by $40 at end of the year 5 (the net of the $100 tax exempt income from the excluded COD applied to reduce attributes and the $60 noncapital, nondeductible expense from the reduction of S's portion of the CNOL)).* * *

* * * * *

(d) * * *

(3) * * *

(i) * * *

(B) S's aggregate inside loss (as defined in paragraph (d)(3)(iii) of this section).

* * * * *

(5) * * *

(ii) * * * S's attribute reduction amount is allocated proportionately (by basis) between (among) the non-stock Category D asset and S's deemed single share(s) of subsidiary stock. (See paragraphs (d)(4)(ii)(B)(*2*) and (d)(4)(ii)(C) of this section regarding the portion of S's attribute reduction amount allocated to the Category D assets other than lower-tier subsidiary stock.) For allocation purposes, S's basis in each deemed single share of S1 stock is its deemed basis (determined under paragraphs (d)(5)(i)(B) and (d)(5)(i)(C) of this section), reduced by—

* * * * *

(8) * * *

Example 6. * * *

(ii) * * *

(B) * * * However, S's gain recognized on the transfer of Share E is computed and immediately adjusts members' bases in subsidiary stock under § 1.1502–32 (because M and S are not members of the same group immediately after the transaction, the sale is not an intercompany transaction subject to § 1.1502–13).

* * * * *

(D) * * *

(3) * * * See paragraph (d)(5)(v)(A) of this section.* * *

* * * * *

Example 8. * * *

(F) * * * Under § 1.1502–32(c)(1)(ii)(A)(*1*) this $90 expense is allocated to the transferred loss shares of S stock in proportion to the loss in the shares, or $.90 per share.* * *

* * * * *

(ii) * * *

(E) * * * The facts are the same as in paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of $22, in lieu of S reducing its attributes.* * *

(F) * * * The facts are the same as in paragraph (ii)(A) of this *Example 8*.***

Example 9. * * *

(ii) * * * However, S1's gain recognized on the transfer of the S2 share is computed and immediately adjusts members' bases in subsidiary stock under § 1.1502–32.

* * * * *

(g) * * *

(2) * * *

Example 5. * * *

(i) * * * S owns Asset 1 with a basis of $100 and a value of $20.* * *

(iii) * * * However, because all the shares are transferred, the group's income is clearly reflected. * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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DEPARTMENT OF THE TREASURY

31 CFR Part 30

Tarp Capital Purchase Program

AGENCY: Domestic Finance, Treasury.

ACTION: Interim final rule.

SUMMARY: This interim rule, promulgated pursuant to sections 101(a)(1), 101(c)(5), and 111(b) of the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110–343 (EESA), provides guidance on the executive compensation provisions applicable to participants in the Troubled Assets Relief Program (TARP) Capital Purchase Program (CPP). Section 111(b) of EESA requires financial institutions from which the Department of the Treasury (Treasury) is purchasing troubled assets through direct purchases to meet appropriate standards for executive compensation and corporate governance. This interim final rule includes the following standards for purposes of the CPP: (a) Limits on compensation that exclude incentives for senior executive officers (SEOs) of financial institutions to take unnecessary and excessive risks that threaten the value of the financial institution; (b) required recovery of any bonus or incentive compensation paid to a SEO based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; (c) prohibition on the financial institution from making any golden parachute payment to any SEO; and (d) agreement to limit a claim to a federal income tax deduction for certain executive remuneration. These rules generally affect financial institutions that participate in the CPP, certain employers related to those financial institutions, and their officers.

DATES: *Effective Date:* These regulations are effective on October 20, 2008. *Comment due date:* November 19, 2008.

ADDRESSES: The Treasury requests comments on the topics addressed in this interim rule. Comments may be submitted to the Treasury by any of the following methods: Submit electronic comments through the federal government e-rulemaking portal, *http://www.regulations.gov* or by e-mail to *executivecompensationcomments@do.treas.gov* or send paper comments in triplicate to Executive Compensation Comments, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Treasury will also make such comments available for public inspection and copying in the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim rule, contact the Office of Domestic Finance, the Treasury, at (202) 927–6618.

SUPPLEMENTARY INFORMATION:

I. Background

This document adds 31 CFR Part 30 under section 111(b) of the Emergency Economic Stabilization Act of 2008, Div. A of Public Law No. 110–343 (EESA) with respect to the Troubled Assets Relief Program (TARP) Capital Purchase Program (CPP) established by the Department of the Treasury (Treasury) under EESA. Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a TARP to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.'' Section 120 of EESA provides that the TARP authorities generally terminate on December 31, 2009, unless extended upon certification by the Secretary of the Treasury to Congress, but in no event later than two years from the date of enactment of EESA (October 3, 2008) (the TARP authorities period). Thus, the TARP authorities period is the period from October 3, 2008 to December 31, 2009 or, if extended, the period from October 3, 2008 to the date so extended, but not later than October 3, 2010.

Section 111 of EESA provides that certain financial institutions that sell assets to the Treasury may be subject to specified executive compensation standards. In the case of auction purchases from a financial institution that has sold assets in an amount that exceeds $300 million in the aggregate (including direct purchases), the financial institution is prohibited under section 111(c) of EESA from entering into any new employment contract with a senior executive officer (SEO) that provides a golden parachute to the SEO in the event of the SEO's involuntary termination, or in connection with the financial institution's bankruptcy filing, insolvency, or receivership. This prohibition applies during the TARP authorities period. The Treasury has issued separate guidance on this provision (Notice 2008–TAAP).

In addition, for auction purchases, section 302 of EESA includes tax provisions as amendments to sections 162(m) and 280G of the Internal Revenue Code (26 U.S.C. 162(m) and 280G) that address compensation paid to certain executive officers employed by financial institutions that sell assets under TARP. Section 302(a) of EESA amended 26 U.S.C. 162(m) to add a new paragraph (m)(5), which reduces the deduction limit to $500,000 in the case of ''executive remuneration'' and ''deferred deduction executive remuneration.'' This limit applies only to certain employers participating in an auction purchase and only for certain taxable years. Employers covered under 26 U.S.C. 162(m)(5) are not limited to publicly held corporations (nor even to corporations). The exception for performance-based compensation and certain other exceptions do not apply in the case of executive compensation covered under 26 U.S.C. 162(m)(5). The Treasury and the Internal Revenue Service have issued guidance on these provisions (I.R.S. Notice 2008–94).

In the case of direct purchases, section 111(b)(1) of EESA requires financial institutions to meet appropriate standards for executive compensation and corporate governance as set forth by the Secretary of the Treasury. These standards apply to the SEOs of the financial institutions while the Treasury holds an equity or debt position in the financial institution acquired under the CPP. Section 111(b)(2) of EESA requires that at least three criteria be satisfied by financial institutions from which the Treasury directly purchases troubled assets and takes a meaningful equity or debt position. The following describes these criteria.

Section 111(b)(2)(A) of EESA requires ''limits on compensation that exclude incentives for senior executive officers of a financial institution to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position in the financial institution.''

Section 111(b)(2)(B) of EESA requires ''a provision for the recovery by the financial institution of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate.''

Section 111(b)(2)(C) of EESA requires ''a prohibition on the financial institution making any golden parachute payment to its senior executive officer during the period that the Secretary holds an equity or debt position in the financial institution.''

Treasury Notice 2008–PSSFI addresses these provisions under section 111(b) of EESA as they apply to financial institutions participating in programs for systemically significant failing institutions. Further guidance will be issued for any additional programs.

These regulations are being issued as interim final regulations to implement the purpose of EESA, which is to provide immediately authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States. Thus, to encourage financial institutions to choose to participate in the CPP, these regulations provide those institutions with information with respect to the applicable executive compensation and corporate governance rules that will apply under the CPP.

II. This Interim Rule

These interim final regulations provide guidance on the executive compensation and corporate governance provisions of section 111(b) of EESA with respect to the CPP. They are written in question and answer format.

The regulations clarify that the requirements of section 111(b) of EESA apply not only to the financial institution that participates in the CPP, but also to any other entity in its controlled group. For this purpose, the controlled group rules in section 414(b) and (c) of the Internal Revenue Code (26 U.S.C. 414(b) and (c)) apply, but only taking into account parent-subsidiary relationships, not brother-sister relationships. These tax rules generally base control on an 80-percent ownership basis. Thus, these interim regulations apply to controlled groups in a manner similar to the executive compensation provisions of section 302(a) of EESA, which added 26 U.S.C. 162(m)(5) and 26 U.S.C. 280G(e) to the Internal Revenue Code, providing special tax treatment for executive compensation for employers participating in the TARP. See 26 U.S.C. 162(m)(5)(B)(iii) and 26 U.S.C. 280G(e)(2)(A).

The requirements in section 111(b) apply with respect to certain executive officers identified in § 30.2 (Q–2) of the regulations. The determination of these executive officers is made based on rules similar to those set forth in the federal securities laws and generally apply to the chief executive officer, the chief financial officer, and the three mostly highly compensated executive officers. The three most highly compensated executive officers are determined according to the requirements in Item 402 of Regulation S–K under the federal securities law (17 CFR 229.402) by reference to the total compensation for the last completed fiscal year. Until the compensation data for the current fiscal year are available, the financial institution should make its best efforts to identify the three most highly compensated executive officers for the current fiscal year. Analogous rules apply to financial institutions that do not have securities registered with the Securities and Exchange Commission (SEC) pursuant to the federal securities laws.

With respect to section 111(b)(2)(A) for purposes of participation in the CPP, the interim final regulations require the financial institution's compensation committee to identify the features in the financial institution's SEO incentive compensation arrangements that could lead SEOs to take unnecessary and excessive risks that could threaten the value of the financial institution. The regulations require that the compensation committee review the SEO incentive compensation arrangements with the financial institution's senior risk officers, or other personnel acting in a similar capacity, to ensure that SEOs are not encouraged to take such risks. The regulations require such review promptly, and in no case more than 90 days, after the purchase under the CPP.

The regulations also require that the compensation committee meet at least annually with the financial institution's senior risk officers to discuss and review the relationship between the financial institution's risk management policies and practices and the SEO incentive compensation arrangements.

In addition, the regulations require the compensation committee to certify that it has completed the reviews of the SEO incentive compensation arrangements as outlined above. Financial institutions with securities registered with the SEC pursuant to the federal securities laws should provide these certifications in the Compensation Discussion and Analysis required pursuant to Item 402(b) of Regulation S–K under the federal securities laws (17 CFR 229.402). Those financial institutions that do not have securities registered with the SEC pursuant to the federal securities laws are required to provide the certifications to their primary regulatory agency.

With respect to section 111(b)(2)(B) of EESA for purposes of participation in the CPP, the interim final regulations provide that the SEO bonus and incentive compensation paid during the period that the Treasury holds an equity or debt position acquired under the CPP must be subject to recovery or ''clawback'' by the financial institution if the payments were based on materially inaccurate financial statements and any other materially inaccurate performance metric criteria. The regulations include a comparison of this requirement to section 304 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (Pub. L. 107–204).

With respect to section 111(b)(2)(C) of EESA for purposes of participation in the CPP, the interim final regulations prohibit a financial institution from making any golden parachute payment to a SEO during the period the Treasury holds an equity or debt position acquired under the CPP. The regulations define a golden parachute payment in the same way as under 26 U.S.C. 280G as applied with respect to new paragraph (e) of 26 U.S.C. 280G, added by section 302(a) of EESA relating to golden parachute payments. Thus, a golden parachute payment means any payment in the nature of compensation to (or for the benefit of) a SEO made on account of an applicable severance from employment to the extent the aggregate present value of such payments equals or exceeds an amount equal to three times the SEO's base amount. The term ''base amount'' for a SEO has the meaning set forth in 26 U.S.C. 280G(b)(3) and 26 CFR 1.280G–1, Q&A–34 (except that references to ''change in ownership or control'' are treated as referring to an ''applicable severance from employment'').

The regulations define an applicable severance from employment as any SEO's severance from employment with the financial institution (i) by reason of involuntary termination of employment with the financial institution or with an entity that is treated as the same employer as the financial institution under the controlled group rules or (ii) in connection with any bankruptcy filing, insolvency, or receivership of the financial institution or of an entity that is treated as the same employer as the financial institution under the controlled group rules. The regulations define an involuntary termination of employment and set forth rules for determining when a payment on account of an applicable severance from employment occurs. These rules are substantially the same as the standards in IRS Notice 2008–94 regarding new paragraph (e) of 26 U.S.C. 280G, and are also generally similar to the pre-existing standards under 26 U.S.C. 280G (see 26 CFR 1.280G–1, Q&A–22(a)).

The regulations include a special rule for cases in which a financial institution (target) that has sold troubled assets to the Treasury through the CPP is acquired by an entity (acquirer) in an acquisition of any form. Under this rule, acquirer does not become subject to section 111(b) of EESA merely as a result of the acquisition. The rule applies only if the acquirer is not related to target and treats target as related if stock or other interests of target are treated (under 26 U.S.C. 318(a) other than paragraph (4) thereof) as owned by acquirer. With respect to target, any employees of target who are SEOs prior to the acquisition will be subject to section 111(b) of EESA until after the first anniversary following the acquisition.

The regulations set forth an additional standard for executive compensation and corporate governance under section 111(b)(1) of EESA. Under this standard, the financial institution must agree, as a condition to participate in the CPP, that no deduction will be claimed for federal income tax purposes for remuneration that would not be deductible if 26 U.S.C. 162(m)(5) were to apply to the financial institution. For this purpose, during the period that the Treasury holds an equity or debt position in the financial institution acquired under the CPP: (i) The financial institution (including entities in its controlled group) is treated as an ''applicable employer,'' (ii) its SEOs are treated as ''covered executives,'' and (iii) any taxable year that includes any portion of that period is treated as an ''applicable taxable year,'' each as defined in 26 U.S.C. 162(m)(5), except that the dollar limitation and the remuneration for the taxable year are prorated for the portion of the taxable year that the Treasury holds an equity or debt position in the financial institution under the CPP. The Secretary has determined that this is an appropriate standard for executive compensation for the CPP. This rule only applies for taxable years that include the period that the Treasury holds an equity or debt position in the financial institution acquired under the CPP. This standard applies even though the financial institution is not subject to 26 U.S.C. 162(m)(5) and only limits the amount of the deduction that may be claimed. Thus, no deduction may be claimed for remuneration during a taxable year for compensation in excess of $500,000 for a SEO, and the special rules relating to deferred deduction executive remuneration would also apply. See I.R.S. Notice 2008–94 for additional information regarding the deduction limit under 26 U.S.C. 162(m)(5).

III. Procedural Requirements

Justification for Interim Rulemaking

This rule is promulgated pursuant to EESA, the purpose of which is to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States. Specifically, this rule implements certain provisions of section 111 of EESA, which sets forth executive compensation standards for financial institutions that sell troubled assets to the Treasury under EESA. The statute provides that the Secretary may issue guidance and regulations to carry out these provisions and that such guidance and regulations may be effective upon issuance.

In order to encourage financial institutions to choose to participate in the CPP, those institutions must have timely and reliable information with respect to the applicable executive compensation and corporate governance rules that will apply under the program. Accordingly, because EESA authorizes section 111 guidance to be immediately effective and because of exigencies in the financial markets, the Treasury finds that it would be contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), to delay the issuance of this rule pending an opportunity for public comment and good cause exists to dispense with this requirement. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), the Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, the Treasury is inviting public comment on the regulation during a thirty-day period and will consider all comments in developing a final rule.

Regulatory Planning and Review

The rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, this rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C chapter 6).

List of Subjects in 31 CFR Part 30

Executive compensation, Troubled assets.

■ For the reasons set out in the preamble, Title 31 of the CFR is amended as follows:

PART 30—TARP CAPITAL PURCHASE PROGRAM

■ 1. Add part 30 to read as follows:

PART 30—TARP CAPITAL PURCHASE PROGRAM

Authority: Section 111(b) of the Emergency Economic Stabilization Act of 2008, Div. A of Public Law 110–343; 122 Stat 3765.

§ 30.0 Executive compensation and corporate governance.

The following questions and answers reflect the executive compensation and corporate governance requirements of section 111(b) of the Emergency Economic Stabilization Act of 2008, Div. A of Public Law No. 110–343 (EESA) with respect to participation in the Troubled Assets Relief Program (TARP) Capital Purchase Program (CPP) established by the Treasury thereunder:

§ 30.1 Q–1: To what financial institutions does this part apply?

(a) *General rule.* This part applies to any financial institution that participates in the CPP.

(b) *Controlled group rules.* For purposes of section 111(b) of EESA, two or more persons who are treated as a single employer under section 26 U.S.C. 414(b) (employees of a controlled group of corporations) and section 26 U.S.C. 414(c) (employees of partnerships, proprietorships, etc., that are under common control) are treated as a single employer. However, for purposes of section 111(b) of EESA, the rules for brother-sister controlled groups and combined groups are disregarded (including disregarding the rules in section 26 U.S.C. 1563(a)(2) and (a)(3) with respect to corporations and the parallel rules that are in section 26 CFR 1.414(c)–2(c) with respect to other organizations conducting trades or businesses). See § 30.11 (Q–11) of this part for special rules where a financial institution is acquired.

§ 30.2 Q–2: Who is a senior executive officer (SEO) under section 111 of EESA?

(a) *General definition.* A SEO means a ''named executive officer'' as defined in Item 402 of Regulation S–K under the federal securities laws (17 CFR 229.402) who:

(1) Is employed by a financial institution that is participating in the CPP while the Treasury holds an equity or debt position acquired under the CPP; and

(2)(i) Is the principal executive officer (PEO) (or person acting in a similar capacity) of such financial institution (or, in the case of a controlled group, of the parent entity);

(ii) The principal financial officer (PFO) (or person acting in a similar capacity) of such financial institution (or, in the case of a controlled group, of the parent entity); or

(iii) One of the three most highly compensated executive officers of such financial institution (or the financial institution's controlled group) other than the PEO or the PFO.

(b) *Determination of three most highly compensated executive officers.* For financial institutions with securities registered with the Securities and Exchange Commission (SEC) pursuant to the federal securities law, the three most highly compensated executive officers are determined according to the requirements in Item 402 of Regulation S–K under the federal securities laws (17 CFR 229.402). The term ''executive officer'' has the same meaning as defined in Rule 3b–7 of the Securities Exchange Act of 1934 (Exchange Act) (17 CFR 240.3b–7). For purposes of determining the three most highly compensated executive officers, compensation is determined as it is in Item 402 of Regulation S–K to include total compensation for the last completed fiscal year without regard to whether the compensation is includible in the executive officer's gross income. Until the compensation data for the current fiscal year are available, the financial institution should make its best efforts to identify the three most highly compensated executive officers for the current fiscal year.

(c) *Application to private employers.* Rules analogous to the rules in paragraphs (a) and (b) of this section apply to financial institutions that are not subject to the federal securities laws, rules, and regulations, including financial institutions that do not have securities registered with the SEC pursuant to the federal securities laws.

§ 30.3 Q–3: What actions are necessary for a financial institution participating in the CPP to comply with section 111(b)(2)(A) of EESA?

(a) In order to comply with section 111(b)(2)(A) of EESA for purposes of participation in the CPP, a financial institution must comply with the following rules:

(1) Promptly, and in no case more than 90 days, after the purchase under the CPP, the financial institution's compensation committee, or a committee acting in a similar capacity, must review the SEO incentive

compensation arrangements with such financial institution's senior risk officers, or other personnel acting in a similar capacity, to ensure that the SEO incentive compensation arrangements do not encourage SEOs to take unnecessary and excessive risks that threaten the value of the financial institution;

(2) Thereafter, the compensation committee, or a committee acting in a similar capacity, must meet at least annually with senior risk officers, or individuals acting in a similar capacity, to discuss and review the relationship between the financial institution's risk management policies and practices and the SEO incentive compensation arrangements; and

(3) The compensation committee, or a committee acting in a similar capacity, must certify that it has completed the reviews of the SEO incentive compensation arrangements required under paragraphs (a)(1) and (2) of this section.

(b) These rules apply while the Treasury holds an equity or debt position acquired under the CPP.

§ 30.4 Q–4: How should the financial institution comply with the standard under § 30.3 that the compensation committee, or a committee acting in a similar capacity, review the SEO incentive compensation arrangements to ensure that the SEO incentive compensation arrangements do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the financial institution?

Because each financial institution faces different material risks given the unique nature of its business and the markets in which it operates, the compensation committee, or a committee acting in a similar capacity, should discuss with the financial institution's senior risk officers, or other personnel acting in a similar capacity, the risks (including long-term as well as short-term risks) that such financial institution faces that could threaten the value of the financial institution. The compensation committee, or a committee acting in a similar capacity, should identify the features in the financial institution's SEO incentive compensation arrangements that could lead SEOs to take such risks. Any such features should be limited in order to ensure that the SEOs are not encouraged to take risks that are unnecessary or excessive.

§ 30.5 Q–5: How should the financial institution comply with the certification requirements under § 30.3?

(a) *Certification.* The compensation committee, or a committee acting in a similar capacity, of the financial institution must provide the certifications required by § 30.3 (Q–3) stating that it has reviewed, with such financial institution's senior risk officers, the SEO incentive compensation arrangements to ensure that the incentive compensation arrangements do not encourage SEOs to take unnecessary and excessive risks. Providing a statement similar to the following and in the manner provided in paragraphs (b) and (c) of this section, as applicable, would satisfy this standard: ''The compensation committee certifies that it has reviewed with senior risk officers the SEO incentive compensation arrangements and has made reasonable efforts to ensure that such arrangements do not encourage SEOs to take unnecessary and excessive risks that threaten the value of the financial institution.''

(b) *Location.* For financial institutions with securities registered with the SEC pursuant to the federal securities law, the compensation committee, or a committee acting in a similar capacity, should provide this certification in the Compensation Discussion and Analysis required pursuant to Item 402(b) of Regulation S–K under the federal securities laws (17 CFR 229.402).

(c) *Application to private financial institutions.* The rules provided in this section are also applicable to financial institutions that are not subject to the federal securities laws, rules, and regulations, including financial institutions that do not have securities registered with the SEC pursuant to the federal securities laws. A private financial institution should file the certification of the compensation committee, or a committee acting in a similar capacity, with its primary regulatory agency.

§ 30.6 Q–6: What actions are necessary for a financial institution participating in the CPP to comply with section 111(b)(2)(B) of EESA?

In order to comply with section 111(b)(2)(B) of EESA for purposes of participation in the CPP, a financial institution must require that SEO bonus and incentive compensation paid during the period that the Treasury holds an equity or debt position acquired under the CPP are subject to recovery or ''clawback'' by the financial institution if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria.

§ 30.7 Q–7: How do the standards under section 111(b)(2)(B) of EESA differ from section 304 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (Pub. Law No. 107–204)?

Section 304 of Sarbanes-Oxley requires the forfeiture by a public company's chief executive officer and the chief financial officer of any bonus, incentive-based compensation, or equity-based compensation received and any profits from sales of the company's securities during the twelve-month period following a materially non-compliant financial report. Section 111(b)(2)(B) of EESA differs from section 304 of Sarbanes-Oxley in several ways. The standard under section 111(b)(2)(B) of EESA: Applies to the three most highly compensated executive officers in addition to the PEO and the PFO; applies to both public and private financial institutions; is not exclusively triggered by an accounting restatement; does not limit the recovery period; and covers not only material inaccuracies relating to financial reporting but also material inaccuracies relating to other performance metrics used to award bonuses and incentive compensation.

§ 30.8 Q–8: What actions are necessary for a financial institution participating in the CPP to comply with section 111(b)(2)(C) of EESA?

In order to comply with section 111(b)(2)(C) of EESA for purposes of participation in the CPP, a financial institution must prohibit any golden parachute payment to a SEO during the period the Treasury holds an equity or debt position acquired under the CPP.

§ 30.9 Q–9: What is a golden parachute payment under section 111(b) of EESA?

(a) *Definition.* As provided under 26 U.S.C. 280G(e), a ''golden parachute payment'' means any payment in the nature of compensation to (or for the benefit of) a SEO made on account of an applicable severance from employment to the extent the aggregate present value of such payments equals or exceeds an amount equal to three times the SEO's base amount. The term ''base amount'' for a SEO has the meaning set forth in 26 U.S.C. 280G(b)(3) and 26 CFR 1.280G–1, Q&A–34, except that references to ''change in ownership or control'' are treated as referring to an ''applicable severance from employment.''

(b) *Applicable severance from employment.* (1) *Definition.* An applicable severance from employment means any SEO's severance from employment with the financial institution.

(i) By reason of involuntary termination of employment with the financial institution or with an entity that is treated as the same employer as the financial institution under § 30.1 (Q–1) of this part; or

(ii) In connection with any bankruptcy filing, insolvency, or receivership of the financial institution or of an entity that is treated as the same employer as the financial institution under § 30.1 (Q–1) of this part.

(2) *Involuntary termination.* (i) An involuntary termination from employment means a termination from employment due to the independent exercise of the unilateral authority of the employer to terminate the SEO's services, other than due to the SEO's implicit or explicit request to terminate employment, where the SEO was willing and able to continue performing services. An involuntary termination from employment may include the financial institution's failure to renew a contract at the time such contract expires, provided that the SEO was willing and able to execute a new contract providing terms and conditions substantially similar to those in the expiring contract and to continue providing such services. In addition, a SEO's voluntary termination from employment constitutes an involuntary termination from employment if the termination from employment constitutes a termination for good reason due to a material negative change in the SEO's employment relationship. See 26 CFR 1.409A–1(n)(2).

(ii) A severance from employment by a SEO is by reason of involuntary termination even if the SEO has voluntarily terminated employment in any case where the facts and circumstances indicate that absent such voluntary termination the financial institution would have terminated the SEO's employment and the SEO had knowledge that he or she would be so terminated.

(c) *Payments on account of an applicable severance from employment.* (1) *Definition.* A payment on account of an applicable severance from employment means a payment that would not have been payable if no applicable severance from employment had occurred (including amounts that would otherwise have been forfeited if no applicable severance from employment had occurred) and amounts that are accelerated on account of the applicable severance from employment. See 26 CFR 1.280G–1, Q&A–24(b), for rules regarding the determination of the amount that is on account of an acceleration.

(2) *Excluded amounts.* Payments on account of an applicable severance from employment do not include amounts paid to a SEO under a tax qualified retirement plan.

§ 30.10 Q–10: Are there other conditions that are required under the executive compensation and corporate governance standards in section 111(b)(1) of EESA?

The financial institution must agree, as a condition to participate in the CPP, that no deduction will be claimed for federal income tax purposes for remuneration that would not be deductible if 26 U.S.C. 162(m)(5) were to apply to the financial institution. For this purpose, during the period that the Treasury holds an equity or debt position in the financial institution acquired under the CPP:

(a) The financial institution (including entities in its controlled group) is treated as an ''applicable employer,''

(b) Its SEOs are treated as ''covered executives,'' and

(c) Any taxable year that includes any portion of that period is treated as an ''applicable taxable year,'' each as defined in 26 U.S.C. 162(m)(5), except that the dollar limitation and the remuneration for the taxable year are prorated for the portion of the taxable year that the Treasury holds an equity or debt position in the financial institution under the CPP.

§ 30.11 Q–11: How does section 111(b) of EESA operate in connection with an acquisition, merger, or reorganization?

(a) *Special rules for acquisitions, mergers, or reorganizations.* In the event that a financial institution (target) that had sold troubled assets to the Treasury through the CPP is acquired by an entity that is not related to target (acquirer) in an acquisition of any form, acquirer will not become subject to section 111(b) of EESA merely as a result of the acquisition. For this purpose, an acquirer is related to target if stock or other interests of target are treated (under 26 U.S.C. 318(a) other than paragraph (4) thereof) as owned by acquirer. With respect to the target, any employees of target who are SEOs prior to the acquisition will be subject to section 111(b)(2)(C) of EESA until after the first anniversary following the acquisition.

(b) Example. In 2008, financial institution A sells $100 million of troubled assets to the Treasury through the CPP. In January 2009, financial institution B, which is not otherwise subject to section 111(b) of EESA, acquires financial institution A in a stock purchase transaction, with the result that financial institution A becomes a wholly owned subsidiary of financial institution B. Based on the rules in paragraph (a) of this § 30.11 (Q–11), the SEOs of financial institution B are not subject to section 111(b) of EESA solely as a result of the acquisition of financial institution A in January 2009. The SEOs of financial institution A at the time of the acquisition are subject to section 111(b)(2)(C) of EESA until January 2010, the first anniversary following the acquisition.

Dated: October 14, 2008.

Neel Kashkari,

Interim Assistant Secretary for Financial Stability.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 34

[Docket No. CDC–2008–0002]

RIN 0920–AA20

Medical Examination of Aliens—Revisions to Medical Screening Process

AGENCY: Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

ACTION: Correcting amendments.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the U.S. Department of Health and Human Services (HHS), published an Interim Final Rule in the **Federal Register** on October 6, 2008 (73 FR 58047), updating regulations that govern medical examinations that aliens must undergo before they may be admitted to the United States. This document corrects an omission contained in the rule.

DATES: Effective on October 20, 2008.

FOR FURTHER INFORMATION, CONTACT: Stacy M. Howard, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Road, NE., E03, Atlanta, GA 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION: The Centers for Disease Control and Prevention (CDC), within the U.S. Department of Health and Human Services (HHS), published an Interim Final Rule in the **Federal Register** of October 6, 2008, FR Doc. E8–23485, (73 FR 58047) updating regulations that govern medical examinations that aliens must undergo before they may be