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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON CERTAIN COMPENSATION.

(a) Prohibition on Certain Compensation Not Based on Performance Standards.—Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended by redesignating subsections (e) through (h) as subsections (f) through (i), and inserting after subsection (d) the following:

“(e) Prohibition on Certain Compensation Not Based on Performance Standards.—

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

“(A) provides for compensation that is unreasonable or excessive, as defined in standards established by the Secretary, in consultation with the Chairperson of the Congressional Oversight Panel established under section 125, in accordance with paragraph (2); or

“(B) includes any bonus or other supplemental payment that is not directly based on performance-based measures set forth in standards established by the Secretary in accordance with paragraph (2).

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

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

“(A) UNREASONABLE AND EXCESSIVE COMPENSATION STANDARDS.—Standards that define
‘unreasonable or excessive’ for purposes of sub-
paragraph (1)(A).

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

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

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

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

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

“(3) REPORTING REQUIREMENT.—

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

“(i) over $500,000;
“(ii) over $1,000,000;
“(iii) over $2,000,000;
“(iv) over $3,000,000; and
“(v) over $5,000,000.

The report shall distinguish amounts the institution considers to be a bonus and the reason for such distinction. The name or identity of persons receiving compensation in such amounts shall not be required in such reports. The Secretary shall make such reports available on the Internet. Any financial institution subject to this paragraph shall issue a retrospective annual report for 2008 and both a prospective and retrospective annual report for each subsequent calendar year until such institution ceases to be subject to this paragraph.
“(B) Total compensation defined.—For purposes of this paragraph, the term ‘total compensation’ includes all cash payments (including without limitation salary, bonus, retention payments), all transfers of property, stock options, sales of stock, and all contributions by the company (or its affiliates) for that person’s benefit.”.

(b) Revision to Rule of Construction.—Section 111(b)(3)(D)(iii) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(b)(3)(D)(iii)) is amended by inserting before the period the following: “, except that an entity subject to subsection (e) may not, while a capital investment described in that subsection remains outstanding, pay a bonus or other supplemental payment that is otherwise prohibited by clause (i) without regard to when the arrangement to pay such a bonus was entered into”.
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.

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.