

Frequently Asked Questions (FAQs)
Office of the Special Master for TARP Executive Compensation
Compensation Review Data Request

Pursuant to Section 111(f) of the Emergency Economic Stabilization Act of 2008, as amended (“EESA”), and the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Special Master for TARP Executive Compensation (the “Special Master”) is required to review all bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most-highly compensated employees (the “Covered Employees”) of each TARP recipient from the date the recipient first received financial assistance until February 17, 2009 (the “Review Period”). 31 C.F.R. § 30.16(a)(2). On March 23, 2010, the Special Master issued a request for certain compensation data to facilitate this review.

This guidance responds to certain questions frequently asked by affected TARP recipients with regard to the *Compensation Review Data Request Form* and accompanying *Instructions* issued on March 23, 2010.

1. Section 3 of the *Instructions* provides that compensation data are not required for Excluded Employees—those Covered Employees who earned \$500,000 or less in “annual compensation” during each fiscal year within the Review Period. The term “annual compensation” is defined in Section 30.1 (Q-1) of the Rule to mean the dollar value of total compensation for the applicable fiscal year, including all equity-based compensation. How should a TARP recipient calculate “annual compensation” for purposes of determining whether an individual is an Excluded Employee?

For purposes of determining whether a Covered Employee earned \$500,000 or less in annual compensation for a particular fiscal year, all equity-based compensation granted in that fiscal year should be included in the calculation of annual compensation at the total fair market value on the grant date. All equity-based compensation granted in fiscal years ending prior to the Review Period should be excluded from the calculation of annual compensation.

2. Section 30.1 (Q-1) of the Rule defines annual compensation as the dollar value of total compensation for the applicable fiscal year as determined pursuant to Item 402(a) of Regulation S-K under the federal securities laws, 17 C.F.R. § 229.402(a). On December 23, 2009 the SEC published in the Federal Register a final rule amending Item 402 of Regulations S-K (see 74 Fed. Reg. 68,334 (December 23, 2009)). Those amendments became effective February 28, 2010. What is the significance of newly-amended Item 402(a) for purposes of responding to the *Compensation Review Data Request*?

A TARP recipient should calculate annual compensation by reference to Item 402(a) as in effect prior to being amended effective February 28, 2010, when responding to the *Compensation Review Data Request*. Thus, for example, a TARP recipient’s list of Covered Employees for

fiscal year 2009 (which may include one or more Excluded Employees) should match the list of senior executive officers and the next 20 most highly compensated employees for fiscal year 2009 provided by the TARP recipient in connection with the certification required under Section 30.15 of the Rule.

Section 4, Tab 3, Item 9 of the *Instructions* describes the amount of equity-based awards made during the Review Period by reference to Item 402(a) as amended effective February 28, 2010. This reference may have resulted in confusion among TARP recipients as to the applicability of newly-amended Item 402(a) for purposes of responding to the *Compensation Review Data Request*. To avoid any confusion, the amount of equity-based compensation granted in a particular fiscal year should be recorded pursuant to Section 4, Tab 3, Item 9 of the *Instructions* at the total fair market value on the grant date.

3. Section 4, Tab 2 of the *Instructions* requires the submission of “employee title” and “annual compensation” for each Covered Employee who is not an Excluded Employee for various fiscal years. Is a TARP recipient required to submit this data for fiscal years 2007, 2008 and 2009, regardless of the year in which the TARP recipient’s Review Period began?

Yes. As originally issued, the *Instructions* contained an erroneous description of the fiscal years for which annual compensation and employee title data are requested. The Office of the Special Master has determined, pursuant to 31 C.F.R. § 30.16(a)(2), that certain historical data are needed to carry out a comprehensive review of prior compensation as required under Section 111(f) of EESA. This historical data will be used to place into context compensation payments made by a TARP recipient during the Review Period. Therefore, a TARP recipient’s submission will not be considered complete unless the TARP recipient provides the employee title and annual compensation of each Covered Employee who is not an Excluded Employee for each of fiscal years 2007, 2008, and 2009, regardless of the year in which the TARP recipient’s Review Period began.

4. If a TARP recipient first received financial assistance on December 31, 2008, and the TARP recipient uses a calendar year fiscal year, must the TARP recipient compile a list of Covered Employees for the 2008 fiscal year?

Yes. For purposes of this data request and the Special Master’s review of compensation payments made before February 17, 2009, the term “Review Period” includes the date on which the TARP recipient first received financial assistance.

Please check back regularly for postings of additional FAQs.