February 4, 2009
TG-15

Treasury Announces New Restrictions On Executive Compensation

Today, the Treasury Department is issuing a new set of guidelines on executive pay for financial institutions that are receiving government assistance to address our current financial crisis. These measures are designed to ensure that public funds are directed only toward the public interest in strengthening our economy by stabilizing our financial system and not toward inappropriate private gain. The measures announced today are designed to ensure that the compensation of top executives in the financial community is closely aligned not only with the interests of shareholders and financial institutions, but with the taxpayers providing assistance to those companies.

The Treasury guidelines on executive pay seek to strike the correct balance between the need for strict monitoring and accountability on executive pay and the need for financial institutions to fully function and attract the talent pool that will maximize the chances of financial recovery and taxpayers being paid back on their investments. The proposals below, such as emphasizing restricted stock that vests as the government is repaid with interest, seek to strike exactly that balance.

The guidelines distinguish between banks participating in any new generally available capital access program and banks needing "exceptional assistance." Generally available programs have the same terms for all recipients, with limits on the amount each institution may receive and specified returns for taxpayers. The goal of these programs is to help ensure the financial system as a whole can provide the credit necessary for recovery, including providing capital to smaller community banks that play a critical role in lending to small businesses, families and others. The previously announced Capital Purchase Program is an example of a generally available capital access program.

If a firm needs more assistance than is allowed under a widely available standard program, then that is exceptional assistance. Banks falling under the "exceptional assistance" standard have bank-specific negotiated agreements with Treasury. Examples include AIG, and the Bank of America and Citi transactions under the Targeted Investment Program.

As part of President Obama's efforts to promote systemic regulatory reform, the standards today mark the beginning of a long-term effort to examine both the degree that executive compensation structures at financial institutions contributed to our current financial crisis and how corporate governance and compensation rules can be reformed to better promote long-term value and growth for shareholders, companies, workers and the economy at large and to prevent such financial crises from occurring again.

I. COMPLIANCE AND CERTIFICATION:

All Companies Receiving Government Assistance Must Ensure Compliance with Executive Compensation Provisions: The chief executive officers of all companies that have to this point received or do receive any form of government assistance must provide certification that the companies have strictly complied with statutory, Treasury, and contractual executive compensation restrictions. Chief executive officers must re-certify compliance with these restrictions on an annual basis. In addition, the compensation committees of all companies receiving government assistance must provide an explanation of how their senior executive compensation arrangements do not encourage excessive and unnecessary risk-taking.

II. ENHANCED CONDITIONS ON EXECUTIVE COMPENSATION GOING FORWARD:

A. Companies Receiving Exceptional Financial Recovery Assistance:

- Limit Senior Executives to $500,000 in Total Annual Compensation – Other than Restricted Stock: Current programs providing exceptional assistance to financial institutions forbid recipients of government funds from taking a tax deduction for senior executive compensation above $500,000. Today's guidance takes this restriction further by limiting the total amount of compensation to no more than $500,000 for these senior executives except for restricted stock awards.
- Any Additional Pay for Senior Executives Must Be in Restricted Stock that Vests When the Government Has Been Repaid with Interest: Any pay to a senior executive of a company receiving exceptional assistance beyond $500,000 must be made in restricted stock or other similar long-term incentive arrangements. The senior executive receiving such restricted stock will only be able to cash in either after the government has been repaid – including the contractual dividend payments that ensure taxpayers are compensated for the time value of their money – or after a specified period according to conditions that consider among other factors the degree a company has satisfied repayment obligations, protected taxpayer interests or met lending and stability standards. Such a restricted stock strategy will help assure that senior executives of companies receiving exceptional assistance have incentives aligned with both the long-term interests of shareholders as well as minimizing the costs to taxpayers.
- Executive Compensation Structure and Strategy Must be Fully Disclosed and Subject to a "Say on Pay" Shareholder Resolution: The senior executive compensation structure and the rationale for how compensation is tied to sound risk management must be submitted to a non-binding shareholder resolution. There are no "Say on Pay" provisions in the existing programs.
- Require Provisions to Clawback Bonuses for Top Executives Engaging in Deceptive Practices: Under the existing programs providing exceptional assistance, only the top five senior executives were subject to a clawback provision. Going forward, a company receiving exceptional assistance must have in place provisions to claw back bonuses and incentive compensation from any of the next twenty senior executives if they are found to have knowingly engaged in providing inaccurate information relating to financial statements or performance metrics used to calculate their own incentive pay.
- Increase Ban on Golden Parachutes for Senior Executives: The existing programs providing exceptional assistance to financial institutions prohibited the top five senior executives from receiving any golden parachute payment upon severance from employment, a ban that will be expanded to include the top ten senior executives. In addition, and at a minimum, the next twenty-five executives will be prohibited from receiving any golden parachute payment greater than one year's compensation upon severance from employment.
- Require Board of Directors' Adoption of Company Policy Relating to Approval of Luxury Expenditures: The boards of directors of companies receiving exceptional assistance from the government must adopt a company-wide policy on any expenditures related to aviation services, office and facility renovations, entertainment and holiday parties, and conferences and events. This policy is not intended to cover reasonable expenditures for sales conferences, staff development,

reasonable performance incentives and other measures tied to a company's normal business operations. These new rules go beyond current guidelines, and would require certification by chief executive officers for expenditures that could be viewed as excessive or luxury items. Companies should also now post the text of the expenditures policy on their web sites.

B. Financial Institutions Participating in Generally Available Capital Access Programs:

The Treasury intends to issue proposed guidance subject to public comment on the following executive compensation requirements relating to future *generally available* capital access programs.

- Limit Senior Executives to $500,000 in Total Annual Compensation Plus Restricted Stock – U***n***less Waived with Full Public Disclosure and Shareholder Vote: Companies that participate in generally available capital access programs may waive the $500,000 plus restricted stock rule only by disclosure of their compensation and, if requested, a non-binding "say on pay" shareholder resolution. All firms participating in a future capital access program must review and disclose the reasons that compensation arrangements of both the senior executives and other employees do not encourage excessive and unnecessary risk taking. Under the current Capital Purchase Program, the companies were only required to review and certify that the top five executives' compensation arrangements did not encourage excessive and unnecessary risk-taking.
- Require Provisions to Clawback Bonuses for Top Executives Engaging in Deceptive Practices: The same clawback provision that applies to companies receiving exceptional assistance will apply to those in generally available capital access programs. Thus, in addition to the clawback provision applicable to the top five executives as under the Capital Purchase Program, a company receiving assistance must have in place provisions to claw back bonuses and incentive compensation from any of the next twenty senior executives if they are found to have knowingly engaged in providing inaccurate information relating to financial statements or performance metrics used to calculate their own incentive pay.
- Increase Ban on Golden Parachutes for Senior Executives: Even under generally available capital access programs, the golden parachute ban will be strengthened: Upon a severance from employment, the top five senior executives will not be allowed a golden parachute payment greater than one year's compensation, as opposed to three years under the current Capital Purchase Program.
- Require Board of Directors' Adoption of Company Policy Relating to Approval of Luxury Expenditures: This policy will be the same for companies accessing generally available capital programs as it is for those receiving exceptional assistance. There are no guidelines on luxury expenditures under the current Capital Purchase Program.

[*These new standards will not apply retroactively to existing investments or to programs already announced such as the Capital Purchase Program and the Term Asset-Backed Securities Loan Facility*.]

III. LONG-TERM REGULATORY REFORM: COMPENSATION STRATEGIES ALIGNED WITH PROPER RISK MANAGEMENT AND LONG-TERM VALUE AND GROWTH:

Even as we work to recover from current market events, it is not too early to begin a serious effort to both examine how company-wide compensation strategies at financial institutions – not just those related to top executives – may have encouraged excessive risk-taking that contributed to current market events and to begin developing model compensation policies for the future. Such steps should include:

- ***Requiring all Compensation Committees of Public Financial Institutions to Review and Disclose Strategies for Aligning Compensation with Sound Risk-Management:*** The Secretary of the Treasury and the Chairman of the Securities and Exchange Commission should work together to require compensation committees of all public financial institutions – not just those receiving government assistance – to review and disclose executive and certain employee compensation arrangements and explain how these compensation arrangements are consistent with promoting sound risk management and long-term value creation for their companies and their shareholders.
- C***ompensation of Top Executives Should Include Incentives That Encourage a Long-Term Perspective:*** Over the last decade there has been an emerging consensus that top executives should receive compensation that encourages more of a long-term perspective on creating economic value for their shareholders and the economy at large. One idea worthy of serious consideration is requiring top executives at financial institutions to hold stock for several years after it is awarded before it can be cashed-out as this would encourage a more long-term focus on the economic interests of the firm.
- ***Pass Say on Pay Shareholder Resolutions on Executive Compensation:*** Even beyond companies receiving financial recovery assistance, owners of financial institutions – the shareholders – should have a non-binding resolution on both the levels of executive compensation as well as how the structure of compensation incentives help promote risk management and long-term value creation for the firm and the economy as a whole.
- ***White House -Treasury Conference on Long-Term Executive Pay Reform:*** The Secretary of the Treasury will host a conference with shareholder advocates, major public pension and institutional investor leaders, policy-makers, executives, academics, and others on executive pay reform at financial institutions. Treasury will seek testimony, comment, and white papers on model executive pay initiatives in the cause of establishing best practices and guidelines on executive compensation arrangements for financial institutions.

###