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Yasemin Sim Esmen

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Yale Program on Financial Stability
Lessons Learned

Kenneth Feinberg

By Yasemin Sim Esmen

Kenneth Feinberg was special master for Troubled Assets Relief Program (TARP) executive compensation at the US Department of the Treasury during the Global Financial Crisis (GFC). He was tasked with overseeing the revision of executive payments at companies that received exceptional assistance from the government during the crisis. For four decades, Feinberg has managed victim compensations for major catastrophes, including mediating resolution of Agent Orange claims and serving as special master of the September 11th Victim Compensation Fund; recently, he was hired by the Justice Department to oversee the $500 million 737 Max Victims Fund allocated for the families of those killed in the two crashes involving Boeing 737s. This Lessons Learned is based on an interview held with Feinberg on March 11, 2021; the full transcript may be accessed here.

When companies are receiving large amounts of government funding, it may be more acceptable to place limits on excessive executive compensation to protect the public's interests.

The law that created the Treasury oversight of executive compensation in the seven companies that received exceptional assistance under the Troubled Assets Relief Program (TARP) was unique. The whole point of the TARP executive compensation program was to protect the public's interest, explained Feinberg. "When you provide massive taxpayer money to assist companies so that they can survive, the idea that on a parallel track these companies were providing huge amounts of immediate cash compensation to executives caused a real political firestorm in the Congress," he said. The Wall Street versus Main Street debates that proliferated during the period made it clear that the firestorm had quickly spread beyond Washington.

When the government provided financial assistance and effectively became a significant creditor of the several companies that received exceptional TARP assistance, Congress decided that it should have a say in the executive compensation paid at those companies. Once the companies paid back the funds from the government, the TARP compensation restrictions went away. According to Feinberg, that's how it should be; he does not think this program is likely to be, or should be, replicated or expanded outside the extraordinary conditions that generated it:

> The federal government should not be in the business of regulating private corporate compensation. I do not think the Founding Fathers or policy makers today think that it is wise or beneficial for this strong arm of the federal government and the Department of the Treasury to impose its principles and its scriptures on private compensation and private companies.

When designing an executive compensation structure, it is important to make sure executives have "skin in the game."

Executive compensation at companies that received exceptional assistance from the TARP was generally structured in a way that gave the executives large sums of guaranteed, immediately available cash. This shielded them from much of the risk that their companies were taking on, said Feinberg, risk that investors and now the public were having to shoulder, which created a very unfair situation. Feinberg said,

> . . . at a time of great financial uncertainty, the idea that executives were protected from the fluctuations of the marketplace by hard cash was also a convenient way for executives to balance cash, stock, and other payments by getting the bulk of their compensation in cash and not having to worry about the fluctuations in the marketplace when it came to stock.

Although each company had different rationalizations, Feinberg easily identified one common reason for the way executive compensations were structured:

> I think that the reason there was not more skin in the game was because in the competitive private marketplace, maintaining executive loyalty to a company required immediate financial gratification, not long-term success.

While establishing the TARP executive compensation program, Feinberg had to address the concern that executives whose compensation was being restructured would leave their companies, causing firms to lose top talent at a time when they were most needed. Feinberg did not agree.

> I never believed it, it was never demonstrated that would be the case, and it did not turn out to be the case.
>
> What I did try and do, during my tenure at the Treasury Department, was to come up with a balanced compensation formula, a balanced structure that would maintain executive loyalty within reason, while at the same time tie that loyalty and that executive's ultimate compensation to long-term, not short-term, company growth as reflected in stocks and other forms of compensation.

There was also a focus on curbing what were viewed as outlandish perks paid by a company—"preventing officials from joining country clubs or taking private planes while the company was still dependent on public taxpayer support." However, according to Feinberg, "the key to the program was better aligning executive compensation to longer-term company performance."

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