

What Counts as a "Perk" During the COVID-19 Pandemic?

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Companies have offered benefits to employees, including executive officers, to enable them to continue their work and otherwise to make their lives easier during the COVID-19 pandemic. Now the SEC has released additional guidance as to when these benefits constitute perquisites or personal benefits that should be included in executive compensation for proxy disclosure purposes. See [Question 219.05](#) of the SEC's Compliance and Disclosure Interpretations. In brief, reporting companies are to apply the SEC's existing two-step analysis to identify whether an item constitutes a perquisite or personal benefit:

- An item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive's duties.
- Otherwise, an item that confers a direct or indirect benefit and that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, is a perquisite or personal benefit unless it is generally available on a non-discriminatory basis to all employees.

While the analysis is fact-specific, the SEC staff indicates that enhanced technology needed to work from home during a stay-at-home order would generally not be a perquisite, because of the integral and direct relationship to the performance of the executive's duties. It is worth noting that as long as there is that "integral and direct" relationship, the item is not a perquisite, even if confers an ancillary personal benefit.

In contrast, health-related or personal transportation benefits provided to address new risks because of the pandemic may not be integrally and directly related to the performance of the executive's duties, and should be considered perquisites unless they are generally available to all employees.

Director benefits are subject to the same two-step analysis, and while director perquisites have been on a downward trend, we would expect that the guidance also applies to director benefits where relevant.

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