

“(b) EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.—

“(1) ESTABLISHMENT OF STANDARDS.—During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

“(A) the standards established by the Secretary under this section; and

“(B) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

“(2) STANDARDS REQUIRED.—The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

“(3) SPECIFIC REQUIREMENTS.—The standards established under paragraph (2) shall include the following:

“(A) Limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

“(B) A provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate.

“(C) A prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

“(D)(i) A prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, except that any prohibition developed under this paragraph shall not apply to the payment of long-term restricted stock by such TARP recipient, provided that such long-term restricted stock—

“(I) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding;

“(II) has a value in an amount that is not greater than 1/3 of the total amount of annual compensation of the employee receiving the stock; and

“(III) is subject to such other terms and conditions as the Secretary may determine is in the public interest.

“(ii) The prohibition required under clause (i) shall apply as follows:

“(I) For any financial institution that received financial assistance provided under the TARP equal to less than \$25,000,000, the prohibition shall apply only to the most highly-compensated employee of the financial institution.

“(II) For any financial institution that received financial assistance provided under the TARP equal to at least \$25,000,000, but less than \$250,000,000, the prohibition shall apply to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

“(III) For any financial institution that received financial assistance provided under the TARP equal to at least \$250,000,000, but less than \$500,000,000, the prohibition shall apply to the senior executive officers and at least the 10 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

“(IV) For any financial institution that received financial assistance provided under the

TARP equal to \$500,000,000 or more, the prohibition shall apply to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

“(iii) The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

“(E) A prohibition on any compensation plan that would encourage manipulation of the reported earnings of such TARP recipient to enhance the compensation of any of its employees.

“(F) A requirement for the establishment of a Board Compensation Committee that meets the requirements of subsection (c).

“(4) CERTIFICATION OF COMPLIANCE.—The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the requirements of this section—

“(A) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

“(B) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

“(c) BOARD COMPENSATION COMMITTEE.—

“(1) ESTABLISHMENT OF BOARD REQUIRED.—Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

“(2) MEETINGS.—The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

“(3) COMPLIANCE BY NON-SEC REGISTRANTS.—In the case of any TARP recipient, the common or preferred stock of which is not registered pursuant to the Securities Exchange Act of 1934, and that has received \$25,000,000 or less of TARP assistance, the duties of the Board Compensation Committee under this subsection shall be carried out by the board of directors of such TARP recipient.

“(d) LIMITATION ON LUXURY EXPENDITURES.—The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

“(1) entertainment or events;

“(2) office and facility renovations;

“(3) aviation or other transportation services;

or

“(4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

“(e) SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

“(1) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

“(2) NONBINDING VOTE.—A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any

## TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

### SEC. 7000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

#### TITLE VII—LIMITS ON EXECUTIVE COMPENSATION

Sec. 7000. Table of contents.

Sec. 7001. Executive compensation and corporate governance.

Sec. 7002. Applicability with respect to loan modifications.

### SEC. 7001. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended to read as follows:

#### “SEC. 111. EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.

“(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) SENIOR EXECUTIVE OFFICER.—The term ‘senior executive officer’ means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

“(2) GOLDEN PARACHUTE PAYMENT.—The term ‘golden parachute payment’ means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

“(3) TARP RECIPIENT.—The term ‘TARP recipient’ means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

“(4) COMMISSION.—The term ‘Commission’ means the Securities and Exchange Commission.

“(5) PERIOD IN WHICH OBLIGATION IS OUTSTANDING; RULE OF CONSTRUCTION.—For purposes of this section, the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

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 proxy materials related to executive compensation.

“(3) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of enactment of the American Recovery and Reinvestment Act of 2009, the Commission shall issue any final rules and regulations required by this subsection.

“(f) REVIEW OF PRIOR PAYMENTS TO EXECUTIVES.—

“(1) IN GENERAL.—The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before the date of enactment of the American Recovery and Reinvestment Act of 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

“(2) NEGOTIATIONS FOR REIMBURSEMENT.—If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

“(g) NO IMPEDIMENT TO WITHDRAWAL BY TARP RECIPIENTS.—Subject to consultation with the appropriate Federal banking agency (as that term is defined in section 3 of the Federal Deposit Insurance Act), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary shall liquidate warrants associated with such assistance at the current market price.

“(h) REGULATIONS.—The Secretary shall promulgate regulations to implement this section.”.

**SEC. 7002. APPLICABILITY WITH RESPECT TO LOAN MODIFICATIONS.**

Section 109(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5219(a)) is amended—

(1) by striking “To the extent” and inserting the following:

“(1) IN GENERAL.—To the extent”; and

(2) by adding at the end the following:

“(2) WAIVER OF CERTAIN PROVISIONS IN CONNECTION WITH LOAN MODIFICATIONS.—The Secretary shall not be required to apply executive compensation restrictions under section 111, or to receive warrants or debt instruments under section 113, solely in connection with any loan modification under this section.”.

And the Senate agreed to the same.

DAVID OBEY,  
CHARLES RANGEL,  
HENRY WAXMAN,

*Managers on the Part of the House.*

DANIEL K. INOUYE,  
MAX BAUCUS,  
HARRY REID,

*Managers on the Part of the Senate.*

**JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE**

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1), a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment to the text deleted the entire House bill after the enacting clause and inserted the Senate bill. This conference agreement includes a revised bill.

The conference agreement designates amounts in the Act as emergency requirements pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009. All applicable provisions in the Act are designated as an emergency for purposes of pay-as-you-go principles.