

date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

#### DEFINITIONS

For definitions of terms contained in this section, see section 5301 of this title.

### § 5221. 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 [15 U.S.C. 78a et seq.], 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 title 26, 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  $\frac{1}{3}$  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<sup>1</sup> 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

<sup>1</sup> So in original. Probably should be “are”.

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 (c).

**(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-SEC 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 [15 U.S.C. 78a et seq.], 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 February 17, 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 February 17, 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 1813 of this title), 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, at the market price, may liquidate warrants associated with such assistance.

**(h) Regulations**

The Secretary shall promulgate regulations to implement this section.

(Pub. L. 110-343, div. A, title I, § 111, Oct. 3, 2008, 122 Stat. 3776; Pub. L. 111-5, div. B, title VII, § 7001, Feb. 17, 2009, 123 Stat. 516; Pub. L. 111-22, div. A, title IV, § 403, May 20, 2009, 123 Stat. 1658.)

**Editorial Notes**

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1) and (c)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2009—Pub. L. 111-5 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to applicability of requirements, direct purchases of troubled assets, auction purchases of troubled assets, and sunset of provisions, respectively.

Subsec. (g). Pub. L. 111-22 substituted “, at the market price, may liquidate warrants associated with such assistance” for “shall liquidate warrants associated with such assistance at the current market price”.

**§ 5222. 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 5211 of this title.

(Pub. L. 110-343, div. A, title I, § 112, Oct. 3, 2008, 122 Stat. 3777.)

**§ 5223. 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 chapter 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 on the savings and pensions of individuals, and reductions in losses to the Federal Government.

**(2) Authority**

In carrying out paragraph (1), the Secretary shall—

(A) hold the assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling such assets, in order to maximize the value for taxpayers; and

(B) sell such assets at a price that the Secretary determines, based on available financial analysis, will maximize return on investment for the Federal Government.

**(3) Private sector participation**

The Secretary shall encourage the private sector to participate in purchases of troubled assets, and to invest in financial institutions, consistent with the provisions of this section.

**(b) Use of market mechanisms**

In making purchases under this chapter, the Secretary shall—

(1) make such purchases at the lowest price that the Secretary determines to be consistent with the purposes of this chapter; and

(2) maximize the efficiency of the use of taxpayer resources by using market mechanisms, including auctions or reverse auctions, where appropriate.

**(c) Direct purchases**

If the Secretary determines that use of a market mechanism under subsection (b) is not feasible or appropriate, and the purposes of the chapter are best met through direct purchases from an individual financial institution, the Secretary shall pursue additional measures to ensure that prices paid for assets are reasonable and reflect the underlying value of the asset.

**(d) Conditions on purchase authority for warrants and debt instruments**

**(1) In general**

The Secretary may not purchase, or make any commitment to purchase, any troubled asset under the authority of this chapter, unless the Secretary receives from the financial institution from which such assets are to be purchased—

(A) in the case of a financial institution, the securities of which are traded on a national securities exchange, a warrant giving the right to the Secretary to receive non-voting common stock or preferred stock in such financial institution, or voting stock with respect to which,<sup>1</sup> the Secretary agrees not to exercise voting power, as the Secretary determines appropriate; or

(B) in the case of any financial institution other than one described in subparagraph (A), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in paragraph (2)(C).

**(2) Terms and conditions**

The terms and conditions of any warrant or senior debt instrument required under paragraph (1) shall meet the following requirements:

**(A) Purposes**

Such terms and conditions shall, at a minimum, be designed—

<sup>1</sup> So in original. The comma probably should not appear.