

All Tied Up – Compensation Limits under TARP CPP

Salaries, Etc.



- \$500,000 annual limit on deductible compensation to CEOs
- Cannot increase salary to make up for prohibited bonus or incentive compensation
- No tax gross-ups of any kind for CEOs and next 20 most highly compensated employees

Bonuses



- No bonuses to covered employees (varies based on amount of assistance), except for restricted stock and bonuses required to be paid under agreements executed on or before 02/11/09
- Even if employee is no longer covered, still cannot receive bonus for service attributable to covered period
- Bonuses for CEOs and next 20 most highly paid employees subject to “clawback”
- Treasury will review prior bonus payments and may seek reimbursement in some cases

Equity Grants



- Stock options are considered incentive compensation and subject to the bonus restrictions
- Exception under bonus restrictions for restricted stock; provided that such restricted stock: (1) does not fully vest until Treasury is repaid (i.e., for each 25% of TARP funds repaid, 25% of grant may vest), (2) does not have a value greater than 1/3 of employee’s “annual compensation” (which includes value of equity awards in year of grant), and (3) is forfeited if the employee does not perform substantial services for at least 2 years from the date of grant

Severance



- No “golden parachute payments” to an CEO or any of the next 5 most highly paid employees
- “Golden parachute payment” means any payment for departure from a company or change in control
- Prohibits accelerated vesting due to departure or change in control
- Prohibits rights to amounts payable after TARP period
- Effectively, all employees subject to this restriction are at-will

Deferred Comp



- Deferred compensation is considered a golden parachute payment unless certain conditions are met

Cutting Loose - Compensation Limits under TARP CPP

Salaries, Etc.



- May use stock as a component of salary, provided that: (1) it is not subject to a substantial risk of forfeiture, (2) the amount is determinable as a dollar amount through the date earned, and (3) it accrues at the same time as salary

Bonuses



- Bonus prohibition does not apply to bonuses paid or accrued prior to June 15, 2009
- If a bonus payment relates to a multi-year service period, during some portion of which the employee is not a SEO or highly compensated employee, he or she may receive the portion of the bonus payment that relates to the service period that the employee was not a SEO or highly compensated employee
- Commissions are not considered bonuses, provided certain conditions are met
- Sign-on bonuses that are not subject to a substantial risk of forfeiture may be permissible

Equity Grants



- May grant restricted stock units as a component of salary; provided certain conditions are met.
- For example, an employee may accrue a number of shares of common stock equal to a fixed dollar amount each pay period; at the end of the year, employer transfers the total number of accrued shares to employee, subject to a multi-year holding period

Severance



- “Golden parachute payment” prohibition does not apply to payments for services performed or benefits accrued, certain time-vested rights, and certain deferred compensation payments
- Note: if a TARP recipient is acquired by a non-TARP institution, the SEOs and next 5 most highly paid employees of the TARP recipient will not be subject to the golden parachute prohibition; provided that the golden parachute payments are made after the change in control

Deferred Comp



- Not considered a golden parachute payment if the following conditions are met: (1) the plan was in effect at least 1 year prior to departure or change in control; (2) payment made pursuant to plan terms in effect for at least 1 year; (3) employee has a vested right to the payments under the plan; and (4) payment is not based on any discretionary acceleration of vesting or accrual occurring later than 1 year before departure or change in control