

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 es-

tablishing 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-

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term results and not on long-term value creation. The compensation committed 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 ap-

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plicable, 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