



Batts Morrison
Wales & Lee

CERTIFIED PUBLIC ACCOUNTANTS

Sample Key Executive Compensation Arrangements Policy

Notice: This sample policy document does not constitute professional advice and is not a substitute for the law and regulations related to the topics addressed herein. Organizations are encouraged to consult with tax counsel in establishing compensation for their top leaders, including any person who meets the definition of a “disqualified person” as described in federal tax law, to ensure compliance with federal tax law and other applicable law. Tax counsel may assist an organization and its leaders in taking steps to avail themselves of protections that may be available under the law in connection with compensation-setting.

As with any significant policy, an organization should consult with legal counsel in adopting a policy covering the topics addressed herein.

Section 1.01. Setting and approval of key executive employee compensation arrangements. Compensation arrangements of key executive employees of the Corporation shall be approved in advance by an authorized body (as defined in Section 1.03) of the Corporation who shall have obtained and relied upon appropriate data as to comparability (as defined in Section 1.05) prior to making its determination. The authorized body shall adequately document (as defined in Section 1.06) the basis for its determination concurrently with making that determination.

Section 1.02. Key executive employee. For purposes of this policy, the term “key executive employee” includes the officers and directors of the Corporation and any individual who has powers and responsibilities similar to officers and directors of the Corporation. The term includes any person who, regardless of title, has ultimate responsibility for implementing the decisions of the Board, for supervising the management, administration, or operation of the Corporation as a whole, or for managing the finances of the Corporation as a whole. The term does not include the heads of separate departments or smaller units of the Corporation, as these individuals do not have management responsibilities for the Corporation as a whole.

Section 1.03. Authorized body. The term “authorized body” shall, with respect to the CEO or top management official of the Corporation, include the Board of Directors of the Corporation or a committee of the Board of Directors, which may be composed of any individuals permitted under state law or the Corporation’s By-laws to serve on such a committee, to the extent that the committee is permitted by State law to act on behalf of the Board of Directors. However, such authorized body shall be composed solely of individuals who do not have a conflict of interest (as defined in Section 1.04) with respect to such compensation arrangement.

With respect to key executive employees other than the CEO or top management official, the authorized body consists solely of the CEO, who is authorized by the Board of Directors to establish such compensation, provided that the CEO does not have a conflict of interest (as defined in Section 1.04) with respect to such compensation arrangement. In the event that the CEO has a conflict of interest with respect to any key executive employee, the authorized body with respect to that employee shall be the authorized body described in the preceding paragraph.

An individual with a conflict of interest (as defined in Section 1.04) with respect to the compensation arrangement may only be present at the meeting authorizing the compensation arrangement in order to answer questions regarding the transaction. The individual with a conflict of interest (as defined in Section 1.04) must recuse himself or herself from the meeting for the portion of the meeting consisting of debate and voting on the compensation arrangement. The minutes of the meeting should document when the individual recused himself or herself from the meeting and that the individual was not present for the portion of the meeting consisting of debate and voting on the arrangement.

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Section 1.04. Absence of conflict of interest. A member of the governing body authorized to approve key executive employee compensation arrangements does not have a conflict of interest with respect to a compensation arrangement only if the member:

- (a) Is not a disqualified person (within the meaning of Treas. Reg. §53.4958-3) participating in or economically benefiting from the compensation arrangement and is not a member of the family (as defined in Treas. Reg. §53.4958-3(b)(1)) of any such disqualified person;
- (b) Is not in an employment relationship subject to the direction or control of any disqualified person participating in or economically benefiting from the compensation arrangement;
- (c) Does not receive compensation or other payments subject to approval by any disqualified person participating in or economically benefiting from the compensation arrangement;
- (d) Has no material financial interest affected by the compensation arrangement; and
- (e) Does not approve a transaction providing economic benefits to any disqualified person participating in the compensation arrangement, who in turn has approved or will approve a transaction providing economic benefits to the member.

Section 1.05. Appropriate data as to comparability. The authorized body has appropriate data as to comparability if, given the knowledge and expertise of its members, it has information sufficient to determine whether the compensation arrangement in its entirety is reasonable. Relevant information shall include, but is not limited to, compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the availability of similar services in the geographic area of the Corporation; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the individual for whom the compensation arrangement is being set. Updated comparability data should be obtained by the authorized body on a periodic basis, generally at least every three years. However, more frequent updates of comparability data should be obtained if annual compensation increases exceed a modest percentage in keeping with increases generally applicable to all employees.

Section 1.06. Adequate documentation. The written or electronic records of the authorized body shall note:

- (a) The terms of the compensation arrangement that was approved and the date it was approved;
- (b) The members of the authorized body who were present during debate on the compensation arrangement that was approved and those who voted on it;
- (c) The comparability data obtained and relied upon by the authorized body and how the data was obtained; and
- (d) Any actions taken with respect to consideration of the compensation arrangement by anyone who is otherwise a member of the authorized body but who had a conflict of interest with respect to the compensation arrangement, including when the individual recused himself or herself from the portion of the meeting consisting of debate and voting on the arrangement.

If the authorized body determines that reasonable compensation for a specific arrangement is higher than the range of comparability data obtained, the authorized body must record the basis for its determination.

The documentation outlined in the section shall be duly recorded in the minutes of the authorized body before the later of the next meeting of the authorized body or 60 days after the final action or actions of the authorized body are taken. Such records shall be reviewed and approved by the authorized body as reasonable, accurate, and complete within a reasonable time period thereafter.

This sample document is provided for general information purposes. It does not constitute professional advice. It is a generic document that is not specifically designed for your organization. We have provided it as a matter of professional courtesy for you to consider, together with your legal counsel, as you determine policies and/or provisions of your governing documents that are appropriate for your organization. In establishing your organization's policies or provisions of your governing documents, you should consider, together with your legal counsel, your unique operational, financial, and legal circumstances.