

T-MAIL

Navigating the Executive Benefits Landscape
with The Todd Organization

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New Banking Law Affects Executive Compensation Practices Across Industry Lines

ON JULY 21, PRESIDENT OBAMA SIGNED INTO LAW the “Dodd-Frank Wall Street Reform” bill. While the measure’s stated purpose is to prevent another financial crisis, it has many far-ranging provisions, including a number that generally impact executive compensation.

Of particular note are the following provisions:

- **Shareholder votes on executive pay and golden parachutes.** Starting in 2011, most companies must hold a nonbinding shareholder vote on the pay and benefits for executives listed in the proxy. After 2011, companies will have to hold a similar vote at least once every three years.
- **Independent compensation committees.** The U.S. Securities and Exchange Commission (SEC) is directed to issue rules to stock exchanges mandating that, as a requirement for listing, each member of a company’s compensation committee must be an independent director. In addition, companies must provide funding for independent compensation consultants that the compensation committee wishes to retain.
- **Graphical representations of executive compensation.** The SEC is also directed to clarify disclosures relating to compensation, including requiring companies to provide charts that compare their executive compensation with stock performance over a five-year period.
- **Clawback provisions.** Companies must have a policy for recovering erroneously paid compensation when certain required accounting restatements occur.

The impact and scope of these changes will be significantly determined by forthcoming SEC and other regulations. Certainly, though, there will need to be increased disclosure and a higher burden of documenting regulatory compliance.

The Todd Organization has a long record of working with companies to help make sure executive benefit plans preserve and increase shareholder value. We will be closely monitoring these continuing changes.

Banking Regulators’ Recent Guidance on Incentive Compensation

For the financial services industry, another important development occurred on June 21 when the federal government issued new regulatory guidance on sound incentive compensation policies throughout the banking industry. The Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision adopted this final guidance, which was originally proposed in October 2009.

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In a news release, these four government agencies said, “During the next stage, the banking agencies will be conducting additional cross-firm, horizontal reviews of incentive compensation practices at the large, complex banking organizations....” The agencies also said, “In addition to the work with the large, complex banking organizations, the agencies are also working to incorporate oversight of incentive compensation arrangements into the regular examination process for smaller firms.”

One of the specific concerns that the agencies have are aggressive approaches that have been taken to deferred compensation arrangements. They note, “Many firms are using deferral arrangements to adjust for risk, but they are taking a ‘one-size-fits-all’ approach and are not tailoring these deferral arrangements according to the type or duration of risk.”

The Todd Organization is available to discuss how deferred compensation and other executive benefit plans and related financing of these plans can help preserve the safety and soundness of financial institutions. In the current regulatory and financial climate, many institutions may want to refine and expand their deferred compensation programs.

Additional Information and Resources

For more information on the new “Wall Street Reform” law and banking regulators’ recent action, please see the following:

U.S. Senate Committee on Banking, Housing & Urban Affairs

“Brief Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act”

http://banking.senate.gov/public/files/070110_Dodd_Frank_Wall_Street_Reform_comprehensive_summary_Final.pdf

Daniel J. Ryterband, Guest Author

Bloomberg Businessweek

“Dodd-Frank: What it Means for Comp and Governance”

http://www.businessweek.com/managing/content/jul2010/ca20100716_567635.htm

Arnold Golden Gregory LLP Securities and Corporate Governance Team

“Executive Compensation and Corporate Governance Provisions of the Dodd-Frank Act”

<http://business-ethics.com/2010/07/22/1640-executive-compensation-and-corporate-governance-provisions-of-the-dodd-frank-act/>

Federal Reserve, June 21 News Release

<http://www.federalreserve.gov/newsevents/press/bcreg/20100621a.htm>

June 21 Guidance from Banking Regulators on Sound Incentive Compensation Policies

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100621a1.pdf>



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