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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Treasury Department Executive Compensation Restrictions

In implementing the provisions of the Emergency Stabilization Act of 2008, the U.S. Treasury Department has issued guidance designed to provide direction to financial institutions participating in the Trouble Asset Relief Program ("TARP") Capital Purchase Program. A financial institution participating in the TARP Capital Purchase Program will be subject to more stringent executive compensation rules for the period during which the Treasury Department holds equity issued under this program.

The discussion herein will address the existing guidelines and the new guidelines to be implemented in the future.

The existing guidelines require a financial institution to meet certain standards, including: (i) insuring incentive compensation for senior executives does not encourage unnecessary and excessive risks that threaten the value of the financial institution; (ii) requiring recovery or clawback of any bonus or incentive compensation paid to a senior executive based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; (iii) prohibiting the financial institution from making any golden parachute payment to a senior executive as defined in Section 280G of the Internal Revenue Code provision; (iv) agreeing not to deduct for tax purposes executive compensation in excess of $500,000 for each senior executive under Section 162(m) of the Internal Revenue Code (rather than the normal $1,000,000).

The existing guideline compensation restrictions apply to a defined group of senior officers which include the Chief Executive Officer ("CEO"), Chief Financial Officer and the three other most highly compensated officers. These senior officers are generally determined in accordance with the rules in Item 402 of SEC Regulation S-K.

The Treasury Department has also issued its interim final rule in 31 CFR Part 30 for reporting and recordkeeping requirements under the executive compensation standards of TARP's Capital Purchase Program. The final rule requires the CEO to certify annually within 135 days after the financial institution's fiscal year end that the financial institution and its compensation committee have complied with the required executive compensation standards.

In addition, within 120 days of the Securities Purchase Agreement between the financial institution and the Treasury Department, the CEO is required to certify that the compensation committee has reviewed the senior executives' incentive compensation arrangements with the senior risk officer to insure that these requirements do not encourage senior executives to take unnecessary and excessive risks that could threaten the value of the financial institution.

The CEO must also provide the 120-day and annual certifications to the TARP Chief Compliance Officer. The financial institution is required to keep records to substantiate these certifications for at least six years following each certification and to provide these records to the TARP Chief Compliance Officer upon request.

On February 4, 2009, the Treasury Department announced new guidelines on executive compensation which when implemented will modify the restrictions on financial institutions receiving assistance under the TARP Capital Purchase Program in the future.

The new guidelines when implemented are generally as follows:

- The total compensation paid to any of the five senior officers may not exceed $500,000 plus restricted stock awards;

- the financial institution must review and disclose the reasons that the compensation arrangements for all of its employees do not encourage excessive and unnecessary risk-taking;

- requiring recovery of bonus and incentive compensation paid to the financial institution's top twenty-five senior officers based on statements or other criteria that is materially inaccurate;

- limiting golden parachute payments to certain executive officers of the financial institution to no more than one year's compensation as opposed to the calculation for payments in Section 280G of the Internal Revenue Code; and

- requiring the Board of Directors of a financial institution to adopt a policy on luxury expenditures relating to aviation services, office and facility renovations, entertainment, holiday parties and similar expenditures (this policy will require certification of the CEO on expenditures that may be viewed as excessive or luxury items, and the policy must be posted on the financial institution's website).

There will also be additional restrictions on financial institutions receiving "exceptional financial recovery assistance" such as American International Group, Inc., Citigroup, Inc. and Bank of America (because these restrictions will only apply to a limited group of institutions, they are not discussed herein).

The requirements of the Treasury Department relating to executive compensation under the TARP's Capital Purchase Program is available at www.ustreas.gov/initiatives/eesa/ under the heading *Executive Compensation Guidance*.

Our firm is also available to answer questions regarding compliance with TARP's Capital Purchase Program.

 Comments, ideas, opinions and questions - email gbinns@ddh-ar.com - telephone (501) 375-9151 - facsimile (501) 375-6484.