

Evolution of Executive Compensation Since the Passage of ERISA

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Polling Question

- When did you enter the workforce permanently (i.e., after university)?
 - Before 1980
 - Between 1980 and 1989
 - Between 1990 and 1999
 - Between 2000 and 2009
 - In or after 2010

1970 – 1979

APB Opinion No. 25, Accounting for Stock Issued to Employees. The compensatory value of a stock award is the difference between the fair market value of the stock and the exercise price to the employee to acquire the stock, on the grant date. If exercise price is equal to FMV of stock on grant date, there would be no compensation expense.

Section 401(k) added to the Internal Revenue Code by the Revenue Act of 1978

1972

1974

1978

RECESSION

Code Section 415 added by the **Employee Retirement Income Security Act of 1974**

1980 – 1989

**Multiemployer Pension
Plans Amendment Act of
1980 (“MEPPA”)**

1980

1981

**Economic Recovery
Tax Act of 1981
 (“ERTA”)**

**Tax Equity and Fiscal
Responsibility Act of
1982 (“TEFRA”)**
Adds Code Section **416**,
Top-Heavy Plan rules

1982

1984

Deficit Reduction Act of 1984
Adds Code Sections **280G**
and Section **4999** (the Golden
Parachute Rules)

1986

Tax Reform Act of 1986 (“TRA”)

- Code Section **401(a)(17)** limits on compensation includible for qualified plan purposes
- Capital gains and ordinary income tax rates lowered

1991 – 1999

RECESSION

1993



Omnibus Budget Reconciliation Act of 1993 (“OBRA ‘93”)

- Reduced the Section **401(a)(17)** cap of compensation includible for qualified plan purposes to **\$150,000** (from \$238,000)
- Added Code Section **162(m)** \$1 million cap on compensation deduction by public companies for “covered employees.” Includes an exception for “qualified performance-based compensation”
- Capital gains and ordinary income tax rates increased

SEC’s Electronic and Data Gathering, Analysis, and Retrieval (“**EDGAR**”)



1996

Dot.com
Bubble
Bursts/
Accounting
Scandals /
Market Crash
/ Recession

2000 – 2009

Sarbanes Oxley Act of 2002 (“SOX”)

- Compensation clawback rules for CEO and CFO
- Prohibits loans to executives
- Accelerated Section 16(a) Filing Deadlines
- Pension Fund Blackout Periods
- CEO/CFO Certifications

FAS 123R requires accounting expense for stock options, effective for fiscal years beginning after June 2005

SEC Risk Disclosure Rules, Release No. 9089, “Proxy Disclosure Enhancements” [74 FR 68334 (December 23, 2009)]

Emergency Economic Stabilization Act of 2008 (“**EESA**”). Created Troubled Assets Relief Program (“**TARP**”)

2001

2002

2003

2004

2005

2006

2008

2009

2009

Economic Growth and Tax Relief Reconciliation Act of 2001 (“**EGTRRA**”)

- Ordinary income tax rates reduced
- 401(k) contribution limits increased

Jobs and Growth Tax Relief Reconciliation Act

- Reduced tax rate on dividends and capital gains

American Jobs Creation Act of 2004 (“**AJCA**”)

Adds Code Section **409A**

Stock Option Backdating Scandal

Securities Act Release No. 8732A, “Executive Compensation” 71 FR 53158 (September 2006)

- Compensation Discussion and Analysis
- **Summary Compensation Table** reflecting all elements of compensation, including a “total” compensation column and **disclosure of perquisites**
- Three equity and incentive disclosure tables
- New tables and narrative disclosure regarding **retirement benefits and deferred compensation**
- New narrative or tabular disclosure of estimated amounts payable upon **termination of employment and a change-in-control**

Financial Markets Crash / Recession

American Recovery and Reinvestment Tax Act of 2009 (“**ARRA**”)

Amended and expanded EESA’s corporate governance and executive compensation requirements

2010 – 2020

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

- Shareholder Say on Pay and Say on Pay Frequency
- Shareholder Approval of Golden Parachute Compensation
- Disclosure Regarding Chairman and CEO Structures
- Compensation Committee Member Independence
- Independence of Compensation Consultant, Legal Counsel, and Other Advisers
- Pay Ratio Disclosure
- Whistleblower Bounties
- Incentive Compensation for Financial Institutions
- Disclosure of Pay Versus Performance
- Policy on Recovery of Erroneously Awarded Compensation [Clawbacks]

2010

2012

Jumpstart Our Business Startups Act of 2012 (JOBS Act)

- Introduced a new category of issuer—the “emerging growth company” (EGC)—that is relieved from certain compensation-related disclosure requirements

Tax Cuts and Jobs Act of 2017 (“TCJA”)

- Expands the coverage of Code Sec. 162(m) to some *private companies*
- Expands the number of officers who are “covered employees”
- Repeals the performance-based compensation exception to the \$1 million deductibility limit
- Capital gains and ordinary income tax rates lowered

2017

2021 – 2030: ???



2021

