

Corporate & Financial Weekly Digest

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FDIC Issues Guidance on Golden Parachute Applications

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On October 14, the Federal Deposit Insurance Corporation (FDIC) issued revised guidance on golden parachute payments made to “institution-affiliated parties” (IAPs), such as bank employees, officers and directors, when such institutions are in a “troubled condition” (i.e., such institution is rated a composite “4” or “5” or meets other criteria). Certain golden parachute payments may be made in such circumstances, although application to the FDIC must be made and certain materials must be provided.

In the guidance, the FDIC notes that, in order for an institution to make or agree to make a golden parachute payment when it is in a troubled condition, the applicant institution must demonstrate that: (1) the IAP has not committed any fraudulent act or omission, or breach of trust or fiduciary duty or insider abuse, that has had a material adverse effect on the institution or covered company; (2) that the IAP is not “substantially responsible” for the insolvency or troubled condition of the institution or covered company; and (3) that the IAP has not violated any applicable federal or state banking law that has had or is likely to have a material effect on the institution or covered company.

Importantly, the FDIC has clarified in the guidance the following with respect to such payments or agreements to make such payments: (1) combined applications are permitted in situations where an institution seeks to pay relatively small amounts to lower-level employees with similar responsibilities or to implement a reduction-in-force or reorganization and must terminate numerous employees to cut costs; (2) there is now a de minimis payment amount of \$5,000 per individual that will automatically be approved without requiring an official review (although a list of recipients must be retained by the institution); and (3) the FDIC is unlikely to approve golden parachute payments for institutions that are in a precarious financial position unless the institution can demonstrate near-term benefits that outweigh the cost of the payments and the payment is not contrary to the golden parachute restrictions.

For more information, click [here](#).