

Frequently Asked Questions (FAQs)

Executive Compensation Requirements under the Capital Purchase Program (CPP)

For what period do the executive compensation requirements set forth in 31 C.F.R. Part 30 promulgated under EESA section 111(b) (CPP executive compensation requirements) apply to the financial institution?

The executive compensation requirements apply to the financial institution for as long as Treasury holds any equity or debt position in the financial institution under the CPP, including the Warrant or any equity acquired under the Warrant.

How are senior executive officers (SEOs) identified for purposes of compliance with the CPP executive compensation requirements?

(a) Non-tax-related standards. For purposes of the non-tax-related executive compensation standards (no unnecessary and excessive risk taking, clawbacks of certain bonus or incentive compensation, and prohibition on golden parachute payments), the SEOs for a year are the “named executive officers” who are identified in the financial institution's annual report on Form 10-K or annual meeting proxy statement for that year (reporting the executive's compensation for the immediately preceding year). These executive officers are considered the SEOs throughout that entire year.

Prior to the identification of the named executive officers in the financial institution's annual report on Form 10-K or annual meeting proxy statement, the financial institution must make its best efforts to identify the year's SEOs for purposes of the applicability of the non-tax related executive compensation standards for the year. If any executive is a potential SEO and terminates employment in an involuntary termination prior to the identification of the year's named executive officers, the financial institution should refrain from making any golden parachute payment until the year's named executive officers are identified in either the annual report on Form 10-K or annual meeting proxy statement so that it can be determined whether the executive is a named executive officer and, therefore, is a SEO who is not entitled to the golden parachute payment for the year.

(b) Tax-related standard. The tax-related executive compensation standard requires financial institutions to agree not to claim a tax deduction for compensation paid to each SEO in an amount that exceeds \$500,000. Because the contractual limitation on the amount of the tax deduction is based on current year compensation, the SEOs are determined based on compensation for that year, rather than compensation paid in the preceding year as described above. This means that for the purposes of the tax-related standard, SEOs are determined based on the financial institution's annual report on Form 10-K or annual meeting proxy statement for the year subsequent to the year in which the contractual limitation on the tax deduction applies.

(c) Private financial institutions. Rules analogous to those in paragraph (a) and (b) apply to financial institutions that do not have securities registered with the Securities and Exchange Commission (SEC) pursuant to the federal securities laws.

How must a financial institution that is defined as a “smaller reporting company” pursuant to Item 10 of Regulation S-K under the federal securities laws identify SEOs for purposes of compliance with the CPP executive compensation requirements?

A financial institution that is a “smaller reporting company” must identify SEOs pursuant to the rules set forth in section 30.2 of 31 C.F.R. Part 30 and the previous FAQ. Note that such a financial institution must identify at least five SEOs, even if only three SEOs are provided in the disclosure pursuant to section 402 of Regulation S-K under the federal securities laws.

How should a financial institution that is defined as a “smaller reporting company” pursuant to Item 10 of Regulation S-K under the federal securities laws provide the certifications of the compensation committee for purposes of compliance with the CPP executive compensation requirements?

A financial institution that is a “smaller reporting company” should provide the certifications of the compensation committee, or a committee acting in a similar capacity, to its primary regulatory agency.

To what primary regulatory agency should a state-chartered bank that does not have securities registered with the SEC pursuant to the federal securities laws provide the certifications of the compensation committee for purposes of compliance with the CPP executive compensation requirements?

In the case of a state-chartered bank that does not have securities registered with the SEC pursuant to the federal securities laws, the primary regulatory agency is its primary federal banking regulator.

For purposes of compliance with the CPP executive compensation requirements relating to the clawback provision, must a financial institution recover bonuses and incentive compensation based on financial statements that become materially inaccurate because of revisions to generally accepted accounting principles where the financial statements were accurate based on generally accepted accounting principles applicable when the payment was made?

No.

Are payments on account of involuntary termination of employment that are made after the period that the Treasury holds an equity or debt position under the CPP taken into account for purposes of the rules prohibiting golden parachute payments under the CPP executive compensation requirements?

Yes. A golden parachute payment is the aggregate present value of all payments made on account of an applicable severance of employment that equals or exceeds three times the CEO's base amount. Thus, the determination of a golden parachute payment includes amounts paid during or after the period the Treasury holds an equity or debt position under the CPP. ([See §1.280G-1, Q&A-38, of the Treasury Regulations for how to allocate the base amount to a series of payments made over multiple years.])

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