.
 - ***Freezes excessive executive severance and retirement pay:*** Supplemental executive retirement benefits can provide substantial cash guarantees to departing executives, regardless of performance. Just as with the “Top 25,” the Special Master’s rulings today conclude that executives should provide for their retirements with wealth based on performance while they are employed, rather than being guaranteed substantial retirement benefits beyond those provided to everyday workers.

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Mr. Robert Benmosche
President and Chief Executive Officer
American International Group, Inc.
70 Pine Street
27th Floor
New York, NY 10270

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees (“Covered Employees 26 – 100”)

Dear Mr. Benmosche:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of employees who are either executive officers of American International Group, Inc. (“AIG”) or one of AIG’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule (“Covered Employees 26 – 100”). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I and II*) providing the determinations of the Special Master with respect to 2009 compensation structures for Covered Employees 26-100. 31 C.F.R. § 30.16(a)(3)(ii).

The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review of AIG’s “Top 25” employees, which emphasized the individual “amounts payable” to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Interim Final Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii). The Special Master has determined that, to satisfy this standard, the 2009 compensation structures for Covered Employees 26 – 100 generally must comport with the following important standards:

- The compensation structures for Covered Employees 26 – 100 must be consistent with the principles emphasized in the Special Master’s previous determinations, including: pay based on individual and company performance, long-term incentives, avoidance of “guaranteed” bonuses and retention payments, and appropriate levels of compensation compared to compensation for persons in similar positions or roles at similar entities. The Office of the Special Master has consulted with both the Federal Reserve Bank of New York and Department of the Treasury in applying these principles to the development of AIG’s compensation structures.

- To achieve these principles, Covered Employees 26 – 100 should receive compensation in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by the Company’s compensation committee, subject to the structural rules described herein and set forth in detail in the attached Determination Memorandum.
- **Total compensation** must emphasize long-term performance. At least 50% of a Covered Employee’s total compensation — whatever the mix of components for that individual — must not be transferable for at least three years. The objective is to promote long-term performance. In addition, the total amount of cash included in any individual compensation package may not exceed 45% of total compensation, except in exceptional cases for good cause shown.
 - **Cash salary** should not exceed \$500,000 per year, except in exceptional cases for good cause shown, as certified by the Compensation and Management Resources Committee of AIG’s Board of Directors (“AIG’s Compensation Committee”), which is comprised solely of independent directors.
 - **Stock salary** will immediately vest, but will not be transferable until at least one year after it is earned.
 - **Incentive compensation** may be granted if—and only if—the Covered Employee achieves objective performance metrics determined by AIG’s Compensation Committee, in consultation with the Office of the Special Master. Incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to “clawback” if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- The total value of all incentive compensation granted to Covered Employees 26 – 100 cannot exceed a specified percentage of AIG’s eligible earnings, which will be determined by AIG’s Compensation Committee and may be reviewed by the Special Master.
- If AIG reasonably expects that a Covered Employee may become one of the “Top 25” employees in 2010 and therefore subject to “bonus” restrictions under the Emergency Economic Stabilization Act of 2008, as amended, and the Interim Final Rule, the compensation structure for that employee will be subject to additional terms and conditions described in the Determination Memorandum to assure compliance with pertinent statutory and regulatory requirements.
- The restrictions described in the Special Master’s “Top 25” determinations pertaining to perquisites, severance benefits and supplemental executive retirement plans shall be extended to Covered Employees 26 – 100.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3)(ii), AIG must adopt policies applicable to Covered Employees 26 – 100 as follows:

- The achievement of all performance objectives must be certified by AIG's Compensation Committee. These performance objectives must be reviewed and approved by the Office of the Special Master.
- Each Covered Employee will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- Each Covered Employee will be subject to stock holding requirements established by AIG consistent with the stock ownership commitment rules AIG has established for senior executives of the company.
- AIG may not provide a tax "gross-up" of any kind to any Covered Employee.

These requirements are described in further detail in the attached Determination Memorandum.

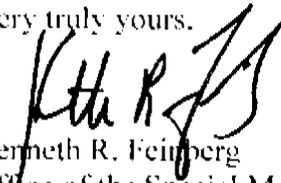
The Special Master's review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to AIG's compensation structures:

- *Performance-based compensation.* The majority of compensation payable under the approved structures depends on AIG and individual performance, and ties the financial incentives of AIG employees to the overall performance of the Company. The majority of the total compensation paid to employees under these structures will be redeemable over a period of not less than three years. The ultimate value realized by each Covered Employee therefore will depend on AIG's performance over the long term. Guaranteed amounts payable in cash, in contrast, are rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for AIG to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to AIG employees is weighted heavily toward long-term structures that are tied to AIG's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to AIG employees should consist only of cash base salaries and stock salary at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. *Id.* § 30.16(b)(1)(iii).

Pursuant to the Interim Final Rule, AIG may, within 30 days of the date hereof, request in

writing that the Special Master reconsider the determinations set forth in *Annex A*. If AIG does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Anastasia D. Kelly, Esquire
Marc R. Trevino, Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

Under the Emergency Economic Stabilization Act of 2008, as amended (“EESA”) and the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master,” or the “Office”) is responsible for reviewing compensation structures for the executive officers and 100 most highly employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”), at financial institutions receiving exceptional financial assistance (“Exceptional Assistance Recipients”) under the Troubled Asset Relief Program (the “TARP”). 31 C.F.R. § 30.16(a)(3)(ii). The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review for the “Top 25” employees, which emphasized the individual “amounts payable” to those employees. *Id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii).

American International Group, Inc. (“AIG,” or the “Company”), one of six remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2009 compensation structures for review pursuant to Section 30.16(a)(3)(ii) of the Rule. The Special Master has completed the review of the Company’s proposed compensation structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(ii) of the Rule, with respect to Covered Employees 26 – 100.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Since that date, the Special Master, and Treasury employees working in the Office of the Special Master, have conducted extensive discussions with AIG officials. During these discussions, the Office of the Special Master informed AIG about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and AIG explored potential compensation structures for Covered Employees 26 – 100.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii). On October 5, 2009, the Office of the Special Master requested from each Exceptional Assistance Recipient, including AIG, certain data and documentary information necessary to facilitate the Office of the Special Master’s review of the Company’s proposed compensation structures. The request required AIG to submit data describing its proposed 2009 compensation structures, as

well as the historical compensation structures for Covered Employees 26 – 100.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). AIG was required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

AIG submitted this information to the Office of the Special Master on October 13, 2009. Following a preliminary review of the submission, and the provision by AIG of certain additional information requested by the Office of the Special Master, on October 30, 2009, the Special Master determined that AIG’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(ii). The Office of the Special Master then commenced a formal review of AIG’s proposed compensation structures for Covered Employees 26 – 100. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in executive compensation and corporate governance;
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the Department of Finance and Business Economics at the University of Southern California’s Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company’s proposed compensation structures for Covered Employees 26 – 100 for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees 26 – 100 whether AIG’s proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of TESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3)(ii) (as applied to Covered Employees 26 – 100 of Exceptional Assistance Recipients, the “Public Interest Standard”). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance, or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, and to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or granted. *Id.* § 30.16(h)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structures should be consistent with, and not excessive taking into account, compensation structures for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structures should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with Company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

In addition, the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.*

IV. COMPENSATION STRUCTURES

A. AIG Proposals

AIG provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for Covered Employees 26 – 100 (the “Proposed Structures”). Under the Proposed Structures, Covered Employees would generally receive a combination of cash salary, stock salary, and long-term stock. AIG also proposed that several Covered Employees receive cash amounts pursuant to previously existing retention contracts.

As proposed, cash salary would comprise approximately 40% of each employee’s total compensation. Short-term bonuses payable in cash would also be provided based on the 2009 performance of the Company and pursuant to historical supplemental cash bonus programs.

Under the Proposed Structures, stock represents the single largest component of total compensation. This compensation component would take the form of stock salary or long-term restricted stock. As proposed, long-term restricted stock would vest over time.

AIG also proposed that certain Covered Employees receive substantial cash amounts pursuant to previously existing retention contracts. AIG argued that these amounts were due under agreements providing for legally binding rights under valid written employment contracts, see 31 C.F.R. § 30.10(e)(2), and thus were not subject to the review of the Special Master.

B. Determinations of the Special Master

The Special Master reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review, the Special Master has determined that the Proposed Structures are, on the whole, inconsistent with the Public Interest Standard and require modification.

The Special Master has determined that the compensation structures described in this Part

IV.B will not, by virtue of their structural design, result in payments inconsistent with the Public Interest Standard. These compensation structures are described in further detail in *Exhibits I and II*.

I. Total Compensation

The Special Master reviewed AIG's Proposed Structures in light of the principle that an "appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). In general, the Special Master has concluded that compensation transferable no earlier than three years following the date it is earned provides employees with incentives to maximize the long-term value of the Company. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100, whether in the form of cash or stock, must provide at least 50% of total compensation in the form of compensation that is not transferable for at least three years.

The Special Master also reviewed the Proposed Structures in light of the principle that "a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." *Id.* § 30.16(b)(1)(iii). In general, compensation payable in the form of cash does not align employees' incentives with the interests of shareholders and taxpayers as effectively as compensation payable in the form of Company stock. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the total amount of cash included in the compensation structure for any Covered Employee should not exceed 45% of total compensation,¹ other than in exceptional cases for good cause shown. The remaining percentage of total compensation must be payable in the form of Company stock.²

In addition, the Special Master may take into account compensation structures, such as legally binding rights under valid employment contracts, that are not subject to review by the Special Master. *Id.* § 30.16(a)(3)(ii). AIG's Proposed Structures included substantial cash payments in 2009 to several Covered Employees 26 – 100 pursuant to previously existing "retention" contracts that, AIG argues, provide legally binding rights to payment, *id.* Although the Office of the Special Master negotiated for the restructuring of similar arrangements at other Exceptional Assistance Recipients, discussions with AIG officials did not lead to an agreed upon restructuring of these contracts. After consulting with officials at the Federal Reserve Bank of New York and officials at Treasury, and considering their opinions, the Special Master has

¹ As noted below, the Special Master has determined that, for any Covered Employee who receives a payment pursuant to a previously existing "retention" contract, this percentage should be decreased to 40%, excluding the amounts payable pursuant to the "retention" contract. *See* 31 C.F.R. § 30.10(a)(3)(ii).

² In some cases, a Covered Employee may have received cash compensation prior to the date of this Determination Memorandum that prohibits the Company from complying with the prescriptions of Part IV.B.1, if the Company provides the Covered Employee with the total 2009 compensation described in AIG's Proposed Structures. The Special Master has determined that, with respect to those Covered Employees, in order for the compensation structure to be consistent with the Public Interest Standard, AIG must provide any additional 2009 compensation up to the total described in AIG's proposed structures, except for continued payment of base salary in effect as of the date immediately preceding the date of this Determination Memorandum, in the form of Company stock.

concluded that, due to the unique financial circumstances currently found to exist at AIG, and the need to retain the services of several Covered Employees 26 – 100 who are deemed by the Federal Reserve Bank of New York, the Treasury, and AIG itself to be particularly critical to AIG's long-term financial success, restructuring of these contracts would not be consistent with the Public Interest Standard. Instead, the Special Master has reduced the maximum allowable percentage of the cash component of total compensation in all cases in which a Covered Employee 26 – 100 receives a payment pursuant to these contracts.

The Special Master has determined that the proportion of cash included in the compensation structure for any Covered Employee who receives a payment pursuant to a previously existing "retention" contract must be reduced to reflect these payments. *Id.* Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the compensation structure for any Covered Employee who receives a payment in 2009 pursuant to such a contract must not exceed 40%, excluding for this purpose amounts payable pursuant to the contract. Any cash amounts payable to a Covered Employee in 2009, except for those payable pursuant to a legally binding right under a valid employment contract, *see id.*, will be counted towards this 40% limitation, and the remaining percentage of total compensation must be payable in the form of Company stock. In addition, as described above, in order to be consistent with the Public Interest Standard, the compensation structure for any Covered Employee who receives a payment in 2009 pursuant to a previously existing contract must provide at least 50% of the Covered Employee's total compensation in a form that is not transferable for at least three years, excluding for this purpose amounts payable pursuant to the contract.³

a. Cash Salary

The Special Master reviewed AIG's proposed cash salaries in light of the principle that compensation structures should generally be consistent with compensation structures "for persons in similar positions or roles at similar entities that are similarly situated, including entities competing in the same markets." *Id.* § 30.16(b)(1)(v). The Special Master has determined that, to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100 may not provide for cash salaries in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by AIG's Compensation Committee. The Office of the Special Master has been advised that such exceptions will be rare.

b. Stock Salary

The Special Master reviewed the Proposed Structures in light of the principle that compensation structures should "appropriately allocate the components of compensation such as salary . . . as well as the extent to which compensation is provided in cash, equity, or other types of compensation," *id.* § 30.16(b)(1)(iii). AIG's Proposed Structures provide for payment of base

³ The conclusions set forth in this Determination Memorandum with respect to the treatment of "retention" contracts, *see id.* § 30.10, does not apply to payments to employees of AIG's Financial Products division. According to the Company's submissions to the Office of the Special Master, payments to those employees are not due until 2010. Accordingly, those payments will be addressed in the Special Master's determinations with respect to 2010 compensation.

salary in the form of vested stock as well as cash. The Special Master has concluded that, in this respect, the Proposed Structures properly permit the payment of base compensation in the form of vested stock salary, which facilitates an appropriate allocation of fixed, annual compensation to stock.

The Special Master also reviewed the Proposed Structures in light of the principle that compensation structures should provide compensation that is “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that, to provide compensation that is performance-based over a relevant period, stock salary may not be transferred or otherwise redeemed prior to the first anniversary of the date such stock salary is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes.

c. Incentive Compensation

The Special Master reviewed AIG’s proposed incentive compensation for Covered Employees 26 – 100 in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv). In general, incentive compensation should not be granted unless the achievement of performance metrics is reviewed and certified on an independent basis. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that no incentive compensation may be granted to a Covered Employee unless the employee achieves objective performance metrics developed by appropriate AIG officials and reviewed and approved by AIG’s Compensation Committee (which is composed solely of independent directors) in consultation with the Office of the Special Master. As described below, incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to “clawback” if the performance assessment resulting in the compensation is later discovered to be inaccurate.

i. Cash Incentives

The Special Master reviewed AIG’s proposed incentive compensation in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met.” *Id.* § 30.16(b)(iv). In general, the Special Master has concluded that cash incentives should be deferred over a period of time designed to ensure that the performance metrics giving rise to the payment accurately measured performance. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that at least 50% of incentive compensation granted after the date of this Determination Memorandum and paid in cash be deferred for at least one year after the grant date, in order to assure compliance with the performance metrics upon which the compensation was based.

ii. Stock Incentives

The Special Master reviewed AIG’s proposed incentive compensation in light of recently

adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle that compensation structures should ensure that “an appropriate portion of the compensation should be performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that a significant amount of the compensation paid as incentive compensation should reflect the Company’s performance over the long term. Accordingly, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that at least 50% of incentive compensation be paid in the form of stock or stock equivalents that cannot be transferred or otherwise redeemed until at least three years from the date of grant and cannot be transferred until one year following vesting, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. The remaining 50% of incentive compensation may be paid in a form, and at a time, determined by AIG’s Compensation Committee, subject to the principles set forth in Part IV.B. of this Determination Memorandum.

iii. Total Incentives

Finally, the Special Master reviewed AIG’s proposed incentive compensation in light of the principle that compensation structures “should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated.” *Id.* § 30.16(b)(1)(v). The Special Master has determined that safeguards with respect to the aggregate amount of incentive compensation payable to Covered Employees 26 – 100 are necessary to ensure that compensation structures for Covered Employees 26 – 100 are generally comparable to those for persons in similar positions or roles at similar entities. Accordingly, the Special Master has determined that, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 may not provide for incentive compensation that, in the aggregate, exceeds a specified percentage of AIG’s eligible earnings. Such eligible earnings will be determined by AIG’s Compensation Committee and may be reviewed by the Office of the Special Master.

2. Covered Employees 26 – 100 Entering the “Top 25”

If a Covered Employee becomes a “Top 25” employee in 2010, several complications arise with respect to that Covered Employee’s compensation structure. In particular, Section 111 of EISA, and Section 30.10 of the Rule, impose restrictions on the accrual or payment of cash “bonuses” in 2010 for any Covered Employee who becomes a “Top 25” employee in 2010, even if the compensation relates to performance prior to the employee joining the “Top 25.” The Special Master has considered these issues and has determined that, if AIG reasonably expects that a Covered Employee may become one of the “Top 25” employees in 2010, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements.

First, in accordance with the Special Master’s October 22, 2009 determinations for the “Top 25,” additional stock salary may be granted to the Covered Employee on a *non pro tunc* basis, provided that the stock or stock units vest immediately and are only redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment

redeemable one year early if federal obligations are repaid (except stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Second, any incentive compensation for performance in 2009 that would be payable to the Covered Employee in cash in the first quarter of 2010 (consistent with the principles set forth in Part IV.B.1.c.i.) may be paid on or before December 31, 2009.

Third, notwithstanding the other requirements of this Part IV.B., any incentive compensation paid to the Covered Employee may be paid in the form of AIG stock (but not stock units) that vests on or before December 31, 2009, provided that the transferability of such stock shall be consistent with the structural principles set forth in Part IV.B. (except with respect to stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Fourth, notwithstanding the other requirements of this Part IV.B., up to one-third of the Covered Employee's "annual compensation" may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.

3. "Other" Compensation and Perquisites

AIG's proposals provide for substantial payments of "other" compensation, as well as perquisites, to Covered Employees 26 – 100. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that a significant portion of the compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

Accordingly, to be consistent with the Public Interest Standard, the compensation structure for each Covered Employee generally must provide no more than \$25,000 in "other" compensation and perquisites. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.⁴

4. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

AIG also proposed that certain Covered Employees receive limited compensation in the form of accruals under a "non-qualified deferred compensation" plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

⁴ AIG has identified Covered Employees subject to expatriate arrangements providing for the payment of certain "other" compensation in excess of this limitation. The Special Master has reviewed these arrangements and concluded that such payments, not to exceed \$350,000 per employee, are consistent with the Public Interest Standard, and that such payments may be disregarded for purposes of determining whether a Covered Employee's compensation structure meets the requirements of the Public Interest Standard as set forth in this Part IV.B.

The Special Master has concluded that the primary portion of a Covered Employee's compensation package should be allocated to compensation structures that are "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). Payments under the Company's "non-qualified deferred compensation" plans do not depend upon "individual performance and/or the performance of the [company] or a relevant business unit," *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top employee upon leaving the Company.

Covered Employees 26 – 100 should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must not provide for further 2009 accruals under supplemental retirement plans or Company credits to other "non-qualified deferred compensation" plans (with the exception of employee-funded elective deferrals) following the date of this Determination Memorandum.

5. Severance Plans

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must ensure that 2009 compensation structures do not result in an increase in the amounts payable pursuant to these arrangements.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period," 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, AIG must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for Covered Employees 26 – 100, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are "measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv), incentive compensation may not be granted unless AIG's Compensation Committee determines to grant such compensation in light of the employee's performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, AIG's securities filings. In addition, the Committee must retain discretion with respect to each

employee to reduce (but not to increase) the amount of incentive compensation on the basis of its overall evaluation of the employee's or AIG's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV above, the structures determined by the Special Master to be consistent with the Public Interest Standard, include grants of stock or stock units in AIG. It is critical that these compensation structures achieve the Rule's objective of "appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity." *id.* § 30.16(b)(1)(iii). Accordingly, the Company must have in effect a policy that would prohibit a Covered Employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in Part IV above. Such transactions would be contrary to the principles set forth in the Rule.

Finally, because the compensation structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock or stock units in AIG, it is particularly important that stock acquired pursuant to these grants provide "compensation [that is] performance-based over a relevant performance period." *id.* § 30.16(b)(1)(iv). AIG's submissions to the Office of the Special Master included a description of the Company's stock ownership requirements, which provide that a portion of stock acquired under the Company's compensation plans must be held over an appropriate period of time. Accordingly, AIG's Compensation Committee must ensure that each Covered Employee is subject to the holding requirements set forth in the Company's stock ownership requirements, and must certify compliance with the rules to the Office of the Special Master.

B. Additional Requirements

In addition to the requirements set forth above, in light of the requirements of the Rule, AIG is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Under the Rule, AIG must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with AIG's senior risk officers any risks that could threaten the value of AIG. In particular, the Rule requires that the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (2) employee compensation plans that could encourage the manipulation of AIG's reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The Rule requires that the compensation committee disclose to Treasury an annual narrative description of whether AIG, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any

“benchmarking” or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).

- (3) *Clawback.* The Rule requires that any bonus payment made to a senior executive officer or one of the next twenty most highly compensated employees of AIG be subject to a provision for recovery or “clawback.” *Id.* § 30.8. The Special Master has determined that this important requirement should also apply to each of AIG’s Covered Employees 26 – 100. Accordingly, any incentive compensation must be forfeited if the compensation granted is later determined to be based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive compensation was earned.
- (4) *Prohibition on Tax Gross-Ups.* The Rule prohibits AIG from providing (formally or informally) a tax “gross-up,” as defined in the Rule, to any senior executive officer or most highly compensated employee. *Id.* § 30.11(d). The Special Master has determined that this important requirement should also apply to each of AIG’s Covered Employees 26 – 100. Accordingly, AIG must not provide (formally or informally) a tax “gross-up,” as defined in the Rule, to any Covered Employee following the date of this Determination Memorandum.

VI. CONCLUSION

The Special Master has reviewed AIG’s Proposed Structures in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by AIG require modification in order to meet the Public Interest Standard.

Part IV.B. sets forth structures that the Special Master has concluded comport with the Rule’s principles. Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3)(ii) thereof, the Special Master hereby determines that the compensation structures set forth in Part IV.B. including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Rule, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If AIG does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in Part IV.B. and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(ii) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special

Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

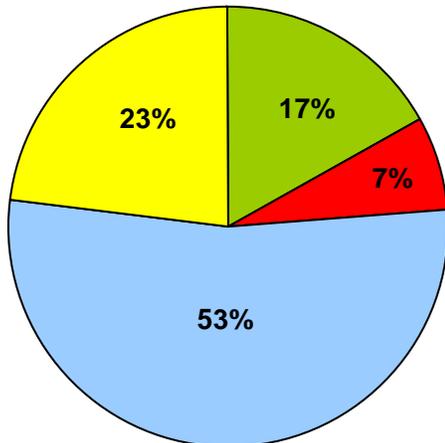
Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to Covered Employees 26 - 100 without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
SAMPLE COMPENSATION STRUCTURE
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

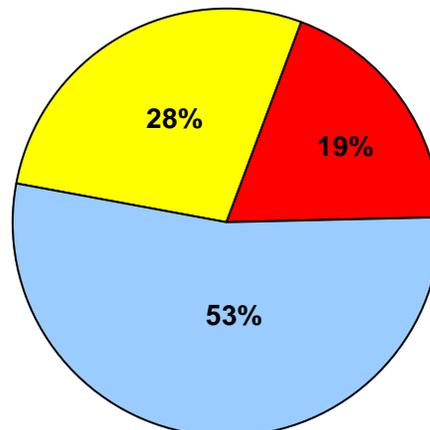
Example: Covered Employee with a total compensation package of **\$3,000,000**.

- **Base salary.**
 - **Cash:** The Covered Employee receives a total of **\$500,000** in cash salary.
 - **Stock Salary:** The Covered Employee receives **\$200,000** in stock salary, which vests immediately but may not be transferred prior to the first anniversary of the date it is earned.
- **Incentive Compensation.** The Covered Employee may also receive **\$2,300,000** in incentive compensation as follows:
 - **Cash Incentive: \$700,000.**
 - **\$350,000** immediately payable; and
 - **\$350,000** paid at least one year from the grant date.
 - **Stock incentive: \$1,600,000.**
 - The entire amount may not be sold or transferred prior to the third anniversary of the grant date.
- **Total compensation.** Covered Employee’s total compensation is **\$3,000,000**, with 40% of the total delivered in cash and 60% delivered in stock (47% delivered short term and 53% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



<ul style="list-style-type: none"> ■ Cash Salary ■ Stock Salary - 1 year after grant ■ Stock Incentive - Not payable until the 3rd year ■ Cash Incentive - 50% immediately, 50% one year later 	<ul style="list-style-type: none"> ■ Amounts payable in the current year ■ Amounts payable in the 2nd year ■ Amounts payable in 3+ years
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Note 1: This Exhibit does not include amounts payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

EXHIBIT II
TERMS AND CONDITIONS OF COMPENSATION STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in Part IV.B. of the Determination Memorandum. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Stock salary.** Because this is a new compensation element, stock salary may be granted on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of grant. Unless otherwise provided in the Determination Memorandum, stock granted as stock salary may not be redeemable during the one-year period immediately following the date it is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. Whether a *nunc pro tunc* grant that is labeled stock salary should be considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Stock compensation generally.** For purposes of the Determination Memorandum, "stock" compensation may include stock or stock units reflecting the value of AIG's common equity, a "basket" of four AIG insurance subsidiaries that the Company, the Federal Reserve Bank of New York, and the Department of the Treasury have identified as critical to the future of AIG, or, in exceptional cases certified by AIG's Compensation Committee to the Special Master, the stock of a specified subsidiary of AIG, provided in each case that the compensation is accrued and paid in a manner that complies in all respects with applicable provisions of the Rule.
- **Prior compensation.** In accordance with the Rule, unless otherwise noted compensation paid to Covered Employees 26 – 100 during the period from June 15, 2009 to the date of the Determination Memorandum will be treated as complying with the Rule, provided that such compensation was paid under a compensation structure established by the Company as of June 14, 2009, and provided further that the Company promptly complies with the modifications set forth in the Determination Memorandum. 31 C.F.R. § 30.16(a)(3)(iii).
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions (with the exception of employee-funded

elective deferrals) may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.

- ***Qualified Plans.*** For the avoidance of doubt, the Special Master has determined that participation by Covered Employees 26 – 100 in tax-qualified retirement, broad-based employee health and welfare plans, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Ms. Nancy Rae
Executive Vice President, Human Resources
Chrysler Group LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, MI 48326-2766

Re: *Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees ("Covered Employees 26 – 100")*

Dear Ms. Rae:

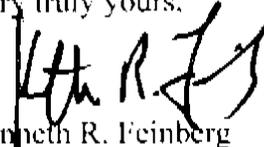
Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of employees who are either executive officers of Chrysler Group LLC or one of the Company's 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule ("Covered Employees 26 – 100").

According to the materials you have submitted, the proposed compensation structures for Covered Employees 26 – 100, with the exception of a single Covered Employee, fit within the exemption set forth in Section 30.16(a)(3)(ii) of the Interim Final Rule for employees receiving total annual compensation (other than long-term restricted stock) not exceeding \$500,000. Those proposed compensation structures therefore are automatically deemed to meet the requirements of the Interim Final Rule, and Chrysler is not required to seek the prior approval of the Special Master to implement these structures. To the extent the 2009 compensation structure for any Covered Employee, including the amounts that are or may be payable thereunder, is modified such that the exemption is no longer applicable, Chrysler is required to notify the Office of the Special Master and seek approval for further action consistent with the Interim Final Rule. 31 C.F.R. § 30.16(a)(3)(ii).

The proposal for the Covered Employee with annual compensation exceeding \$500,000 is, according to the submission, based on the compensation structures previously approved by the Special Master on October 22, 2009, for Chrysler's "Top 25" employees. In light of the foregoing, Chrysler has demonstrated that it is highly unlikely payments made to such Covered Employee would be inconsistent with the purposed of Section 111 of EESA or TARP, or would otherwise be contrary to the public interest, and such compensation structure is therefore approved. See *id.*

The foregoing is limited to the proposed compensation structures for Covered Employees 26 - 100, and may not be relied upon with respect to any other employee of Chrysler. Moreover, the Office of the Special Master has relied upon, and this letter is qualified in its entirety by, the accuracy of the materials submitted by Chrysler to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken R. Feinberg". The signature is stylized and written in a cursive-like font.

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Holly E. Leese, Esquire
Lawrence Cagney, Esquire



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Michael S. Helfer, Esquire
General Counsel & Corporate Secretary
Citigroup Inc.
399 Park Avenue
New York, NY 10022

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees (“Covered Employees 26 – 100”)

Dear Mr. Helfer:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of employees who are either executive officers of Citigroup Inc. (“Citigroup”) or one of Citigroup’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule (“Covered Employees 26 – 100”). Attached as **Annex A** is a Determination Memorandum (accompanied by **Exhibits I and II**) providing the determinations of the Special Master with respect to 2009 compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii).

The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review of Citigroup’s “Top 25” employees, which emphasized the individual “amounts payable” to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Interim Final Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii). The Special Master has determined that, to satisfy this standard, the 2009 compensation structures for Covered Employees 26 – 100 generally must comport with the following important standards:

- The compensation structures for Covered Employees 26 – 100 must be consistent with the principles emphasized in the Special Master’s previous determinations, including: pay based on individual and Company performance, long-term incentives, avoidance of “guaranteed” bonuses and retention payments, and appropriate levels of compensation compared to compensation for persons in similar positions or roles at similar entities.
- To achieve these principles, Covered Employees 26 – 100 should receive compensation in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by the Company’s compensation committee, subject to the structural rules described herein and set forth in detail in the attached Determination Memorandum.

- **Total compensation** must emphasize long-term performance. At least 50% of a Covered Employee's total compensation — whatever the mix of components for that individual — must not be transferable for at least three years. The objective is to promote long-term performance. In addition, the total amount of cash included in any individual compensation package may not exceed 45% of total compensation, except in exceptional cases for good cause shown.
- **Cash salary** should not exceed \$500,000 per year, except in exceptional cases for good cause shown, as certified by the Personnel and Compensation Committee of Citigroup's Board of Directors ("Citigroup's Compensation Committee"), which is comprised solely of independent directors.
- **Stock salary** will immediately vest, but will not be transferable until at least one year after it is earned.
- **Incentive compensation** may be granted if—and only if—the Covered Employee achieves objective performance metrics determined by Citigroup's Compensation Committee, in consultation with the Office of the Special Master. Incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- The total value of all incentive compensation granted to Covered Employees 26 – 100 cannot exceed a specified percentage of Citigroup's eligible earnings, which will be determined by Citigroup's Compensation Committee and may be reviewed by the Special Master.
- If Citigroup reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010 and therefore subject to "bonus" restrictions under the Emergency Economic Stabilization Act of 2008, as amended, and the Interim Final Rule, the compensation structure for that employee will be subject to additional terms and conditions described in the Determination Memorandum to assure compliance with pertinent statutory and regulatory requirements.
- Cash guarantees payable pursuant to previously existing agreements should be restructured to be consistent with the principles above.
- The restrictions described in the Special Master's "Top 25" determinations pertaining to perquisites, severance benefits and supplemental executive retirement plans shall be extended to Covered Employees 26 – 100.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3)(ii), Citigroup must adopt policies applicable to Covered Employees 26 – 100 as follows:

- The achievement of all performance objectives must be certified by Citigroup's Compensation Committee. These performance objectives must be reviewed and approved by the Office of the Special Master.
- Each Covered Employee will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- Each Covered Employee will be subject to stock holding requirements established by Citigroup consistent with the stock ownership commitment rules described in Citigroup's submission to the Office of the Special Master.
- Citigroup may not provide a tax "gross-up" of any kind to any Covered Employee.

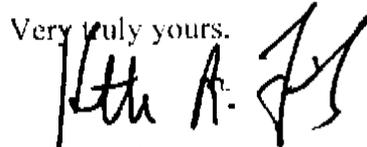
These requirements are described in further detail in the attached Determination Memorandum.

The Special Master's review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to Citigroup's compensation structures:

- *Performance-based compensation.* The majority of compensation payable under the approved structures depends on Citigroup and individual performance, and ties the financial incentives of Citigroup employees to the overall performance of the Company. The majority of the total compensation paid to employees under these structures will be redeemable over a period of not less than three years. The ultimate value realized by each Covered Employee therefore will depend on Citigroup's performance over the long term. Guaranteed amounts payable in cash, in contrast, are rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for Citigroup to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to Citigroup employees is weighted heavily toward long-term structures that are tied to Citigroup's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to Citigroup employees should consist only of cash base salaries and stock salary at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. *Id.* § 30.16(b)(1)(iii).

Pursuant to the Interim Final Rule, Citigroup may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If Citigroup does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Lewis B. Kaden, Esquire
Mr. Paul McKinnon

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

Under the Emergency Economic Stabilization Act of 2008, as amended (“EESA”) and the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master,” or the “Office”) is responsible for reviewing compensation structures for the executive officers and 100 most highly employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”), at financial institutions receiving exceptional financial assistance (“Exceptional Assistance Recipients”) under the Troubled Asset Relief Program (the “TARP”). 31 C.F.R. § 30.16(a)(3)(ii). The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review for the “Top 25” employees, which emphasized the individual “amounts payable” to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii).

Citigroup Inc. (“Citigroup,” or the “Company”), one of six remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2009 compensation structures for review pursuant to Section 30.16(a)(3)(ii) of the Rule. The Special Master has completed the review of the Company’s proposed compensation structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(ii) of the Rule, with respect to Covered Employees 26 – 100.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Since that date, the Special Master, and Treasury employees working in the Office of the Special Master, have conducted extensive discussions with Citigroup officials. During these discussions, the Office of the Special Master informed Citigroup about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and Citigroup explored potential compensation structures for Covered Employees 26 – 100.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii). On October 5, 2009, the Office of the Special Master requested from each Exceptional Assistance Recipient, including Citigroup, certain data and documentary information necessary to facilitate the Office of the Special Master’s review of the Company’s proposed compensation structures.

The request required Citigroup to submit data describing its proposed 2009 compensation structures, as well as the historical compensation structures for Covered Employees 26 – 100.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). Citigroup was required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

Citigroup submitted this information to the Office of the Special Master on October 13, 2009. Following a preliminary review of the submission, and the provision by Citigroup of certain additional information requested by the Office of the Special Master, on October 30, 2009, the Special Master determined that Citigroup’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(ii). The Office of the Special Master then commenced a formal review of Citigroup’s proposed compensation structures for Covered Employees 26 – 100. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in executive compensation and corporate governance;
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the Department of Finance and Business Economics at the University of Southern California’s Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company’s proposed compensation structures for Covered Employees 26 – 100 for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees 26 – 100 whether Citigroup’s proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3)(ii) (as applied to Covered Employees 26 – 100 of Exceptional Assistance Recipients, the “Public Interest Standard”). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance, or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, and to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or granted. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structures should be consistent with, and not excessive taking into account, compensation structures for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structures should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with Company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

In addition, the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.*

IV. COMPENSATION STRUCTURES

A. Citigroup Proposals

Citigroup provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for Covered Employees 26 – 100 (the “Proposed Structures”). Under the Proposed Structures, Covered Employees 26 – 100 would generally receive a combination of cash salary, short-term cash bonuses, long-term cash bonuses, and long-term stock.

As proposed, cash salary would comprise approximately 10% to 20% of each employee’s total compensation. Short-term bonuses payable in cash would also be provided based on the 2009 performance of the Company, the employee’s business unit, and the employee. Long-term cash bonuses would also be paid, based on similar metrics measured over longer periods of time.

Under the Proposed Structures, long-term stock represented the single largest component of total compensation. This compensation component would take the form of options, restricted stock, or phantom stock, would vest over time, and would be immediately transferable upon vesting. For each Covered Employee, management and the Personnel and Compensation Committee of Citigroup’s Board of Directors (“Citigroup’s Compensation Committee”) would establish a target grant of cash and equity, expressed as percentages of the Covered Employee’s “market” levels of pay for that employee’s position.

B. Determinations of the Special Master

The Special Master reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review, the Special Master has determined that the Proposed Structures are, on the whole, inconsistent with the Public Interest Standard and require modification.

The Special Master has determined that the compensation structures described in this Part IV.B will not, by virtue of their structural design, result in payments inconsistent with the Public

Interest Standard. These compensation structures are described in further detail in *Exhibits I and II*.

1. Total Compensation

The Special Master reviewed Citigroup's Proposed Structures in light of the principle that an "appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). In general, the Special Master has concluded that compensation transferable no earlier than three years following the date it is earned provides employees with incentives to maximize the long-term value of the Company. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100, whether in the form of cash or stock, must provide at least 50% of total compensation in the form of compensation that is not transferable for at least three years following the date it is earned.

The Special Master also reviewed the Proposed Structures in light of the principle that "a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." *Id.* § 30.16(b)(1)(iii). In general, compensation payable in the form of cash does not align employees' incentives with the interests of shareholders and taxpayers as effectively as compensation payable in the form of Company stock. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the total amount of cash included in the compensation structure for any Covered Employee should not exceed 45% of total compensation, other than in exceptional cases for good cause shown. The remaining percentage of total compensation must be payable in the form of Company stock.

a. Cash Salary

The Special Master reviewed Citigroup's proposed cash salaries in light of the principle that compensation structures should generally be consistent with compensation structures "for persons in similar positions or roles at similar entities that are similarly situated, including entities competing in the same markets." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has determined that, to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100 may not provide for cash salaries in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by Citigroup's Compensation Committee.

b. Stock Salary

The Special Master reviewed the Proposed Structures in light of the principle that compensation structures should "appropriately allocate the components of compensation such as salary . . . as well as the extent to which compensation is provided in cash, equity, or other types of compensation." *Id.* § 30.16(b)(1)(iii). The Proposed Structures generally provide for payment of base salary only in the form of cash. The Special Master has concluded that, to be consistent with the Public Interest Standard, compensation structures should permit the payment of base compensation in the form of vested stock salary which facilitates an appropriate allocation of fixed, annual compensation to stock.

The Special Master also reviewed the Proposed Structures in light of the principle that compensation structures should provide compensation that is “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that, to provide compensation that is performance-based over a relevant period, stock salary may not be transferred or otherwise redeemed prior to the first anniversary of the date such stock salary is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes.

e. Incentive Compensation

The Special Master reviewed Citigroup’s proposed incentive compensation for Covered Employees 26 – 100 in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv). In general, incentive compensation should not be granted unless the achievement of performance metrics is reviewed and certified on an independent basis. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that no incentive compensation may be granted to a Covered Employee unless the employee achieves objective performance metrics developed by appropriate Citigroup officials and reviewed and approved by Citigroup’s Compensation Committee (which is composed solely of independent directors) in consultation with the Office of the Special Master. As described below, incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to “clawback” if the performance assessment resulting in the compensation is later discovered to be inaccurate.

i. Cash Incentives

The Special Master reviewed Citigroup’s proposed incentive compensation in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met.” *Id.* § 30.16(b)(iv). In general, the Special Master has concluded that cash incentives should be deferred over a period of time designed to ensure that the performance metrics giving rise to the payment accurately measured performance. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that at least 50% of incentive compensation granted after the date of this Determination Memorandum and paid in cash be deferred for at least one year after the grant date, in order to assure compliance with the performance metrics upon which the compensation was based.

ii. Stock Incentives

The Special Master reviewed Citigroup’s proposed incentive compensation in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle that compensation structures should ensure that “an appropriate portion of the compensation should be performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that a significant amount of the compensation paid as incentive compensation should reflect the

Company's performance over the long term. Accordingly, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that at least 50% of incentive compensation be paid in the form of stock or stock equivalents that cannot be transferred until at least three years from the date of grant and cannot be transferred until at least one year following vesting, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. The remaining 50% of incentive compensation may be paid in a form, and at a time, determined by Citigroup's Compensation Committee, subject to the principles set forth in Part IV.B. of this Determination Memorandum.

iii. Total Incentives

Finally, the Special Master reviewed Citigroup's proposed incentive compensation in light of the principle that compensation structures "should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated." *Id.* § 30.16(b)(1)(v). The Special Master has determined that safeguards with respect to the aggregate amount of incentive compensation payable to Covered Employees 26 – 100 are necessary to ensure that compensation structures for Covered Employees 26 – 100 are generally comparable to those for persons in similar positions or roles at similar entities. Accordingly, the Special Master has determined that, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 may not provide for incentive compensation that, in the aggregate, exceeds a specified percentage of Citigroup's eligible earnings. Such eligible earnings will be determined by Citigroup's Compensation Committee and may be reviewed by the Office of the Special Master.

2. Covered Employees 26 – 100 Entering the "Top 25"

If a Covered Employee becomes a "Top 25" employee in 2010, several complications arise with respect to that Covered Employee's compensation structure. In particular, Section 111 of EESA, and Section 30.10 of the Rule, impose restrictions on the accrual or payment of cash "bonuses" in 2010 for any Covered Employee who becomes a "Top 25" employee in 2010, even if the compensation relates to performance prior to the employee joining the "Top 25." The Special Master has considered these issues and has determined that, if Citigroup reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements.

First, in accordance with the Special Master's October 22, 2009 determinations for the "Top 25," additional stock salary may be granted to the Covered Employee on a *mutuo pro tunc* basis, provided that the stock or stock units vest immediately and are only redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if federal obligations are repaid (except stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Second, any incentive compensation for performance in 2009 that would be payable to the Covered Employee in cash in the first quarter of 2010 (consistent with the principles set forth in Part IV.B.1.c.i.) may be paid on or before December 31, 2009.

Third, notwithstanding the other requirements of this Part IV.B., any incentive compensation paid to the Covered Employee may be paid in the form of Citigroup stock (but not stock units) that vests on or before December 31, 2009, provided that the transferability of such stock shall be consistent with the structural principles set forth in Part IV.B. (except with respect to stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Fourth, notwithstanding the other requirements of this Part IV.B., up to one-third of the Covered Employee's "annual compensation" may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.

3. "Other" Compensation and Perquisites

Citigroup's proposals provide for limited payments of "other" compensation, as well as perquisites, to Covered Employees 26 – 100. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that a significant portion of the compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

Accordingly, to be consistent with the Public Interest Standard, the compensation structure for each Covered Employee generally must provide no more than \$25,000 in "other" compensation and perquisites. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.¹

4. Severance Plans

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must ensure that 2009 compensation structures do not result in an increase in the amounts payable pursuant to these arrangements.

5. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

Citigroup also proposed that certain Covered Employees receive limited compensation in the form of accruals under a "non-qualified deferred compensation" plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over

¹ Citigroup has identified Covered Employees subject to expatriate arrangements providing for the payment of certain "other" compensation in excess of this limitation. The Special Master has reviewed these arrangements and concluded that such payments, not to exceed \$350,000 per employee, are consistent with the Public Interest Standard, and that such payments may be disregarded for purposes of determining whether a Covered Employee's compensation structure meets the requirements of the Public Interest Standard as set forth in this Part IV.B.

time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee's compensation package should be allocated to compensation structures that are "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). Payments under the Company's "non-qualified deferred compensation" plans do not depend upon "individual performance and/or the performance of the [company] or a relevant business unit." *Id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top employee upon leaving the Company.

Covered Employees 26 – 100 should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must not provide for further 2009 accruals under supplemental retirement plans or Company credits to other "non-qualified deferred compensation" plans (with the exception of employee-funded elective deferrals) following the date of this Determination Memorandum.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period," 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, Citigroup must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for Covered Employees 26 – 100, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are "measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv), incentive compensation may not be granted unless Citigroup's Compensation Committee determines to grant such compensation in light of the employee's performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, Citigroup's securities filings. In addition, the Committee must retain discretion with respect to each employee to reduce (but not to increase) the amount of incentive compensation on the basis of its overall evaluation of the employee's or Citigroup's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV above, the structures determined by the Special Master to be consistent with the Public Interest Standard, include grants of stock or stock units in Citigroup. It is critical that these compensation structures achieve the Rule's objective of

“appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity.” *id.* § 30.16(b)(1)(iii). Accordingly, the Company must have in effect a policy that would prohibit a Covered Employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in Part IV above. Such transactions would be contrary to the principles set forth in the Rule.

Finally, because the compensation structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock or stock units in Citigroup, it is particularly important that stock acquired pursuant to these grants provide “compensation [that is] performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). Citigroup’s proposals included a detailed description of the Company’s stock ownership commitment rules, which provide that a portion of stock acquired under the Company’s equity compensation plans must be held over an appropriate period of time. Accordingly, Citigroup’s Compensation Committee must ensure that each Covered Employee is subject to the holding requirements set forth in the Company’s stock ownership commitment rules, and must certify compliance with the rules to the Office of the Special Master.

B. Additional Requirements

In addition to the requirements set forth above, in light of the requirements of the Rule, Citigroup is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Under the Rule, Citigroup must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with Citigroup’s senior risk officers any risks that could threaten the value of Citigroup. In particular, the Rule requires that the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (2) employee compensation plans that could encourage the manipulation of Citigroup’s reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The Rule requires that the compensation committee disclose to Treasury an annual narrative description of whether Citigroup, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).
- (3) *Clawback.* The Rule requires that any bonus payment made to a senior executive officer or one of the next twenty most highly compensated employees of Citigroup be subject to a provision for recovery or “clawback.” *Id.* § 30.8. The Special Master has determined that this important requirement should also apply to each of Citigroup’s Covered Employees 26–100. Accordingly, any incentive compensation must be subject to

forfeiture if the compensation granted is later determined to be based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive compensation was earned.

- (4) *Prohibition on Tax Gross-Ups.* The Rule prohibits Citigroup from providing (formally or informally) a tax “gross-up,” as defined in the Rule, to any senior executive officer or most highly compensated employee. *Id.* § 30.11(d). The Special Master has determined that this important requirement should also apply to each of Citigroup’s Covered Employees 26 – 100. Accordingly, Citigroup must not provide (formally or informally) a tax “gross-up,” as defined in the Rule, to any Covered Employee following the date of this Determination Memorandum.

VI. CONCLUSION

The Special Master has reviewed Citigroup’s Proposed Structures in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by Citigroup require modification in order to meet the Public Interest Standard.

Part IV.B sets forth structures that the Special Master has concluded comport with the Rule’s principles. Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3)(ii) thereof, the Special Master hereby determines that the compensation structures set forth in Part IV.B, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Rule, Citigroup may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If Citigroup does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(e)(1).

The foregoing determinations are limited to the compensation structures described in Part IV.B, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(ii) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

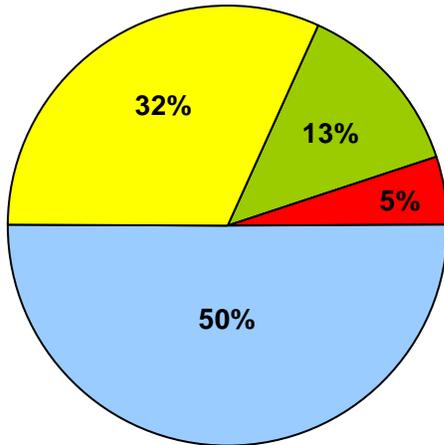
Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
SAMPLE COMPENSATION STRUCTURE
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

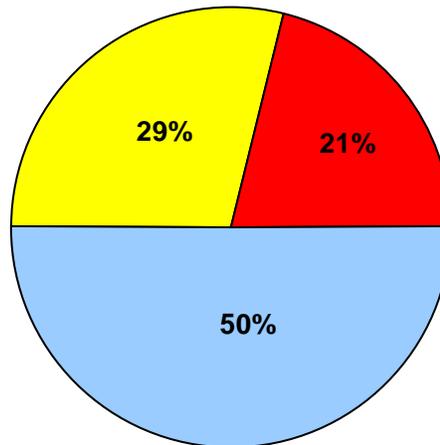
Example: Covered Employee with a total compensation package of \$3,000,000.

- **Base salary.**
 - **Cash:** The Covered Employee receives a total of \$400,000 in cash salary.
 - **Stock Salary:** The Covered Employee receives \$150,000 in stock salary, which vests immediately but may not be transferred prior to the first anniversary of the date it is earned.
- **Incentive Compensation.** The Covered Employee may also receive \$2,450,000 in incentive compensation as follows:
 - **Cash Incentive: \$950,000.**
 - \$475,000 immediately payable; and
 - \$475,000 paid at least one year from the grant date.
 - **Stock incentive: \$1,500,000**
 - The entire amount may not be sold or transferred prior to the third anniversary of the grant date.
- **Total compensation.** Covered Employee’s total compensation is \$3,000,000, with 45% of the total delivered in cash and 55% delivered in stock (50% delivered short term and 50% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



<ul style="list-style-type: none"> ■ Cash Salary ■ Stock Salary - 1 year after grant ■ Stock Incentive-Not payable until the 3rd Year ■ Cash Incentive-50% immediately, 50% one year later
--

<ul style="list-style-type: none"> ■ Amounts payable in the current year ■ Amounts payable in the 2nd year ■ Amounts payable in 3+ years

Note 1: This Exhibit does not include amounts payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

EXHIBIT II
TERMS AND CONDITIONS OF COMPENSATION STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in Part IV.B. of the Determination Memorandum. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Stock salary.** Because this is a new compensation element, stock salary may be granted on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of grant. Unless otherwise provided in the Determination Memorandum, stock granted as stock salary may not be redeemable during the one-year period immediately following the date it is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Prior compensation.** In accordance with the Rule, unless otherwise noted compensation paid to Covered Employees 26 – 100 during the period from June 15, 2009 to the date of the Determination Memorandum will be treated as complying with the Rule, provided that such compensation was paid under a compensation structure established by the Company as of June 14, 2009, and provided further that the Company promptly complies with the modifications set forth in the Determination Memorandum. 31 C.F.R. § 30.16(a)(3)(iii).
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions (with the exception of employee-funded elective deferrals) may be made to other “non-qualified deferred compensation” plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by Covered Employees 26 – 100 in tax-qualified retirement plans, broad-based employee health and welfare plans, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Mr. Gregory E. Lau
Executive Director – Global Compensation
General Motors Company
300 Renaissance Drive
MC 482-C32-B61
Detroit, MI 48265-300

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees (“Covered Employees 26 – 100”)

Dear Mr. Lau:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of employees who are either executive officers of General Motors Company (“GM”) or one of GM’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule (“Covered Employees 26 – 100”). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I and II*) providing the determinations of the Special Master with respect to 2009 compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii).

The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review of GM’s “Top 25” employees, which emphasized the individual “amounts payable” to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Interim Final Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii). The Special Master has determined that, to satisfy this standard, the 2009 compensation structures for Covered Employees 26 – 100 generally must comport with the following important standards:

- The compensation structures for Covered Employees 26 – 100 must be consistent with the principles emphasized in the Special Master’s previous determinations, including: pay based on individual and Company performance, long-term incentives, avoidance of “guaranteed” bonuses and retention payments, and appropriate levels of compensation compared to compensation for persons in similar positions or roles at similar entities.
- To achieve these principles, Covered Employees 26 – 100 should receive compensation in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be

determined by the Company's compensation committee, subject to the structural rules described herein and set forth in detail in the attached Determination Memorandum.

- **Total compensation** must emphasize long-term performance. At least 50% of a Covered Employee's total compensation — whatever the mix of components for that individual — must not be transferable for at least three years, except in exceptional cases for good cause shown. The objective is to promote long-term performance. In addition, the total amount of cash included in any individual compensation package may not exceed 50% of total compensation, except in exceptional cases for good cause shown.
 - **Cash salary** should not exceed \$500,000 per year, except in exceptional cases for good cause shown, as certified by the Executive Compensation Committee of GM's Board of Directors ("GM's Compensation Committee"), which is comprised solely of independent directors.
 - **Stock salary** will immediately vest, but will not be transferable until at least one year after it is earned.
 - **Incentive compensation** may be granted if—and only if—the Covered Employee achieves objective performance metrics determined by GM's Compensation Committee), which is comprised solely of independent directors, in consultation with the Office of the Special Master. Incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- The total value of all incentive compensation granted to Covered Employees 26 – 100 will be determined by GM's Compensation Committee in consultation with the Special Master.
- If GM reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010 and therefore subject to "bonus" restrictions under the Emergency Economic Stabilization Act of 2008, as amended, and the Interim Final Rule, the compensation structure for that employee will be subject to additional terms and conditions described in the Determination Memorandum to assure compliance with pertinent statutory and regulatory requirements.
- Cash guarantees payable pursuant to previously existing agreements should be restructured to be consistent with the principles above.
- The restrictions described in the Special Master's "Top 25" determinations pertaining to perquisites, severance benefits and supplemental executive retirement plans shall be extended to Covered Employees 26 – 100.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3)(ii), GM must adopt policies applicable to Covered Employees 26 – 100 as follows:

- The achievement of all performance objectives must be certified by GM's Compensation Committee. These performance objectives must be reviewed and approved by the Office of the Special Master.
- Each Covered Employee will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- Each Covered Employee will be subject to stock holding requirements established by GM's Compensation Committee in consultation with the Office of the Special Master.
- GM may not provide a tax "gross-up" of any kind to any Covered Employee.

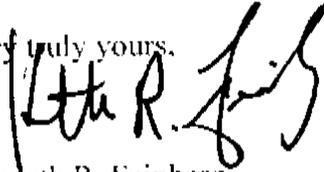
These requirements are described in further detail in the attached Determination Memorandum.

The Special Master's review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GM's compensation structures:

- *Performance-based compensation.* The majority of compensation payable under the approved structures depends on GM and individual performance, and ties the financial incentives of GM employees to the overall performance of the Company. The majority of the total compensation paid to employees under these structures will be redeemable over a period of not less than three years. The ultimate value realized by each Covered Employee therefore will depend on GM's performance over the long term. Guaranteed amounts payable in cash, in contrast, are rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for GM to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to GM employees is weighted heavily toward long-term structures that are tied to GM's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to GM employees should consist only of cash base salaries and stock salary at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. *Id.* § 30.16(b)(1)(iii).

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If GM does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken R. Feinberg". The signature is written in a cursive, somewhat stylized font.

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Ms. Mary T. Barra

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

Under the Emergency Economic Stabilization Act of 2008, as amended (“EESA”) and the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master,” or the “Office”) is responsible for reviewing compensation structures for the executive officers and 100 most highly employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”), at financial institutions receiving exceptional financial assistance (“Exceptional Assistance Recipients”) under the Troubled Asset Relief Program (the “TARP”). 31 C.F.R. § 30.16(a)(3)(ii). The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review for the “Top 25” employees, which emphasized the individual “amounts payable” to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii).

General Motors Company (“GM” or the “Company”), one of six remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2009 compensation structures for review pursuant to Section 30.16(a)(3)(ii) of the Rule. Covered Employees 26 – 100 comprise two business unit categories: corporate employees (“Corporate Employees”) and employees of GM’s asset management unit (“Promark Employees”).

The Special Master has completed the review of the Company’s proposed compensation structures for Covered Employees 26 – 100 pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(ii) of the Rule, with respect to Covered Employees 26 – 100.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Since that date, the Special Master, and Treasury employees working in the Office of the Special Master, have conducted extensive discussions with GM officials. During these discussions, the Office of the Special Master informed GM about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and GM explored potential compensation structures for Covered Employees 26 – 100.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii). On October 5, 2009, the Office of the Special Master requested from each Exceptional Assistance Recipient, including GM, certain data and documentary information necessary to facilitate the Office of the Special Master's review of the Company's proposed compensation structures. The request required GM to submit data describing its proposed 2009 compensation structures, as well as the historical compensation structures for Covered Employees 26 – 100.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). GM was required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GM submitted this information to the Office of the Special Master on October 13, 2009. Following a preliminary review of the submission, and the provision by GM of certain additional information requested by the Office of the Special Master, on October 30, 2009, the Special Master determined that GM's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(ii). The Office of the Special Master then commenced a formal review of GM's proposed compensation structures for Covered Employees 26 – 100. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in executive compensation and corporate governance;
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the Department of Finance and Business Economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for Covered Employees 26 – 100 for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees 26 – 100 whether GM’s proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3)(ii) (as applied to Covered Employees of Exceptional Assistance Recipients, the “Public Interest Standard”). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance, or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, and to retain and recruit talented employees who will contribute to the recipient’s future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or granted. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structures should be consistent with, and not excessive taking into account, compensation structures for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are

financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).

- (6) *Employee contribution to TARP recipient value.* The compensation structures should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with Company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

In addition, the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.*

The Rule also provides an exemption where a Covered Employee's annual compensation does not exceed \$500,000 (excluding "long-term restricted stock," as that term is defined in the Rule). Compensation structures that fit within this exemption are automatically deemed to meet the requirements of the Rule, and GM is not required to seek the prior approval of the Special Master to implement these structures. 31 C.F.R. § 30.16(a)(3)(ii).

IV. COMPENSATION STRUCTURES

A. GM Proposals

GM provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for Covered Employees 26 – 100 (the "Proposed Structures"). GM's proposal for Corporate Employees and Promark Employees reflected the significant differences between the businesses and their customary compensation structures. The Corporate Employees generally manage the Company's automotive business, and their compensation structure is weighted more heavily toward stock than Promark Employees, who manage GM and third-party pension trust fund and other assets.

Under the Proposed Structures, Corporate Employees generally would receive a combination of cash salary and long-term incentive compensation payable in the form of "long-term restricted stock," as that term is defined in the Rule. Long-term incentive compensation

would be provided based on the 2009 performance of the employee. Corporate Employees who are members of GM's Senior Leadership Group (the Company's senior management team) also would receive stock salary.

Promark Employees instead would receive a combination of cash salary, short-term cash bonuses and long-term cash bonuses. Bonuses—both short-term and long-term—would be determined by the absolute return on assets under Promark's management. Under the Proposed Structures, Promark Employees would receive no compensation in the form of stock or stock units.

B. Determinations of the Special Master

The Special Master reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review, the Special Master has determined that the Proposed Structures are largely consistent with the Public Interest Standard; however, certain aspects of the Proposed Structures require modification.

The Special Master has determined that the compensation structures described in this Part IV.B will not, by virtue of their structural design, result in payments inconsistent with the Public Interest Standard. These compensation structures are described in further detail in *Exhibits I and II*.

1. Total Compensation

The Special Master reviewed GM's Proposed Structures in light of the principle that an "appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). In general, the Special Master has concluded that compensation transferable no earlier than three years following the date it is earned provides employees with incentives to maximize the long-term value of the Company. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 - 100, whether in the form of cash or stock, must provide at least 50% of total compensation in the form of compensation that is not transferable for at least three years following the date it is earned, other than in exceptional cases for good cause shown.

The Special Master also reviewed the Proposed Structures in light of the principle that "a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." *Id.* § 30.16(b)(1)(iii). In general, compensation payable in the form of cash does not align employees' incentives with the interests of shareholders and taxpayers as effectively as compensation payable in the form of Company stock. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the total amount of cash included in the compensation structure for any Covered Employee should not exceed 50% of total compensation, other than in exceptional cases for good cause shown. The remaining percentage of total compensation must be payable in the form of Company stock.

a. Cash Salary

The Special Master reviewed GM's proposed cash salaries in light of the principle that compensation structures should generally be consistent with compensation structures "for persons in similar positions or roles at similar entities that are similarly situated, including entities competing in the same markets." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has determined that, to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100 may not provide for cash salaries in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by the Executive Compensation Committee of the Company's Board of Directors ("GM's Compensation Committee").

b. Stock Salary

The Special Master reviewed the Proposed Structures in light of the principle that compensation structures should "appropriately allocate the components of compensation such as salary . . . as well as the extent to which compensation is provided in cash, equity, or other types of compensation," *id.* § 30.16(b)(1)(iii). With the exception of Promark Employees, the Proposed Structures provide for payment of base salary in the form of cash and stock. The Special Master has concluded that, to be consistent with the Public Interest Standard, compensation structures generally should permit the payment of base compensation in the form of vested stock salary which facilitates an appropriate allocation of fixed, annual compensation to stock, other than in exceptional cases for good cause shown.

The Special Master also reviewed the Proposed Structures in light of the principle that compensation structures should provide compensation that is "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that, to provide compensation that is performance-based over a relevant period, stock salary may not be transferred or otherwise redeemed prior to the first anniversary of the date such stock salary is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes.

c. Incentive Compensation

The Special Master reviewed GM's proposed incentive compensation for Covered Employees 26 – 100 in light of the principle that compensation structures should provide performance-based compensation based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv). In general, incentive compensation should not be granted unless the achievement of performance metrics is reviewed and certified on an independent basis. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that no incentive compensation may be granted to a Covered Employee unless the employee achieves objective performance metrics developed by appropriate GM officials and reviewed and approved by GM's Compensation Committee (which is composed solely of independent directors) in consultation with the Office of the Special Master. As described below, incentive compensation may be delivered in a mix of cash and stock, but must

be payable over time and subject to “clawback” if the performance assessment resulting in the compensation is later discovered to be inaccurate.

i. Cash Incentives

The Special Master reviewed GM’s proposed incentive compensation in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met.” *Id.* § 30.16(b)(iv). In general, the Special Master has concluded that cash incentives should be deferred over a period of time designed to ensure that the performance metrics giving rise to the payment accurately measured performance. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 generally must provide that at least 50% of incentive compensation granted after the date of this Determination Memorandum and paid in cash be deferred for at least one year after the grant date, other than in exceptional cases for good cause shown, in order to assure compliance with the performance metrics upon which the compensation was based.

ii. Stock Incentives

The Special Master reviewed GM’s proposed incentive compensation in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle that compensation structures should ensure that “an appropriate portion of the compensation should be performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that a significant amount of the compensation paid as incentive compensation should reflect the Company’s performance over the long term. Accordingly, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 generally must provide that at least 50% of incentive compensation be paid in the form of stock or stock equivalents that cannot be transferred until at least three years from the date of grant and cannot be transferred until at least one year following vesting, other than in exceptional cases for good cause shown and except for stock or stock equivalents withheld or transferred immediately upon vesting to enable the employee to pay taxes. The remaining 50% of incentive compensation may be paid in a form, and at a time, determined by GM’s Compensation Committee, subject to the principles set forth in Part IV.B. of this Determination Memorandum.

iii. Total Incentives

Finally, the Special Master reviewed GM’s proposed incentive compensation in light of the principle that compensation structures “should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated.” *Id.* § 30.16(b)(1)(v). The Special Master has determined that safeguards with respect to the aggregate amount of incentive compensation payable to Covered Employees 26 – 100 are necessary to ensure that compensation structures for Covered Employees 26 – 100 are generally comparable to those for persons in similar positions or roles at similar entities. Accordingly, the Special Master has determined that, in order to be consistent with the Public Interest Standard, the total value of all incentive compensation granted

to Covered Employees must be determined by GM's Compensation Committee in consultation with the Special Master.

2. Covered Employees Entering the "Top 25"

If a Covered Employee becomes a "Top 25" employee in 2010, several complications arise with respect to that Covered Employee's compensation structure. In particular, Section 111 of EFSA, and Section 30.10 of the Rule, impose restrictions on the accrual or payment of cash "bonuses" in 2010 for any Covered Employee who becomes a "Top 25" employee in 2010, even if the compensation relates to performance prior to the employee joining the "Top 25." The Special Master has considered these issues and has determined that, if GM reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements.

First, in accordance with the Special Master's October 22, 2009 determinations for the "Top 25," additional stock salary may be granted to the Covered Employee on a *nunc pro tunc* basis, provided that the stock or stock units vest immediately and are only redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if federal obligations are repaid (except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Second, any incentive compensation for performance in 2009 that would be payable to the Covered Employee in cash in the first quarter of 2010 (consistent with the principles set forth in Part IV.B.1.c.i.) may be paid on or before December 31, 2009.

Third, notwithstanding the other requirements of this Part IV.B., any incentive compensation paid to the Covered Employee may be paid in the form of GM stock (but not stock units) that vests on or before December 31, 2009, provided that the transferability of such stock shall be consistent with the structural principles set forth in Part IV.B (except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Fourth, notwithstanding the other requirements of this Part IV.B., up to one-third of the Covered Employee's "annual compensation" may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.

3. Exemption for Annual Compensation Under \$500,000

According to GM's submission, the Proposed Structures may result in payments to one or more Covered Employees that result in annual compensation (other than long-term restricted stock) totaling \$500,000 or less. If the Proposed Structure for a Covered Employee satisfies the exemption set forth in Section 30.16(a)(3)(ii) of the Rule and described in Part III above, then the structure is automatically deemed to meet the requirements of the Rule, and GM is not required to seek the prior approval of the Special Master to implement the structure.

4. "Other" Compensation and Perquisites

GM's proposals provide for limited payments of "other" compensation, as well as perquisites, to Covered Employees 26 – 100. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that a significant portion of the compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

Accordingly, to be consistent with the Public Interest Standard, the compensation structure for each Covered Employee generally must provide no more than \$25,000 in "other" compensation and perquisites. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.¹

5. Severance Plans

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(i)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must ensure that 2009 compensation structures do not result in an increase in the amounts payable pursuant to these arrangements.

6. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

GM also proposed that certain Covered Employees receive limited compensation in the form of accruals under a "non-qualified deferred compensation" plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee's compensation package should be allocated to compensation structures that are "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). Payments under the Company's "non-qualified deferred compensation" plans do not depend upon "individual performance and/or the performance of the [company] or a relevant business unit," *id.*; instead,

¹ GM has identified Covered Employees subject to expatriate arrangements providing for the payment of certain "other" compensation in excess of this limitation. The Special Master has reviewed these arrangements and concluded that such payments, not to exceed \$350,000 per employee, are consistent with the Public Interest Standard, and that such payments may be disregarded for purposes of determining whether a Covered Employee's compensation structure meets the requirements of the Public Interest Standard as set forth in this Part IV.B.

such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top employee upon leaving the Company.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must not provide for further 2009 accruals under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans (with the exception of employee-funded elective deferrals) following the date of this Determination Memorandum.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, GM must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for Covered Employees 26 – 100, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), incentive compensation may not be granted unless GM’s Compensation Committee determines to grant such compensation in light of the employee’s performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, GM’s securities filings. In addition, the Committee must retain discretion with respect to each employee to reduce (but not to increase) the amount of any incentive compensation on the basis of its overall evaluation of the employee’s or GM’s performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV above, the structures determined by the Special Master to be consistent with the Public Interest Standard, include grants of stock or stock units in GM. It is critical that these compensation structures achieve the Rule’s objective of “appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity.” *id.* § 30.16(b)(1)(iii). Accordingly, the Company must have in effect a policy that would prohibit a Covered Employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in Part IV above. Such transactions would be contrary to the principles set forth in the Rule.

Finally, because the compensation structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock or stock units in GM, it is particularly important that stock acquired pursuant to these grants provide “compensation [that is] performance-based over a relevant performance period.” *id.* § 30.16(b)(1)(iv). Accordingly, the Company must ensure that each Covered Employee is subject to holding requirements set forth in stock ownership commitment rules to be adopted by GM’s Compensation Committee in consultation with the Office of the Special Master.

B. Additional Requirements

In addition to the requirements set forth above, in light of the requirements of the Rule, GM is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Under the Rule, GM must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with GM’s senior risk officers any risks that could threaten the value of GM. In particular, the Rule requires that the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (2) employee compensation plans that could encourage the manipulation of GM’s reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The Rule requires that the compensation committee disclose to Treasury an annual narrative description of whether GM, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(e).
- (3) *Clawback.* The Rule requires that any bonus payment made to a senior executive officer or one of the next twenty most highly compensated employees of GM be subject to a provision for recovery or “clawback.” *Id.* § 30.8. The Special Master has determined that this important requirement should also apply to each of GM’s Covered Employees. Accordingly, any incentive compensation must be subject to forfeiture if the compensation granted is later determined to be based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive compensation was earned.
- (4) *Prohibition on Tax Gross-Ups.* The Rule prohibits GM from providing (formally or informally) a tax “gross-up,” as defined in the Rule, to any senior executive officer or most highly compensated employee. *Id.* § 30.11(d). The Special Master has determined that this important requirement should also apply to each of GM’s Covered Employees.

Accordingly, GM must not provide (formally or informally) a tax "gross-up," as defined in the Rule, to any Covered Employee following the date of this Determination Memorandum.

VI. CONCLUSION

The Special Master has reviewed GM's Proposed Structures in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GM require modification in order to meet the Public Interest Standard.

Part IV.B sets forth structures that the Special Master has concluded comport with the Rule's principles. Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3)(ii) thereof, the Special Master hereby determines that the compensation structures set forth in Part IV.B, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GM does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in Part IV.B, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(ii) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

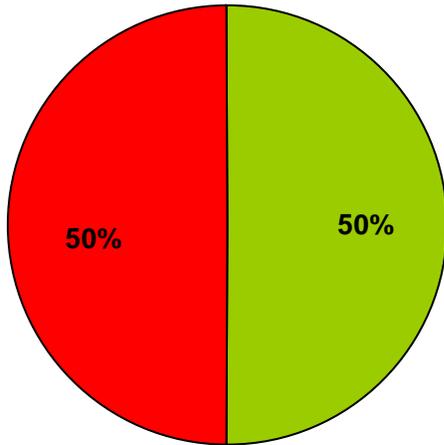
Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

Exhibit I-A
SAMPLE COMPENSATION STRUCTURE
FOR GM CORPORATE EMPLOYEE
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

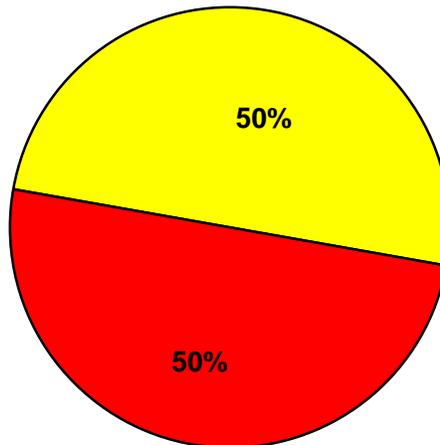
Example: GM Corporate Employee with a total compensation package of \$700,000.

- **Base salary.**
 - **Cash:** The Covered Employee receives a total of \$350,000 in cash salary.
- **Incentive Compensation.** The Covered Employee may also receive \$350,000 in incentive compensation as follows:
 - **Stock Incentive: \$350,000**
 - The entire amount may not be sold or transferred prior to the third anniversary of the grant date.
- **Total compensation.** The Covered Employee’s total compensation is \$700,000, with 50% of the total delivered in cash and 50% delivered in stock (50% delivered short term and 50% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



<p>■ Cash Salary</p> <p>■ Stock Incentive-Cliff vest Year 3 settles upon TARP repayment</p>

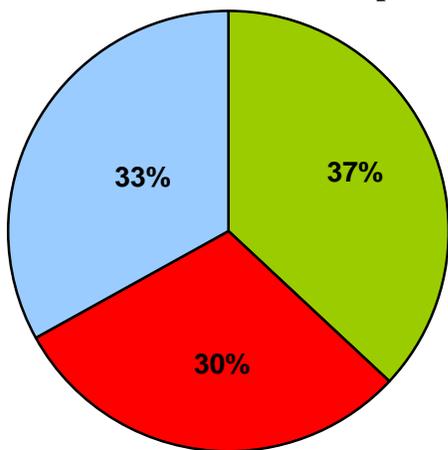
<p>■ Amounts payable in the current year</p> <p>■ Amounts payable in 3+ years</p>

Exhibit I-B
SAMPLE COMPENSATION STRUCTURE
FOR GM SENIOR LEADERSHIP GROUP MEMBER
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

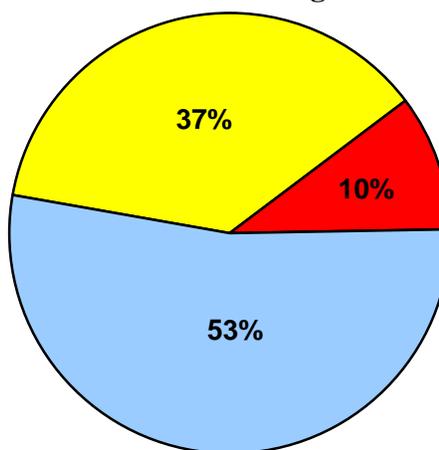
Example: GM Corporate Employee who is a member of the Company’s Senior Leadership Group with a total compensation package of **\$1,350,000**.

- **Base salary.**
 - **Cash:** The Covered Employee receives a total of **\$500,000** in cash salary.
 - **Stock Salary:** The Covered Employee receives **\$400,000** in stock salary, which vests immediately and becomes transferable on the second, third and fourth anniversary of the date it is earned.
- **Incentive Compensation.** The Covered Employee may also receive **\$450,000** in incentive compensation as follows:
 - **Stock incentive: \$450,000**
 - The entire amount vests three years from the grant date and is transferable in 25% installments as the TARP obligation is repaid.
- **Total compensation.** Covered Employee’s total compensation is **\$1,350,000**, with 37% of the total delivered in cash and 63% delivered in stock (47% delivered short term and 53% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



■ Cash Salary
■ Stock Salary - settles ratably in Years 2-3-4
■ Annual Incentive Equity-Cliff vest Year 3, settles upon TARP repayment

■ Amounts payable in the current year
■ Amounts payable in the 2nd year
■ Amounts payable in 3+ years

EXHIBIT II
TERMS AND CONDITIONS OF COMPENSATION STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in Part IV.B. of the Determination Memorandum. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Stock salary.** Because this is a new compensation element, stock salary may be granted on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of grant. Unless otherwise provided in the Determination Memorandum, stock granted as stock salary may not be redeemable during the one-year period immediately following the date it is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Allocation of compensation.** For compensation delivered in annual installments over a period of years, each installment will be considered separately in determining when compensation vests or becomes transferable for purposes of the Determination Memorandum.
- **Prior compensation.** In accordance with the Rule, unless otherwise noted, compensation paid to Covered Employees during the period from June 15, 2009 to the date of the Determination Memorandum will be treated as complying with the Rule, provided that such compensation was paid under a compensation structure established by the Company as of June 14, 2009, and provided further that the Company promptly complies with the modifications set forth in the Determination Memorandum. 31 C.F.R. § 30.16(a)(3)(iii).
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions (with the exception of employee-funded elective deferrals) may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by Covered Employees 26 – 100 in tax-qualified retirement plans, broad-

based employee health and welfare plans, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Drema M. Kalajian, Esquire
General Motors Acceptance Corporation Financial Services
200 Renaissance Center
MC-B09-B11
Detroit, MI 48265

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees ("Covered Employees 26 – 100")

Dear Ms. Kalajian:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of employees who are either executive officers of General Motors Acceptance Corporation Financial Services ("GMAC") or one of GMAC's 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule ("Covered Employees 26 – 100"). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I and II*) providing the determinations of the Special Master with respect to 2009 compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii).

The compensation review for Covered Employees 26 – 100 differs from the Special Master's review of GMAC's "Top 25" employees, which emphasized the individual "amounts payable" to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Interim Final Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* § 30.16(a)(3)(ii). The Special Master has determined that, to satisfy this standard, the 2009 compensation structures for Covered Employees 26 – 100 generally must comport with the following important standards:

- The compensation structures for Covered Employees 26 – 100 must be consistent with the principles emphasized in the Special Master's previous determinations, including: pay based on individual and Company performance, long-term incentives, avoidance of "guaranteed" bonuses and retention payments, and appropriate levels of compensation compared to compensation for persons in similar positions or roles at similar entities.
- To achieve these principles, Covered Employees 26 – 100 should receive compensation in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by the Company's compensation committee, subject to the structural rules described herein and set forth in detail in the attached Determination Memorandum.

- **Total compensation** must emphasize long-term performance. At least 50% of a Covered Employee's compensation other than cash base salary — whatever the mix of components for that individual — must not be transferable or otherwise redeemable for at least three years. The objective is to promote long-term performance. In addition, the total amount of cash included in any compensation package for an individual who earns \$500,000 or more in cash may not exceed 45% of the total compensation for that individual, except in exceptional cases for good cause shown.
- **Cash salary** should not exceed \$500,000 per year, except in exceptional cases for good cause shown.
- **Stock salary** will immediately vest, but will not be transferable or otherwise redeemable until at least one year after it is earned.
- **Incentive compensation** may be granted if—and only if—the Covered Employee achieves objective performance metrics determined by the compensation committee of GMAC's Board of Directors ("GMAC's Compensation Committee"), which is comprised solely of independent directors, in consultation with the Office of the Special Master. Incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- The total value of all incentive compensation granted to Covered Employees 26 – 100 cannot exceed a specified percentage of GMAC's eligible earnings, which will be determined by GMAC's Compensation Committee and may be reviewed by the Special Master.
- If GMAC reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010 and therefore subject to "bonus" restrictions under the Emergency Economic Stabilization Act of 2008, as amended, and the Interim Final Rule, the compensation structure for that employee will be subject to additional terms and conditions described in the Determination Memorandum to assure compliance with pertinent statutory and regulatory requirements.
- Cash guarantees payable pursuant to previously existing agreements should be restructured to be consistent with the principles above.
- The restrictions described in the Special Master's "Top 25" determinations pertaining to perquisites, severance benefits and supplemental executive retirement plans shall be extended to Covered Employees 26 – 100.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3)(ii), GMAC must adopt policies applicable to Covered Employees 26 – 100 as follows:

- The achievement of all performance objectives must be certified by GMAC's Compensation Committee. These performance objectives must be reviewed and approved by the Office of the Special Master.
- Each Covered Employee will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- GMAC may not provide a tax "gross-up" of any kind to any Covered Employee.

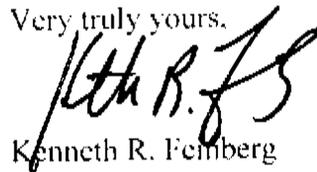
These requirements are described in further detail in the attached Determination Memorandum.

The Special Master's review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GMAC's compensation structures:

- *Performance-based compensation.* The majority of compensation payable under the approved structures depends on GMAC and individual performance, and ties the financial incentives of GMAC employees to the overall performance of the Company. A significant portion of the total compensation paid to employees under these structures will be redeemable over a period of not less than three years. The ultimate value realized by each Covered Employee therefore will depend on GMAC's performance over the long term. Guaranteed amounts payable in cash, in contrast, are rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for GMAC to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to GMAC employees is weighted heavily toward long-term structures that are tied to GMAC's performance. As a general principle, guaranteed income is rejected. Fixed compensation payable to GMAC employees should consist only of cash base salaries and stock salary at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. *Id.* § 30.16(b)(1)(iii).

Pursuant to the Interim Final Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If GMAC does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Fenberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Mr. Kim Fennebresque
William B. Solomon, Jr., Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

Under the Emergency Economic Stabilization Act of 2008, as amended (“EESA”) and the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master,” or the “Office”) is responsible for reviewing compensation structures for the executive officers and 100 most highly employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”), at financial institutions receiving exceptional financial assistance (“Exceptional Assistance Recipients”) under the Troubled Asset Relief Program (the “TARP”). 31 C.F.R. § 30.16(a)(3)(ii). The compensation review for Covered Employees 26 – 100 differs from the Special Master’s review for the “Top 25” employees, which emphasized the individual “amounts payable” to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(ii).

General Motors Acceptance Corporation Financial Services (“GMAC,” or the “Company”), one of six remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2009 compensation structures for review pursuant to Section 30.16(a)(3)(ii) of the Rule. The Special Master has completed the review of the Company’s proposed compensation structures for Covered Employees 26 – 100 pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(ii) of the Rule, with respect to Covered Employees 26 – 100.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Since that date, the Special Master, and Treasury employees working in the Office of the Special Master, have conducted extensive discussions with GMAC officials. During these discussions, the Office of the Special Master informed GMAC about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and GMAC explored potential compensation structures for Covered Employees 26 – 100.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for the Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii). On October 5, 2009, the Office of the Special Master requested from each Exceptional Assistance Recipient, including GMAC, certain data and documentary information necessary to facilitate

the Office of the Special Master's review of the Company's proposed compensation structures. The request required GMAC to submit data describing its proposed 2009 compensation structures, as well as the historical compensation structures for Covered Employees 26 - 100.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). GMAC was required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GMAC submitted this information to the Office of the Special Master on October 13, 2009. Following a preliminary review of the submission, and the provision by GMAC of certain additional information requested by the Office of the Special Master, on October 30, 2009, the Special Master determined that GMAC's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(ii). The Office of the Special Master then commenced a formal review of GMAC's proposed compensation structures for Covered Employees 26 - 100. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in executive compensation and corporate governance;
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Treflitzs Chair in Finance in the Department of Finance and Business Economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees 26 - 100 for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees 26 - 100 whether GMAC's proposed compensation structures "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3)(ii) (as applied to Covered Employees 26

– 100 of Exceptional Assistance Recipients, the “Public Interest Standard”). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance, or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, and to retain and recruit talented employees who will contribute to the recipient’s future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or granted. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation*. An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments*. The compensation structures should be consistent with, and not excessive taking into account, compensation structures for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value*. The compensation structures should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with Company policy and regulation (including risk management), and corporate leadership, as well as the role the employee

may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

In addition, the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.*

The Rule also provides an exemption where a Covered Employee's annual compensation does not exceed \$500,000 (excluding "long-term restricted stock," as that term is defined in the Rule). Compensation structures that fit within this exemption are automatically deemed to meet the requirements of the Rule, and the approval of the Special Master is not required to implement these structures. 31 C.F.R. § 30.16(a)(3)(ii).

IV. COMPENSATION STRUCTURES

A. GMAC Proposals

GMAC provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for Covered Employees 26 – 100 (the "Proposed Structures"). Under the Proposed Structures, Covered Employees 26 – 100 would generally receive a combination of cash salary, cash bonuses and stock-based compensation.

Cash salaries generally would comprise 20% to 50% of each employee's target total direct compensation. Short-term cash bonuses would be administered on a pooled basis, with target incentive pools for each GMAC business unit based on the aggregated individual target bonuses for Covered Employees 26 – 100 in that unit. Actual amounts payable from each pool and to each Covered Employee would be determined by GMAC's Compensation Committee based on business unit and individual performance, respectively. Stock grants were previously made to Covered Employees 26 – 100 in 2009 in the form of restricted stock units that vest in four equal, annual installments.

B. Determinations of the Special Master

The Special Master reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review, the Special Master has determined that the Proposed Structures are, on the whole, inconsistent with the Public Interest Standard and require modification.

The Special Master has determined that the compensation structures described in this Part IV.B will not, by virtue of their structural design, result in payments inconsistent with the Public Interest Standard. These compensation structures are described in further detail in *Exhibits I* and *II*.

1. Total Compensation

The Special Master reviewed GMAC's Proposed Structures in light of the principle that an "appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). In general, the Special Master has concluded that compensation payable no earlier than three years from the date it is earned provides employees with incentives to maximize the long-term value of the Company. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 - 100, whether in the form of cash or stock, must provide that at least 50% of compensation other than cash salary is payable no earlier than three years from the date it is earned.

The Special Master also reviewed the Proposed Structures in light of the principle that "a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." *Id.* § 30.16(b)(1)(iii). In general, compensation payable in the form of cash does not align employees' incentives with the interests of shareholders and taxpayers as effectively as compensation payable in the form of Company stock. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the total amount of cash included in the compensation structure for any Covered Employee who receives more than \$500,000 in cash salary and cash incentive compensation should not exceed 45% of total compensation, other than in exceptional cases for good cause shown.¹ Any such exceptions should be individually certified to the Office of the Special Master by GMAC's Compensation Committee. The remaining percentage of total compensation must be payable in the form of Company stock. To provide for reasonable levels of liquidity, a Covered Employee who earns less than \$500,000 in cash salary and cash incentive compensation may receive more than 45% of total compensation in cash, but must receive a material portion of total compensation in the form of Company stock.

a. Cash Salary

The Special Master reviewed GMAC's proposed cash salaries in light of the principle that compensation structures should generally be consistent with compensation structures "for persons in similar positions or roles at similar entities that are similarly situated, including entities competing in the same markets." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has

¹ In some cases, a Covered Employee may have received cash compensation prior to the date of this Determination Memorandum that prohibits the Company from complying with the prescriptions of Part IV.B.1. if the Company provides such Covered Employee with the total 2009 compensation described in the Proposed Structures. The Special Master has determined that, with respect to any such Covered Employee, in order for the compensation structure to be consistent with the Public Interest Standard, GMAC must provide any additional 2009 compensation, except for continued payment of a level of cash base salary consistent with the principles set forth in Part IV.B.1.a., in the form of Company stock.

determined that, to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100 may not provide for cash salaries in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by GMAC’s Compensation Committee.

b. Stock Salary

The Special Master reviewed the Proposed Structures in light of the principle that compensation structures should “appropriately allocate the components of compensation such as salary . . . as well as the extent to which compensation is provided in cash, equity, or other types of compensation,” *id.* § 30.16(b)(1)(iii). The Proposed Structures generally provide for payment of base salary only in the form of cash. The Special Master has concluded that, to be consistent with the Public Interest Standard, compensation structures should permit the payment of base compensation in the form of vested stock salary, which facilitates an appropriate allocation of fixed, annual compensation to stock.

The Special Master also reviewed the Proposed Structures in light of the principle that compensation structures should provide compensation that is “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that, to provide compensation that is performance-based over a relevant period, stock salary may not be transferred or otherwise redeemed prior to the first anniversary of the date such stock salary is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes.

c. Incentive Compensation

The Special Master reviewed GMAC’s proposed incentive compensation for Covered Employees 26 – 100 in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met.” *id.* § 30.16(b)(1)(iv). In general, incentive compensation should not be granted unless the achievement of performance metrics is reviewed and certified on an independent basis. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that no incentive compensation may be granted to a Covered Employee unless the employee achieves objective performance metrics developed by appropriate GMAC officials and reviewed and approved by GMAC’s Compensation Committee (which is composed solely of independent directors) in consultation with the Office of the Special Master. As described below, incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to “clawback” if the performance assessment resulting in the grant is later discovered to be inaccurate.

i. Cash Incentives

The Special Master reviewed GMAC’s proposed incentive compensation in light of the principle that compensation structures should provide performance-based compensation based on “performance metrics [that are] measurable, enforceable, and actually enforced if not met.” *Id.* § 30.16(b)(iv). In general, the Special Master has concluded that cash incentives should be

deferred over a period of time designed to ensure that the performance metrics giving rise to the payment accurately measured performance. Accordingly, the Special Master has concluded that to be consistent with the Public Interest Standard, the compensation structure for any Covered Employee who receives more than \$500,000 in cash salary and cash incentive compensation must provide that at least 50% of incentive compensation granted after the date of this Determination Memorandum and paid in cash be deferred for at least one year after the date the grant is made, in order to assure compliance with the performance metrics upon which the incentive compensation was based.

ii. Stock Incentives

The Special Master reviewed GMAC's proposed incentive compensation in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle that compensation structures should ensure that "an appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that a significant amount of the compensation paid as an incentive should reflect the Company's performance over the long term. Accordingly, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that at least 50% of incentive compensation be paid in the form of stock or stock equivalents that cannot be transferred or otherwise redeemed until at least three years from the date of grant and cannot be transferred or otherwise redeemed until one year following vesting, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. The remaining 50% of incentive compensation may be paid in a form, and at a time, determined by GMAC's compensation committee, subject to the principles set forth in Part IV.B. of this Determination Memorandum. The Special Master has determined that the restructuring of any equity grants previously made in 2009 to conform to the three-year requirement would be consistent with the Public Interest Standard.

iii. Total Incentives

Finally, the Special Master reviewed GMAC's proposed incentive compensation in light of the principle that compensation structures "should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated." *Id.* § 30.16(b)(1)(v). The Special Master has determined that safeguards with respect to the aggregate amount of incentive compensation payable to Covered Employees 26 – 100 are necessary to ensure that compensation structures for Covered Employees 26 - 100 are generally comparable to those for persons in similar positions or roles at similar entities that are similarly situated. Accordingly, the Special Master has determined that, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 may not provide for incentive compensation that, in the aggregate, exceeds a specified percentage of GMAC's eligible earnings. Such eligible earnings will be determined by GMAC's Compensation Committee and may be reviewed by the Office of the Special Master.

2. Covered Employees 26 – 100 Entering the “Top 25”

If a Covered Employee becomes a “Top 25” employee in 2010, several complications arise with respect to that Covered Employee’s compensation structure. In particular, Section 111 of EESA, and Section 30.10 of the Rule, impose restrictions on the accrual or payment of cash “bonuses” in 2010 for any Covered Employee who becomes a “Top 25” employee in 2010, even if the compensation relates to performance prior to the employee joining the “Top 25.” The Special Master has considered these issues and has determined that, if GIMAC reasonably expects that a Covered Employee may become one of the “Top 25” employees in 2010, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements. The Special Master has determined that the restructuring of such a Covered Employee’s 2009 compensation structure to conform to the following terms and conditions, including with respect to stock-based compensation previously granted in 2009, is consistent with the Public Interest Standard.

First, in accordance with the Special Master’s October 22, 2009, determinations for the “Top 25,” additional stock salary may be granted to the Covered Employee on a *nunc pro tunc* basis, provided that the stock vests immediately and is only redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid (except stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Second, any incentive compensation for performance in 2009 that would be payable to the Covered Employee in cash in the first quarter of 2010 (consistent with the principles set forth in Part IV.B.1.c.i) may be paid on or before December 31, 2009.

Third, notwithstanding the other requirements of this Part IV.B., up to one-third of the Covered Employee’s “annual compensation” may be paid in the form of “long-term restricted stock,” as those terms are defined in the Rule.

3. “Other” Compensation and Perquisites

GIMAC’s proposals provide for limited payments of “other” compensation, as well as perquisites, to Covered Employees 26 – 100. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of the compensation structures should not be allocated to such perquisites and “other” compensation. *See id.* §30.16(b)(1)(iii).

Accordingly, to be consistent with the Public Interest Standard, the compensation structure for each Covered Employee generally must provide no more than \$25,000 in “other” compensation and perquisites. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

4. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

GMAC also proposed that certain Covered Employees receive limited compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement – in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top employee upon leaving the Company.

Covered Employees 26 – 100 should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must not provide for further 2009 accruals under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans (with the exception of employee-funded elective deferrals) following the date of this Determination Memorandum.

5. Severance Plans

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must ensure that 2009 compensation structures do not result in an increase in the amounts payable pursuant to these arrangements.

6. Exemption for Certain Covered Employees 26 – 100

The Proposed Structures for certain Covered Employees would result in annual compensation (other than long-term restricted stock) not exceeding \$500,000. If the Proposed Structure for a Covered Employee satisfies the exemption set forth in Section 30.16(a)(3)(ii) of the Rule and described in Part III above, the structure is automatically deemed to meet the requirements of the Rule.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, GMAC must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for Covered Employees 26 – 100, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), incentive compensation may not be granted unless GMAC’s Compensation Committee determines to grant such compensation in light of the employee’s performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, GMAC’s securities filings. In addition, the Committee must retain discretion with respect to each employee to reduce (but not to increase) the amount of incentive compensation on the basis of its overall evaluation of the employee’s or GMAC’s performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV above, the structures determined by the Special Master to be consistent with the Public Interest Standard, include grants of stock or stock units in GMAC. It is critical that these compensation structures achieve the Rule’s objective of “appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity,” *id.* § 30.16(b)(1)(iii). Accordingly, the Company must have in effect a policy that would prohibit a Covered Employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in Part IV above. Such transactions would be contrary to the principles set forth in the Rule.

Finally, because the compensation structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock or stock units in GMAC, it is particularly important that stock acquired pursuant to these grants provide “compensation [that is] performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). Accordingly, GMAC’s Compensation Committee must ensure that each Covered Employee is subject to holding requirements set forth in stock ownership commitment rules to be adopted by GMAC’s Compensation Committee in consultation with the Office of the Special Master.

B. Additional Requirements

In addition to the requirements set forth above, in light of the requirements of the Rule, GMAC is required to institute the following corporate governance reforms:

- (1) *Compensation Committee: Risk Review.* Under the Rule, GMAC must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with GMAC’s senior risk

officers any risks that could threaten the value of GMAC. In particular, the Rule requires that the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (2) employee compensation plans that could encourage the manipulation of GMAC's reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.

- (2) *Disclosure with Respect to Compensation Consultants.* The Rule requires that the compensation committee disclose to Treasury an annual narrative description of whether GMAC, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).
- (3) *Clawback.* The Rule requires that any bonus payment made to a senior executive officer or one of the next twenty most highly compensated employees of GMAC be subject to a provision for recovery or "clawback." *Id.* § 30.8. The Special Master has determined that this important requirement should also apply to each of GMAC's Covered Employees 26 – 100. Accordingly, any incentive compensation must be subject to forfeiture if it is later determined to be based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive compensation was earned.
- (4) *Prohibition on Tax Gross-Ups.* The Rule prohibits GMAC from providing (formally or informally) a tax "gross-up," as defined in the Rule, to any senior executive officer or most highly compensated employee. *Id.* § 30.11(d). The Special Master has determined that this important requirement should also apply to each of GMAC's Covered Employees 26 – 100. Accordingly, GMAC must not provide (formally or informally) a tax "gross-up," as defined in the Rule, to any Covered Employee following the date of this Determination Memorandum.

VI. CONCLUSION

The Special Master has reviewed GMAC's Proposed Structures in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GMAC require modification in order to meet the Public Interest Standard.

Part IV.B sets forth structures that the Special Master has concluded comport with the Rule's principles. Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3)(ii) thereof, the Special Master hereby determines that the compensation structures set forth in Part IV.B, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent

with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GMAC does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in Part IV.B, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(ii) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

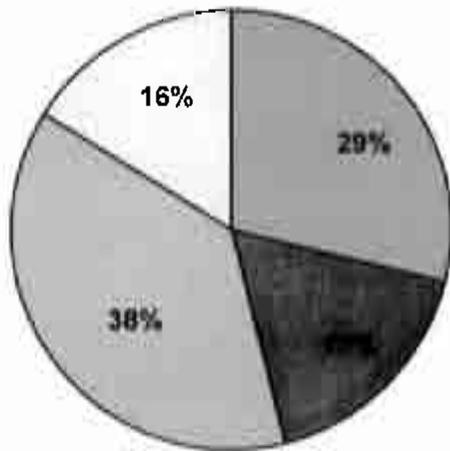
Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT 1
SAMPLE COMPENSATION STRUCTURE
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

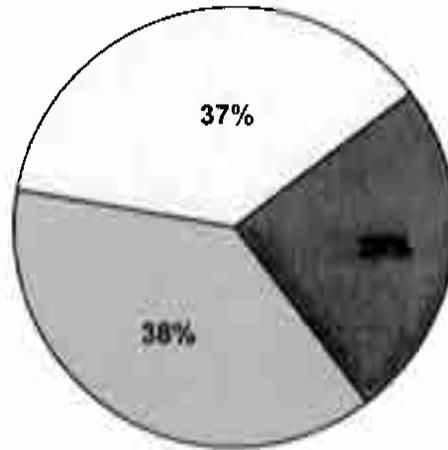
Example: Covered Employee with total compensation package of \$1,190,000.

- **Base salary.**
 - **Cash:** The Covered Employee receives a total of \$350,000 in cash salary.
 - **Stock Salary:** The covered Employee receives \$200,000 in Stock Salary, which vests immediately but may not be transferred prior to the first anniversary of the date it is earned.
- **Incentive Compensation.** The Covered Employee may also receive \$640,000 in incentive compensation as follows:
 - **Cash Incentive: \$190,000**
 - \$95,000 immediately payable
 - \$95,000 paid at least one year from grant date
 - **Stock incentive: \$450,000**
 - The entire amount may not be transferred or otherwise redeemed prior to the third anniversary of the grant date.
- **Total compensation.** The Covered Employee's total compensation is \$1,190,000, with 45% of the total delivered in cash and 55% delivered in stock (62% of delivered short term and 38% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



<input type="checkbox"/> Cash Salary	<input type="checkbox"/> Amounts payable in the current year
<input checked="" type="checkbox"/> Stock Salary - 1 year after grant	<input checked="" type="checkbox"/> Amounts payable in the 2nd year
<input type="checkbox"/> Annual Incentive Equity-Not payable until the 3rd Year	<input type="checkbox"/> Amounts payable in 3+ years
<input type="checkbox"/> Annual Incentive Cash-50% immediately, 50% one year later	

Note 1: This Exhibit does not include amounts payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(c)(2).

EXHIBIT II
TERMS AND CONDITIONS OF COMPENSATION STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in Part IV.B of the Determination Memorandum. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Stock salary.** Because this is a new compensation element, stock salary may be granted on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of grant. Unless otherwise provided in the Determination Memorandum, stock or stock equivalents granted as stock salary may not be redeemable during the one-year period immediately following the date it is earned, except for stock salary withheld or transferred immediately upon vesting to enable the employee to pay taxes. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Prior compensation.** In accordance with the Rule, unless otherwise noted compensation paid to Covered Employees 26 – 100 during the period from June 15, 2009, to the date of the Determination Memorandum will be treated as complying with the Rule, provided that such compensation was paid under a compensation structure established by the Company as of June 14, 2009, and provided further that the Company promptly complies with the modifications set forth in the Determination Memorandum. 31 C.F.R. § 30.16(a)(3)(iii).
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions (with the exception of employee-funded elective deferrals) may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees 26 – 100 in tax-qualified retirement, broad-based employee health and welfare plans, and similar plans is consistent with the Public Interest Standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Mr. J. Steele Alphin
Chief Administrative Officer
Bank of America Corporation
100 N. Tryon Street
NCI-007-58-22
Charlotte, NC 28255

**Re: Compensation Structures for Executive Officers
and Certain Most Highly Compensated Employees**

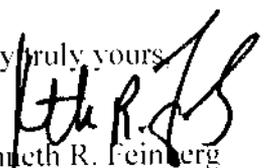
Dear Mr. Alphin:

On October 13, 2009, pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, Bank of America Corporation submitted proposals to the Office of the Special Master regarding compensation structures (the "Proposed Structures") for employees who are either executive officers of Bank of America or one its 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule (the "Covered Employees 26 – 100"). See 31 C.F.R. § 30.16(a)(3)(ii).

On December 9, 2009, Bank of America repaid its TARP obligations, ending its "TARP period." *Id.* § 30.1. Accordingly, the compensation structures for Covered Employees 26 – 100 are no longer subject to the Special Master's review, and no determination in that regard will be forthcoming.

In addition, as a result of the repayment, Special Master approval is not required for the future compensation of "Top 25 Employees." *Id.* § 30.16(a)(3)(i). However, payments to Top 25 Employees for their service during the TARP period remain subject to the Special Master's October 22, 2009, determination. *Id.* § 30.16(a)(3)(i). We understand that Bank of America has agreed to comply with the Interim Final Rule and with the October 22 determination as if its TARP period extended through December 31, 2009.

Very truly yours,


Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Mr. Thomas M. Ryan
Jana J. Litsey, Esquire
Mr. Mark Behnke



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Tracy Hackman, Esquire
Vice President, General Counsel and Secretary
Chrysler Financial
27777 Inkster Road
CIMS 405-27-16
Farmington Hills, MI 48334

Re: *Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees ("Covered Employees 26 – 100")*

Dear Ms. Hackman:

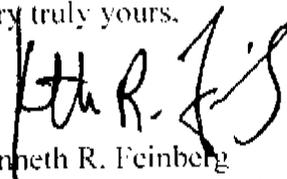
Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of employees who are either executive officers of Chrysler Financial or one of the Company's 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule ("Covered Employees 26 – 100").

According to the materials you have submitted, the proposed compensation structures for Covered Employees 26 – 100 fit within the exemption set forth in Section 30.16(a)(3)(ii) of the Interim Final Rule for employees receiving total annual compensation (other than long-term restricted stock) not exceeding \$500,000. The proposed compensation structures therefore are automatically deemed to meet the requirements of the Interim Final Rule, and Chrysler Financial is not required to seek the prior approval of the Special Master to implement these structures. To the extent the 2009 compensation structure for any Covered Employee, including the amounts that are or may be payable thereunder, is modified such that the exemption is no longer applicable, Chrysler Financial is required to notify the Office of the Special Master and seek approval for further action consistent with the Interim Final Rule, 31 C.F.R. § 30.16(a)(3)(ii).

The foregoing is limited to the proposed compensation structures for Covered Employees 26 – 100, and may not be relied upon with respect to any other employee of Chrysler Financial. Moreover, the Office of the Special Master has relied upon, and this letter is qualified in its entirety by, the accuracy of the materials submitted by Chrysler

Financial to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. R. Feinberg". The signature is written in a cursive, somewhat stylized font.

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Thomas F. Gilman



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 23, 2009

Michael S. Helfer, Esquire
General Counsel & Corporate Secretary
Citigroup Inc.
399 Park Avenue
New York, NY 10022

***Re: Compensation Structures for Executive Officers
and Certain Most Highly Compensated Employees***

Dear Mr. Helfer:

On December 23, 2009, Citigroup, Inc. (“Citigroup”) repaid certain TARP obligations, including its obligations under the Targeted Investment Program. Accordingly, Citigroup is no longer a recipient of “exceptional financial assistance” for purposes of the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance. *See* 31 C.F.R. § 30.1; *id.* § 30.16(a)(1).

As a result of the repayment, Special Master approval is not required for 2010 compensation payments made to “Top 25” employees, *id.* § 30.16(a)(3)(i); *id.* § 30.16(a)(1), or for 2010 compensation structures for employees who are executive officers of Citigroup or one of its 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule (“Covered Employees 26 – 100”), *id.* § 30.16(a)(3)(ii); *id.* § 30.16(a)(1).

However, payments to “Top 25” employees for their service during 2009 remain subject to the Special Master’s October 22, 2009 determination, and compensation structures for Covered Employees 26 – 100 for their service during 2009 remain subject to the Special Master’s December 11, 2009 determination. *Id.* § 30.16(a)(3)(i); *id.* § 30.16(a)(3)(ii). We also understand that Citigroup has agreed to comply with the Interim Final Rule and with the October 22 and December 11 determinations as if it had remained a recipient of “exceptional financial assistance” through December 31, 2009.

Moreover, because certain of Citigroup’s other TARP obligations remain outstanding, Citigroup will remain subject to applicable prescriptions of the Interim Final Rule until those obligations are extinguished in full. *See id.*

Very truly yours,

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Lewis B. Kaden, Esquire
Mr. Paul McKinnon



U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

EMBARGOED FOR 2:00 PM EDT: March 23, 2010

CONTACT: Treasury Public Affairs (202) 622-2960

SPECIAL MASTER ISSUES 2010 RULINGS FOR ‘TOP 25’ EXECUTIVES AT FIRMS RECEIVING EXCEPTIONAL TAXPAYER ASSISTANCE AND ‘LOOK BACK’ LETTER ON REVIEW OF PRE-RECOVERY ACT COMPENSATION

To view the determinations, visit [link](#).

Today, the Special Master for TARP Executive Compensation, Kenneth R. Feinberg, issued his rulings on 2010 executive pay packages for the ‘Top 25’ executives at the five remaining firms that received exceptional assistance from taxpayers: AIG, Chrysler, Chrysler Financial, GM, and GMAC. Because Bank of America and Citigroup repaid their exceptional assistance, they are not subject to the Special Master’s 2010 rulings. The Special Master also released a letter requesting information on compensation paid to the ‘Top 25’ executives at each firm that received TARP assistance before February 17, 2009 to obtain information needed for the ‘look back’ review required by the Recovery Act.

Today, the Special Master:

- 1. Issued new rulings on 2010 pay for ‘Top 25’ executives at firms that received exceptional support**
 - Overall cash for these specific executives down, on average, by 33 percent from 2009 levels
 - Total pay for these specific executives down, on average, by 15 percent from 2009
 - Cash salaries kept at \$500,000 or less for 82 percent of covered executives
 - Retains key talent—84 percent of executives included in 2009 rulings remain with the companies
 - At AIG Financial Products, pledges fully repaid—and cash salaries frozen (with one exception), with all additional compensation paid in stock that must be held over time
 - At GMAC, CEO taking only stock, and no cash salaries over \$500,000
- 2. Reaffirmed fundamental compensation reforms announced last year for 2010**
 - Majority of compensation paid in stock that must be held for the long term
 - Incentives paid only if objective performance goals are achieved—and subject to “clawback”
 - Tough limits on perquisites and excessive retirement pay kept in place for 2010
- 3. Issued ‘look back’ letter on review of compensation paid prior to the Recovery Act**
 - Requests information needed to implement review mandated by the Recovery Act but limits requests to those earning over \$500,000 to reduce burdens on small banks
 - Responses due in 30 days; Special Master will review compensation information to identify whether any payments were contrary to the public interest
 - Special Master to seek to negotiate for appropriate reimbursements to taxpayers as required by the Recovery Act

1. **New rulings on 2010 pay for ‘Top 25’ executives at firms that received exceptional support:** Today the Special Master ruled on pay for the ‘Top 25’ executives at the five remaining firms that received exceptional financial assistance under the TARP: AIG, Chrysler, Chrysler Financial, GM, and GMAC. The 119 executives included in the 2010 rulings include both executives who were subject to the Special Master’s 2009 decisions and officials new to the ‘Top 25.’
 - ***Overall cash pay for these specific executives down, on average, by 33 percent from 2009 levels:*** The Special Master has decreased total cash by 33 percent compared to the cash compensation these individual executives received in 2009.
 - ***Total pay for these specific executives down, on average, by 15 percent from 2009:*** The Special Master also reduced total compensation at AIG, GMAC, and Chrysler Financial by 15 percent compared to the pay these executives received in 2009. (GM and Chrysler are excluded from this total due to bankruptcy restructurings that occurred in the middle of 2009.) Total pay decreased even including the value of the long-term stock the Special Master is requiring executives to hold over the long term.
 - ***Cash salaries kept at \$500,000 or less for 82 percent of covered executives:*** The Special Master held the line on cash salary, continuing to require that salaries be limited to \$500,000 or less, with exceptions only where good cause is shown. Some 82 percent of the executives subject to today’s rulings will receive cash salaries of \$500,000 or less—even though the companies requested many more exceptions.
 - ***Retains key talent—84 percent of executives included in 2009 rulings remain with the companies:*** More than 80 percent of the executives the Special Master ruled on in his 2009 decisions remain with the companies in early 2010, working to create the long-term value that will help the companies repay taxpayers.
 - ***At AIG Financial Products, pledges fully repaid—and cash salaries generally frozen, with all additional compensation in stock that must be held over time:*** The Special Master succeeded in making sure that AIG Financial Products executives repaid the entire \$45 million they pledged to give back from previous bonuses. Taking those bonuses into account, the Special Master today announced that cash salaries at AIG Financial Products will stay frozen (with one exception). And, in a fundamental shift from the guaranteed bonuses of the past, the Special Master required that all other pay at AIG Financial Products be in the form of stock that must be held over time—to ensure that executives work for long-term taxpayer value rather than short-term gains.
 - ***At GMAC, CEO paid only in stock, and no cash salaries over \$500,000:*** The CEO of GMAC will receive no cash salary—all of his compensation will be paid in stock that must be held over the long term—and no GMAC executive will receive a cash base salary of more than \$500,000.
2. **Fundamental compensation reforms announced last year reaffirmed for 2010:** The Special Master’s 2010 rulings also reaffirm the principles announced last year to bring executive pay into line with long-term value creation and financial stability.
 - ***Majority of compensation paid in stock that must be held for the long term:*** Last year, the Special Master’s rulings required that a majority of compensation be paid in stock that must be held over time, including “stock salary” that requires the executive to invest in the company alongside taxpayers with each and every paycheck. The rulings announced today reaffirm that approach for 2010, requiring that executives accept the majority of their pay in the form of stock that must be held over time.
 - ***Incentives may be paid only if objective performance results are achieved—and must be subject to “clawback” if results prove illusory:*** In a departure from the previous practice of routinely paying bonuses despite poor performance, last year the Special Master ruled that incentives could be paid only if objective performance measures were achieved. Today’s rulings reaffirm that requirement, and keep in place the Special Master’s additional requirement that any incentives be subject to clawback if the results giving rise to the payment do not hold up over the long term.

- ***Tough limits on perquisites and excessive retirement benefits kept in place for 2010:*** The Special Master’s 2009 rulings limited executive perquisites to no more than \$25,000 and froze supplemental retirement plans that have long provided excessive payments hidden from public view. The Special Master today extended those limits to 2010, concluding that executives should build savings for retirement based on performance—rather than through guaranteed retirement benefits provided at taxpayer expense.
3. ***‘Look back’ letter on review of compensation paid prior to the Recovery Act:*** The Special Master also issued a letter to all 419 firms that received TARP assistance prior to February 17, 2009, requesting information on compensation paid to their ‘Top 25’ executives prior to that date. As required by the Recovery Act, the Special Master will review those payments to determine whether any payment was contrary to the public interest—and, if any such payment is identified, will seek to negotiate reimbursements to the federal government.
- ***Requests information needed to implement review mandated by the Recovery Act but limits requests to those earning over \$500,000 to reduce burdens on small banks:*** The Recovery Act requires that Treasury review compensation paid to executives between the date each TARP recipient received funding and February 17, 2009—the date the Recovery Act became law. The letter issued today requests information needed for the Special Master to conduct that review. To limit the burden on community banks that participated in TARP, the review is tailored to require only information on payments to executives who earned over \$500,000 a year.
 - ***Responses due in 30 days; Special Master will review compensation information to identify whether any payments were contrary to the public interest:*** Each TARP recipient must provide the required information within 30 days of the “look back” letter. Then, as required by the Recovery Act and Treasury regulations, the Special Master will review the information to determine whether any payment was inconsistent with the public interest.
 - ***Special Master to seek to negotiate for appropriate reimbursements to taxpayers as required by the Recovery Act:*** If the Special Master identifies any payments contrary to the public interest standard under the Recovery Act and Treasury regulations, the Special Master will seek to negotiate with the company and the employee for appropriate reimbursements to the taxpayer.

###



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 23, 2010

Mr. Robert Benmosche
President and Chief Executive Officer
American International Group, Inc.
70 Pine Street
27th Floor
New York, NY, 10270

Re: *Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees ("Covered Employees 1-25")*

Dear Mr. Benmosche:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of the senior executive officers and next 20 most highly compensated employees ("Covered Employees 1-25") of American International Group, Inc. ("AIG"). Attached as ***Annex A*** is a Determination Memorandum (accompanied by ***Exhibits I and II***) providing the determinations of the Special Master with respect to 2010 compensation for those employees. 31 C.F.R. § 30.16(a)(3)(i).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each Covered Employee 1-25 "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* On October 22, 2009, the Special Master issued a Determination Memorandum containing principles designed to ensure that 2009 compensation for AIG's Covered Employees 1-25 satisfies this public interest standard.

The principles established for 2009 must continue to govern compensation at the five remaining recipients of exceptional assistance in 2010. Generally, these principles require that:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. The majority of each individual's base salary will be paid in the form of stock that will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of the date stock salary is earned, with each installment redeemable one year early if AIG repays its federal obligations.

- Total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees.
- If — and only if — grants of incentives are appropriate in light of AIG’s circumstances at the end of 2010 *and* a particular Covered Employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for a long-term incentive grant. These incentives must be granted in restricted stock that will be forfeited unless the employee stays with AIG for at least three years following grant, and may only be redeemed in 25% installments for each 25% of AIG’s TARP obligations that are repaid. Long-term incentive grants must not exceed one third of a Covered Employee’s annual compensation.
- Any and all incentive compensation paid to these employees will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- “Other” compensation and perquisites, and supplemental executive retirement plans, must remain subject to the limitations described in the 2009 determinations.

AIG’s submissions followed these important principles to some extent, but modifications are required to make certain that compensation for AIG’s Covered Employees 1–25 satisfies the public interest standard. Accordingly, the compensation structures approved by the Special Master vary in the following respects from AIG’s proposals:

- The number of Covered Employees 1–25 earning more than \$500,000 in cash salary will be five, rather than 10, as proposed by AIG.
- For AIG Financial Products executives who received cash “retention” awards in 2010, cash salaries generally have been frozen at the levels set in the October 22, 2009, determination, with a single exception capped at \$450,000.
- Overall compensation packages will be reduced to levels more appropriate in comparison with total compensation provided to employees in similar positions or roles at similarly situated companies.
- A greater portion of overall compensation must be allocated to incentive compensation that must be paid in long-term restricted stock and that may be granted only upon the achievement of objective performance goals.
- All stock salary must be redeemable only in three equal, annual installments, with each installment redeemable one year earlier if AIG repays its federal obligations. AIG has informed the Office of the Special Master that a repayment of federal obligations occurred on March 19, 2010. Accordingly, upon certification of that repayment by AIG’s compensation committee, the redemption of each installment of stock salary may be accelerated by one year.

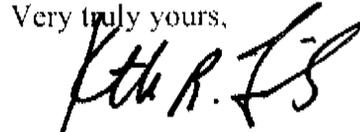
As described in the attached Determination Memorandum, AIG must also continue to observe the following prescriptions described in the Special Master's 2009 determinations:

- The achievement of any performance objectives must be certified by the compensation committee of AIG's Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.
- The employees will be prohibited from engaging in any hedging or derivative transactions involving AIG stock that would undermine the long-term performance incentives created by the compensation structures.
- AIG may not provide a tax "gross up" of any kind to these employees.

These requirements are described in detail in the attached Determination Memorandum.

Pursuant to the Interim Final Rule, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Enclosures

cc: Jeffrey Hurd, Esq.
Marc R. Trevino, Esq.

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master”) responsibility for reviewing compensation structures of certain employees at institutions that received exceptional financial assistance under TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or...otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(i).

American International Group, Inc. (“AIG” or the “Company”), one of five remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2010 compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3)(i) of the Rule. These compensation structures apply to five employees that the Company has identified for 2010 as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 17 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”). Three employees who otherwise would have been included in the Most Highly Compensated Employees departed the Company prior to the date of this memorandum.

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(i) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee. 31 C.F.R. § 30.16(a)(3)(i).

On October 22, 2009, after reviewing submissions of proposed compensation structures from AIG, the Special Master issued determinations regarding 2009 compensation structures, and amounts potentially payable thereunder, for AIG’s senior executive officers and certain most highly compensated employees (the “2009 Determinations”). The 2009 Determinations included principles designed to ensure that 2009 compensation for the applicable employees would not “result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or

are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3). The 2009 Determinations applied only to those individuals identified by the Company as subject to the Special Master’s mandatory jurisdiction to review and approve compensation structures and payments, *see id.*, for 2009 and only with respect to compensation for services provided to AIG for 2009.

On December 14, 2009, the Special Master requested from each remaining Exceptional Assistance Recipient, including AIG, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s 2010 compensation structures. The request required AIG to submit data describing its proposed compensation structures, and the payments that would result from the proposals, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). AIG was required to submit competitive market data indicating how the amounts payable under AIG’s proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. AIG was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

AIG submitted this information to the Office of the Special Master on January 15, 2010. Following a preliminary review of the submission, on February 2, 2010, the Special Master determined that AIG’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(i). The Office of the Special Master then commenced a formal review of AIG’s proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of receipt of a substantially complete submission. *Id.*

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*; and
- External information on comparable compensation structures extracted from Equilar’s *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar’s *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees).

The Special Master considered these sources, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company’s proposed compensation structures for the Covered Employees for 2010.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether AIG's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation*. An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments*. The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).

- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. AIG Proposals

AIG has provided the Office of the Special Master with detailed information concerning its proposed 2010 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the “Proposed Structures”).

AIG supported its proposal with detailed assessments of each Covered Employee’s tenure and responsibilities at the Company and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a “peer group” of entities selected by the Company. Of the 13 employees listed as Covered Employees for 2009, 8 remain on the list of Covered Employees for 2010, and 14 employees are new entrants to the group.

1. AIG Corporate and Operating Units

Each of the five Senior Executive Officers and 11 of the Most Highly Compensated Employees serve in either AIG’s corporate offices or as a senior executive of an AIG subsidiary other than AIG Financial Products (“AIGFP”). The Proposed Structures for employees in this group generally included cash salaries of \$500,000 or more, and stock salary and long-term restricted stock with terms and conditions consistent with the 2009 Determinations.

a. Cash Salary and Cash "Retention" Awards

AIG proposed that employees new to the Covered Employee group generally continue to receive cash salaries at the rates paid to them in 2009, with the proposed rates ranging from \$350,000 to \$1,500,000. For 3 of the 4 corporate employees remaining in the Covered Employee group from 2009, the Company proposed raising cash salaries. (The exception was the Chief Executive Officer.) The proposed raises were substantial and would result in 100% to 140% increases over the cash salaries approved by the Special Master in 2009. AIG's submission argued that the proposed cash salaries could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

AIG has indicated that it intends to pay "retention" awards to 8 Covered Employees in this group in 2010. The "retention" awards are paid under agreements asserted to provide legally binding rights under valid written employee contracts, *see* 31 C.F.R. § 30.10(e)(2), that was thus not subject to the review of the Special Master.

b. Stock Salary

AIG proposed stock salaries in amounts ranging from \$200,000 to \$7,740,000 for corporate and operating unit employees who are new to the Covered Employee group. For 3 of the 4 corporate employees remaining in the Covered Employee group from 2009, the Company proposed raising stock salaries. The proposed raises would result in 65% to 87% increases over the stock salaries approved by the Special Master in 2009. As required by the Rule, the stock units proposed to be used for stock salary would be fully vested upon grant.

Consistent with the 2009 Determinations, AIG proposed that stock salary granted to Covered Employees in this group would only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if AIG repays its federal obligations.

c. Annual Long-Term Incentive Awards

AIG proposed that most Covered Employees would be eligible to receive annual long-term incentive awards representing approximately 10% their total 2010 compensation, payable in long-term restricted stock units that generally would vest only if the Covered Employee remains employed by the Company on the third anniversary of the grant date. As required by the Rule, these awards would be paid only in 25% installments for each 25% of AIG's TARP obligations that are repaid.

d. "Other" Compensation and Perquisites

AIG proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

e. Non-Qualified Deferred Compensation

AIG proposed that the Special Master revisit the requirement in the 2009 Determinations that Covered Employees must not accrue additional amounts under "non-qualified deferred compensation" plans for 2010 (with the exception of employee-funded elective deferrals).

2. AIG Financial Products

Six of the Most Highly Compensated Employees for 2010 are executives of AIGFP. The Proposed Structures for employees in this group consisted of cash salaries of \$500,000 and stock salaries ranging from \$1,000,000 to \$3,000,000. Unlike the proposed stock salary for corporate and operating unit employees, the stock salary proposed for AIGFP Covered Employees would be redeemable on the first anniversary of grant. No long-term restricted stock was proposed for these Covered Employees, in light of the Company's intention to wind down AIGFP's operations.

In addition, each of the AIGFP Covered Employees has received a cash "retention" award in 2010 under an agreement asserted to provide a legally binding right under a valid written employee contract, *see id.*, that thus was not subject to the approval of the Special Master.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. The Special Master's review also made use of the resources described in Part II. In light of this review, the Special Master has determined that the principles established for 2009, which reflect the Public Interest Standard and are set forth in the 2009 Determinations, must continue to govern compensation in 2010.

After reviewing the Proposed Structures, the Special Master has concluded that they are in some respects consistent with the general principles established in the 2009 Determinations; however, certain aspects of the Proposed Structures and amounts potentially payable under the Proposed Structures require modification to ensure that they are consistent with the Public Interest Standard.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I and II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. AIG Corporate and Operating Units

a. Cash Salary and Cash "Retention" Awards

The Special Master reviewed AIG's proposed cash salaries in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities," 31 C.F.R. § 30.16(b)(1)(v). Based in part upon this principle, the Special Master concluded in 2009 that cash salaries generally should not target a level above the 50th percentile as compared to persons in similar positions or roles at similar entities, because such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

The Special Master also reviewed AIG's proposed cash salaries in light of the principle that compensation structures should be "performance-based over a relevant performance period."

id. § 30.16(b)(1)(iv). Based in part upon this principle, the 2009 Determinations concluded that, other than in exceptional cases for good cause shown, a Covered Employee's cash salary should not exceed \$500,000.

In addition, the Special Master may take into account compensation structures, such as legally binding rights under valid employment contracts, that are not subject to review by the Special Master. *Id.* § 30.16(a)(3). Of the employees in this group, eight are asserted to be entitled to substantial cash payments in 2010 pursuant to previously existing "retention" awards. As noted in the 2009 Determinations, similar "retention" awards at other Exceptional Assistance Recipients were amended to provide compensation in a manner consistent with the Public Interest Standard; however, discussions with AIG officials have not resulted in agreements to restructure these arrangements. Instead, for each Covered Employee with a cash "retention" award payable in 2010, the Special Master has considered the "retention" award when assessing the cash salary AIG proposed for that employee.

Accordingly, the Special Master has determined that the proposed cash salaries would not be consistent with the Public Interest Standard because they generally exceeded \$500,000 and do not appropriately consider the amounts payable in 2010 to Covered Employees under previously existing cash "retention" awards. The cash salaries that the Special Master has determined to be consistent with the Public Interest Standard for these employees are described in *Exhibits I and II*.

b. Stock Salary

The Special Master reviewed the amount of stock salary AIG proposed to pay these Covered Employees in light of the principles that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities," *id.* § 30.16(b)(1)(v), and that a "compensation structure, and amount payable...should reflect the current or prospective contributions of an employee to the value of the [Company]," *id.* § 30.16(b)(1)(vi). The Special Master found that the amounts of stock salary proposed by AIG were excessive in comparison to payments provided to persons in similar positions or roles at similar entities, and that such payments would be inconsistent with the Public Interest Standard. The stock salaries that the Special Master has determined are consistent with the Public Interest Standard for such employees for 2010 are set forth in *Exhibit I*.

In addition, the Special Master reviewed AIG's proposed stock salary in light of the principle that AIG must be able to maintain and attract the necessary employees to remain competitive in the marketplace. *See id.* § 30.16(b)(1)(ii). Based in part upon this principle, in the 2009 Determinations the Special Master approved a stock salary structure reflecting the value of a "basket" of four AIG insurance subsidiaries. Following the 2009 Determinations, the Special Master also approved the use of common stock for 2009 stock salary.

Since the 2009 Determinations, AIG has entered into agreement to dispose of some of the subsidiaries covered by the previously approved "basket." Accordingly, for 2010 stock salary, AIG proposed an alternative "basket" with a structure designed to serve as proxy for the long-term value of the Company. The "basket" would reflect the value of common stock and so-called "hybrid" securities that, unlike Treasury's preferred stock, are traded regularly, and therefore can be valued in a consistent and transparent manner using market pricing. In light of

the principles that compensation structures “should avoid incentives to take unnecessary or excessive risks,” *id.* § 30.16(b)(1)(i), and be allocated in a manner that aligns “the interest of the employee with the interests of shareholders and taxpayers,” *id.* § 30.16(b)(1)(iii), the Special Master has determined that the payment of stock salary designed to serve as a proxy for the long-term value of the Company. The terms and conditions of the “basket” units will be determined by AIG subject to the approval of the Office of the Special Master.¹ The units are described in further detail in *Exhibits I and II*.

Finally, the Special Master reviewed the structure of AIG’s proposal for stock salary in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. See *id.* § 30.16(b)(1)(i). In light of this principle, the 2009 Determinations concluded that stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier in the event AIG repays its federal obligations. The Proposed Structures were consistent with this requirement. AIG has informed the Office of the Special Master that the Company completed a corporate transaction that resulted in the repayment of approximately \$568 million to the Federal Reserve Bank of New York. Accordingly, upon certification of that repayment by AIG’s compensation committee, each redemption date of 2009 and 2010 stock salary may be accelerated by one year.²

c. Annual Long-Term Incentive Awards

The Special Master reviewed AIG’s proposed annual long-term incentive awards in light of the principle that performance-based compensation should be payable “over a relevant performance period,” *id.* Based in part upon this principle, the 2009 Determinations require long-term incentives to be paid in the form of long-term restricted stock, and permit such awards

¹ The Covered Employees generally may not be paid a “bonus,” or receive payments pursuant to an “incentive plan,” except in limited circumstances prescribed by the Rule. The provisions of the Rule addressing compensation in the form of salary paid in property (such as stock) indicate that such payments will not constitute an “incentive plan” for purposes of the Rule if the payments are made pursuant to “an arrangement under which an employee receives a restricted stock unit that is analogous to TARP recipient stock.” 31 C.F.R. § 30.1. Under the Rule, “a unit is analogous to stock if the unit is based upon stock of the TARP recipient...and the term ‘TARP recipient stock’ with respect to a particular employee recipient means the stock of a corporation...that is an ‘eligible issuer of service recipient stock’” for purposes of certain federal taxation regulations, *id.* The Rule also provides that “[t]he Special Master shall have responsibility for interpreting” the Rule. *Id.* § 30.16(a)(1). AIG’s proposed “basket” units comprising common stock and debt securities are designed to approximate the long-term value of the Company, and thus to align employees incentives with the taxpayer, while avoiding incentives for excessive risk taking. Accordingly, under these limited, unique circumstances, and without determining whether the “basket” units comprise “stock of a corporation...that is an ‘eligible issuer of service recipient stock’” under the Rule, the Special Master has concluded that AIG’s proposed units constitute “restricted stock unit[s] that are analogous to TARP recipient stock” for purposes of the Rule. *Id.* § 30.1.

² The terms and conditions of stock salary and long-term restricted stock proposed for the Chief Executive Officer are described in the August 16, 2009, Letter Agreement with Robert H. Benmosche pursuant to which Mr. Benmosche was appointed Chief Executive Officer of AIG. The Special Master initially determined that the compensation structure under the Letter Agreement was consistent with the Public Interest Standard on October 2, 2009. See Letter to Compensation and Management Resources Committee, American International Group, Oct. 2, 2009, available at <http://www.financialstability.gov/docs/RobertBenmoscheDeterminationLetter.pdf>. For the reasons provided therein, the Special Master has affirmed that compensation potentially payable to Mr. Benmosche in 2010 under his Letter Agreement and as described in *Exhibit I* is consistent with the Public Interest Standard.

to be paid if, and only if, objective performance metrics are achieved and the employee continues to provide services to the company for three years following the date of grant.

The structure of AIG's proposed annual long-term incentive awards is generally consistent with the 2009 Determinations. Under the Proposed Structures, annual long-term incentive awards for 2010 will be payable only upon the achievement of specified, objective performance criteria to be provided to the Office of the Special Master and the employee continues to provide services to the Company for three years following the date of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of AIG's TARP obligations that are repaid.

The Special Master also reviewed the target amounts of annual long-term incentive awards AIG proposed for the Covered Employees in this group in light of the principle that an "appropriate portion of the compensation should be performance-based," *id.* § 30.16(b)(1)(iv), and based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* The Proposed Structures failed to meet these principles because they generally allocated no more than 10% of a Covered Employee's compensation to long-term restricted stock based on the achievement of performance measures. As described in *Exhibits I and II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include more substantial allocations to annual long-term incentive awards payable only upon the achievement of specified, objective performance criteria to be developed and reviewed in consultation with the Office of the Special Master.

Finally, the Company requested that different vesting terms apply in the case of employees who provide two years of service after the grant of an incentive — the minimum service period required by the Rule — but retire prior to providing three years of service, which is the length of service required by the 2009 Determinations. The Special Master has concluded that the Company's succession planning and the timing of individual employees' retirement dates should not be unduly dependent on compensation structures in light of the principles that compensation structures and the amounts payable thereunder should reflect "the current or prospective contributions of an employee to the value of the TARP recipient" and "the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient's future success." *Id.* § 30.16(b)(1). Accordingly, for the foregoing reasons and the reasons provided in the 2009 Determinations, the Special Master has determined that the long-term incentive awards described in *Exhibits I and II* will not result in payments that would be inconsistent with the Public Interest Standard.

d. "Other" Compensation and Perquisites

The 2009 Determinations generally require that perquisites and "other" compensation provided to a Covered Employee be limited to \$25,000 on an annual basis, and the Proposed Structures are consistent with this requirement. For the reasons provided in the 2009 Determinations, and as described in *Exhibit II*, any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

e. Non-Qualified Deferred Compensation

For the reasons provided in the 2009 Determinations, Covered Employees will not accrue in 2010 additional amounts under supplemental executive retirement plans and other “non-qualified deferred compensation” plans, as described in *Exhibit II*.

f. Severance Plans

For the reasons provided in the 2009 Determinations, the Company must ensure that 2010 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

2. *AIG Financial Products*

In the 2009 Determinations, the Special Master emphasized the importance of the ongoing discussions with the Company regarding the full satisfaction of the pledge by AIGFP employees to return \$45 million of the cash “retention” payments they received in 2009. Because of the unresolved nature of those discussions, the Special Master determined that no payments of additional 2009 compensation to the applicable employees, other than continuation of cash salaries, would be consistent with the Public Interest Standard.

Each of the AIGFP Covered Employees received another substantial cash “retention” payment in 2010. In light of these “retention” payments, which may be taken into account in determining 2010 compensation structures, *see id.* § 30.16(a)(3)(i), the Special Master has concluded that the proposed \$500,000 cash base salaries for AIGFP employees would generally not be consistent with the Public Interest Standard. Accordingly, the cash salaries for AIGFP Covered Employees set forth on *Exhibit I* are frozen at the levels paid at the conclusion of fiscal year 2008, per the 2009 Determinations, with one exception where a \$450,000 salary has been approved for an employee in light of his critical role.

Each of the AIGFP Covered Employees also pledged to participate in the \$45 million repayment described above. AIG has informed the Office of the Special Master that, as of the date hereof, it has received, offset or withheld at least \$45 million. The Special Master has concluded that, conditioned upon certification by the chair of the Company’s compensation committee that at least \$45 million of “retention” payments has been received, offset or withheld by the Company, the payment of additional, non-cash compensation to AIGFP Covered Employees for service provided in 2010 will not be inconsistent with the Public Interest Standard, so long as the compensation otherwise satisfies the principles set forth in the Rule and described in Part III. Accordingly, the Special Master reviewed the amounts and structure of stock compensation proposed for this group of employees in light of those principles.

AIG proposed that these Covered Employees be granted stock salary that would be redeemable on the first anniversary of the grant date. AIG argued that the shorter redemption period would be appropriate in light of the anticipated wind down of AIGFP. Stock salary, however, is required by the Rule to be fully vested at grant, so the departure of an employee as the result of reductions in force in connection with the wind-down will not result in forfeiture of earned stock salary. In addition, the services provided by AIGFP Covered Employees in 2010 have the potential to continue affecting the value of AIG long after the employees’ departure.

Thus, redemption of an AIGFP Covered Employee's stock salary on the first anniversary of grant would result in compensation that is not "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). Accordingly, the stock salary that the Special Master has determined to be consistent with the Public Interest Standard for AIGFP Covered Employees has the same structure, as described in *Exhibits I* and *II*, as the stock salary provided to Covered Employees at the Company's corporate and operating units: it may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if AIG repays its federal obligations.

3. *Departed Employees*

Three employees who would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to those employees, the Special Master has determined that the payment of stock salaries and cash salaries at the rates in effect on January 1, 2010, through the date of the termination of employment, and payment of up to \$25,000 in perquisites and "other" compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.³

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are "performance-based over a relevant performance period," 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, the Special Master required as part of the 2009 Determinations that AIG take certain corporate governance steps to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

The Special Master has determined that these same corporate governance requirements, which are detailed in Section V of the 2009 Determinations, must continue to apply in 2010. Among other requirements, AIG must:

- Ensure that employees are prohibited from engaging in any derivative or similar transaction with respect to AIG stock that would undermine the long-term performance incentives created by the compensation structures set forth in *Exhibits I* and *II*.
- Maintain a compensation committee comprised exclusively of independent directors, which must discuss, evaluate, and review with AIG's senior risk officers any risks that could threaten the value of AIG. *Id.* § 30.4; *id.* § 30.5.

³ AIG has informed the Office of the Special Master that one of the departed employees was stationed overseas. With respect to that employee, the Special Master has determined that payments in connection with his repatriation, limited to those expressly contemplated by the letter agreement confirming his overseas assignment, are consistent with the Public Interest Standard.

- Ensure that the compensation committee discloses to Treasury an annual narrative description of whether AIG, its board of directors, or the committee has engaged a compensation consultant during the past three years; and, if so, the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of pay. *Id.* § 30.11(c).
- Provide to Treasury an annual disclosure of any perquisite whose total value for AIG’s fiscal year exceeds \$25,000 for each of the Covered Employees, as well as 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). *Id.* § 30.11(b).
- Ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. AIG must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- AIG was required to adopt an excessive or luxury expenditures policy, provide that policy to the Treasury, and post it on AIG’s website. If AIG’s board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- Except as explicitly permitted under the Rule, AIG is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- AIG’s chief executive officer and chief financial officer must provide written certification of the Company’s compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. B.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2010 in light of the principles described in the 2009 Determinations, which in turn reflect the Public Interest Standard. On the basis of that review, the Special Master has determined that the Proposed Structures submitted by AIG are to some extent consistent with the 2009 Determinations but require certain modifications in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I and II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I and II*, including the amounts payable or potentially payable under such compensation

structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If AIG does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(e)(1).

The foregoing determinations are limited to the compensation structures and employees described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(i) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES
2010 Compensation

Company Name: American International Group, Inc.

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary + stock salary + long-term restricted stock.)
1	\$3,000,000	\$4,000,000	\$3,500,000	\$10,500,000
133	\$450,000	\$4,062,500	\$1,500,000	\$6,012,500
134	\$700,000	\$3,050,000	\$1,250,000	\$5,000,000
145	\$177,799	\$3,322,201	\$0	\$3,500,000
147	\$241,933	\$758,067	\$0	\$1,000,000
157	\$125,000	\$3,468,750	\$0	\$3,593,750
163	\$495,000	\$4,485,000	\$1,020,000	\$6,000,000
182	\$450,000	\$3,062,500	\$0	\$3,512,500
186	\$450,000	\$1,437,500	\$625,000	\$2,512,500
188	\$100,000	\$3,500,000	\$0	\$3,600,000
192	\$700,000	\$2,000,000	\$0	\$2,700,000
196	\$495,000	\$3,731,250	\$1,375,000	\$5,601,250
206	\$700,000	\$5,000,000	\$1,900,000	\$7,600,000
217	\$1,500,000	\$2,520,000	\$1,980,000	\$6,000,000
236	\$475,000	\$2,156,250	\$875,000	\$3,506,250
237	\$495,000	\$3,656,250	\$850,000	\$5,001,250
243	\$500,000	\$1,300,000	\$0	\$1,800,000
261	\$475,000	\$4,568,750	\$0	\$5,043,750
267	\$495,000	\$5,149,000	\$1,156,000	\$6,800,000
534	\$312,500	\$0	\$0	\$312,500
1056	\$475,000	\$2,967,932	\$854,000	\$4,296,932
1057	\$442,874	\$2,117,126	\$640,000	\$3,200,000

Comparison of 2010 Compensation to Prior Year Compensation

- **Overall:** Overall cash decreased \$22.2M or 63% and total direct compensation increased \$1.9M or 2%.
- **The 4 corporate and operating unit executives remaining in the Top 25 from 2009:** Cash salaries increased \$0.5M or 12% and total direct compensation increased \$3.3M or 12%.
- **The 12 corporate and operating executives new to the Top 25 in 2010:** Overall cash compensation decreased \$23M or 77% and total direct compensation decreased \$17.2M or 25% from 2009.
- **The 6 Financial Products executives:** Cash base salaries are frozen at fiscal year 2008 levels, with one exception who remains below \$500,000; 91% of total compensation is now delivered over 4 years and tied to company performance versus 0% in 2009.

Note 1 – Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note 2 – The terms of stock salary and any long-term restricted stock delivered to Employee 1, the CEO, are provided in a letter agreement the Special Master approved in a determination dated October 2, 2009. See *supra* Determination Memorandum note 1. Stock salary may not be redeemed until the fifth anniversary of the date it is earned. Long-term restricted stock generally will be forfeited if the CEO does not serve for at least two years after the grant date, and cannot be redeemed until AIG repays its TARP obligations.

Note 3 – The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2010.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Salary payments.** Cash and stock base salaries reflect the annual rate for the employee and are effective as of January 1, 2010, and in the case of stock salary are payable on a *nunc pro tunc* basis from that date. To the extent the Special Master's determinations for 2010 reduce an employee's previous cash or stock salary rate, payments in excess of that rate prior to the date hereof must be offset by reductions to prospective 2010 cash salary payments or to any stock salary payable with respect to 2010.
- **Stock compensation generally.** For purposes of the Determination Memorandum, "stock" compensation includes common stock and stock units (or, for stock salary only, the securities referenced by the "basket" described below). Notwithstanding any transferability restrictions applicable to any stock compensation described in the Determination Memorandum, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments as described in the Determination Memorandum. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances. As described in Part IV, stock salary may be granted in the form of stock units reflecting the value of a "basket" of AIG common stock and other securities. The terms and conditions of these "basket" units will be determined by AIG subject to the approval of the Office of the Special Master.
- **Long-term restricted stock.** Long-term restricted stock may only be granted upon the achievement of objective performance criteria developed and reviewed in consultation with the Office of the Special Master. The compensation committee must certify (1) the achievement of such criteria, and (2) that the grant of incentives is appropriate in light of AIG's overall circumstances at the time. Such stock must be forfeited unless conditioned upon the employee's continued employment through the third anniversary of grant, unless a termination of employment results from death or disability; provided, however, that all or a portion of such stock (or similar stock granted with respect to 2009 service) may, for good cause certified by the Company's compensation committee, continue to vest if the employee retires on or after the second anniversary of the grant date. The term "retirement" must meet an objective standard established in consultation with the Office of the Special Master.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 23, 2010

Ms. Nancy A. Rac
Executive Vice President - Human Resources
Chrysler Group LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, Michigan 48326-2766

Re: Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees ("Covered Employees 1-25")

Dear Ms. Rac:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of the senior executive officers and next 20 most highly compensated employees ("Covered Employees 1-25") of Chrysler Group LLC ("Chrysler"). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I and II*) providing the determinations of the Special Master with respect to 2010 compensation for those employees. 31 C.F.R. § 30.16(a)(3)(i).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* On October 22, 2009, the Special Master issued a Determination Memorandum containing principles designed to ensure that 2009 compensation for Chrysler's Covered Employees 1-25 satisfies this public interest standard.

The principles established for 2009 must continue to govern compensation at the five remaining recipients of exceptional assistance in 2010. I am pleased that Chrysler's 2010 submission is consistent with these important principles, which are detailed in the attached Determination Memorandum. Generally, these principles require that:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. A significant portion of each individual's base salary will be paid

in the form of stock that will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of the date stock salary is earned, with each installment redeemable one year early if Chrysler repays its TARP obligations.

- Total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees.
- If – and only if — grants of incentives are appropriate in light of Chrysler’s circumstances at the end of 2010 *and* a particular Covered Employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for a long-term incentive grant. These incentives must be granted in restricted stock that will be forfeited unless the employee stays with Chrysler for at least three years following grant, and may only be redeemed in 25% installments for each 25% of Chrysler’s TARP obligations that are repaid. Long-term incentive grants must not exceed one third of a Covered Employee’s annual compensation.
- Any and all incentive compensation paid to these employees will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- “Other” compensation and perquisites, and supplemental executive retirement plans, must remain subject to the limitations described in the 2009 determinations.

As noted above, Chrysler’s submissions are consistent with these important principles, and the compensation structures approved by the Special Master for 2010 are comparable to the approved structures for 2009. In particular, cash salaries will be frozen at 2009 levels.

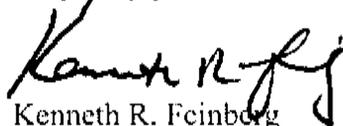
As described in the attached Determination Memorandum, Chrysler must also continue to observe the following prescriptions described in the Special Master’s 2009 determinations:

- The achievement of any performance objectives must be certified by the Compensation and Leadership Development Committee of Chrysler’s Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.
- The employees will be prohibited from engaging in any hedging or derivative transactions involving Chrysler stock that would undermine the long-term performance incentives created by the compensation structures.
- Chrysler may not provide a tax “gross up” of any kind to these employees.

These requirements are described in detail in the attached Determination Memorandum.

Pursuant to the Interim Final Rule, Chrysler may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Enclosures

cc: Holly E. Leese, Esquire
Lawrence Cagney, Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master”) responsibility for reviewing compensation structures of certain employees at institutions that received exceptional financial assistance under TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or...otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(i).

Chrysler Group LLC (“Chrysler” or the “Company”), one of five remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2010 compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3)(i) of the Rule. These compensation structures apply to five employees that the Company has identified for 2010 as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 20 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(i) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee. 31 C.F.R. § 30.16(a)(3)(i).

On October 22, 2009, after reviewing submissions of proposed compensation structures from the Company, the Special Master issued determinations regarding 2009 compensation structures, and amounts potentially payable thereunder, for Chrysler’s senior executive officers and certain most highly compensated employees (the “2009 Determinations”). The 2009 Determinations included principles designed to ensure that 2009 compensation for the applicable employees would not “result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3).

The 2009 Determinations applied only to those individuals identified by the Company as subject to the Special Master's mandatory jurisdiction to review and approve compensation structures and payments, *see id.*, for 2009 and only with respect to compensation for services provided to Chrysler for 2009.

On December 14, 2009, the Special Master requested from each remaining Exceptional Assistance Recipient, including Chrysler, certain data and documentary information necessary to facilitate the Special Master's review of the Company's 2010 compensation structures. The request required Chrysler to submit data describing its proposed compensation structures, and the payments that would result from the proposals, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). Chrysler was required to submit competitive market data indicating how the amounts payable under Chrysler's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. Chrysler was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

Chrysler submitted this information to the Office of the Special Master on January 15, 2010. Following a preliminary review of the submission, on February 2, 2010, the Special Master determined that Chrysler's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(i). The Office of the Special Master then commenced a formal review of Chrysler's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of receipt of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*; and
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees).

The Special Master considered these sources, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2010.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether Chrysler's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). The Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).

- (5) *Comparable structures and payments.* The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. Chrysler Proposals

Chrysler has provided the Office of the Special Master with detailed information concerning its proposed 2010 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the "Proposed Structures").

Chrysler supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company.

Chrysler's chief executive officer (the "CEO") also serves as the chief executive officer of Fiat S.p.A., a minority shareholder of the Company. According to the Company's submission,

Fiat has and will continue to provide for the CEO's 2010 compensation, and Chrysler has not proposed to pay the CEO any compensation in 2010.¹

1. Cash Salary

Chrysler proposed freezing cash salaries at 2009 levels.

2. Stock Salary

Chrysler proposed that certain Covered Employees receive stock salary for 2010 in amounts up to \$180,000. Consistent with the 2009 Determinations, and as required by the Rule, these stock units would be fully vested upon grant, but would only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if Chrysler repays its TARP obligations.

3. Annual Long-Term Incentive Awards

Chrysler proposed that most Covered Employees would receive annual long-term incentive awards in amounts up to \$340,000. Under the proposal, these employees would be eligible to receive awards representing up to one third of their total 2010 compensation, payable in long-term restricted stock units that generally would vest only if the Covered Employee remains employed by the Company on the third anniversary of the grant date. As required by the Rule, these awards would be paid only in 25% installments for each 25% of Chrysler's TARP obligations that are repaid.

4. "Other" Compensation and Perquisites

Chrysler proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

The 2009 Determinations also require that Covered Employees not accrue additional amounts under "non-qualified deferred compensation" plans (with the exception of employee-funded elective deferral arrangements). Chrysler's proposal for 2010 is consistent with this requirement.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. The Special Master's review also

¹ In December 2009, Chrysler sought approval to provide the CEO with stock salary for his 2009 service as a director of the Company. The Special Master subsequently issued a written determination on December 23, 2009 approving, subject to certain conditions, the stock salary proposed by Chrysler. See Letter to Nancy Rae (December 23, 2009), *available at* <http://www.financialstability.gov/docs/20091223%20Chrysler%20Supplemental%20Determination%20Letter.pdf>.

made use of the resources described in Part II. In light of this review, the Special Master has determined that the principles established for 2009, which reflect the Public Interest Standard and are set forth in the 2009 Determinations, must continue to govern compensation in 2010.

After reviewing the Proposed Structures, the Special Master has concluded that they are consistent with the general principles established in the 2009 Determinations and therefore consistent with the Public Interest Standard.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I and II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed Chrysler's proposal with respect to cash salary in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities," 31 C.F.R. § 30.16(b)(1)(v). Based in part upon this principle, the 2009 Determinations required that cash salaries generally target the 50th percentile, because such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

The Special Master also reviewed Chrysler's proposal with respect to cash salary in light of the principle that compensation structures should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Based in part upon this principle, the 2009 Determinations concluded that cash salary generally should not exceed \$500,000, other than in exceptional cases for good cause shown.

After reviewing Chrysler's proposal, the Special Master has concluded that the proposed cash salaries are comparable to those amounts for persons in similar positions or roles at similar entities, and do not exceed \$500,000. Accordingly, the Special Master has approved the cash salaries set forth in the Proposed Structures, as reflected in *Exhibits I and II*,

2. Stock Salary

The Special Master reviewed the amount of stock salary Chrysler proposed to pay the Covered Employees in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." *Id.* § 30.16(b)(1)(v). Consistent with the 2009 Determinations, Chrysler's stock salary proposal would place the Covered Employees at or below the 50th percentile of compensation for persons in similar roles at similar entities. Accordingly, the Special Master has generally approved the amounts of stock salary set forth in the Proposed Structures. These amounts are described in further detail in *Exhibits I and II*.

The Special Master also reviewed the structure of Chrysler's stock salary proposal in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *See id.* § 30.16(b)(1)(i). In light of this

principle, the 2009 Determinations concluded that stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier in the event Chrysler repays its TARP obligations.

Chrysler proposed a structure for stock salary granted to Covered Employees in 2010 consistent with the requirements of the 2009 Determinations. As described in *Exhibits I and II*, stock salary for 2010 may become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier in the event Chrysler repays its TARP obligations (except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

3. Annual Long-Term Incentive Awards

The Special Master reviewed Chrysler's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be payable "over a relevant performance period," *id.* Based in part upon this principle, the 2009 Determinations require long-term incentives to be paid in the form of long-term restricted stock, and permit such awards to be paid if, and only if, objective performance metrics are achieved and the employee continues to provide services to the company for three years following the date of grant. In addition, as required by the Rule, this stock may only be redeemed in 25% installments for each 25% of Chrysler's TARP obligations that are repaid (except for amounts withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Chrysler's proposed annual long-term incentive awards are consistent with the 2009 Determinations, which impose a three year vesting requirement on these awards. Other Exceptional Assistance recipients also requested that different vesting terms apply in the case of employees who provide two years of service after the grant of an incentive—the minimum service period required by the Rule—but retire prior to providing three years of service, which is the length of service required by the 2009 Determinations. The Special Master has concluded that succession planning and the timing of individual employees' retirement dates should not be unduly dependent on compensation structures in light of the principles that compensation structures and the amounts payable thereunder should reflect "the current or prospective contributions of an employee to the value of the TARP recipient" and "the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient's future success." Accordingly, for the foregoing reasons and the reasons provided in the 2009 Determinations, the Special Master has determined that the long-term incentive awards described in *Exhibits I and II* will not result in payments that would be inconsistent with the Public Interest Standard.

4. "Other" Compensation and Perquisites

The 2009 Determinations generally require that perquisites and "other" compensation provided to a Covered Employee be limited to \$25,000 on an annual basis, and the Proposed Structures are consistent with this requirement. For the reasons provided in the 2009 Determinations, and as described in *Exhibit II*, any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this

limitation have already been made to a Covered Employee in 2010, those amounts should be promptly returned to the Company.²

5. Non-Qualified Deferred Compensation

For the reasons provided in the 2009 Determinations, and as proposed by Chrysler, Covered Employees will not accrue in 2010 additional amounts under supplemental executive retirement plans and other “non-qualified deferred compensation” plans, as described in *Exhibit II*.

6. Severance Plans

For the reasons provided in the 2009 Determinations, the Company must ensure that 2010 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, the Special Master required as part of the 2009 Determinations that Chrysler take certain corporate governance steps to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

The Special Master has determined that these same corporate governance requirements, which are detailed in Section V of the 2009 Determinations, must continue to apply in 2010. Among other requirements, Chrysler must:

- Ensure that employees are prohibited from engaging in any derivative or similar transaction with respect to Chrysler stock that would undermine the long-term performance incentives created by the compensation structures set forth in *Exhibits I and II*.
- Maintain a compensation committee comprised exclusively of independent directors, which must discuss, evaluate, and review with Chrysler’s senior risk officers any risks that could threaten the value of Chrysler. *Id.* § 30.4; *id.* § 30.5.
- Ensure that the compensation committee discloses to Treasury an annual narrative description of whether Chrysler, its Board of Directors, or the committee has engaged a compensation consultant during the past three years; and, if so, the types of services

² Chrysler has identified certain employees subject to expatriate arrangements providing for the payment of certain “other” compensation in excess of this limitation. The Special Master has reviewed these arrangements and has concluded that such payments, not to exceed \$275,000 per employee, are consistent with the Public Interest Standard.

provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of pay. *Id.* § 30.11(c).

- Provide to Treasury an annual disclosure of any perquisite whose total value for Chrysler’s fiscal year exceeds \$25,000 for each of the Covered Employees, as well as 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). *Id.* § 30.11(b).
- Ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Chrysler must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- Chrysler was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on Chrysler’s website. If Chrysler’s Board of Directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the Board of Directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- Except as explicitly permitted under the Rule, Chrysler is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- Chrysler’s chief executive officer and chief financial officer must provide written certification of the Company’s compliance with the various requirements of Section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. B.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2010 in light of the principles described in the 2009 Determinations, which in turn reflect the Public Interest Standard. On the basis of that review, the Special Master has determined that the Proposed Structures submitted by Chrysler are consistent with the 2009 Determinations.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, Chrysler may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If Chrysler does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures and employees described in *Exhibits I and II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(i) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES
2010 Compensation

Company Name: Chrysler Group LLC

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary + stock salary + long-term restricted stock.)
TRP001	\$0	\$0	\$0	\$0
TRP002	\$500,000	\$180,000	\$340,000	\$1,020,000
TRP005	\$485,000	\$145,500	\$315,250	\$945,750
TRP006	\$455,000	\$150,150	\$302,575	\$907,725
TRP009	\$410,000	\$135,300	\$272,650	\$817,950
TRP010	\$410,000	\$61,500	\$235,750	\$707,250
TRP011	\$400,000	\$144,000	\$272,000	\$816,000
TRP012	\$405,000	\$0	\$0	\$405,000
TRP014	\$385,000	\$138,600	\$261,800	\$785,400
TRP016	\$335,000	\$110,550	\$222,775	\$668,325
TRP017	\$315,000	\$85,085	\$200,030	\$600,115
TRP018	\$315,000	\$85,050	\$200,025	\$600,075
TRP019	\$310,704	\$0	\$0	\$310,704
TRP020	\$310,000	\$115,200	\$212,600	\$637,800
TRP021	\$295,008	\$0	\$0	\$295,008
TRP022	\$290,004	\$104,400	\$197,200	\$591,604
TRP023	\$280,008	\$100,800	\$190,400	\$571,208
TRP024	\$280,008	\$0	\$0	\$280,008
TRP025	\$310,000	\$102,300	\$206,150	\$618,450
TRP026	\$270,000	\$97,200	\$183,600	\$550,800
TRP028	\$265,008	\$100,800	\$182,900	\$548,708
TRP029	\$265,032	\$95,412	\$180,220	\$540,664
TRP030	\$265,032	\$95,412	\$180,220	\$540,664
TRP055	\$325,000	\$87,750	\$206,375	\$619,125

Comparison of 2010 Compensation to Prior Year Compensation

- Annual cash salary rates remain unchanged from 2009 for all Covered Employees.
- No Covered Employees with annual cash salary rate over \$500,000.
- Only one Covered Employee with total direct compensation over \$1,000,000.

Note 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note 2: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2010.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Salary payments.** Cash and stock base salaries reflect the annual rate for the employee and are effective as of January 1, 2010, and in the case of stock salary are payable on a *nunc pro tunc* basis from that date. To the extent the Special Master's determinations for 2010 reduce an employee's previous cash or stock salary rate, payments in excess of that rate prior to the date hereof must be offset by reductions to prospective 2010 cash salary payments or to any stock salary payable with respect to 2010.
- **Stock compensation generally.** For purposes of the Determination Memorandum, "stock" compensation includes common stock and stock units. Notwithstanding any transferability restrictions applicable to any stock compensation described in the Determination Memorandum, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments as described in the Determination Memorandum. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Long-term restricted stock.** Long-term restricted stock may only be granted upon the achievement of objective performance criteria developed and reviewed in consultation with the Office of the Special Master. The compensation committee must certify (1) the achievement of such criteria, and (2) that the grant of incentives is appropriate in light of Chrysler's overall circumstances at the time. Such stock must be forfeited unless conditioned upon the employee's continued employment through the third anniversary of grant, unless a termination of employment results from death or disability; provided, however, that all or a portion of such stock (or similar stock granted with respect to 2009 service) may, for good cause certified by the Company's compensation committee, continue to vest if the employee retires on or after the second anniversary of the grant date. The term "retirement" must meet an objective standard established in consultation with the Office of the Special Master.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20240

March 23, 2010

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CIMS 405-27-16
Farmington Hills, MI 48334

Re: *Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees ("Covered Employees 1-25")*

Dear Ms. Hackman:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of the senior executive officers and next 20 most highly compensated employees ("Covered Employees 1-25") of Chrysler Financial. Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*) providing the determinations of the Special Master with respect to 2010 compensation for those employees. 31 C.F.R. § 30.16(a)(3)(i).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* On October 22, 2009, the Special Master issued a Determination Memorandum containing principles designed to ensure that 2009 compensation for Chrysler Financial's Covered Employees 1-25 satisfies this public interest standard.

The principles established for 2009 must continue to govern compensation at the five remaining recipients of exceptional assistance in 2010. I am pleased that Chrysler Financial's 2010 submission is largely consistent with these important principles, which are detailed in the attached Determination Memorandum. Generally, these principles require that:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown.

- Total compensation for each individual must be appropriate when compared with total compensation of comparable employees at similarly situated companies, and should generally not exceed the 50th percentile of total compensation for comparable employees.
- “Other” compensation and perquisites, and supplemental executive retirement plans, must remain subject to the limitations described in the 2009 determinations.

Although Chrysler Financial’s submissions are generally consistent with these important principles, some modifications are required to make certain that compensation for Chrysler Financial’s Covered Employees 1–25 satisfies the public interest standard. Accordingly, the compensation structures approved by the Special Master vary in the following respects from Chrysler Financial’s proposals:

- The number of Covered Employees 1–25 earning more than \$500,000 in cash salary will be eight, rather than 14, as proposed by Chrysler Financial.
- Total direct compensation for 2010 will increase by 10% over 2009. Chrysler Financial had proposed a 20% increase over 2009 based on the Company’s achievement of significant business objectives sooner than projected.

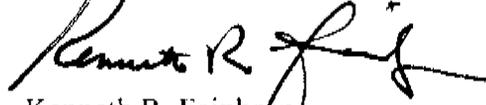
As described in the attached Determination Memorandum, Chrysler Financial must also continue to observe the following prescriptions described in the Special Master’s 2009 determinations:

- Chrysler Financial may not provide a tax “gross up” of any kind to these employees.
- As least once every year, Chrysler Financial’s compensation committee must provide the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten Chrysler Financial’s value.

These requirements are described in detail in the attached Determination Memorandum.

Pursuant to the Interim Final Rule, Chrysler Financial may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Enclosures

cc: Mr. Thomas F. Gilman

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master”) responsibility for reviewing compensation structures of certain employees at institutions that received exceptional financial assistance under TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or . . . otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(i).

Chrysler Financial (the “Company”), one of five remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2010 compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3)(i) of the Rule. These compensation structures apply to five employees that the Company has identified for 2010 as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 20 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(i) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee. 31 C.F.R. § 30.16(a)(3)(i).

On October 22, 2009, after reviewing submissions of proposed compensation structures from the Company, the Special Master issued determinations regarding 2009 compensation structures, and amounts potentially payable thereunder, for Chrysler Financial’s senior executive officers and certain most highly compensated employees (the “2009 Determinations”). The 2009 Determinations included principles designed to ensure that 2009 compensation for the applicable employees would not “result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3)(i).

The 2009 Determinations applied only to those individuals identified by the Company as subject to the Special Master's mandatory jurisdiction to review and approve compensation structures and payments, *see id.*, for 2009 and only with respect to compensation for services provided to Chrysler Financial for 2009.

On December 14, 2009, the Special Master requested from each remaining Exceptional Assistance Recipient, including Chrysler Financial, certain data and documentary information necessary to facilitate the Special Master's review of the Company's proposed 2010 compensation structures. The request required Chrysler Financial to submit data describing its proposed compensation structures, and the payments that would result from the proposals, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). Chrysler Financial was required to submit competitive market data indicating how the amounts payable under Chrysler Financial's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. Chrysler Financial was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

Chrysler Financial submitted this information to the Office of the Special Master on January 15, 2010. Following a preliminary review of the submission, on February 2, 2010, the Special Master determined that Chrysler Financial's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(i). The Office of the Special Master then commenced a formal review of Chrysler Financial's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of receipt of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*; and
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees).

The Special Master considered these sources, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2010.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether Chrysler Financial's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3)(i) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk.* The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).

- (5) *Comparable structures and payments.* The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. Chrysler Financial Proposals

Chrysler Financial has provided the Office of the Special Master with detailed information concerning its proposed 2010 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the “Proposed Structures”).

Chrysler Financial supported its proposal with detailed assessments of each Covered Employee’s tenure and responsibilities at the Company and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a “peer group” of entities selected by the Company.

As noted in the 2009 Determinations, Chrysler Financial is currently pursuing a wind-down of its operations and the repayment of its lenders and investors. The Company has

asserted that its success in this context is largely dependent upon maintaining critical talent, as it will be difficult to attract new employees during the wind-down process. In addition, providing compensation payable in long-term incentives based on the performance of the Company is impractical while the business is winding down, and Chrysler Financial therefore has requested that 2010 compensation, like 2009 compensation, be paid in the form of cash salaries.

1. Cash Salary

Chrysler Financial proposed increasing cash salaries by 20% above 2009 levels, effective March 1, 2010, based on the Company's successful achievement of pre-determined business objectives sooner than anticipated.

2. "Other" Compensation and Perquisites

Chrysler Financial proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments vary in value and include payments in excess of the \$25,000 annual limit set forth in the 2009 Determinations.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. The Special Master's review also made use of the resources described in Part II. In light of this review, the Special Master has determined that the principles established for 2009, which reflect the Public Interest Standard and are set forth in the 2009 Determinations, must continue to govern compensation in 2010.

After reviewing the Proposed Structures, the Special Master has concluded that they are largely consistent with the general principles established in the 2009 Determinations. However, certain aspects of the Proposed Structures require modification to ensure that they are consistent with the Public Interest Standard.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed Chrysler Financial's proposal with respect to cash salary in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." 31 C.F.R. § 30.16(b)(1)(v). Based in part upon this principle, the 2009 Determinations required that cash salaries generally target the 50th percentile, because such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

The Special Master also reviewed Chrysler Financial's proposal with respect to cash salary in light of the principle that compensation structures must "reflect the need for the TARP recipient to remain a competitive enterprise ... and ultimately to be able to repay TARP obligations." *Id.* § 30.16(b)(1)(ii). The 2009 Determinations acknowledged that Chrysler Financial's stated business objectives — which include an orderly wind-down of its business — may require cash salaries that give employees clear incentives to remain with the firm during the wind-down period.

Finally, the Special Master reviewed the Proposed Structures with respect to cash salary in light of the principle that compensation structures should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Based in part upon this principle, the 2009 determinations for other Exceptional Assistance Recipients concluded that cash salary generally should not exceed \$500,000, other than in exceptional cases for good cause shown.

Based on this review, the Special Master has concluded that Chrysler Financial's proposed cash salaries for certain Covered Employees cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities, and that such salaries generally exceed amounts needed to retain employees during the wind-down process. Accordingly, Chrysler Financial's proposal requires modification in order to be consistent with the Public Interest Standard.

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined to be consistent with the 2009 Determinations are comparable to those amounts for persons in similar positions or roles at similar entities, and are less than \$500,000, except in certain circumstances for good cause shown.

2. "Other" Compensation and Perquisites

The 2009 Determinations generally require that perquisites and "other" compensation provided to a Covered Employee be limited to \$25,000 on an annual basis, and the Proposed Structures are consistent with this requirement. As described in *Exhibit II*, any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2010, those amounts should be promptly returned to the Company.

Chrysler Financial has provided the Office of the Special Master with an independent justification for certain perquisites and "other" compensation that are expected to exceed the \$25,000 annual limit in 2010. In particular, the Company has sought approval for payments, consistent with employment agreements that pre-date TARP, to reimburse two Covered Employees for certain expenses that the Company estimates will total \$40,000 and \$60,000, respectively, in 2010. Chrysler Financial has also requested permission to pay two additional Covered Employees \$18,600 each under an existing program for Chrysler Financial employees living in geographic locations with high living costs. Payments to these two employees, when combined with other perquisites, would push the sum of all perquisites and other compensation provided in 2010 to \$34,200 for each employee.

The Special Master reviewed these justifications in light of the Public Interest Standard, giving particular consideration to whether the proposed payments are “consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated.” *Id.* at § 30.16(b)(1)(v). Additionally, the Special Master took into account “the current or prospective contributions of an employee to the value of the TARP recipient” and “the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient’s future success, and ultimately to be able to repay TARP obligations.” *Id.* at § 30.16(b)(1)(ii).

With regard to certain expenses for two of the Covered Employees, Chrysler Financial has represented that these employees serve in critical roles, and that their continued presence is vital to a successful wind-down of the Company’s operations. In addition, when the employees joined Chrysler Financial in 2007, the Company agreed to reimburse each employee for these expenses. Based on the Company’s own estimates, the expenses for each of the Covered Employees would represent approximately 4–7% of each employee’s total direct compensation for 2010. Given these factors, the Special Master has concluded that Chrysler Financial has provided satisfactory justification for the payment of these expenses, and that these payments are consistent with the Public Interest Standard provided they do not exceed the estimated annual amounts provided by the Company.

The Special Master also has concluded that the location adjustment payments proposed by Chrysler Financial are consistent with the Public Interest Standard. These payments represent less than 5% of each affected employee’s total direct compensation for 2010, and are being made pursuant to an existing program for Chrysler Financial employees.

3. Severance Plans

For the reasons provided in the 2009 Determinations, the Company must ensure that 2010 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period.” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, the Special Master required as part of the 2009 Determinations that Chrysler Financial take certain corporate governance steps to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

The Special Master has determined that these same corporate governance requirements, which are detailed in Section V of the 2009 Determinations, must continue to apply in 2010. Among other requirements, Chrysler Financial must:

- Maintain a compensation committee comprised exclusively of independent directors, which must discuss, evaluate, and review with Chrysler Financial's senior risk officers any risks that could threaten the value of Chrysler Financial. *Id.* § 30.4; *id.* § 30.5.
- Ensure that the compensation committee discloses to Treasury an annual narrative description of whether Chrysler Financial, its Board of Directors, or the committee has engaged a compensation consultant during the past three years; and, if so, the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of pay. *Id.* § 30.11(c).
- Provide to Treasury an annual disclosure of any perquisite whose total value for Chrysler Financial's fiscal year exceeds \$25,000 for each of the Covered Employees, as well as 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). *Id.* § 30.11(b).
- Ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. Chrysler Financial must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- Chrysler Financial was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on Chrysler Financial's website. If Chrysler Financial's Board of Directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the Board of Directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- Except as explicitly permitted under the Rule, Chrysler Financial is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- Chrysler Financial's chief executive officer and chief financial officer must provide written certification of the Company's compliance with the various requirements of Section 111 of EISA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. B.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2010 in light of the principles described in the 2009 Determinations, which in turn reflect the Public Interest Standard. On the basis of that review, the Special Master has determined that the

Proposed Structures submitted by Chrysler Financial are largely consistent with the 2009 Determinations but require certain modifications in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, Chrysler Financial may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If Chrysler Financial does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures and employees described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(i) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES
2010 Compensation

Company Name: Chrysler Financial

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary + stock salary + long-term restricted stock.)
A216G8	\$1,650,000	\$0	\$0	\$1,650,000
A200H1	\$495,000	\$0	\$0	\$495,000
A224F7	\$237,600	\$0	\$0	\$237,600
A232F6	\$270,864	\$0	\$0	\$270,864
A272C1	\$880,000	\$0	\$0	\$880,000
A288A8	\$440,000	\$0	\$0	\$440,000
A296A7	\$475,200	\$0	\$0	\$475,200
B225F8	\$1,485,000	\$0	\$0	\$1,485,000
B241E6	\$456,500	\$0	\$0	\$456,500
B249D5	\$539,000	\$0	\$0	\$539,000
C234F8	\$451,000	\$0	\$0	\$451,000
C258D5	\$539,000	\$0	\$0	\$539,000
C298A9	\$440,000	\$0	\$0	\$440,000
D211H3	\$240,570	\$0	\$0	\$240,570
D235F9	\$451,000	\$0	\$0	\$451,000
E204H5	\$440,000	\$0	\$0	\$440,000
E220G3	\$451,000	\$0	\$0	\$451,000
E236E1	\$550,004	\$0	\$0	\$550,004
F213G5	\$265,216	\$0	\$0	\$265,216
F245E1	\$451,000	\$0	\$0	\$451,000
F253D9	\$487,300	\$0	\$0	\$487,300
F285B5	\$282,150	\$0	\$0	\$282,150
G206H7	\$539,000	\$0	\$0	\$539,000
H231F5	\$467,500	\$0	\$0	\$467,500
H279B8	\$660,000	\$0	\$0	\$660,000

Comparison of 2010 Compensation to Prior Year Compensation

- Annual cash salary rates and total direct compensation will increase by 10% over 2009 levels but remain below 2008 levels.
- Only eight Covered Employees with total direct compensation over \$500,000.

Note 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(c)(2).

Note 2: Due to the Company's stated business objectives, including an orderly wind down of the Company's operations, compensation is only delivered in cash base salary.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- ***Salary payments.*** Cash base salaries reflect the annual rate for the employee and are effective as of January 1, 2010.
- ***Other compensation and perquisites.*** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- ***Supplemental executive retirement plans and non-qualified deferred compensation plans.*** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- ***Qualified Plans.*** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D. C. 20230

March 23, 2010

Mr. Gregory E. Lau
Executive Director – Global Compensation
General Motors Company
300 Renaissance Drive
MC 482-C32-B61
Detroit, MI, 48265-3000

Re: *Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees (“Covered Employees 1–25”)*

Dear Mr. Lau:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of the senior executive officers and next 20 most highly compensated employees (“Covered Employees 1–25”) of General Motors Company (“GM”). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*) providing the determinations of the Special Master with respect to 2010 compensation for those employees. 31 C.F.R. § 30.16(a)(3)(i).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each Covered Employee 1–25 “will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest.” *Id.* On October 22, 2009, the Special Master issued a Determination Memorandum containing principles designed to ensure that 2009 compensation for GM’s Covered Employees 1–25 satisfies this public interest standard.

The principles established for 2009 must continue to govern compensation at the five remaining recipients of exceptional assistance in 2010. I am pleased that GM’s 2010 submission is largely consistent with these important principles, which are detailed in the attached Determination Memorandum. Generally, these principles require that:

- There can be no guarantee of any “bonus” or “retention” awards among the compensation structures approved by the Special Master.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. The majority of each individual’s base salary generally will be paid in the form of stock that will immediately vest, in accordance with the Interim Final

Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of the date stock salary is earned, with each installment redeemable one year early if GM repays its TARP obligations.

- Total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees.
- If — and only if — grants of incentives are appropriate in light of GM’s circumstances at the end of 2010 *and* a particular Covered Employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for a long-term incentive grant. These incentives must be granted in restricted stock that will be forfeited unless the employee stays with GM for at least three years following grant, and may only be redeemed in 25% installments for each 25% of GM’s TARP obligations that are repaid. Long-term incentive grants must not exceed one third of a Covered Employee’s annual compensation.
- Any and all incentive compensation paid to these employees will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- “Other” compensation and perquisites, and supplemental executive retirement plans, must remain subject to the limitations described in the 2009 determinations.

Although GM’s submissions are generally consistent with these important principles, some modifications are required to make certain that compensation for GM’s Covered Employees 1–25 satisfies the public interest standard. Accordingly, the compensation structures approved by the Special Master vary in the following respects from GM’s proposals:

- The number of Covered Employees 1–25 earning more than \$500,000 in cash salary will be eight, rather than 16, as proposed by GM.
- Annual cash salary rates will decrease by 7.5% in aggregate. Of the 22 Covered Employees 1–25 who were GM employees during 2009, three will receive an increase in their annual cash salary rates, five will receive no increase in their annual cash salary rates, and 14 will see their annual cash salary rates decrease.

As described in the attached Determination Memorandum, GM must also continue to observe the following prescriptions described in the Special Master’s 2009 determinations:

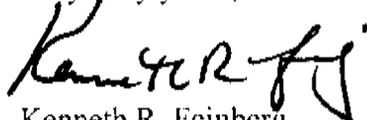
- The achievement of any performance objectives must be certified by the Executive Compensation Committee of GM’s Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.

- The employees will be prohibited from engaging in any hedging or derivative transactions involving GM stock that would undermine the long-term performance incentives created by the compensation structures.
- GM may not provide a tax “gross up” of any kind to these employees.

These requirements are described in detail in the attached Determination Memorandum.

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Enclosures

cc: Ms. Mary T. Barra

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master”) responsibility for reviewing compensation structures of certain employees at institutions that received exceptional financial assistance under TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or ... otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(i).

General Motors Company (“GM” or the “Company”), one of five remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2010 compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3)(i) of the Rule. These compensation structures apply to five employees that the Company has identified for 2010 as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 19 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

All but one of the Covered Employees for 2010 are GM corporate employees, which represents a significant shift from 2009. Due to the method used to calculate a Most Highly Compensated Employee’s compensation under the Rule, the vast majority of Covered Employees for 2009 represented GM’s asset management unit, Promark. GM also implemented significant changes to its senior management team for 2010. Of the 20 employees listed as Covered Employees for 2009, only five remain on the list of Covered Employees for 2010 due to these factors. In addition, two of the Covered Employees joined GM as new employees in 2010. Finally, one employee who otherwise would have been included among the Most Highly Compensated Employees for 2010 departed the Company prior to the date of this memorandum.

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(i) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. The Rule requires

that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee. 31 C.F.R. § 30.16(a)(3)(i).

On October 22, 2009, after reviewing submissions of proposed compensation structures from the Company, the Special Master issued determinations regarding 2009 compensation structures, and amounts potentially payable thereunder, for GM's senior executive officers and certain most highly compensated employees (the "2009 Determinations"). The 2009 Determinations included principles designed to ensure that 2009 compensation for the applicable employees would not "result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3). The 2009 Determinations applied only to those individuals identified by the Company as subject to the Special Master's mandatory jurisdiction to review and approve compensation structures and payments, *see id.*, for 2009 and only with respect to compensation for services provided to GM for 2009.¹

On December 14, 2009, the Special Master requested from each remaining Exceptional Assistance Recipient, including GM, certain data and documentary information necessary to facilitate the Special Master's review of the Company's 2010 compensation structures. The request required GM to submit data describing its proposed compensation structures, and the payments that would result from the proposals, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). GM was required to submit competitive market data indicating how the amounts payable under GM's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. GM was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GM submitted this information to the Office of the Special Master on January 15, 2010. Following a preliminary review of the submission, on February 2, 2010, the Special Master determined that GM's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(i). The Office of the Special Master then commenced a formal review of GM's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of receipt of a substantially complete submission. *Id.*

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

¹ In December 2009, GM sought approval of a proposed letter agreement between the Company and Christopher Liddell providing for the appointment of Mr. Liddell to the position of Chief Financial Officer effective January 1, 2010, and setting forth certain proposed compensation arrangements for Mr. Liddell. The Special Master subsequently issued a written determination on December 23, 2009 approving, subject to certain conditions, the compensation structure proposed for Mr. Liddell. *See* Letter to Gregory E. Lau (December 23, 2009), *available at* <http://www.financialstability.gov/docs/20091223%20GM%20Supplemental%20Determination%20Letter.pdf>.

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*; and
- External information on comparable compensation structures extracted from Equilar's *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar's *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees).

The Special Master considered these sources, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2010.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether GM's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites,

based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of Section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. GM Proposals

GM has provided the Office of the Special Master with detailed information concerning its proposed 2010 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the "Proposed Structures").

GM supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company.

1. Cash Salary

GM proposed increasing cash salaries above 2009 levels for a majority of the Covered Employees, with 16 employees receiving cash salaries above \$500,000.

2. Stock Salary

GM proposed that certain Covered Employees receive substantial stock salary for 2010 in amounts up to \$5,300,000. Consistent with the 2009 Determinations, and as required by the Rule, these stock units would be fully vested upon grant, but would only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GM repays its TARP obligations.

3. Annual Long-Term Incentive Awards

GM proposed that most Covered Employees would receive annual long-term incentive awards in amounts up to \$2,000,000. Under the proposal, these employees would be eligible to receive awards representing up to one third of their total 2010 compensation, payable in long-term restricted stock units that generally would vest only if the Covered Employee remains employed by the Company on the third anniversary of the grant date. Departing from the Special Master's 2009 Determinations, GM also requested that these long-term incentive awards vest if the Covered Employee remains employed by the Company on the second, rather than third, anniversary of the grant date. As required by the Rule, these awards would be paid only in 25% installments for each 25% of GM's TARP obligations that are repaid.

4. "Other" Compensation and Perquisites

GM proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

GM also proposed, consistent with the 2009 Determinations, that Covered Employees would not accrue additional amounts under “non-qualified deferred compensation” plans for 2010 (with the exception of employee-funded elective deferrals).

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. The Special Master’s review also made use of the resources described in Part II. In light of this review, the Special Master has determined that the principles established for 2009, which reflect the Public Interest Standard and are set forth in the 2009 Determinations, must continue to govern compensation in 2010.

After reviewing the Proposed Structures, the Special Master has concluded that they are largely consistent with the general principles established in the 2009 Determinations. However, certain aspects of the Proposed Structures require modification to ensure that they are consistent with the Public Interest Standard.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed GM’s proposal with respect to cash salary in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities,” 31 C.F.R. § 30.16(b)(1)(v). Based in part upon this principle, the 2009 Determinations required that cash salaries generally target the 50th percentile, because such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

The Special Master also reviewed GM’s proposal with respect to cash salary in light of the principle that compensation structures should be “performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). Based in part upon this principle, the 2009 Determinations concluded that cash salary generally should not exceed \$500,000, other than in exceptional cases for good cause shown.

Based on this review, the Special Master has concluded that GM’s proposed cash salaries for certain Covered Employees cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities. In addition, the Special Master has concluded that GM’s proposal, which requested that 16 of the 24 Covered Employees receive cash salaries of more than \$500,000, does not comply with the general principle from the 2009 Determinations regarding the amount of cash salary. Accordingly, GM’s proposal requires modification in order to be consistent with the Public Interest Standard.

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined to be consistent with the 2009 Determinations are comparable to those amounts for persons in similar positions or roles at similar entities, and are less than \$500,000, except in certain circumstances for good cause shown.

2. Stock Salary

The Special Master reviewed the amount of stock salary GM proposed to pay the Covered Employees in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities.” *Id.* § 30.16(b)(1)(v). Consistent with the 2009 Determinations, GM’s stock salary proposal would place the Covered Employees at or below the 50th percentile of compensation for persons in similar roles at similar entities.

The Special Master reviewed the structure of GM’s stock salary proposal in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *See id.* § 30.16(b)(1)(i). In light of this principle, the 2009 Determinations concluded that stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier in the event GM repays its TARP obligations. The Proposed Structures were consistent with this requirement. GM has informed the Office of the Special Master that the Company has repaid TARP obligations to Treasury. Accordingly, upon certification of that repayment by GM’s compensation committee, each redemption date of 2009 and 2010 stock salary may be accelerated by one year.

Accordingly, for the foregoing reasons and the reasons provided in the 2009 Determinations, the Special Master has determined that the stock salary described in *Exhibits I* and *II* will not result in payments that would be inconsistent with the Public Interest Standard.

3. Annual Long-Term Incentive Awards

The Special Master reviewed GM’s proposed annual long-term incentive awards in light of the principle that performance-based compensation should be payable “over a relevant performance period.” *id.* Based in part upon this principle, the 2009 Determinations require long-term incentives to be paid in the form of long-term restricted stock, and permit such awards to be paid if, and only if, objective performance metrics are achieved and the employee continues to provide services to the company for three years following the date of grant. In addition, as required by the Rule, this stock may only be redeemed in 25% installments for each 25% of GM’s TARP obligations that are repaid.

GM’s proposed annual long-term incentive awards are generally consistent with the 2009 Determinations. However, the Company requested that different vesting terms apply in the case of employees who provide two years of service after the grant of an incentive -- the minimum service period required by the Rule -- but retire prior to providing three years of service, which is the length of service required by the 2009 Determinations. The Special Master has concluded that the Company’s succession planning and the timing of individual employees’ retirement dates should not be unduly dependent on compensation structures in light of the principles that

compensation structures and the amounts payable thereunder should reflect “the current or prospective contributions of an employee to the value of the TARP recipient” and “the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient’s future success.” *Id.* § 30.16(b)(1). Accordingly, for the foregoing reasons and the reasons provided in the 2009 Determinations, the Special Master has determined that the long-term incentive awards described in *Exhibits I* and *II* will not result in payments that would be inconsistent with the Public Interest Standard.

4. “Other” Compensation and Perquisites

The 2009 Determinations generally require that perquisites and “other” compensation provided to a Covered Employee be limited to \$25,000 on an annual basis, and the Proposed Structures are consistent with this requirement. For the reasons provided in the 2009 Determinations, and as described in *Exhibit II*, any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2010, those amounts should be promptly returned to the Company.²

5. Non-Qualified Deferred Compensation

For the reasons provided in the 2009 Determinations, and as proposed by GM, Covered Employees will not accrue in 2010 additional amounts under supplemental executive retirement plans and other “non-qualified deferred compensation” plans, as described in *Exhibit II*.

6. Severance Plans

For the reasons provided in the 2009 Determinations, the Company must ensure that 2010 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

7. Departed Employee

One employee who would have been a Covered Employee had he remained employed is no longer employed by the Company. With respect to this employee, the Special Master has determined that the payment of stock salary and cash salary at the rate in effect on January 1, 2010, through the date of the termination of employment, and payment of up to \$25,000 in perquisites and “other” compensation are consistent with the Public Interest Standard. No other payments to this employee of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

² GM has identified certain employees subject to expatriate arrangements providing for the payment of certain “other” compensation in excess of this limitation. The Special Master has reviewed these arrangements and has concluded that such payments, not to exceed \$425,000 per employee, are consistent with the Public Interest Standard.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, the Special Master required as part of the 2009 Determinations that GM take certain corporate governance steps to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

The Special Master has determined that these same corporate governance requirements, which are detailed in Section V of the 2009 Determinations, must continue to apply in 2010. Among other requirements, GM must:

- Ensure that employees are prohibited from engaging in any derivative or similar transaction with respect to GM stock that would undermine the long-term performance incentives created by the compensation structures set forth in *Exhibits I and II*.
- Maintain a compensation committee comprised exclusively of independent directors, which must discuss, evaluate, and review with GM’s senior risk officers any risks that could threaten the value of GM. *Id.* § 30.4; *id.* § 30.5.
- Ensure that the compensation committee discloses to Treasury an annual narrative description of whether GM, its Board of Directors, or the committee has engaged a compensation consultant during the past three years; and, if so, the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of pay. *Id.* § 30.11(c).
- Provide to Treasury an annual disclosure of any perquisite whose total value for GM’s fiscal year exceeds \$25,000 for each of the Covered Employees, as well as 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). *Id.* § 30.11(b).
- Ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. GM must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- GM was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on GM’s website. If GM’s Board of Directors makes any material amendments to this policy, within 90 days of the adoption of the amended policy, the Board of Directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.

- Except as explicitly permitted under the Rule, GM is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- GM's chief executive officer and chief financial officer must provide written certification of the Company's compliance with the various requirements of Section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. B.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2010 in light of the principles described in the 2009 Determinations, which in turn reflect the Public Interest Standard. On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GM are largely consistent with the 2009 Determinations but require certain modifications in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I and II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I and II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GM does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures and employees described in *Exhibits I and II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(i) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES
2010 Compensation

Company Name: General Motors Company

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary + stock salary + long-term restricted stock.)
7924	\$1,700,000	\$5,300,000	\$2,000,000	\$9,000,000
0012	\$450,000	\$433,000	\$441,000	\$1,324,000
0017	\$495,000	\$2,639,750	\$0	\$3,134,750
0135	\$490,000	\$691,400	\$590,600	\$1,772,000
0417	\$450,000	\$281,000	\$350,000	\$1,081,000
0542	\$800,000	\$1,333,250	\$1,000,000	\$3,133,250
1731	\$495,000	\$1,683,866	\$0	\$2,178,866
2346	\$485,000	\$745,883	\$566,667	\$1,797,550
2387	\$495,000	\$802,450	\$600,000	\$1,897,450
2983	\$375,000	\$308,888	\$0	\$683,888
2986	\$700,000	\$1,212,183	\$866,667	\$2,778,850
3317	\$900,000	\$3,373,700	\$2,000,000	\$6,273,700
3348	\$600,000	\$791,417	\$633,333	\$2,024,750
3394	\$300,000	\$250,000	\$0	\$550,000
4894	\$495,000	\$958,383	\$666,667	\$2,120,050
5360	\$375,000	\$467,600	\$0	\$842,600
5434	\$580,000	\$1,040,100	\$280,000	\$1,900,100
5697	\$600,000	\$1,070,233	\$766,667	\$2,436,900
6335	\$495,000	\$935,783	\$666,667	\$2,097,450
6447	\$495,000	\$702,450	\$550,000	\$1,747,450
6524	\$495,000	\$701,200	\$550,000	\$1,746,200
6610	\$450,000	\$631,000	\$500,000	\$1,581,000
7231	\$750,000	\$3,450,000	\$2,000,000	\$6,200,000
9635	\$490,000	\$607,000	\$500,000	\$1,597,000

Comparison of 2010 Compensation to Prior Year Compensation

- **Overall:** Annual cash salary rates decrease 7.5%.
- **Executives remaining in the Top 25 from 2009:** Annual cash salary rates decrease 14.2%.
- **Executives new to the Top 25 in 2010:** Annual cash salary rates decrease 5.7%.

Note 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note 2: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2010.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Salary payments.** Cash and stock base salaries reflect the annual rate for the employee and are effective as of January 1, 2010, and in the case of stock salary are payable on a *nunc pro tunc* basis from that date. To the extent the Special Master's determinations for 2010 reduce an employee's previous cash or stock salary rate, payments in excess of that rate prior to the date hereof must be offset by reductions to prospective 2010 cash salary payments or to any stock salary payable with respect to 2010.
- **Stock compensation generally.** For purposes of the Determination Memorandum, "stock" compensation includes common stock and stock units. Notwithstanding any transferability restrictions applicable to any stock compensation described in the Determination Memorandum, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments as described in the Determination Memorandum. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Long-term restricted stock.** Long-term restricted stock may only be granted upon the achievement of objective performance criteria developed and reviewed in consultation with the Office of the Special Master. The compensation committee must certify (1) the achievement of such criteria, and (2) that the grant of incentives is appropriate in light of GM's overall circumstances at the time. Such stock must be forfeited unless conditioned upon the employee's continued employment through the third anniversary of grant, unless a termination of employment results from death or disability; provided, however, that all or a portion of such stock (or similar stock granted with respect to 2009 service) may, for good cause certified by the Company's compensation committee, continue to vest if the employee retires on or after the second anniversary of the grant date. The term "retirement" must meet an objective standard established in consultation with the Office of the Special Master.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 23, 2010

Drema M. Kalajian, Esquire
General Motors Acceptance Corporation Financial Services
200 Renaissance Center
MC-B09-B11
Detroit, MI 48265

Re: Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees ("Covered Employees 1-25")

Dear Ms. Kalajian:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of the senior executive officers and next 20 most highly compensated employees ("Covered Employees 1-25") of General Motors Acceptance Corporation Financial Services ("GMAC"). Attached as *Annex A* is a Determination Memorandum (accompanied by *Exhibits I* and *II*) providing the determinations of the Special Master with respect to 2010 compensation for those employees. 31 C.F.R. § 30.16(a)(3)(i).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each Covered Employee 1-25 "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* On October 22, 2009, the Special Master issued a Determination Memorandum containing principles designed to ensure that 2009 compensation for GMAC's Covered Employees 1-25 satisfies this public interest standard.

The principles established for 2009 must continue to govern compensation at the five remaining recipients of exceptional assistance in 2010. GMAC's 2010 submission is largely consistent with these important principles, which are detailed in the attached Determination Memorandum. Generally, these principles require that:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. The majority of each individual's base salary will be paid in the form of stock that will immediately vest, in accordance with the Interim Final Rule, but

will only be redeemable in three equal, annual installments beginning on the second anniversary of the date stock salary is earned, with each installment redeemable one year early if GMAC repays its TARP obligations.

- Total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees.
- If — and only if — grants of incentives are appropriate in light of GMAC's circumstances at the end of 2010 *and* a particular Covered Employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for a long-term incentive grant. These incentives must be granted in restricted stock that will be forfeited unless the employee stays with GMAC for at least three years following grant, and may only be redeemed in 25% installments for each 25% of GMAC's TARP obligations that are repaid. Long-term incentive grants must not exceed one third of a Covered Employee's annual compensation.
- Any and all incentive compensation paid to these employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or due to the employee's misconduct.
- "Other" compensation and perquisites, and supplemental executive retirement plans, must remain subject to the limitations described in the 2009 determinations.

Although GMAC's submissions are generally consistent with these important principles, some modifications are required to make certain that compensation for GMAC's Covered Employees 1–25 satisfies the public interest standard. Accordingly, the compensation structures approved by the Special Master vary in the following respects from GMAC's proposals:

- The CEO's compensation package will be restructured, with a greater allocation to stock salary and no cash salary. As a result of this restructuring, and an additional voluntary restructuring, no Covered Employee will receive a cash salary exceeding \$500,000.
- Stock salaries for certain employees who are new to the Covered Employees 1–25 group will be reduced to levels more appropriate in light of their historical overall compensation levels and in comparison with total compensation of comparable employees at similarly situated companies.
- Cash salaries and stock salaries for other employees who remained in the Covered Employees 1–25 group from 2009 will be frozen at the levels previously approved by the Special Master.
- The approved aggregate amount of incentives payable to Covered Employees will be reduced from the Company's proposal of \$29,445,000 to \$12,500,000. Approval of

additional incentive grants, if any, will be determined, subject to Special Master approval, at the conclusion of the year based on the Company's overall 2010 performance.

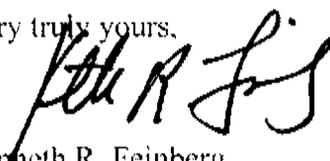
As described in the attached Determination Memorandum, GMAC must also continue to observe the following prescriptions described in the Special Master's 2009 determinations:

- The achievement of any performance objectives must be certified by the compensation committee of GMAC's Board of Directors, which is composed solely of independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.
- The employees will be prohibited from engaging in any hedging or derivative transactions involving GMAC stock that would undermine the long-term performance incentives created by the compensation structures.
- GMAC may not provide a tax "gross up" of any kind to these employees.

These requirements are described in detail in the attached Determination Memorandum.

Pursuant to the Interim Final Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Enclosures

cc: Mr. Kim Fennebresque
William B. Solomon, Jr., Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master”) responsibility for reviewing compensation structures of certain employees at institutions that received exceptional financial assistance under TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or...otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(i).

General Motors Acceptance Corporation Financial Services (“GMAC” or the “Company”), one of five remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2010 compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3)(i) of the Rule. These compensation structures apply to five employees that the Company has identified for 2010 as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 20 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3)(i) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee. 31 C.F.R. § 30.16(a)(3)(i).

On October 22, 2009, after reviewing submissions of proposed compensation structures from the Company, the Special Master issued determinations regarding 2009 compensation structures, and amounts potentially payable thereunder, for GMAC’s senior executive officers and certain most highly compensated employees (the “2009 Determinations”). The 2009 Determinations included principles designed to ensure that 2009 compensation for the applicable employees would not “result in payments that are inconsistent with the purposes of section 111

of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3). The 2009 Determinations applied only to those individuals identified by the Company as subject to the Special Master’s mandatory jurisdiction to review and approve compensation structures and payments, *see id.*, for 2009 and only with respect to compensation for services provided to GMAC for 2009.¹

On December 14, 2009, the Special Master requested from each remaining Exceptional Assistance Recipient, including GMAC, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s 2010 compensation structures. The request required GMAC to submit data describing its proposed compensation structures, and the payments that would result from the proposals, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). GMAC was required to submit competitive market data indicating how the amounts payable under GMAC’s proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. GMAC was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GMAC submitted this information to the Office of the Special Master on January 15, 2010. Following a preliminary review of the submission, the Office of the Special Master requested and received additional information from GMAC. On February 12, 2010, the Special Master determined that GMAC’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(i). The Office of the Special Master then commenced a formal review of GMAC’s proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of receipt of a substantially complete submission. *Id.*

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;

¹ On November 16, 2009, GMAC filed a report with the Securities Exchange Commission announcing it had named a new chief executive officer, Mr. Michael Carpenter (the “CEO”). In the report, the company noted that Mr. Carpenter would cease receiving compensation for his service as a GMAC board member, and that GMAC intended to submit a proposed compensation package for Mr. Carpenter to the Office of the Special Master. GMAC did so on December 22, 2009, after discussions on the substance of the proposal with the Office of the Special Master. The Special Master subsequently issued a written determination on December 23, 2009 approving, subject to certain conditions, the proposed compensation structure. *See* Letter to Drema M. Kalajian (December 23, 2009), *available at* <http://www.financialstability.gov/docs/20091223%20GMAC%20Supplemental%20Determination%20Letter.pdf>.

- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*; and
- External information on comparable compensation structures extracted from Equilar’s *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar’s *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees).

The Special Master considered these sources, in light of the statutory and regulatory standards described in Part III below, when evaluating the Company’s proposed compensation structures for the Covered Employees for 2010.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether GMAC’s proposed compensation structure, including amounts payable or potentially payable under the compensation structure, “will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the “Public Interest Standard”). The Rule requires that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the Exceptional Assistance Recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the Exceptional Assistance Recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the Exceptional Assistance Recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient’s future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. GMAC Proposals

GMAC has provided the Office of the Special Master with detailed information concerning its proposed 2010 compensation structures for the Covered Employees, including

amounts proposed to be paid under the compensation structure for each Covered Employee (the "Proposed Structures").

GMAC supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a "peer group" of entities selected by the Company. Of the employees listed as Covered Employees for 2009, 16 remain on the list of Covered Employees for 2010, and 8 employees are new entrants to the group.

1. Cash Salary

GMAC proposed cash salaries in amounts ranging from \$400,000 to \$500,000 for employees new to the Covered Employee group. For employees remaining in the Covered Employee group from 2009, cash salaries were proposed at either the rate approved by the Special Master in 2009, or the 2009 rate plus a \$9,000 increase to replace a portion of the value of a discontinued company car program.

2. Stock Salary

GMAC proposed stock salaries in amounts ranging from \$900,000 to \$4,937,500 for employees new to the Covered Employee group. For employees remaining in the Covered Employee group from 2009, stock salaries were proposed at the rate approved by the Special Master in 2009 for ten employees, and at increased rates for seven employees, with the additional annual amounts ranging from \$86,128 to \$1,968,000. As required by the Rule, the stock units proposed to be used for stock salary would be fully vested upon grant.

Consistent with the 2009 Determinations, GMAC initially proposed that stock would only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GMAC repays its TARP obligations. Subsequently, following discussions with the Office of the Special Master in which GMAC described unique difficulties balancing an appropriate allocation of long-term compensation and the delivery of a reasonable amount of liquidity to Covered Employees, GMAC requested consideration for a structure under which stock salary would instead only be redeemable in five, equal annual installments beginning on the first anniversary of grant.

3. Annual Long-Term Incentive Awards

GMAC proposed that most Covered Employees be eligible to receive annual long-term incentive awards representing up to one third of their total 2010 compensation, payable in long-term restricted stock units that generally would vest only if the Covered Employee remains employed by the Company on the third anniversary of the grant date. As required by the Rule, these awards would be paid only in 25% installments for each 25% of GMAC's TARP obligations that are repaid.

4. “Other” Compensation and Perquisites

GMAC proposed payments of “other” compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

GMAC also proposed, consistent with the 2009 Determinations, that Covered Employees would not accrue additional amounts under “non-qualified deferred compensation” plans for 2010 (with the exception of employee-funded elective deferrals).

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. The Special Master’s review also made use of the resources described in Part II. In light of this review, the Special Master has determined that the principles established for 2009, which reflect the Public Interest Standard and are set forth in the 2009 Determinations, must continue to govern compensation in 2010.

After reviewing the Proposed Structures, the Special Master has concluded that they are consistent with the general principles established in the 2009 Determinations; however, certain aspects of the Proposed Structures and amounts potentially payable under the Proposed Structures require modification to ensure that they are consistent with the Public Interest Standard.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I and II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed GMAC’s proposal with respect to cash salary in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities,” 31 C.F.R. § 30.16(b)(1)(v). Based in part upon this principle, the Special Master concluded in 2009 that cash salaries generally should not target a level above the 50th percentile as compared to persons in similar positions or roles at similar entities, because such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

The Special Master also reviewed GMAC’s proposal with respect to cash salary in light of the principle that compensation structures should be “performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). Based in part upon this principle, the 2009 Determinations concluded that cash salary generally should not exceed \$500,000, other than in exceptional cases for good cause shown. Subsequent to its initial submission, GMAC proposed reducing the salaries of the two Covered Employees with cash salaries exceeding \$500,000.

Accordingly, the Proposed Structures generally conformed to the requirements provided in the 2009 Determinations and set forth above.

The Proposed Structures for certain Covered Employees also included a \$9,000 benefit to partially replace the benefits under a company car program that was discontinued by GMAC as a cost-saving measure. GMAC characterized this benefit as cash salary. Although the restructuring of the benefit constitutes an overall compensation decrease for the affected employees, the Special Master has concluded that a fixed, \$9,000 increase to cash salary based on historical participation in the plan does not satisfy the principle that a “compensation structure, and amount payable...should reflect the current or prospective contributions of an employee to the value of the [Company],” *id.* § 30.16(b)(1)(vi), and that such a payment is more appropriately considered a perquisite. See *id.* § 30.16(b)(1)(iii). As a result, the cash salaries that the Special Master has determined to be consistent with the Public Interest Standard, as set forth in **Exhibit I**, do not include the \$9,000 replacement benefit. GMAC’s payment of any such amount to a Covered Employee will be consistent with the Public Interest Standard only to the extent it does not exceed the limit on perquisites set forth in Part IV.B.4. below.

2. Stock Salary

The Special Master reviewed the amount of stock salary GMAC proposed to pay the Covered Employees in light of the principles that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities,” *id.* § 30.16(b)(1)(v), and that a “compensation structure, and amount payable...should reflect the current or prospective contributions of an employee to the value of the [Company],” *id.* § 30.16(b)(1)(vi). For employees who were covered by the 2009 Determinations, the Special Master has concluded that stock salary rates approved therein continue to satisfy the principles described in the previous sentence. As a result, (with the exception of the CEO, who is covered separately in Part IV.B.7. below) the stock salaries that the Special Master has determined are consistent with the Public Interest Standard for such employees for 2010, as set forth in **Exhibit I**, do not include GMAC’s proposed increases.

For employees who were not covered by the 2009 Determinations, the Special Master found that the amounts of stock salary proposed by GMAC were excessive in comparison to payments provided to persons in similar positions or roles at similar entities, and that such payments would be inconsistent with the Public Interest Standard. The stock salaries that the Special Master has determined are consistent with the Public Interest Standard for such employees for 2010 are set forth in **Exhibit I**.

The Special Master also reviewed the structure of GMAC’s stock salary proposal in light of the principles that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *see id.* § 30.16(b)(1)(i), and that an appropriate portion of compensation should be “performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). The Special Master has concluded that GMAC’s proposal to allow stock salary to become redeemable only in five equal, annual installments beginning on the first anniversary of grant provides a sufficient alignment with long-term value creation, extended over a period designed to reflect performance. Accordingly, the Special Master has determined that the structure of stock salary described in **Exhibit II** will not result in payments that would be

inconsistent with the Public Interest Standard, provided that GMAC also restructures the stock salary approved for each Covered Employee in 2009 under the 2009 Determinations to the structure set forth in *Exhibit II*.

3. Annual Long-Term Incentive Awards

The Special Master reviewed GMAC's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be payable "over a relevant performance period," *id.* Based in part upon this principle, the 2009 Determinations require long-term incentives to be paid in the form of long-term restricted stock, and permit such awards to be paid if, and only if, objective performance metrics are achieved and the employee continues to provide services to the company for three years following the date of grant.

The structure of GMAC's proposed annual long-term incentives is generally consistent with the 2009 Determinations. Under the Proposed Structures, annual long-term incentives for 2010 would be granted only upon the achievement of specified, objective performance criteria that have been provided to the Office of the Special Master. GMAC's proposed target amounts were equal to approximately, but not more than, one third of total direct compensation, with the exception of the CEO, whose target amount is covered separately in Part IV.B.7., and two Covered Employees for whom no long-term incentives were proposed. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of GMAC's TARP obligations that are repaid.

The Special Master reviewed the proposed amounts of long-term restricted stock grants in light of the principle that the criteria for such incentives should "encompass individual performance and/or the performance of the TARP recipient..." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that for 2010, in addition to the achievement of individual objective performance measures, a portion of the aggregate amount of incentives available for allocation to the Covered Employees should depend on Company-wide performance over the course of 2010. Accordingly, the Special Master has determined that an aggregate amount of \$12,500,000 of long-term restricted stock may be granted to the Covered Employees based solely upon the achievement of specified, objective performance criteria—with the amount granted to any individual Covered Employee not to exceed the lesser of one third of such employee's annual compensation (as defined in the Rule) and the target incentive proposed for such employee under the Proposed Structures. No additional amount of long-term restricted stock may be granted without GMAC's achievement of overall performance goals.

Following additional discussion with the Office of the Special Master, GMAC proposed that the remainder of the aggregate target incentives for Covered Employees be approved for 2010 only if the Company achieves positive income from continuing operations (before taxes and certain other items). The Special Master has concluded in principle that the grant incentives to Covered Employees following GMAC's achievement of its proposed performance goal—in addition to each individual employee's objective performance metrics—would not result in payments inconsistent with the Public Interest Standard. However, the Special Master's final determination regarding 2010 incentive grants to Covered Employees will not be made prior to the certification by GMAC's compensation committee that the proposed company-wide performance goal has been achieved, and that the compensation committee has allocated

incentives based on its assessments of individual employee performance, with the amount granted to any individual Covered Employee not to exceed the lesser of one third of such employee's annual compensation and the target incentive proposed for such employee under the Proposed Structures. Thus, any additional incentives will require subsequent review prior to the final approval of the the Special Master. The structure and amount of grants of long-term restricted stock that the Special Master has determined, as of the date hereof, to be consistent with the Public Interest Standard are set forth in *Exhibits I* and *II*.

4. "Other" Compensation and Perquisites

The 2009 Determinations generally require that perquisites and "other" compensation provided to a Covered Employee be limited to \$25,000 on an annual basis, and the Proposed Structures are consistent with this requirement. For the reasons provided in the 2009 Determinations, and as described in *Exhibit II*, any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2010, those amounts should be promptly returned to the Company.

5. Non-Qualified Deferred Compensation

For the reasons provided in the 2009 Determinations, and as proposed by GMAC, Covered Employees will not accrue in 2010 additional amounts under supplemental executive retirement plans and other "non-qualified deferred compensation" plans, as described in *Exhibit II*.

6. Severance Plans

For the reasons provided in the 2009 Determinations, the Company must ensure that 2010 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

7. CEO Compensation

In a December 23, 2009, Supplemental Determination, the Special Master approved a compensation package for GMAC's newly hired CEO. See *supra* note 1. In its 2010 submission, GMAC proposed an increase to the CEO's stock salary rate and 2010 annual long-term incentive opportunity. As described with respect to other Covered Employees in Part IV.B.2. above, the Special Master has concluded that increases to the rates of stock-based compensation approved in the 2009 are unwarranted. Following discussions between the Office of the Special Master and GMAC regarding the foregoing conclusion, GMAC proposed a restructured compensation package for the CEO, with the same overall amount approved by the Special Master in 2009 provided solely in a combination of stock salary and an annual long-term incentive award. The terms and conditions of the stock salary and annual long-term incentive award proposed for the CEO are the same as for other Covered Employees.

The Special Master assessed the revised proposal for the CEO in light of the principle that "in the case of an executive or other senior level position a significant portion of the overall

compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers.” *Id.* § 30.16(b)(1)(iii). Although the revised proposal included an increased rate of stock salary, the Special Master has concluded that a compensation structure in which the CEO’s opportunity for wealth accumulation depends entirely on the long-term equity value of the Company best aligns his interests with those of the taxpayers, and such a structure, as described in *Exhibits I and II*, is consistent with the Public Interest Standard.

8. Departing Employee

Following its submission, GMAC informed the Office of the Special Master that one Senior Executive Officer announced his intent to depart the Company. With respect to this employee, the Special Master has determined that the payment of stock salary and cash salary at the rate in effect on January 1, 2010, through the date of the termination of employment, and payment of up to \$25,000 in perquisites and “other” compensation are consistent with the Public Interest Standard. No other payments to this employee of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, the Special Master required as part of the 2009 Determinations that GMAC take certain corporate governance steps to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

The Special Master has determined that these same corporate governance requirements, which are detailed in Section V of the 2009 Determinations, must continue to apply in 2010. Among other requirements, GMAC must:

- Ensure that employees are prohibited from engaging in any derivative or similar transaction with respect to GMAC stock that would undermine the long-term performance incentives created by the compensation structures set forth in *Exhibits I and II*.
- Maintain a compensation committee comprised exclusively of independent directors, which must discuss, evaluate, and review with GMAC’s senior risk officers any risks that could threaten the value of GMAC. *Id.* § 30.4; *id.* § 30.5.
- Ensure that the compensation committee discloses to Treasury an annual narrative description of whether GMAC, its board of directors, or the committee has engaged a compensation consultant during the past three years; and, if so, the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of pay. *Id.* § 30.11(c).

- Provide to Treasury an annual disclosure of any perquisite whose total value for GMAC's fiscal year exceeds \$25,000 for each of the Covered Employees, as well as 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). *Id.* § 30.11(b).
- Ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. GMAC must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- GMAC was required to adopt an excessive or luxury expenditures policy, provide that policy to the Treasury, and post it on GMAC's website. If GMAC's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- Except as explicitly permitted under the Rule, GMAC is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- GMAC's chief executive officer and chief financial officer must provide written certification of the Company's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. B.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2010 in light of the principles described in the 2009 Determinations, which in turn reflect the Public Interest Standard. On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GMAC are largely consistent with the 2009 Determinations but require certain modifications in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I and II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I and II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or

relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GMAC does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures and employees described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3)(i) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES
2010 Compensation

Company Name: GMAC Financial Services

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in five equal annual installments beginning on the 1st anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary + stock salary; excluding potential long-term restricted stock.)
280677	\$0	\$8,000,000		\$8,000,000
151695	\$500,000	\$1,858,333		\$2,358,333
166144	\$500,000	\$900,000		\$1,400,000
197253	\$500,000	\$1,941,667		\$2,441,667
250095	\$500,000	\$4,437,500		\$4,937,500
265967	\$500,000	\$2,350,000		\$2,850,000
339212	\$500,000	\$4,437,500		\$4,937,500
354392	\$450,000	\$1,000,000		\$1,450,000
391076	\$450,000	\$1,133,333		\$1,583,333
501828	\$450,000	\$1,850,000		\$2,300,000
509014	\$400,000	\$852,278		\$1,252,278
513416	\$450,000	\$880,000		\$1,330,000
546145	\$500,000	\$1,641,667		\$2,141,667
555076	\$480,000	\$1,029,167		\$1,509,167
567303	\$400,000	\$1,300,000		\$1,700,000
682168	\$500,000	\$3,183,333		\$3,683,333
707713	\$400,000	\$1,000,000		\$1,400,000
710047	\$500,000	\$1,300,000		\$1,800,000
725547	\$450,000	\$1,220,833		\$1,670,833
746382	\$400,000	\$1,000,000		\$1,400,000
805106	\$500,000	\$2,208,333		\$2,708,333
921597	\$400,000	\$1,149,872		\$1,549,872
936790	\$400,000	\$1,141,667		\$1,541,667
964006	\$450,000	\$2,391,667		\$2,841,667

Comparison of 2010 Compensation to Prior Year Compensation

- **Long-term Restricted Stock:** The compensation committee may grant up to \$12.5M of incentives to employees for achievement of objective individual performance goals. Additional long-term restricted stock for incentive grants, if any, will be determined at the conclusion of the year based on Company performance, subject to Special Master approval.
- **Overall:** Annualized overall cash compensation decreased by \$8.8M or 45%. Approved total direct compensation, including the \$12.5M long-term restricted stock pool, decreased by 14% from 2009.
- **The 16 executives remaining in the Top 25 from 2009:** Annualized overall cash compensation decreased by \$1,050,000 or 13%. Currently allocated total direct compensation decreased by at least 30% from 2009 levels. Depending on Company and individual performance, these employees could earn up to the entire long-term restricted stock pool.
- **The 8 executives new to the Top 25 in 2010:** Annualized overall cash compensation decreased by \$7.8M or 68%. Currently allocated total direct compensation decreased by 28% from 2009 levels. Depending on Company and individual performance, these employees could earn up to \$8.5M of the long-term restricted stock pool.

Note 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note 2: The total number of Covered Employees may be less than 25 because of separations from service since January 1, 2010.

EXHIBIT II
TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Salary payments.** Cash and stock base salaries reflect the annual rate for the employee and are effective as of January 1, 2010, and in the case of stock salary are payable on a *nunc pro tunc* basis from that date. To the extent the Special Master's determinations for 2010 reduce an employee's previous cash or stock salary rate, payments in excess of that rate prior to the date hereof must be offset by reductions to prospective 2010 cash salary payments or to any stock salary payable with respect to 2010.
- **Stock compensation generally.** For purposes of the Determination Memorandum, "stock" compensation includes common stock and stock units. Notwithstanding any transferability restrictions applicable to any stock compensation described in the Determination Memorandum, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares based on the fair market value on the date of award. Stock granted as stock salary may only be redeemed in five equal, annual installments as described in the Determination Memorandum. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Long-term restricted stock.** Long-term restricted stock may only be granted upon the achievement of, as applicable, individual and company-wide objective performance criteria developed and reviewed in consultation with the Office of the Special Master, and, for amounts in excess of the \$12,500,000 long-term restricted stock pool, upon subsequent Special Master approval. The compensation committee must certify (1) the achievement of such criteria, and (2) that the grant of incentives is appropriate in light of GMAC's overall circumstances at the time. Such stock must be forfeited unless conditioned upon the employee's continued employment through the third anniversary of grant, unless a termination of employment results from death or disability; provided, however, that all or a portion of such stock (or similar stock granted with respect to 2009 service) may, for good cause certified by the Company's compensation committee, continue to vest if the employee retires on or after the second anniversary of the grant date. The term "retirement" must meet an objective standard established in consultation with the Office of the Special Master.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 16, 2010

Mr. Robert Benmosche
President and Chief Executive Officer
American International Group, Inc.
70 Pine Street
New York, NY 10270

**Re: Proposed Compensation Structures for Certain Executive Officers
and Most Highly Compensated Employees (“Covered Employees 26 – 100”)**

Dear Mr. Benmosche:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of employees who are either executive officers of American International Group, Inc. (“AIG”) or one of AIG’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”). The Special Master’s compensation reviews for Covered Employees 26 – 100 differ from the reviews of AIG’s “Top 25” employees, which addressed individual “amounts payable” to those employees, 31 C.F.R. § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, the Special Master must determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest” (as applied to Covered Employees 26 – 100 of AIG, the “Public Interest Standard”). *Id.* § 30.16(a)(3)(ii).

On December 11, 2009, the Special Master issued determinations (the “2009 Determinations”) designed to ensure that 2009 compensation structures for AIG’s 2009 Covered Employees 26 – 100 met the Public Interest Standard. The 2009 Determinations were informed by a number of considerations, including each of the principles articulated in the Rule. *Id.* § 30.16(b)(1). In particular, the determinations emphasized allocating significant portions of compensation to long-term structures tied to AIG’s overall value, using structures that are performance-based and easily understood by shareholders, and protecting the Company’s ability to remain a competitive enterprise and ultimately to repay the its taxpayer assistance.

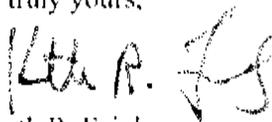
The Special Master has concluded that, for the reasons provided in the 2009 Determinations, the principles and requirements of those determinations should generally continue to apply in 2010. Accordingly, the Special Master has determined that the compensation structures described in *Annex A*, which reaffirm the compensation structures approved in 2009, are consistent with the Public Interest Standard. AIG’s proposed compensation structures, with minor modifications, are consistent with the Special Master’s prescriptions, which require that:

- Compensation may be provided in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by AIG’s compensation committee.

- Compensation must be performance-based. Fixed compensation should consist only of cash salaries and stock salaries at levels sufficient to attract and retain employees and provide them a reasonable level of liquidity. Cash salaries should not exceed \$500,000 per year, except in exceptional cases for good cause shown, as certified by the Company's independent compensation committee.
- Compensation must emphasize long-term results. At least 50% of any incentive payment to a Covered Employee must be delivered in long-term stock. In most cases, half of total pay — whatever the overall mix of components for that individual — must not be transferable for at least three years.
- Stock compensation must constitute a significant portion of each Covered Employee's compensation structure. For employees who earn more than \$500,000 in total cash, that portion must be 55% at the minimum.
- Incentives may be paid if—and only if—the payments are appropriate in light of AIG's overall circumstances and a particular Covered Employee achieves objective performance metrics. Incentive payments must be subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- Incentive payments must be payable over time and delivered in a mix of cash and stock, and the total value of all incentive compensation payments cannot exceed a specified percentage of the company's eligible earnings, to be determined by the compensation committee.
- The restrictions described in the Special Master's previous determinations pertaining to perquisites, severance benefits, hedging transactions, tax "gross-ups" and supplemental executive retirement plans shall continue to apply to Covered Employees 26 – 100.

The Special Master's determinations are limited to the compensation structures described in *Annex A*, and shall not be relied upon with respect to any other employee. The determinations have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by AIG to the Office of the Special Master, and the absence of any material misstatement or omission in such materials. Pursuant to the Interim Final Rule, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Jeffrey Hurd, Esq.
Marc R. Trevino, Esq.

ANNEX A
APPROVED 2010 COMPENSATION STRUCTURES

This Annex sets forth terms and conditions for the 2010 compensation structures for AIG's 2010 Covered Employees 26 – 100. (For the avoidance of doubt, if the compensation structure for a Covered Employee fits within the \$500,000 "safe harbor" exemption set forth in Section 30.16(a)(3)(ii) of the Rule, the Special Master's approval is not required for that employee's compensation structure.) Capitalized terms used in this Annex have the meaning given to them in the preceding letter. To the extent that AIG's proposed structures do not meet the principles and requirements of this Annex, AIG must make such modifications as are necessary to comply with such principles and requirements.

1. Primary Components of Compensation

- **Cash salary.** Covered Employees should not receive cash salaries payments in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by AIG's compensation committee, which is comprised solely of independent directors.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value on the date of grant. Whether a grant or payment that is labeled stock salary is salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Incentive compensation.** Under any incentive compensation structure, payments to a Covered Employee must be conditioned upon achievement of objective performance criteria (other than continued service), with such achievement to be assessed and certified by the compensation committee. Performance criteria must be developed by the compensation committee and may be reviewed by the Office of the Special Master. The aggregate amount of incentives paid to Covered Employees for performance achieved only in 2010 may not exceed a specified percentage of AIG's eligible earnings. The amount and calculation of such eligible earnings will be determined by the compensation committee and may be reviewed by the Office of the Special Master.

2. Allocation Rules

- **Application of allocation rules.** The allocation rules apply to each Covered Employee's 2010 "primary compensation structure," which is equal to the sum of the amounts potentially payable to a Covered Employee (1) in 2010 cash salary, (2) in 2010 stock salary, or (3) under 2010 incentive plans. For purposes of these determinations, 2010 incentive plans are plans for which incentives are earned (a) solely with respect to 2010, and (b) under a multi-year incentive plan established in 2010. Compliance with the allocation rules is to be assessed based on a Covered Employee's primary compensation structure as designed and established in 2010, assuming both target level of achievement under each incentive plan and maximum level of achievement under each incentive plan.
- **Equity allocation.** For a Covered Employee whose 2010 primary compensation structure includes more than \$500,000 of cash compensation, at least 55% of his or her 2010 primary compensation structure must be allocated to stock compensation. AIG may allocate less than 55% of a Covered Employee's 2010 primary compensation structure to stock compensation if the cash allocation of the employee's primary compensation structure does not exceed \$500,000, provided that for such employee the allocation in the employee's 2010 primary compensation

structure to stock compensation must constitute a significant portion of the primary compensation structure.

- **Long-term allocation.** At least 50% of each Covered Employee's 2010 primary compensation structure must be allocated to primary components of compensation that will not be paid or become transferable prior to the third anniversary of grant. For a Covered Employee whose 2010 primary compensation structure does not include more than \$500,000 of cash compensation, the long-term allocation rule excludes cash salary.

3. Additional Terms and Conditions

- **Payment of incentives.** No payment or stock compensation grant under a 2010 incentive plan may be made prior to the conclusion of the applicable performance period. Payment under each 2010 incentive plan must consist of at least 50% stock compensation; however, no cash may be paid under an incentive plan to a Covered Employee unless either (1) 50% of the target incentive amount under such plan has been first paid in the form of stock compensation, or (2) at the time of such payment, the percentage of compensation actually received in stock under such Covered Employee's 2010 primary compensation structure equals or exceeds the percentage of stock compensation required in such Covered Employee's compensation structure.* The stock compensation paid under a 2010 incentive plan may not be transferred or otherwise redeemed prior to the third anniversary of grant, provided that any performance period exceeding one year in an incentive plan may be counted toward this three-year holding period. For a Covered Employee whose 2010 primary compensation structure includes more than \$500,000 of cash compensation, at least 50% of the amount payable in cash under each incentive plan must be deferred at least one year after the date of the initial cash payment under that plan.
- **Stock compensation generally.** For purposes of these determinations, "stock" compensation means the securities referenced by the "basket" described in Part IV of the March 23, 2010, determinations for AIG's "Top 25" executives, or, for purposes of "long-term restricted stock" (as defined in the Rule) only, AIG common stock or common stock units. No stock compensation paid to a Covered Employee may be redeemed or become transferable prior to the first anniversary of the date on which such stock compensation vests. Notwithstanding the requirements of the foregoing sentence and the transferability restrictions otherwise applicable to any stock compensation, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.

* For example: E, a Covered Employee, participates in an incentive program that meets the structural requirements of this Annex, and has a target incentive payment of \$100. If E achieves the applicable performance criteria, E would be eligible for a payment of \$100, consisting of stock compensation of at least \$50, and up to \$50 in cash. On the other hand, if E fails to fully meet the performance criteria and as a result is eligible to receive \$75 in incentive payments, the amount of E's incentive payable in cash will depend on whether E previously received 2010 stock compensation, such as stock salary. If E had not received other stock compensation, only \$25 of the payment could be in cash because no cash could be paid prior to the payment of 50% of the target payment — \$50 in this case — in stock compensation. If, however, E had received other stock compensation, the amount of cash payable under the incentive plan could exceed \$25, but only to the extent the cash proportion of compensation actually paid to E with respect to 2010 would not exceed the portion required to be allocated to cash in E's primary compensation structure.

- **Clawbacks and hedging.** Any incentive payment must be subject to “clawback” if the payment or the amount thereof was based on materially inaccurate financial statements (which term includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria, or if the Covered Employee is terminated due to misconduct that occurred during the period the incentive was earned. In addition, the compensation structure for each Covered Employee must prohibit the employee from engaging in any derivative or similar transaction with respect to AIG that would undermine the long-term performance incentives created by the compensation structures set forth in this Annex.
- **Employees entering the “Top 25”.** If AIG reasonably concludes that a Covered Employee may become one of the “Top 25” employees in 2011, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements. Any payment under a 2010 incentive plan that would be payable to the Covered Employee in cash in the first quarter of 2011 consistent with the terms of this Annex may be paid on or before December 31, 2010. In addition, notwithstanding the other requirements of this Annex, any incentive compensation for performance in 2010 may be paid to the Covered Employee in the form of AIG common stock (but not stock units) that vests on or before December 31, 2010, provided that the transferability of such stock shall be consistent with the structural principles of this Annex. Finally, notwithstanding the other requirements of this Annex, up to one-third of the Covered Employee’s “annual compensation” for 2010 may be paid in the form of “long-term restricted stock,” as those terms are defined in the Rule.
- **Severance.** No 2010 compensation structure may establish the right to a “golden parachute” payment (as defined in the Rule) or permit an increase in the amount of such a payment under an already-existing arrangement.

4. Other components of compensation

- **Tax gross-ups.** AIG is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees, in the same manner as the gross-up prohibition applies to “Top 25” employees under the Rule.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations. Payments to Covered Employees under expatriate arrangements, not to exceed \$350,000 per employee (excluding “tax equalization agreements” as defined in the Rule), are excluded from the limitation in the foregoing sentence.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other “non-qualified deferred compensation” plans, as defined by pertinent SEC regulations, for any Covered Employee for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts contributed to or payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20549

April 16, 2010

Tracy Hackman, Esquire
Vice President, General Counsel and Secretary
Chrysler Financial
27777 Inkster Road
CIMS 405-27-16
Farmington Hills, MI 48334

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees ("Covered Employees 26 – 100")

Dear Ms. Hackman:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of employees who are either executive officers of Chrysler Financial or one of the company's 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule ("Covered Employees 26 – 100" or "Covered Employees").

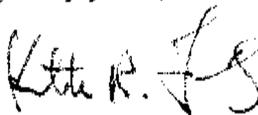
According to the materials you have submitted, the proposed compensation structures for Covered Employees 26 – 100, with the exception of a single Covered Employee, fit within the exemption set forth in Section 30.16(a)(3)(ii) of the Interim Final Rule for employees receiving total annual compensation (other than long-term restricted stock) not exceeding \$500,000. The proposed compensation structures therefore are automatically deemed to meet the requirements of the Interim Final Rule, and Chrysler Financial is not required to seek the prior approval of the Special Master to implement these structures. To the extent the 2010 compensation structure for any Covered Employee, including the amounts that are or may be payable thereunder, is modified such that the exemption is no longer applicable, Chrysler Financial is required to notify the Office of the Special Master and seek approval for further action consistent with the Interim Final Rule. 31 C.F.R. § 30.16(a)(3)(ii).

The proposal for the Covered Employee with total annual compensation exceeding \$500,000 is, according to the submission, based on the compensation structures previously approved by the Special Master on March 23, 2010, for Chrysler Financial's "Top 25" employees. In light of the foregoing, Chrysler Financial has

demonstrated that the compensation structure for such Covered Employee will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or would otherwise be contrary to the public interest, and such compensation structure is therefore approved.¹ See *id.*

The foregoing is limited to the proposed compensation structures for Covered Employees 26 – 100, and may not be relied upon with respect to any other employee of Chrysler Financial. Moreover, the Office of the Special Master has relied upon, and this letter is qualified in its entirety by, the accuracy of the materials submitted by Chrysler Financial to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Mr. Thomas F. Gilman

¹ The Covered Employee is subject to certain expatriate arrangements that provide for the payment of “other” compensation. Chrysler Financial anticipates that these payments, when combined with all perquisites and other compensation paid to the Covered Employee in 2010, will exceed the \$25,000 annual limit on perquisites and other compensation set forth in the March 23, 2010 determinations for “Top 25” employees. Because the Covered Employee’s total compensation for 2010 is not expected to exceed \$570,000, the Special Master has concluded that these expatriate payments are consistent with the public interest standard.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20520

April 16, 2010

Mr. Gregory E. Lau
Executive Director – Global Compensation
General Motors Company
300 Renaissance Drive
MC 482-C32-B61
Detroit, MI 48265-3000

**Re: Proposed Compensation Structures for Certain Executive Officers
and Most Highly Compensated Employees (“Covered Employees 26 – 100”)**

Dear Mr. Lau:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of employees who are either executive officers of General Motors Company (“GM”) or one of GM’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”). The Special Master’s compensation reviews for Covered Employees 26 – 100 differ from the reviews of GM’s “Top 25” employees, which addressed individual “amounts payable” to those employees, 31 C.F.R. § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, the Special Master must determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest” (as applied to Covered Employees 26 – 100 of GM, the “Public Interest Standard”). *Id.* § 30.16(a)(3)(ii).

On December 11, 2009, the Special Master issued determinations (the “2009 Determinations”) designed to ensure that 2009 compensation structures for GM’s 2009 Covered Employees 26 – 100 met the Public Interest Standard. The 2009 Determinations were informed by a number of considerations, including each of the principles articulated in the Rule. *Id.* § 30.16(b)(1). In particular, the determinations emphasized allocating significant portions of compensation to long-term structures tied to GM’s overall value, using structures that are performance-based and easily understood by shareholders, and protecting the Company’s ability to remain a competitive enterprise and ultimately to repay its taxpayer assistance.

The Special Master has concluded that, for the reasons provided in the 2009 Determinations, the principles and requirements of those determinations should generally continue to apply in 2010. Accordingly, the Special Master has determined that the compensation structures described in *Annex A*, which reaffirm the compensation structures approved in 2009, are consistent with the Public Interest Standard. GM’s proposed compensation structures, with minor modifications, are consistent with the Special Master’s prescriptions, which require that:

- Compensation may be provided in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by GM's independent compensation committee.
- Compensation must be performance-based. Fixed compensation should consist only of cash salaries and stock salaries at levels sufficient to attract and retain employees and provide them a reasonable level of liquidity. Cash salaries should not exceed \$500,000 per year, except in exceptional cases for good cause shown, as certified by the Company's independent compensation committee.
- Compensation must emphasize long-term results. At least 50% of any incentive payment to a Covered Employee must be delivered in long-term stock. Half of total pay except cash salary up to \$500,000 — whatever the overall mix of components for that individual — must not be transferable for at least three years.
- Stock compensation must constitute a significant portion of each Covered Employee's compensation structure. For employees who earn more than \$500,000 in total cash, that portion must be 50% at the minimum.
- Incentives may be paid if—and only if—the payments are appropriate in light of GM's overall circumstances and a particular Covered Employee achieves objective performance metrics. Incentive payments must be subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- Incentive payments must be payable over time and delivered in a mix of cash and stock. The total value of all incentive compensation payments cannot exceed a specified amount determined by reference to one or more pre-established performance metrics, to be determined by the compensation committee.
- The restrictions described in the Special Master's previous determinations pertaining to perquisites, severance benefits, hedging transactions, tax "gross-ups" and supplemental executive retirement plans shall continue to apply to Covered Employees 26 -- 100.

The Special Master's determinations are limited to the compensation structures described in *Annex A*, and shall not be relied upon with respect to any other employee. The determinations have relied upon, and are qualified in their entirety by the accuracy of the materials submitted by GM to the Office of the Special Master, and the absence of any material misstatement or omission in such materials. Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Ms. Mary T. Barra

ANNEX A
APPROVED 2010 COMPENSATION STRUCTURES

This Annex sets forth terms and conditions for the 2010 compensation structures for certain of GM's 2010 Covered Employees 26 – 100. (For the avoidance of doubt, if the compensation structure for a Covered Employee fits within the \$500,000 "safe harbor" exemption set forth in Section 30.16(a)(3)(ii) of the Rule, the structure is automatically deemed to meet the requirements of the Rule.) Capitalized terms used in this Annex have the meaning given to them in the preceding letter. To the extent that GM's proposed structures do not meet the principles and requirements of this Annex, GM must make such modifications as are necessary to comply with such principles and requirements.

1. Primary Components of Compensation

- **Cash salary.** Covered Employees should not receive cash salary payments in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by GM's compensation committee, which is comprised solely of independent directors.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value on the date of grant. Whether a grant or payment that is labeled stock salary is salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Incentive compensation.** Under any incentive compensation structure, payments to a Covered Employee must be conditioned upon achievement of objective performance criteria (other than continued service), with such achievement to be assessed and certified by the compensation committee. Performance criteria must be developed by the compensation committee and may be reviewed by the Office of the Special Master. The aggregate amount of incentives paid to Covered Employees for performance achieved only in 2010 may not exceed a specified amount determined by reference to one or more pre-established performance metrics. The identification and calculation of such metrics will be determined by the compensation committee and may be reviewed by the Office of the Special Master.

2. Allocation Rules

- **Application of allocation rules.** The allocation rules apply to each Covered Employee's 2010 "primary compensation structure," which is equal to the sum of the amounts potentially payable to a Covered Employee (1) in 2010 cash salary, (2) in 2010 stock salary, and (3) under 2010 incentive plans. For purposes of these determinations, 2010 incentive plans are plans for which incentives are earned (a) solely with respect to 2010, and (b) under a multi-year incentive plan established in 2010. Compliance with the allocation rules is to be assessed based on a Covered Employee's primary compensation structure as designed and established in 2010, assuming both target level of achievement under each incentive plan and maximum level of achievement under each incentive plan.
- **Equity allocation.** For a Covered Employee whose 2010 primary compensation structure includes more than \$500,000 of cash compensation, at least 50% of his or her 2010 primary compensation structure must be allocated to stock compensation. GM may allocate less than 50% of a Covered Employee's 2010 primary compensation structure to stock compensation if the cash allocation of the employee's primary compensation structure does not exceed \$500,000, provided

that for such employee the allocation in the employee's 2010 primary compensation structure to stock compensation must constitute a significant portion of the primary compensation structure.¹

- **Long-term allocation.** At least 50% of each Covered Employee's 2010 primary compensation structure (excluding up to \$500,000 of cash salary) must be allocated to primary components of compensation that will not be paid or become transferable prior to the third anniversary of grant.²

3. Additional Terms and Conditions

- **Payment of incentives.** No payment or stock compensation grant under a 2010 incentive plan may be made prior to the conclusion of the applicable performance period. Payment under each 2010 incentive plan must consist of at least 50% stock compensation; however, no cash may be paid under an incentive plan to a Covered Employee unless either (1) 50% of the target incentive amount under such plan has been first paid in the form of stock compensation, or (2) at the time of such payment, the percentage of compensation actually received in stock under such Covered Employee's 2010 primary compensation structure equals or exceeds the percentage of stock compensation required in such Covered Employee's compensation structure.³ The stock compensation paid under a 2010 incentive plan may not be transferred or otherwise redeemed prior to the third anniversary of grant, provided that any performance period exceeding one year in an incentive plan may be counted toward this three-year holding period. For a Covered Employee whose 2010 primary compensation structure includes more than \$500,000 of cash compensation, at least 50% of the amount payable in cash under each incentive plan must be deferred at least one year after the date of the initial cash payment under that plan.
- **Stock compensation generally.** For purposes of these determinations, "stock" compensation includes GM common stock and stock units. No stock compensation paid to a Covered Employee may be redeemed or become transferable prior to the first anniversary of the date on which such stock compensation vests. Notwithstanding the requirements of the foregoing sentence and the transferability restrictions otherwise applicable to any stock compensation, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Clawbacks and Hedging.** Any incentive payment must be subject to "clawback" if the payment or the amount thereof was based on materially inaccurate financial statements (which term

¹ The 2009 Determinations permitted exceptions to the equity allocation principle for "good cause shown." For 2010, exceptions to the general principle are limited to situations in which the cash portion of an employee's primary compensation structure does not exceed \$500,000.

² The 2009 Determinations permitted exceptions to the long-term allocation principle for "good cause shown." Exceptions to the general principle are not permitted for 2010, but up to \$500,000 of cash salary may be excluded when applying the principle.

³ For example: E, a Covered Employee, participates in an incentive program that meets the structural requirements of this Annex, and has a target incentive payment of \$100. If E achieves the applicable performance criteria, E would be eligible for a payment of \$100, consisting of stock compensation of at least \$50, and up to \$50 in cash. On the other hand, if E fails to fully meet the performance criteria and as a result is eligible to receive \$75 in incentive payments, the amount of E's incentive payable in cash will depend on whether E previously received 2010 stock compensation, such as stock salary. If E had not received other stock compensation, only \$25 of the payment could be in cash because no cash could be paid prior to the payment of 50% of the target payment—\$50 in this case—in stock compensation. If, however, E had received other stock compensation, the amount of cash payable under the incentive plan could exceed \$25, but only to the extent the cash proportion of compensation actually paid to E with respect to 2010 would not exceed the portion required to be allocated to cash in E's primary compensation structure.

includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria, or if the Covered Employee is terminated due to misconduct that occurred during the period the incentive was earned. In addition, the compensation structure for each Covered Employee must prohibit the employee from engaging in any derivative or similar transaction with respect to GM that would undermine the long-term performance incentives created by the compensation structures set forth in this Annex.

- **Employees entering the "Top 25."** If GM reasonably concludes that a Covered Employee may become one of the "Top 25" employees in 2011, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements. Any payment under a 2010 incentive plan that would be payable to the Covered Employee in cash in the first quarter of 2011 consistent with the terms of this Annex may be paid on or before December 31, 2010. In addition, notwithstanding the other requirements of this Annex, any incentive compensation for performance in 2010 may be paid to the Covered Employee in the form of GM common stock (but not stock units) that vests on or before December 31, 2010, provided that the transferability of such stock shall be consistent with the structural principles of this Annex. Finally, notwithstanding the other requirements of this Annex, up to one-third of the Covered Employee's "annual compensation" for 2010 may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.
- **Severance.** No 2010 compensation structure may establish the right to a "golden parachute" payment (as defined in the Rule) or permit an increase in the amount of such a payment under an already-existing arrangement.

4. Other components of compensation

- **Tax Gross-Ups.** GM is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees, in the same manner as the gross-up prohibition applies to "Top 25" employees under the Rule.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations. Payments to Covered Employees under expatriate arrangements, not to exceed \$350,000 per employee (excluding "tax equalization agreements" as defined in the Rule) are excluded from the limitation in the foregoing sentence.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for any Covered Employee for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts contributed to or payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20500

April 16, 2010

Drema M. Kalajian, Esquire
General Motors Acceptance Corporation Financial Services
200 Renaissance Center
MC-B09-B11
Detroit, MI 48265

**Re: Proposed Compensation Structures for Certain Executive Officers
and Most Highly Compensated Employees (“Covered Employees 26 – 100”)**

Dear Ms. Kalajian:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of employees who are either executive officers of General Motors Acceptance Corporation Financial Services (“GMAC”) or one of GMAC’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”). The Special Master’s compensation reviews for Covered Employees 26 – 100 differ from the reviews of GMAC’s “Top 25” employees, which addressed individual “amounts payable” to those employees, 31 C.F.R. § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, the Special Master must determine only whether the proposed compensation structures “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest” (as applied to Covered Employees 26 – 100 of GMAC, the “Public Interest Standard”). *Id.* § 30.16(a)(3)(ii).

On December 11, 2009, the Special Master issued determinations (the “2009 Determinations”) designed to ensure that 2009 compensation structures for GMAC’s 2009 Covered Employees 26 – 100 met the Public Interest Standard. The 2009 Determinations were informed by a number of considerations, including each of the principles articulated in the Rule. *Id.* § 30.16(b)(1). In particular, the determinations emphasized allocating significant portions of compensation to long-term structures tied to GMAC’s overall value, using structures that are performance-based and easily understood by shareholders, and protecting the Company’s ability to remain a competitive enterprise and ultimately to repay the its taxpayer assistance.

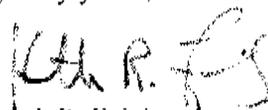
The Special Master has concluded that, for the reasons provided in the 2009 Determinations, the principles and requirements of those determinations should generally continue to apply in 2010. Accordingly, the Special Master has determined that the compensation structures described in *Annex A*, which reaffirm the compensation structures approved in 2009, are consistent with the Public Interest Standard. GMAC’s proposed compensation structures, with minor modifications, are consistent with the Special Master’s prescriptions, which require that:

- Compensation may be provided in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by GMAC’s compensation committee.

- Compensation must be performance-based. Fixed compensation should consist only of cash salaries and stock salaries at levels sufficient to attract and retain employees and provide them a reasonable level of liquidity. Cash salaries should not exceed \$500,000 per year, except in exceptional cases for good cause shown, as certified by the Company's independent compensation committee.
- Compensation must emphasize long-term results. At least 50% of any incentive payment to a Covered Employee must be delivered in long-term stock. Half of total pay except cash salary up to \$500,000 — whatever the overall mix of components for that individual — must not be transferable for at least three years.
- Stock compensation must constitute a significant portion of each Covered Employee's compensation structure. For employees who earn more than \$500,000 in total cash, that portion must be 55% at the minimum.
- Incentives may be paid if—and only if—the payments are appropriate in light of GMAC's overall circumstances and a particular Covered Employee achieves objective performance metrics. Incentive payments must be subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.
- Incentive payments must be payable over time and delivered in a mix of cash and stock. The total value of all incentive compensation payments cannot exceed a specified percentage of the company's eligible earnings, to be determined by the compensation committee.
- The restrictions described in the Special Master's previous determinations pertaining to perquisites, severance benefits, hedging transactions, tax "gross-ups" and supplemental executive retirement plans shall continue to apply to Covered Employees 26-- 100.

The Special Master's determinations are limited to the compensation structures described in *Annex A*, and shall not be relied upon with respect to any other employee. The determinations have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by GMAC to the Office of the Special Master, and the absence of any material misstatement or omission in such materials. Pursuant to the Interim Final Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Mr. Kim Fennebresque
William B. Solomon, Jr., Esquire

ANNEX A
APPROVED 2010 COMPENSATION STRUCTURES

This Annex sets forth terms and conditions for the 2010 compensation structures for GMAC's 2010 Covered Employees 26 – 100. (For the avoidance of doubt, if the compensation structure for a Covered Employee fits within the \$500,000 "safe harbor" exemption set forth in Section 30.16(a)(3)(ii) of the Rule, the Special Master's approval is not required for that employee's compensation structure.) Capitalized terms used in this Annex have the meaning given to them in the preceding letter. To the extent that GMAC's proposed structures do not meet the principles and requirements of this Annex, GMAC must make such modifications as are necessary to comply with such principles and requirements.

1. Primary Components of Compensation

- **Cash salary.** Covered Employees should not receive cash salaries payments in excess of \$500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by GMAC's compensation committee, which is comprised solely of independent directors.
- **Stock salary.** Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value on the date of grant. Whether a grant or payment that is labeled stock salary is salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Incentive compensation.** Under any incentive compensation structure, payments to a Covered Employee must be conditioned upon achievement of objective performance criteria (other than continued service), with such achievement to be assessed and certified by the compensation committee. Performance criteria must be developed by the compensation committee and may be reviewed by the Office of the Special Master. The aggregate amount of incentives paid to Covered Employees for performance achieved only in 2010 may not exceed a specified percentage of GMAC's eligible earnings. The amount and calculation of such eligible earnings will be determined by the compensation committee and may be reviewed by the Office of the Special Master.

2. Allocation Rules

- **Application of allocation rules.** The allocation rules apply to each Covered Employee's 2010 "primary compensation structure," which is equal to the sum of the amounts potentially payable to a Covered Employee (1) in 2010 cash salary, (2) in 2010 stock salary, or (3) under 2010 incentive plans. For purposes of these determinations, 2010 incentive plans are plans for which incentives are earned (a) solely with respect to 2010, and (b) under a multi-year incentive plan established in 2010. Compliance with the allocation rules is to be assessed based on a Covered Employee's primary compensation structure as designed and established in 2010, assuming both target level of achievement under each incentive plan and maximum level of achievement under each incentive plan.
- **Equity allocation.** For a Covered Employee whose 2010 primary compensation structure includes more than \$500,000 of cash compensation, at least 55% of his or her 2010 primary compensation structure must be allocated to stock compensation. GMAC may allocate less than 55% of a Covered Employee's 2010 primary compensation structure to stock compensation if the cash allocation of the employee's primary compensation structure does not exceed \$500,000.

provided that for such employee the allocation in the employee's 2010 primary compensation structure to stock compensation must constitute a significant portion of the primary compensation structure.

- **Long-term allocation.** At least 50% of each Covered Employee's 2010 primary compensation structure (excluding up to \$500,000 of cash salary) must be allocated to primary components of compensation that will not be paid or become transferable prior to the third anniversary of grant.

3. Additional Terms and Conditions

- **Payment of incentives.** No payment or stock compensation grant under a 2010 incentive plan may be made prior to the conclusion of the applicable performance period. Payment under each 2010 incentive plan must consist of at least 50% stock compensation; however, no cash may be paid under an incentive plan to a Covered Employee unless either (1) 50% of the target incentive amount under such plan has been first paid in the form of stock compensation, or (2) at the time of such payment, the percentage of compensation actually received in stock under such Covered Employee's 2010 primary compensation structure equals or exceeds the percentage of stock compensation required in such Covered Employee's compensation structure.* The stock compensation paid under a 2010 incentive plan may not be transferred or otherwise redeemed prior to the third anniversary of grant, provided that any performance period exceeding one year in an incentive plan may be counted toward this three-year holding period. For a Covered Employee whose 2010 primary compensation structure includes more than \$500,000 of cash compensation, at least 50% of the amount payable in cash under each incentive plan must be deferred at least one year after the date of the initial cash payment under that plan.
- **Stock compensation generally.** For purposes of these determinations, "stock" compensation includes GMAC common stock and stock units. No stock compensation paid to a Covered Employee may be redeemed or become transferable prior to the first anniversary of the date on which such stock compensation vests. Notwithstanding the requirements of the foregoing sentence and the transferability restrictions otherwise applicable to any stock compensation, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Clawbacks and Hedging.** Any incentive payment must be subject to "clawback" if the payment or the amount thereof was based on materially inaccurate financial statements (which term includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria, or if the Covered Employee is terminated due to

* For example: E, a Covered Employee, participates in an incentive program that meets the structural requirements of this Annex, and has a target incentive payment of \$100. If E achieves the applicable performance criteria, E would be eligible for a payment of \$100, consisting of stock compensation of at least \$50, and up to \$50 in cash. On the other hand, if E fails to fully meet the performance criteria and as a result is eligible to receive \$75 in incentive payments, the amount of E's incentive payable in cash will depend on whether E previously received 2010 stock compensation, such as stock salary. If E had not received other stock compensation, only \$25 of the payment could be in cash because no cash could be paid prior to the payment of 50% of the target payment — \$50 in this case — in stock compensation. If, however, E had received other stock compensation, the amount of cash payable under the incentive plan could exceed \$25, but only to the extent the cash proportion of compensation actually paid to E with respect to 2010 would not exceed the portion required to be allocated to cash in E's primary compensation structure.

misconduct that occurred during the period the incentive was earned. In addition, the compensation structure for each Covered Employee must prohibit the employee from engaging in any derivative or similar transaction with respect to GMAC that would undermine the long-term performance incentives created by the compensation structures set forth in this Annex.

- **Employees entering the "Top 25".** If GMAC reasonably concludes that a Covered Employee may become one of the "Top 25" employees in 2011, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements. Any payment under a 2010 incentive plan that would be payable to the Covered Employee in cash in the first quarter of 2011 consistent with the terms of the Annex may be paid on or before December 31, 2010. In addition, notwithstanding the other requirements of this Annex, any incentive compensation for performance in 2010 may be paid to the Covered Employee in the form of GMAC common stock (but not stock units) that vests on or before December 31, 2010, provided that the transferability of such stock shall be consistent with the structural principles of this Annex. Finally, notwithstanding the other requirements of this Annex, up to one-third of the Covered Employee's "annual compensation" for 2010 may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.
- **Severance.** No 2010 compensation structure may establish the right to a "golden parachute" payment (as defined in the Rule) or permit an increase in the amount of such a payment under an already-existing arrangement.

4. Other components of compensation

- **Tax Gross-Ups.** GMAC is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees, in the same manner as the gross-up prohibition applies to "Top 25" employees under the Rule. Payments to Covered Employees under expatriate arrangements, not to exceed \$350,000 per employee (excluding "tax equalization agreements" as defined in the Rule), are excluded from the limitation in the foregoing sentence.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** No amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations, for any Covered Employee for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts contributed to or payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 16, 2010

Ms. Nancy A. Rae
Executive Vice President—Human Resources
Chrysler Group LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, Michigan 48326-2766

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees (“Covered Employees 26 – 100”)

Dear Ms. Rae:

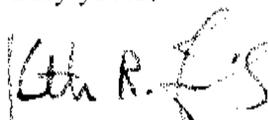
Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2010 compensation submission on behalf of employees who are either executive officers of Chrysler Group LLC (“Chrysler”) or one of the company’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule (“Covered Employees 26 – 100” or “Covered Employees”).

According to the materials you have submitted, the proposed compensation structures for Covered Employees 26 – 100 fit within the exemption set forth in Section 30.16(a)(3)(ii) of the Interim Final Rule for employees receiving total annual compensation (other than long-term restricted stock) not exceeding \$500,000. The proposed compensation structures therefore are automatically deemed to meet the requirements of the Interim Final Rule, and Chrysler is not required to seek the prior approval of the Special Master to implement these structures. To the extent the 2010 compensation structure for any Covered Employee, including the amounts that are or may be payable thereunder, is modified such that the exemption is no longer applicable, Chrysler is required to notify the Office of the Special Master and seek approval for further action consistent with the Interim Final Rule. 31 C.F.R. § 30.16(a)(3)(ii).

The foregoing is limited to the proposed compensation structures for Covered Employees 26 – 100, and may not be relied upon with respect to any other employee of Chrysler. Moreover, the Office of the Special Master has relied upon, and this letter is qualified in its entirety by, the accuracy of the materials submitted by Chrysler to the

Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken R. Feinberg". The signature is written in a cursive style with a vertical line to the left of the name.

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Holly E. Leese, Esquire
Lawrence Cagney, Esquire



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 2, 2009

Compensation and Management Resources Committee
American International Group, Inc.
70 Pine Street, 27th Floor
New York, New York 10270
VIA ELECTRONIC MAIL AND U.S. MAIL

**Re: Proposed Compensation Payments and
Structure for Robert H. Benmosche**

To The Members of the Compensation and Management Resources Committee:

Pursuant to Section 30.16(a)(3) of the Department of the Treasury's Interim Final Rule regarding TARP Standards for Compensation and Corporate Governance (the "Rule"), the Special Master for TARP Executive Compensation (the "Special Master") is required to determine whether the compensation structure for each senior executive officer of a recipient of exceptional assistance under the Troubled Asset Relief Program (the "TARP"), including the amounts payable or potentially payable under such compensation structure, will or may result in payments that are inconsistent with the purposes of section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 ("EESA"), or TARP, or are otherwise contrary to the public interest. The Special Master is required to consider certain principles set forth in Section 30.16(b) of the Rule in making these determinations. In addition, the Rule requires that the Special Master issue a determination within sixty days of the receipt of a substantially complete submission.

American International Group, Inc. (the "Company"), has requested approval of a proposed letter agreement, attached as *Annex A*, between the Company and Robert H. Benmosche, providing for the appointment of Mr. Benmosche to the position of President and Chief Executive Officer and setting forth certain proposed compensation arrangements for Mr. Benmosche (the "Letter Agreement"). The Company has provided the Office of the Special Master with a detailed review of the compensation Mr. Benmosche received when he previously served as the Chief Executive Officer of another public company. The Company has also provided the Office of the Special Master with a detailed comparative analysis describing the compensation arrangements of persons in similar positions at similar entities that are similarly situated. The Company's submission with respect to the Letter Agreement is now substantially complete for purposes of the Rule, and the Office of the Special Master has completed its review and analysis of the proposed compensation structure set forth therein.

In determining whether to award any annual long-term, performance-based incentive award pursuant to the Letter Agreement, the Company's Compensation and Management Resources Committee (the "Committee") must evaluate Mr. Benmosche's performance against specified objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation will be disclosed to shareholders in, and certified by the Committee as part of, the Company's securities filings. In addition, the Committee has retained discretion to reduce (but not to increase) the amount of any incentive award on the basis of its overall evaluation of Mr. Benmosche's and/or the Company's performance (notwithstanding full or partial satisfaction of the performance criteria).

I have reviewed the Letter Agreement in light of the principles set forth in Section 30.16(b) of the Rule. Pursuant to the authority vested in me as the Special Master for TARP Executive Compensation, and in accordance with Section 30.16(a)(3) of the Rule, I hereby determine that the compensation structure set forth in the Letter Agreement, including the amounts payable or potentially payable under such compensation structure, will not result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest.

In particular, I note the following:

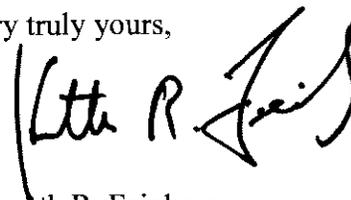
- That the total compensation package is determined by the Special Master to be appropriate when compared to the total compensation packages of other applicable Presidents and Chief Executive Officers of similarly situated companies.
- That the stock salary issued to Mr. Benmosche in 2009 is determined to be performance based because the value of such stock salary will be determined by the value of the Company's stock over the long term, and cannot be sold until the 5th anniversary of the Effective Date of this Letter Agreement (August 10, 2014).
- That the annual long-term incentive award contemplated by this Letter Agreement is also determined to be performance based and, except in case of disability or death, will not vest unless Mr. Benmosche continues to provide services to the company for two years following the grant date of the award, and will be subject to an annual performance assessment as determined by the Company's Compensation and Management Resources Committee on the basis of objective performance metrics developed in consultation with the Office of the Special Master.
- That any and all incentive compensation paid to Mr. Benmosche will be subject to recovery or "clawback" if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metrics.

- That any annual long-term incentive award made pursuant to this Letter Agreement will be subject to formal review and approval by the Office of the Special Master.

The foregoing determination is limited to the compensation structure set forth in the Letter Agreement and shall not be relied upon with respect to any other employee. In addition, for the avoidance of doubt, this determination shall be limited, with respect to stock salary, to grants of shares in the Company, and shall not constitute, or be construed to constitute, the approval of the Special Master required under section 4 of the Letter Agreement with respect to the use of alternative forms of compensation. The determination is limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and determination have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

I look forward to working with you further as we move forward with the process of reviewing compensation structures for certain other employees of the Company.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken R. Feinberg", written in a cursive style.

Kenneth R. Feinberg
Office of the Special Master for
TARP Executive Compensation

cc: Ms. Anastasia D. Kelly
Mr. Andrew J. Kaslow
Marc R. Trevino, Esq.

ANNEX A
PROPOSED LETTER AGREEMENT

August 16, 2009

Dear Bob:

I am pleased to confirm the terms of your employment with American International Group, Inc.

1. *Effective Date.* August 10, 2009.
2. *Position.* On the Effective Date, you will begin to serve as President and Chief Executive Officer of AIG. In that capacity, you will report directly (and only) to the Board of Directors and have all of the customary authorities, duties and responsibilities that accompany these positions.
3. *Salary (Cash).* Your initial cash salary will be \$3,000,000 per year.
4. *Salary (Stock).* In addition to your cash salary, you will be eligible to receive bi-monthly awards of stock or phantom stock units in AIG. These awards, which we refer to as stock salary, will be at an initial rate of \$4,000,000 per year and will be subject to the following additional terms:
 - Initially your stock salary will be in the form of shares of AIG. Subject to the approval of the Office of the Special Master for TARP Executive Compensation, AIG's Compensation and Management Resources Committee (in consultation with you) may change the specific form of stock salary from time to time;
 - Stock will be immediately vested when delivered, tax will be withheld by AIG in kind (unless otherwise directed by you) and remaining shares cannot be sold until the 5th anniversary of the Effective Date;
 - Phantom stock units will be immediately vested but will not be delivered until the 2nd anniversary of grant, and units will be settled in cash or stock at the election of the Committee (in consultation with you) and taxed on delivery and, in the case of stock delivered, may be subject to restrictions on transfer up to the 5th anniversary of the Effective Date at the Committee's discretion (phantom stock units will not be used without prior approval of the Office of the Special Master); and
 - The Committee will authorize early transferability of any stock salary you have received on death or disability.

AIG is in the process of developing the specifics of your stock salary for 2009, which will be retroactive to the Effective Date once finalized. AIG will make these stock awards to you pursuant to a more detailed award agreement, which will govern the awards.

5. *Annual Long-Term Award.* Each year you will be eligible to receive a long-term incentive award of up to \$3,500,000 in the form of stock or phantom stock units in AIG. The amount for 2009 will be prorated from the Effective Date. The Committee will determine the form and amount annually based on its performance assessment, subject to the following:
 - Stock or phantom stock units would vest on the 2nd anniversary of grant (the minimum time required by the applicable TARP Regulations) and will be subject to transfer/payout restrictions as required by the applicable TARP Regulations; and
 - To the extent permitted by the applicable TARP Regulations, awards will provide for early vesting on death or disability and early transferability on the same events.
6. *No Severance.* You will not participate in AIG's Executive Severance Plan or otherwise be entitled to any severance on termination of your employment for any reason.
7. *Benefits.* Subject to the limits of this letter and the applicable TARP Regulations, you will be entitled to benefits consistent with senior executives of AIG and reimbursement of reasonable business expenses, in each case in accordance with applicable AIG policies as in effect from time to time. In connection with your joining AIG, AIG will also promptly pay any reasonable legal fees incurred in connection with your review of this letter and the negotiations contemplated in Section 11.
8. *Executive Compensation Standards.* Any bonus or incentive compensation paid to you is subject to recovery or "clawback" by AIG if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria (all within the meaning of, and to the full extent necessary to comply with, the applicable TARP Regulations). In addition, you will not be entitled to any golden parachute payment or tax gross-up from AIG or its affiliates to the extent prohibited by the applicable TARP Regulations.

Your compensation will be subject to formal review and approval by the Office of the Special Master. In addition, as part of AIG's agreements with the U.S. Department of the Treasury, your compensation is subject to applicable regulations that may be issued and in effect from time to time. You may receive compensation from AIG only to the extent that it is consistent with those regulations.

9. *Indemnification and Cooperation.* During and after your employment, AIG will indemnify you in your capacity as a director, officer, employee or agent of AIG to the fullest extent permitted by applicable law and AIG's charter and by-laws, and will provide you with director and officer liability insurance coverage (including post-termination/post-director service tail coverage) on the same basis as AIG's other executive officers. AIG agrees to cause any successor to all or substantially all of the business or assets (or both) of AIG to assume expressly in writing and to agree to perform all of the obligations of AIG in this paragraph.

You agree (whether during or after your employment with AIG) to reasonably cooperate with AIG in connection with any litigation or regulatory matter or with any government authority on any matter, in each case, pertaining to AIG and with respect to which you may have relevant knowledge, provided that, in connection with such cooperation, AIG will reimburse your reasonable expenses and you shall not be required to act against your own legal interests.

10. *Tax Matters.* To the extent any taxable expense reimbursement or in-kind benefits under Section 7 or Section 9 is subject to Section 409A of the Internal Revenue Code of 1986, the amount thereof eligible in one taxable year shall not affect the amount eligible for any other taxable year, in no event shall any expenses be reimbursed after the last day of the taxable year following the taxable year in which you incurred such expenses and in no event shall any right to reimbursement or receipt of in-kind benefits be subject to liquidation or exchange for another benefit. Each payment under this letter will be treated as a separate payment for purposes of Section 409A of the Code.
11. *Non-competition and non-solicitation.* In connection with your joining AIG, you agree to enter into non-competition arrangements (covering competing insurance business) and non-solicitation arrangement (covering senior AIG employees) with AIG. You and we agree to negotiate those arrangements reasonably and in good faith. Receipt of your stock salary is conditioned on your entering into those arrangements.

We look forward to your leadership.

Sincerely,

AMERICAN INTERNATIONAL GROUP, INC.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 21, 2009

Mr. Robert Benmosche
President and Chief Executive Officer
American International Group, Inc.
70 Pine Street
27th Floor
New York, NY 10270

***Re: Reconsideration Request and Supplemental Determination Regarding
2009 Compensation Payments and Structures for Senior Executive
Officers and Most Highly Compensated Employees***

Dear Mr. Benmosche:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), on October 22, 2009, the Special Master issued an initial determination (the "Initial Determination") with respect to compensation payments for the senior executive officers and next 20 most highly compensated employees ("Top 25 Employees") of American International Group, Inc. ("AIG"). 31 C.F.R. § 30.16(a)(3)(i). Under the Rule, AIG is permitted, within 30 days of the issuance of the Initial Determination, to request that the Special Master reconsider that determination, provided that the request specified relevant new information not previously considered by the Special Master. *See id.* § 30.16(c)(1).

On November 20, 2009, AIG submitted a written request for reconsideration (the "Reconsideration Request") of the Initial Ruling with respect to one Top 25 Employee. AIG's prior submissions to the Office of the Special Master indicated that the Top 25 Employee would terminate employment with AIG during 2009, and the Initial Determination with respect to the Top 25 Employee reflected those submissions. The Reconsideration Request indicated, however, that the Top 25 Employee will remain in the employ of AIG. In light of that information, which was not previously considered by the Special Master, AIG requested that the Special Master reconsider the compensation payments approved in the Initial Determination for the Top 25 Employee.

Under the Rule, the Special Master must, upon receipt of a written request for reconsideration, provide a final determination setting forth the facts and analysis that formed the basis for the determination. *Id.* This letter sets forth the final determination of the Special Master in light of AIG's Reconsideration Request. In addition, this letter addresses certain other matters, including, as set forth below, certain technical corrections to the Initial Determination and to the Special Master's December 11, 2009 determination with respect to compensation structures for certain employees ("Covered Employees 26-100") not subject to the Initial Determination (the "Second Determination").

1. Reconsideration Request

AIG's previous submissions to the Office of the Special Master indicated that a specified Top 25 Employee (the "Specified Employee") intended to depart AIG prior to the end of 2009. Based on that information, the Special Master's Initial Determination approved compensation for the Specified Employee limited to a base salary of \$450,000, payable through the Specified Employee's departure date, and no further compensation for the remainder of 2009.

AIG's Reconsideration Request states that, rather than depart AIG prior to the end of 2009, the Specified Employee will remain in the employ of AIG. AIG has indicated that the employee is critical to AIG's long-term performance and stability, and that his continued employment by AIG will significantly aid AIG's ability to repay the taxpayer. In light of those facts, AIG's Reconsideration Request seeks approval of two additional types of compensation for the Specified Employee for 2009: (1) a *nunc pro tunc* grant of stock salary, with a grant-date value of \$3,258,333, and (2) an annual long-term incentive award, in an amount up to \$1,000,000 depending on the Specified Employee's achievement of objective performance metrics, to be granted in the form of "long-term restricted stock" as defined in the Rule (the "Proposed Structure").

The Rule requires that the Special Master determine for each Top 25 Employee whether the proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of [S]ection 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (the "Public Interest Standard"). The Rule requires that the Special Master consider six principles when making these compensation determinations. *Id.* § 30.16(b)(1).

The Special Master has reviewed the Reconsideration Request in detail by application of the principles set forth in the Rule. In particular, the Special Master's review has been guided by the principle that compensation structures should be "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Initial Determination authorized no stock salary or annual long-term incentive award for the Specified Employee because AIG's submissions indicated that the Specified Employee would depart AIG. Under those circumstances, no performance-based pay was necessary to align the interests of the Specified Employee with those of AIG and taxpayers. However, in light of the fact that the Specified Employee will remain in the employ of AIG, it is appropriate to provide the Specified Employee with long-term incentives to ensure that the employee contributes to AIG's long-term success and, ultimately, AIG's ability to repay taxpayers.

Accordingly, the Special Master has determined that, in addition to the compensation approved for the Specified Employee in the Initial Determination, the Proposed Structure will not, by virtue of its structural design or the amounts potentially payable thereunder, result in payments inconsistent with the Public Interest Standard. In all other respects, the compensation structure for the Specified Employee must comply

with the terms of the Initial Determination, including requirements related to the transferability of salary stock and the grant of long-term incentives.

In addition, the Specified Employee shall remain subject to the requirement that "other" compensation and perquisites not exceed \$25,000, except where a satisfactory independent justification is provided in formal submissions to the Office of the Special Master. To date, no satisfactory justification with respect to the Specified Employee has been provided to the Office of the Special Master. Accordingly, to the extent that the "other" compensation and perquisites in excess of \$25,000 described in AIG's submissions have been provided to the Specified Employee during 2009, in order to be consistent with the Public Interest Standard the compensation structure must provide for the reduction of amounts payable to the Specified Employee by any such excess, and such reduction may be subject to further review by the Office of the Special Master.

2. Technical Corrections

The Initial Determination requires that stock salary granted to Top 25 Employees may only be redeemed by the employee in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if AIG repays its TARP obligations. The determinations were intended to accelerate the sale of stock salary only if AIG repays its obligations to taxpayers. AIG's obligations, however, include both TARP obligations and obligations to other federal institutions. Thus, the Second Determination requires that stock salary granted to Covered Employees 26 – 100 may only be redeemed by the employee in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if AIG repays its federal obligations. Accordingly, *Exhibit I* sets forth corrections to the Initial Determination that bring the requirements of the Initial Determination with respect to salary stock into conformity with the requirements of the Second Determination.

The Second Determination included the determinations of the Special Master with respect to amounts payable to Covered Employees 26 -- 100 pursuant to certain expatriate arrangements. These arrangements are designed to make the employees whole for the costs of living overseas, at AIG's request, in order to perform their duties. Those determinations were intended also to address payments pursuant to "tax equalization agreements," as defined in the Rule; however, the Second Determination did not expressly address those arrangements. Accordingly, *Exhibit I* sets forth corrections to the Second Determination that clarify the determinations of the Special Master.

In addition, upon further review of AIG's submissions, it has come to the attention of the Office of the Special Master that one Top 25 Employee is also subject to expatriate arrangements. These arrangements were not expressly addressed in the Initial Determination. Accordingly, *Exhibit I* sets forth corrections to the Initial Determination that address payments pursuant to expatriate arrangements for that Top 25 Employee.

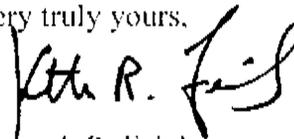
3. Additional Determinations

Following the Initial Determination, AIG requested approval to alter the terms of the "stock salary" that may be granted to Top 25 Employees. The Initial Determination requires that any such "stock salary" be granted in the form of stock units reflecting the value of a "basket" of four particularly critical AIG insurance subsidiaries: American International Assurance Co. Ltd., American Life Insurance Co., Chartis, and AIG Domestic Life & Retirement Services Group. AIG has requested that such "stock salary," in appropriate cases, now be granted in the form of vested common stock (or stock units reflecting the value of common stock) of AIG rather than the "basket."

The Special Master has reviewed this request in light of the principles set forth in the Rule. In particular, the Special Master's review has been guided by the principle that compensation structures should be "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). Providing Top 25 Employees with stock salary in the form of common stock will provide those employees with incentives to maximize the value of AIG and, therefore, its ability to repay the taxpayer. Accordingly, the Special Master has determined that, for purposes of the Initial Determination, "stock salary" may include vested common stock (or stock units reflecting the value of common stock) of AIG, and that compensation structures for Top 25 Employees pursuant to the foregoing will not, by virtue of their structural design or the amounts potentially payable thereunder, result in payments inconsistent with the Public Interest Standard.

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusions have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by AIG to the Office of the Special Master, including without limitation the Reconsideration Request, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Anastasia D. Kelly, Esquire
Marc R. Trevino, Esquire

EXHIBIT I
AIG 2009 COMPENSATION DETERMINATIONS
TECHNICAL CORRECTIONS

1. In Part IV.B.1.b. (on page A9) of the Initial Determination, the second sentence of the second paragraph is restated in its entirety as follows:

“Instead, stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if AIG repays its federal obligations.”

2. In Part IV.B.3. (on page A9) of the Second Determination, footnote 4 is restated in its entirety as follows:

“AIG has identified Covered Employees subject to expatriate arrangements providing for the payment of certain “other” compensation in excess of this limitation. These arrangements are designed to make the employees whole for the costs of living overseas, at AIG’s request, in order to perform their duties. The Special Master has reviewed these arrangements and has concluded that such payments, not to exceed \$350,000 per employee (except in exceptional cases for good cause shown), are consistent with the Public Interest Standard, and that such payments may be disregarded for purposes of determining whether a Covered Employee’s compensation structure meets the requirements of the Public Interest Standard as set forth in this Part IV.B. In addition, the Special Master has concluded that payments to these employees pursuant to “tax equalization agreements,” as defined in the Rule, are consistent with the Public Interest Standard, and may be disregarded for purposes of determining whether a Covered Employee’s compensation structure meets the requirements of the Public Interest Standard as set forth in this Part IV.B.”

3. In Part IV.B.1.d. (on page A10) of the Initial Determination, a footnote is added at the end of the last sentence of that Part, reading as follows:

“AIG has, however, identified one employee subject to an expatriate arrangement providing for the payment of certain “other” compensation in excess of this limitation. These arrangements are designed to make the employees whole for the costs of living overseas, at AIG’s request, in order to perform their duties. The Special Master has reviewed these arrangements and has concluded that such payments, not to exceed \$350,000, in addition to payments to these employees pursuant to “tax equalization agreements,” as defined in the Rule, are consistent with the Public Interest Standard.”



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 23, 2009

Ms. Nancy Rae
Executive Vice President, Human Resources
Chrysler Group LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, MI 48326-2766

***Re: Supplemental Determination Regarding 2009 Compensation
Payments for the Chief Executive Officer (the "CEO")***

Dear Ms. Rae:

This letter addresses certain matters related to determinations of the Special Master for TARP Executive Compensation under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), regarding the compensation of the senior executive officers and certain most highly compensated employees of Chrysler Group LLC ("Chrysler").

Pursuant to the Rule, on October 22, 2009, the Special Master issued an initial determination (the "Initial Determination") with respect to compensation structures and payments for the senior executive officers and the next 20 most highly compensated employees of Chrysler. In the Initial Determination, no compensation structure or payments were approved by the Special Master for Chrysler's chief executive officer, because the CEO's compensation is entirely paid by Fiat S.p.A, a minority shareholder of the Company, where he also serves as chief executive officer.

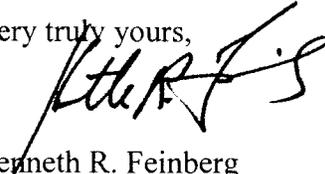
Following the Initial Determination, Chrysler representatives notified the Office of the Special Master that the Company's independent compensation committee had determined that to best align the CEO's interests with the Company's shareholders, the CEO should earn Chrysler stock on the same terms as other directors. (The CEO also serves as a director.) Accordingly, Chrysler proposed that the CEO receive a grant of restricted units vesting in equal installments on the first three anniversaries of the grant date. Under the Rule, the compensation of directors generally is not subject to review by the Special Master, but all payments to an exceptional assistance recipient's principal executive officer—even for service as a director—require approval.

The Special Master reviewed the Company's proposal to grant stock to the CEO in light of the principle in the Rule that a portion of compensation provided to senior executives should be "long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." 31 C.F.R. § 30.16(b)(1)(iii). The

Special Master has determined that Chrysler's proposal generally is consistent with that principle; however, due to legal restrictions on the types of payments that may be delivered to senior executive officers such as the CEO, see *id.* at § 30.10, the structure of the stock grant proposed by Chrysler would violate the Rule. In the alternative, the Special Master has determined that the stock salary structure set forth on **Exhibit I**, which is intended to both meet the requirements of the Rule and provide the same level of stock ownership and long-term incentives proposed by Chrysler, will not result "in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* at § 30.16(a)(3)(ii).

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by Chrysler to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Holly E. Leese, Esquire
Lawrence Cagney, Esquire

**EXHIBIT I
ADDITIONAL DETERMINATION**

Chief Executive Officer stock salary arrangement for 2009 service as a director:

Amount.....\$600,000

Deliverygranted on a *nunc pro tunc* basis, effective the first date of the CEO's service as a director of Chrysler

Settlementthe later of (i) the third anniversary of the date any portion of the stock salary was earned, or (ii) the date on which Chrysler has no remaining "obligations" (as defined in the Rule) under TARP

Other terms.....consistent with Exhibit II of the Special Master's Initial Determination



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 23, 2009

Mr. Gregory E. Lau
Executive Director — Global Compensation
General Motors Company
300 Renaissance Drive
MC 482-C32-B61
Detroit, Michigan 48265-3000

***Re: Supplemental Determination Regarding 2009 Compensation
Payments and Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. Lau:

This letter addresses certain matters related to determinations of the Special Master for TARP Executive Compensation under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), regarding the compensation of the senior executive officers and certain most highly compensated employees of General Motors Company ("GM").

1. **Technical Corrections**

Pursuant to the Rule, on October 22, 2009, the Special Master issued an initial determination (the "Initial Determination") with respect to compensation structures and payments for the senior executive officers and the next 20 most highly compensated employees ("Top 25 Employees") of GM. Under the Rule, an initial determination of the Special Master shall be treated as final unless the TARP recipient requests a reconsideration within 30 days. Because GM did not request such a reconsideration, the Initial Determination became final effective November 21, 2009.

It has come to the attention of the Office of the Special Master, however, that the memorandum in which the Initial Determination was set forth contained certain technical errors that, without revision, may be misleading. Attached as ***Exhibit I*** to this letter are corrections to such errors, which, together with the memorandum issued on October 22, 2009, accurately set forth the Initial Determination.

2. **Additional Determinations**

Following the Initial Determination, on December 9, 2009, GM requested approval to alter the 2009 compensation structures for two of the Top 25 Employees. In particular, GM sought to eliminate the long-term restricted stock grants to such

employees and replace those grants with stock salary payable on a *nunc pro tunc* basis effective January 1, 2009, in consideration of the executives' unique skills, which GM stated are critical to the success of the Company in the near-term.

The Rule requires that the Special Master determine whether the 2009 compensation structures for Top 25 Employees "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3)(ii) (the "Public Interest Standard"). The Rule also requires that the Special Master consider six principles when making these compensation determinations. In particular, the compensation structures and the amounts payable thereunder should reflect "the current or prospective contributions of an employee to the value of the TARP recipient" and "the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient's future success, and ultimately to be able to repay TARP obligations." *Id.* at § 30.16(b)(1).

The Special Master has determined that the compensation changes proposed by GM will not, by virtue of their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard. All stock salary granted pursuant to this determination must adhere to the applicable terms and conditions set forth in Exhibit II to the Initial Determination.

3. Perquisites and Other Compensation

In the Initial Determination, the Special Master required that, to be consistent with the Public Interest Standard, the 2009 compensation structure for a Top 25 Employee should include no more than \$25,000 in perquisites and "other" compensation. Under the Rule, perquisites and "other" compensation paid prior to the date of the Initial Determination, October 22, 2009, are treated as consistent with the Public Interest Standard if paid in accordance with the terms of employment in effect as of June 14, 2009. *Id.* at § 30.16(a)(3)(iii). GM is not required to seek the approval of the Special Master for these "grandfathered" payments.

Amounts paid after October 22, 2009, however, are not grandfathered under the Rule and therefore must fit within the \$25,000 annual limitation on perquisites and "other" compensation, pro-rated for the remaining portion of 2009. To the extent that payments exceeding this pro-rated limitation have been made to a Top 25 Employee, those payments should be promptly returned to GM, unless an exception is granted by the Special Master. Any exception requires GM to provide to the Office of the Special Master an independent justification.

GM has provided the Office of the Special Master with an independent justification for certain perquisites and "other" compensation that are not grandfathered under the Rule. In particular, GM has sought approval for payments made pursuant to expatriate agreements, and for personal security benefits provided to certain Top 25 Employees. The Special Master reviewed these justifications in light of the Public Interest Standard, giving particular consideration to whether the proposed payments are

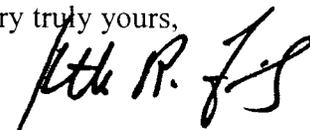
“consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated.” *Id.* at § 30.16(b)(1). Additionally, the Special Master took into account “the current or prospective contributions of an employee to the value of the TARP recipient” and “the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient’s future success, and ultimately to be able to repay TARP obligations.” *Id.*

With regard to expatriate payments, the Special Master recently noted in his determination of December 11, 2009, regarding GM employees 26 – 100, that such payments are consistent with the Public Interest Standard, provided they do not exceed \$350,000 on an annual basis. All of the expatriate payments for which GM seeks an exception fit within this limit and therefore are approved.

As to personal security benefits, GM has represented that its decision to provide such benefits was based on an outside security study prepared for the Company. Additionally, the Corporate Governance Committee of the Board of Directors of GM reviewed and approved the costs associated with providing personal security benefits to the affected Top 25 Employees. Based on these representations, the Special Master has concluded that GM has provided satisfactory justification for the personal security benefits that are not grandfathered under the Rule, and that these benefits are consistent with the Public Interest Standard.

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by GM to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Ms. Mary T. Barra

EXHIBIT I
TECHNICAL CORRECTIONS TO THE OCTOBER 22, 2009
GM DETERMINATION MEMORANDUM

1. In Part IV.A.1 (on page A5), "\$658,000" is deleted and replaced with "\$615,208".
2. In Part IV.B.7 (on page A9), the heading "Departed Employees" is deleted and replaced with the heading "Departed and Departing Employees" and the first sentence is deleted and replaced with the following sentence:

"In addition, four employees that would have been Covered Employees had they remained employed are no longer employed by the Company, and one Covered Employee is expected to terminate employment after the conclusion of 2009."

3. On Exhibit I, the Total Direct Compensation amount of \$1,881,000 is deleted and replaced with the amount of \$1,890,000.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 23, 2009

Mr. Gregory E. Lau
Executive Director — Global Compensation
General Motors Company
300 Renaissance Drive
MC: 482-C32-B61
Detroit, Michigan 48265-3000

VIA ELECTRONIC MAIL AND U.S. MAIL

***Re: Proposed Compensation Payments and
Structure for Christopher Liddell***

Dear Mr. Lau:

Pursuant to Section 30.16(a)(3) of the Department of the Treasury's Interim Final Rule regarding TARP Standards for Compensation and Corporate Governance (the "Rule"), the Special Master for TARP Executive Compensation (the "Special Master") is required to determine whether the compensation structure for each senior executive officer of a recipient of exceptional assistance under the Troubled Asset Relief Program (the "TARP"), including the amounts payable or potentially payable under such compensation structure, will or may result in payments that are inconsistent with the purposes of Section 111 of the Emergency Economic Stabilization Act of 2008, as amended ("EESA"), or TARP, or are otherwise contrary to the public interest. The Special Master is required to consider certain principles set forth in Section 30.16(b) of the Rule in making these determinations. In addition, the Rule requires that the Special Master issue a determination within sixty days of the receipt of a substantially complete submission.

General Motors Company (the "Company"), has requested approval of a proposed letter agreement (attached), between the Company and Christopher Liddell, providing for the appointment of Mr. Liddell to the position of Chief Financial Officer and setting forth certain proposed compensation arrangements for Mr. Liddell (the "Letter Agreement"). The Company has provided the Office of the Special Master with a detailed review of the compensation Mr. Liddell received when he previously served as the Chief Financial Officer of another public company. The Company has also provided the Office of the Special Master with a detailed comparative analysis describing the compensation arrangements of persons in similar positions at similar entities that are similarly situated. The Company's submission with respect to the Letter Agreement is now substantially complete for purposes of the Rule, and the Office of the

Special Master has completed its review and analysis of the proposed compensation structure set forth therein.

I have reviewed the Letter Agreement in light of the principles set forth in Section 30.16(b) of the Rule. The compensation payments and structure proposed for Mr. Liddell are consistent with the October 22, 2009 determination of the Special Master regarding 2009 payments and compensation structures for the Company's other senior executive officers and most highly compensated employees. The Company has represented that Mr. Liddell's compensation will be subject to the same terms and conditions set forth in the October 22, 2009 determination, including but not limited to the following:

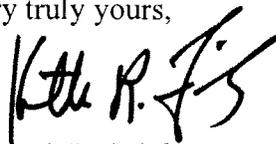
- Any and all incentive compensation paid to Mr. Liddell will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites provided to Mr. Liddell will not exceed \$25,000 (absent exceptional circumstances for good cause shown).
- No severance benefit to which Mr. Liddell becomes entitled in the future may take into account cash salary or stock salary that the Special Master has approved.
- Mr. Liddell will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the proposed compensation structure.
- The Company may not provide a tax "gross-up" of any kind to Mr. Liddell.

Subject to the foregoing conditions, and pursuant to the authority vested in me as the Special Master for TARP Executive Compensation, and in accordance with Section 30.16(a)(3) of the Rule, I hereby determine that the compensation structure set forth in the Letter Agreement, including the amounts payable or potentially payable under such compensation structure, will not result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.

The foregoing determination is limited to the compensation structure set forth in the Letter Agreement and shall not be relied upon with respect to any other employee. The determination is limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and determination have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by the Company to the

Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth R. Feinberg". The signature is stylized and cursive.

Kenneth R. Feinberg
Office of the Special Master for
TARP Executive Compensation

Attachments

cc: Ms. Mary T. Barra



Edward E. Whitacre, Jr.
Chairman and
Chief Executive Officer

December 17, 2009

Mr. Christopher P. Liddell
3645 Evergreen Point Road
Medina, WA 98030

Dear Chris:

On behalf of General Motors, I am pleased to extend to you an offer of employment as Vice Chairman and Chief Financial Officer of General Motors. This position reports directly to me in my capacity as Chairman and CEO. The tentative start date is January 1, 2010. You will be located at our headquarters office in Detroit, Michigan. The terms of the offer are set forth on the attached "Overview of Total Compensation and Benefits" (the "Overview") as modified in discussions with Greg Lau today.

As a GM executive in the United States, you will be entitled to GM's standard package of benefits and perquisites available to executives at your level as set forth in the Overview. Your participation in these plans, as well as any compensation plans, will be controlled by the terms of those plans and they can be amended, changed or terminated at any time as applicable to similarly situated participants.

Please note that you will need to satisfactorily complete a drug screening, as well as a background and security screening, as a condition of your employment.

We look forward to welcoming you to General Motors.

Sincerely,

Attachment

I accept this offer of employment with General Motors beginning January 1, 2010.

Christopher P. Liddell

Date

Confidential Treatment Requested by General Motors Company Under the Freedom of Information Act

TOTAL COMPENSATION AND BENEFITS OVERVIEW

**Christopher Liddell
Chief Financial Officer**

<u>DIRECT COMPENSATION*</u>	<u>AMOUNT</u>	<u>COMMENTS</u>
Annual Cash Salary	\$750,000	Portion of salary paid in cash. Increases as appropriate - next review in 2011.
Annual Salary Stock	\$3,450,000	Portion of salary paid in stock. On each salary payment date 1/24 of annual grant is earned and is not forfeitable except for inimical acts. The salary stock is converted to shares based on the valuation from the implied trading value of the Oldco bonds. The 2010 salary stock will be delivered ratably over three years beginning in 2012. Following IPO, salary stock will be valued based on stock market price.
Restricted Stock Unit Grant	\$2,000,000	Target value of grant can be no greater than 1/3 of total annual compensation. Award is subject to forfeiture if not an active employee at the time of delivery (except for termination due to death). The grant vests in three years. Stock may only be redeemed in 25% installments for each 25% installment of GM's TARP obligations that are repaid. Performance metrics are applicable to determine final grant units. The RSU grant amount could be reduced based on the total compensation delivered during the calendar year.
Total Annual Compensation - at target	<u>\$6,200,000</u>	

*Compensation is subject to determination by the Executive Compensation Committee of the Board of Directors. Compensation plans may be amended, changed or terminated at any time by the Committee. Also as a TARP recipient, approval of the U.S. Treasury's Special Master must be obtained for all compensation payments and structures for CEOs and other most highly compensated employees.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 23, 2009

Drema M. Kalajian, Esquire
General Motors Acceptance Corporation Financial Services
200 Renaissance Center
MC-B09-B11
Detroit, MI 48265

**Re: *Supplemental Determination Regarding 2009 Compensation
Payments for the Chief Executive Officer (the "CEO")***

Dear Ms. Kalajian:

This letter addresses certain matters related to determinations of the Special Master for TARP Executive Compensation under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), regarding the compensation of the senior executive officers and certain most highly compensated employees of General Motors Acceptance Corporation Financial Services ("GMAC").

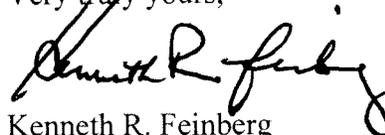
Pursuant to the Rule, on October 22, 2009, the Special Master issued an initial determination (the "Initial Determination") with respect to compensation structures and payments for the senior executive officers and the next 20 most highly compensated employees of GMAC. On November 16, 2009, GMAC filed a report with the Securities Exchange Commission announcing it had named a new chief executive officer, Mr. Michael Carpenter. In the report, the company noted that Mr. Carpenter would cease receiving compensation for his service as a GMAC board member, and that GMAC intended to submit a proposed compensation package for Mr. Carpenter to the Office of the Special Master. GMAC did so on December 22, 2009, its representatives having previously discussed the substance of the proposal with the Special Master and staff members in the Office of the Special Master.

The proposed pay package for Mr. Carpenter conforms to the compensation structures that the Special Master concluded, in the Initial Determination, would not result "in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3)(ii) (the "Public Interest Standard"). The amounts potentially payable to Mr. Carpenter under GMAC's proposal have also been reviewed by the Office of the Special Master to assess whether such amounts are consistent with amounts payable to persons in similar positions or roles at similar entities that are similarly situated. See *id.* § 30.16(b)(1)(v). In light of this review, the Special Master has concluded that the amounts potentially payable to Mr. Carpenter under the proposal "appropriately, reflect [his] prospective contributions...to

the value of the exceptional assistance recipient, taking into account multiple factors such as...corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient.” *Id.* § 30.16(b)(1)(vi). Accordingly, the Special Master has determined that GMAC’s proposed compensation structure, as described in *Exhibit I*, is consistent with the Public Interest Standard.

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by GMAC to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Mr. Kim Fennebresque
William B. Solomon, Jr., Esquire

**EXHIBIT I
ADDITIONAL DETERMINATION**

CEO compensation structure:

Cash salary\$950,000

Stock salary.....\$5,415,000

Long-term restricted stock.....up to \$3,135,000

-The figures above are presented on annual basis. For 2009, all amounts are to be pro-rated for the period Mr. Carpenter has served as GMAC's chief executive officer.

-The terms and conditions of the Initial Determination regarding the compensation structures and amounts potentially payable thereunder to the GMAC chief executive officer shall apply *mutatis mutandis* to Mr. Carpenter's compensation structures and amounts potentially payable thereunder, effective November 16, 2009.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 5, 2010

Mr. Robert H. Benmosche
Chief Executive Officer
American International Group, Inc.
70 Pine Street, 27th Floor
New York, New York 10270

**Re: *Supplemental Determination Regarding
Proposed Compensation Structure for Peter Hancock***

Dear Mr. Benmosche:

This letter addresses your request on behalf of American International Group, Inc., ("AIG") for approval by the Special Master for TARP Executive Compensation of a compensation structure for a potential new hire. Under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), the Special Master must approve the compensation structures of executive officers of "exceptional assistance recipients" such as AIG. 31 C.F.R. § 30.16(a)(3)(ii).

Pursuant to the Rule, on December 11, 2009, the Special Master issued an initial determination (the "Determination"), which concluded that certain compensation structures for AIG executive officers would not result "in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* § 30.16(a)(3)(ii) (the "Public Interest Standard"). Subsequent to the issuance of the Determination, AIG informed the Office of the Special Master that it had identified Mr. Peter Hancock as a potential new hire for an executive officer position, serving as Executive Vice President supervising AIG's Investments, Financial Products, CFO/Finance, Strategic Planning/Restructuring, Risk and Audit functions. On February 5, 2010, AIG submitted a proposed compensation structure for Mr. Hancock to the Office of the Special Master—its representatives having previously discussed the substance of the proposal with the Special Master and staff members in the Office of the Special Master—and requested a determination that the proposed structure is consistent with the Public Interest Standard.

AIG proposed a 2010 compensation structure for Mr. Hancock that generally conforms to the compensation structures the Special Master approved in the Determination. Accordingly, the Special Master has determined that AIG's proposed 2010 compensation structure for Mr. Hancock, as set forth in the draft employment agreement attached as *Exhibit I* (the "Draft Agreement"), is consistent with the Public Interest Standard.

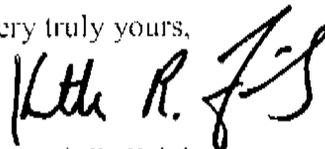
The Draft Agreement also contemplates that on January 1, 2011, Mr. Hancock may become a "senior executive officer" of AIG for the purposes of the Rule. Unlike the approval

being given currently, which addresses only compensation structure, if Mr. Hancock becomes a senior executive officer in future years the Special Master's approval will be required under the Rule for both his compensation structure and specific amounts payable. *Id.* § 30.16(a)(3)(i).

Under the Draft Agreement, an alternate compensation structure would be provided to Mr. Hancock from and after the date on which he becomes a senior executive officer, in light of the additional restrictions on compensation payable to such employees under the Rule. The alternate compensation structure proposed by AIG generally conforms with the compensation structure the Special Master previously approved for senior executive officers of AIG. Accordingly, the Special Master has concluded in principle that the compensation structure and the amounts potentially payable under the structure proposed for Mr. Hancock should he become a senior executive officer would be consistent with the Public Interest Standard. Notwithstanding the foregoing, however, the Special Master's final determination under Section 30.16(a)(3) of the Rule regarding compensation structures and payments for Mr. Hancock in any year after 2010 will not be made prior to the Special Master's regular review of AIG's senior executive officer compensation for that year, and will be based on the totality of the facts and circumstances at that time.

The conclusions reached herein apply only to the proposal in respect of Mr. Hancock. Such conclusions are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by AIG to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Jeffrey Hurd, Esq.
Marc Trevino, Esq.

February 8, 2010

Dear Peter:

I am pleased to confirm the terms of your employment with American International Group, Inc.

1. *Term of this Letter.* This letter will be effective for a term beginning on February 8, 2010 and ending on December 31, 2012.
2. *Position.* Your employment with AIG will commence on the beginning of the term of this letter. You will be an Executive Vice President of AIG and report directly to the CEO. The following functions of AIG will report to you: Investments, Financial Products, CFO/Finance, Strategic Planning/Restructuring, Risk and Audit.
3. *Base Cash Salary.* Your base cash salary will be \$1,500,000 per year. On January 1, 2011, your base cash salary will increase to \$1,800,000.
4. *Stock Salary.* In addition to your cash salary, you will receive equal bi-monthly awards of stock or restricted stock units in AIG. For 2010, these awards, which we refer to as stock salary, will be at a rate of \$2,400,000 per year. On January 1, 2011, your stock salary will increase to \$4,400,000 per year.
 - Initially your stock salary will be in the form of restricted stock units of AIG;
 - Restricted stock units will be immediately vested and will be delivered in three equal, annual installments beginning on the 2nd anniversary of the date of grant (with each installment being accelerated by one year if AIG repays its federal obligations), and units will be settled in cash or stock at the election of the Committee (in consultation with you) and taxed on delivery;
 - If your restricted stock units are settled in stock, the stock will be immediately vested when delivered, tax will be withheld by AIG in kind (unless otherwise directed by you) and remaining shares shall not be subject to any additional transferability restrictions; and
 - The Committee will authorize early transferability of any stock salary you have received on death or disability.
5. *2010 Cash Incentive Pay.* For 2010, your annual cash incentive target will be \$1,800,000. AIG's Compensation and Management Resources Committee will determine the amount of your cash incentive award based on its performance assessment against objective performance metrics that have been provided to you. We anticipate that you will become one of AIG's top 25 most highly compensated employees for 2011. Accordingly, any cash incentive earned will be paid in two equal installments in December 2010.

The first installment will be paid in cash, and the second installment will be paid in fully vested AIG stock that may not be transferred until January 1, 2012.

Your annual cash incentive for 2010 may not exceed the amount of the stock incentive award you receive for 2010 pursuant to Section 6 below. Because we anticipate that you will become one of AIG's top 25 most highly compensation employees for 2011, we do not anticipate that you will be eligible for an annual cash incentive for 2011 or 2012.

6. *2010 Long-Term Stock Incentive Pay.* For 2010, your long-term incentive award target will be \$1,800,000 in the form of stock or restricted stock units of AIG. The Committee will determine the form and amount of your stock incentive award based on its performance assessment against objective performance metrics that have been provided to you, subject to the following:
 - For 2010, stock or restricted stock units will be immediately vested and will be subject to transfer/payout restrictions for three years; and
 - Awards will provide for early transferability in the event of death or disability.
7. *Long-Term Restricted Stock.* For each of 2011 and 2012, your long-term restricted stock award target will be \$800,000. The Committee will determine the form and amount of your long-term restricted stock award based on its performance assessment against objective performance metrics that will be provided to you, subject to the following:
 - For 2011 and 2012, stock or restricted stock units will vest on the 3rd anniversary of grant and will be subject to transfer/payout restrictions as and if required at the time by the TARP Standards for Compensation and Corporate Governance (31 C.F.R. Part 30) for long-term restricted stock; and
 - Awards will provide for early vesting on death or disability and early transferability on the same events to the extent permitted by the TARP Standards for Compensation and Corporate Governance.
8. *Benefits.* Subject to the limits of this letter and the TARP Standards of Compensation and Corporate Governance, you will be entitled to benefits consistent with senior executives of AIG and reimbursement of reasonable business expenses, in each case in accordance with applicable AIG policies as in effect from time to time. In connection with your joining AIG, AIG will also promptly pay any reasonable legal fees incurred in connection with your review of this letter and its annexes. You will participate in AIG's Executive Severance Plan beginning as of the date hereof as an Executive Vice President (without regard to the Partners Plan, for which you are not eligible, or any other eligibility requirement). Under the ESP for 2010, your 2010 cash incentive target will be treated as your historic average "Annual Cash Bonuses."

9. *Executive Compensation Standards.* Any bonus or incentive compensation paid to you is subject to recovery or “clawback” by AIG if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria (all within the meaning of, and to the full extent necessary to comply with, the TARP Standards for Compensation and Corporate Governance). In addition, you will not be entitled to any golden parachute payment or tax gross-up from AIG or its affiliates to the extent prohibited by the TARP Standards for Compensation and Corporate Governance.

In addition, your compensation is subject to applicable regulations issued by the U.S. Department of the Treasury (including the TARP Standards for Compensation and Corporate Governance) and applicable requirements of agreements between AIG and the U.S. government, as the same are in effect from time to time. You may receive compensation from AIG only to the extent that it is consistent with those regulations and requirements.

10. *Indemnification and Cooperation.* During and after your employment, AIG will indemnify you in your capacity as a director, officer, employee or agent of AIG to the fullest extent permitted by applicable law and AIG’s charter and by-laws, and will provide you with director and officer liability insurance coverage (including post-termination/post-director service tail coverage) on the same basis as AIG’s other executive officers. AIG agrees to cause any successor to all or substantially all of the business or assets (or both) of AIG to assume expressly in writing and to agree to perform all of the obligations of AIG in this paragraph.

You agree (whether during or after your employment with AIG) to reasonably cooperate with AIG in connection with any litigation or regulatory matter or with any government authority on any matter, in each case, pertaining to AIG and with respect to which you may have relevant knowledge, provided that, in connection with such cooperation, AIG will reimburse your reasonable expenses including reasonable legal fees if you choose to have your own counsel, and you shall not be required to act against your own legal interests.

11. *Tax Matters.* To the extent any taxable expense reimbursement or in-kind benefits under Section 8 or Section 10 is subject to Section 409A of the Internal Revenue Code of 1986, the amount thereof eligible in one taxable year shall not affect the amount eligible for any other taxable year, in any event, any such expenses shall be reimbursed no later than the last day of the taxable year following the taxable year in which you incurred such expenses and in no event shall any right to reimbursement or receipt of in-kind benefits be subject to liquidation or exchange for another benefit. Each payment under this letter will be treated as a separate payment for purposes of Section 409A of the Code. You will be entitled to instruct AIG to withhold taxes in accordance with the applicable rules upon your becoming subject to any tax on vesting of any stock awards hereunder. This Section 11 shall also apply to any payments made to you under Section IX.F. (Cooperation) of the Release and Restrictive Covenant Agreement, which shall be as set forth in Annex 1.

12. *Non-competition and non-solicitation.* In connection with your joining AIG, you have entered into non-competition arrangements (covering competing insurance business) and non-solicitation arrangement (covering senior AIG employees) with AIG as set forth in Annex 2. For the avoidance of doubt, those non-competition arrangements provide that enforcement will be conditioned on AIG's performing its obligations under the ESP as provided herein.

13. *Dispute resolution.* Any contest or dispute between AIG and you arising out of or relating to or concerning this letter or your other employment arrangements with AIG (including termination of your employment) shall be submitted to arbitration in New York City before, and in accordance with the commercial arbitration rules then obtaining of, the American Arbitration Association (the "AAA"). Each party will bear his or its own expenses of the arbitration including legal fees. Any dispute will be subject to the jurisdiction of a State or Federal court located in the City of New York to the extent necessary to obtain injunctive relief.

We look forward to having you as a member of AIG's leadership team.

Sincerely,

AMERICAN INTERNATIONAL GROUP, INC.

By: _____

Jeffrey J. Hurd

Senior Vice President –
Human Resources and Communications

I agree with and accept the foregoing terms.

[Name]



DEPARTMENT OF THE TREASURY
WASHINGTON, D. C. 20220

March 12, 2010

Ms. Nancy A. Rac
Executive Vice President Human Resources
Chrysler Group LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, Michigan 48326-2766

***Re: Supplemental Determination Regarding 2009 Compensation
Payments and Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Ms. Rac:

This letter addresses certain matters related to determinations of the Special Master for TARP Executive Compensation under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), regarding the compensation of the senior executive officers and certain most highly compensated employees of Chrysler Group LLC ("Chrysler").

Pursuant to the Rule, on October 22, 2009, the Special Master issued an initial determination (the "Initial Determination") with respect to 2009 compensation structures and payments for the senior executive officers and the next 20 most highly compensated employees ("Top 25 Employees") of Chrysler. Under the Rule, an initial determination of the Special Master shall be treated as final unless the TARP recipient requests a reconsideration within 30 days. Because Chrysler did not request such a reconsideration, the Initial Determination became final effective November 21, 2009.

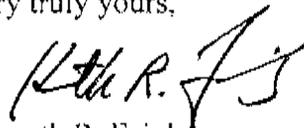
Following the Initial Determination, on January 15, 2010, Chrysler requested approval to alter the 2009 compensation structures for several of the Top 25 Employees. In particular, Chrysler sought to supplement the long-term restricted stock grants approved by the Special Master in the Initial Determination based on a comprehensive review of employee performance during the six-month period following the company's emergence from bankruptcy in June 2009. Chrysler completed this review in early 2010 before granting long-term restricted stock for 2009, which the company intends to do on or before March 15, 2010. In no event would the aggregate grant of long-term restricted stock for a Top 25 Employee exceed one-third of that employee's 2009 annual compensation.

The Rule requires that the Special Master determine whether the 2009 compensation structures for Top 25 Employees “will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3)(ii) (the “Public Interest Standard”). The Rule also requires that the Special Master consider six principles when making these compensation determinations. In particular, the compensation structures and the amounts payable thereunder should reflect “the current or prospective contributions of an employee to the value of the TARP recipient” and “the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient’s future success, and ultimately to be able to repay TARP obligations.” *Id.* at § 30.16(b)(1).

The Special Master has determined that the compensation changes proposed by Chrysler will not, by virtue of their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard. All long-term restricted stock granted pursuant to this determination must adhere to the applicable terms and conditions set forth in Exhibit II to the Initial Determination, including the requirement that long-term restricted stock may be granted only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by Chrysler’s compensation committee.

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by Chrysler to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Holly E. Leese, Esquire
Lawrence Cagney, Esquire



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 18, 2010

Jeffrey J. Hurd, Esq.
Senior Vice President —
Human Resources and Communications
American International Group, Inc.
70 Pine Street
New York, New York 10270

***Re: Supplemental Determination Regarding
2010 Compensation Payments and Structures for
Most Highly Compensated Employees***

Dear Mr. Hurd:

This letter addresses requests submitted by you on behalf of American International Group, Inc. (“AIG”), for approval by the Special Master for TARP Executive Compensation (the “Special Master”) regarding (i) compensation potentially payable to a “Top 25” executive, and (ii) the compensation structure for a candidate for an executive officer position in the “Covered Employees 26–100” group. This letter also provides a clarification regarding compensation structures approved for the “Covered Employees 26–100” group.

Under the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Special Master must approve the compensation structures and amounts payable to “Top 25” executives of “exceptional assistance recipients” such as AIG. 31 C.F.R. § 30.16(a)(3)(i). The Special Master must also approve the compensation structures—but not individual amounts payable—to executive officers who are in an exceptional assistance recipient’s “Covered Employees 26–100” group. *Id.* § 30.16(a)(3)(ii).

1. Top 25 Executive

Pursuant to the Rule, on March 23, 2010, the Special Master issued an initial determination (the “Top 25 Determination”), which concluded that certain compensation structures and amounts payable to AIG’s Top 25 executive officers would not result in payments that are “inconsistent with the purposes of section 111 of EESA or TARP, or [are] otherwise contrary to the public interest.” *Id.* § 30.16(b)(1) (the “Public Interest Standard”). Subsequently, AIG submitted a request to alter the compensation package of a Top 25 executive as a result of the substantial expansion of the executive’s responsibilities after the issuance of the Top 25 Determination. AIG proposed to raise the executive’s cash salary by \$300,000 and stock salary by \$1,000,000 on an annualized basis, with the raises effective on the date of the executive’s promotion. No additional changes to the structural requirements or other amounts payable under

the Top 25 Determination were proposed. In light of the substantial expansion of the executive's responsibilities and the corresponding increase to the current and expected contribution of the executive to the value of AIG, *see id.* § 30.16(b)(1)(vi), the Special Master has determined that the proposed alteration is consistent with the Public Interest Standard.

2. Executive Officer Candidate

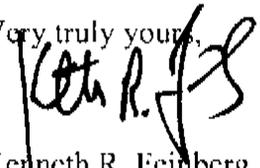
Also pursuant to the Rule, on April 16, 2010, the Special Master issued an additional initial determination (the "26-100 Determination"), which concluded that certain compensation structures for AIG's Covered Employees 26-100 group are consistent with the Public Interest Standard. Subsequent to the issuance of the 26-100 Determination, AIG informed the Office of the Special Master that it had identified Henri Courpron as a potential candidate for an AIG executive officer position, serving as the Chief Executive Officer of International Lease Finance Corporation. On May 17, 2010, AIG submitted a proposed compensation structure for Mr. Courpron to the Office of the Special Master—its representatives having previously discussed the substance of the proposal with the Special Master and staff members in the Office of the Special Master—and requested a determination that the proposed structure is consistent with the Public Interest Standard. Under the proposal, which generally conforms to the requirements of the 26-100 Determination, Mr. Courpron will be eligible to receive cash salary, stock salary, cash and stock incentives, and other benefits (including eligibility under AIG's Executive Severance Plan) on the same terms and conditions as current executives of AIG in the Covered Employees 26-100 group. Accordingly, the Special Master has determined that AIG's proposed 2010 compensation structure for Mr. Courpron is consistent with the Public Interest Standard.

AIG's submission for Mr. Courpron also proposed compensation structures for 2011 and 2012, and contemplates that Mr. Courpron may become a Top 25 executive for 2012. The proposed 2011 and 2012 compensation structures generally conform with the compensation structures the Special Master has approved for executives in the Covered Employees 26-100 group and Top 25 executives, respectively. Accordingly, the Special Master has concluded in principle that the proposed 2011 and 2012 compensation structures and amounts potentially payable to Mr. Courpron would be consistent with the Public Interest Standard. Notwithstanding the foregoing, however, the Special Master's final determination under the Rule regarding compensation structures and payments for Mr. Courpron in any year after 2010 will not be made prior to the Special Master's regular review of AIG's compensation proposals for that year, and will be based on the totality of the facts and circumstances at that time.

3. Clarification Regarding Covered Employees 26-100 Performance Metrics

The Special Master's 26-100 Determination includes the requirement that the payment of incentive compensation must be conditioned upon the achievement of objective performance criteria. For the avoidance of doubt, for the purposes of the 26-100 Determination, an incentive compensation plan that includes the sale of a subsidiary or assets of a subsidiary of AIG as a performance measure or payment condition—among other objective performance measures or payment conditions—will not be deemed to be inconsistent with the Public Interest Standard merely because of the inclusion of such a measure or condition.

The approvals in this letter apply only to the proposals in respect of the executives addressed in sections 1 and 2. Such conclusions are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, the Special Master's evaluations and conclusions have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by AIG to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,


Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Robert H. Benmosche
Marc Trevino, Esq.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20215

June 10, 2010

Ms. Mary T. Barra
Vice President — Human Resources
General Motors Company
300 Renaissance Drive
MC 482-C32-D82
Detroit, Michigan 48265

***Re: Reconsideration Request Regarding Proposed Compensation Structures
for Certain Executive Officers and Most Highly Compensated
Employees (“Covered Employees 26 – 100”)***

Dear Ms. Barra:

Pursuant to the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), on April 16, 2010, the Special Master issued an initial determination (the “Initial Determination”) with respect to 2010 compensation structures for employees who are either executive officers of General Motors Company (“GM”) or one of GM’s 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Rule (“Covered Employees 26 – 100”). Under the Rule, GM is permitted, within 30 days of the issuance of the Initial Determination, to request that the Special Master reconsider that determination. 31 C.F.R. § 30.16(c)(1). The request must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information “resulted in a material error in the initial determination.” *Id.*

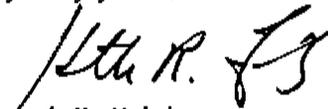
On May 14, 2010, GM submitted a request for reconsideration (the “Reconsideration Request”) of the Initial Determination, noting that GM would soon report earnings for the first quarter of 2010. The Reconsideration Request cites the pending earnings report as relevant new information not previously considered, and requests that the Special Master reconsider the requirement, set forth in Annex A of the Initial Determination, that “[n]o payment or stock compensation grant under a 2010 incentive plan may be made prior to the conclusion of the applicable performance period.” Specifically, GM requests that it be permitted to grant restricted stock units for the 2010 calendar year before the year has ended based on performance to-date and subject to continued performance for the remainder of 2010.

The Rule requires that the Special Master, upon receipt of a written request for reconsideration, provide a final determination within 30 days setting forth the facts and analysis that formed the basis for the determination. *Id.* at § 30.16(c)(2). The Special Master has reviewed the Reconsideration Request in light of the relevant standards set forth in the Rule. For the reasons set forth below, the Reconsideration Request is denied, and the Initial Determination shall become final effective the date of this letter.

While GM's first quarter earnings report is encouraging, it does not present the type of new information that would support a reconsideration of the Initial Determination under the Rule. The Special Master has determined that the Initial Determination, when viewed in light of the new information provided by the earnings report, does not contain a "material error" that must be remedied, as required under the Rule. To the contrary, the Special Master continues to believe that 2010 incentive compensation should be granted only after the applicable performance period has ended and performance has been objectively assessed. Also, it should be noted that the approved 2010 compensation structures for Covered Employees 26 – 100 permit the use of stock salary, which GM is free to utilize if it determines that a larger portion of 2010 compensation should be paid in the form of equity to effectively motivate its leadership team.

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of any compensation structure for the subject employees with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by GM to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Mr. Gregory E. Lau



DEPARTMENT OF THE TREASURY
WASHINGTON, DC 20503

June 23, 2010

Mr. Gregory E. Lau
Executive Director – Global Compensation
General Motors Company
300 Renaissance Drive
MC 482-C32-B61
Detroit, Michigan 48265-3000

***Re: Supplemental Determination Regarding 2010 Compensation
Payments and Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. Lau:

This letter addresses certain matters related to determinations of the Special Master for TARP Executive Compensation under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), regarding the compensation of the senior executive officers and certain most highly compensated employees of General Motors Company ("GM").

Pursuant to the Rule, on March 23, 2010, the Special Master issued an initial determination (the "Initial Determination") with respect to 2010 compensation structures and payments for the senior executive officers and the next 20 most highly compensated employees ("Top 25 Employees") of GM. Under the Rule, an initial determination of the Special Master shall be treated as final unless the TARP recipient requests a reconsideration within 30 days. Because GM did not request such a reconsideration, the Initial Determination became final effective April 22, 2010.

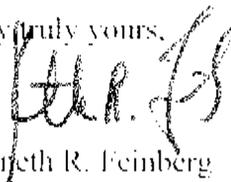
Following the Initial Determination, on June 17, 2010, GM requested approval to alter the 2010 compensation structures for two of the Top 25 Employees. In particular, GM sought to increase the amount of stock salary and long-term restricted stock granted to these employees in light of the substantial additional responsibilities assumed by each employee since the date of the Initial Determination. GM proposed increasing 2010 stock salary for these employees by \$97,917 and \$103,000, respectively. Long-term restricted stock grants for 2010 would increase by \$33,333 and \$100,000, respectively. Cash salaries would remain unchanged. The proposed changes represent increases of less than 13% in total direct compensation over the 2010 compensation structures approved for each of these employees in the Initial Determination.

The Rule requires that the Special Master determine whether the 2010 compensation structures for Top 25 Employees “will or may result in payments that are inconsistent with the purposes of Section 111 of HESA or TARP, or are otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3)(ii) (the “Public Interest Standard”). The Rule also requires that the Special Master consider six principles when making these compensation determinations. In particular, the compensation structures and the amounts payable thereunder should reflect “the current or prospective contributions of an employee to the value of the TARP recipient” and “the need for the TARP recipient to remain a competitive enterprise, to retain ... talented employees who will contribute to the TARP recipient’s future success, and ultimately to be able to repay TARP obligations.” *Id.* at § 30.16(b)(1). Additionally, the compensation structures and amounts payable thereunder “should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated.” *Id.*

The Special Master has determined that the 2010 compensation changes proposed by GM will not, by virtue of their structural design or the amounts potentially payable thereunder, result in payments inconsistent with the Public Interest Standard. The revised compensation structures and payments will become effective on the date of each employee’s promotion. In all other respects, the revised compensation structures and payments must adhere to the applicable terms and conditions set forth in Exhibit II of the Initial Determination.

The conclusions reached herein are limited to the authority vested in me by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, my evaluation and conclusion have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by GM to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Ms. Mary T. Barra



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20234

August 3, 2010

Jeffrey J. Hurd, Esq.
Senior Vice President ---
Human Resources and Communications
American International Group, Inc.
70 Pine Street
New York, New York 10270

***Re: Supplemental Determination Regarding
2010 Compensation Payments and Structures for
Most Highly Compensated Employees***

Dear Mr. Hurd:

This letter addresses requests submitted by you on behalf of American International Group, Inc. ("AIG"), for approval by the Special Master for TARP Executive Compensation (the "Special Master") regarding (i) compensation potentially payable to a "Top 25" executive, and (ii) compensation structures of employees in the "Covered Employees 26-100" group. This letter also provides a clarification regarding compensation structures approved for the "Covered Employees 26-100" group.

Under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), the Special Master must approve the compensation structures and amounts payable to "Top 25" executives of "exceptional assistance recipients" such as AIG. 31 C.F.R. § 30.16(a)(3)(i). The Special Master must also approve the compensation structures—but not individual amounts payable—to executive officers who are in an exceptional assistance recipient's "Covered Employees 26-100" group. *Id.* § 30.16(a)(3)(ii).

1. Top 25 and Covered Employees 26-100 Omissions

Pursuant to the Rule, on March 23, 2010, the Special Master issued an initial determination (the "Top 25 Determination"), which concluded that certain compensation structures and amounts payable to AIG's Top 25 executives would not result in payments that are "inconsistent with the purposes of section 111 of EISA or TARP, or [are] otherwise contrary to the public interest." *Id.* § 30.16(b)(1) (the "Public Interest Standard"). On April 16, 2010, the Special Master issued another initial determination (the "26-100 Determination"), which concluded that certain compensation structures for AIG's Covered Employees 26-100 group are consistent with the Public Interest Standard.

Subsequent to the issuance of the determinations described above, AIG notified the Office of the Special Master that revised calculations revealed the misidentification of one member in each of the 2010 groups. As a result of this misidentification, no compensation structure or payments were proposed for an omitted Top 25 executive and no compensation structure was proposed for an omitted employee in the Covered Employees 26-100 group. On August 2, 2010, AIG submitted proposals for the omitted executives—its representatives having previously discussed the substance of the proposal with the Office of the Special Master—and requested a determination that any payments under the proposals would be consistent with the Public Interest Standard.

The proposed pay package for the omitted Top 25 executive conforms to the compensation structures that the Special Master approved in the Top 25 Determination. The amounts potentially payable to the Top 25 executive under the proposal have also been reviewed by the Office of the Special Master to assess whether such amounts are consistent with amounts payable to persons in similar positions or roles at similar entities that are similarly situated. See *id.* § 30.16(b)(1)(v). In light of this review, the Special Master has concluded that these amounts “appropriately, reflect [the executive’s] prospective contributions...to the value of the exceptional assistance recipient.” *Id.* § 30.16(b)(1)(vi). Accordingly, the Special Master has determined that the compensation structure proposed for this executive, as described in *Exhibit I*, is consistent with the Public Interest Standard.

The proposed compensation structure for the omitted employee from the Covered Employees 26-100 group is consistent with the requirements of the 26-100 Determination. Accordingly, the Special Master has determined that AIG’s proposed 2010 compensation structure for this executive is consistent with the Public Interest Standard.

2. New Executive Officer

Subsequent to the issuance of the 26-100 Determination, AIG also informed the Office of the Special Master that it had identified a potential candidate for an AIG executive officer position, serving as the Executive Chairman of American International Assurance Company Limited (the “AIA Executive”). On July 17, 2010, AIG submitted a proposed compensation structure and requested a determination that the proposed structure is consistent with the Public Interest Standard. Under the proposal, which is consistent with the requirements of the 26-100 Determination and compensation structures previously approved by the Special Master for incoming AIG executive officers, the AIA Executive would be eligible to receive cash salary, cash and stock incentives, and other benefits (including eligibility under AIG’s Executive Severance Plan) on the same terms and conditions as current executives of AIG in the Covered Employees 26-100 group. Accordingly, the Special Master has determined that AIG’s proposed 2010 compensation structure for the AIA Executive is consistent with the Public Interest Standard.

AIG’s submission for the AIA Executive also proposes compensation structures for 2011 and 2012, and contemplates that the AIA Executive may become a Top 25 executive for 2012. The proposed 2011 and 2012 compensation structures generally conform with the compensation structures the Special Master has approved for executives in the Covered Employees 26-100 group and Top 25 executives, respectively. Accordingly, the Special Master has concluded in

principle that the proposed 2011 and 2012 compensation structures and amounts potentially payable under them would be consistent with the Public Interest Standard. Notwithstanding the foregoing, however, the Special Master's final determination under the Rule regarding the AIA Executive's compensation structures and payments in any year after 2010 will not be made prior to the regular review of AIG's compensation proposals for that year, and will be based on the totality of the facts and circumstances at that time.

3. Compensation Structure for a Covered Employee

On August 2, 2010, AIG also submitted a proposal regarding the compensation structure of a certain employee in the Covered Employees 26-100 group (the "Covered Employee"). At the time of the 26-100 Determination, it was anticipated that the Covered Employee would fall within the Rule's "safe harbor" provision, which provides automatic approval for compensation structures resulting in \$500,000 or less in "annual compensation" (excluding long-term restricted stock). *See id.* § 30.16(a)(3)(ii). According to AIG, it is now anticipated that the Covered Employee's "annual compensation" may exceed \$500,000, due to his performance under sales commission plans. Notwithstanding the stock and long-term allocation requirements of the 26-100 Determination, AIG has requested approval to continue paying the Covered Employee under these programs (along with a minimal cash base salary). AIG has noted the long-established and predominant use of commission programs to compensate sales employees in positions similar to the Covered Employee's, and confirmed that payments under the program would qualify as "commission compensation" under the Rule.

The Special Master considered the proposal in light of the Rule's exclusion of reasonable "commission compensation" from the restrictions applicable to bonus and incentive compensation, *see id.* § 30.1, and the principle that compensation structures should be consistent with those provided to "persons in similar positions or roles at similar entities...competing in the same markets" as a covered employee. Accordingly, the Special Master has determined that the payment of qualified "commission compensation" to the Covered Employee under the programs (in addition to a minimal base salary) is not inconsistent with the Public Interest Standard, provided that any other compensation structure of the Covered Employee comply with the requirements of the 26-100 Determination.

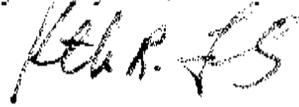
4. Guidance Regarding the 26-100 Determination

The 26-100 Determination requires that employees in the Covered Employees 26-100 group be paid no more than \$25,000 in perquisites and "other" compensation, absent exceptional circumstances for good cause shown. With respect to an individual employee in the Covered Employees 26-100 group, a relocation undertaken at the request of the company constitutes exceptional circumstances, and such circumstances constitute good cause for the company to pay such employee's reasonable relocation expenses under a program that provides such benefits on the same basis to similarly situated employees; provided, however, that a tax gross-up is not a reasonable relocation expense.

The approvals in this letter apply only to the proposals in respect of the executives addressed in sections 1, 2 and 3. Such conclusions are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to

constitute the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, the Special Master's evaluations and conclusions have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by AIG to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,

A handwritten signature in black ink, appearing to read "K.R. Feinberg". The signature is written in a cursive, somewhat stylized font.

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Robert H. Benmosche
Marc Trevino, Esq.

**EXHIBIT I
SUPPLEMENTAL DETERMINATION**

Top 25 Executive 2010 compensation structure:

Cash salary	\$400,000 (prospective annual rate)
Stock salary	\$800,000 (annual rate, payable on a <i>nunc pro tunc</i> basis effective January 1, 2010).
Long-term restricted stock	\$300,000 (2010 target amount; in addition, subject to the limitations of the Rule, a long-term restricted stock grant of up to \$850,000 may be granted with respect to 2009 service in consideration of the cancellation of incentive payments upon the identification of the executive as a member of the Top 25.)

The terms and conditions of the Top 25 Determination regarding the compensation structures and amounts potentially payable thereunder to the non-AIGFP Covered Employees (as defined in the Top 25 Determination) shall apply to the Top 25 Executive.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 3, 2010

James J. Duffy
Ally Financial Inc.
200 Renaissance Center
MC-B09-B11
Detroit, MI 48265

***Re: Supplemental Determination Regarding
2010 Compensation Payments and Structures***

Dear Mr. Duffy:

This letter addresses a request submitted by you on behalf of Ally Financial Inc. ("Ally"), for approval by the Special Master for TARP Executive Compensation (the "Special Master") regarding compensation structures of and potential payments to "Top 25" executives. Under the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), the Special Master must approve the compensation structures and amounts payable to "Top 25" executives of "exceptional assistance recipients" such as Ally. 31 C.F.R. § 30.16(a)(3)(i).

1. Top 25 Executive

Pursuant to the Rule, on March 23, 2010, the Special Master issued an initial determination (the "Top 25 Determination"), which concluded that certain compensation structures and amounts payable to Ally's Top 25 executives would not result in payments that are "inconsistent with the purposes of section 111 of EESA or TARP, or [are] otherwise contrary to the public interest." *Id.* § 30.16(b)(1) (the "Public Interest Standard").

On July 30, 2010, following discussions with the Office of the Special Master, Ally submitted a request to alter the compensation package of a Top 25 executive as a result of the substantial expansion of the executive's responsibilities after the issuance of the Top 25 Determination. Ally proposes to raise the executive's cash salary by \$100,000 and stock salary by \$166,667 on an annualized basis, with the raises effective on the date of the executive's promotion, and increase his 2010 long-term incentive opportunity by \$233,333. No additional changes to the executive's compensation structure or potential payment amounts have been proposed. In light of the substantial expansion of the executive's responsibilities and the corresponding increase to the current and expected contribution of the executive to the value of Ally, *see id.* § 30.16(b)(1)(vi), the Special Master has determined that the proposed alteration is consistent with the Public Interest Standard.

2. Redemption of Stock Salary

Ally also requested the Special Master's approval to establish arrangements under which executives in the Top 25 may voluntarily agree to a longer redemption period for all or a portion of their stock salary than is required by the Top 25 Determination. The Top 25 Determination provides that stock salary may only be redeemed in five equal, annual installments beginning on the first anniversary of grant.

The Special Master considered the request in light of the principle that "in the case of an executive or other senior level position a significant portion [of] overall compensation should be long term compensation." *Id.* § 30.16(b)(1)(iii). Although the Top 25 Determination already requires significant allocations to long-term compensation, the Special Master has concluded that voluntary arrangements permitting longer redemption periods for stock salary would be consistent with the principles of the Top 25 Determination so long they do not provide "incentives to take unnecessary or excessive risks that could threaten the value of [Ally]." *Id.* § 30.16(b)(1)(i). Accordingly, the Special Master has determined that, to be consistent with the Public Interest Standard, any such arrangement must require that:

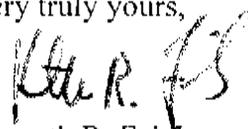
- under no circumstances may stock salary be redeemed more rapidly than permitted in the Top 25 Determination;
- once established, neither Ally nor the executive may revoke the arrangement;
- redemption may only occur on whole-year anniversaries of the redemption date provided by the Top 25 Determination;
- after giving effect to the arrangement, stock salary must continue to be redeemed in multiple, equal installments, and the final installment may be redeemed no sooner than the second anniversary of the first installment.

Finally, the establishment and details of such an arrangement must be disclosed in writing to the Office of the Special Master.

The foregoing determination pursuant to Section 30.16(a)(3)(i) of the Rule permits Ally and Top 25 executives to enter into voluntary arrangements with respect to stock salary earned only after the date of this letter. It does not require Ally or any executive to enter into any arrangement of any kind. No determination is being made pursuant to Section 30.16(a)(3), Section 30.16(a)(4) or any other provision of the Rule that any change to any compensation arrangement, including the time and form of payment, is necessary for such compensation arrangement to be consistent with the Public Interest Standard. This letter is not an advisory opinion of the Special Master that specifically addresses any compensation arrangement, and is not intended to confer eligibility for the guidance set forth in IRS Notice 2009-92.

The approvals in this letter apply only to the proposals in respect of the executives addressed herein. Such conclusions are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or the Department of the Treasury with respect to the compliance of the proposed compensation structure or any other compensation structure for the subject employee with any other provision of the Rule. Moreover, the Special Master's evaluations and conclusions have relied upon, and are qualified in their entirety by, the accuracy of the materials submitted by Ally to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Very truly yours,



Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

cc: Drema M. Kalajian, Esquire
Richard Strahota



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

March 23, 2010

TO: TARP Recipients

RE: Special Master Review of Past Compensation Payments

Our records indicate that your institution received financial assistance under the Troubled Asset Relief Program ("TARP") before February 17, 2009. Pursuant to Section 111(f) of the Emergency Economic Stabilization Act of 2008, as amended ("EESA"), as implemented by the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), the Special Master for TARP Executive Compensation (the "Special Master") is required to review all bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most-highly compensated employees (the "Covered Employees") of each TARP recipient from the date the recipient first received financial assistance until February 17, 2009. 31 C.F.R. § 30.16(a)(2).

To facilitate the review, the Special Master will require the submission of certain data and a certification from each TARP recipient. Attached to this letter are the instructions for preparation and submission of the attached *Compensation Review Data Request Form* and accompanying certification. A template for completion of the *Form* and certification are also attached. The information requested on this *Form* will be used by the Office of the Special Master in conducting the review required by Section 111(f) of EESA and Section 30.16(a)(2) of the Rule. A complete list of TARP recipients subject to this review is enclosed.

As noted in the enclosed instructions, compensation data is not required for those Covered Employees with "annual compensation" of \$500,000 or less. (The term "annual compensation" is defined in Section 30.1 of the Rule and explained in the attached instructions.) The Special Master has determined that payments to these employees are highly unlikely to be inconsistent with the public interest. Therefore, you need not provide compensation data for these Covered Employees, but you must still submit a signed certification. Please see the enclosed instructions for additional details.

You must confirm receipt of the attached material by sending an electronic mail message to SpecialMasterReview@do.treas.gov no later than April 6, 2010. You must submit the required data and/or a certification to the Office of the Special Master no later than April 22, 2010. You must include your U.S. Treasury ID number (UST#) on all submissions and correspondence. Questions regarding this data request should be directed to the Office of the Special Master at SpecialMasterReview@do.treas.gov or 202-622-1706.

Sincerely,

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Enclosures

Appendix - Institution Listing

1st Constitution Bancorp
1st Enterprise Bank
1st FS Corporation
1st Source Corporation
AB&T Financial Corporation
Adbanc, Inc.
Alarion Financial Services, Inc.
Alaska Pacific Bancshares, Inc.
Alliance Financial Corporation
AMB Financial Corporation
American Express Company
American International Group, Inc (AIG)
American State Bancshares
Ameris Bancorp
AmeriServ Financial, Inc
Anchor Bancorp Wisconsin, Inc.
Annapolis Bancorp, Inc.
Associated Banc-Corp
Bancorp Rhode Island, Inc.
BancTrust Financial Group, Inc.
Bank of America Corporation
Bank of Commerce
Bank of Commerce Holdings
Bank of Marin Bancorp
Bank of the Ozarks, Inc.
Bankers' Bank of the West Bancorp, Inc.
BankFirst Capital Corporation
BankGreenville Financial Corporation
Banner Corporation
Banner County Banc Corporation
Bar Harbor Bankshares
BB&T Corp.
BCSB Bancorp, Inc.
Beach Business Bank
Berkshire Hills Bancorp, Inc.
Bern Bancshares, Inc.
Blue Valley Banc Corp
BNC Bancorp
BNCCORP, Inc.
Boston Private Financial Holdings Inc.
Bridge Capital Holdings
Bridgeview Bancorp, Inc.
Broadway Financial Corporation
C&F Financial Corporation
Cache Valley Banking Company
Cadence Financial Corporation
California Oaks State Bank
Calvert Financial Corporation
Calwest Bancorp
Capital Bancorp, Inc.
Capital Bank Corporation
Capital One Financial Corporation
Capital Pacific Bancorp
Carolina Bank Holdings, Inc.
Carolina Trust Bank
Carrollton Bancorp
Carver Bancorp, Inc.
Cascade Financial Corporation
Cathay General Bancorp
Cecil Bancorp, Inc.
CedarStone Bank
Center Bancorp, Inc.
Center Financial Corporation
Centerstate Banks of Florida Inc.
Centra Financial Holdings, Inc.
Central Bancorp, Inc.
Central Bancshares, Inc.
Central Federal Corporation
Central Jersey Bancorp
Central Pacific Financial Corp.
Central Valley Community Bancorp
Central Virginia Bankshares, Inc.
Centrix Bank & Trust
Centrue Financial Corporation
Chrysler Financial
Chrysler Group LLC
CIT Group Inc.
Citigroup Inc.
Citizens & Northern Corporation
Citizens Bancorp
Citizens Commerce Bancshares, Inc.
Citizens Community Bank
Citizens First Corporation
Citizens Republic Bancorp, Inc.
Citizens South Banking Corporation
City National Corporation
Coastal Banking Company, Inc.
CoBiz Financial Inc.
Codus Valley Bancorp, Inc.
ColoEast Bankshares, Inc.
Colony Bancorp, Inc.
Columbia Banking System Inc.
Comerica Inc.
Commerce National Bank
Commonwealth Business Bank
Community 1st Bank
Community Bank of the Bay
Community Bankers Trust Corporation
Community Financial Corporation
Community Holding Company of Florida, Inc.
Community Investors Bancorp, Inc.
Community Partners Bancorp
Community Trust Financial Corporation
Community West Bancshares
Congaree Bancshares, Inc.
Corning Savings and Loan Association
Country Bank Shares, Inc.
Crescent Financial Corporation
Crosstown Holding Company
CVB Financial Corp
DeSoto County Bank
Dickinson Financial Corporation II

Appendix – Institution Listing

DNB Financial Corporation
Eagle Bancorp, Inc.
East West Bancorp
Eastern Virginia Bankshares, Inc.
ECB Bancorp, Inc.
Emelaire Financial Corp.
Encore Bancshares Inc.
Enterprise Financial Services Corp.
Equity Bancshares, Inc.
Exchange Bank
F & M Bancshares, Inc.
F & M Financial Corporation
F&M Financial Corporation
F.N.B. Corporation
Farmers Bank
Farmers Capital Bank Corporation
FCB Bancorp, Inc.
FFW Corporation
Fidelity Bancorp, Inc.
Fidelity Financial Corporation
Fidelity Southern Corporation
Fifth Third Bancorp
Financial Institutions, Inc.
Financial Security Corporation
First Bancorp
First BanCorp
First Bank of Charleston, Inc.
First Bankers Trustshares, Inc.
First Banks, Inc.
First California Financial Group, Inc
First Choice Bank
First Citizens Banc Corp
First Community Bank Corporation of America
First Community Bankshares Inc.
First Community Corporation
First Defiance Financial Corp.
First Express of Nebraska, Inc.
First Financial Bancorp
First Financial Holdings Inc.
First Financial Service Corporation
First Horizon National Corporation
First Litchfield Financial Corporation
First Manitowoc Bancorp, Inc.
First Menasha Bancshares, Inc.
First Midwest Bancorp, Inc.
First Niagara Financial Group
First PacTrust Bancorp, Inc.
First Resource Bank
First Security Group, Inc.
First Sound Bank
First Southern Bancorp, Inc.
First ULB Corp.
First United Corporation
First Western Financial, Inc.
Firstbank Corporation
FirstMerit Corporation
Flagstar Bancorp, Inc.
Flushing Financial Corporation
FNB United Corp.
FPB Bancorp, Inc.
FPB Financial Corp
Fresno First Bank
Fulton Financial Corporation
General Motors
Georgia Commerce Bancshares, Inc.
GMAC
Goldwater Bank, N.A.
GrandSouth Bancorporation
Great Southern Bancorp
Green Bankshares, Inc.
Greer Bancshares Incorporated
Gregg Bancshares, Inc.
Guaranty Federal Bancshares, Inc.
Hampton Roads Bankshares, Inc.
Hawthorn Bancshares, Inc.
Heartland Financial USA, Inc.
Heritage Commerce Corp.
Heritage Financial Corporation
HF Financial Corp
Hilltop Community Bancorp, Inc.
HMN Financial, Inc.
Home Bancshares, Inc.
Hometown Bancshares, Inc.
HopFed Bancorp
Horizon Bancorp
Huntington Bancshares
Hyperion Bank
Iberiabank Corporation
Idaho Bancorp
Independence Bank
Independent Bank Corp.
Independent Bank Corporation
Indiana Community Bancorp
Intermountain Community Bancorp
International Bancshares Corporation
Interwest Bancshares Corporation
JP Morgan Chase & Co.
Katahdin Bankshares Corp.
KeyCorp
Lakeland Bancorp, Inc.
LCNB Corp.
Leader Bancorp, Inc.
Legacy Bancorp, Inc.
Liberty Bancshares, Inc. (Jonesboro, AR)
Liberty Bancshares, Inc. (Springfield, MO)
Liberty Financial Services, Inc.
LNB Bancorp Inc.
Lone Star Bank
LSB Corporation
M&T Bank Corporation
Magna Bank
MainSource Financial Group, Inc.

Appendix -- Institution Listing

Manhattan Bancorp
Marquette National Corporation
Marshall & Ilsley Corporation
MB Financial Inc.
Mercantile Capital Corp.
Meridian Bank
Metro City Bank
MetroCorp Bancshares, Inc.
Mid Penn Bancorp, Inc.
Middleburg Financial Corporation
Midland States Bancorp, Inc.
MidSouth Bancorp, Inc.
Midwest Banc Holdings, Inc.
Midwest Regional Bancorp, Inc.
MidWestOne Financial Group, Inc.
Mission Community Bancorp
Mission Valley Bancorp
Monadnock Bancorp, Inc.
Monarch Community Bancorp, Inc.
Monarch Financial Holdings, Inc.
Monument Bank
Morgan Stanley
Morrill Bancshares, Inc.
Moscow Bancshares, Inc.
MutualFirst Financial, Inc.
Nara Bancorp, Inc.
National Penn Bancshares, Inc.
NCAI Bancorp
New Hampshire Thrift Bancshares, Inc.
New York Private Bank & Trust Corporation
NewBridge Bancorp
Nicolet Bankshares, Inc.
North Central Bancshares, Inc.
Northeast Bancorp
Northern Trust Corporation
Northway Financial, Inc.
Northwest Bancorporation, Inc.
Northwest Commercial Bank
Oak Ridge Financial Services, Inc.
Oak Valley Bancorp
OceanFirst Financial Corp.
Ojai Community Bank
Old Line Bancshares, Inc.
Old National Bancorp
Old Second Bancorp, Inc.
OneUnited Bank
Pacific Capital Bancorp
Pacific City Financial Corporation
Pacific Coast Bankers' Bancshares
Pacific Coast National Bancorp
Pacific Commerce Bank
Pacific International Bancorp
Park National Corporation
Parke Bancorp, Inc.
Parkvale Financial Corporation
Pascack Community Bank
Patapasco Bancorp, Inc.
Patriot Bancshares, Inc.
Peapack-Gladstone Financial Corporation
Peninsula Bank Holding Co.
Peoples Bancorp
Peoples Bancorp Inc.
Peoples Bancorp of North Carolina, Inc.
PGB Holdings, Inc.
Pierce County Bancorp
Pinnacle Financial Partners, Inc.
Plains Capital Corporation
Plumas Bancorp
Popular, Inc.
Porter Bancorp, Inc.
PremierWest Bancorp
Princeton National Bancorp, Inc.
PrivateBancorp, Inc.
Puget Sound Bank
Pulaski Financial Corp
QCR Holdings, Inc.
Redwood Capital Bancorp
Redwood Financial, Inc.
Regional Bankshares, Inc.
Regions Financial Corp.
Reliance Bancshares, Inc.
Rising Sun Bancorp
Rogers Bancshares, Inc.
S&T Bancorp
Saigon National Bank
Sandy Spring Bancorp, Inc.
Santa Clara Valley Bank, N.A.
Santa Lucia Bancorp
SCBT Financial Corporation
Seacoast Banking Corporation of Florida
Seacoast Commerce Bank
Security Bancshares of Pulaski County, Inc.
Security Business Bancorp
Security California Bancorp
Security Federal Corporation
Severn Bancorp, Inc.
Shore Bancshares, Inc.
Signature Bank
Somerset Hills Bancorp
Sound Banking Company
South Financial Group, Inc.
Southern Bancorp, Inc.
Southern Community Financial Corp.
Southern Illinois Bancorp, Inc.
Southern Missouri Bancorp, Inc.
Southwest Bancorp, Inc.
State Bancorp, Inc.
State Bankshares, Inc.
State Capital Corporation
State Street Corporation
StellarOne Corporation
Sterling Bancorp

Appendix – Institution Listing

Sterling Bancshares, Inc.
Sterling Financial Corporation
Stewardship Financial Corporation
Stockmens Financial Corporation
Stonebridge Financial Corp.
Summit State Bank
Sun Bancorp, Inc
SunTrust Banks, Inc.
Superior Bancorp Inc.
Surrey Bancorp
Susquehanna Bancshares, Inc
SVB Financial Group
Synovus Financial Corp.
Syringa Bancorp
Taylor Capital Group
TCB Holding Company, Texas Community Bank
TCF Financial Corporation
TCNB Financial Corp
Tennessee Commerce Bancorp, Inc.
Tennessee Valley Financial Holdings, Inc.
Texas Capital Bancshares, Inc.
Texas National Bancorporation
The Bancorp, Inc.
The Bank of Currituck
The Bank of Kentucky Financial Corporation
The Bank of New York Mellon Corporation
The Baraboo Bancorporation
The Connecticut Bank and Trust Company
The Elmira Savings Bank, FSB
The First Bancorp, Inc.
The First Bancshares, Inc.
The Freeport State Bank
The Goldman Sachs Group, Inc.
The Little Bank, Incorporated
The PNC Financial Services Group Inc.
The Queensborough Company
Three Shores Bancorporation, Inc
TIB Financial Corp
Tidelands Bancshares, Inc
Timberland Bancorp, Inc.
Todd Bancshares, Inc.
TowneBank
Treaty Oak Bancorp, Inc.
Tri-County Financial Corporation
Trustmark Corporation
U.S. Bancorp
UBT Bancshares, Inc.
UCBH Holdings, Inc.
Umpqua Holdings Corp.
Union First Market Bankshares Corporation
United Bancorp, Inc.
United Bancorporation of Alabama, Inc.
United Community Banks, Inc.
United Financial Banking Companies, Inc.
Unity Bancorp, Inc.
US Metro Bank
Uwharrie Capital Corp
Valley Commerce Bancorp
Valley Community Bank
Valley Financial Corporation
Valley National Bancorp
Virginia Commerce Bancorp
VIST Financial Corp.
W.T.B. Financial Corporation
Wainwright Bank & Trust Company
Washington Banking Company
Washington Federal Inc.
WashingtonFirst Bankshares, Inc
Webster Financial Corporation
Wells Fargo & Company
Wesbanco Bank Inc.
West Bancorporation, Inc.
Westamerica Bancorporation
Western Alliance Bancorporation
Western Community Bancshares, Inc.
Western Illinois Bancshares Inc.
Whitney Holding Corporation
Wilmington Trust Corporation
Wilshire Bancorp, Inc.
Wintrust Financial Corporation
WSPS Financial Corporation
Yadkin Valley Financial Corporation
Zions Bancorporation

OFFICE OF THE SPECIAL MASTER FOR TARP EXECUTIVE COMPENSATION

COMPENSATION REVIEW DATA REQUEST FORM INSTRUCTIONS

These *Instructions* are designed to aid recipients of financial assistance under the Troubled Asset Relief Program (“TARP”) created under the Emergency Economic Stabilization Act of 2008, as amended (“EESA”), in completing the *Compensation Review Data Request Form* and accompanying certification. The *Instructions* refer frequently to the Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), *see* 31 C.F.R. Part 30, a copy of which may be found on the Office of Financial Stability Website at www.financialstability.gov.¹ You may find it useful to refer to a copy of the Rule while reading through the *Instructions*.

As explained in Section 3 of the *Instructions*, compensation data generally are not required for employees with “annual compensation” (as defined in Section 30.1 of the Rule) of \$500,000 or less. We anticipate that some TARP recipients will have no employees with annual compensation in excess of \$500,000. These TARP recipients may comply with this data request by submitting a signed copy of the certification provided in Attachment A. Please see Section 3 of the *Instructions* below for additional information.

The *Instructions* and the Rule should provide you with all the information necessary to complete and submit the *Form* and accompanying certification. Should you have questions about the *Form*, please contact the Office of the Special Master for TARP Executive Compensation via email at SpecialMasterReview@do.treas.gov or via telephone at 202-622-1706. We recommend that you contact the Office of the Special Master by email.

SECTION 1: INTRODUCTION

Section 111(f) of EESA requires the Secretary of the Treasury to review all bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most-highly compensated employees of each TARP recipient (the “Covered Employees”) between the date the TARP recipient first received financial assistance and February 17, 2009 (the “Review Period”). This requirement applies to all TARP recipients, including those recipients who have repaid all or any portion of the financial assistance they received under TARP.

Under the Rule, the Special Master for TARP Executive Compensation (the “Special Master”) has the authority to conduct the review prescribed by Section 111(f) of EESA.

¹ Click on “About” in the upper left-hand corner of the home page, then scroll down and click on the second link from the bottom, “Executive Compensation Guidance,” then click the link, which brings you to “Executive Compensation,” scroll to “Additional Resources” and you will see the link to the “Interim Final Rule.”

31 C.F.R. § 30.16(a)(2). The Rule authorizes the Special Master to request in writing any information from TARP recipients necessary to carry out the review, and TARP recipients must submit any requested information to the Special Master within 30 days of the request. *Id.* The Rule also provides that if, based on this review, the Special Master determines that the payment of a bonus, retention award, and other compensation was inconsistent with Section 111(f) of EESA or TARP, or was otherwise contrary to the public interest, then the Special Master shall have responsibility for negotiating with the TARP recipient and the subject employee for appropriate reimbursements to the federal government with respect to such payment. *Id.*

To facilitate this review, the Special Master requires that you provide compensation data in the attached *Compensation Review Data Request Form* and submit a signed certification. Compensation data are not required, however, for those Covered Employees with “annual compensation” (as defined in Section 30.1 of the Rule) of \$500,000 or less in each of the fiscal years covered by the Review Period. If a Covered Employee received annual compensation that fell below this threshold amount in each of the applicable fiscal years, then he or she is an “Excluded Employee” for purposes of this data request, and you are not required to submit compensation data for that employee. However, you must still submit a signed certification. Given this compensation threshold, we anticipate that many TARP recipients will be able to comply with this data request by filing a single certification and providing no additional information. Please see Section 3 of the *Instructions* below for additional information regarding Excluded Employees and the \$500,000 threshold.

Regardless of whether you are required to provide compensation data in the *Form*, you must file a signed certification indicating the number of the Covered Employees with annual compensation of more than \$500,000 in any fiscal year covered by the Review Period (even if there are no Covered Employees with that much annual compensation). See Sections 2 and 3 of the *Instructions* below for additional information regarding this requirement. A model certification also is provided as Attachment A to the *Instructions*. Please note that the certification provided in Attachment A must be signed by the TARP recipient’s chief executive officer and either the chairman of the board’s compensation committee or, where a compensation committee is not established, a member of the board (other than the TARP recipient’s chief executive officer).

SECTION 2: DETERMINATION OF COVERED EMPLOYEES

The compensation review relates only to Covered Employees—those individuals who were “senior executive officers” and the next 20 “most-highly compensated employees” (each as defined in Section 30.1 of the Rule) of the TARP recipient in any fiscal year covered by the Review Period, which begins on the date on which the TARP recipient first received financial assistance and ends on February 17, 2009. Because Covered Employees are determined under the Rule by reference to a fiscal year, you may need to compile two lists of Covered Employees depending on your fiscal year end-date and when you first received TARP financial assistance. See Section 30.3 of the Rule for instructions regarding how to determine “senior executive officers” and “most-highly compensated employees.” The following examples illustrate the determination of Covered Employees for purposes of this compensation review:

Example 1: TARP Recipient A uses a calendar fiscal year and first received TARP financial assistance on November 1, 2008. The Review Period for TARP Recipient A therefore spans the company's 2008 and 2009 fiscal years. For purposes of this data request, TARP Recipient A must compile a list of Covered Employees for its 2008 fiscal year and a separate list of Covered Employees for its 2009 fiscal year. Compensation data for the full Review Period must be provided for each Covered Employee whose name appears on either list, except for the Excluded Employees, as described in Section 3 below.

Example 2: Same facts as Example 1, except that TARP Recipient A first received financial assistance on January 15, 2009. In this case, the entire Review Period (from January 15, 2009 to February 17, 2009) is encompassed by the company's 2009 fiscal year. Therefore, TARP Recipient A need only compile a single list of Covered Employees for that fiscal year.

Example 3: TARP Recipient B uses a fiscal year that ends November 30th of each year. Its 2008 fiscal year began on December 1, 2007, and ended on November 30, 2008. The company first received TARP assistance on November 1, 2008. In this case, the Review Period spans two fiscal years—2008 and 2009—and TARP Recipient B must compile separate lists of Covered Employees for its 2008 and 2009 fiscal years. Compensation data must be provided for the full Review Period for each Covered Employee on either list, except for the Excluded Employees, as described in Section 3 below.

Example 4: Same facts as Example 3, except that the company's fiscal year ends June 30th of each year. In this case, the entire Review Period is encompassed by the company's 2009 fiscal year (i.e., the period from July 1, 2008 to June 30, 2009). Therefore, TARP Recipient B need only compile a single list of Covered Employees for that fiscal year.

In sum, you must compile a list of Covered Employees for each fiscal year any part of which falls within the Review Period. If the Review Period spans two fiscal years, then this process will result in two separate lists (although some employees may be on both lists). Except for the Excluded Employees, as described in Section 3 below, you must include information in the *Compensation Review Data Request Form* for each individual included on your list (or lists) of Covered Employees. Hence, you may be required to submit compensation data for more than 25 individuals. You must also file a signed certification indicating the number of Covered Employees for whom data are being submitted.

SECTION 3: DETERMINATION OF EXCLUDED EMPLOYEES

As noted in Section 1, compensation data are not required for Excluded Employees—those Covered Employees who earned \$500,000 or less in “annual compensation” during each fiscal year within the Review Period. The term “annual compensation” is defined in Section 30.1 of the Rule to mean the dollar value of total compensation for the applicable fiscal year as determined pursuant to Item 402(a) of Regulation S-K under the federal securities laws, 17

C.F.R. § 229.402(a), which generally includes salary, bonus, stock awards, option awards, non-equity incentive plan compensation, and all other compensation.

If your Review Period spans two fiscal years, then a Covered Employee must have received \$500,000 or less in “annual compensation” in each of those fiscal years to be an Excluded Employee. The following example illustrates the determination of Excluded Employees for purposes of this compensation review:

Example 1: Suppose TARP Recipient C uses a calendar year fiscal year and first received TARP financial assistance on December 1, 2008. If a Covered Employee received annual compensation of \$450,000 and \$550,000 for fiscal years 2008 and 2009, respectively, then that Covered Employee is not an Excluded Employee, and therefore TARP Recipient C must provide compensation data for that Covered Employee during the entire Review Period. That is, as explained in Section 4 below, TARP Recipient C must provide compensation data with respect to the Covered Employee for both fiscal years 2008 and 2009.

If one or more Covered Employees had annual compensation that fell below the \$500,000 threshold for all fiscal years included in the Review Period, then those Covered Employees are Excluded Employees and you are not required to provide compensation data for those Covered Employees. However, you must still submit a signed certification. TARP recipients with some Covered Employees above the \$500,000 threshold and others who are below the threshold (and therefore are Excluded Employees) must provide compensation data for Covered Employees above the threshold and submit a certification identifying the number of Covered Employees above the threshold. A model certification is provided in Attachment A to these *Instructions* for your use.

We anticipate that some TARP recipients will have no Covered Employees with annual compensation in excess of \$500,000 for each of the fiscal years covered by the Review Period. These TARP recipients may comply with this data request by submitting a single certification. Please note that the certification provided in Attachment A must be signed by the TARP recipient’s chief executive officer and either the chairman of the board’s compensation committee or, where a compensation committee is not established, a member of the board (other than the chief executive officer).

SECTION 4: COMPLETION OF COMPENSATION REVIEW DATA REQUEST FORM

The *Compensation Review Data Request Form* consists of one spreadsheet with three separate tabs:

- Tab 1: Company Information
- Tab 2: Covered Employees
- Tab 3: Payments to Covered Employees

These tabs contain multiple data elements, each of which are described below. If all the Covered Employees at your company are Excluded Employees, you will not complete and submit the *Compensation Review Data Request Form*. Instead, you will submit only a certification indicating that all the Covered Employees are Excluded Employees.

TAB 1: COMPANY INFORMATION

This tab requests information about your company, and about the number of Covered Employees for whom you will provide detailed compensation information. Please note that the term “fiscal year 2008” means the fiscal year ending in calendar year 2008, while the term “fiscal year 2009” means the fiscal year ending in calendar year 2009. Please provide:

1. *UST #*: This is the number assigned by the Treasury Department upon receipt of TARP financial assistance.
2. *Institution Name*: This is the name of the institution that received TARP financial assistance.
3. *Contact Person Name*.
4. *Contact Person Phone*.
5. *Contact Person Email*.
6. *2008 Covered Employees*: If your Review Period began in fiscal year 2008 (i.e., the fiscal year ending in calendar year 2008), include the number of Covered Employees with more than \$500,000 in annual compensation for fiscal year 2008. See Section 3 above for the definition of “annual compensation.” If your Review Period began in fiscal year 2009, please enter “0.”
7. *2008 Excluded Employees*: If your Review Period began in fiscal year 2008, include the number of Covered Employees with \$500,000 or less in annual compensation for fiscal year 2008. See Section 3 above for the definition of “annual compensation.” If your Review Period began in fiscal year 2009, please enter “0.”
8. *2009 Covered Employees*: Include the number of Covered Employees with more than \$500,000 in “annual compensation” for fiscal year 2009 (i.e., the fiscal year ending in calendar year 2009). See Section 3 above for the definition of “annual compensation.”
9. *2009 Excluded Employees*: Include the number of Covered Employees with \$500,000 or less in “annual compensation” for fiscal year 2009. See Section 3 above for the definition of “annual compensation.”

TAB 2: COVERED EMPLOYEES

This tab requests information about the Covered Employees at your company who are not Excluded Employees. No information should be entered on Tab 2 for Excluded Employees. See

Section 3 above for information on how to determine whether a Covered Employee is an Excluded Employee. Please note that the term “fiscal year 2008” means the fiscal year ending in calendar year 2008, while the term “fiscal year 2009” means the fiscal year ending in calendar year 2009.

For each Covered Employee who is not an Excluded Employee, please provide:

1. *UST #*: This is the number assigned by the Treasury Department upon receipt of TARP funding.
2. *EEID*: Provide a unique employee identification number. Please use a number you create for the purpose of this review, rather than a number that is already linked to personally identifiable information with respect to the employee. **This identifier should NOT be the employee’s social security number or company employee ID number.**
3. *Employee Last Name*
4. *Employee First Name*
5. *2007 Employee Title*: Provide the employee’s title at the beginning of fiscal year 2007 (i.e., the fiscal year ending in calendar year 2007), or enter “NA” if he or she was not employed as of that date.
6. *2007 Annual Compensation*: If your Review Period began in fiscal year 2007 (i.e., a fiscal year ending in 2007), provide the employee’s annual compensation for fiscal year 2007. This is the same annual compensation used to determine 2008 Covered Employees pursuant to the Rule. See Section 3 above for the definition of “annual compensation.”
7. *2008 Employee Title*: Provide the employee’s title at the beginning of fiscal year 2008 (i.e., the fiscal year ending in calendar year 2008), or enter “NA” if he or she was not employed as of that date.
8. *2008 Classification*: Using the pull-down menu, select the employee’s classification during the 2008 fiscal year (i.e., either a “senior executive officer” (SEO) or “most-highly compensated employee” (MHCE)). If your Review Period did not begin in fiscal year 2008, or if the employee was a Covered Employee in fiscal year 2009 but not fiscal year 2008, select “NA.”
9. *2008 Annual Compensation*: If your Review Period began in fiscal year 2008 (i.e., a fiscal year ending in 2008), provide the employee’s annual compensation for fiscal year 2008. See Section 3 above for the definition of “annual compensation.” You must enter 2008 annual compensation for each employee listed, even if a particular employee was only a Covered Employee for fiscal year 2009.

10. *2009 Employee Title:* Provide the employee's title at the beginning of fiscal year 2009 (i.e., the fiscal year ending in calendar year 2009), or enter "NA" if he or she was not employed as of that date.
11. *2009 Classification:* Using the pull-down menu, select the employee's classification during the 2009 fiscal year (i.e., "senior executive officer" (SEO) or "most-highly compensated employee" (MHCE)). If the employee was a Covered Employee in 2008 but not 2009, select "NA."
12. *2009 Annual Compensation:* Provide the employee's annual compensation for fiscal year 2009. See Section 3 above for the definition of "annual compensation." You must enter 2009 annual compensation for each employee listed, even if a particular employee was only a Covered Employee for fiscal year 2008.
13. *Termination Date:* For a Covered Employee who is no longer an employee of your company, provide the date on which his or her employment terminated.

TAB 3: PAYMENTS

This tab requests information on payments made to the Covered Employees listed on Tab 2. Information must be provided on each payment made during the entire Review Period to those Covered Employees, even if an individual was not a Covered Employee during the entire Review Period. The following example illustrates the payments to be disclosed for each Covered Employee listed on Tab 2:

Example 1: TARP Recipient D uses a calendar year fiscal year and first received TARP financial assistance on December 1, 2008. If a Covered Employee received annual compensation of \$450,000 and \$550,000 for fiscal years 2008 and 2009, respectively, then the employee must be included in the compensation review. Moreover, TARP Recipient D must provide in Tab 3 information regarding each payment or award made to the Covered Employee during the entire Review Period (i.e., the period from December 1, 2008 to February 17, 2009).

For purposes of the *Compensation Review Data Request Form*, a "payment" to a Covered Employee is intended to include every payment of compensation or right to future compensation delivered or granted to a Covered Employee during the Review Period. This means that, in addition to information on actual delivery of cash or stock, information must be provided on awards of restricted stock or stock options, grants under cash-based incentive plans, severance packages resulting from a termination, the acceleration of any vesting requirements, and deferrals or other promises to pay, such as credits to supplemental executive retirement plans.

For each payment made during the Review Period to a Covered Employee listed on Tab 2, there are several required data points, which are described below. Note that each row in Tab 3 should represent a single payment or award made to a Covered Employee during the Review Period. Because multiple payments will have been made to each Covered Employee, multiple rows will be needed for each Covered Employee. Following the descriptions are examples intended to provide guidance on how to report various types of compensation.

1. *UST #*: This is the number assigned by the Treasury Department upon receipt of TARP funding.
2. *EEID*: Use the same unique employee identification number used in Item 2 of Tab 2 above.
3. *Payment or Award Date*: Provide the date on which the Covered Employee, as applicable, received actual payment, was granted a new award, or became entitled to a future payment.
4. *Frequency of Payment*: Using the pull-down menu, select the item that best describes the relative frequency with which payments/awards of this nature are made. For example, if the line item is an annual bonus payment, select “*Annual*.” If the line item is a regular, bi-weekly salary payment, select “*Bi-weekly*.”
5. *Compensation Element*: Select from the pull-down menu the item that best describes this payment or award.
 - *Salary*: Any payment, whether in cash or some other form, to a Covered Employee for services performed by the employee at a regular bi-weekly, monthly, annual, or similar periodic rate.
 - *Incentive*: Any “bonus payment” as defined under Section 30.1 of the Rule, which generally includes all bonuses, stock awards, option awards, non-equity incentive awards, and retention awards. Any of the following should be reported as a payment of an *Incentive* during the Review Period: cash payment or deferral of an amount earned under an annual or longer-term incentive program; vesting of previously granted equity awards; grants of equity- or cash-based incentives, whether or not these require future service or performance; entry into an agreement that provides a legally binding right to a fixed or minimum payment in the future, such as a retention agreement or bonus guarantee. The preceding list is not intended to be exclusive, but provides examples of payments that must be reported as the payment of an *Incentive*.
 - *Severance*: Any “golden parachute payment,” as defined in Section 30.1 of the Rule. In general, a severance payment includes any payment or award made to a Covered Employee for the departure from the TARP recipient for any reason other than death or disability, or any payment due to a change in control of the TARP recipient, other than payments for services performed and benefits accrued. Report as *Severance* both payments that actually were made to Covered Employees during the Review Period, and also payments that were triggered by a termination of employment during the Review Period. Each component of a Covered Employee’s overall severance package, if any, should be reported as a separate payment, with a brief description of the payment’s characteristics in the *Notes* column.
 - *Nonqualified Deferred Compensation (NQDC)*: Any amount accrued, credited to, or set aside for a Covered Employee under a “deferred compensation plan” as defined under Section 30.1 of the Rule, or an amount paid out to a Covered Employee from a deferred compensation plan. The *NQDC* description should not be used for salary, incentive, or severance payments that were earned, vested or triggered during the Review Period, but

for which payment was deferred rather than paid currently. Those payments should instead be labeled using the applicable compensation element, with the deferral reflected in the *Timing* column. Examples of payments that should be labeled as *NQDC* in this column are credits to a supplemental executive retirement program, or the regular or accelerated payment of an amount under a previously existing deferred compensation arrangement. The preceding list is not intended to be exclusive, but provides examples of payments that must be reported as the payment of *NQDC*.

- *Other*: Any “perquisites” as defined in Section 30.1 of the Rule and “other” compensation that is not described accurately using the any of the above elements, such as tax gross-ups, relocation costs, or expatriate expenses. Do not report credits or contributions to any qualified retirement plan (as defined in Section 4974(c) of the Internal Revenue Code), benefits under a broad-based employee benefit plan (such as group health or life insurance plans), or bona fide and routine expense reimbursements payable pursuant to company policy, all of which are being excluded from this data request.
6. *Incentive Description*: If the compensation element is an incentive payment or award, or a portion of a severance payment related to an incentive program, select from the pull-down menu the type or plan or arrangement that best describes the type of incentive. If the compensation element is not an incentive payment or award, select “NA.”
- *Annual Plan*.
 - *Long-term Plan*.
 - *Retention Plan*.
 - *Sign-On*: Any incentive grant related to the commencement of employment, including a “buy out” of forfeited awards granted by the employee’s former employer.
 - *Other*.
7. *Form of Compensation*: Select from the pull-down menu the form in which the compensation was paid or awarded.
- *Cash*.
 - *Equity*.
 - *Other*: Provide any necessary explanation or detail in the “Notes” column. Payments delivered in a form reportable as “other” will generally include perquisites or other benefits paid in-kind, such as outplacement services provided as part of a severance package.
8. *Timing*: Select from the pull-down menu the item that best describes the timing of the payment or award.
- *Current*: The payment or award was paid and resulted in taxable income during the Review Period, regardless of when it was earned, accrued or granted.

- *Deferred (fully vested)*: The payment or award, when made, is not subject to a substantial risk of forfeiture (as defined in 26 C.F.R. § 1–83(c)), and is not payable or redeemable until some future date.
- *Deferred (subject to forfeiture)*: The payment or award, when made, is subject to a substantial risk of forfeiture (as defined in 26 C.F.R. § 1–83(c)), and is not payable or redeemable until some future date.

If the timing of the delivery differs for portions of a payment, please enter each portion as a separate payment.

9. *Amount*: Provide the gross amount of the payment, deferral or award detailed on this line. Grants of equity based awards during the Review Period should be recorded at their aggregate grant date value, as determined pursuant to Item 402(a) of Regulation S-K under the federal securities laws (as amended effective February 28, 2010). Grants of cash-based awards during the Review Period should be recorded at their target value, unless they have a guaranteed minimum amount, in which case the guaranteed amount should be reported.
10. *Notes*: Provide any additional information necessary for the Special Master to understand the context in which the payment or award was made, such as the vesting conditions, if any, of an equity award, the length of service required to earn a retention payment, or the date on which a deferred payment will be received.

Example 1: TARP Recipient E uses a calendar year fiscal year and first received TARP financial assistance on November 15, 2008. On December 31, 2008, a Covered Employee employed by TARP Recipient E (i) was credited with three months of service under the company’s supplemental executive retirement plan (the “SERP”). Under the SERP, benefits are subject to forfeiture until an employee satisfies age and service requirements, which the Covered Employee will not reach for several years.

On January 16, 2009, the Covered Employee received (ii) a regular, bi-weekly salary payment. On January 30, 2009, the Covered Employee received (iii) another regular, bi-weekly salary payment, (iv) a cash payment equal to the value of 100 shares of company stock resulting from the annual partial vesting of a restricted stock unit award from a previous year under the company’s long-term equity plan, (v) a portion of an annual bonus paid in cash, (vi) a portion of an annual bonus paid in a fixed number of fully-vested stock units, which will result in a future cash payment equal to the value of the underlying company shares, and (vii) a retention agreement under which the Covered Employee is entitled to \$1,000 payable in cash in 18 months, provided the employee remains employed through the date of payment.

These facts result in seven payments for the Covered Employee, which TARP Recipient E must report as follows:

- (i) The SERP credit is reported, with a *Payment or Award Date* of December 31, 2008, as a *Quarterly* payment of *NQDC*. The *Timing* of the credit is reported as *Deferred (subject to forfeiture)*. The *Amount* of the payment is the increase in the

actuarial present value of the Covered Employee's SERP benefit resulting from the credit. If TARP Recipient E does not have existing data on the value of the credit or ready access to such data, it may report a good faith estimate of the value as the *Amount*.

- (ii) The first salary payment is reported, with a *Payment or Award Date* of January 16, 2009, as a *Bi-weekly* payment of *Salary*. The *Timing* of the payment is reported as *Current*. The *Amount* is the gross amount of the salary payment, without regard to any tax withholding, elective deferrals to a tax-qualified retirement plan, or contributions by the Covered Employee to group health or other employee benefit plan.
- (iii) The second salary payment is reported in the same manner as the previous salary payment, but as a separate entry with a *Payment or Award Date* of January 30, 2009.
- (iv) The vesting and payment of the restricted stock units are reported, with a *Payment or Award Date* of January 30, 2009, as an *Award Annual* payment of an *Incentive* with an *Incentive Description* of *Long-term Plan*. Although the payment relates to restricted stock units, because cash was delivered rather than stock, the *Form of Compensation* is *Cash*. The *Timing* of the payment is reported as *Current*. The *Amount* is the gross amount of the payment.
- (v) The cash portion of the Covered Employee's annual bonus is reported, with a *Payment or Award Date* of January 30, 2009, as an *Annual* payment of an *Incentive* with an *Incentive Description* of *Annual Plan*. The *Timing* of the payment is reported as *Current*. The *Amount* is the gross amount of the cash portion of the annual bonus.
- (vi) The stock unit portion of the Covered Employee's annual bonus is reported as a separate payment from the portion paid currently in cash described in (v) above. The *Payment or Award Date*, *Frequency of Payment*, *Compensation Element* and *Incentive Description* are the same as for the cash portion of the annual bonus. Although the payment will eventually be delivered in cash, because its value during the deferral period is tied to company stock, the *Form of Compensation* is *Equity*. The *Timing* of the payment is reported as *Deferred (fully vested)*. The *Amount* is the gross amount of the portion of the annual bonus allocated to stock units.
- (vii) The retention agreement is reported, with a *Payment or Award Date* of January 30, 2009, as a *One-time* payment of an *Incentive*, with an *Incentive Description* of *Retention Plan*. The *Timing* of the payment is reported as *Future (subject to risk of forfeiture)*. The *Amount* is \$1,000, and the form is *Cash*.

Example 2: TARP Recipient F uses a calendar year fiscal year and first received TARP financial assistance on December 1, 2008. TARP Recipient F terminated a Covered Employee's employment without "cause" on December 3, 2008. As a result of the termination, the Covered Employee becomes entitled to two years of salary continuation paid on regularly-scheduled

payroll dates. TARP Recipient F must report the payments resulting from the termination of Covered Employee's employment as follows.

Each salary continuation payment actually made during the Review Period is reported in its own row on Tab 3. In addition, the aggregate value of the salary continuation payments made after the Review Period is reported in a single row. The remaining salary continuation payments, which were triggered during the Review Period but only payable after the end of the Review Period, are reported using the termination of employment date in the *Payment or Award Date* column, and an appropriate selection in the *Timing* column, depending on whether the payments are fully vested or are subject to additional conditions, such as compliance with non-competition restrictions, or future company performance.

SECTION 4: SUBMITTING CERTIFICATIONS AND FORMS

All certifications and data submissions (including supporting documentation) must be filed electronically with the Office of the Special Master via email to SpecialMasterReview@do.treas.gov. Certifications may be submitted via the email address without encryption. Additional procedures are required to submit the *Compensation Review Data Request Form*, which will contain private data that must be encrypted to ensure its security.

When the Special Master's Office receives confirmation of receipt of this request via email to SpecialMasterReview@do.treas.gov, as required in the cover letter accompanying these *Instructions*, you will receive an email response that includes instructions for establishing a secure account. Please use this account to submit your completed *Compensation Review Data Request Form*.

The file name for the *Compensation Review Data Request Form* should be in the following format: [UST Number]-CRDRF.xls. Please note that there is a 15 megabyte limit on the size of attachments that can be sent through the system; therefore, you may need to break up your submission into several emails. In the event that additional documentation is required, each recipient will be contacted by the Office of the Special Master with details regarding submission of this information.

Questions regarding submission procedures, or substantive questions regarding the *Compensation Review Data Request Form* may be directed to the Office of the Special Master at SpecialMasterReview@do.treas.gov or via telephone at 202-622-1706. Staff members are available from 9:00am to 5:00pm Eastern Time, Monday through Friday. We recommend that you contact the Office of the Special Master by email.

SECTION 5: FREEDOM OF INFORMATION ACT

The Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), requires Treasury upon request to disclose records within its possession, including records that include or comprise information that Treasury receives from private entities. However, FOIA also authorizes

Treasury to withhold from public disclosure information that falls within certain enumerated exemptions set forth in section 552(b). These exemptions include, but are not limited to, “trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential,” *id.* § 552(b)(4), and “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552(b)(6). Treasury recognizes that the information Treasury collects from TARP recipients pursuant to the *Compensation Review Data Request Form* may be commercially or financially sensitive or personal in nature. Accordingly, Treasury will consider carefully the FOIA exemptions when it responds to any third party FOIA request for such information.

If Treasury receives a FOIA request for records containing information provided pursuant to the *Compensation Review Data Request Form* and Treasury does not decide unilaterally to withhold such records from disclosure, Treasury will promptly notify the TARP recipient of the FOIA request if (1) Treasury has reason to believe that disclosure of your information could reasonably be expected to cause the TARP recipient substantial competitive harm, or (2) the TARP recipient has, in good faith, already designated the requested records as containing commercially or financially sensitive information. 31 C.F.R. §§ 1.6(b), (c), (g). Treasury’s notification will describe the records that the requester seeks and will offer the TARP recipient an opportunity, within ten working days of receipt of the notification, to present Treasury with a detailed statement of its objections to Treasury disclosing the records, including a set of its proposed redactions and all of its asserted grounds for Treasury to withhold records under any exemption of the FOIA. *Id.* § 1.6(d). If a TARP recipient asserts that Treasury should apply FOIA exemption (b)(4) to withhold a record, then the TARP recipient must demonstrate why the record is a trade secret or commercial or financial information that is privileged or confidential. *Id.* The TARP recipient must also support any claim of confidentiality with a statement or certification by an officer or authorized company representative that the record in question is, in fact, confidential commercial or financial information and has not been disclosed to the public. *Id.* § 1.6(c). Separate determinations of confidentiality must be made for each type of information, as opposed to a determination being made on the confidentiality of the total package.

If Treasury should decide to disclose the record after a careful review of the objections of a TARP recipient, then Treasury will provide the TARP recipient with a written notification of its decision. *Id.* § 1.6(e). This notification will include a description of the record Treasury intends to disclose, a disclosure date of not less than ten working days from the mailing date of the notice, and a statement of Treasury’s reasons for proceeding with disclosure notwithstanding the objections. *Id.*

Each TARP recipient should be aware FOIA authorizes the federal district courts to enjoin Treasury from withholding records and may order Treasury to produce any records improperly withheld from a requester. 5 U.S.C. § 552(a)(4)(B). Treasury will notify the TARP recipient promptly if Treasury becomes aware of any FOIA lawsuit involving information provided by the TARP recipient. 31 C.F.R. § 1.6(f).

Each TARP recipient should also be aware that FOIA does not authorize Treasury to withhold any information from the Congress. 5 U.S.C. § 552(d).

SECTION 6: PRIVACY ACT STATEMENT

The Department of the Treasury, under the authority of 12 U.S.C. § 5221 and 31 U.S.C. § 321, collects this information from each TARP recipient in order to review and approve compensation payments and compensation structures for the “senior executive officers” and “highly compensated employees” of the TARP recipient, in each case as defined under 31 C.F.R. Part 30, and to determine whether certain payments to those individuals were inconsistent with the purposes of section 111 of the Emergency Economic Stabilization Act (“EESA”) or the Troubled Asset Relief Program (“TARP”) or were otherwise contrary to the public interest.

1. The information may be disclosed to law enforcement agencies when they are investigating a potential violation of civil or criminal law, to other agencies as required by law, or when requested by Congress.
2. The information may be disclosed to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for UST, or when necessary to accomplish an agency function related to this system of records.
3. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to UST officers and employees.
4. These records may be used to disclose information to an agency contractor for the purpose of compiling, organizing, analyzing, programming, utilizing or otherwise refining records subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.
5. Information from this system may be disclosed to the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. § 2904 and § 2906.
6. These records may be used to disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.
7. These records may be used to disclose information to a public or professional auditing organization for the purpose of conducting financial audit and/or compliance audits.

The furnishing of this information by the TARP recipient is mandatory. The individual or entity providing the information 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. Failure to provide the information will cause the TARP recipient to be adversely affected.

Attachment A¹

The Special Master for TARP Executive Compensation (the “Special Master”) has, pursuant to Section 111(f) of the Emergency Economic Stabilization Act of 2008, as amended, requested compensation data for certain employees of [TARP Recipient] (and any related company deemed a TARP recipient under 31 C.F.R. § 30.1) (the “Company”) who received more than \$500,000 in annual compensation for fiscal year[s] [2008 and 2009] OR [2009] (the “Applicable Fiscal Year[s]”).

I certify, based on my knowledge, that the Company had [no] OR [____] employee[s] among its “senior executive officers” and 20 “most-highly compensated employees” (“Covered Employees”) who received “annual compensation,” (in each case, as defined in 31 C.F.R. Part 30) greater than \$500,000 for [either of] the Applicable Fiscal Year[s]. The company will submit the requested compensation data for each Covered Employee, if any, who received annual compensation greater than \$500,000 for [either of] the Applicable Fiscal Year[s]. 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.

[CEO of TARP Recipient]

Dated: _____

[Chairman, Compensation Committee]
OR
[Board Director other than CEO]

Dated: _____

¹ Signed certifications should be submitted electronically (e.g., in .pdf format) to the Office of the Special Master via email to SpecialMasterReview@do.treas.gov.

Frequently Asked Questions (FAQs)
Office of the Special Master for TARP Executive Compensation
Compensation Review Data Request

Pursuant to Section 111(f) of the Emergency Economic Stabilization Act of 2008, as amended (“EESA”), and the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Special Master for TARP Executive Compensation (the “Special Master”) is required to review all bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most-highly compensated employees (the “Covered Employees”) of each TARP recipient from the date the recipient first received financial assistance until February 17, 2009 (the “Review Period”). 31 C.F.R. § 30.16(a)(2). On March 23, 2010, the Special Master issued a request for certain compensation data to facilitate this review.

This guidance responds to certain questions frequently asked by affected TARP recipients with regard to the *Compensation Review Data Request Form* and accompanying *Instructions* issued on March 23, 2010.

1. Section 3 of the *Instructions* provides that compensation data are not required for Excluded Employees—those Covered Employees who earned \$500,000 or less in “annual compensation” during each fiscal year within the Review Period. The term “annual compensation” is defined in Section 30.1 (Q-1) of the Rule to mean the dollar value of total compensation for the applicable fiscal year, including all equity-based compensation. How should a TARP recipient calculate “annual compensation” for purposes of determining whether an individual is an Excluded Employee?

For purposes of determining whether a Covered Employee earned \$500,000 or less in annual compensation for a particular fiscal year, all equity-based compensation granted in that fiscal year should be included in the calculation of annual compensation at the total fair market value on the grant date. All equity-based compensation granted in fiscal years ending prior to the Review Period should be excluded from the calculation of annual compensation.

2. Section 30.1 (Q-1) of the Rule defines annual compensation as the dollar value of total compensation for the applicable fiscal year as determined pursuant to Item 402(a) of Regulation S-K under the federal securities laws, 17 C.F.R. § 229.402(a). On December 23, 2009 the SEC published in the Federal Register a final rule amending Item 402 of Regulations S-K (see 74 Fed. Reg. 68,334 (December 23, 2009)). Those amendments became effective February 28, 2010. What is the significance of newly-amended Item 402(a) for purposes of responding to the *Compensation Review Data Request*?

A TARP recipient should calculate annual compensation by reference to Item 402(a) as in effect prior to being amended effective February 28, 2010, when responding to the *Compensation Review Data Request*. Thus, for example, a TARP recipient’s list of Covered Employees for

fiscal year 2009 (which may include one or more Excluded Employees) should match the list of senior executive officers and the next 20 most highly compensated employees for fiscal year 2009 provided by the TARP recipient in connection with the certification required under Section 30.15 of the Rule.

Section 4, Tab 3, Item 9 of the *Instructions* describes the amount of equity-based awards made during the Review Period by reference to Item 402(a) as amended effective February 28, 2010. This reference may have resulted in confusion among TARP recipients as to the applicability of newly-amended Item 402(a) for purposes of responding to the *Compensation Review Data Request*. To avoid any confusion, the amount of equity-based compensation granted in a particular fiscal year should be recorded pursuant to Section 4, Tab 3, Item 9 of the *Instructions* at the total fair market value on the grant date.

3. Section 4, Tab 2 of the *Instructions* requires the submission of “employee title” and “annual compensation” for each Covered Employee who is not an Excluded Employee for various fiscal years. Is a TARP recipient required to submit this data for fiscal years 2007, 2008 and 2009, regardless of the year in which the TARP recipient’s Review Period began?

Yes. As originally issued, the *Instructions* contained an erroneous description of the fiscal years for which annual compensation and employee title data are requested. The Office of the Special Master has determined, pursuant to 31 C.F.R. § 30.16(a)(2), that certain historical data are needed to carry out a comprehensive review of prior compensation as required under Section 111(f) of EESA. This historical data will be used to place into context compensation payments made by a TARP recipient during the Review Period. Therefore, a TARP recipient’s submission will not be considered complete unless the TARP recipient provides the employee title and annual compensation of each Covered Employee who is not an Excluded Employee for each of fiscal years 2007, 2008, and 2009, regardless of the year in which the TARP recipient’s Review Period began.

4. If a TARP recipient first received financial assistance on December 31, 2008, and the TARP recipient uses a calendar year fiscal year, must the TARP recipient compile a list of Covered Employees for the 2008 fiscal year?

Yes. For purposes of this data request and the Special Master’s review of compensation payments made before February 17, 2009, the term “Review Period” includes the date on which the TARP recipient first received financial assistance.

Please check back regularly for postings of additional FAQs.

The Special Master for TARP Executive Compensation Concludes the Review of Prior Payments

Friday, July 23, 2010

Today, the Special Master for TARP Executive Compensation, Kenneth R. Feinberg, announced the conclusion of his review of executive pay in late 2008 and early 2009. The Special Master looked at payments that taxpayer-assisted firms made to “Top 25” executives prior to February 17, 2009, when the Recovery Act introduced additional compensation and corporate governance standards for TARP recipients, and directed a review of their executive pay before that date.

The Special Master’s review announced today:

- 1. *Completes Recovery Act mandate to review executive pay before tightening of standards***
 - Covered the 419 firms that received taxpayer assistance prior to February 17, 2009
 - Payments from TARP recipients to “Top 25” executives after taxpayer funds provided
 - Special Master directed to “seek to negotiate” a reimbursement to the government for a payment determined to be “contrary to the public interest”
 - Statutory authority to review payments, but no authority to require reimbursement
- 2. *Focused on highly compensated employees who received the type of payments later restricted by the Recovery Act and Treasury regulations***
 - Required detailed submissions on executives who earn more than \$500,000 per year, and company certifications for those who earn less
 - 240 companies had no executives over the threshold; 116 had five or fewer
 - Payments limited by subsequent standards: cash bonuses, retention awards, stock grants, golden parachutes and tax gross-ups
 - Of the \$2.3 billion of payments analyzed, \$1.7 billion in these categories
- 3. *Did not determine that payments were contrary to the “public interest” requiring monetary reimbursement***
 - Rules at the time allowed these kinds of payments
 - Payments largely from firms that have repaid the taxpayers
- 4. *Proposes firms adopt policies that provide compensation committees with special restructuring rights:***
 - Compensation committee would have authority to restructure, reduce or cancel payments to executives—and not be bound by “guarantees”
 - Reaffirms important principles in the Wall Street Reform law and banking regulators’ recent guidance on incentive compensation
 - Proposal made directly to 17 firms that paid \$1.6 billion of the \$1.7 billion (92%)
 - Entirely voluntary proposal—up to companies to adopt

- 1. *Completes Recovery Act mandate to review executive pay before tightening of standards:*
The Special Master’s review completed a requirement in the Recovery Act to examine payments**

made to executives between the date a firm received its initial TARP funding and February 17, 2009, when the Recovery Act introduced tighter standards on compensation and corporate governance.

- ***Covered the 419 firms that received taxpayer assistance prior to February 17, 2009:*** All firms that were assisted by taxpayers prior to enactment of the Recovery Act were subject to the review and responded to the Special Master’s request for information on their executive pay.
 - ***Payments from TARP recipients to “Top 25” executives after taxpayer funds provided:*** The review covered firms’ “Top 25” executives — senior executive officers and twenty additional most-highly compensated employees. For firms that had different “Top 25” groups in 2008 and 2009, firms were required to submit information on both groups of executives.
 - ***Special Master directed to “seek to negotiate” a reimbursement to the government for a payment determined to be “contrary to the public interest”:*** If a payment was determined to be inconsistent with the purposes of the Emergency Economic Stabilization Act of 2008, or TARP, or otherwise contrary to the public interest, the statute required the Special Master to seek to negotiate with the company and the employee for a reimbursements.
 - ***Recovery Act provided authority to review, but not to force repayments:*** Although authority to conduct the review and obtain compensation information was provided under the statute and regulations, the Special Master had no authority to force reimbursements from firms or executives, or require any other remedy.
2. ***Focused on highly compensated employees who received the type of payments later restricted by the Recovery Act and Treasury regulations:*** Treasury regulations provided the Special Master the discretion to tailor the review, using factors like the overall compensation of the employee and the type of payments being made.
- ***Required detailed submissions on executives who earn more than \$500,000 per year, and company certifications for those who earn less:*** The Special Master concluded that payments to executives earning \$500,000 or less per year would be highly unlikely to be inconsistent with the public interest. As a result, rather than require detailed submissions on every “Top 25” executive, the Special Master allowed firms to certify that a particular executive earns \$500,000 per year or less.
 - ***240 companies had no executives over the threshold; 116 had five or fewer:*** Most of the 419 firms certified that some of their “Top 25” executives \$500,000 or less per year. For 240 institutions, certifications covered their entire “Top 25” group; for 116 others, detailed submissions were required for less than five executives.
 - ***Payments limited by subsequent rules: cash bonuses, retention awards, stock grants, golden parachutes and tax gross-ups:*** The Special Master examined the extent of payments that, although legal and permitted under rules at the time, were later restricted by standards established under the Recovery Act and Treasury regulations.
 - ***Of the \$2.3 billion of payments analyzed, \$1.7 billion in these categories:*** Of the payments reviewed by the Special Master, approximately 74%, fell into these categories. The remainder of payments fell into categories such as base pay, delivery of stock, and course contributions and distributions of deferred compensation.
3. ***Does not determine that payments were “contrary to the public interest”:*** The Special Master did not determine that any payments were “inconsistent with the purposes of [Section 111 of the Emergency Economic Stabilization Act of 2008] or the TARP or were otherwise contrary to the

public interest.” The Special Master had no authority whatsoever to force repayments from employees or companies.

- ***Rules at the time allowed these kinds of payments:*** Although the Recovery Act and Treasury rules later imposed much stricter limits on pay at TARP recipients, at the time the reviewed payments were made, compensation such as cash bonuses and retention awards were permitted by the rules in place at the time.
- ***Payments largely from firms that have reimbursed taxpayers:*** Eleven of the seventeen firms the Special Master has contacted regarding his proposal have fully reimbursed the taxpayers. Of the \$1.7 billion in payments identified by the Special Master, more than 90% were made by firms that fully repaid, or were taken into consideration in the Special Master’s determinations regarding “exceptional assistance recipients.”

4. ***Proposes firms adopt policies that provide compensation committees with special restructuring rights:*** The Special Master is proposing that firms adopt a prospective compensation policy. Although the proposal is being made at the conclusion of the review, because the Special Master has not reached a determination that requires him to seek any reimbursement, the policy is not proposed as a remedy or settlement of a negotiation regarding any payments.

- ***In a crisis situation, a firm would have authority to restructure, reduce or cancel payments to executives—and not be bound by “guarantees”:*** Under the proposal, if the company’s board of directors has identified that the firm is in a crisis situation, the compensation committee would have the authority to restructure, reduce or cancel pending payments to executives—and this authority would supersede any rights and entitlements executives have in normal circumstances.
- ***Reaffirms important principles in the Wall Street Reform law and banking regulators’ guidance on incentive compensation:*** The proposed policy would give compensation committees flexibility and authority to set and adjust appropriate compensation at a crucial moment, consistent with provisions in the new regulatory reform law, which strengthens committee independence, and with banking regulators’ principles for sound incentive compensation practices, which call for effective oversight by directors and an appropriate balance of risk and reward.
- ***Special Master proposed to 17 firms:*** The Special Master made the proposal directly to 17 firms. The firms were selected in consideration of the overall amounts they paid of bonuses, new stock grants, golden parachutes and other types of compensation later subjected to the tighter standards established by the Recovery Act and subsequent Treasury rules. Of the \$1.7 billion of these types of payments identified by the Special Master, these firms, in the aggregate, paid \$1.6 billion.
- ***Entirely voluntary proposal:*** The entirely voluntary proposal is recommended by the Special Master for wide adoption. A set of principles to guide a company adopting such a policy will be provided. The principles provide flexibility for each firm, working with its regulator, to adopt a policy tailored to its particular business and circumstances.

The Special Master’s Proposed “Brake” Provision:

What is being proposed?

The proposal is for institutions to adopt a policy giving their board and compensation committee the authority, in a crisis situation, to restructure, reduce or cancel pending payments to executives. Under such a policy, contracts like employment agreements and stock option agreements would have special language providing for this authority.

Who is it proposed for?

The Special Master proposed it directly to seventeen firms, but it is proposed for consideration by other firms as well.

How does a policy get adopted?

A company would decide to adopt a policy on an entirely voluntary basis. The Special Master has proposed a set of adoption standards that provide discretion for a company to tailor a policy to its particular circumstances.

What is a “crisis situation” and who decides?

The proposal contemplates a crisis as extraordinary adverse circumstances that constitute a significant threat to the financial viability of a company. Whether such circumstances exist is for a company’s board to decide.

Who would such a policy cover?

A group of senior leaders and highest-earning employees (which will include all executive officers) selected by the company.

What kind of arrangements would a policy apply to?

Generally, to cash and stock incentive plans and awards, executive retirement programs and “golden parachute” arrangements.

Is the policy a “clawback”?

No. The “brake” would allow a company to restructure, reduce or cancel payments that haven’t been made when the brake is triggered, but is not intended for recovery of payments made before that time.

What could a compensation committee do if the “brake” was triggered?

The committee would have a range of options, such as reducing or canceling the amount of a payment, delivering a payment in stock instead of cash (and requiring that stock to be held), or adding additional performance criteria. In some circumstances, tax and accounting considerations would make giving the committee absolute authority impractical, so appropriate limitations on range of options would be necessary.

What has to be disclosed?

Companies adopting a policy would describe the adoption in a current securities filing. The proposal also provides for descriptions of a company’s implementation process in its annual proxy filing—number of employees covered, etc.— and updated disclosure if the company amends or rescinds its policy.

Office of the Special Master for TARP Executive Compensation
ADOPTION STANDARDS FOR PROPOSED COMPENSATION POLICY

1. Purpose. The policy purpose is to establish and preserve the compensation committee's discretion to exercise superseding authority over compensation arrangements of covered employees during a covered period, notwithstanding limitations on its authority outside of a covered period. The policy will be administered and interpreted by the compensation committee, in its sole discretion.
2. Superseding authority. Provide for superseding authority to be comprehensive, including the authority to cancel or reduce the amount of any payment, require a payment be delivered in any combination of cash or property, add a condition to or defer the vesting or delivery of any payment, or restrict the transferability of any payment delivered in vested property.
3. Limitations of authority. To the extent that comprehensive superseding authority would violate a statute or government regulation, or result in substantial adverse tax or accounting consequences, the authority may be limited to the extent necessary to avoid such a result. For example, if providing comprehensive superseding authority would result in an arrangement failing to meet the requirements of Section 409A of the Internal Revenue Code, or would result in a share-based payment intended to be classified as equity instead being classified as a liability, limiting authority in such an arrangement is appropriate. The company shall seek in good faith to minimize limitations.
4. Covered period. A covered period is a period of time during which there are extraordinary adverse circumstances that constitute a significant threat to the financial viability of the company. The company's board of directors has the authority, in its sole discretion, to determine the existence or cessation of extraordinary adverse circumstances.
5. Covered employees. The population of employees covered by the policy will be a group of senior leaders and highest-earning employees identified by the company and will include executive officers.
6. Compensation arrangements. A compensation arrangement is any plan, program or agreement (or an award or grant under such a plan, program or agreement) providing for compensation of any type required to be disclosed under Item 402 of Regulation S-K, except for the following: salary, tax-qualified retirement benefits, "other" compensation arising from reasonable relocation or expatriate expenses, elective deferrals of compensation, programs provided to salaried employees generally in which the level of benefits is not determined by the employee's level of compensation, and programs that provide a *de minimis* amount of compensation.
7. Implementation of the policy. The policy applies to all compensation arrangements established after the adoption of the policy with any person who is then a covered employee. Any such policy shall provide expressly for superseding authority during a covered period, unless the committee has the equivalent of such authority under any conditions and circumstances. In addition, if rights or entitlements in existence prior to an individual becoming a covered employee either limit or preclude the company from unilaterally obtaining superseding authority in a compensation arrangement, upon such individual becoming a covered employee the company will consider whether it should seek to obtain such authority, including by conditioning eligibility for prospective compensation arrangements on the delivery of consent to obtain such authority.
8. Disclosure. In addition to any other disclosure requirements in respect of the policy, the company will file a current report on its adoption and describe the policy in the company's next Compensation Discussion & Analysis. The description will include: a statement of the policy; the status of its implementation; the number of covered employees and the rationale for selecting that population and groups in that population; circumstances in which superseding authority was limited and the rationale for the limitation. In any subsequent Compensation Discussion & Analysis, the company will update those descriptions (or, as the case may be, confirm the absence of updates) and describe other amendments to the policy and its implementation. In the event the company rescinds, or establishes a material limitation or exception to, the policy, it will be disclosed in a current report along with the rationale for doing so.