

# OFFICE OF THE SPECIAL MASTER FOR TARP EXECUTIVE COMPENSATION

## COMPENSATION REVIEW DATA REQUEST FORM INSTRUCTIONS

These *Instructions* are designed to aid recipients of financial assistance under the Troubled Asset Relief Program (“TARP”) created under the Emergency Economic Stabilization Act of 2008, as amended (“EESA”), in completing the *Compensation Review Data Request Form* and accompanying certification. The *Instructions* refer frequently to the Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), *see* 31 C.F.R. Part 30, a copy of which may be found on the Office of Financial Stability Website at [www.financialstability.gov](http://www.financialstability.gov).<sup>1</sup> You may find it useful to refer to a copy of the Rule while reading through the *Instructions*.

As explained in Section 3 of the *Instructions*, compensation data generally are not required for employees with “annual compensation” (as defined in Section 30.1 of the Rule) of \$500,000 or less. We anticipate that some TARP recipients will have no employees with annual compensation in excess of \$500,000. These TARP recipients may comply with this data request by submitting a signed copy of the certification provided in Attachment A. Please see Section 3 of the *Instructions* below for additional information.

The *Instructions* and the Rule should provide you with all the information necessary to complete and submit the *Form* and accompanying certification. Should you have questions about the *Form*, please contact the Office of the Special Master for TARP Executive Compensation via email at [SpecialMasterReview@do.treas.gov](mailto:SpecialMasterReview@do.treas.gov) or via telephone at 202-622-1706. We recommend that you contact the Office of the Special Master by email.

### **SECTION 1: INTRODUCTION**

Section 111(f) of EESA requires the Secretary of the Treasury to review all bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most-highly compensated employees of each TARP recipient (the “Covered Employees”) between the date the TARP recipient first received financial assistance and February 17, 2009 (the “Review Period”). This requirement applies to all TARP recipients, including those recipients who have repaid all or any portion of the financial assistance they received under TARP.

Under the Rule, the Special Master for TARP Executive Compensation (the “Special Master”) has the authority to conduct the review prescribed by Section 111(f) of EESA.

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<sup>1</sup> Click on “About” in the upper left-hand corner of the home page, then scroll down and click on the second link from the bottom, “Executive Compensation Guidance,” then click the link, which brings you to “Executive Compensation,” scroll to “Additional Resources” and you will see the link to the “Interim Final Rule.”

31 C.F.R. § 30.16(a)(2). The Rule authorizes the Special Master to request in writing any information from TARP recipients necessary to carry out the review, and TARP recipients must submit any requested information to the Special Master within 30 days of the request. *Id.* The Rule also provides that if, based on this review, the Special Master determines that the payment of a bonus, retention award, and other compensation was inconsistent with Section 111(f) of EESA or TARP, or was otherwise contrary to the public interest, then the Special Master shall have responsibility for negotiating with the TARP recipient and the subject employee for appropriate reimbursements to the federal government with respect to such payment. *Id.*

To facilitate this review, the Special Master requires that you provide compensation data in the attached *Compensation Review Data Request Form* and submit a signed certification. Compensation data are not required, however, for those Covered Employees with “annual compensation” (as defined in Section 30.1 of the Rule) of \$500,000 or less in each of the fiscal years covered by the Review Period. If a Covered Employee received annual compensation that fell below this threshold amount in each of the applicable fiscal years, then he or she is an “Excluded Employee” for purposes of this data request, and you are not required to submit compensation data for that employee. However, you must still submit a signed certification. Given this compensation threshold, we anticipate that many TARP recipients will be able to comply with this data request by filing a single certification and providing no additional information. Please see Section 3 of the *Instructions* below for additional information regarding Excluded Employees and the \$500,000 threshold.

Regardless of whether you are required to provide compensation data in the *Form*, you must file a signed certification indicating the number of the Covered Employees with annual compensation of more than \$500,000 in any fiscal year covered by the Review Period (even if there are no Covered Employees with that much annual compensation). See Sections 2 and 3 of the *Instructions* below for additional information regarding this requirement. A model certification also is provided as Attachment A to the *Instructions*. Please note that the certification provided in Attachment A must be signed by the TARP recipient’s chief executive officer and either the chairman of the board’s compensation committee or, where a compensation committee is not established, a member of the board (other than the TARP recipient’s chief executive officer).

## **SECTION 2: DETERMINATION OF COVERED EMPLOYEES**

The compensation review relates only to Covered Employees—those individuals who were “senior executive officers” and the next 20 “most-highly compensated employees” (each as defined in Section 30.1 of the Rule) of the TARP recipient in any fiscal year covered by the Review Period, which begins on the date on which the TARP recipient first received financial assistance and ends on February 17, 2009. Because Covered Employees are determined under the Rule by reference to a fiscal year, you may need to compile two lists of Covered Employees depending on your fiscal year end-date and when you first received TARP financial assistance. See Section 30.3 of the Rule for instructions regarding how to determine “senior executive officers” and “most-highly compensated employees.” The following examples illustrate the determination of Covered Employees for purposes of this compensation review:

Example 1: TARP Recipient A uses a calendar fiscal year and first received TARP financial assistance on November 1, 2008. The Review Period for TARP Recipient A therefore spans the company's 2008 and 2009 fiscal years. For purposes of this data request, TARP Recipient A must compile a list of Covered Employees for its 2008 fiscal year and a separate list of Covered Employees for its 2009 fiscal year. Compensation data for the full Review Period must be provided for each Covered Employee whose name appears on either list, except for the Excluded Employees, as described in Section 3 below.

Example 2: Same facts as Example 1, except that TARP Recipient A first received financial assistance on January 15, 2009. In this case, the entire Review Period (from January 15, 2009 to February 17, 2009) is encompassed by the company's 2009 fiscal year. Therefore, TARP Recipient A need only compile a single list of Covered Employees for that fiscal year.

Example 3: TARP Recipient B uses a fiscal year that ends November 30<sup>th</sup> of each year. Its 2008 fiscal year began on December 1, 2007, and ended on November 30, 2008. The company first received TARP assistance on November 1, 2008. In this case, the Review Period spans two fiscal years—2008 and 2009—and TARP Recipient B must compile separate lists of Covered Employees for its 2008 and 2009 fiscal years. Compensation data must be provided for the full Review Period for each Covered Employee on either list, except for the Excluded Employees, as described in Section 3 below.

Example 4: Same facts as Example 3, except that the company's fiscal year ends June 30<sup>th</sup> of each year. In this case, the entire Review Period is encompassed by the company's 2009 fiscal year (i.e., the period from July 1, 2008 to June 30, 2009). Therefore, TARP Recipient B need only compile a single list of Covered Employees for that fiscal year.

In sum, you must compile a list of Covered Employees for each fiscal year any part of which falls within the Review Period. If the Review Period spans two fiscal years, then this process will result in two separate lists (although some employees may be on both lists). Except for the Excluded Employees, as described in Section 3 below, you must include information in the *Compensation Review Data Request Form* for each individual included on your list (or lists) of Covered Employees. Hence, you may be required to submit compensation data for more than 25 individuals. You must also file a signed certification indicating the number of Covered Employees for whom data are being submitted.

### **SECTION 3: DETERMINATION OF EXCLUDED EMPLOYEES**

As noted in Section 1, 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 of the Rule to mean 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), which generally includes salary, bonus, stock awards, option awards, non-equity incentive plan compensation, and all other compensation.

If your Review Period spans two fiscal years, then a Covered Employee must have received \$500,000 or less in “annual compensation” in each of those fiscal years to be an Excluded Employee. The following example illustrates the determination of Excluded Employees for purposes of this compensation review:

Example 1: Suppose TARP Recipient C uses a calendar year fiscal year and first received TARP financial assistance on December 1, 2008. If a Covered Employee received annual compensation of \$450,000 and \$550,000 for fiscal years 2008 and 2009, respectively, then that Covered Employee is not an Excluded Employee, and therefore TARP Recipient C must provide compensation data for that Covered Employee during the entire Review Period. That is, as explained in Section 4 below, TARP Recipient C must provide compensation data with respect to the Covered Employee for both fiscal years 2008 and 2009.

If one or more Covered Employees had annual compensation that fell below the \$500,000 threshold for all fiscal years included in the Review Period, then those Covered Employees are Excluded Employees and you are not required to provide compensation data for those Covered Employees. However, you must still submit a signed certification. TARP recipients with some Covered Employees above the \$500,000 threshold and others who are below the threshold (and therefore are Excluded Employees) must provide compensation data for Covered Employees above the threshold and submit a certification identifying the number of Covered Employees above the threshold. A model certification is provided in Attachment A to these *Instructions* for your use.

We anticipate that some TARP recipients will have no Covered Employees with annual compensation in excess of \$500,000 for each of the fiscal years covered by the Review Period. These TARP recipients may comply with this data request by submitting a single certification. Please note that the certification provided in Attachment A must be signed by the TARP recipient’s chief executive officer and either the chairman of the board’s compensation committee or, where a compensation committee is not established, a member of the board (other than the chief executive officer).

## **SECTION 4: COMPLETION OF COMPENSATION REVIEW DATA REQUEST FORM**

The *Compensation Review Data Request Form* consists of one spreadsheet with three separate tabs:

- Tab 1: Company Information
- Tab 2: Covered Employees
- Tab 3: Payments to Covered Employees

These tabs contain multiple data elements, each of which are described below. If all the Covered Employees at your company are Excluded Employees, you will not complete and submit the *Compensation Review Data Request Form*. Instead, you will submit only a certification indicating that all the Covered Employees are Excluded Employees.

## **TAB 1: COMPANY INFORMATION**

This tab requests information about your company, and about the number of Covered Employees for whom you will provide detailed compensation information. Please note that the term “fiscal year 2008” means the fiscal year ending in calendar year 2008, while the term “fiscal year 2009” means the fiscal year ending in calendar year 2009. Please provide:

1. *UST #*: This is the number assigned by the Treasury Department upon receipt of TARP financial assistance.
2. *Institution Name*: This is the name of the institution that received TARP financial assistance.
3. *Contact Person Name*.
4. *Contact Person Phone*.
5. *Contact Person Email*.
6. *2008 Covered Employees*: If your Review Period began in fiscal year 2008 (i.e., the fiscal year ending in calendar year 2008), include the number of Covered Employees with more than \$500,000 in annual compensation for fiscal year 2008. See Section 3 above for the definition of “annual compensation.” If your Review Period began in fiscal year 2009, please enter “0.”
7. *2008 Excluded Employees*: If your Review Period began in fiscal year 2008, include the number of Covered Employees with \$500,000 or less in annual compensation for fiscal year 2008. See Section 3 above for the definition of “annual compensation.” If your Review Period began in fiscal year 2009, please enter “0.”
8. *2009 Covered Employees*: Include the number of Covered Employees with more than \$500,000 in “annual compensation” for fiscal year 2009 (i.e., the fiscal year ending in calendar year 2009). See Section 3 above for the definition of “annual compensation.”
9. *2009 Excluded Employees*: Include the number of Covered Employees with \$500,000 or less in “annual compensation” for fiscal year 2009. See Section 3 above for the definition of “annual compensation.”

## **TAB 2: COVERED EMPLOYEES**

This tab requests information about the Covered Employees at your company who are not Excluded Employees. No information should be entered on Tab 2 for Excluded Employees. See

Section 3 above for information on how to determine whether a Covered Employee is an Excluded Employee. Please note that the term “fiscal year 2008” means the fiscal year ending in calendar year 2008, while the term “fiscal year 2009” means the fiscal year ending in calendar year 2009.

For each Covered Employee who is not an Excluded Employee, please provide:

1. *UST #*: This is the number assigned by the Treasury Department upon receipt of TARP funding.
2. *EEID*: Provide a unique employee identification number. Please use a number you create for the purpose of this review, rather than a number that is already linked to personally identifiable information with respect to the employee. **This identifier should NOT be the employee’s social security number or company employee ID number.**
3. *Employee Last Name*
4. *Employee First Name*
5. *2007 Employee Title*: Provide the employee’s title at the beginning of fiscal year 2007 (i.e., the fiscal year ending in calendar year 2007), or enter “NA” if he or she was not employed as of that date.
6. *2007 Annual Compensation*: If your Review Period began in fiscal year 2007 (i.e., a fiscal year ending in 2007), provide the employee’s annual compensation for fiscal year 2007. This is the same annual compensation used to determine 2008 Covered Employees pursuant to the Rule. See Section 3 above for the definition of “annual compensation.”
7. *2008 Employee Title*: Provide the employee’s title at the beginning of fiscal year 2008 (i.e., the fiscal year ending in calendar year 2008), or enter “NA” if he or she was not employed as of that date.
8. *2008 Classification*: Using the pull-down menu, select the employee’s classification during the 2008 fiscal year (i.e., either a “senior executive officer” (SEO) or “most-highly compensated employee” (MHCE)). If your Review Period did not begin in fiscal year 2008, or if the employee was a Covered Employee in fiscal year 2009 but not fiscal year 2008, select “NA.”
9. *2008 Annual Compensation*: If your Review Period began in fiscal year 2008 (i.e., a fiscal year ending in 2008), provide the employee’s annual compensation for fiscal year 2008. See Section 3 above for the definition of “annual compensation.” You must enter 2008 annual compensation for each employee listed, even if a particular employee was only a Covered Employee for fiscal year 2009.

10. *2009 Employee Title:* Provide the employee's title at the beginning of fiscal year 2009 (i.e., the fiscal year ending in calendar year 2009), or enter "NA" if he or she was not employed as of that date.
11. *2009 Classification:* Using the pull-down menu, select the employee's classification during the 2009 fiscal year (i.e., "senior executive officer" (SEO) or "most-highly compensated employee" (MHCE)). If the employee was a Covered Employee in 2008 but not 2009, select "NA."
12. *2009 Annual Compensation:* Provide the employee's annual compensation for fiscal year 2009. See Section 3 above for the definition of "annual compensation." You must enter 2009 annual compensation for each employee listed, even if a particular employee was only a Covered Employee for fiscal year 2008.
13. *Termination Date:* For a Covered Employee who is no longer an employee of your company, provide the date on which his or her employment terminated.

### **TAB 3: PAYMENTS**

This tab requests information on payments made to the Covered Employees listed on Tab 2. Information must be provided on each payment made during the entire Review Period to those Covered Employees, even if an individual was not a Covered Employee during the entire Review Period. The following example illustrates the payments to be disclosed for each Covered Employee listed on Tab 2:

Example 1: TARP Recipient D uses a calendar year fiscal year and first received TARP financial assistance on December 1, 2008. If a Covered Employee received annual compensation of \$450,000 and \$550,000 for fiscal years 2008 and 2009, respectively, then the employee must be included in the compensation review. Moreover, TARP Recipient D must provide in Tab 3 information regarding each payment or award made to the Covered Employee during the entire Review Period (i.e., the period from December 1, 2008 to February 17, 2009).

For purposes of the *Compensation Review Data Request Form*, a "payment" to a Covered Employee is intended to include every payment of compensation or right to future compensation delivered or granted to a Covered Employee during the Review Period. This means that, in addition to information on actual delivery of cash or stock, information must be provided on awards of restricted stock or stock options, grants under cash-based incentive plans, severance packages resulting from a termination, the acceleration of any vesting requirements, and deferrals or other promises to pay, such as credits to supplemental executive retirement plans.

For each payment made during the Review Period to a Covered Employee listed on Tab 2, there are several required data points, which are described below. Note that each row in Tab 3 should represent a single payment or award made to a Covered Employee during the Review Period. Because multiple payments will have been made to each Covered Employee, multiple rows will be needed for each Covered Employee. Following the descriptions are examples intended to provide guidance on how to report various types of compensation.

1. *UST #*: This is the number assigned by the Treasury Department upon receipt of TARP funding.
2. *EEID*: Use the same unique employee identification number used in Item 2 of Tab 2 above.
3. *Payment or Award Date*: Provide the date on which the Covered Employee, as applicable, received actual payment, was granted a new award, or became entitled to a future payment.
4. *Frequency of Payment*: Using the pull-down menu, select the item that best describes the relative frequency with which payments/awards of this nature are made. For example, if the line item is an annual bonus payment, select “*Annual*.” If the line item is a regular, bi-weekly salary payment, select “*Bi-weekly*.”
5. *Compensation Element*: Select from the pull-down menu the item that best describes this payment or award.
  - *Salary*: Any payment, whether in cash or some other form, to a Covered Employee for services performed by the employee at a regular bi-weekly, monthly, annual, or similar periodic rate.
  - *Incentive*: Any “bonus payment” as defined under Section 30.1 of the Rule, which generally includes all bonuses, stock awards, option awards, non-equity incentive awards, and retention awards. Any of the following should be reported as a payment of an *Incentive* during the Review Period: cash payment or deferral of an amount earned under an annual or longer-term incentive program; vesting of previously granted equity awards; grants of equity- or cash-based incentives, whether or not these require future service or performance; entry into an agreement that provides a legally binding right to a fixed or minimum payment in the future, such as a retention agreement or bonus guarantee. The preceding list is not intended to be exclusive, but provides examples of payments that must be reported as the payment of an *Incentive*.
  - *Severance*: Any “golden parachute payment,” as defined in Section 30.1 of the Rule. In general, a severance payment includes any payment or award made to a Covered Employee for the departure from the TARP recipient for any reason other than death or disability, or any payment due to a change in control of the TARP recipient, other than payments for services performed and benefits accrued. Report as *Severance* both payments that actually were made to Covered Employees during the Review Period, and also payments that were triggered by a termination of employment during the Review Period. Each component of a Covered Employee’s overall severance package, if any, should be reported as a separate payment, with a brief description of the payment’s characteristics in the *Notes* column.
  - *Nonqualified Deferred Compensation (NQDC)*: Any amount accrued, credited to, or set aside for a Covered Employee under a “deferred compensation plan” as defined under Section 30.1 of the Rule, or an amount paid out to a Covered Employee from a deferred compensation plan. The *NQDC* description should not be used for salary, incentive, or severance payments that were earned, vested or triggered during the Review Period, but



for which payment was deferred rather than paid currently. Those payments should instead be labeled using the applicable compensation element, with the deferral reflected in the *Timing* column. Examples of payments that should be labeled as *NQDC* in this column are credits to a supplemental executive retirement program, or the regular or accelerated payment of an amount under a previously existing deferred compensation arrangement. The preceding list is not intended to be exclusive, but provides examples of payments that must be reported as the payment of *NQDC*.

- *Other*: Any “perquisites” as defined in Section 30.1 of the Rule and “other” compensation that is not described accurately using the any of the above elements, such as tax gross-ups, relocation costs, or expatriate expenses. Do not report credits or contributions to any qualified retirement plan (as defined in Section 4974(c) of the Internal Revenue Code), benefits under a broad-based employee benefit plan (such as group health or life insurance plans), or bona fide and routine expense reimbursements payable pursuant to company policy, all of which are being excluded from this data request.
6. *Incentive Description*: If the compensation element is an incentive payment or award, or a portion of a severance payment related to an incentive program, select from the pull-down menu the type or plan or arrangement that best describes the type of incentive. If the compensation element is not an incentive payment or award, select “NA.”
- *Annual Plan*.
  - *Long-term Plan*.
  - *Retention Plan*.
  - *Sign-On*: Any incentive grant related to the commencement of employment, including a “buy out” of forfeited awards granted by the employee’s former employer.
  - *Other*.
7. *Form of Compensation*: Select from the pull-down menu the form in which the compensation was paid or awarded.
- *Cash*.
  - *Equity*.
  - *Other*: Provide any necessary explanation or detail in the “Notes” column. Payments delivered in a form reportable as “other” will generally include perquisites or other benefits paid in-kind, such as outplacement services provided as part of a severance package.
8. *Timing*: Select from the pull-down menu the item that best describes the timing of the payment or award.
- *Current*: The payment or award was paid and resulted in taxable income during the Review Period, regardless of when it was earned, accrued or granted.

- *Deferred (fully vested)*: The payment or award, when made, is not subject to a substantial risk of forfeiture (as defined in 26 C.F.R. § 1-83(c)), and is not payable or redeemable until some future date.
- *Deferred (subject to forfeiture)*: The payment or award, when made, is subject to a substantial risk of forfeiture (as defined in 26 C.F.R. § 1-83(c)), and is not payable or redeemable until some future date.

If the timing of the delivery differs for portions of a payment, please enter each portion as a separate payment.

9. *Amount*: Provide the gross amount of the payment, deferral or award detailed on this line. Grants of equity based awards during the Review Period should be recorded at their aggregate grant date value, as determined pursuant to Item 402(a) of Regulation S-K under the federal securities laws (as amended effective February 28, 2010). Grants of cash-based awards during the Review Period should be recorded at their target value, unless they have a guaranteed minimum amount, in which case the guaranteed amount should be reported.
10. *Notes*: Provide any additional information necessary for the Special Master to understand the context in which the payment or award was made, such as the vesting conditions, if any, of an equity award, the length of service required to earn a retention payment, or the date on which a deferred payment will be received.

Example 1: TARP Recipient E uses a calendar year fiscal year and first received TARP financial assistance on November 15, 2008. On December 31, 2008, a Covered Employee employed by TARP Recipient E (i) was credited with three months of service under the company’s supplemental executive retirement plan (the “SERP”). Under the SERP, benefits are subject to forfeiture until an employee satisfies age and service requirements, which the Covered Employee will not reach for several years.

On January 16, 2009, the Covered Employee received (ii) a regular, bi-weekly salary payment. On January 30, 2009, the Covered Employee received (iii) another regular, bi-weekly salary payment, (iv) a cash payment equal to the value of 100 shares of company stock resulting from the annual partial vesting of a restricted stock unit award from a previous year under the company’s long-term equity plan, (v) a portion of an annual bonus paid in cash, (vi) a portion of an annual bonus paid in a fixed number of fully-vested stock units, which will result in a future cash payment equal to the value of the underlying company shares, and (vii) a retention agreement under which the Covered Employee is entitled to \$1,000 payable in cash in 18 months, provided the employee remains employed through the date of payment.

These facts result in seven payments for the Covered Employee, which TARP Recipient E must report as follows:

- (i) The SERP credit is reported, with a *Payment or Award Date* of December 31, 2008, as a *Quarterly* payment of *NQDC*. The *Timing* of the credit is reported as *Deferred (subject to forfeiture)*. The *Amount* of the payment is the increase in the

actuarial present value of the Covered Employee's SERP benefit resulting from the credit. If TARP Recipient E does not have existing data on the value of the credit or ready access to such data, it may report a good faith estimate of the value as the *Amount*.

- (ii) The first salary payment is reported, with a *Payment or Award Date* of January 16, 2009, as a *Bi-weekly* payment of *Salary*. The *Timing* of the payment is reported as *Current*. The *Amount* is the gross amount of the salary payment, without regard to any tax withholding, elective deferrals to a tax-qualified retirement plan, or contributions by the Covered Employee to group health or other employee benefit plan.
- (iii) The second salary payment is reported in the same manner as the previous salary payment, but as a separate entry with a *Payment or Award Date* of January 30, 2009.
- (iv) The vesting and payment of the restricted stock units are reported, with a *Payment or Award Date* of January 30, 2009, as an *Award Annual* payment of an *Incentive* with an *Incentive Description* of *Long-term Plan*. Although the payment relates to restricted stock units, because cash was delivered rather than stock, the *Form of Compensation* is *Cash*. The *Timing* of the payment is reported as *Current*. The *Amount* is the gross amount of the payment.
- (v) The cash portion of the Covered Employee's annual bonus is reported, with a *Payment or Award Date* of January 30, 2009, as an *Annual* payment of an *Incentive* with an *Incentive Description* of *Annual Plan*. The *Timing* of the payment is reported as *Current*. The *Amount* is the gross amount of the cash portion of the annual bonus.
- (vi) The stock unit portion of the Covered Employee's annual bonus is reported as a separate payment from the portion paid currently in cash described in (v) above. The *Payment or Award Date*, *Frequency of Payment*, *Compensation Element* and *Incentive Description* are the same as for the cash portion of the annual bonus. Although the payment will eventually be delivered in cash, because its value during the deferral period is tied to company stock, the *Form of Compensation* is *Equity*. The *Timing* of the payment is reported as *Deferred (fully vested)*. The *Amount* is the gross amount of the portion of the annual bonus allocated to stock units.
- (vii) The retention agreement is reported, with a *Payment or Award Date* of January 30, 2009, as a *One-time* payment of an *Incentive*, with an *Incentive Description* of *Retention Plan*. The *Timing* of the payment is reported as *Future (subject to risk of forfeiture)*. The *Amount* is \$1,000, and the form is *Cash*.

Example 2: TARP Recipient F uses a calendar year fiscal year and first received TARP financial assistance on December 1, 2008. TARP Recipient F terminated a Covered Employee's employment without "cause" on December 3, 2008. As a result of the termination, the Covered Employee becomes entitled to two years of salary continuation paid on regularly-scheduled

payroll dates. TARP Recipient F must report the payments resulting from the termination of Covered Employee's employment as follows.

Each salary continuation payment actually made during the Review Period is reported in its own row on Tab 3. In addition, the aggregate value of the salary continuation payments made after the Review Period is reported in a single row. The remaining salary continuation payments, which were triggered during the Review Period but only payable after the end of the Review Period, are reported using the termination of employment date in the *Payment or Award Date* column, and an appropriate selection in the *Timing* column, depending on whether the payments are fully vested or are subject to additional conditions, such as compliance with non-competition restrictions, or future company performance.

## **SECTION 4: SUBMITTING CERTIFICATIONS AND FORMS**

All certifications and data submissions (including supporting documentation) must be filed electronically with the Office of the Special Master via email to [SpecialMasterReview@do.treas.gov](mailto:SpecialMasterReview@do.treas.gov). Certifications may be submitted via the email address without encryption. Additional procedures are required to submit the *Compensation Review Data Request Form*, which will contain private data that must be encrypted to ensure its security.

When the Special Master's Office receives confirmation of receipt of this request via email to [SpecialMasterReview@do.treas.gov](mailto:SpecialMasterReview@do.treas.gov), as required in the cover letter accompanying these *Instructions*, you will receive an email response that includes instructions for establishing a secure account. Please use this account to submit your completed *Compensation Review Data Request Form*.

The file name for the *Compensation Review Data Request Form* should be in the following format: [UST Number]-CRDRF.xls. Please note that there is a 15 megabyte limit on the size of attachments that can be sent through the system; therefore, you may need to break up your submission into several emails. In the event that additional documentation is required, each recipient will be contacted by the Office of the Special Master with details regarding submission of this information.

Questions regarding submission procedures, or substantive questions regarding the *Compensation Review Data Request Form* may be directed to the Office of the Special Master at [SpecialMasterReview@do.treas.gov](mailto:SpecialMasterReview@do.treas.gov) or via telephone at 202-622-1706. Staff members are available from 9:00am to 5:00pm Eastern Time, Monday through Friday. We recommend that you contact the Office of the Special Master by email.

## **SECTION 5: FREEDOM OF INFORMATION ACT**

The Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), requires Treasury upon request to disclose records within its possession, including records that include or comprise information that Treasury receives from private entities. However, FOIA also authorizes

Treasury to withhold from public disclosure information that falls within certain enumerated exemptions set forth in section 552(b). These exemptions include, but are not limited to, “trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential,” *id.* § 552(b)(4), and “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552(b)(6). Treasury recognizes that the information Treasury collects from TARP recipients pursuant to the *Compensation Review Data Request Form* may be commercially or financially sensitive or personal in nature. Accordingly, Treasury will consider carefully the FOIA exemptions when it responds to any third party FOIA request for such information.

If Treasury receives a FOIA request for records containing information provided pursuant to the *Compensation Review Data Request Form* and Treasury does not decide unilaterally to withhold such records from disclosure, Treasury will promptly notify the TARP recipient of the FOIA request if (1) Treasury has reason to believe that disclosure of your information could reasonably be expected to cause the TARP recipient substantial competitive harm, or (2) the TARP recipient has, in good faith, already designated the requested records as containing commercially or financially sensitive information. 31 C.F.R. §§ 1.6(b), (c), (g). Treasury’s notification will describe the records that the requester seeks and will offer the TARP recipient an opportunity, within ten working days of receipt of the notification, to present Treasury with a detailed statement of its objections to Treasury disclosing the records, including a set of its proposed redactions and all of its asserted grounds for Treasury to withhold records under any exemption of the FOIA. *Id.* § 1.6(d). If a TARP recipient asserts that Treasury should apply FOIA exemption (b)(4) to withhold a record, then the TARP recipient must demonstrate why the record is a trade secret or commercial or financial information that is privileged or confidential. *Id.* The TARP recipient must also support any claim of confidentiality with a statement or certification by an officer or authorized company representative that the record in question is, in fact, confidential commercial or financial information and has not been disclosed to the public. *Id.* § 1.6(c). Separate determinations of confidentiality must be made for each type of information, as opposed to a determination being made on the confidentiality of the total package.

If Treasury should decide to disclose the record after a careful review of the objections of a TARP recipient, then Treasury will provide the TARP recipient with a written notification of its decision. *Id.* § 1.6(e). This notification will include a description of the record Treasury intends to disclose, a disclosure date of not less than ten working days from the mailing date of the notice, and a statement of Treasury’s reasons for proceeding with disclosure notwithstanding the objections. *Id.*

Each TARP recipient should be aware FOIA authorizes the federal district courts to enjoin Treasury from withholding records and may order Treasury to produce any records improperly withheld from a requester. 5 U.S.C. § 552(a)(4)(B). Treasury will notify the TARP recipient promptly if Treasury becomes aware of any FOIA lawsuit involving information provided by the TARP recipient. 31 C.F.R. § 1.6(f).

Each TARP recipient should also be aware that FOIA does not authorize Treasury to withhold any information from the Congress. 5 U.S.C. § 552(d).

## **SECTION 6: PRIVACY ACT STATEMENT**

The Department of the Treasury, under the authority of 12 U.S.C. § 5221 and 31 U.S.C. § 321, collects this information from each TARP recipient in order to review and approve compensation payments and compensation structures for the “senior executive officers” and “highly compensated employees” of the TARP recipient, in each case as defined under 31 C.F.R. Part 30, and to determine whether certain payments to those individuals were inconsistent with the purposes of section 111 of the Emergency Economic Stabilization Act (“EESA”) or the Troubled Asset Relief Program (“TARP”) or were otherwise contrary to the public interest.

1. The information may be disclosed to law enforcement agencies when they are investigating a potential violation of civil or criminal law, to other agencies as required by law, or when requested by Congress.
2. The information may be disclosed to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for UST, or when necessary to accomplish an agency function related to this system of records.
3. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to UST officers and employees.
4. These records may be used to disclose information to an agency contractor for the purpose of compiling, organizing, analyzing, programming, utilizing or otherwise refining records subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.
5. Information from this system may be disclosed to the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. § 2904 and § 2906.
6. These records may be used to disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.
7. These records may be used to disclose information to a public or professional auditing organization for the purpose of conducting financial audit and/or compliance audits.

The furnishing of this information by the TARP recipient is mandatory. The individual or entity providing the information may be subject to 18 U.S.C. § 1001, which generally prohibits the making of any false or fraudulent statement in a matter within the jurisdiction of the

federal government. Failure to provide the information will cause the TARP recipient to be adversely affected.

## Attachment A<sup>1</sup>

The Special Master for TARP Executive Compensation (the “Special Master”) has, pursuant to Section 111(f) of the Emergency Economic Stabilization Act of 2008, as amended, requested compensation data for certain employees of [TARP Recipient] (and any related company deemed a TARP recipient under 31 C.F.R. § 30.1) (the “Company”) who received more than \$500,000 in annual compensation for fiscal year[s] [2008 and 2009] OR [2009] (the “Applicable Fiscal Year[s]”).

I certify, based on my knowledge, that the Company had [no] OR [\_\_\_\_] employee[s] among its “senior executive officers” and 20 “most-highly compensated employees” (“Covered Employees”) who received “annual compensation,” (in each case, as defined in 31 C.F.R. Part 30) greater than \$500,000 for [either of] the Applicable Fiscal Year[s]. The company will submit the requested compensation data for each Covered Employee, if any, who received annual compensation greater than \$500,000 for [either of] the Applicable Fiscal Year[s]. I understand that a knowing and willful false or fraudulent statement made in connection with this certification may be punished by fine, imprisonment, or both. *See*, for example, 18 U.S.C. § 1001.

\_\_\_\_\_  
[CEO of TARP Recipient]

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Chairman, Compensation Committee]  
OR  
[Board Director other than CEO]

Dated: \_\_\_\_\_

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<sup>1</sup> Signed certifications should be submitted electronically (e.g., in .pdf format) to the Office of the Special Master via email to [SpecialMasterReview@do.treas.gov](mailto:SpecialMasterReview@do.treas.gov).