

111TH CONGRESS
2D SESSION

S. 3149

To amend the Internal Revenue Code of 1986 to limit certain executive compensation paid by systemically significant financial institutions.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 19), 2010

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to limit certain executive compensation paid by systemically significant financial institutions.

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. SHORT TITLE.**

4 This Act may be cited as the “Wall Street Compensa-
5 tion Reform Act of 2010”.

1 **SEC. 2. EXECUTIVE COMPENSATION PAID BY SYSTEM-**
 2 **ICALLY SIGNIFICANT FINANCIAL INSTITU-**
 3 **TIONS.**

4 (a) IN GENERAL.—Subsection (m) of section 162 of
 5 the Internal Revenue Code of 1986 is amended by adding
 6 at the end the following new paragraph:

7 “(6) SPECIAL RULE FOR APPLICATION TO SYS-
 8 TEMICALLY SIGNIFICANT FINANCIAL INSTITU-
 9 TIONS.—

10 “(A) IN GENERAL.—In the case of an em-
 11 ployer which is a systemically significant finan-
 12 cial institution, this subsection shall apply with
 13 the following modifications:

14 “(i) NON-PUBLIC ENTITIES.—Para-
 15 graph (1) shall be applied by substituting
 16 ‘employer’ for ‘publicly held corporation’.

17 “(ii) COVERED EMPLOYEES.—Para-
 18 graph (3) shall be applied—

19 “(I) by substituting ‘such em-
 20 ployee is among the 25 highest com-
 21 pensated employees’ for so much of
 22 subparagraph (B) as precedes ‘for the
 23 taxable year (other than the chief ex-
 24 ecutive officer).’, and

25 “(II) in addition to the individ-
 26 uals described in such paragraph (in-

1 including the individuals described in
2 subclause (I) of this clause), by treat-
3 ing any employee whose actions have
4 a material impact on the risk expo-
5 sure of the taxpayer as a covered em-
6 ployee.

7 Any employee whose applicable employee
8 remuneration for the taxable year exceeds
9 \$1,000,000 is presumed to engage in ac-
10 tions which have a material impact on the
11 risk exposure of the taxpayer unless the
12 taxpayer submits an information return to
13 the Secretary which describes the role and
14 responsibilities of such employee and the
15 reason such employee should not be consid-
16 ered to have a material impact on the risk
17 exposure of the taxpayer. Such return shall
18 be deemed to have been approved unless
19 the Secretary notifies the taxpayer in writ-
20 ing within 90 days of the submission of
21 such return. For purposes of this clause,
22 the term ‘employee’ includes employees
23 within the meaning of section 401(c)(1).

1 “(iii) REMUNERATION PAYABLE ON
2 COMMISSION BASIS.—Subparagraph (B) of
3 paragraph (4) shall not apply.

4 “(iv) DEFERRED DEDUCTION EXECU-
5 TIVE REMUNERATION.—In the case of any
6 deferred deduction executive remuneration
7 (as determined under rules similar to the
8 rules of paragraph (5)(F), if executive re-
9 muneration for purposes of such paragraph
10 included remuneration of covered employ-
11 ees as defined in clause (ii) of this para-
12 graph, and if the year in which the appli-
13 cable services were performed were treated
14 as an applicable taxable year), rules simi-
15 lar to the rules of paragraph (5)(A)(ii)
16 shall apply by substituting ‘\$1,000,000’ for
17 ‘\$500,000’.

18 “(B) SYSTEMICALLY SIGNIFICANT FINAN-
19 CIAL INSTITUTION.—

20 “(i) IN GENERAL.—For purposes of
21 this paragraph, the term ‘systemically sig-
22 nificant financial institution’ means an en-
23 tity which engages primarily in activities
24 which are financial in nature (as deter-
25 mined under section 4(k) of the Bank

Holding Company Act of 1956), and
which—

“(I) owns or controls assets
greater than \$25,000,000,000, or

“(II) owns or controls assets
greater than \$10,000,000,000 and
maintains a ratio of debt to equity
which is greater than 20 to 1.

“(ii) CLASSIFICATION.—A taxpayer
which is a systemically significant financial
institution for any taxable year shall be a
systemically significant financial institution
for purposes of all subsequent taxable
years.

“(C) SPECIAL RULES FOR PERFORMANCE-
BASED COMPENSATION.—Remuneration payable
solely on account of the attainment of one or
more performance goals (hereinafter ‘perform-
ance-based remuneration’) which is paid by any
systemically significant financial institution to
any covered employee (as determined under
subparagraph (A)(ii)) shall not be excluded
under subparagraph (C) of paragraph (4) from
treatment as applicable employee remuneration
unless the following requirements are met:

1 “(i) PERFORMANCE-BASED COM-
 2 PENSATION POOL.—The amount and allo-
 3 cation of the taxpayer’s performance-based
 4 remuneration for covered employees are
 5 determined by the compensation committee
 6 required under paragraph (4)(C)(i) by tak-
 7 ing into account—

8 “(I) the cost and quantity of cap-
 9 ital required to support the risks
 10 taken by the taxpayer in the conduct
 11 of the financial activities of the tax-
 12 payer,

13 “(II) the cost and quantity of the
 14 liquidity risk assumed by the taxpayer
 15 in the conduct of such activities, and

16 “(III) the timing and likelihood
 17 of potential future revenues from such
 18 activities.

19 “(ii) MATERIAL TERMS.—The mate-
 20 rial terms of performance-based remunera-
 21 tion paid to covered employees specify
 22 that—

23 “(I) not less than 50 percent of
 24 such remuneration must vest no ear-

1 lier than 5 years after the date of
2 payment,

3 “(II) the proportion of such re-
4 muneration payable under vesting ar-
5 rangements must increase based on
6 the level of seniority or responsibility
7 of the employee,

8 “(III) such remuneration payable
9 under vesting arrangements must vest
10 on a basis no faster than pro rata
11 over the specified number of years of
12 such arrangement (not to be less than
13 5),

14 “(IV) such remuneration is con-
15 tingent on a formal agreement be-
16 tween the taxpayer and the employee
17 which forbids the use of personal
18 hedging strategies, remuneration-re-
19 lated insurance, or liability-related in-
20 surance which undermines the risk
21 alignment effects of this paragraph,

22 “(V) in the case of an employer
23 which is a publicly held corporation,
24 not less than 50 percent of such re-

muneration must be in the form of
stock in the employer, and

“(VI) in the case of remuneration
paid to a chief executive officer or
chief financial officer (if such chief fi-
nancial officer is a covered employee)
of a publicly held corporation, such re-
muneration must be subject to sub-
stantial forfeiture requirements in the
event the taxpayer is required to pre-
pare an accounting restatement due to
material noncompliance, as a result of
misconduct, with any financial report-
ing requirement under Federal securi-
ties laws.

For purposes of this clause, the date on
which remuneration is deemed to have
vested is the first date on which such re-
muneration is not subject to a substantial
risk of forfeiture (within the meaning of
section 409A(d)(4)).

“(D) SPECIAL RULE FOR PERFORMANCE-
BASED COMPENSATION PAID BY NON-PUBLIC
ENTITIES.—In the case of a systemically signifi-
cant financial institution which is not a publicly

held corporation, in addition to the requirements of subparagraph (C), paragraph (4)(C) shall be applied by substituting the following for clauses (i) through (iii) thereof:

“(i) the taxpayer commissions an annual, external review of its compensation policies and practices, including an examination and analysis of the taxpayer’s compliance with the requirements of this subsection, and

“(ii) the taxpayer obtains certification from an unrelated third party commissioned to evaluate compensation practices that performance goals and other material terms under which the remuneration is to be paid are satisfied before any payment of such remuneration is made.’.

For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (b) or (c) of section 414 shall be treated as related taxpayers.

“(E) COORDINATION WITH RULES FOR EMPLOYERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF PROGRAM.—In the case of any

1 systemically significant financial institution to
2 which paragraph (5) applies for any taxable
3 year, this paragraph shall not apply to any pay-
4 ment of remuneration to which such paragraph
5 applies.

6 “(F) REGULATORY AUTHORITY.—Not later
7 than 180 days after the date of the enactment
8 of this paragraph, the Secretary shall prescribe
9 such guidance, rules, or regulations of general
10 applicability as are necessary to carry out the
11 purposes of this paragraph, including—

12 “(i) the method for valuing assets for
13 purposes of subparagraph (B)(i),

14 “(ii) the method for calculating the
15 ratio described in subparagraph (B)(i)(II),

16 “(iii) criteria for use in determining
17 whether the actions of an employee have a
18 material impact on the risk exposure of the
19 taxpayer, and for determining what con-
20 stitutes a substantial forfeiture require-
21 ment with respect to executive remunera-
22 tion,

23 “(iv) criteria for determining whether
24 a remuneration agreement constitutes a
25 hedging strategy, and

1 “(v) anti-abuse rules to prevent the
2 avoidance of the purposes of this para-
3 graph, including by use of independent
4 contractors.

5 “(G) APPLICATION OF PARAGRAPH.—This
6 paragraph shall apply—

7 “(i) in the case of an entity which is
8 a systemically significant financial institu-
9 tion in calendar 2010, to remuneration for
10 services performed in calendar years begin-
11 ning after 2010, and

12 “(ii) in the case of an entity which be-
13 comes a systemically significant financial
14 institution in a calendar year after 2010,
15 to remuneration for services performed in
16 calendar years beginning with the second
17 calendar year after the year in which such
18 entity first becomes a systemically signifi-
19 cant financial institution.”.

20 (b) CONFORMING AMENDMENT.—Subparagraph (G)
21 of section 162(m)(5) of the Internal Revenue Code of
22 1986 is amended by adding at the end the following:
23 “Paragraph (6) shall not apply to any payment of remu-
24 nation to which this paragraph applies.”.

1 (c) REPORT ON PERFORMANCE-BASED COMPENSA-
 2 TION PAID BY PUBLICLY HELD CORPORATIONS.—

3 (1) IN GENERAL.—Each systemically significant
 4 financial institution which is a publicly held corpora-
 5 tion shall submit to the Chairman of the Securities
 6 and Exchange Commission, and shall make publicly
 7 available, an annual report on compensation policies
 8 and practices which describes—

9 (A) the process used to develop and modify
 10 such institution’s compensation policies, includ-
 11 ing the composition and the mandate of such
 12 institution’s compensation committee,

13 (B) the actions taken by such institution
 14 to comply with section 162(m)(6) of the Inter-
 15 nal Revenue Code of 1986,

16 (C) any additional actions taken to imple-
 17 ment the Principles for Sound Compensation
 18 Practices adopted by the Financial Stability
 19 Board established by the G–20 Finance Min-
 20 isters and Central Bank Governors,

21 (D) the most important design characteris-
 22 tics of such institution’s compensation policies,
 23 including criteria used for performance meas-
 24 urement and risk adjustment, the linkage be-
 25 tween pay and performance, vesting policy and

1 criteria, and the parameters used for allocating
2 cash versus other forms of remuneration,

3 (E) aggregate quantitative information on
4 remuneration paid by such institution, differen-
5 tiating between remuneration paid to senior ex-
6 ecutive officers and to employees whose actions
7 have a material impact on the risk exposure of
8 such institution, which indicates the amounts of
9 remuneration for the financial year (divided
10 into fixed and variable remuneration) and the
11 number of employees to which such remunera-
12 tion was paid, and

13 (F) the amount of remuneration paid by
14 such institution during the financial year pre-
15 ceding the year of the report which was non-
16 deductible by reason of section 162(m) of such
17 Code.

18 (2) TIMING OF REPORT.—The report required
19 under paragraph (1) shall be submitted beginning in
20 calendar year 2011 (or, if later, the calendar year
21 after the year in which an entity first becomes a sys-
22 temically significant financial institution which is a
23 publicly held corporation), at such time during such
24 year and each subsequent year as the Chairman of

1 the Securities and Exchange Commission shall speci-
2 fy.

3 (3) DEFINITIONS.—Any term used in this sub-
4 section which is also used in section 162(m)(6) of
5 the Internal Revenue Code of 1986 shall have the
6 same meaning as when used in such section.

7 (d) EFFECTIVE DATE.—The amendments made by
8 subsections (a) and (b) shall apply to remuneration for
9 services performed after December 31, 2010.

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