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IN THE SENATE OF THE UNITED STATES

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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,*

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

4 (a) PROHIBITION ON CERTAIN COMPENSATION NOT
5 BASED ON PERFORMANCE STANDARDS.—Section 111 of
6 the Emergency Economic Stabilization Act of 2008 (12
7 U.S.C. 5221) is amended by redesignating subsections (e)

1 through (h) as subsections (f) through (i), and inserting
2 after subsection (d) the following:

3 “(e) PROHIBITION ON CERTAIN COMPENSATION NOT
4 BASED ON PERFORMANCE STANDARDS.—

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

21 “(A) provides for compensation that is un-
22 reasonable or excessive, as defined in standards
23 established by the Secretary, in consultation
24 with the Chairperson of the Congressional

1 Oversight Panel established under section 125,
2 in accordance with paragraph (2); or

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

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

16 “(2) STANDARDS.—Not later than 30 days
17 after the date of enactment of this subsection, the
18 Secretary, with the approval of the agencies that are
19 members of the Federal Financial Institutions Ex-
20 amination Council, and in consultation with the
21 Chairperson of the Congressional Oversight Panel
22 established under section 125, shall establish the fol-
23 lowing:

24 “(A) UNREASONABLE AND EXCESSIVE
25 COMPENSATION STANDARDS.—Standards that

1 define ‘unreasonable or excessive’ for purposes
2 of subparagraph (1)(A).

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

9 “(i) the stability of the financial insti-
10 tution and its ability to repay or begin re-
11 paying the United States for any capital
12 investment received under this title;

13 “(ii) the performance of the individual
14 executive or employee to whom the pay-
15 ment relates;

16 “(iii) adherence by executives and em-
17 ployees to appropriate risk management
18 requirements; and

19 “(iv) other standards which provide
20 greater accountability to shareholders and
21 taxpayers.

22 “(3) CLARIFICATION RELATING TO SEVERANCE
23 PAY.—For purposes of this subsection, a compensa-
24 tion payment or compensation payment arrangement
25 shall not include a severance payment paid by an

1 employer in the ordinary course of business to an
2 employee who has been employed by the employer
3 for a minimum of 5 years upon dismissal of that em-
4 ployee, unless such severance payment is in an
5 amount greater than the annual salary of such em-
6 ployee or \$250,000.

7 “(4) CONDITIONAL EXEMPTION.—

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

17 “(B) DEFAULT.—If the Secretary deter-
18 mines that an institution that has entered into
19 an agreement as provided for in subparagraph
20 (A) has defaulted on such agreement, the Sec-
21 retary shall require that any compensation pay-
22 ments made by such institution that would have
23 been subject to paragraph (1) if the institution
24 had not entered into such an agreement be sur-
25 rendered to the Treasury.

1 “(5) REPORTING REQUIREMENT.—

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

12 “(i) over \$500,000;

13 “(ii) over \$1,000,000;

14 “(iii) over \$2,000,000;

15 “(iv) over \$3,000,000; and

16 “(v) over \$5,000,000.

17 The report shall distinguish amounts the insti-
18 tution considers to be a bonus and the reason
19 for such distinction. The name or identity of
20 persons receiving compensation in such
21 amounts shall not be required in such reports.
22 The Secretary shall make such reports available
23 on the Internet. Any financial institution sub-
24 ject to this paragraph shall issue a retrospective
25 annual report for 2008 and both a prospective

1 and retrospective annual report for each subse-
2 quent calendar year until such institution
3 ceases to be subject to this paragraph.

4 “(B) TOTAL COMPENSATION DEFINED.—

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

13 “(6) COMMUNITY FINANCIAL INSTITUTION EX-
14 EMPTION.—

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

21 “(B) COMMUNITY FINANCIAL INSTITUTION
22 DEFINED.—For the purposes of this paragraph,
23 the term ‘community financial institution’
24 means a financial institution that receives or re-
25 ceived a direct capital investment under the

1 Troubled Asset Relief Program under this title
 2 of not more than \$250,000,000.

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

10 (b) REVISION TO RULE OF CONSTRUCTION.—Section
 11 111(b)(3)(D)(iii) of the Emergency Economic Stabiliza-
 12 tion Act of 2008 (12 U.S.C. 5221(b)(3)(D)(iii)) is amend-
 13 ed by inserting before the period the following: “, except
 14 that an entity subject to subsection (e) may not, while a
 15 capital investment described in that subsection remains
 16 outstanding, pay a bonus or other supplemental payment
 17 that is otherwise prohibited by clause (i) without regard
 18 to when the arrangement to pay such a bonus was entered
 19 into”.

20 **SEC. 2. EXECUTIVE COMPENSATION COMMISSION.**

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

25 “(j) EXECUTIVE COMPENSATION COMMISSION.—

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

5 “(2) DUTIES.—

6 “(A) STUDY REQUIRED.—The Commission
7 shall conduct a study of the executive com-
8 pensation system for recipients of a direct cap-
9 ital investment under the TARP. In conducting
10 such study, the Commission shall examine—

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

13 “(ii) how closely executive pay has
14 been linked to company performance in the
15 past;

16 “(iii) how executive pay can be more
17 closely linked to company performance in
18 the future;

19 “(iv) the factors influencing executive
20 pay; and

21 “(v) how current executive pay incen-
22 tives affect executive behavior.

23 “(B) CONSIDERATION OF PROPOSALS.—
24 The Commission shall consider, in addition to
25 any recommendations made by members of the

1 Commission or outside advisers, the effects of
2 implementing increased shareholder voice in ex-
3 ecutive compensation.

4 “(3) REPORT.—

5 “(A) IN GENERAL.—Not later than 90
6 days after the date on which all members of the
7 Commission have been appointed, the Commis-
8 sion shall deliver a report to the President and
9 to the Congress containing—

10 “(i) recommendations for legislative
11 action;

12 “(ii) recommendations for executive
13 action, including actions taken by the De-
14 partment of the Treasury or any other
15 agency for which the Commission has rec-
16 ommendations; and

17 “(iii) recommendations for voluntary
18 actions to be taken by recipients of a direct
19 capital investment under the TARP.

20 “(B) MINORITY VIEWS.—The report re-
21 quired under subparagraph (A) shall be accom-
22 panied by any separate recommendations that
23 members of the Commission wish to make, but
24 that were not agreed upon by the Commission
25 for purposes of the report required under sub-

1 paragraph (A). Such separate recommendations
2 must take the form of a proposal for aligning
3 executive pay with the long-term health of the
4 company.

5 “(4) COMPOSITION.—

6 “(A) The Commission shall be composed of
7 9 members, appointed as follows:

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

10 “(ii) 1 member appointed by the
11 Speaker of the House of Representatives.

12 “(iii) 1 member appointed by the Sen-
13 ate Majority Leader.

14 “(iv) 1 member appointed by the
15 House Minority Leader.

16 “(v) 1 member appointed by the Sen-
17 ate Minority Leader.

18 “(vi) 1 member appointed by the
19 Chairman of the Financial Services Com-
20 mittee of the House of Representatives.

21 “(vii) 1 member appointed by the
22 Ranking Member of the Financial Services
23 Committee of the House of Representa-
24 tives.

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

4 “(ix) 1 member appointed by the
5 Ranking Member of the Banking, Housing,
6 and Urban Affairs Committee of the Sen-
7 ate.

8 “(B) Each appointing entity shall name its
9 member within 21 days of the date of the en-
10 actment of this subsection.

11 “(C) Any vacancy in the Commission shall
12 be filled in the same manner as the original ap-
13 pointment.

14 “(5) ACTIVITIES.—

15 “(A) The Chairman of the Financial Serv-
16 ices Committee of the House of Representatives
17 shall select one member to serve as the Chair-
18 man of the Commission, and such Chairman
19 will call to order the first meeting of the Com-
20 mission within 10 business days after the date
21 on which all members of the Commission have
22 been appointed.

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

8 “(6) ACTIONS BY THE COMMISSION.—A deci-
9 sion of a majority of commissioners present at a
10 meeting of the Commission shall constitute the deci-
11 sion of the Commission where the Commission is
12 given discretion to act, including but not limited to,
13 recommendations to be made in the report described
14 in paragraph 3.

17 “(8) **TERMINATION.**—The Commission shall
18 terminate 30 days after the date on which the Com-
19 mission submits its report to the President and the
20 Congress under paragraph 3.

21 “(9) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated such sums
23 as may be necessary to carry out this subsection.”.
Passed the House of Representatives April 1, 2009.

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