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111TH CONGRESS
1ST SESSION

H. R. 1664

[Report No. 111-]

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2009

Mr. GRAYSON (for himself, Mr. HIMES, Ms. LEE of California, Mr. WELCH, Mr. ELLISON, Mr. ORTIZ, Mr. PERRIELLO, Ms. JACKSON-LEE of Texas, and Mr. CONNOLLY of Virginia) introduced the following bill; which was referred to the Committee on Financial Services

MARCH --, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 23, 2009]

A BILL

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 the
4 *Emergency Economic Stabilization Act of 2008 (12 U.S.C.*
5 *5221)* is amended by redesignating subsections (e) through
6 (h) as subsections (f) through (i), and inserting after sub-
7 section (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 under
13 this title, or with respect to the Federal National
14 Mortgage Association, the Federal Home Loan Mort-
15 gage Corporation, or a Federal home loan bank,
16 under the amendments made by section 1117 of the
17 Housing and Economic Recovery Act of 2008, may,
18 while that capital investment remains outstanding,
19 make a compensation payment, other than a lon-
20 gevity bonus or a payment in the form of restricted
21 stock, to any executive or employee under any exist-
22 ing compensation arrangement, or enter into a new
23 compensation payment arrangement, if such com-
24 pensation payment or compensation payment ar-
25 rangement—

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

7 “(B) includes any bonus or other supple-
8 mental payment that is not directly based on
9 performance-based measures set forth in stand-
10 ards established by the Secretary in accordance
11 with paragraph (2).

12 *Provided that, nothing in this paragraph applies to*
13 *an institution that did business with a recipient of a*
14 *direct capital investment under the TARP.*

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

22 “(A) *UNREASONABLE AND EXCESSIVE COM-*
23 *PENSATION STANDARDS.*—Standards that define
24 ‘unreasonable or excessive’ for purposes of sub-
25 paragraph (1)(A).

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

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

11 “(ii) *the performance of the individual*
12 *executive or employee to whom the payment*
13 *relates;*

14 “(iii) *adherence by executives and em-*
15 *ployees to appropriate risk management re-*
16 *quirements; and*

17 “(iv) *other standards which provide*
18 *greater accountability to shareholders and*
19 *taxpayers.*

20 “(3) *REPORTING REQUIREMENT.*—

21 “(A) *IN GENERAL.*—*Any financial institu-*
22 *tion that is subject to the requirements of para-*
23 *graph (1) shall, not later than 90 days after the*
24 *date of enactment of this subsection and annu-*
25 *ally on March 31 each year thereafter, transmit*

1 to the Secretary, who shall make a report which
2 states how many persons (officers, directors, and
3 employees) received or will receive total com-
4 pensation in that fiscal year in each of the fol-
5 lowing amounts:

6 “(i) over \$500,000;

7 “(ii) over \$1,000,000;

8 “(iii) over \$2,000,000;

9 “(iv) over \$3,000,000; and

10 “(v) over \$5,000,000.

11 The report shall distinguish amounts the institu-
12 tion considers to be a bonus and the reason for
13 such distinction. The name or identity of persons
14 receiving compensation in such amounts shall
15 not be required in such reports. The Secretary
16 shall make such reports available on the Internet.
17 Any financial institution subject to this para-
18 graph shall issue a retrospective annual report
19 for 2008 and both a prospective and retrospective
20 annual report for each subsequent calendar year
21 until such institution ceases to be subject to this
22 paragraph.

23 “(B) *TOTAL COMPENSATION DEFINED.*—For
24 purposes of this paragraph, the term ‘total com-
25 pensation’ includes all cash payments (including

1 *without limitation salary, bonus, retention pay-*
2 *ments), all transfers of property, stock options,*
3 *sales of stock, and all contributions by the com-*
4 *pany (or its affiliates) for that person's benefit.”.*

5 ***(b) REVISION TO RULE OF CONSTRUCTION.***—*Section*
6 *111(b)(3)(D)(iii) of the Emergency Economic Stabilization*
7 *Act of 2008 (12 U.S.C. 5221(b)(3)(D)(iii)) is amended by*
8 *inserting before the period the following: “, except that an*
9 *entity subject to subsection (e) may not, while a capital in-*
10 *vestment described in that subsection remains outstanding,*
11 *pay a bonus or other supplemental payment that is other-*
12 *wise prohibited by clause (i) without regard to when the*
13 *arrangement to pay such a bonus was entered into”.*