

Department of the Treasury, the following Departmental Offices
Request for Emergency Processing and Approval
Executive Compensation

1. Circumstances necessitating the collection of information

Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Public Law 110-343), as amended by the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5), the Department of the Treasury (Treasury) implements several aspects of the Troubled Asset Relief Program (TARP). The statute provides the Secretary broad authority to purchase and insure mortgage assets, and to purchase any other financial instrument that the Secretary, in consultation with the Federal Reserve Chairman, determines necessary to stabilize our financial markets.

The interim rule sets forth additional executive compensation requirements under EESA as required by the amendments to EESA under ARRA. The information collections included in this interim final rule provides reporting and recordkeeping requirements for executive compensation.

The information collections involve the following reporting and recordkeeping requirements:

- (1) The compensation committee of the board of directors of the TARP recipient (or the entire board of directors in the case of certain private TARP recipients) must certify that it has reviewed with senior risk officers certain employee compensation plans to ensure that such plans do not encourage employees to take unnecessary and excessive risks that threaten the value of the TARP recipient, and 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. The compensation committee must also provide a narrative description identifying each plan and how these plans do not encourage such risks or encourage such manipulation. For a TARP recipient with securities registered with the SEC pursuant to federal securities laws, the disclosures must be made as part of the TARP recipient's securities filings and to Treasury. For a TARP recipient that is a smaller reporting company, or that is a private company, the disclosures must be made to Treasury and to its primary regulatory agency.
- (2) TARP recipients that receive exceptional financial assistance must make submissions to the Special Master on Executive Compensation to receive approval of all compensation payments to, and compensation structures for, senior executive officers and the number of most highly compensated employees subject to certain prohibitions under the statute, which may be no more than 20 additional employees. TARP recipients that receive exceptional financial assistance must also make submissions to the Special Master on Executive Compensation to receive approval of the compensation structures for any of the top 100 most highly compensated employees that are not included in the prior group.

- (3) TARP recipients must disclose for senior executive officers and the number of most highly compensated employees subject to certain prohibitions under the statute, which may be no more than 20 additional employees, any perquisite whose total value for the fiscal year exceeds \$25,000. The TARP recipient must also provide a narrative description of the amount and nature of these perquisites, the recipient of these perquisites, and a justification for offering these perquisites. This disclosure must be made to Treasury and to the TARP recipient's primary regulatory agency.
- (4) TARP recipients must provide a narrative description concerning any engagement of a compensation consultant, including whether such consultant has provided certain types of compensation comparisons and whether such consultant was independent. This disclosure must be made to Treasury and to the TARP recipient's primary regulatory agency.
- (5) The primary executive officer and the primary financial officer of a TARP recipient must provide an annual certification that, based on that person's knowledge, the following has occurred:
 - a. the compensation committee has reviewed every six months certain compensation plans to ensure that such plans do not encourage excessive or unnecessary risk;
 - b. the compensation committee has reviewed every six months certain compensation plans to ensure that such plans do not encourage the manipulation of reported earnings;
 - c. the compensation committee will certify to the reviews under (a) and (b);
 - d. the compensation committee will provide a narrative of how it limited any features in such plans that encourage excessive or unnecessary risk or encourage the manipulation of reported earnings;
 - e. the TARP recipient has required that bonus payments to the senior executive officers and the next twenty most highly compensated employees be subject to recovery if the bonus payments were based on materially inaccurate financial statements of other performance metric criteria;
 - f. the board of directors of the TARP recipient has established and complied with a luxury and excessive expenditures policy;
 - g. the TARP recipient will permit a non-binding shareholder resolution on the executive compensation disclosures related to senior executive officer compensation;
 - h. the TARP recipient will disclose the amount, nature, and justification for the offering of perquisites whose total value exceeds \$25,000 for a certain number of senior executive officers and most highly compensated employees;
 - i. the TARP recipient will disclose whether a compensation consultant has been engaged during any part of the most recent fiscal year, whether such

- compensation consultant provided certain types of comparisons, and whether such compensation consultant was independent; and
- j. the TARP recipient has prohibited tax gross-ups with respect to certain employees.

The senior executive officer and senior financial officer must also provide a list of the senior executive officers and most highly compensated employees. In the case of a TARP recipient that has received exceptional financial assistance, the senior executive officer and senior financial officer must also certify that the TARP recipient has received the required approvals from the Special Master on Executive Compensation for the compensation payable to, and the compensation structures for, the senior executive officers and certain most highly compensated employees, and has received the required approvals from the Special Master on Executive Compensation for the compensation structures for any of the top 100 most highly compensated employees not subject to the previous approval requirement. A TARP recipient with securities registered with the SEC pursuant to the federal securities law must provide these certifications as part of certain SEC filings and to the Treasury. A private TARP recipient must provide these certifications to its primary regulatory agency and to Treasury. The TARP recipient must preserve appropriate documentation and records to substantiate the certifications provided above for a minimum of 6 years, the first 2 in a readily-accessible location.

- (6) A TARP recipient must submit information requested by the Special Master on Executive Compensation with respect to the review of bonuses, retention awards, and other compensation paid to employees before February 17, 2009, to determine whether any of such payments were inconsistent with the purposes of ARRA or TARP, or otherwise contrary to the public interest.
- (7) In the case of a TARP recipient or employee of a TARP recipient that has requested an advisory opinion from the Special Master on Executive Compensation as to whether a compensation structure has resulted in, or may result in, a payment that is inconsistent with the purposes of ARRA or TARP, or otherwise contrary to the public interest, or the Special Master on Executive Compensation has determined that it would be useful to provide such an advisory opinion, the TARP recipient or employee must submit such information as the Special Master on Executive Compensation determines is necessary to render such an opinion.

2. Use of the data

For items (1) and (5), the information will be used to monitor compliance with the executive compensation requirements of EESA, ARRA and implementing regulations. For items (3) and (4), the information will be used to monitor and evaluate the compensation practices of the TARP recipient. For items (2), (6) and (7), the information will be used by the Special Master on Executive Compensation as a basis for

determinations on the compensation structures and compensation payments at issue, as required by the implementing regulations.

3. Use of information technology

In most cases, executive compensation related information collections will be in writing, but may be transmitted electronically.

4. Efforts to identify duplication

The information will be collected once and then on a periodic basis as required by the regulations or as determined by the Special Master, based on the circumstances, in the case of 2, 6, and 7. The information is not collected or reported in any other information collection.

5. Impact on small entities

Some small entities that participate in the CPP will be affected by this collection. Small and large entities are subject to the same EESA and ARRA standards, regardless of size. However, with respect to certain requirements related to senior executive officers and most highly compensated employees, smaller entities generally will have fewer employees subject to such requirements because such entities will have received small amounts of TARP assistance and will have fewer employees earning more than the highly-compensated employee threshold of \$100,000.

6. Consequences of less frequent collection and obstacles to burden reduction

If the information is not collected, Treasury will not be able to adequately ensure compliance with EESA's and ARRA's executive compensation requirements.

7. Circumstances requiring special information collection

Not applicable.

8. Solicitation of comments on information collection

This is a request for emergency clearance for this information collection. Treasury will provide for public comment in the Federal Register before the expiration date granted by OMB.

9. Provision of payments to recordkeepers

Not applicable.

10. Assurance of confidentiality

Any confidential information provided voluntarily by TARP recipients will be maintained as confidential consistent with applicable provisions of the Trade Secrets Act and Freedom of Information Act.

11. Justification of sensitive questions

Not applicable.

12. Estimated burden of information collection

Summary of Burden		# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Hours
1	Compensation Committee Risk Certification	650	1	650	2.00	1,300.00
2	Special Mater on Executive Compensation Submission	7	1	7	50.00	350.00
3	Senior Executive Officers and Highly Compensated Employees Disclosure	300	1	300	3.00	900.00
4	Engagement of Compensation Consultant Narrative Description	650	1	650	2.00	1,300.00
5	Primary Executive and Financial Officers Annual Certification	650	1	650	3.00	1,950.00
6	Bonus, Retention Awards, and Other Compensation Submission	650	1	650	4.00	2,600.00
7	Special Master on Executive Compensation Advisory Opinion Request	50	1	50	4.00	200.00
TOTALS		650	4.55	2,957	2.91	8,600.00

13. Estimated total annual cost burden to respondents

The Department estimates that there will be no annualized capital/start-up costs for the respondents to collect and submit this information.

14. Estimated cost to the federal government.

There will be no annualized capital/start-up costs for the government to receive this information.

15. Reasons for change in burden

This is a new collection.

16. Plans for tabulation, statistical analysis and publication

Not applicable.

17. Reasons why displaying the OMB expiration date is inappropriate

We believe that display of the OMB expiration date is inappropriate because it could cause confusion by leading the respondent to believe that the requirements conclude as of the expiration date.

18. Exceptions to certification requirement of OMB Form 83-I

Regarding this request for OMB approval, there are no exceptions to the certification statement in item 19 of Form 83-I.