

1 and Information Administration in a form that is inter-  
2 active and searchable.

3 (m) The Assistant Secretary shall have the authority  
4 to prescribe such rules as are necessary to carry out the  
5 purposes of this section.

6 **TITLE VII—LIMITS ON**  
7 **EXECUTIVE COMPENSATION**

8 **SEC. 7000. TABLE OF CONTENTS.**

9 The table of contents of this title is as follows:

TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

Sec. 7000. Table of contents.

Sec. 7001. Executive compensation and corporate governance.

Sec. 7002. Applicability with respect to loan modifications.

10 **SEC. 7001. EXECUTIVE COMPENSATION AND CORPORATE**  
11 **GOVERNANCE.**

12 Section 111 of the Emergency Economic Stabilization  
13 Act of 2008 (12 U.S.C. 5221) is amended to read as fol-  
14 lows:

15 **“SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE**  
16 **GOVERNANCE.**

17 “(a) DEFINITIONS.—For purposes of this section, the  
18 following definitions shall apply:

19 “(1) SENIOR EXECUTIVE OFFICER.—The term  
20 ‘senior executive officer’ means an individual who is  
21 1 of the top 5 most highly paid executives of a pub-  
22 lic company, whose compensation is required to be  
23 disclosed pursuant to the Securities Exchange Act of

1 1934, and any regulations issued thereunder, and  
2 non-public company counterparts.

3 “(2) GOLDEN PARACHUTE PAYMENT.—The  
4 term ‘golden parachute payment’ means any pay-  
5 ment to a senior executive officer for departure from  
6 a company for any reason, except for payments for  
7 services performed or benefits accrued.

8 “(3) TARP RECIPIENT.—The term ‘TARP re-  
9 cipient’ means any entity that has received or will  
10 receive financial assistance under the financial as-  
11 sistance provided under the TARP.

12 “(4) COMMISSION.—The term ‘Commission’  
13 means the Securities and Exchange Commission.

14 “(5) PERIOD IN WHICH OBLIGATION IS OUT-  
15 STANDING; RULE OF CONSTRUCTION.—For purposes  
16 of this section, the period in which any obligation  
17 arising from financial assistance provided under the  
18 TARP remains outstanding does not include any pe-  
19 riod during which the Federal Government only  
20 holds warrants to purchase common stock of the  
21 TARP recipient.

22 “(b) EXECUTIVE COMPENSATION AND CORPORATE  
23 GOVERNANCE.—

24 “(1) ESTABLISHMENT OF STANDARDS.—During  
25 the period in which any obligation arising from fi-

1       nancial assistance provided under the TARP re-  
2       mains outstanding, each TARP recipient shall be  
3       subject to—

4               “(A) the standards established by the Sec-  
5       retary under this section; and

6               “(B) the provisions of section 162(m)(5) of  
7       the Internal Revenue Code of 1986, as applica-  
8       ble.

9               “(2) STANDARDS REQUIRED.—The Secretary  
10       shall require each TARP recipient to meet appro-  
11       priate standards for executive compensation and cor-  
12       porate governance.

13               “(3) SPECIFIC REQUIREMENTS.—The standards  
14       established under paragraph (2) shall include the  
15       following:

16               “(A) Limits on compensation that exclude  
17       incentives for senior executive officers of the  
18       TARP recipient to take unnecessary and exces-  
19       sive risks that threaten the value of such recipi-  
20       ent during the period in which any obligation  
21       arising from financial assistance provided under  
22       the TARP remains outstanding.

23               “(B) A provision for the recovery by such  
24       TARP recipient of any bonus, retention award,  
25       or incentive compensation paid to a senior exec-

1           utive officer and any of the next 20 most high-  
2           ly-compensated employees of the TARP recipi-  
3           ent based on statements of earnings, revenues,  
4           gains, or other criteria that are later found to  
5           be materially inaccurate.

6                   “(C) A prohibition on such TARP recipient  
7           making any golden parachute payment to a sen-  
8           ior executive officer or any of the next 5 most  
9           highly-compensated employees of the TARP re-  
10          cipient during the period in which any obliga-  
11          tion arising from financial assistance provided  
12          under the TARP remains outstanding.

13                   “(D)(i) A prohibition on such TARP re-  
14          cipient paying or accruing any bonus, retention  
15          award, or incentive compensation during the pe-  
16          riod in which any obligation arising from finan-  
17          cial assistance provided under the TARP re-  
18          mains outstanding, except that any prohibition  
19          developed under this paragraph shall not apply  
20          to the payment of long-term restricted stock by  
21          such TARP recipient, provided that such long-  
22          term restricted stock—

23                           “(I) does not fully vest during the pe-  
24                           riod in which any obligation arising from

1 financial assistance provided to that TARP  
2 recipient remains outstanding;

3 “(II) has a value in an amount that  
4 is not greater than  $\frac{1}{3}$  of the total amount  
5 of annual compensation of the employee re-  
6 ceiving the stock; and

7 “(III) is subject to such other terms  
8 and conditions as the Secretary may deter-  
9 mine is in the public interest.

10 “(ii) The prohibition required under clause  
11 (i) shall apply as follows:

12 “(I) For any financial institution that  
13 received financial assistance provided  
14 under the TARP equal to less than  
15 \$25,000,000, the prohibition shall apply  
16 only to the most highly compensated em-  
17 ployee of the financial institution.

18 “(II) For any financial institution  
19 that received financial assistance provided  
20 under the TARP equal to at least  
21 \$25,000,000, but less than \$250,000,000,  
22 the prohibition shall apply to at least the  
23 5 most highly-compensated employees of  
24 the financial institution, or such higher  
25 number as the Secretary may determine is

1 in the public interest with respect to any  
2 TARP recipient.

3 “(III) For any financial institution  
4 that received financial assistance provided  
5 under the TARP equal to at  
6 least \$250,000,000, but less than  
7 \$500,000,000, the prohibition shall apply  
8 to the senior executive officers and at least  
9 the 10 next most highly-compensated em-  
10 ployees, or such higher number as the Sec-  
11 retary may determine is in the public inter-  
12 est with respect to any TARP recipient.

13 “(IV) For any financial institution  
14 that received financial assistance provided  
15 under the TARP equal to \$500,000,000 or  
16 more, the prohibition shall apply to the  
17 senior executive officers and at least the 20  
18 next most highly-compensated employees,  
19 or such higher number as the Secretary  
20 may determine is in the public interest  
21 with respect to any TARP recipient.

22 “(iii) The prohibition required under clause  
23 (i) shall not be construed to prohibit any bonus  
24 payment required to be paid pursuant to a writ-  
25 ten employment contract executed on or before

1 February 11, 2009, as such valid employment  
2 contracts are determined by the Secretary or  
3 the designee of the Secretary.

4 “(E) A prohibition on any compensation  
5 plan that would encourage manipulation of the  
6 reported earnings of such TARP recipient to  
7 enhance the compensation of any of its employ-  
8 ees.

9 “(F) A requirement for the establishment  
10 of a Board Compensation Committee that  
11 meets the requirements of subsection (c).

12 “(4) CERTIFICATION OF COMPLIANCE.—The  
13 chief executive officer and chief financial officer (or  
14 the equivalents thereof) of each TARP recipient  
15 shall provide a written certification of compliance by  
16 the TARP recipient with the requirements of this  
17 section—

18 “(A) in the case of a TARP recipient, the  
19 securities of which are publicly traded, to the  
20 Securities and Exchange Commission, together  
21 with annual filings required under the securities  
22 laws; and

23 “(B) in the case of a TARP recipient that  
24 is not a publicly traded company, to the Sec-  
25 retary.

1 “(c) BOARD COMPENSATION COMMITTEE.—

2 “(1) ESTABLISHMENT OF BOARD REQUIRED.—

3 Each TARP recipient shall establish a Board Com-  
4 pensation Committee, comprised entirely of inde-  
5 pendent directors, for the purpose of reviewing em-  
6 ployee compensation plans.

7 “(2) MEETINGS.—The Board Compensation  
8 Committee of each TARP recipient shall meet at  
9 least semiannually to discuss and evaluate employee  
10 compensation plans in light of an assessment of any  
11 risk posed to the TARP recipient from such plans.

12 “(3) COMPLIANCE BY NON-SEC REG-  
13 ISTRANTS.—In the case of any TARP recipient, the  
14 common or preferred stock of which is not registered  
15 pursuant to the Securities Exchange Act of 1934,  
16 and that has received \$25,000,000 or less of TARP  
17 assistance, the duties of the Board Compensation  
18 Committee under this subsection shall be carried out  
19 by the board of directors of such TARP recipient.

20 “(d) LIMITATION ON LUXURY EXPENDITURES.—The  
21 board of directors of any TARP recipient shall have in  
22 place a company-wide policy regarding excessive or luxury  
23 expenditures, as identified by the Secretary, which may  
24 include excessive expenditures on—

25 “(1) entertainment or events;

1           “(2) office and facility renovations;

2           “(3) aviation or other transportation services;

3           or

4           “(4) other activities or events that are not rea-  
5           sonable expenditures for staff development, reason-  
6           able performance incentives, or other similar meas-  
7           ures conducted in the normal course of the business  
8           operations of the TARP recipient.

9           “(e) SHAREHOLDER APPROVAL OF EXECUTIVE COM-  
10          PENSATION.—

11           “(1) ANNUAL SHAREHOLDER APPROVAL OF EX-  
12          ECUTIVE COMPENSATION.—Any proxy or consent or  
13          authorization for an annual or other meeting of the  
14          shareholders of any TARP recipient during the pe-  
15          riod in which any obligation arising from financial  
16          assistance provided under the TARP remains out-  
17          standing shall permit a separate shareholder vote to  
18          approve the compensation of executives, as disclosed  
19          pursuant to the compensation disclosure rules of the  
20          Commission (which disclosure shall include the com-  
21          pensation discussion and analysis, the compensation  
22          tables, and any related material).

23           “(2) NONBINDING VOTE.—A shareholder vote  
24          described in paragraph (1) shall not be binding on  
25          the board of directors of a TARP recipient, and may

1 not be construed as overruling a decision by such  
2 board, nor to create or imply any additional fidu-  
3 ciary duty by such board, nor shall such vote be con-  
4 strued to restrict or limit the ability of shareholders  
5 to make proposals for inclusion in proxy materials  
6 related to executive compensation.

7 “(3) DEADLINE FOR RULEMAKING.—Not later  
8 than 1 year after the date of enactment of the  
9 American Recovery and Reinvestment Act of 2009,  
10 the Commission shall issue any final rules and regu-  
11 lations required by this subsection.

12 “(f) REVIEW OF PRIOR PAYMENTS TO EXECU-  
13 TIVES.—

14 “(1) IN GENERAL.—The Secretary shall review  
15 bonuses, retention awards, and other compensation  
16 paid to the senior executive officers and the next 20  
17 most highly-compensated employees of each entity  
18 receiving TARP assistance before the date of enact-  
19 ment of the American Recovery and Reinvestment  
20 Act of 2009, to determine whether any such pay-  
21 ments were inconsistent with the purposes of this  
22 section or the TARP or were otherwise contrary to  
23 the public interest.

24 “(2) NEGOTIATIONS FOR REIMBURSEMENT.—If  
25 the Secretary makes a determination described in

1 paragraph (1), the Secretary shall seek to negotiate  
2 with the TARP recipient and the subject employee  
3 for appropriate reimbursements to the Federal Gov-  
4 ernment with respect to compensation or bonuses.

5 “(g) NO IMPEDIMENT TO WITHDRAWAL BY TARP  
6 RECIPIENTS.—Subject to consultation with the appro-  
7 priate Federal banking agency (as that term is defined  
8 in section 3 of the Federal Deposit Insurance Act), if any,  
9 the Secretary shall permit a TARP recipient to repay any  
10 assistance previously provided under the TARP to such  
11 financial institution, without regard to whether the finan-  
12 cial institution has replaced such funds from any other  
13 source or to any waiting period, and when such assistance  
14 is repaid, the Secretary shall liquidate warrants associated  
15 with such assistance at the current market price.

16 “(h) REGULATIONS.—The Secretary shall promul-  
17 gate regulations to implement this section.”.

18 **SEC. 7002. APPLICABILITY WITH RESPECT TO LOAN MODI-**  
19 **FICATIONS.**

20 Section 109(a) of the Emergency Economic Stabiliza-  
21 tion Act of 2008 (12 U.S.C. 5219(a)) is amended—

22 (1) by striking “To the extent” and inserting  
23 the following:

24 “(1) IN GENERAL.—To the extent”; and

25 (2) by adding at the end the following:

1           “(2) WAIVER OF CERTAIN PROVISIONS IN CON-  
2           NECTION WITH LOAN MODIFICATIONS.—The Sec-  
3           retary shall not be required to apply executive com-  
4           pensation restrictions under section 111, or to re-  
5           ceive warrants or debt instruments under section  
6           113, solely in connection with any loan modification  
7           under this section.”.