

# 2010: An Executive Compensation Odyssey

**FEATURING:**

George H. Bostick, Benefits Tax Counsel, U.S. Treasury Department

Daniel T. Chaudoin, Assistant Director Enforcement Division, U.S. Securities and Exchange Commission

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December 8, 2009

12:00 PM – 1:30 PM EST

## AGENDA

**Introductory Remarks:** [Hon. Michael G. Oxley](#) – Baker & Hostetler LLP (Washington, DC)

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**Panel 1: The New Compensation Landscape for Public Companies (and Private Companies That Use Public Company Rules as a Benchmark)**

Panelists: [Donald W. Brodsky](#) – Baker & Hostetler LLP (Houston, TX)  
[Jonathan R. Barr](#) – Baker & Hostetler LLP (Washington, DC)  
[Daniel T. Chaudoin](#) – Assistant Director, Enforcement Division, U.S. Securities & Exchange Commission (Washington, DC)  
[Theodore R. Ginsburg](#) – BDO Seidman (Cleveland, OH)

Moderator: [John J. McGowan](#) – Baker & Hostetler LLP (Cleveland, OH)

Topics Include:

- The Corporate and Financial Institution Compensation Fairness Act of 2009 (CFICFA) (committee independence and say-on-pay rules for compensation packages, and severance and parachute payments)
- Modifications to NYSE Rule 452 (eliminating broker discretionary voting of shares) directions)
- Reactions to the report presented by the Conference Board Task Force on Executive Compensation (calling for adoption of five principles, including more transparency and oversight and fewer controversial pay practices)
- The SEC's current enforcement activities relating to "clawing back" excessive or unsupported compensation paid to public company executives
- SEC's new compensation disclosure, independence & excessive risk rules

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**Panel 2: Reviewing, Reassessing the Federal and State Tax Rules Applicable to Executive Compensation, In Light of the New Risk of Forfeiture, and Forfeiture (Claw Back) Rules**

Panelists: [Raymond M. Malone](#) – Baker & Hostetler LLP (Cleveland, OH)  
[Georgeann P. Peters](#) – Baker & Hostetler LLP (Columbus, OH)  
[George H. Bostick](#) – Benefits Tax Counsel, U.S. Department of Treasury (Washington, DC)

Moderator: [William M. Toomajian](#) – Baker & Hostetler LLP (Cleveland, OH)

Topics Include:

Practical problems posed by claw backs, including state and local income tax limitations and claim of right doctrine shortcomings, and immediate taxation of property that may have to be forfeited

- Comparing the golden parachute tax rules to CFICFA’s new golden parachute approval rules; how a new “no gross up” world raises the stakes for executives
- Reconsidering how to apply the “substantial risk of forfeiture” rule that dominates the §409A deferred compensation rules, given the new excessive risk and claw back rules; whether and when “risk of forfeiture” and “risk of loss/risk of repayment” are one and the same
- Reconsidering how to structure §83 property transfers, in light of “hold through retirement” and similar contractual restrictions; when to consider alternative forms of property

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**Panel 3: New Compensation Models & Techniques, Better Suited for The New Challenges**

Panelists: [Raymond M. Malone](#) – Baker & Hostetler LLP (Cleveland, OH)  
[Georgeann P. Peters](#) – Baker & Hostetler LLP (Columbus, OH)  
[Theodore R. Ginsburg](#) – BDO Seidman (Cleveland, OH)

Moderator: [John J. McGowan](#) – Baker & Hostetler LLP (Cleveland, OH)

Topics include:

- New self-executing stock option terms and conditions (e.g., collars, shorter exercise windows, and DNR provisions), and possibly equity securities alternatives, to improve option pricing, make “hold through retirement” restrictions more palatable
- New contract “control” provisions, built into stock-based compensation (e.g., contingency-based put and call rights, registration rights, etc.), and performance-based vesting and cash-out rules, to reduce claw back risks and “hold through retirement” investment risks
- New incentive compensation models, to align risk of forfeiture and risk of loss/repayment, to reduce both claw back risks and §409A payment restrictions
- Techniques that provide the Compensation Committee a simplified, constructive framework, and an opportunity to showcase their independence
- Compensation models that use self-executing provisions to avoid the payment uncertainties generated by an optics-driven environment

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**Closing Remarks:** [John J. McGowan](#) – Baker & Hostetler LLP (Cleveland, OH)  
[Hon. Michael G. Oxley](#) – Baker & Hostetler LLP (Washington, DC)