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THE PANGBURN COMPANY
*Third Party Administration of
Nonqualified Executive Benefit Plans*

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is for general use and should not be
applied to individual situations unless
carefully coordinated with professional
financial advice.*

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FINAL GUIDANCE ON INCENTIVE COMPENSATION APPLICABLE TO BANKING ORGANIZATIONS

On June 21st, 2010, the Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), and the Federal Deposit Insurance Corporation (FDIC) jointly adopted final guidance on incentive compensation (IC) practices for the banking industry. The guidance applies to all banking organizations under the supervision of the three agencies.

The guidance is “principle based” as opposed to “rules based” listing 3 key principles:

1. IC arrangements should balance risk and financial results that do not encourage risk taking.
2. IC arrangements should be compatible with effective controls and risk management.
3. IC arrangements should be supported by strong corporate governance.

For the purpose of this guidance, incentive compensation refers to current or potential compensation that is tied to achievement of one or more “performance” metrics, such as a level of sales, revenue, or income. It does not include accrued benefits based upon salary or service, such as qualified plans or nonqualified plans, to the extent benefits are not based upon performance metrics.

Generally, the guidance applies to any employee that may expose the banking organization to material risk. It specifically covers senior executives and any employee (including non-executive employees) who may be responsible for bank oversight of activities.

UNINTENDED CONSEQUENCE OF TARP & THE SMALL BUSINESS LENDING FUND

The original intent of TARP was to create a facility through which banks can sell their toxic assets, but instead of this, the \$700 billion program became the Capital Purchase Program for “healthy banks.” The large banks that were considered “too big to fail” were “forced” to take TARP funding by selling to the U.S. Treasury and hence tax payers’ preferred stock with warrants. Some of the regional banks have paid back their TARP funding, but the majority (600 community banks) have not. Recent news regarding the failed dividend payments to the Treasury department shows that these banks’ state or national banking regulators told them not to pay back the TARP funding because of the hit to the banks’ capital.

The government has proposed the Small Business Lending Fund, a \$30 billion initiative that will allow banks to exchange their TARP shares for ones with a lower dividend rate if they increase their lending to small businesses. While the program's intentions are good, some wonder if it will have unintended negative consequences. As negligent banks wait for the program, they could choose to avoid their dividend payments, even if they have sufficient funds. There are no penalties for the first five missed payments.

"How good a deal the small banks are going to get has convinced some that maybe they don't want to get out of TARP so soon," says Linus Wilson, finance professor at University of Louisiana at Lafayette. "And the banks that don't take advantage will be in a worse competitive position."

The biggest banks have rightfully borne most of the blame for the financial crisis and the costly bailout. But as they emerge from it seemingly stronger than ever, it's the smallest borrowers of TARP funds that now have reason to worry.

Only time will tell how the outcome of the Troubled Asset Relief Program will go. Will it raise inflation or enhance financial institutions’ ability to lend and increase the performance of their balance sheets? There are definite opinions on both sides.

Planning Briefs

401(K) BALANCES SURGE:

According to Fidelity Investments the average account balance jumped 41% to \$66,900 as of March 31, up from \$47,500 at the end of March in 2009.

DISAPPEARING STOCK OPTIONS:

CNNMoney.com reports that a little more than three-quarters of the companies in the S&P 1500 relied on stock options to pay their CEO's compared to 93% just 5 years ago.

EMPLOYER MATCHES TRAILING:

A new survey from Towers Watson revealed that 57% of employers automatically enroll workers in 401(k) plans, but fewer than 50% of the ones that suspended/reduced matching contributions since 2008 have restored them.

THE RICH GET RICHER:

According to the Merrill Lynch 14th annual World Wealth Report, the number of high-net-worth individuals (anyone with more than \$1M of investable assets) saw their wealth soar 18.9%. The answer was apparently investing in emerging markets.

CEO'S FEELING OPTIMISTIC:

In its Private Company Trendsetter Barometer, PricewaterhouseCoopers found that 51% of CEOs were optimistic about the U. S. economy's future, up 6 points from the last quarter and up 32 points from a year earlier.

LIFE INSURANCE STABLE:

Moody's changed its outlook on the life insurance industry to stable from negative. Almost all of the 19 life companies tracked posted positive operating earnings and net income during the first quarter of 2010.

NQDC PLANS TREND UP:

The fourth annual MullinTBG-Plan Sponsor Executive Benefits survey shows employer sponsorship of nonqualified plans to be as strong as ever - reaching a new high of more than 91% - and informal funding jumping 10 percent to 71.4 percent among responding companies.

TECHNOLOGY TIPS

"Smart Grid" Technology

One of the main buzzwords of the green movement is "smart grid," but what exactly does that mean to the typical homeowner or business? The smart grid is based on technology to automatically track power consumption and production as often and with as much detail as possible. From a utility provider standpoint, the smart grid begins with a "smart meter" system. By replacing antiquated electric, water, & gas meters with digital networked units, the utility companies can obtain more accurate readings, identify problems, eliminate human meter readers, monitor ongoing usage, and manage connects & disconnects from a central office. They can even shift to a time-based billing system where they can charge more for electricity used at peak times (e.g., on a hot afternoon) and charge less for electricity used at non-peak times (e.g., 3am).

From a consumer standpoint, the smart grid is all about better understanding power consumption in order to better manage it. This monitoring can take place at the macro-level (building/meter) or at the micro-level (device/appliance). At the macro-level, one monitors the power usage for the entire building via a utility-installed smart meter or an individually-installed monitoring device such as the The Energy Device (TED). These devices can even integrate with a service like Google's PowerMeter (google.com/powermeter) allowing one to track consumption online. If solar panels or wind turbines are installed, one can also track the power production at the macro-level. At the micro-level users can track the usage of individual devices using something as simple as a \$20 Kill A Watt device available at many retailers. These devices allow users to track the power consumption of an individual computer, microwave, etc. Also at the micro-level, appliance manufacturers are now making dishwashers, washers, dryers, etc. that

integrate with the smart grid and automatically operate at non-peak usage times. Where a utility has implemented time-based billing, this can lead to significant savings for the consumer.

POST-SALE SURVEY RESULTS

Broker responses to post-sale survey regarding new plans for the first 6 months of 2010:

What was the single most important reason that your client adopted this plan?

Employee retention - 17% / To provide a benefit to key employees - 54% / To reward employees - 11% / To provide additional retirement income to key employees - 15%

What was the most difficult obstacle to overcome in making the sale?

Client understanding the concept of NQDC - 17% / Client understanding of the informal funding vehicle - 20% / Client procrastination - 23% / Working out a plan design - 31%

What was the source of this client?

Referral - 31% / Direct Mail - 3% / Existing Client - 57%

Did you work on this case alone, or did you have a partner?

Alone - 77% / Partner - 23%

What factors played a significant role in motivating your client to adopt this plan?

Client knew what they wanted - Reward for executives - Providing benefit for key EE - Replacement of underperforming product - Competitors have similar plan - Reward and retention of key people - Need to keep key employees during transitions of leadership - Lack of ability of execs to participate in 401(k) - A Union in place and no 401(k) for Management

Does the employer also sponsor a qualified plan?

Yes - 89% / No - 11%

Were you in competition in the sale of this plan?

Yes - 17% / No - 83%

INTERESTING RATES	2009						2010					
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Short-Term AFR	0.82	0.83	0.84	0.75	0.71	0.69	0.57	0.72	0.64	0.67	0.79	0.74
Mid-Term AFR	2.76	2.80	2.87	2.66	2.59	2.64	2.45	2.82	2.69	2.70	2.87	2.72
Long-Term AFR	4.36	4.26	4.38	4.10	4.01	4.17	4.11	4.44	4.35	4.40	4.47	4.30
Federal Funds	0.20	0.18	0.15	0.11	0.12	0.13	0.11	0.14	0.14	0.17	0.20	0.20
T-Bill (One Year)	0.54	0.48	0.43	0.37	0.38	0.26	0.47	0.33	0.32	0.42	0.43	0.35
T-Bill (Ten Year)	3.55	3.66	3.38	3.21	3.45	3.28	3.83	3.68	3.61	3.89	3.72	3.29
T-Bill (30 Year)	4.34	4.42	4.19	3.97	4.26	4.26	4.64	4.56	4.56	4.74	4.53	4.19
Moody's Aaa	5.45	5.29	5.14	4.95	5.19	5.09	5.34	5.30	5.22	5.33	5.15	4.95

(Rates which fluctuate daily are shown on or about the 1st day of the month.)

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