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REPORT
111–236

CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT OF 2009

JULY 30, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3269]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3269) to amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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79–006

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Corporate and Financial Institution Compensation Fairness Act of 2009".

SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

(a) AMENDMENT.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

"(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

"(1) ANNUAL VOTE.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission's compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

"(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

"(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

"(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by any such person or issuer, nor to create or imply any additional fiduciary duty by any such person or issuer.

"(3) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to paragraphs (1) or (2) of this section, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

"(4) RULEMAKING.—Not later than 6 months after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue final rules to implement this subsection.

"(5) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of this subsection, where appropriate in view of the purpose of this subsection. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.".

(b) PROHIBITION ON CLAWBACKS.—

(1) PROHIBITION.—No compensation of any executive of an issuer, having been approved by a majority of shareholders pursuant to section 14(i) of the Securities Exchange Act of 1934 (as added by subsection (a)), may be subject to any clawback except—

(A) in accordance with any contract of such executive providing for such a clawback; or

(B) in the case of fraud on the part of such executive, to the extent provided by Federal or State law.

(2) REGULATIONS.—The Securities and Exchange Commission shall promulgate rules necessary to implement and enforce paragraph (1).

SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

"SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

"(a) COMMISSION RULES.—

"(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

"(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

"(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

"(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

"(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

"(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

"(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

"(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the

compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

"(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category.

"(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

"(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

"(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c), and

"(2) to any independent counsel or other adviser to the compensation committee.".

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Securities Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 2 years after the rules required by the amendment made by this section take effect, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORTING TO REDUCE PERVERSE INCENTIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the appropriate Federal regulators jointly shall prescribe regulations to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) is aligned with sound risk management;

(B) is structured to account for the time horizon of risks; and

(C) meets such other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives offered by such institutions for employees to take undue risks that—

(i) could threaten the safety and soundness of covered financial institutions; or

(ii) could have serious adverse effects on economic conditions or financial stability.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring the reporting of the actual compensation of particular individuals.

Nothing in this subsection shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this Act, and taking into account the factors described in subparagraphs (A), (B), and (C) of subsection (a)(1), the appropriate Federal regulators shall jointly prescribe regulations that prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions that—

(1) could threaten the safety and soundness of covered financial institutions; or

(2) could have serious adverse effects on economic conditions or financial stability.

(c) ENFORCEMENT.—The provisions of this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section shall be treated as a violation of subtitle A of title V of such Act.

(d) DEFINITIONS.—As used in this section—

(1) the term ''appropriate Federal regulator'' means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency; and

(2) the term ''covered financial institution'' means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(f) GAO STUDY.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable throughout the housing and credit market crisis of 2007 and 2008, including the compensation practices of all such companies.

(C) DETERMINING COMPANIES THAT FAILED OR NEARLY FAILED.—In determining whether a company failed, or nearly failed but for government assistance, for purposes of subparagraph (B)(ii), the Comptroller General shall focus on—

(i) companies that received exceptional assistance under the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2009 (12 U.S.C. 5211 et seq.) or other forms of significant government assistance, including under the Automotive Industry Financing Program, the Targeted Investment Program, the Asset Guarantee Program, and the Systemically Significant Failing Institutions Program;

(ii) the Federal National Mortgage Association;

(iii) the Federal Home Loan Mortgage Corporation; and

(iv) companies that participated in the Security and Exchange Commission's Consolidated Supervised Entities Program as of January, 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Congress containing the results of the study required under paragraph (1).

PURPOSE AND SUMMARY

The purposes of this bill are (1) to give shareholders of public companies a nonbinding advisory vote on the pay of the top five executives in connection with proxy solicitations; (2) to establish standards of independence for compensation committees and the consultants and other advisers retained by them at companies that are listed on a national securities exchange or subject to the rules of a national securities association; and (3) to require federal financial regulators to monitor incentive-based payment arrangements of all covered financial institutions and prohibit incentive-based payment arrangements that could threaten financial institutions' safety and soundness or could have serious adverse effects on economic conditions or financial stability.

BACKGROUND AND NEED FOR LEGISLATION

In the decade leading to the current financial crisis, increasing concerns arose regarding seemingly excessive executive and financial institution compensation. These concerns, however, were muted by a period of general prosperity that obscured the impact that compensation structures, particularly those at financial institutions, can have on overall financial and economic stability. As the current financial crisis has developed, a broad consensus has developed that executive and financial institution compensation structures relate directly to both the safety and soundness of individual financial institutions and the health of the broader financial system. H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009, is designed to address the relationship between compensation structures and health of the broader financial system.

EXECUTIVE COMPENSATION

In the book Pay Without Performance, Lucian Bebchuk and Jesse Fried calculated that, in 1991, CEO compensation was 140 times that of an average worker but, by 2003, the ratio had increased to 500 to 1.[1] Further research has found that the increase in pay far outstrips the improvement in company performance or growth in company size. Analyzing these data with Yaniv Grinstein, Bebchuk concluded, "[h]ad the relationship of compensation to size, performance and industry classification remained the same in 2003 as it was in 1993, mean compensation in 2003 would have been only half its actual size."[2]

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[1] Bebchuk, Lucian A. and Jesse Fried, *Pay Without Performance: The Unfulfilled Promise of Executive Compensation*, Harvard University Press, (2004).

[2] Bebchuk, Lucian A. and Yaniv Grinstein. "The Growth in Executive Pay," *21 Oxford Review of Economic Policy 283* (2005), available at: *http://www.law.harvard.edu/faculty/bebchuk/pdfs/Bebchuk-Grinstein.Growth-of-Pay.pdf.*

The years following 2003 saw even greater growth in executive compensation. The Corporate Library's CEO Pay Survey found that total compensation for CEOs increased 30 percent in 2004, 16 percent in 2005 and 9 percent in 2006.

Even in 2008, a year of sharp declines in profits and stock prices, the median CEO salary increased by 4.5 percent.[3] The average worker's wages increased by only 2.7 percent over the same period.[4] Consequently, it appears that the income gap between CEO and average worker is widening in good times as well as bad. Further, the reported statistics are based on median CEO incomes and do not account for the most extreme pay packages. The Wall Street Journal's data show that the highest paid CEO in 2008 received over $100 million in compensation while presiding over a 76 percent decline in share price.[5]

In addition to their annual compensation, CEOs often receive seemingly excessive severance packages when they leave their jobs, even if they're forced out for bad performance. In 2007, Robert Nardelli was forced out as CEO of Home Depot during a period of poor stock performance. He received a severance package estimated at $210 million.[6]

Later in 2007, Merrill Lynch fired Stanley O'Neal as CEO shortly after announcing the largest loss in corporate history,[7] but Mr. O'Neal received a $160 million exit package.[8] In July 2008, AIG announced that it was paying Martin Sullivan $47 million in severance after it forced him out as CEO.[9] In March 2009, General Motors offered $21 million in severance to Rick Wagoner shortly after he was forced out as CEO.[10] Each of these companies required $20 billion or more in government assistance to remain in business over the past year.

FINANCIAL INDUSTRY COMPENSATION

Pay packages in the financial industry swelled to enormous sizes before the failures of Bear Stearns and Lehman Brothers in 2008. In 2007, at several of the largest banks, the average end-of-year bonus was more than $100,000. At Goldman Sachs, the average employee made $700,000.[11] And the highest paid employees make many multiples of the average.

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[3] Lublin, Joann S. "CEO Pay Sinks Along With Profits," *Wall Street Journal,* April 6, 2009, available at: *http://online.wsj.com/article/SB123870448211783759.html.*

[4] *Employment Cost Index—December 2008,* Bureau of Labor Statistics (2009), available at: *http://www.bls.gov/news.release/archives/eci_01302009.pdf.*

[5] Lublin, Joann S., Phred Dvorak and Cari Tuna "Motorola Co-CEO Tops Pay Survey," *Wall Street Journal,* April 3, 2009, available at: *http://online.wsj.com/article/SB123870806394084045.html.*

[6] Creswell, Julie and Michael Barbaro. "Home Depot Ousts Highly Paid Chief," *New York Times,* January 4, 2007, available at: *http://www.nytimes.com/2007/01/04/business/04home.html.*

[7] Thomas, Jr., Landon and Jenny Anderson. "Risk Taker's Reign at Merrill Ends With Swift Fall," *New York Times,* October 29, 2007, available at: *http://www.nytimes.com/2007/10/29/business/29merrill.html.*

[8] "The Price of Saying Goodbye," *New York Times DealBook Blog,* October 30, 2007, available at: *http://dealbook.blogs.nytimes.com/2007/10/30/the-price-of-saying-goodbye/*

[9] "A.I.G. Pays Its Ex-Chief $47 Million," *New York Times,* July 2, 2008, available at: *http://www.nytimes.com/2008/07/02/business/02aig.html*

[10] Wagoner refused to accept the full severance package and took a cut consistent with that suffered by other retirees. "Ex-G.M. Chief to Get $8.5 Million in Retirement Pay," *New York Times,* July 14, 2009, available at: *http://www.nytimes.com/2009/07/15/business/15auto.html.*

[11] Tse, Tomoeh Murakami. "Wall Street Jacks Up Pay After Bailouts," *Washington Post,* July 23, 2009, available at: *http://www.washingtonpost.com/wp-dyn/content/article/2009/07/22/AR2009072203687.html.*

Outsized pay in the financial industry seems closely correlated with financial bubbles. Thomas Philippon and Ariell Reshef studied 100 years of financial industry pay and found "wages in finance were excessively high around 1930 and from the mid 1990s until 2006."[12] These time periods correspond with the pre-Depression excesses of the 1920s, the internet boom and the housing boom—three stock market bubbles that burst and dragged the broader economy into recession or depression.

Several researchers suggest that the correlation between high pay and bubbles in finance may be caused by pay practices. Compensation in the financial industry is based on performance but the incentives are skewed to encourage excessive risk taking. Employees who take risks and win are rewarded greatly but those who lose do not face any financial losses, colloquially described as a "heads you win, tails you break even" pay plan. Under this system, employees are induced to take on far more risk than is good for the company or the financial system, and when those risks fail en masse, collapse can result, as occurred in 2008.

In the wake of the financial market collapse of late 2008, several institutions undertook studies to understand how the system became so vulnerable. Financial industry compensation practices are repeatedly cited as exacerbating the danger. A Group of 30 investigation led by Paul Volcker found "there are numerous examples of misaligned incentives, of incentives that contribute to instability and cyclicality in financial markets,"[13] and later singled out compensation incentives: "the crisis has driven home the importance of aligning compensation practices with the incentives and controls in a firm's risk management program. Senior management and boards need to ensure a consistency in that respect, aligning pay with long-run shareholder interest rather than short-term returns that cannot be sustained and entail greater risk."[14]

Lord Turner, looking at the global crisis on behalf of the British government, explained:

> Thus for instance if a trader, a senior executive or an institution (e.g. a hedge fund) is remunerated on the basis of a contract which provides for a significant profit share in good years but no claw back in years of poor performance, that person or institution will have a strong incentive to pursue strategies which generate strong return in many years but at the expense of the small probability of occasional very large losses. Applied in general across the financial system, such contracts will result on average in excessive compensation relative to the economic functions performed.[15]

Lord Turner went on to observe, "[t]here is a strong prima facie case that inappropriate incentive structures played a role in en-

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[12] Philippon, Thomas and Ariell Reshef. "Wages and Human Capital in the U.S. Financial Industry, 1909–2006," NBER working paper (2009), available at: *http://www.nber.org/papers/w14644.pdf.*

[13] Financial Reform: A Framework for Financial Stability. Group of Thirty Working Group on Financial Reform (2009) p. 40, available at: *http://www.group30.org/pubs/reformreport.pdf.*

[14] Id., p. 41.

[15] Turner, Jonathan Adair, Baron Turner of Ecchinswell. The Turner Review: A regulatory response to the global banking crisis, Financial Services Authority (2009), footnote 24 at p. 49, available at: *http://www.fsa.gov.uk/pubs/other/turner.review.pdf.*

couraging behaviour which contributed to the financial crisis."[16] Finally, Lord Turner concluded,

> [P]ast remuneration policies, acting in combination with capital requirements and accounting rules, have created incentives for some executives and traders to take excessive risks and have resulted in large payments in reward for activities which seemed profit making at the time but subsequently proved harmful to the institution and in some cases to the entire system.[17]

In a May 28, 2009 essay in the Wall Street Journal, Alan Blinder warned that these bubble-producing practices could return: "when fear gives way to greed, most traders and CEOs will have the bad old incentives they had before—unless we reform the system."[18] On July 23, 2009, the Washington Post confirmed Blinder's prediction: "Wall Street, helped by improving profits, is on track to pay employees as much as, or even more than, it did in its pre-crisis days. So far this year, the top six U.S. banks have set aside $74 billion to pay their employees, up from $60 billion in the corresponding period last year."[19]

Executive compensation at financial institutions and financial services companies has been widely criticized for being excessive and providing perverse incentives for reckless behavior.[20] Many experts believe that unsuitably-designed compensation policies that rewarded executive failures rather than successes have contributed to the current financial crisis. Although most media, public, and political attention have been focused on compensation practices at financial services companies receiving Federal assistance under the Emergency Economic Stabilization Act of 2008 (EESA),[21] recent discussion has widened to address executive compensation practices more generally.[22]

Regulators responsible for monitoring the safety and soundness of financial institutions are aware that excessive compensation and incentive packages that encourage inappropriate risk taking can jeopardize the financial health of those institutions and can weaken the broader economy.[23]

LEGISLATIVE HISTORY

Concerns about and possible responses to excessive executive pay were addressed by this Committee and by the House long before the current financial crisis. Present efforts to address excessive executive compensation began with the introduction of the Protection Against Executive Compensation Abuse Act (say-on-pay) in the 109th Congress and continued with House passage (by a vote of

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[16] Id. p. 80.
[17] Id. p. 80.
[18] Blinder, Alan. "Crazy Compensation and the Crisis", Wall Street Journal, May 28, 2009. Available at: *http://online.wsj.com/article/SB124346974150760597.html.*
[19] "Wall Street Jacks Up Pay After Bailouts", id.
[20] *http://www.law.yale.edu/news/8954.htm.*
[21] P.L. 110–343 (Division A), codified as 12 U.S.C. 5221.
[22] *http://online.wsj.com/article/SB124346974150760597.html; http://www.nytimes.com/2009/06/08/business/08bank.html; http://www.nytimes.com/2009/02/05/us/politics/05pay.html.*
[23] See statement by Ben S. Bernanke, chairman, Federal Reserve Board, The Financial Crisis and Community Banking, speech given at the Independent Community Bankers of America's National Convention and Techworld, Phoenix, Arizona (03/20/2009), available at *http://www.federalreserve.gov/newsevents/speech/bernanke20090320a.htm#fn.3.*

269–134) of H.R. 1257, the Shareholder Vote on Executive Compensation Act (say-on-pay), in the 110th Congress. In requiring public companies to hold a non-binding shareholder vote on the compensation packages of a company's top five executives, the say-on-pay bill was, at the time, the most extensive limitation on executive compensation to pass the House in decades. The impact of this achievement was overtaken by the magnitude of the growing housing, credit, and financial crisis, which focused the discussion of compensation practices primarily on companies receiving assistance under EESA. Both EESA and the American Recovery and Reinvestment Act of 2009 (ARRA) require the elimination of incentives to take ''unnecessary and excessive risks'' in firms receiving TARP funds.[24] ARRA builds on the restrictions in EESA and requires the Securities and Exchange Commission (SEC) to issue regulations regarding say-on-pay for public companies that receive EESA assistance.

When issuing final regulations to implement the provisions of ARRA, Treasury announced its intention prospectively to address compensation issues not only in the limited context of firms receiving TARP assistance, but rather in the broader context of compensation as it relates to the health of the countries' corporations.[25] Recognizing and concurring with the Administration's intent to address compensation issues as they impact overall economic and financial stability, the Committee conducted a hearing entitled ''Compensation Structure and Systemic Risk'' on June 11, 2009. That hearing focused on oversight and regulation of compensation practices in the financial services industry, particularly in the context of systemic regulatory reform.

The importance of compensation reform was again highlighted by the President's decision to address this issue in his administration's major financial regulatory reform initiative released June 17, 2009, in a white paper entitled, ''Financial Regulatory Reform: A New Foundation.''[26] The Administration's white paper identified three compensation related initiatives as essential to overall financial regulatory reform. First, the administration endorsed the say-on-pay legislation initiated by the Committee in the 109th and 110th Congresses.[27] Next, the administration indicated an intention to enhance the independence of compensation committees of corporate boards of directors.[28] Third, the administration indicated

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[24] See Sections 111 and 302 of the Emergency Economic Stabilization Act of 2008 (EESA). In particular, Section 111b(2)(A) EESA required the Treasury Secretary to ensure that financial institutions receiving assistance had ''limits on compensation that exclude incentives for senior executive officers of a financial institution to take unnecessary and excessive risks that threaten the value of the financial institution during the period that the Secretary holds an equity or debt position in the financial institution.'' Treasury issued guidance on February 4, 2009 that requires executive base pay to be limited to $500,000 and any incentive pay to be granted in the form of restricted stock. See US Department of the Treasury, press release of February 4, 2009 available at *http://www.ustreas.gov/press/releases/tg15.htm*. See Title VII of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (H.R. 1 of the 111th Congress), amending Sections 109(a) and 111 of the EESA.

[25] See, US Department of the Treasury, press release of June 6, 2009 and Interim Final Rule on TARP Standards for Compensation and Corporate Governance available at: *http://www.financialstability.gov/latest/tg10609b2009.html*.

[26] See, Financial Regulatory Reform: A New Foundation, at pp. 29–30, available at: *http://www.financialstability.gov/docs/regs/FinalReport.1web.pdf*.

[27] For additional background on the Administration's say-on-pay initiative, see, ''Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward, Say-On-Pay'' available at: *http://www.financialstability.gov/docs/regulatoryreform/say-on-pay.pdf*.

[28] For additional background on the Administration's compensation committee independence initiatives, see, ''Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward, New

its support for federal financial regulators "laying out standards on compensation for financial firms that will be fully integrated into the supervisory process." [29]

On July 21st, Chairman Frank introduced H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009 to enact the Administration's three compensation related regulatory reform initiatives into law.

HEARINGS

The Committee conducted a hearing entitled "Compensation Structure and Systemic Risk" on June 11, 2009. That hearing focused on oversight and regulation of compensation practices in the financial services industry, particularly in the context of systemic regulatory reform. The following witnesses testified:

Panel one:

- Mr. Gene Sperling, Counselor to the Secretary of the Treasury, U.S. Department of the Treasury
- Mr. Scott Alvarez, General Counsel, Board of Governors of the Federal Reserve System
- Mr. Brian Breheny, Deputy Director of Corporate Finance, U.S. Securities and Exchange Commission

Panel two:

- Mr. Lucien Bebchuk, Professor of Law, Economics, and Finance, and Director of the Program on Corporate Governance, Harvard Law School

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Independence for Compensation Committees" available at: *http://www.financialstability.gov/docs/regulatoryreform/extendedlcomplcommlanalysis.pdf.*

[29] See, Financial Regulatory Reform: A New Foundation, at pp. 29–30, available at: *http://www.financialstability.gov/docs/regs/FinalReportlweb.pdf.*

- Ms. Nell Minow, Editor and Founder, The Corporate Library
- Mr. Lynn Turner, former Chief Accountant, U.S. Securities and Exchange Commission
- Mr. Kevin Murphy, Trefftzs Chair in Finance, Professor of Business and Law, and Professor of Economics, University of Southern California
- Mr. J.W. Verret, Assistant Professor, George Mason University School of Law

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 28, 2009, and ordered H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009, as amended, favorably reported to the House by a record vote of 40 yeas and 28 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 40 yeas and 28 nays (Record vote no. FC-42). The names of Members voting for and against follow:

Record vote no. FC-42

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski				Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez	X			Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones		X	
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	

Record vote no. FC-42

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs.Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Mr. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

During the consideration of the bill, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment in the nature of a substitute offered by Mr. Garrett, No. 2, was not agreed to by a record vote of 26 yeas and 41 nays (Record vote no. FC-35):

Record vote no. FC-35

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones		X	
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter			
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling, no. 3, limiting application to TARP recipients only, was not agreed to by a record vote of 28 ayes and 40 nays (Record vote no. FC-36):

Record vote no. FC-36

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					

Record vote no. FC-36

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Neugebauer, no. 9, striking the prohibition on certain compensation structures, was not agreed to by a record vote of 28 ayes and 40 nays (Record vote no. FC-37):

Record vote no. FC-37

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					

Record vote no. FC-37

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Neugebauer, no.11, striking section 4 and inserting a GAO study of the impact of allowing financial regulators to prohibit compensation structures, was not agreed to by a record vote of 28 ayes and 40 nays (Record vote no. FC-38):

Record vote no. FC-38

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		

Record vote no. FC-38

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Campbell, no.13, including pension plans in the shareholder vote, was not agreed to by a record vote of 1 aye and 67 nays (Record vote no. FC-39):

Record vote no. FC-39

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus		X	
Mr. Kanjorski				Mr. Castle		X	
Ms. Waters		X		Mr. King (NY)		X	
Mrs. Maloney		X		Mr. Royce		X	
Mr. Gutierrez		X		Mr. Lucas		X	
Ms. Velázquez		X		Mr. Paul		X	
Mr. Watt		X		Mr. Manzullo		X	
Mr. Ackerman		X		Mr. Jones		X	
Mr. Sherman		X		Mrs. Biggert		X	
Mr. Meeks		X		Mr. Miller (CA)		X	
Mr. Moore (KS)		X		Mrs. Capito		X	
Mr. Capuano		X		Mr. Hensarling		X	
Mr. Hinojosa		X		Mr. Garrett (NJ)		X	
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach		X	

Record vote no. FC-39

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Baca		X		Mr. Neugebauer		X	
Mr. Lynch		X		Mr. Price (GA)		X	
Mr. Miller (NC)		X		Mr. McHenry		X	
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam		X	
Mr. Cleaver		X		Mrs.Bachmann		X	
Ms. Bean		X		Mr. Marchant		X	
Ms. Moore (WI)		X		Mr. McCotter		X	
Mr. Hodes		X		Mr. McCarthy		X	
Mr. Ellison		X		Mr. Posey		X	
Mr. Klein		X		Ms. Jenkins		X	
Mr. Wilson		X		Mr. Lee		X	
Mr. Perlmutter		X		Mr. Paulsen		X	
Mr. Donnelly		X		Mr. Lance		X	
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Putnam, no.14, regarding a deferred compensation exemption, was not agreed to by a record vote of 27 ayes and 41 nays (Record vote no. FC-40):

Record vote no. FC-40

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		

Record vote no. FC-40

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Ackerman		X		Mr. Jones		X	
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Garrett, no.15, regarding a GAO study of performance measurement for federal regulators, was not agreed to by a record vote of 27 ayes and 41 nays (Record vote no. FC-41):

Record vote no. FC-41

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present

Record vote no. FC-41

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)			
Mrs. McCarthy				Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell		X	
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs.Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

The following other amendments were also considered by the Committee:

An amendment by Mr. Frank, no. 1, a manager's amendment, was agreed to by a voice vote.

An amendment by Mrs. Kilroy, no. 4, regarding disclosure of votes, was agreed to by a voice vote.

An amendment by Mr. Hensarling, no. 5, regarding a community institution exemption, was agreed to, as modified, by a voice vote.

An amendment by Mr. Foster, no. 6, regarding a GAO study of accreditation of directors, was offered and withdrawn.

An amendment by Mr. Hensarling, no. 7, regarding a GAO study of the correlation between compensation structures and excessive risk taking, was agreed to by a voice vote.

An amendment by Mr. Price, no. 8, regarding a prohibition on clawbacks, was agreed to, as modified, by a voice vote.

An amendment by Mr. Campbell, no. 10, regarding majority voting and election of directors, was offered and withdrawn.

An amendment by Mr. Hensarling, no. 12, regarding GSEs, was agreed to by a voice vote.

An amendment by Mr. Castle, no. 16, striking section 4, was not agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The purposes of H.R. 3269 are: (1) to give shareholders of public companies a nonbinding advisory vote on the pay of the top five executives in connection with proxy solicitations; (2) to establish standards of independence for compensation committees and the consultants and other advisers retained by them at companies that are listed on a national securities exchange or subject to the rules of a national securities association; and (3) to require federal financial regulators to monitor incentive-based payment arrangements of all covered financial institutions and prohibit incentive-based payment arrangements that could threaten financial institutions' safety and soundness or could have serious adverse effects on economic conditions or financial stability.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JULY 30, 2009.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3269—Corporate and Financial Institution Compensation Fairness Act of 2009

H.R. 3269 would require all companies whose stock is traded on public exchanges to allow shareholders to approve, in nonbinding votes, the compensation received by executives and certain compensation agreements between executives and an acquiring entity. The bill also would require certain institutional investment managers to report at least annually on how they voted on any company's shareholder votes regarding compensation. H.R. 3269 would establish standards to ensure the independence of members of a company's compensation committee and the consultants and other advisors that provide support to such a committee. In addition, H.R. 3269 would require financial institutions to disclose to federal regulators the structure of any employee compensation agreements that include performance incentives.

The bill would require the Securities and Exchange Commission (SEC) as well as the federal financial regulatory agencies—the Federal Deposit Insurance Corporation (FDIC), National Credit Union Association (NCUA), Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Housing Finance Agency (FHFA), and the Federal Reserve—to develop regulations to implement the bill's requirements, including regulations to restrict the use of certain employee compensation structures if they would pose a risk to a financial institution or to the economy. The bill also would require the Government Accountability Office (GAO) to conduct a study to determine whether there is a relationship between companies' compensation structures and their risk-taking behavior.

Based on information from the SEC and GAO, CBO estimates that implementing H.R. 3269 would cost about $1 million in 2010

to develop regulations and prepare reports to the Congress, and less than $500,000 per year thereafter for the SEC to monitor compliance by companies affected by the regulations. Such spending would be subject to the availability of appropriated funds.

Any additional costs to the OCC, the OTS, and the FHFA as a result of enacting H.R. 3269 would be recorded on the budget as direct spending and offset by income from annual fees collected by those agencies for their administrative expenses. Similarly, the FDIC and NCUA would recover any added costs when they adjust the premiums and fees paid by insured depository institutions. Thus, CBO estimates that enacting the bill would have a negligible effect on net direct spending over the 2010–2014 and 2010–2019 periods.

The budgetary effects on the Federal Reserve would be recorded as changes in revenues (governmental receipts). CBO expects that implementing H.R. 3269 would not have a significant effect on the workload of the Federal Reserve and anticipates that existing resources would be used to comply with the bill's requirements. Therefore, we estimate that enacting this bill would not have a significant effect on revenues.

H.R. 3269 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The requirements of H.R. 3269 would impose several private-sector mandates as defined in UMRA on publicly traded companies, financial institutions, institutional investment managers, and national securities exchanges and associations. Because the cost of some of the mandates in the bill would depend on federal regulations yet to be established, CBO cannot determine whether the total cost of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs), Barbara Edwards (for federal revenues), and Brian Prest (for the private-sector impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3269 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE

This Act may be cited as the "Corporate and Financial Institution Compensation Fairness Act of 2009."

SECTION 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES (SAY-ON-PAY)

Subsection (a)—Amendments to Section 14 of the Securities Exchange Act of 1934

Annual Shareholder Approval of Executive Compensation ("say-on-pay"). Requires all public companies ("issuers") that are subject to the SEC's rules on solicitation of proxies to hold an annual advisory shareholder vote on compensation of the top five executives as disclosed pursuant to the SEC's compensation disclosure rules.

Shareholder Approval of Golden Parachute Compensation. In connection with a merger, acquisition, consolidation, or proposed sale or other disposition of all of substantially all of the assets of an issuer that is subject to the SEC's rules on solicitation of proxies, shareholders get a separate, nonbinding vote on "golden parachute" arrangements with any principal executive officers of the target or the acquirer, unless such arrangements already were subject to an annual say-on-pay vote.

Disclosure of Votes. Requires institutional investment managers to report at least annually on how they voted pursuant to this section, unless their votes are otherwise required to be reported publicly by SEC rule.

Rulemaking and Effective Date. SEC required to issue final say-on-pay rules within 6 months of enactment; the say-on-pay provisions become effective 6 months after issuance of final rules.

Exemption Authority. SEC allowed to exempt certain categories of issuers from say-on-pay requirements when appropriate in view of the purposes of this section; in determining exemptions, the SEC shall take into account, among other things, the potential impact on smaller reporting issuers

Subsection (b)—Prohibition on Clawbacks

Provides that no compensation approved by a majority of shareholders under this section may be subject to clawback, except in accordance with any contract of such executive providing for a clawback, or in the case of fraud on the part of such executive to the extent provided by federal or state law.

SECTION 3. COMPENSATION COMMITTEE INDEPENDENCE

Subsection (a)—Standards Relating to Compensation Committees Commission Rules

Requires the SEC to, within 9 months of enactment, by rule direct the national securities exchanges and associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the independence standards contained in this subsection, after giving the issuer an opportunity to cure defects.

Exemption Authority. Allows the SEC to exempt certain categories of issuers from coverage of its compensation committee rules when appropriate in view of the purposes this section; in determining exemptions, the SEC shall take into account, among other things, the potential impact on smaller reporting issuers.

Definition of Compensation Committee. For purposes of this section, the term "compensation committee" means a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer, or, if no such committee exists, the independent members of the entire board of directors

Independence of Compensation Committees. Requires each member of the compensation committee of the board of directors to be independent. Independent directors are defined as directors that receive no "consulting, advisory or other compensatory fee" from company other than compensation received as a director. The SEC may exempt from this requirement a particular relationship with respect to compensation committee members where appropriate in view of the purposes of this section.

Independence Standards for Compensation Consultants. The SEC must promulgate regulations establishing independence standards and shareholder disclosure rules regarding compensation consultants that provide advice to compensation committees. In promulgating rules under this section, or any other provision of law with respect to compensation consultants, the SEC must ensure that such rules are competitively neutral among categories of consultants (e.g., firms that only provide compensation advisory services to compensation committees of a public company and multi-disciplinary firms that also provide other services to public companies) and preserve the ability of compensation committees to retain the services of members of any such category.

Compensation Committee Authority Relating to Compensation Consultants, Independent Counsel, and Other Advisers. The compensation committee is specifically authorized to retain and obtain the nonbinding advice of independent compensation consultants or other advisors. The independent compensation committee must be directly responsible for the appointment and compensation of persons so retained, and directly responsible for the oversight of their work.

Disclosure. Starting a year after enactment, routine proxy and consent solicitation materials must disclose whether the compensation committee retained and obtained the advice of an independent compensation consultant. This disclosure requirement does not apply to other similar advisers that the compensation committee may have retained.

Funding. Each issuer shall provide for appropriate funding, as determined by the compensation committee, for payment of compensation to any independent compensation consultant, independent counsel, or other adviser to the compensation committee.

Subsection (b)—Study and review required

The SEC must study and review the use of independent compensation consultants and the effects of such use and report its finding to Congress within 2 years after the rules required by subsection (a) take effect.

SECTION 4. ENHANCED COMPENSATION STRUCTURE REPORTING TO REDUCE PERVERSE INCENTIVES

Subsection (a)—Enhanced Disclosure and Reporting of Compensation Arrangements

Reporting of incentive-based compensation structures. Requires the appropriate Federal regulators (defined below) jointly to issue rules that require covered financial institutions (also defined below) to disclose incentive-based compensation arrangements to the regulators sufficient for the regulators to determine whether such compensation structures encourage undue risk-taking that could threaten the safety and soundness of covered financial institutions or have serious adverse effects on economic conditions or financial stability. For purposes of this section, incentive-based compensation arrangements include, but are not limited to, stock options.

This subsection shall not be construed to require reporting of the actual compensation of particular individuals or to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

Subsection (b)—Prohibition on certain compensation arrangements

Requires the appropriate Federal regulators jointly to issue rules that prohibit any incentive-based pay arrangement, or any feature thereof, that encourages undue risk-taking that could threaten the safety and soundness of covered financial institutions or could have serious adverse effects on economic conditions or financial stability.

Subsection (c)—Enforcement

Provisions of this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section shall be treated as a violation of subtitle A of title V of such Act.

Subsection (d)—Definitions

The ''appropriate federal regulators'' are the Federal Reserve Board, the Office of the Comptroller of the Currency, the Board of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, and the Federal Housing Finance Agency.

The ''covered financial institutions'' are depository institutions, depository institution holding companies, registered broker-dealers, credit unions, investment advisors, the Federal National Mortgage

Association, the Federal Home Loan Mortgage Corporation, and any other financial institution that the appropriate federal regulators jointly by rule determine should be treated as a covered financial institution.

Subsection (e)—Exemption for certain covered financial institutions

The requirements of this section specifically do not apply to covered financial institutions with assets of less than $1 billion.

Subsection (f)—GAO Study and Report

The GAO must conduct a study to determine whether there is a correlation between compensation structures and excessive risk taking and issue a report to Congress containing the results of this study within one year of enactment.

Joint Rulemaking. The rulemakings required under subsections (a) and (b) must be completed within 9 months of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

(a) COMMISSION RULES.—

(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation com-

mittee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

(4) DEFINITION.—As used in this section, the term "compensation committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category.

(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its ca-

pacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c), and

(2) to any independent counsel or other adviser to the compensation committee.

* * * * * * *

PROXIES

SEC. 14. (a) * * *

* * * * * * *

(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

(1) ANNUAL VOTE.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission's compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under

paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by any such person or issuer, nor to create or imply any additional fiduciary duty by any such person or issuer.

(3) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to paragraphs (1) or (2) of this section, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

(4) RULEMAKING.—Not later than 6 months after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue final rules to implement this subsection.

(5) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of this subsection, where appropriate in view of the purpose of this subsection. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

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DISSENTING VIEWS

Lavish executive compensation packages for CEOs who have underperformed and failed to deliver shareholder value have contributed to a growing public perception that corporate boards have not fulfilled their fiduciary responsibility to set executives' pay in a way that aligns the incentives of those executives with the interests of shareholders. This perception undermines confidence in corporate America, and unfairly taints the vast majority of U.S. companies that adhere to sound corporate governance practices in determining the compensation of CEOs and other senior management. The huge losses suffered by large financial institutions in recent years and the need for the government to inject billions of taxpayer dollars into several before on the issue of excessive executive compensation.

H.R. 3269 purports to address these excesses by mandating that all publicly-traded companies registered with the U.S. Securities and Exchange Commission (SEC) provide shareholders the opportunity to cast a non-binding advisory vote on executive compensation as disclosed in the corporate proxy statement. It would also require proxy statements related to a corporate merger or acquisition to include a clear and simple disclosure of any new "golden parachute" plans, or severance pay arrangements whereby top executives receive extra compensation when the corporation is merged with or acquired by another firm. The legislation further mandates a separate, non-binding shareholder vote on these "golden parachute" compensation arrangements. The legislation directs all public companies to have compensation committees comprised of independent directors and requires the SEC to issue independence standards for compensation consultants to the board of directors. Finally, as detailed further below, the legislation grants the Federal financial regulators broad powers to prohibit incentive-based compensation for all employees of financial institutions over a certain size in the United States.

While Republicans share the outrage of our constituents over instances in which corporate CEOs have been richly rewarded for failure, we strongly believe that H.R. 3269 is the wrong solution. By empowering government bureaucrats to sit in judgment of the "incentive-based" compensation of every employee at thousands of financial institutions across the country, the bill represents another example of a "command and control" approach to economic policy that runs counter to America's free market traditions.

Section 4 of the legislation would require the overwhelming majority of U.S. financial institutions (including but not limited to banks, credit unions, broker-dealers, and investment advisors) to disclose incentive-based compensation arrangements, and authorize Federal regulators to control and dictate *all* incentive-based compensation agreements for *all* employees of those firms, in order to

prevent compensation arrangements that encourage ''inappropriate risks'' that ''threaten the safety and soundness'' of individual financial institutions or ''have serious adverse effects on economic conditions or financial stability.'' The bill would grant broad, vague and undefined powers to Federal regulators to determine if incentive-based compensation structures at financial institutions are ''aligned with sound risk management,'' ''structured to account for the time horizon of risks,'' and ''meet other criteria [the regulators] determine to be appropriate to reduce unreasonable incentives to take undue risks.''

As introduced, H.R. 3269 would have subjected every financial institution—regardless of size, regardless of whether it is publicly traded, and regardless of whether it played any role in the financial turmoil of the recent past—to this unprecedented level of government micro-management of basic business practices. Only through the efforts of Financial Services Committee Republicans was language authored by Mr. Hensarling added to the bill during Committee consideration to exempt financial institutions with less than $1 billion in assets from these requirements.

In evaluating the bill's provisions to give shareholders an advisory vote on executive compensation, it is important to keep in mind that corporations are representative—not direct—democracies, and mandating shareholder votes on core operational issues such as compensation levels risks undermining corporate boards' ability to exercise independent judgment on behalf of all of the corporation's shareholders. Evidence suggests that if shareholders are granted a non-binding compensation vote, some will use the new power to push their own political and social agendas that may well conflict with the interests of the majority of shareholders. Because this bill explicitly states that no shareholder proxy rights are prejudiced by the non-binding executive compensation vote, it could also spur frivolous litigation if corporate boards reject or refuse to abide by the results of the shareholder vote.

Republican Members of the Committee voted almost unanimously for a commonsense alternative, offered by Mr. Garrett, which no Democratic Member of the Committee supported. Republicans hope to offer a similar version during consideration in the House. The Garrett substitute replaced the annual ''say-on-pay'' provision with a triennial, nonbinding shareholder vote on executive compensation, which is a forward-looking vote that strengthens shareholder rights. Annual votes on executive pay packages are inappropriate because most executive compensation agreements are for terms of more than one year. Moreover, requiring annual ''say on pay'' votes makes it impossible for public and private pension and retirement funds—which hold the stock of thousands of companies in their portfolios—to adequately fulfill their fiduciary duties to their investors by performing comprehensive evaluations of all the compensation packages for all the companies in which they hold equity securities. In a July 20, 2009 letter to the SEC, the pension fund for the United Brotherhood of Carpenters and Joiners union warned that proposals to mandate annual ''say on pay'' votes for all public companies would be ''irresponsible, undermining executive compensation reform efforts and the voting responsibilities of institutional investors.'' Finally, the Republican alternative struck

the provisions of Section 4 (described above) establishing a new government role in regulating compensation, both executive and non-executive, at every financial institution in America with more than $1 billion in assets.

The Committee on Financial Services ordered H.R. 3269 favorably reported without holding a single legislative hearing to examine its far-reaching effects on corporate governance and employee compensation practices, despite two written requests from Committee Republicans demanding such a hearing. Republicans believe that the House should reject this ill-considered legislation and send it back to the Committee on Financial Services for a more thorough review of its potential unintended consequences.

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