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.

(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 any portion of which is a TARP period (for a TARP recipient with an obligation).
§ 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: