

## Union Calendar No. 28

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

# H. R. 1664

[Report No. 111-64]

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.

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### 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 30, 2009

Additional sponsor: Ms. FUDGE

MARCH 30, 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 *italic*]

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

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## 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,*

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

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

10        *“(e) PROHIBITION ON CERTAIN COMPENSATION NOT*  
11 *BASED ON PERFORMANCE STANDARDS.—*

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

1        *pen- sation pay- ment or com- pen- sation pay- ment ar-*  
2        *rang- e- ment—*

3                *“(A) pro- vides for com- pen- sation that is un-*  
4                *rea- son- able or ex- cessive, as de- fined in stan- dards*  
5                *es- tablished by the Sec- retary, in con- sultation with*  
6                *the Chair- per- son of the Con- gressional Over- sight*  
7                *Panel es- tablished un- der sec- tion 125, in accord-*  
8                *ance with pa- ra- graph (2); or*

9                *“(B) in- cludes any bon- us or other sup- ple-*  
10                *men- tal pay- ment that is not di- rectly based on*  
11                *per- form- ance- based mea- sures set forth in stan-*  
12                *dards es- tablished by the Sec- retary in accord- ance*  
13                *with pa- ra- graph (2).*

14        *Pro- vided that, noth- ing in this pa- ra- graph ap- plies to*  
15        *an in- stitu- tion that did busi- ness with a re- cipient of a*  
16        *di- rect cap- ital in- vestment un- der the TARP.*

17                *“(2) STANDARDS.—Not later than 30 days after*  
18                *the date of enact- ment of this sub- sec- tion, the Sec- retary,*  
19                *with the ap- proval of the ag- en- cies that are mem- bers of*  
20                *the Fed- eral Fi- nancial In- stitu- tions Ex- amin- ation*  
21                *Coun- cil, and in con- sultation with the Chair- per- son of*  
22                *the Con- gressional Over- sight Panel es- tablished un- der*  
23                *sec- tion 125, shall es- tablish the fol- lowing:*

24                *“(A) UNREASONABLE AND EXCESSIVE COM-*  
25                *PEN- SATION STANDARDS.—Standards that de- fine*

1           *‘unreasonable or excessive’ for purposes of sub-*  
2           *paragraph (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 reten-*  
7           *tion 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 payment*  
15                  *relates;*

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

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

22           “(3) *REPORTING REQUIREMENT.—*

23                  “(A) *IN GENERAL.—Any financial institu-*  
24                  *tion that is subject to the requirements of para-*  
25                  *graph (1) shall, not later than 90 days after the*

1           *date of enactment of this subsection and annu-*  
2           *ally on March 31 each year thereafter, transmit*  
3           *to the Secretary, who shall make a report which*  
4           *states how many persons (officers, directors, and*  
5           *employees) received or will receive total com-*  
6           *penetration in that fiscal year in each of the fol-*  
7           *lowing amounts:*

8                     *“(i) over \$500,000;*

9                     *“(ii) over \$1,000,000;*

10                    *“(iii) over \$2,000,000;*

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

12                    *“(v) over \$5,000,000.*

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

1                   “(B) *TOTAL COMPENSATION DEFINED.*—For  
2                   purposes of this paragraph, the term ‘total com-  
3                   pensation’ includes all cash payments (including  
4                   without limitation salary, bonus, retention pay-  
5                   ments), all transfers of property, stock options,  
6                   sales of stock, and all contributions by the com-  
7                   pany (or its affiliates) for that person’s benefit.”.

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



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