

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1664

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## AN ACT

To amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. PROHIBITION ON CERTAIN COMPENSATION.**

2 (a) PROHIBITION ON CERTAIN COMPENSATION NOT  
3 BASED ON PERFORMANCE STANDARDS.—Section 111 of  
4 the Emergency Economic Stabilization Act of 2008 (12  
5 U.S.C. 5221) is amended by redesignating subsections (e)  
6 through (h) as subsections (f) through (i), and inserting  
7 after subsection (d) the following:

8 “(e) PROHIBITION ON CERTAIN COMPENSATION NOT  
9 BASED ON PERFORMANCE STANDARDS.—

10 “(1) PROHIBITION.—No financial institution  
11 that has received or receives a direct capital invest-  
12 ment under the Troubled Assets Relief Program  
13 under this title, or with respect to the Federal Na-  
14 tional Mortgage Association, the Federal Home  
15 Loan Mortgage Corporation, or a Federal home loan  
16 bank, under the amendments made by section 1117  
17 of the Housing and Economic Recovery Act of 2008,  
18 may, while that capital investment remains out-  
19 standing, make a compensation payment, other than  
20 a longevity bonus or a payment in the form of re-  
21 stricted stock, to any executive or employee under  
22 any existing compensation arrangement, or enter  
23 into a new compensation payment arrangement, if  
24 such compensation payment or compensation pay-  
25 ment arrangement—

1           “(A) provides for compensation that is un-  
2           reasonable or excessive, as defined in standards  
3           established by the Secretary, in consultation  
4           with the Chairperson of the Congressional  
5           Oversight Panel established under section 125,  
6           in accordance with paragraph (2); or

7           “(B) includes any bonus or other supple-  
8           mental payment, whether payable before em-  
9           ployment, during employment, or after termi-  
10          nation of employment, that is not directly based  
11          on performance-based measures set forth in  
12          standards established by the Secretary in ac-  
13          cordance with paragraph (2).

14          An institution shall not become subject to the re-  
15          quirements of this paragraph as a result of doing  
16          business with a recipient of a direct capital invest-  
17          ment under the TARP or under the amendments  
18          made by the Housing and Economic Recovery Act of  
19          2008.

20          “(2) STANDARDS.—Not later than 30 days  
21          after the date of enactment of this subsection, the  
22          Secretary, with the approval of the agencies that are  
23          members of the Federal Financial Institutions Ex-  
24          amination Council, and in consultation with the  
25          Chairperson of the Congressional Oversight Panel

1 established under section 125, shall establish the fol-  
2 lowing:

3 “(A) UNREASONABLE AND EXCESSIVE  
4 COMPENSATION STANDARDS.—Standards that  
5 define ‘unreasonable or excessive’ for purposes  
6 of subparagraph (1)(A).

7 “(B) PERFORMANCE-BASED STANDARDS.—  
8 Standards for performance-based measures that  
9 a financial institution must apply when deter-  
10 mining whether it may provide a bonus or re-  
11 tention payment under paragraph (1)(B). Such  
12 performance measures shall include—

13 “(i) the stability of the financial insti-  
14 tution and its ability to repay or begin re-  
15 paying the United States for any capital  
16 investment received under this title;

17 “(ii) the performance of the individual  
18 executive or employee to whom the pay-  
19 ment relates;

20 “(iii) adherence by executives and em-  
21 ployees to appropriate risk management  
22 requirements; and

23 “(iv) other standards which provide  
24 greater accountability to shareholders and  
25 taxpayers.

1           “(3) CLARIFICATION RELATING TO SEVERANCE  
2 PAY.—For purposes of this subsection, a compensa-  
3 tion payment or compensation payment arrangement  
4 shall not include a severance payment paid by an  
5 employer in the ordinary course of business to an  
6 employee who has been employed by the employer  
7 for a minimum of 5 years upon dismissal of that em-  
8 ployee, unless such severance payment is in an  
9 amount greater than the annual salary of such em-  
10 ployee or \$250,000.

11           “(4) CONDITIONAL EXEMPTION.—

12           “(A) REPAYMENT AGREEMENT.—Para-  
13 graph (1) shall not apply to a financial institu-  
14 tion that has entered into a comprehensive  
15 agreement with the Secretary to repay the  
16 United States, in accordance with a schedule  
17 and terms established by the Secretary, all out-  
18 standing amounts of any direct capital invest-  
19 ment or investments received by such institu-  
20 tion under this title.

21           “(B) DEFAULT.—If the Secretary deter-  
22 mines that an institution that has entered into  
23 an agreement as provided for in subparagraph  
24 (A) has defaulted on such agreement, the Sec-  
25 retary shall require that any compensation pay-

1           ments made by such institution that would have  
2           been subject to paragraph (1) if the institution  
3           had not entered into such an agreement be sur-  
4           rendered to the Treasury.

5           “(5) REPORTING REQUIREMENT.—

6                   “(A) IN GENERAL.—Any financial institu-  
7           tion that is subject to the requirements of para-  
8           graph (1) shall, not later than 90 days after the  
9           date of enactment of this subsection and annu-  
10          ally on March 31 each year thereafter, transmit  
11          to the Secretary, who shall make a report which  
12          states how many persons (officers, directors,  
13          and employees) received or will receive total  
14          compensation in that fiscal year in each of the  
15          following amounts:

16                   “(i) over \$500,000;

17                   “(ii) over \$1,000,000;

18                   “(iii) over \$2,000,000;

19                   “(iv) over \$3,000,000; and

20                   “(v) over \$5,000,000.

21          The report shall distinguish amounts the insti-  
22          tution considers to be a bonus and the reason  
23          for such distinction. The name or identity of  
24          persons receiving compensation in such  
25          amounts shall not be required in such reports.

1           The Secretary shall make such reports available  
2           on the Internet. Any financial institution sub-  
3           ject to this paragraph shall issue a retrospective  
4           annual report for 2008 and both a prospective  
5           and retrospective annual report for each subse-  
6           quent calendar year until such institution  
7           ceases to be subject to this paragraph.

8           “(B) TOTAL COMPENSATION DEFINED.—

9           For purposes of this paragraph, the term ‘total  
10          compensation’ includes all cash payments (in-  
11          cluding without limitation salary, bonus, reten-  
12          tion payments), all transfers of property, stock  
13          options, sales of stock, and all contributions by  
14          the company (or its affiliates) for that person’s  
15          benefit or for the benefit of that person’s imme-  
16          diate family members.

17          “(6) COMMUNITY FINANCIAL INSTITUTION EX-  
18          EMPTION.—

19          “(A) IN GENERAL.—The Secretary may  
20          exempt community financial institutions from  
21          any of the requirements of this subsection,  
22          when the Secretary finds that such an exemp-  
23          tion is consistent with the purposes of this sub-  
24          section.

1           “(B) COMMUNITY FINANCIAL INSTITUTION  
2           DEFINED.—For the purposes of this paragraph,  
3           the term ‘community financial institution’  
4           means a financial institution that receives or re-  
5           ceived a direct capital investment under the  
6           Troubled Asset Relief Program under this title  
7           of not more than \$250,000,000.

8           “(7) COMPENSATION CONSIDERATIONS UNDER  
9           THE STANDARDS.—In establishing standards under  
10          this subsection, the Secretary shall consider as com-  
11          pensation any transfer of property, payment of  
12          money, or provision of services by the financial insti-  
13          tution that causes any increase in wealth on the part  
14          of an executive or employee.”.

15          (b) REVISION TO RULE OF CONSTRUCTION.—Section  
16          111(b)(3)(D)(iii) of the Emergency Economic Stabiliza-  
17          tion Act of 2008 (12 U.S.C. 5221(b)(3)(D)(iii)) is amend-  
18          ed by inserting before the period the following: “, except  
19          that an entity subject to subsection (e) may not, while a  
20          capital investment described in that subsection remains  
21          outstanding, pay a bonus or other supplemental payment  
22          that is otherwise prohibited by clause (i) without regard  
23          to when the arrangement to pay such a bonus was entered  
24          into”.

1 **SEC. 2. EXECUTIVE COMPENSATION COMMISSION.**

2 Section 111 of the Emergency Economic Stabilization  
3 Act of 2008 (12 U.S.C. 5221), as amended by section 1,  
4 is further amended by adding at the end the following new  
5 subsection:

6 “(j) EXECUTIVE COMPENSATION COMMISSION.—

7 “(1) ESTABLISHMENT.—There is hereby estab-  
8 lished a commission to be known as the ‘Commission  
9 on Executive Compensation’ (hereinafter in this sub-  
10 section referred to as the ‘Commission’).

11 “(2) DUTIES.—

12 “(A) STUDY REQUIRED.—The Commission  
13 shall conduct a study of the executive com-  
14 pensation system for recipients of a direct cap-  
15 ital investment under the TARP. In conducting  
16 such study, the Commission shall examine—

17 “(i) how closely executive pay is cur-  
18 rently linked to company performance;

19 “(ii) how closely executive pay has  
20 been linked to company performance in the  
21 past;

22 “(iii) how executive pay can be more  
23 closely linked to company performance in  
24 the future;

25 “(iv) the factors influencing executive  
26 pay; and

1           “(v) how current executive pay incen-  
2           tives affect executive behavior.

3           “(B) CONSIDERATION OF PROPOSALS.—

4           The Commission shall consider, in addition to  
5           any recommendations made by members of the  
6           Commission or outside advisers, the effects of  
7           implementing increased shareholder voice in ex-  
8           ecutive compensation.

9           “(3) REPORT.—

10           “(A) IN GENERAL.—Not later than 90  
11           days after the date on which all members of the  
12           Commission have been appointed, the Commis-  
13           sion shall deliver a report to the President and  
14           to the Congress containing—

15           “(i) recommendations for legislative  
16           action;

17           “(ii) recommendations for executive  
18           action, including actions taken by the De-  
19           partment of the Treasury or any other  
20           agency for which the Commission has rec-  
21           ommendations; and

22           “(iii) recommendations for voluntary  
23           actions to be taken by recipients of a direct  
24           capital investment under the TARP.

1           “(B) MINORITY VIEWS.—The report re-  
2           quired under subparagraph (A) shall be accom-  
3           panied by any separate recommendations that  
4           members of the Commission wish to make, but  
5           that were not agreed upon by the Commission  
6           for purposes of the report required under sub-  
7           paragraph (A). Such separate recommendations  
8           must take the form of a proposal for aligning  
9           executive pay with the long-term health of the  
10          company.

11          “(4) COMPOSITION.—

12           “(A) The Commission shall be composed of  
13          9 members, appointed as follows:

14                   “(i) 1 member appointed by the Coun-  
15                   cil of Economic Advisers.

16                   “(ii) 1 member appointed by the  
17                   Speaker of the House of Representatives.

18                   “(iii) 1 member appointed by the Sen-  
19                   ate Majority Leader.

20                   “(iv) 1 member appointed by the  
21                   House Minority Leader.

22                   “(v) 1 member appointed by the Sen-  
23                   ate Minority Leader.

1           “(vi) 1 member appointed by the  
2           Chairman of the Financial Services Com-  
3           mittee of the House of Representatives.

4           “(vii) 1 member appointed by the  
5           Ranking Member of the Financial Services  
6           Committee of the House of Representa-  
7           tives.

8           “(viii) 1 member appointed by the  
9           Chairman of the Banking, Housing, and  
10          Urban Affairs Committee of the Senate.

11          “(ix) 1 member appointed by the  
12          Ranking Member of the Banking, Housing,  
13          and Urban Affairs Committee of the Sen-  
14          ate.

15          “(B) Each appointing entity shall name its  
16          member within 21 days of the date of the en-  
17          actment of this subsection.

18          “(C) Any vacancy in the Commission shall  
19          be filled in the same manner as the original ap-  
20          pointment.

21          “(5) ACTIVITIES.—

22          “(A) The Chairman of the Financial Serv-  
23          ices Committee of the House of Representatives  
24          shall select one member to serve as the Chair-  
25          man of the Commission, and such Chairman

1 will call to order the first meeting of the Com-  
2 mission within 10 business days after the date  
3 on which all members of the Commission have  
4 been appointed.

5 “(B) The Commission shall meet at least  
6 once every 30 days and may meet more fre-  
7 quently at the discretion of the Chairman.

8 “(C) The Commission shall solicit and con-  
9 sider policy proposals from Members of Con-  
10 gress, the financial sector, academia and other  
11 fields as the Commission deems necessary.

12 “(D) The Commission shall hold at least  
13 two public hearings, and may hold more at the  
14 discretion of the Chairman.

15 “(6) ACTIONS BY THE COMMISSION.—A deci-  
16 sion of a majority of commissioners present at a  
17 meeting of the Commission shall constitute the deci-  
18 sion of the Commission where the Commission is  
19 given discretion to act, including but not limited to,  
20 recommendations to be made in the report described  
21 in paragraph 3.

22 “(7) STAFF.—The Chair may hire at his or her  
23 discretion up to seven professional staff members.

24 “(8) TERMINATION.—The Commission shall  
25 terminate 30 days after the date on which the Com-

1 mission submits its report to the President and the  
2 Congress under paragraph 3.

3 “(9) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated such sums  
5 as may be necessary to carry out this subsection.”.

Passed the House of Representatives April 1, 2009.

Attest:

*Clerk.*



111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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**AN ACT**

To amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.