To require greater disclosure of senior corporate officer compensation, to empower shareholders and investors to protect themselves from fraud, to limit conflicts of interest in determining senior corporate officer compensation, to ensure integrity in Federal contracting, to close corporate tax loopholes utilized to subsidize senior corporate officer compensation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Corporate Executive Compensation Accountability and Transparency Act”.

SEC. 2. LIMITATION ON ANNUAL AMOUNTS WHICH MAY BE DEFERRED UNDER NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 409A(a) of the Internal Revenue Code of 1986 (relating to inclusion of gross income under nonqualified deferred compensation plans) is amended—

(1) by striking “and (4)” in subclause (I) of paragraph (1)(A)(i) and inserting “(4), and (5)”, and

(2) by adding at the end the following new paragraph:

“(5) ANNUAL LIMITATION ON AGGREGATE DEFERRED AMOUNTS.—

“(A) LIMITATION.—The requirements of this paragraph are met if the plan provides that the aggregate amount of compensation which is deferred for any taxable year with respect to a participant under the plan may not exceed the applicable dollar amount for the taxable year.

“(B) INCLUSION OF FUTURE EARNINGS.—If an amount is includible under paragraph (1) in the gross income of a participant for any
taxable year by reason of any failure to meet
the requirements of this paragraph, any income
(whether actual or notional) for any subsequent
taxable year shall be included in gross income
under paragraph (1)(A) in such subsequent taxable year to the extent such income—

“(i) is attributable to compensation
(or income attributable to such compensation) required to be included in gross income by reason of such failure (including by reason of this subparagraph), and

“(ii) is not subject to a substantial risk of forfeiture and has not been previously included in gross income.

“(C) AGGREGATION RULES.—For purposes of this paragraph, all nonqualified deferred compensation plans maintained by all employers treated as a single employer under subsection (d)(6) shall be treated as 1 plan.

“(D) APPLICABLE DOLLAR AMOUNT.—For purposes of this paragraph, the term ‘applicable dollar amount’ means, with respect to any participant, $1,000,000.”.

(b) EFFECTIVE DATE.—
(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008, except that the amendments shall only apply to amounts deferred after December 31, 2008 (and to earnings on such amounts).

(2) GUIDANCE RELATING TO CERTAIN EXISTING ARRANGEMENTS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before December 31, 2008, may, without violating the requirements of section 409A(a) of such Code, be amended—

(A) to provide that a participant may, no later than December 31, 2008, cancel or modify an outstanding deferral election with regard to all or a portion of amounts deferred after December 31, 2008, to the extent necessary for the plan to meet the requirements of section 409A(a)(5) of such Code (as added by the amendments made by this section), but only if amounts subject to the cancellation or modification are, to the extent not previously included in gross income, includible in income of the par-
participant when no longer subject to substantial risk of forfeiture, and

(B) to conform to the requirements of section 409A(a)(5) of such Code (as added by the amendments made by this section) with regard to amounts deferred after December 31, 2008.

SEC. 3. EXECUTIVE REIMBURSEMENT OF COMPENSATION FOR MISCONDUCT.

Section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7243) is amended—

(1) in subsection (a), by striking “12-month” each place that term appears and inserting “36-month”;

(2) by amending subsection (b) to read as follows:

“(b) Rulemaking To Improve Enforcement.—

“(1) In general.—Not later than 120 days after the date of enactment of the Corporate Executive Compensation Accountability and Transparency Act, the Commission shall develop and issue regulations to ensure more effective enforcement of subsection (a). In developing the regulations required under this paragraph, the Commission shall provide a comment period not to exceed 60 days.
“(2) REQUIRED INCLUSIONS.—The regulations required under paragraph (1) shall, at a minimum, clarify—

“(A) that the term ‘misconduct’ includes misconduct that results from—

“(i) specific illicit actions of a senior executive or officer, including the chief executive officer and chief financial officer, of a company, or knowledge of illicit actions, accompanied by willful inaction to address such illicit actions; or

“(ii) the willful concealment by such executive or officer, of illicit actions; and

“(B) that the term ‘illicit action’ includes any of the following activities:

“(i) Backdating stock options to conceal liabilities, losses, or any other negative financial information from shareholders and investors.

“(ii) Accounting irregularities designed to conceal losses, liabilities, or other negative financial information from shareholders, boards of directors, or government regulators, that are required to be dis-
closed under this Act, or any other Act, regulation, or rule governing securities.

“(iii) Accounting irregularities designed to artificially achieve profit or other financial targets that would not have reasonably been met under generally accepted accounting principles and industry standards, or through compliance with—

“(I) this Act, or any other Act, regulation, or rule governing securities; and


“(iv) Willfully circumventing the reporting, independence, due diligence, disclosure or fiduciary requirements and obligations of this Act, or any other Act, regulation, or rule governing securities in order to mislead, deceive, or withhold information that is required to be given to shareholders, boards of directors, and Federal and State regulatory authorities.

“(v) Any conduct that violates, or is in conflict with, the legal and fiduciary responsibilities of the senior executive or offi-
cer to the shareholders and boards of di-
rectors of such executive or officer.”; and

(3) by adding at the end the following:

“(c) REPORT.—Not later than 60 days after the date
of enactment of the Corporate Executive Compensation
Accountability and Transparency Act, the Chair of the
Commission shall issue a report—

“(1) analyzing the current enforcement efforts
of the Commission in regards to this section; and

“(2) listing the legislative, regulatory, or admin-
istrative recommendations of the Commission on
how to remove any current barriers to effective en-
forcement of this section.

“(d) COMMISSION EXEMPTION AUTHORITY.—

“(1) IN GENERAL.—The Commission may ex-
empt any person from the application of subsection
(a), as it deems necessary and appropriate.

“(2) NOTICE.—If the Commission exempts any
person pursuant to its authority under paragraph
(1), the Commission shall, not later than 15 days
after such exemption is granted, issue a public state-
ment explaining the factors surrounding the grant-
ing of such exemption and shall notify the chair-
person and ranking minority member of the appro-
priate committees of Congress.”.
SEC. 4. 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:

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

“(1) ANNUAL VOTE.—Any proxy or consent or authorization for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after January 1, 2009, shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission’s compensation disclosure rules (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material). The shareholder vote shall not be binding on the corporation 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 solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after January 1, 2009, that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy solicitation material, in a clear and simple form in accordance with regulations of the Commission, any agreements or understandings that such person has with any principal 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 are based on or otherwise relate to the acquisition, merger, consolidation, sale, or other disposition, and that have not been subject to a shareholder vote under paragraph (1).

“(B) **SHAREHOLDER APPROVAL.—** The proxy solicitation material containing the disclosure required by subparagraph (A) shall provide
for a separate shareholder vote to approve such agreements or understandings. A vote by the shareholders shall not be binding on the corporation 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.”.

(b) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall issue any final rules and regulations required by the amendments made by subsection (a).

SEC. 5. DISCLOSURE OF COMPENSATION CONSULTANT ACTIVITIES AND INDEPENDENCE.

(a) RULEMAKING.—Not later than 120 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue regulations clarifying and strengthening disclosure requirements for the compensation of consultants or advisors to a compensation committee of any company.
(b) **CONTENT.**—The regulations required under subsection (a) shall—

(1) prohibit any other work or service performed by a compensation consultant on behalf of the company that presents a conflict of interest or otherwise compromises the independence of the consultant;

(2) require the company to certify whether a compensation consultant performed any work, research, or preparation, or otherwise had reasonable involvement in a compensation recommendation, is independent; and

(3) clarify the standards used by the Securities and Exchange Commission to determine the independence of compensation consultants, provided that such standards include the following limitations:

(A) A compensation consultant who at any time in the previous 18 months prior to the compensation recommendation of such consultant to a company had noncompensation consulting related business, or otherwise had a noncompensation consultation related financial relationship with that company, shall not be considered independent.
(B) A compensation consultant that has or previously had any financial or professional relationship with a company, the board of directors of such company, or any senior executive officers of such company, that would reasonably be construed as presenting a conflict of interest in the compensation consultation recommendation of that consultant shall not be considered independent.

(c) Definition of Company.—For purpose of this section, the term “company” means a corporation, association, partnership, trust, limited liability company, limited liability partnership, or other legal entity.

SEC. 6. REQUIREMENT FOR CERTAIN FEDERAL CONTRACTORS TO DISCLOSE EXECUTIVE COMPENSATION STRUCTURES.

(a) Disclosure Requirement.—

(1) Civilian Contracts.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by adding at the end the following new section:

“SEC. 318. REQUIREMENT TO DISCLOSE EXECUTIVE COMPENSATION STRUCTURES.

“(a) Compensation Structure Disclosure.—A contract for the procurement of property or services en-
entered into by an executive agency with a covered contractor shall require the contractor to disclose to the contracting official an accounting of the compensation structures for the following individuals:

“(1) The chief executive officer of the contractor.

“(2) The chief financial officer of the contractor.

“(3) The 5 most highly compensated executive officers of the contractor.

“(4) Each member of the board of directors of the contractor, as appropriate.

“(b) COMPENSATION DISCUSSION AND ANALYSIS.—Not later than 90 days after entering into a contract described under subsection (a), a covered contractor shall submit to the contracting official of the executive agency a compensation discussion and analysis that justifies the compensation structures for the individuals identified in such subsection, including a good faith analysis and comparison of prevailing standard industry and market compensation structures with the compensation structures for such individuals.

“(c) ANNUAL UPDATE.—The covered contractor shall submit to the contracting official of the executive agency
an annual update of the information required under sub-
section (a) for the duration of the contract.

“(d) ALTERNATIVE DISCLOSURE REQUIREMENT FOR
CERTAIN CONTRACTORS.—

“(1) IN GENERAL.—A covered contractor de-
scribed in paragraph (2) that is unable to provide
the information required under subsections (a) and
(b) may instead provide to the contracting official of
the executive agency the following:

“(A) A certification that the contractor re-
ceived less than 50 percent of its annual gross
revenues from Federal contracts during the im-
mediately preceding fiscal year.

“(B) An accounting of the compensation
structures for the 3 most highly compensated
executive officers of the contractor.

“(2) CONTRACTORS ELIGIBLE FOR ALTER-
NATIVE DISCLOSURE REQUIREMENTS.—A covered
contractor is eligible to provide alternative disclosure
under this subsection if it is not publicly held and
is a small business concern owned and controlled by
socially and economically disadvantaged individuals,
a small business concern owned and controlled by
veterans, a small business concern owned and con-
controlled by women, or a socially and economically dis-
advantaged small business concern.

“(3) DEFINITIONS.—In this subsection—

“(A) the term ‘publicly held’ means a busi-
ness concern that is—

“(i) an issuer of a class of securities
registered or that is required to be reg-
istered pursuant to section 12 of the Secu-
78l) or that is required to file reports pur-
suant to section 15(d) of that Act (15
U.S.C. 78o(d)); or

“(ii) owned by an issuer of a class of
securities registered or that is required to
be registered pursuant to section 12 of the
Securities Exchange Act of 1934 (15
U.S.C. 78l) or that is required to file re-
ports pursuant to section 15(d) of that Act
(15 U.S.C. 78o(d));

“(B) the term ‘small business concern
owned and controlled by socially and economi-
cally disadvantaged individuals’ has the mean-
ing given that term in section 8(d)(3)(C) of the
“(C) the terms ‘small business concern owned and controlled by veterans’ and ‘small business concern owned and controlled by women’ have the meanings given those terms in section 3 of the Small Business Act (15 U.S.C. 632); and

“(D) the term ‘socially and economically disadvantaged small business concern’ has the meaning given that term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

“(e) USE OF INFORMATION IN FUTURE CONTRACTING DECISIONS.—Information on contractors collected under subsections (b) and (d) shall be used by executive agencies in justifying and determining the value of future contract awards.

“(f) AVAILABILITY OF INFORMATION.—Information collected under subsections (a) through (d) shall be made publicly available in searchable form through the Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)).

“(g) COVERED CONTRACTOR DEFINED.—In this section, the term ‘covered contractor’ means an individual or entity that received more than $5,000,000 in annual gross
revenues from Federal contracts (or subcontracts at any tier) during the preceding fiscal year.”.

(2) Defense contracts.—

(A) Disclosure requirement.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

“§2334. Requirement to disclose executive compensation structures

“(a) Compensation structure disclosure.—A contract for the procurement of property or services entered into by an agency with a covered contractor shall require the contractor to disclose to the contracting official an accounting of the compensation structures for the following individuals:

“(1) The chief executive officer of the contractor.

“(2) The chief financial officer of the contractor.

“(3) The 5 most highly compensated executive officers of the contractor.

“(4) Each member of the board of directors of the contractor, as appropriate.

“(b) Compensation discussion and analysis.—Not later than 90 days after entering into a contract described under subsection (a), a covered contractor shall
submit to the contracting official of the agency a compensation discussion and analysis that justifies the compensation structures for the individuals identified in such subsection, including a good faith analysis and comparison of prevailing standard industry and market compensation structures with the compensation structures for such individuals.

“(c) ANNUAL UPDATE.—The covered contractor shall submit to the contracting official of the agency an annual update of the information required under subsection (a) for the duration of the contract.

“(d) ALTERNATIVE DISCLOSURE REQUIREMENT FOR CERTAIN CONTRACTORS.—

“(1) IN GENERAL.—A covered contractor described in paragraph (2) that is unable to provide the information required under subsections (a) and (b) may instead provide to the contracting official of the agency the following:

“(A) A certification that the contractor received less than 50 percent of its annual gross revenues from Federal contracts during the immediately preceding fiscal year.

“(B) An accounting of the compensation structures for the 3 most highly compensated executive officers of the contractor.
“(2) Contractors eligible for alternative disclosure requirements.—A covered contractor is eligible to provide alternative disclosure under this subsection if it is not publicly held and is a small business concern owned and controlled by socially and economically disadvantaged individuals, a small business concern owned and controlled by veterans, a small business concern owned and controlled by women, or a socially and economically disadvantaged small business concern.

“(3) Definitions.—In this subsection—

“(A) the term ‘publicly held’ means a business concern that is—

“(i) an issuer of a class of securities registered or that is required to be registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78o(d)); or

“(ii) owned by an issuer of a class of securities registered or that is required to be registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file re-
ports pursuant to section 15(d) of that Act
(15 U.S.C. 78o(d));

“(B) the term ‘small business concern
owned and controlled by socially and economi-
cally disadvantaged individuals’ has the mean-
ing given that term in section 8(d)(3)(C) of the

“(C) the terms ‘small business concern
owned and controlled by veterans’ and ‘small
business concern owned and controlled by
women’ have the meanings given those terms in
section 3 of the Small Business Act (15 U.S.C.
632); and

“(D) the term ‘socially and economically
disadvantaged small business concern’ has the
meaning given that term in section 8(a)(4) of
the Small Business Act (15 U.S.C. 637(a)(4)).

“(e) USE OF INFORMATION IN FUTURE CON-
TRACTING DECISIONS.—Information on contractors col-
lected under subsections (b) and (d) shall be used by agen-
cies in justifying and determining the value of future con-
tract awards.

“(f) AVAILABILITY OF INFORMATION.—Information
collected under subsections (a) through (d) shall be made
publicly available in searchable form through the Federal
Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)).

“(g) COVERED CONTRACTOR DEFINED.—In this section, the term ‘covered contractor’ means an individual or entity that received more than $5,000,000 in annual gross revenues from Federal contracts (or subcontracts at any tier) during the preceding fiscal year.”.

(B) CLERICAL AMENDMENT.—The table of contents at the beginning of such chapter is amended by adding at the end the following new item:

“2334. Requirement to disclose executive compensation structures.”.

(b) AMENDMENT OF FEDERAL ACQUISITION REGULATION.—Not later than 120 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) to provide for the implementation of the requirements of section 318 of the Federal Property of Administrative Services Act of 1949, as added by subsection (a)(1) and section 2334 of title 10, United States Code, as added by subsection (a)(2).
SEC. 7. INCREASING TRANSPARENCY ON STOCK OPTIONS

ACCOUNTING AND ACCURATE VALUATION OF

EXECUTIVE COMPENSATION.

(a) In General.—Notwithstanding any other provision of law, not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission, in a manner consistent with the goal of providing investors with a clearer and more complete picture of the compensation earned by the principal executive officer, principal financial officer, the highest paid executive officers, and the members of the board of director of a company, shall issue regulations that require each company subject to the jurisdiction of the Commission to disclose, in clear terms, the full grant date present value of equity instruments that are used as executive compensation awards in the Summary Compensation Table of each such company.

(b) Definition of Company.—For purpose of this section, the term “company” means a corporation, association, partnership, trust, limited liability company, limited liability partnership, or other legal entity.

(c) Rule of Construction.—Nothing in this section shall be construed to enable the Securities and Exchange Commission to take action that would materially weaken any current reporting or disclosure requirements or to allow an alternative valuation not consistent with the
standard of “full grant date present value of equity instru-
ments” to meet the goals of subsection (a).