



Yale SCHOOL OF MANAGEMENT
Program on Financial Stability

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Resource Library

9-10-2010

Office of the Special Master for TARP Executive Compensation: Final Report of Special Master Kenneth R. Feinberg

Kenneth R. Feinberg

<https://elischolar.library.yale.edu/ypfs-documents/11159>

This resource is brought to you for free and open access by the Yale Program on Financial Stability and [EliScholar](#), a digital platform for scholarly publishing provided by Yale University Library. For more information, please contact ypfs@yale.edu.

Office of the Special Master for TARP Executive Compensation
FINAL REPORT OF SPECIAL MASTER KENNETH R. FEINBERG

September 10, 2010

TABLE OF CONTENTS

PREFACE..... iii

INTRODUCTION iv

I. STATUTE AND REGULATIONS 1

 A. Initial Statutory and Regulatory Requirements 1

 B. The Recovery Act and Subsequent Treasury Standards 1

 C. The Interim Final Rule on TARP Standards for Compensation and Corporate Governance..... 2

II. THE OFFICE OF THE SPECIAL MASTER FOR TARP EXECUTIVE COMPENSATION..... 4

 A. Authority of the Office 4

 1. Jurisdiction Over Exceptional Assistance Recipients 4

 2. Interpretative Authority 6

 3. The Section 111(f) Look Back Review 6

 B. Organization and Administration of the Office 6

 1. Staffing 6

 2. Coordination with Treasury and Other Federal Officials..... 6

 3. Communication with Exceptional Assistance Recipients and Other TARP Recipients 7

 4. Oversight 7

III. COMPENSATION DETERMINATIONS FOR EXCEPTIONAL ASSISTANCE RECIPIENTS 8

 A. Determination Process 8

 1. Communication..... 8

 2. Diligence and Analysis 8

 3. Drafting and Release of Determinations..... 9

 B. Recurrent Standards in Determinations 9

 1. Strict Limits on Guaranteed Cash Compensation 9

 2. Achievement of Objective Performance Goals..... 9

 3. Long-term Structures 10

 4. Minimization of Indirect and Ancillary Compensation 10

 C. Determinations 10

 1. Top 25 Determinations 10

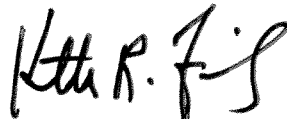
2.	Covered Employees 26–100 Determinations	10
3.	Supplemental Determinations.....	11
IV.	SECTION 111(f) LOOK BACK REVIEW.....	12
A.	Basis of Review.....	12
B.	Data Request	12
C.	Data Analysis	12
D.	Findings.....	13
E.	Proposed Policy.....	13
V.	OBSERVATIONS AND RECOMMENDATIONS.....	15
	NOTES	16
	GLOSSARY OF DEFINED TERMS	23
	EXHIBITS.....	25

PREFACE

The following Final Report summarizes the work of the Office of the Special Master for TARP Executive Compensation during my tenure as Special Master, which began with my appointment by the Secretary of the Treasury on June 15, 2009. During the nearly 14 month period that followed, the Special Master's Office implemented the unprecedented directive of determining compensation packages for the top executives at those companies that received exceptional taxpayer assistance under the Troubled Asset Relief Program. It is my personal belief that this Office made an important contribution to the highly-charged subject of executive compensation. It remains to be seen whether our work will have a lasting impact. Only time will tell.

The Office of the Special Master has been staffed by loyal, committed and highly competent individuals who worked throughout my tenure to help ensure the success of the Office. Without the efforts and dedication of the following Treasury personnel, this Final Report would be meager indeed. I owe a debt of thanks to: Mary Pat Fox, Patricia Geoghegan, Robert J. Jackson, Jr., Bruce Mackay, Eric MacPherson, Katherine Mueller, William Cassiere Mulvey, and Kurt T. Slawson. In addition, I owe a special thanks to two individuals from my law firm who gave ceaselessly of their time and energy, Camille Biros and Jacqueline Zins.

Finally, I thank both the Secretary of the Treasury, Timothy F. Geithner, and the Deputy Secretary, Neal S. Wolin, for placing their trust and confidence in me. I hope that I have vindicated their judgment in affording me the opportunity to serve the Treasury, the Administration and the citizens of the United States.



Kenneth R. Feinberg
Special Master for TARP Executive Compensation

INTRODUCTION

As the Special Master for TARP Executive Compensation from the establishment of the Office of the Special Master on June 15, 2009, through September 10, 2010, I respectfully submit this report detailing the work of the Office during the period of my appointment. As an official matter, my duties as Special Master do not require me to provide a formal report upon my departure; however, I concluded that such a report is warranted. Two factors in particular informed my decision. First, executive compensation practices, especially at firms that received taxpayer assistance, are a continuing concern of the Treasury Department, other government officials and the public at large. Second, accountability and transparency regarding this Office have had the highest priority during my tenure. The following document is intended to serve those same two considerations, with a brief and straightforward description of the Office and its activities to date.

Since my appointment as Special Master, the executive compensation landscape has changed significantly. While the Office focused on its discrete responsibilities, a much broader policy initiative was moving forward. Last September, G-20 leaders confirmed that compensation practices in the financial sector both reflected and encouraged excessive risk-taking, and endorsed standards intended to align compensation practices with long-term value creation and financial stability. These standards are being implemented worldwide.

In the United States, the Federal Reserve and other federal banking regulators issued guiding principles on how incentive compensation at banks should be designed to protect safety and soundness, and committed to ensuring that banks adopt these principles. The SEC enhanced existing compensation disclosure requirements. The Wall Street Reform law requires public companies to give shareholders a “say on pay” vote and strengthens compensation committees’ independence. Taken together, these efforts demonstrate the resolve to address compensation issues that contributed to the financial crisis, and the significant progress made to date.

Executive pay practices, however, present difficulties that range beyond incentive plan design and corporate governance, including the profound difference in perspective on executive pay practices between some financial institutions and many of the taxpayers whose dollars rescued our economy and financial system. To our great benefit, the Treasury rules that created the Office of the Special Master anticipated the range of difficulties we would encounter, and provided authority to confront them as well as principles for doing so. Given this authority and guidance, I believe an important measure of the Office’s performance is its willingness to confront the full range of difficulties, from the technical challenge of creating sound incentive programs, to addressing certain widespread perceptions of fairness.

The ultimate effects of the Office’s extraordinary oversight will not be known for some time. At this point, I am pleased to report that the program is a success. Of the seven firms initially subject to the Office’s jurisdiction, two have completed repayment to the taxpayers and three more have begun to do so—in one case fully returning the “exceptional” assistance that invoked my purview. Four firms remain in the program, but I am encouraged by their record of retaining top employees and adding outside talent, and hopeful for their eventual repayment.

This report has five parts. Part I provides the legislative and regulatory background and framework surrounding the Office. Part II outlines the Office's duties, authority and organization. Part III describes the compensation determinations regarding firms that received exceptional taxpayer assistance. Part IV describes the review of payments made to Top 25 executives at all TARP recipients before the Recovery Act introduced tighter standards. Part V includes my observations and recommendations in light of my experience as Special Master. Finally, the report has a substantial collection of exhibits, including all the compensation determinations to date.

I. STATUTE AND REGULATIONS

A. Initial Statutory and Regulatory Requirements

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 became law.¹ Developed in response to the financial crisis facing the nation, EESA provided immediate authority and facilities that Treasury could use to restore liquidity and stability to the financial system.² EESA authorized the Secretary to establish the Troubled Asset Relief Program 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.”³

EESA also directed the Secretary to require firms participating in TARP to meet appropriate standards for executive compensation and corporate governance.⁴ The statute provided criteria, which required at least the following standards to apply while a firm was a TARP recipient:⁵

- Limits on compensation to exclude incentives for senior executive officers to take unnecessary and excessive risks that threaten their firm’s value.⁶
- A “clawback” provision to permit the recovery of bonuses paid to senior executive officers based on earning statements or other criteria later proven to be materially inaccurate.⁷
- Prohibition on firms making golden parachute payments to senior executive officers.⁸

On October 20, 2008, Treasury issued an interim final rule implementing the EESA standards for participants in the Capital Purchase Program, the source of funds for most of the firms receiving taxpayer assistance.⁹ On February 4, 2009, Treasury announced revised guidelines, with additional corporate governance requirements and restrictions on pay structures.¹⁰

B. The Recovery Act and Subsequent Treasury Standards

Prior to the implementation of the February 4, 2009 guidelines, Congress passed the American Recovery and Reinvestment Act of 2009, which the President signed into law on February 17, 2009.¹¹ The Recovery Act amended EESA to require more stringent governance and pay standards. The amended standards included all the initial EESA requirements and the following additions:

- Extension of the “clawback” requirement to a firm’s entire Top 25.¹²
- Extension of the prohibition on golden parachute payments to the Top 10,¹³ and clarification that the prohibition covers all payments due to a departure from employment, not just those above a certain amount.¹⁴

- Prohibition on the payment or accrual of any bonus, retention award, or incentive compensation to certain highly compensated employees, except for limited incentives paid in “long-term restricted stock”¹⁵ or under existing, binding contracts.¹⁶ The number of employees covered by the prohibition ranges from one to 25 depending on the amount of TARP assistance received.¹⁷
- Prohibition of compensation plans that encourage manipulation of reported earnings to enhance the compensation of employees.¹⁸
- Establishment of a compensation committee composed entirely of independent directors.¹⁹ The committee must conduct a risk-assessment of compensation plans at least every six months.²⁰
- Establishment of a company-wide policy regarding excessive or luxury expenditures.²¹
- An annual, non-binding “say on pay” shareholder vote regarding compensation required to be disclosed under SEC rules.²²
- Annual certifications of compliance with the Recovery Act standards, to be provided by the chief executive officer and chief financial officer of a firm.²³

Finally, in addition to the prospective requirements for TARP recipients, the Recovery Act also required the Secretary to conduct a Look Back Review of bonuses, retention awards, and other compensation paid to each TARP recipient’s Top 25 before the introduction of the additional requirements, to determine whether any payments were inconsistent with the purpose of EESA or TARP, or otherwise contrary to the public interest.²⁴ This standard is often referred to as the Public Interest Standard. For any payment determined to be in such a category, the Secretary must “seek to negotiate with the TARP recipient and subject employee for appropriate reimbursements to the Federal Government.”²⁵

C. The Interim Final Rule on TARP Standards for Compensation and Corporate Governance

The Recovery Act also directed the Secretary to issue regulations implementing its compensation and corporate governance requirements.²⁶ On June 10, 2009, Treasury announced the Interim Final Rule on TARP Standards for Compensation and Corporate Governance,²⁷ which consolidated and superseded all prior guidance on compensation and corporate governance for TARP recipients.²⁸ In addition to the specific requirements provided by the Recovery Act, the Rule requires TARP recipients to meet the following standards:²⁹

- Prohibition on paying tax “gross-ups” to Top 25 executives.³⁰ Tax “gross-ups” are payments designed to reduce or eliminate the tax burden on an executives relating to particular compensation and benefits arrangements.
- Disclosure of perquisites exceeding \$25,000 for certain employees.³¹

- Disclosure of whether the company or its compensation committee engaged a compensation consultant.³²
- For Exceptional Assistance Recipients, approval by the Special Master of certain compensation structures and payments to certain executives.³³

Along with releasing the Rule, the Secretary announced the appointment of Kenneth R. Feinberg as Special Master.³⁴ The authorities and responsibilities of the Special Master are described in detail below.

II. THE OFFICE OF THE SPECIAL MASTER FOR TARP EXECUTIVE COMPENSATION

A. Authority of the Office

The Special Master is appointed by the Secretary, and may be removed by the Secretary with or without notice, without cause, and prior to the naming of any successor.³⁵ The Special Master has three primary responsibilities: (1) reviewing and approving compensation payments and structures of executives at Exceptional Assistance Recipients;³⁶ (2) interpreting the executive compensation and corporate governance provisions of the Rule and related guidance;³⁷ and (3) conducting the Look Back Review.³⁸ The authority of the Special Master to review, interpret and approve is limited to these areas, and does not extend to any other aspects of EESA or TARP, or to employees of TARP recipients other than those specifically identified in the statute and regulations.³⁹

1. *Jurisdiction Over Exceptional Assistance Recipients*

The Rule identifies several TARP programs that provide “exceptional” taxpayer support.⁴⁰ Firms receiving financial assistance under one of these programs are required to obtain Special Master approval regarding certain compensation structures and payments to certain executives.⁴¹ Initially, the firms receiving assistance under these programs, and therefore subject to Special Master jurisdiction, were: AIG, Bank of America, Chrysler, Chrysler Financial, Citigroup, General Motors and GMAC (now known as Ally Financial).⁴² As a result of repayments by three of these firms,⁴³ as of August 2, 2009, the firms required to obtain Special Master approvals are AIG, Ally Financial, Chrysler and General Motors.

Under the Rule, Exceptional Assistance Recipients must obtain Special Master approval for the compensation structures and payments to Top 25 executives.⁴⁴ Special Master approval is also required for the compensation structures—but not individual compensation payments—of Covered Employees 26–100.⁴⁵ The same fundamental standard is applied in Top 25 and Covered Employees 26–100 reviews: the Special Master must determine whether a payment (or payment that may result from a compensation structure) would be inconsistent with the purposes of Section 111 of EESA or TARP, or would otherwise be contrary to the public interest.⁴⁶ Under the Rule, the Special Master determines consistency with this standard by applying six principles:

- **Risk.** Compensation structures should avoid incentives that encourage employees to take unnecessary or excessive risks that could threaten the value of the company including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the company. Compensation packages should be aligned with sound risk management.⁴⁷
- **Taxpayer Return.** Compensation structures and amount payable should reflect the need for a firm to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient’s future success, so that the company will ultimately be able to repay its TARP obligations.⁴⁸

- Appropriate Allocation. Compensation structures should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded.⁴⁹
- Performance-based Compensation. An appropriate portion of compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the company or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met.⁵⁰
- Comparable Structures and Payments. Compensation structures, and amounts payable where applicable, should be consistent with, and not excessive taking into account, compensation structures and amounts for persons in similar positions or roles at similar entities, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization.⁵¹
- Employee Contribution to TARP Recipient Value. The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the company, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient.⁵²

The Rule provides discretion for the Special Master to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee.⁵³ To the extent two or more principles may appear inconsistent in a particular situation, the Special Master exercises his discretion in determining the relative weight to be accorded to each principle.⁵⁴ The Special Master may also take into account other compensation structures and other compensation earned, accrued, or paid, including compensation structures and payments that are not subject to the restrictions of Section 111 of EESA. For example, in reaching a determination about a proposed, prospective arrangement, the Special Master may consider payments that will be made pursuant to an existing contract that the Special Master has no authority to restructure or cancel.⁵⁵

In certain circumstances, the Special Master's authority over compensation structures and payments is limited. Compensation structures for Covered Employees 26–100 that provide total annual compensation (other than long-term restricted stock) not exceeding \$500,000 are automatically deemed to meet the Public Interest Standard.⁵⁶ In addition, the Special Master has the discretion to limit the scope of his reviews based on factors such as the amount and type of payments, or the overall compensation earned by the employee during the relevant period.⁵⁷

2. *Interpretative Authority*

The Special Master is responsible for interpreting the executive compensation and corporate governance requirements of EESA, the Rule and any other applicable guidance as applied to particular facts and circumstances.⁵⁸ The Special Master has authority to render advisory opinions regarding whether those requirements have or would be met in particular circumstances,⁵⁹ as well as the authority to issue advisory opinions regarding whether the compensation structures or payments to employees of a TARP recipients are consistent with the Public Interest Standards.⁶⁰

3. *The Section 111(f) Look Back Review*

The Secretary delegated the responsibility and authority for administering the Look Back Review to the Special Master. The review requires application to Review Period payments of the same six principles underlying the Public Interest Standard,⁶¹ which are described in detail above (i.e., risk, taxpayer return, appropriate allocation, performance-based compensation, comparable structures and payments, and employee contribution to TARP recipient value). The Special Master had discretion to determine the scope of the review based on factors such as the payment amount, the type of payment, or the overall compensation earned by the employee during the relevant period, and the costs and benefits of renegotiation for a payment.⁶² The Rule also provided authority to collect information necessary to carry out the review from TARP recipients.⁶³

B. Organization and Administration of the Office

1. *Staffing*

The staff of the Office has consisted of Treasury employees and contractors detailed from the Office of Financial Stability. During the determination process for Exceptional Assistance Recipients described below, a team of approximately twelve worked for the Office on a full or part-time basis, including four executive compensation specialists and analysts, five attorneys, the Special Master, and managerial and administrative support staff. The Special Master also consulted two academic experts in the field of executive compensation: Lucian A. Bebchuk of Harvard Law School and Kevin J. Murphy of the University of Southern California's Marshall School of Business.

2. *Coordination with Treasury and Other Federal Officials*

From time to time, the Office staff and the Special Master sought input from Treasury officials on a wide variety of matters, including firm-specific issues on which an

official might have particular expertise, guidance on broad departmental mission goals and program priorities, and his determinations. As circumstances warranted, the Office also consulted with staff members at the Federal Reserve, the Federal Reserve Bank of New York, and other agencies to discuss general matters of executive compensation policy and practice, and compensation considerations of specific Exceptional Assistance Recipients. Finally, the Special Master represented Treasury in consultations with the Federal Housing Finance Agency, which is charged with approving compensations arrangements for certain executives at Fannie Mae and Freddie Mac.

3. *Communication with Exceptional Assistance Recipients and Other TARP Recipients*

The Special Master and members of his staff regularly interact with Exceptional Assistance Recipients and other TARP recipients. These interactions range from formal in-person meetings with compensation committee members and senior executives of Exceptional Assistance Recipients to discuss proposed compensation structures, to informal telephone conversations with TARP recipients regarding the requirements of the Rule.

4. *Oversight*

A number of entities oversee TARP and programs established under TARP, including the Office of the Special Inspector General for the Troubled Asset Relief Program,⁶⁴ the Financial Stability Oversight Board,⁶⁵ the Congressional Oversight Panel,⁶⁶ and the Government Accountability Office.⁶⁷ The Office has contributed information about the compensation and corporate governance standards under TARP and the Special Master's determinations to Office of Financial Stability's responses to inquiries and reports for these oversight bodies, and met in person or by telephone to brief them on the Special Master program and determinations. The Special Master also appeared before Congress regarding his work on two occasions—before the House Committee on Oversight and Government Reform on October 28, 2009,⁶⁸ and before the House Committee on Financial Services on February 25, 2010.⁶⁹

III. COMPENSATION DETERMINATIONS FOR EXCEPTIONAL ASSISTANCE RECIPIENTS

A. Determination Process

The particular circumstances of Exceptional Assistance Recipients and individual employees drove the outcome of particular determinations, but the process leading to conclusions and determinations was consistent across the institutions and each round of Top 25 and Covered Employees 26–100 determinations. Generally, the process involved three parallel work streams: communication, diligence and analysis, and drafting and release of determinations.

1. *Communication*

The first step in each round of determinations was communication with the Exceptional Assistance Recipients regarding the timing, anticipated steps for the upcoming process and early review of potential substantive concerns. Next, the Office officially requested data from each firm regarding the historical and proposed compensation arrangements of the applicable executives. After an initial review of a data submission, and, to the extent necessary, follow-up conversations and re-submissions, the Office provided formal notice that a firm's submission was substantially complete, setting a 60-day deadline for the issuance of a determination.⁷⁰ Throughout the remainder of the process, staff of the Office maintained regular communication with the firms regarding both procedural matters and substantive concerns about proposed compensation structures and payments.

In addition to communication with staff and advisers of the Exceptional Assistance Recipients, the Office from time to time consulted other government officials with expertise regarding a particular institution. Finally, with respect to the 2009 Top 25 and Covered Employees 26–100 determinations, the Office consulted with the academic experts identified above.

2. *Diligence and Analysis*

Preliminary issue-spotting and benchmarking of proposed compensation structures and payments began during initial communications with Exceptional Assistance Recipients regarding pending submissions. After receiving data submissions, Office staff working on a particular determination performed in-depth legal diligence, and market and historical analysis, of proposed and existing compensation arrangements of executives, particularly by reference to the Rule's principles. Following this review, the Special Master was presented with an issues list for his consideration, often leading to an iterative process of discussions among the Special Master and Office staff, and follow-up conversations with the Exceptional Assistance Recipients to pose questions and counter-proposals.

Based on the information submitted by the firms and the Office's review and communications, and in light of the six principles set forth in the Rule, the Special Master would reach determinations. Following the initial round of determinations, the Office and

the Special Master realized significant benefit in having an established process and base of information.

3. *Drafting and Release of Determinations*

Compensation determinations are presented in memoranda, which describe the analysis and rationale informing the Special Master's conclusions, as well as the technical requirements for approved structures. For Top 25 determinations, the memoranda also present the approved amounts potentially payable under the structures. All compensation determinations of the Special Master (including supplemental determinations) are available to the public via the Special Master's website.⁷¹

B. Recurrent Standards in Determinations

The conclusions in the Special Master's final compensation determinations are reached, as the case may be, on an employee-by-employee, group-by-group or company-by-company basis, and are heavily dependent on the facts and circumstances surrounding a particular conclusion. Each conclusion necessarily reflects the Special Master's exercise of discretion and judgment in applying the Rule's six principles to a particular situation; however, in the course of reviewing the wide variety of proposals submitted by the Exceptional Assistance Recipients, four key standards, based on the Rule's principles, provided the groundwork for compensation structures and payments approved by the Special Master. Each of these standards is described below.

1. *Strict Limits on Guaranteed Cash Compensation*

The primary portion of an employee's compensation package should be allocated to compensation structures with performance components.⁷² As a result, large amounts of fixed cash compensation are disfavored.⁷³ The cash portion of an employee's salary generally should not exceed \$500,000, other than in exceptional circumstances for good cause shown. Additional salary should instead be composed of vested stock with extended holding requirements.

Cash incentives (where permitted by the Rule) should not be guaranteed under any circumstances.⁷⁴ Certain pre-existing incentive compensation arrangements include guaranteed minimum payments. Such arrangements provide the employee with little downside risk in the event of poor performance, but potentially unlimited gain in the event that substantial risk-taking leads to significant profits, which can create incentives to take unnecessary or excessive risks. Where possible such arrangements should be restructured, or, to the extent they cannot be restructured due to contractual obligations or other reasons, taken into account when making specific compensation determinations.⁷⁵

2. *Achievement of Objective Performance Goals*

Incentive compensation should be based on performance metrics that are measurable, enforceable, and actually enforced if not met.⁷⁶ The company's independent compensation committee must take an active role in both the design process of incentives and the review and measurement of achievement.

3. *Long-term Structures*

A significant amount of compensation should reflect a company's long-term performance and value, often using grants of company stock.⁷⁷ In most circumstances a large proportion of compensation should be held or deferred for a period of at least three years.⁷⁸ In addition, the vesting of an employee's right to a payment and the actual monetization or redemption of the payment should be partially or wholly separated. For example: Cash incentive payments should generally be delivered in multiple tranches and not as single lump sums, with subsequent tranches deferred for at least a year after payment of the initial tranche. Stock salary must generally be redeemable ratably over a period of years, and no portion of an executive's stock salary should be redeemable in less than one year.

4. *Minimization of Indirect and Ancillary Compensation*

Compensation structures that are not aligned with shareholder and taxpayer interests in the firm should be minimized or eliminated. Executives' opportunities for wealth creation should be married to the fortunes of the firm, not provided by compensation structures such as golden parachutes and supplemental retirement programs. In addition, executives should bear the burden of personal expenses; firms should not provide excessive perquisites or tax gross-ups.

C. Determinations

1. *Top 25 Determinations*

Determinations for Top 25 executives have been issued for 2009 and 2010. The first rulings for this group were released on October 22, 2009, and covered the initial seven Exceptional Assistance Recipients.⁷⁹ Despite occurring late in the year, the structures and payments resulted in substantial reductions in cash and overall compensation for 2009 to the covered executives.⁸⁰

The 2010 Top 25 determinations were released on March 23, 2010,⁸¹ and covered the five firms then receiving exceptional assistance. (Prior to the 2010 determinations, Bank of America fully repaid its obligations,⁸² and Citigroup repaid its exceptional assistance.)⁸³ These determinations generally followed the precedents set by the October 2009 Top 25 determinations, with refinements reflecting the benefit of additional experience and in light of changes to particular circumstances. A large majority—84%—of Top 25 executives covered by the 2009 determinations remained with the companies through the 2010 determinations. The cash and overall compensation of most executives new to the Top 25, who mostly filled slots created by employee departures prior to the 2009 determinations, was reduced substantially from historical levels.⁸⁴

2. *Covered Employees 26–100 Determinations*

Determinations for Covered Employees 26–100 have been issued for 2009 and 2010. Because the review of this group of employees addresses compensation structures

and not actual payments, the effect of the determinations on the overall amounts of compensation is not measurable by the Office of the Special Master.

The initial determinations for this group were released on December 11, 2009, and covered five of the six firms then receiving exceptional assistance.⁸⁵ (Prior to the issuance of these determinations, Bank of America fully repaid its obligations.)⁸⁶ No determination was issued for Chrysler Financial because its entire Covered Employees 26–100 group fell within the Rule’s \$500,000 “safe harbor,” which results in automatic approval of an executive’s compensation structure.⁸⁷ Despite occurring near the end of the year, however, the determinations preceded “bonus season” for 2009. As a result, most incentive payments to covered employees were required to conform to the Special Master’s approved structures, with substantial allocation to stock-based and long-term structures.⁸⁸

The 2010 Covered Employees 26–100 determinations were released on April 16, 2010, and covered four of the five firms then receiving exceptional assistance. (Prior to the 2010 determinations, Citigroup repaid the assistance it had been provided under an exceptional assistance program.)⁸⁹ For 2010, no determination was issued for Chrysler because its entire Covered Employees 26–100 group fell within the safe harbor.⁹⁰ These determinations closely followed the precedent of the December 2009 Covered Employees 26–100 determinations.⁹¹

3. *Supplemental Determinations*

In addition to the calendar year Top 25 and Covered Employees 26–100 determinations, the Special Master from time to time issued “supplemental” determinations.⁹² These determinations were issued for three purposes: First, in response to proposals regarding the compensation structures and payments for new hires in roles that are subject to immediate Special Master jurisdiction.⁹³ Second, to provide technical corrections to previous determinations or a response to a request for reconsideration.⁹⁴ Third, in response to a proposal to modify previously approved compensation structures.⁹⁵

IV. SECTION 111(f) LOOK BACK REVIEW

A. Basis of Review

As described above, the Recovery Act mandated a review of prior compensation payments made by TARP recipients. This Look Back Review requires a review of all bonuses, retention awards, and other compensation paid to the Top 25 during the period beginning on the date the TARP recipient first received financial assistance until February 17, 2009, commonly referred to as the Review Period. Under the Rule, the Special Master was charged with administering the Look Back Review.

B. Data Request

On March 23, 2010, the Special Master issued information requests to the 419 TARP recipients covered by the review, along with detailed instructions for submitting compensation data.⁹⁶ The Special Master did not request detailed compensation data for Top 25 executives who received \$500,000 or less in “annual compensation” during each fiscal year within the Review Period. The Special Master established this exclusion pursuant to his administrative discretion under the Rule, having concluded that payments to these employees were highly unlikely to be inconsistent with the Public Interest Standard. Instead, TARP recipients were permitted to simply certify how many of their Top 25 executives were eligible for the exclusion.⁹⁷

For each Top 25 executive whose compensation exceeded \$500,000 threshold, the following data was required to be submitted, as applicable:⁹⁸ (i) name, (ii) title in 2008 and 2009, (iii) historical annual compensation information from 2007, 2008 and 2009, (iv) employment termination date, and (v) an accounting of all compensation provided to the employee during the Review Period.⁹⁹ TARP recipients had 30 days to submit compensation data and certifications,¹⁰⁰ and were generally timely with their submissions, as well as with any corrections due to technical or clerical errors.

Of the 419 TARP recipients covered by the review, 240 certified that none of their Top 25 earned more than \$500,000 in annual compensation during each year covered by the Review Period. This concluded the review of payments at these companies. Of the remaining 179 companies, most had numerous excluded employees as well. The number of Top 25 executives subject to the next stage of the review therefore was reduced to less than 1,700 from at least 10,500.

C. Data Analysis

Working with technology staff and contractors detailed from the Office of Financial Stability, the Office of the Special Master created a database to store the compensation data and provide a platform to examine it. The system allowed analysis of payments during the Review Period on an employee-by-employee and company-by-company basis, looking at multiple factors, including payment structure and allocation (i.e., incentive compensation, retention awards, golden parachute payments, etc.), aggregate amounts relative to firms of comparable size and amount of assistance received, payment

timing, whether the firm repaid financial assistance, and descriptions of incentive payments and awards.

The analysis focused in particular on payments that fell within categories that were restricted after the Review Period by the Recovery Act and the Rule: stock grants and cash bonuses paid or accrued to certain executives;¹⁰¹ golden parachute payments made to any Top 10 Employee;¹⁰² tax gross-ups paid to any Top 25 executive.¹⁰³ Although TARP recipients generally were not prohibited from making these types of payments during the Review Period,¹⁰⁴ the subsequent legislation and regulations suggest that a payment that was contrary to the Public Interest Standard would more likely fall within one of these disfavored categories.

D. Findings

The 179 TARP recipients that submitted detailed compensation data made compensation payments to Top 25 executives during the Review Period totaling \$2.3 billion. \$1.7 billion of this amount, or approximately 74% of all payments made during the Review Period, consists of payments that fall into the disfavored categories described above.¹⁰⁵ Of the 179 institutions covered by the second stage of the review, 126 made at least some amount of these types of payments; however, \$1.6 billion of the \$1.7 billion in payments came from 17 institutions.¹⁰⁶

The Rule directs the Special Master to use the same six principles applied in the review of compensation structures and payments when determining whether payments made during the Review Period were inconsistent with the Public Interest Standard: risk; taxpayer return; appropriate allocation; performance-based compensation; comparable structures and payments; and, employee contribution to TARP recipient value.¹⁰⁷

In reaching determinations regarding the reviewed payments, two factors in particular contributed to the Special Master's conclusion. First, as noted above, payments of these types were permitted by the rules and regulations in place at the time.¹⁰⁸ Second, more than 90% of the payments in disfavored categories were made by firms that have provided full reimbursement of their TARP obligations, or, as Exceptional Assistance Recipients, have significantly restructured the compensation arrangements of their Top 25 under the Special Master's oversight, which takes prior payments into account.¹⁰⁹

Taking account of these factors, the Special Master did not determine that any reviewed payment was inconsistent with the Public Interest Standard. It is important to note that this outcome does not express a conclusion that these payments were appropriate or advisable, particularly in light of the circumstances facing the financial system generally, and some institutions specifically, in late 2008 and early 2009.

E. Proposed Policy

Because the Special Master determined that no payments made during the Review Period were contrary to the Public Interest Standard, he had no authority under the statute or the Rule to "seek to negotiate ... appropriate reimbursement to the Federal Government."¹¹⁰ The Special Master nevertheless concluded that some action was warranted. He therefore proposed that all TARP recipients, and in particular the 17

companies identified during the review, adopt a prospective compensation policy that would provide companies the authority to alter pending payments to executives in the event of a financial crisis.¹¹¹

Under the proposed “brake” policy, in the event that a company’s board of directors identifies extraordinary adverse circumstances that constitute a significant threat to the financial viability of the company, the compensation committee would have the authority to restructure, reduce or cancel pending payments to executives—and this authority would supersede any rights and entitlements executives have in normal circumstances.¹¹² The proposed policy would give compensation committees flexibility to set and adjust compensation at crucial moments. This authority is consistent with provisions in the new regulatory reform law,¹¹³ which strengthen committee independence, and with banking regulators’ guidance on incentive compensation,¹¹⁴ which calls for effective oversight by directors and an appropriate balance of risk and reward. Had such a policy been in place during late 2008 and early 2009, it might have prevented some of the payments later described by the Special Master as ill-advised.

Adoption of the proposed policy by any firm would be entirely voluntary. Because the Special Master did not determine that any payment was inconsistent with the Public Interest Standard, the policy is not a remedy or settlement. Rather, the Special Master introduced the proposal as a matter of good public policy that should be considered by TARP recipients and other firms.

V. OBSERVATIONS AND RECOMMENDATIONS

My departure does not result in any changes under the statute or Rule—the Office’s work will continue—but it does occasion an opportunity for observation.

The Office has done its job so far: establishing a determination process; designing pay packages that both respect taxpayers and keep executives on board. The need for an outside Special Master has lessened. In my view, a more permanent Treasury official should be appointed to lead the Office, using the current blueprint with the benefits of hindsight and our work to date. For that official, I have two recommendations:

First, keep the core set of standards, based on the principles in the Rule, that grounded and clarified our process: Limit guaranteed cash. Demand a performance component for most compensation. Focus on long-term value creation. Stop excessive perquisites and other giveaways. And hold the line on cash salaries—this reinforces the other building blocks, and makes firms propose structures that focus executives on stability and performance.

Second, continue the constructive dialogue with the leadership, advisors and directors of the firms. This provides a necessary perspective on each company’s culture, sensitivities and objectives. Their insights deserve, and have been given, substantial weight; however, some skepticism is warranted with regard to claims that significant restructuring of compensation will lead to increased executive turnover and prevent institutions from attracting new talent. In my experience, this generally has not been the case.

The program is concluding its fourteenth month. The Special Master has issued 33 compensation determinations and completed the Look Back Review. There are four exceptional assistance recipients remaining for the Office’s attention, and a useful model remains in place for future determinations. But the Office’s useful model is not a model for use more broadly. The extreme level of scrutiny applied to compensation arrangements by the Special Master is warranted by the circumstances of the firms under his jurisdiction. But given the extraordinary nature of those circumstances, it would be inappropriate (as well as impractical) to replicate the program across a larger number of firms. I advise against any expansion of the Office’s jurisdiction.

NOTES

- ¹ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261, 31 U.S.C. §1105, and scattered sections of 26 U.S.C.). Relevant excerpts of EESA are attached as Exhibit 1.
- ² *Id.* § 2(1).
- ³ *Id.* § 101(a)(1).
- ⁴ *See id.* § 111(b)(1). Section 111 of EESA was amended and restated by section 7001 of the Recovery Act.
- ⁵ *Id.* § 111(b)(2).
- ⁶ *Id.* § 111(b)(2)(A).
- ⁷ *Id.* § 111(b)(2)(B).
- ⁸ *Id.* § 111(b)(2)(C).
- ⁹ 73 Fed. Reg. 62,205 (Oct. 20, 2008). Treasury simultaneously provided guidance covering other TARP programs. The guidance for the Program for Systemically Significant Failing Institutions—AIG—applied similar standards as the rule for CPP participants, plus a more stringent rule on golden parachute payments. *See* Treas. Notice 2008-PSSFI.
- ¹⁰ Press Release, Treasury Announces New Restrictions on Executive Compensation (Feb. 4, 2009), <http://www.ustreas.gov/press/releases/tg15.htm>.
- ¹¹ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115. Relevant excerpts of the Recovery Act are attached as Exhibit 2.
- ¹² 12 U.S.C. § 5221(b)(3)(B).
- ¹³ *Id.* § 5221(b)(3)(C).
- ¹⁴ *Id.* § 5221(a)(2).
- ¹⁵ *Id.* § 5221(b)(3)(D)(i).
- ¹⁶ *Id.* § 5221(b)(3)(D)(iii).
- ¹⁷ *Id.* § 5221(b)(3)(D)(ii).
- ¹⁸ *Id.* § 5221(b)(3)(E).
- ¹⁹ *Id.* § 5221(c)(1).
- ²⁰ *Id.* § 5221(c)(2).
- ²¹ *Id.* § 5221(d). Such policies cover expenditures such as entertainment or events, office and facility renovations, aviation or other transportation services, or other expenses unrelated to the normal conduct of the firm's business. *Id.*
- ²² *Id.* § 5221(e). The SEC issued final regulations implementing this requirement on January 19, 2010. *See* 75 Fed. Reg. 2,789 (Jan. 19, 2010).

- ²³ *Id.* § 5221(b)(4).
- ²⁴ *Id.* § 5221(f)(1).
- ²⁵ *Id.* § 5221(f)(2).
- ²⁶ *Id.* § 5221(h).
- ²⁷ TARP Standards for Compensation and Corporate Governance, 74 Fed. Reg. 28,394 (June 15, 2009). The Rule (and subsequent technical corrections) are attached as Exhibit 4.
- ²⁸ *See id.* at 28,396.
- ²⁹ *See* 12 U.S.C. § 5221(b)(1)-(2).
- ³⁰ 31 C.F.R. § 30.11(d).
- ³¹ *Id.* § 30.11(b). The number of employees covered by the perquisite disclosure requirement, like the standard prohibiting bonus accruals and payments, ranges from one to twenty-five depending on the amount of taxpayer assistance provided. *Id.*
- ³² *See id.* § 30.11(c).
- ³³ *See id.* § 30.11(a).
- ³⁴ *See* Fact Sheet, United States Department of the Treasury, Interim Final Rule on TARP Standards for Compensation and Corporate Governance (June 10, 2009). A copy of the Fact Sheet is attached as Exhibit 3.
- ³⁵ 31 C.F.R. § 30.16(a). Although appointed by the Secretary, the Special Master reports to the Assistant Secretary for Financial Stability. *See* Letter from Timothy F. Geithner, Secretary of the Treasury, to Elizabeth Warren, Congressional Oversight Panel Chair 11 (February 16, 2010), <http://cop.senate.gov/documents/letter-021610-cop.pdf>.
- ³⁶ *Id.* § 30.16(a)(3)(i)-(ii).
- ³⁷ *Id.* § 30.16(a)(1).
- ³⁸ *Id.* § 30.16(a)(2).
- ³⁹ *See* 74 Fed. Reg. at 28,404.
- ⁴⁰ 31 C.F.R. § 30.1. The Rule defines “exceptional financial assistance” as assistance as “any financial assistance provided under the Programs for Systemically Significant Failing Institutions, the Targeted Investment Program, the Automotive Industry Financing Program, and any new program designated by the Secretary as providing exceptional financial assistance.” *Id.*
- ⁴¹ 31 C.F.R. § 30.11(a).
- ⁴² The full names of the institutions at the time: American International Group, Inc., Bank of America Corporation, Chrysler Financial Services Americas LLC, Chrysler Group LLC, Citigroup Inc., General Motors Company and GMAC, Inc.
- ⁴³ Bank of America repaid its TARP obligations on December 9, 2009. *See* Letter to Bank of America, *infra* note 82. Citigroup repaid its obligations under exceptional assistance

programs on December 23, 2009. *See* Letter to Citigroup, *infra* note 83. Chrysler Financial's TARP obligations were extinguished in consideration of a payment made on May 14, 2010. *See* Press Release, United States Department of the Treasury, Chrysler Financial Parent Company Repays \$1.9 Billion in Settlement of Original Chrysler Loan (May 17, 2010), <http://www.ustreas.gov/press/releases/tg700.htm>.

- ⁴⁴ *Id.* § 30.16(a)(3)(i).
- ⁴⁵ *Id.* § 30.16(a)(3)(ii).
- ⁴⁶ *Id.* § 30.16(a)(3)(i)-(ii).
- ⁴⁷ *Id.* § 30.16(b)(1)(i).
- ⁴⁸ *Id.* § 30.16(b)(1)(ii).
- ⁴⁹ *Id.* § 30.16(b)(1)(iii).
- ⁵⁰ *Id.* § 30.16(b)(1)(iv).
- ⁵¹ *Id.* § 30.16(b)(1)(v).
- ⁵² *Id.* § 30.16(b)(1)(vi).
- ⁵³ *Id.* § 30.16(b).
- ⁵⁴ *Id.*
- ⁵⁵ *Id.* § 30.16(a)(3).
- ⁵⁶ *Id.* § 30.16(a)(3)(ii).
- ⁵⁷ *Id.* § 30.16(a)(3)(i).
- ⁵⁸ *Id.* § 30.16(a)(1); *e.g.*, Frequently Asked Questions – TARP Standards for Compensation and Corporate Governance. A copy of the FAQs is attached as Exhibit 5.
- ⁵⁹ *Id.* The Special Master has only issued advisory opinions in circumstances regarding exceptional assistance recipients. *E.g.*, Letter from Kenneth R. Feinberg, Special Master for TARP Executive Compensation to American International Group, Inc., and American Life Insurance Company regarding MetLife's Purchase of American Life Insurance Company (March 5, 2010). A copy of this Letter is attached as Exhibit 6.
- ⁶⁰ *Id.* § 30.16(a)(4).
- ⁶¹ *Id.* § 30.16(a)(2).
- ⁶² *Id.*
- ⁶³ *Id.*
- ⁶⁴ *See* 12 U.S.C. § 5231.
- ⁶⁵ *Id.* § 5214.
- ⁶⁶ *Id.* § 5233.
- ⁶⁷ *Id.* § 5226.

- ⁶⁸ *Executive Compensation: How Much is Too Much?: Hearing before the H. Comm. on Oversight and Government Reform*, 111th Cong. (2009), available at <http://groc.edgeboss.net/wmedia/groc/transfer/10.28.09.fc.execcomp.wvx> (archived video of the hearing). A copy of the Special Master's written testimony is attached as Exhibit 7.
- ⁶⁹ *Compensation in the Financial Services Industry – Government Perspectives: Hearing before the H. Comm. on Financial Services*, 111th Cong. (2010), available at <http://financialserv.edgeboss.net/wmedia/financialserv/hearing022510.wvx> (archived video of the hearing). A copy of the Special Master's written testimony is attached as Exhibit 8.
- ⁷⁰ See 31 C.F.R. § 30.16(c)(1).
- ⁷¹ See <http://www.financialstability.gov/about/spcMaster.html>
- ⁷² See 31 C.F.R. § 30.16(b)(1)(iv).
- ⁷³ See *id.* § 30.16.
- ⁷⁴ See *id.* § 30.16(b)(1)(iv).
- ⁷⁵ See *id.* § 30.16(a)(3)(ii).
- ⁷⁶ See 31 C.F.R. § 30.16(b)(1)(iv).
- ⁷⁷ See *id.* § 30.16(b)(1)(iii).
- ⁷⁸ See Financial Stability Board, Principles for Sound Compensation Practices—Implementation Standards 3 (2009) (recommending that substantial portions of compensation be paid in stock and be deferred at least three years).
- ⁷⁹ See Fact Sheet, United States Department of the Treasury, The Special Master for TARP Executive Compensation Issues First Rulings (October 22, 2009). A copy of this Fact Sheet is attached as Exhibit 9; copies of the determinations are attached as Exhibits 10-A through 10-G.
- ⁸⁰ See *id.*
- ⁸¹ See Fact Sheet, United States Department of the Treasury, Special Master Issues 2010 Rulings for Top 25 Executives at Firms Receiving Exceptional Taxpayer Assistance (March 23, 2010). A copy of this Fact Sheet is attached as Exhibit 16; copies of the determinations are attached as Exhibits 17-A through 17-E.
- ⁸² See Letter from Special Master Kenneth R. Feinberg to Bank of America Corporation regarding Compensation Structures for Executive Officers and Certain Most Highly Compensated Employees (December 11, 2009). A copy of this Letter is attached as Exhibit 13.
- ⁸³ See Letter from Special Master Kenneth R. Feinberg to Citigroup Inc. regarding Compensation Structures for Executive Officers and Certain Most Highly Compensated Employees (December 23, 2009). A copy of this Letter is attached as Exhibit 14.
- ⁸⁴ See March 2010 Fact Sheet, *supra* note 81.

- ⁸⁵ See Fact Sheet, United States Department of the Treasury, The Special Master for TARP Executive Compensation Rules on Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees 26–100 (December 11, 2009). A copy of this Fact Sheet is attached as Exhibit 11; copies of the determinations are attached as Exhibits 12-A through 12-E.
- ⁸⁶ See Letter to Bank of America, *supra* note 82.
- ⁸⁷ See 31 C.F.R. § 30.16(a)(3)(ii). See also Letter from Special Master Kenneth R. Feinberg to Chrysler Financial regarding Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees (December 11, 2009). A copy of this Letter is attached as Exhibit 14.
- ⁸⁸ See December 2009 Fact Sheet, *supra* note 81.
- ⁸⁹ See Letter to Citigroup, *supra* note 83.
- ⁹⁰ See 31 C.F.R. § 30.16(a)(3)(ii). See also Letter from Special Master Kenneth R. Feinberg to Chrysler Group LLC regarding Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees (April 16, 2010). A copy of this Letter is attached as Exhibit 19.
- ⁹¹ Copies of the determinations are attached as Exhibits 18-A through 18-D.
- ⁹² Copies of the supplemental determinations are attached as Exhibits 20-A through 20-M.
- ⁹³ See FAQs, *supra* note 58, at Q4.
- ⁹⁴ See 31 C.F.R. § 30.16(c)(1).
- ⁹⁵ See 31 C.F.R. § 30.16(c)(2).
- ⁹⁶ See Letter from Special Master Kenneth R. Feinberg to TARP recipients, regarding the Special Master Review of Past Compensation Payments (March 23, 2010). A copy of this Letter is attached as Exhibit 21.
- ⁹⁷ See Office of the Special Master for TARP Executive Compensation, Compensation Review Data Request Form Instructions (March 23, 2010). A copy of the Instructions, and a set of FAQs the Office published regarding them, are attached as Exhibits 22 and 23.
- ⁹⁸ *Id.*
- ⁹⁹ *Id.*
- ¹⁰⁰ See 31 C.F.R. § 30.16(a)(2) (noting that “TARP recipients must submit any requested information to the Special Master within 30 days of the request”).
- ¹⁰¹ See *id.* § 30.10.
- ¹⁰² See *id.* § 30.9.
- ¹⁰³ See *id.* § 30.11(d) (prohibiting gross-ups to any Top 25 executive of a TARP recipient).
- ¹⁰⁴ With the exception of golden parachute payments, Section 111 of EESA as originally enacted provided for general standards rather than outright prohibitions on specific types of payments. See *supra* notes 5-8 and accompanying text.

- ¹⁰⁵ See Fact Sheet, United States Department of the Treasury, The Special Master for TARP Executive Compensation Concludes the Review of Prior Payments (July 23, 2010). A copy of this Fact Sheet is attached as Exhibit 24.
- ¹⁰⁶ *Id.* These 17 institutions are: American Express Company; American International Group, Inc.; Bank of America Corporation; Boston Private Financial Holdings, Inc.; Capital One Financial Corporation; CIT Group Inc.; Citigroup Inc.; JPMorgan Chase & Co.; M&T Bank Corporation; Morgan Stanley; Regions Financial Corporation; SunTrust Banks, Inc.; The Bank of New York Mellon Corporation; The Goldman Sachs Group, Inc.; The PNC Financial Services Group, Inc.; U.S. Bancorp; and Wells Fargo & Company.
- ¹⁰⁷ See *supra* text accompanying notes 47-52 for an explanation of these principles.
- ¹⁰⁸ See 31 C.F.R. § 30.16(b)(1) (directing the Special Master to apply the principles by considering the facts and circumstances at the time the compensation was granted, earned or paid, as appropriate).
- ¹⁰⁹ See July 2010 Fact Sheet, *supra* note 105. See also 31 C.F.R. § 30.16(b)(ii) (providing ability to repay TARP as a factor in the principles); *id.* § 30.16(a)(3)(i)-(ii) (providing that the Special Master may consider prior payments or structures when reaching determinations regarding payments or structures that are subject to review).
- ¹¹⁰ See 12. U.S.C. § 5221(f)(2).
- ¹¹¹ See July 2010 Fact Sheet, *supra* note 105.
- ¹¹² See Office of the Special Master for TARP Executive Compensation, Adoption Standards For Proposed Compensation Policy (July 23, 2010). A copy of the adoption standards is attached as Exhibit 25.
- ¹¹³ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 931, 124 Stat. 1376, (2010).
- ¹¹⁴ See Guidance on Sound Incentive Compensation Policies, 75 Fed. Reg. 36,395 (Office of the Comptroller of the Currency, Bd. of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., and the Office of Thrift Supervision, June 25, 2010).

GLOSSARY OF DEFINED TERMS

<u>Covered Employees 26–100</u>	The employees of an Exceptional Assistance Recipient whose compensation structures—but not individual payment amounts—are subject to Special Master approval. This group consists of the 75 most highly compensated employees who are not in the Top 25, plus any executive officer who is not in the Top 25 or the group of 75.
<u>EESA</u>	The Emergency Economic Stabilization Act of 2008.
<u>Exceptional Assistance Recipient</u>	A firm receiving taxpayer support under one of the TARP programs that provides “exceptional” assistance: the Program for Systemically Significant Financial Institutions (now known as the AIG Investment Program), the Targeted Investment Program and the Automotive Industry Finance Program.
<u>Look Back Review</u>	The Special Master’s review of payments that TARP recipients made to Top 25 executives before the Recovery Act and Treasury established tighter standards on compensation and corporate governance.
<u>Office</u>	The Office of the Special Master for TARP Executive Compensation.
<u>Public Interest Standard</u>	The Special Master’s review standard, which is applied by using six principles enumerated in the Rule. To satisfy the standard, a payment (or potential payment) must not be inconsistent with the purposes of Section 111 of ESSA or TARP, or otherwise contrary to the public interest.
<u>Recovery Act</u>	The American Recovery and Reinvestment Act of 2009.
<u>Review Period</u>	The period subject to the Look Back Review, beginning on the date a TARP recipient first received assistance under a TARP program and ending on February 17, 2009.
<u>Rule</u>	Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance.
<u>SEC</u>	The Securities and Exchange Commission.

<u>Secretary</u>	The Secretary of the Treasury.
<u>Special Master</u>	The Special Master for TARP Executive Compensation.
<u>TARP</u>	The Troubled Asset Relief Program.
<u>TARP recipient</u>	An institution receiving assistance under the Troubled Asset Relief Program.
<u>Top 25</u>	The group of employees of a TARP recipient consisting of the company’s “senior executive officers” and its 20 next most highly compensated employees. SEC compensation disclosure rules are used to identify the senior executive officers (generally the CEO, CFO and three other executive officer) and provide the method for determining an employee’s level of compensation.
<u>Treasury</u>	The Department of the Treasury.

EXHIBITS

Part I

1. The Emergency Economic Stabilization Act of 2008 (excerpts)..... E1
2. The American Recovery and Reinvestment Act of 2009 (excerpts) E9
3. Fact Sheet: The IFR on TARP Standards for Compensation and Corporate Governance E15
4. Interim Final Rule on TARP Standards for Compensation and Corporate Governance (with subsequent technical corrections)..... E20

Part II

5. Frequently Asked Questions: TARP Standards for Compensation and Corporate Governance..... E56
6. Letter from Kenneth R. Feinberg, Special Master for TARP Executive Compensation to American International Group, Inc., and American Life Insurance Company regarding MetLife’s Purchase of American Life Insurance Company (Mar. 5, 2010) E63
7. Written testimony of Special Master Kenneth R. Feinberg before the Committee on Oversight and Government Reform on October 28, 2009 E66
8. Written testimony of Special Master Kenneth R. Feinberg before the House Committee on Financial Services on February 25, 2010 E73

Part III

9. Fact Sheet: The Special Master for TARP Executive Compensation Issues First Rulings (Oct. 22, 2009) E79
10. 2009 Top 25 determinations
 - A. AIG..... E83
 - B. Bank of America E105
 - C. Chrysler E125
 - D. Chrysler Financial E145
 - E. Citigroup (with subsequent technical corrections) E160
 - F. General Motors..... E184
 - G. GMAC..... E202

11. Fact Sheet: The Special Master for TARP Executive Compensation Rules on Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees 26–100	E221
12. 2009 Covered Employees 26–100 determinations and letters	
A. AIG	E225
B. Chrysler.....	E245
C. Citigroup	E247
D. General Motors	E265
E. GMAC	E285
13. Letter from Special Master Kenneth R. Feinberg to Bank of America Corporation regarding Compensation Structures for Executive Officers and Certain Most Highly Compensated Employees (Dec. 11, 2009).....	E303
14. Letter from Special Master Kenneth R. Feinberg to Chrysler Financial regarding Compensation Structures for Executive Officers and Certain Most Highly Compensated Employees (Dec. 11, 2009)	E304
15. Letter from Special Master Kenneth R. Feinberg to Citigroup Inc. regarding Compensation Structures for Executive Officers and Certain Most Highly Compensated Employees (Dec. 23, 2009)	E306
16. Fact Sheet: Special Master Issues 2010 Rulings for Top 25 Executives at Firms Receiving Exceptional Taxpayer Assistance (Mar. 23, 2010)	E307
17. 2010 Top 25 determinations	
A. AIG	E310
B. Chrysler.....	E328
C. Chrysler Financial	E343
D. General Motors	E357
E. GMAC	E372
18. 2010 Covered Employees 26–100 determinations and letters	
A. AIG	E389
B. Chrysler Financial	E394
C. General Motors	E396
D. GMAC	E401

19. Letter from Special Master Kenneth R. Feinberg to Chrysler Group LLC regarding Compensation Structures for Executive Officers and Certain Most Highly Compensated Employees (December 11, 2009).....	E406
20. Supplemental determinations and responses to reconsideration requests	
A. AIG CEO compensation (Oct. 2, 2009)	E408
B. AIG reconsideration request (Dec. 21, 2009).....	E414
C. Chrysler CEO compensation(Dec. 23, 2009)	E419
D. GM compensation structures (Dec. 23, 2009).....	E422
E. GM CFO compensation (Dec. 23, 2009).....	E426
F. GMAC CEO compensation (Dec. 23, 2009).....	E431
G. AIG compensation structure (Feb. 5, 2010)	E434
H. Chrysler long-term restricted stock grants (Mar. 12, 2010)	E440
I. AIG compensation structure (May 20, 2010).....	E442
J. GM reconsideration request (Jun. 10, 2010)	E445
K. GM compensation structures (Jun. 23, 2009).....	E447
L. AIG compensation structures (Aug. 3, 2010).....	E449
M. Ally Financial compensation structures (Aug. 3, 2010).....	E454

Part IV

21. Letter from Special Master Kenneth R. Feinberg to TARP recipients, regarding the Special Master Review of Past Compensation Payments (Mar. 23, 2010).....	E457
22. Compensation Review Data Request Form Instructions	E462
23. Frequently Asked Questions: Compensation Review Data Request	E478
24. Fact Sheet: The Special Master for TARP Executive Compensation Concludes the Review of Prior Payments (Jul. 23, 2010)	E480
25. Adoption Standards and Q&As for the Special Master’s “Brake” Proposal	E483