

## CORPORATE

James J. Canfield, Chair

315-425-2763

[icanfield@hblaw.com](mailto:icanfield@hblaw.com)

Jeffrey B. Andrus  
 H. Douglas Barclay  
 William A. Barclay  
 Christopher J. Bonner  
 Eileen A. Casey  
 Roger F. Cominsky  
 Donald S. Day  
 Richard J. Day  
 George S. Deptula  
 Richard Fischbein  
 Lawrence J. Gallick  
 Herbert J. Glose  
 James S. Grossman  
 Robert P. Heary  
 Holly J. Hoehner  
 John A. Jadhon  
 Ronald S. Kareken  
 John Kelepurovski, Jr.  
 Robert J. Lanza  
 Edwin M. Larkin  
 Robert N. Latella  
 Kathryn A. Lisandrelli  
 John P. Lowe, Jr.  
 Oksana M. Ludd  
 Charles C. Martorana  
 Francis X. Matt, III  
 Gerard M. Meehan  
 Emily C. Micale  
 Gary L. Mucci  
 Sandra S. O'Loughlin  
 Laurence B. Oppenheimer  
 Richard J. Paul  
 Joseph P. Pylman  
 Nicholas A. Scarfone  
 Gerald F. Stack  
 Edward J. Trombly  
 Arnold N. Zelman

## New Compensation Limits On Financial Institutions Receiving Government Assistance

On February 4, 2009, the Department of the Treasury announced that financial institutions receiving government assistance will be subject to guidelines limiting pay for their senior executives (the "Guidelines").

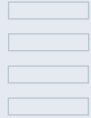
The Guidelines have two sets of restrictions, one for institutions that will be participating in generally available capital access programs and one for institutions that will be receiving "exceptional assistance," such as that previously received by AIG, Bank of America and Citigroup. The Guidelines are not retroactively applied. Therefore, financial institutions that have previously received aid are not subject to the new restrictions.

**Exceptional financial recovery assistance:** Financial institutions receiving exceptional financial assistance will be subject to the restrictions set forth below:

- **\$500,000 cash limit plus restricted stock.** Total annual compensation for senior executives (not defined) will be limited to \$500,000, except for "restricted stock and long-term incentive arrangements." Permissible restricted stock and other long-term incentive arrangements may not be convertible into cash until either the government assistance has been repaid in full, including contractual dividend payments that ensure taxpayers are compensated for the "time value of their money," or after a specified period according to conditions that consider, among the factors, the degree a company has satisfied repayment obligations, protected taxpayer interests or met lending and stability standards.
- **"Say on pay" resolution.** The financial institution must submit the senior executive compensation structure and the rationale for how compensation is tied to sound risk management to a non-binding shareholder vote, that is, a "say on pay" resolution.
- **Bonus clawbacks.** The financial institution must have provisions to "claw back" bonuses and incentive compensation from any of the top 25 senior executives if it is later determined that they knowingly provided inaccurate information relating to financial statements or performance metrics used to calculate their own incentive pay.

(Continued on back)

Hiscock & Barclay is a full service, 210-attorney law firm, with offices throughout the major cities of New York State, as well as in Boston, Washington, D.C. and Toronto. We provide comprehensive legal and business counsel to a diverse client base in 28 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.



- Commercial Litigation
- Construction & Surety
- Corporate
- Creditors' Rights
- Economic & Project Development
- Energy & Utilities
- Environmental
- Financial Institutions & Lending
- Health Care & Human Services
- Immigration
- Indian Law
- Insurance Coverage & Regulation
- Intellectual Property & Technology
- Intellectual Property Litigation
- International Business
- Labor & Employment
- Lobbying & Election Law Compliance
- Media & First Amendment Law
- Municipal & Land Use
- Professional Liability
- Public Finance
- Real Estate
- Real Property Tax & Condemnation
- Regulatory
- Tax
- Telecommunications
- Torts & Products Liability Defense
- Trusts & Estates

- Golden parachutes prohibited or limited. The top 15 senior executives will be prohibited from receiving any golden parachute payments upon termination of their employment. The next 25 senior executives may receive no more than one year's compensation upon termination.
- Board policy on luxuries. The board of directors of the financial institution must adopt a policy on expenditures for aviation services, office and facility renovations, entertainment and holiday parties, and conferences and events; excluding, however, reasonable expenditures for sales conferences, staff development, reasonable performance incentives and other measures tied to the company's normal business operations. The policy must be posted on the company's web site.
- Certification by CEO and the Compensation Committee. The chief executive officer of the financial institution will be required to certify annually that the company has strictly complied with compensation restrictions imposed by statute, by the Treasury Department or by contract. Also, the company's compensation committee must disclose why senior executive compensation arrangements do not encourage excessive and unnecessary risk-taking.

**Generally available capital access programs:** Where a financial institution participates in a "generally available capital access program," such as the Treasury's Capital Purchase Program, the Guidelines contain similar components as applicable to a company receiving exceptional financial assistance, although some are less restrictive and/or may be waived under certain conditions. While the Treasury Department plans to issue further guidance on these components and to solicit public comment, the following is a recap of the proposed guidelines:

- Waiver of cap if disclosure and "say on pay" shareholder resolution. The \$500,000 plus restricted stock rule can be waived if the company provides disclosure of compensation and will, if requested, offer to the shareholders the opportunity to vote on a non-binding "say on pay" resolution. The financial institution must review and disclose the reasons why compensation arrangements do not encourage excessive and unnecessary risk-taking.
- Golden parachutes. Under the golden parachutes limitation, the top 5 senior executives can receive no more than one year's compensation upon termination of employment.
- Luxury expenditures. The financial institution's board of directors must adopt the same policy on various expenditures as required of companies receiving exceptional assistance.

**Looking forward.** The Treasury Department also announced its desire to take steps to improve compensation arrangements at all public financial institutions to promote sound risk management and long-term value creation for the company and "the economy as a whole." ■

*If you require further information regarding the information presented in this Legal Alert and its impact on your organization, please contact any of the members of the Practice Area listed on the front of this Alert.*