111th Congress
2d Session

S. ______

To amend the Internal Revenue Code of 1986 to impose an excise tax on excessive 2009 bonuses received from certain major recipients of Federal emergency economic assistance, to limit the deduction allowable for such bonuses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. Boxer (for herself and Mr. Webb) introduced the following bill; which was read twice and referred to the Committee on ______

A BILL

To amend the Internal Revenue Code of 1986 to impose an excise tax on excessive 2009 bonuses received from certain major recipients of Federal emergency economic assistance, to limit the deduction allowable for such bonuses, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3

SECTION 1. SHORT TITLE.

This Act may be cited as the “Taxpayer Fairness

Act”.

SEC. 2. FINDINGS.

Congress finds the following:
(1) During the years 2008 and 2009, the Nation’s largest financial firms received extraordinary and unprecedented assistance from the public.

(2) Such assistance was critical to the success and in many cases the survival of these firms during the year 2009.

(3) High earners at such firms should contribute a portion of any excessive bonuses obtained for the year 2009 to help the Nation reduce the public debt and recover from the recession.

SEC. 3. EXCISE TAXES ON EXCESSIVE 2009 BONUSES RECEIVED FROM MAJOR RECIPIENTS OF FEDERAL EMERGENCY ECONOMIC ASSISTANCE.

(a) IMPOSITION OF TAX.—Chapter 46 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 4999A. EXCESSIVE 2009 BONUSES RECEIVED FROM MAJOR RECIPIENTS OF FEDERAL EMERGENCY ECONOMIC ASSISTANCE.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any person who receives a covered excessive 2009 bonus a tax equal to 50 percent of the amount of such bonus.

"(b) DEFINITION.—For purposes of this section, the term ‘covered excessive 2009 bonus’ has the meaning given such term by section 280I(b)."
“(e) Administrative Provisions and Special Rules.—

“(1) Withholding.—

“(A) In general.—In the case of any covered excessive 2009 bonus which is treated as wages for purposes of section 3402, the amount otherwise required to be deducted and withheld under such section shall be increased by the amount of the tax imposed by this section on such bonus.

“(B) Bonuses paid before enactment.—In the case of any covered excessive 2009 bonus to which subparagraph (A) applies which is paid before the date of the enactment of this section, no penalty, addition to tax, or interest shall be imposed with respect to any failure to deduct and withhold the tax imposed by this section on such bonus.

“(2) Treatment of tax.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

“(3) Notice requirements.—The Secretary shall require each major Federal emergency economic assistance recipient (as defined in section 2801(d)(1)) to notify, as soon as practicable after
the date of the enactment of this section and at such
other times as the Secretary determines appropriate,
the Secretary and each covered employee (as defined
in section 280I(e)) of the amount of covered exces-
sive 2009 bonuses to which this section applies and
the amount of tax deducted and withheld on such
bonuses.

“(4) SECRETARIAL AUTHORITY.—The Secretary
may prescribe such regulations, rules, and guidance
of general applicability as may be necessary to carry
out the provisions of this section, including—

“(A) to prescribe the due date and manner
of payment of the tax imposed by this section
with respect to any covered excessive 2009
bonus paid before the date of the enactment of
this section, and

“(B) to prevent—

“(i) the recharacterization of a bonus
payment as a payment which is not a
bonus payment in order to avoid the pur-
poses of this section,

“(ii) the treatment as other than an
additional 2009 bonus payment of any
payment of increased wages or other pay-
ments to a covered employee who receives
a bonus payment subject to this section in
order to reimburse such covered employee
for the tax imposed by this section with re-
gard to such bonus, or
“(iii) the avoidance of the purposes of
this section through the use of partner-
ships or other pass-thru entities.”.

(b) Clerical Amendments.—

(1) The heading and table of sections for chap-
ter 46 of the Internal Revenue Code of 1986 are
amended to read as follows:

“Chapter 46—Taxes on Certain Excessive Remuneration

“Sec. 4999. Golden parachute payments.
“Sec. 4999A. Excessive 2009 bonuses received from major recipients of Federal
economic assistance.”.

(2) The item relating to chapter 46 in the table
of chapters for subtitle D of such Code is amended
to read as follows:

“Chapter 46. Taxes on certain excessive remuneration.”.

(e) Effective Date.—The amendments made by
this section shall apply to payments of covered excessive
2009 bonuses after December 31, 2008, in taxable years
ending after such date.
SEC. 4. LIMITATION ON DEDUCTION OF AMOUNTS PAID AS

EXCESSIVE 2009 BONUSES BY MAJOR RECIPIENTS OF FEDERAL EMERGENCY ECONOMIC

ASSISTANCE.

(a) In General.—Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 2801. EXCESSIVE 2009 BONUSES PAID BY MAJOR RECIPIENTS OF FEDERAL EMERGENCY ECONOMIC ASSISTANCE.

"(a) General Rule.—The deduction allowed under this chapter with respect to the amount of any covered excessive 2009 bonus shall not exceed 50 percent of the amount of such bonus.

"(b) Covered Excessive 2009 Bonus.—For purposes of this section, the term ‘covered excessive 2009 bonus’ means any 2009 bonus payment paid during any calendar year to a covered employee by any major Federal emergency economic assistance recipient, to the extent that the aggregate of such 2009 bonus payments (without regard to the date on which such payments are paid) with respect to such employee exceeds the dollar amount of the compensation received by the President under section 102 of title 3, United States Code, for calendar year 2009.

"(c) 2009 Bonus Payment.—
“(1) IN GENERAL.—The term ‘2009 bonus payment’ means any payment which—

“(A) is a payment for services rendered,

“(B) is in addition to any amount payable to a covered employee for services performed by such covered employee at a regular hourly, daily, weekly, monthly, or similar periodic rate,

“(C) in the case of a retention bonus, is paid for continued service during calendar year 2009 or 2010, and

“(D) in the case of a payment not described in subparagraph (C), is attributable to services performed by a covered employee during calendar year 2009 (without regard to the year in which such payment is paid).

Such term does not include payments to an employee as commissions, contributions to any qualified retirement plan (as defined in section 4974(e)), welfare and fringe benefits, overtime pay, or expense reimbursements. In the case of a payment which is attributable to services performed during multiple calendar years, such payment shall be treated as a 2009 bonus payment to the extent it is attributable to services performed during calendar year 2009.
(2) DEFERRED DEDUCTION BONUS PAYMENTS.—

(A) IN GENERAL.—The term ‘2009 bonus payment’ includes payments attributable to services performed in 2009 which are paid in the form of remuneration (within the meaning of section 162(m)(4)(E)) for which the deduction under this chapter (determined without regard to this section) for such payment is allowable in a subsequent taxable year.

(B) TIMING OF DEFERRED DEDUCTION BONUS PAYMENTS.—For purposes of this section and section 4999A, the amount of any payment described in subparagraph (A) (as determined in the year in which the deduction under this chapter, determined without regard to this section, for such payment would be allowable) shall be treated as having been made in the calendar year in which any interest in such amount is granted to a covered employee (without regard to the date on which any portion of such interest vests).

(3) RETENTION BONUS.—The term ‘retention bonus’ means any bonus payment (without regard to
the date such payment is paid) to a covered em-
ployee which—

“(A) is contingent on the completion of a
period of service with a major Federal emer-
gency economic assistance recipient, the comple-
tion of a specific project or other activity for
the major Federal emergency economic assist-
ance recipient, or such other circumstances as
the Secretary may prescribe, and

“(B) is not based on the performance of
the covered employee (other than a requirement
that the employee not be separated from em-
ployment for cause).

A bonus payment shall not be treated as based on
performance for purposes of subparagraph (B) solely
because the amount of the payment is determined by
reference to a previous bonus payment which was
based on performance.

“(d) MAJOR FEDERAL EMERGENCY ECONOMIC AS-
SISTANCE RECIPIENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘major Federal
emergency economic assistance recipient’ means—

“(A) any financial institution (within the
meaning of section 3 of the Emergency Eco-
nomic Stabilization Act of 2008) if at any time
after December 31, 2007, the Federal Government acquires—

"(i) an equity interest in such person pursuant to a program authorized by the Emergency Economic Stabilization Act of 2008 or the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343), or

"(ii) any warrant (or other right) to acquire any equity interest with respect to such person pursuant to any such program,

but only if the total value of the equity interest described in clauses (i) and (ii) in such person is not less than $5,000,000,000,

"(B) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and

"(C) any person which is a member of the same affiliated group (as defined in section 1504, determined without regard to subsection (b) thereof) as a person described in subparagraph (A) or (B).

"(2) TREATMENT OF CONTROLLED GROUPS.—

All persons treated as a single employer under sub-
section (a) or (b) of section 52 or subsection (m) or
(o) of section 414 shall be treated as a single em-
ployer with respect to any covered employee.
“(e) COVERED EMPLOYEE.—For purposes of this
section, the term ‘covered employee’ means, with respect
to any major Federal emergency economic assistance re-
ipient—
“(1) any employee of such recipient, and
“(2) any director of such recipient who is not
an employee.
In the case of any major Federal emergency economic as-
sistance recipient which is a partnership or other unincor-
porated trade or business, the term ‘employee’ shall in-
clude employees of such recipient within the meaning of
section 401(c)(1).
“(f) REGULATIONS.—The Secretary may prescribe
such regulations, rules, and guidance of general applica-
bility as may be necessary to carry out the provisions of
this section, including—
“(1) to prescribe the due date and manner of
reporting and payment of any increase in the tax
imposed by this chapter due to the application of
this section to any covered excessive 2009 bonus
paid before the date of the enactment of this section,
“(2) to prevent—

“(A) the recharacterization of a bonus payment as a payment which is not a bonus payment in order to avoid the purposes of this section, or

“(B) the avoidance of the purposes of this section through the use of partnerships or other pass-thru entities.”.

(b) Clerical Amendment.—The table of sections for part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end of the following new item:

“Sec. 280I. Excessive 2009 bonuses paid by major recipients of Federal emergency economic assistance.”.

(e) Conforming Amendments.—

(1) Subparagraph (F) of section 162(m)(4) of the Internal Revenue Code of 1986 is amended—

(A) by inserting “AND EXCESSIVE 2009 BONUSES” after “PAYMENTS” in the heading,

(B) by striking “the amount” and inserting “the total amounts”, and

(C) by inserting “or 280I” before the period.

(2) Subparagraph (A) of section 3121(v)(2) of such Code is amended by inserting “, to any covered
excessive 2009 bonus (as defined in section 280I(b)),” after “section 280G(b)”.
(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments of covered excessive 2009 bonuses after December 31, 2008, in taxable years ending after such date.