

CLAWBACKS OF EXECUTIVE COMPENSATION: THE NEW FRONTIER

June 29, 2023

Webinar / 1:00-2:35 pm Eastern

A confluence of two legal regimes has produced clawbacks of executive compensation, two of which will be discussed in this seminar. Each of these discussed clawbacks is designed to prevent executives from profiting from wrongdoing and each of which is rife with complexities. Under Section 954 of the Dodd-Frank Act, the SEC has issued final regulations that require a company to clawback incentive-based compensation if the company prepares an accounting restatement because of material noncompliance with financial reporting requirements. This clawback applies regardless of whether an executive participated in any misconduct that gave rise to the noncompliance. Under the Evaluation of Corporate Compliance Programs of the Criminal Division of the U.S. Department of Justice, prosecutors will consider whether a corporation maintains and enforces policies for recoupment or reduction of compensation due to misconduct or compliance violations. In addition, under a three-year Pilot Program Regarding Compensation Incentives and Clawbacks, the Criminal Division will offer reductions in fines to companies that seek to clawback compensation from executives that engaged in misconduct, had supervisory authority over the persons or a business unit that engaged in the misconduct, or were willfully blind to the misconduct. Furthermore, the treatment of a clawback under the Internal Revenue Code, especially the treatment of an executive's repayment of compensation received in a prior taxable year, is rife with complexities. The panelists will review the substantive requirements and tax treatment of the clawbacks and consider how to navigate their complexities.

Moderator/

Panelist: **Cynthia Marcotte Stamer**, *Cynthia Marcotte Stamer PC*, Plano, TX

Panelists: **Steven H. Sholk**, *Gibbons PC*, Newark, NJ
Victoria Zerjav, *Holland & Knight LLP*, Stamford, CT

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