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REPORT
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PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1664) 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 31, 2009.—Referred to the House Calendar and ordered to be printed

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Mr. PERLMUTTER, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 306]

The Committee on Rules, having had under consideration House Resolution 306, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1664, 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, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The rule makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of

the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI) includes a waiver of clause 4(a) of rule XIII, requiring a three-day layover of the committee report. Although the rule waives all points of order against the amendment in the nature of a substitute (except clause 10 of rule XXI), the Committee is not aware of any points of order. The waiver of all points of order is prophylactic.

SUMMARY OF AMENDMENTS TO BE MADE IN ORDER

(Summaries derived from information provided by sponsors)

1. Frank (MA) Would provide further clarification that an institution does not become subject to the limitations on compensation in this bill as a result of doing business with an institution that has received a direct capital investment under either the TARP or HERA. Would exempt severance pay from coverage if the payment is made in the ordinary course to an employee who has been with the institution at least 5 years prior to dismissal, as long as that payment is not greater than the employee's annual salary or $250,000. Would require the compensation data that an institution must report annually to the Treasury to include contributions made for the benefit of an employee's immediate family members. Would create a Commission on Executive Compensation to study the executive compensation system for recipients of direct capital investments under the TARP and make recommendations for legislative and regulatory action. (20 minutes)

2. Cardoza (CA) Would allow the Treasury Secretary to exempt financial institutions receiving TARP funds under a certain threshold. (10 minutes)

3. Meeks, Gregory (NY) Would exempt from compensation standards any institutions that receive TARP funding or payment agreements entered into before the enactment of this bill. (10 minutes)

4. Bean (IL)/McMahon (NY) Would allow institutions that enter into a payment schedule with Treasury on terms set by Treasury to no longer be subject to the bonus and compensation restrictions created by the Act. If an institution defaults on its payment schedule, any bonuses and compensation that exceeds the regulations promulgated in accordance to the Act would be subject to clawback. (10 minutes)

5. Bilirakis (FL) Would clarify that an institution that is not a TARP recipient will not be subject to the requirements of the bill as a result of doing business with a TARP recipient. (10 minutes)

6. DeFazio (OR) Would amend the Emergency Economic Stabilization Act of 2008 to make the shareholder vote on executive compensation packages binding upon the board of directors. (10 minutes)

7. Dahlkemper (PA) Would clarify the definition of executive compensation to include payments made before, during and after employment, and would make explicit that the definition of compensation considered under the standards to be prepared by the

Secretary to include payment of money, transfers of property or provision of services. (10 minutes)

TEXT OF AMENDMENTS TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK OF MASSACHUSETTS, OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

In subsection (e)(1) of the matter proposed to be inserted by section 1(a) of the bill, in the matter following subparagraph (B), strike "nothing in this paragraph" and all that follows through "under the TARP" and insert "an institution shall not become subject to the requirements of this paragraph as a result of doing business with a recipient of a direct capital investment under the TARP or under the amendments made by the Housing and Economic Recovery Act of 2008".

In subsection (e) of the matter proposed to be inserted by section 1(a) of the bill, redesignate paragraph (3) as paragraph (4) and insert after paragraph (2) the following:

"(3) CLARIFICATION RELATING TO SEVERANCE PAY.—For purposes of this subsection, a compensation payment or compensation payment arrangement shall not include a severance payment paid by an employer in the ordinary course of business to an employee who has been employed by the employer for a minimum of 5 years upon dismissal of that employee, unless such severance payment is in an amount greater than the annual salary of such employee or $250,000.".

In the matter proposed to be inserted by section 1(a) of the bill, in subsection (e)(4)(B) (as redesignated by the previous amendment), insert before the period the following: "or for the benefit of that person's immediate family members".

At the end of the bill, insert the following new section:

SEC. 2. EXECUTIVE COMPENSATION COMMISSION.

Section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221), as amended by section 1, is further amended by adding at the end the following new subsection:

"(j) EXECUTIVE COMPENSATION COMMISSION.—

"(1) ESTABLISHMENT.—There is hereby established a commission to be known as the 'Commission on Executive Compensation' (hereinafter in this subsection referred to as the 'Commission').

"(2) DUTIES.—

"(A) STUDY REQUIRED.—The Commission shall conduct a study of the executive compensation system for recipients of a direct capital investment under the TARP. In conducting such study, the Commission shall examine—

"(i) how closely executive pay is currently linked to company performance;

"(ii) how closely executive pay has been linked to company performance in the past;

"(iii) how executive pay can be more closely linked to company performance in the future;

"(iv) the factors influencing executive pay; and—

"(v) how current executive pay incentives affect executive behavior.

"(B) CONSIDERATION OF PROPOSALS.—The Commission shall consider, in addition to any recommendations made by members of the Commission or outside advisers, the effects of implementing increased shareholder voice in executive compensation.

"(3) REPORT.—

"(A) IN GENERAL.—Not later than 90 days after the date on which all members of the Commission have been appointed, the Commission shall deliver a report to the President and to the Congress containing—

"(i) recommendations for legislative action;

"(ii) recommendations for executive action, including actions taken by the Department of the Treasury or any other agency for which the Commission has recommendations; and

"(iii) recommendations for voluntary actions to be taken by recipients of a direct capital investment under the TARP.

"(B) MINORITY VIEWS.—The report required under subparagraph (A) shall be accompanied by any separate recommendations that members of the Commission wish to make, but that were not agreed upon by the Commission for purposes of the report required under subparagraph (A). Such separate recommendations must take the form of a proposal for aligning executive pay with the long-term health of the company.

"(4) COMPOSITION.—

"(A) The Commission shall be composed of 9 members, appointed as follows:

"(i) 1 member appointed by the Council of Economic Advisers.

"(ii) 1 member appointed by the Speaker of the House of Representatives.

"(iii) 1 member appointed by the Senate Majority Leader.

"(iv) 1 member appointed by the House Minority Leader.

"(v) 1 member appointed by the Senate Minority Leader.

"(vi) 1 member appointed by the Chairman of the Financial Services Committee of the House of Representatives.

"(vii) 1 member appointed by the Ranking Member of the Financial Services Committee of the House of Representatives.

"(viii) 1 member appointed by the Chairman of the Banking, Housing, and Urban Affairs Committee of the Senate.

"(ix) 1 member appointed by the Ranking Member of the Banking, Housing, and Urban Affairs Committee of the Senate.

"(B) Each appointing entity shall name its member within 21 days of the date of the enactment of this subsection.

"(C) Any vacancy in the Commission shall be filled in the same manner as the original appointment.

"(5) ACTIVITIES.—

"(A) The Chairman of the Financial Services Committee of the House of Representatives shall select one member to serve as the Chairman of the Commission, and such Chairman will call to order the first meeting of the Commission within 10 business days after the date on which all members of the Commission have been appointed.

"(B) The Commission shall meet at least once every 30 days and may meet more frequently at the discretion of the Chairman.

"(C) The Commission shall solicit and consider policy proposals from Members of Congress, the financial sector, academia and other fields as the Commission deems necessary.

"(D) The Commission shall hold at least two public hearings, and may hold more at the discretion of the Chairman.

"(6) ACTIONS BY THE COMMISSION.—A decision of a majority of commissioners present at a meeting of the Commission shall constitute the decision of the Commission where the Commission is given discretion to act, including but not limited to, recommendations to be made in the report described in paragraph 3.

"(7) STAFF.—The Chair may hire at his or her discretion up to seven professional staff members.

"(8) TERMINATION.—The Commission shall terminate 30 days after the date on which the Commission submits its report to the President and the Congress under paragraph 3.

"(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARDOZA OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (e) of the matter proposed to be inserted by section 1(a), add at the end the following:

"(4) COMMUNITY FINANCIAL INSTITUTION EXEMPTION.—

"(A) IN GENERAL.—The Secretary may exempt community financial institutions from any of the requirements of this subsection, when the Secretary finds that such an exemption is consistent with the purposes of this subsection.

"(B) COMMUNITY FINANCIAL INSTITUTION DEFINED.—for the purposes of this paragraph, the term 'community financial institution' means a financial institution that receives or received a direct capital investment under the Troubled Asset Relief Program under this title of not more than $250,000,000.".

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEEKS OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (e)(1) of the matter proposed to be inserted by section 1(a)—

(1) strike "has received or receives a direct capital investment under the Troubled Assets Relief Program under this title" and insert "receives a direct capital investment under the Troubled Assets Relief Program under this title after the date of enactment of this subsection"; and

(2) strike "any existing compensation arrangement" and insert "any compensation arrangement other than a compensation arrangement entered into prior to the date of enactment of this subsection".

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BEAN OF ILLINOIS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (e) of the matter proposed to be inserted by section 1(a) of the bill, redesignate paragraph (3) as paragraph (4) and insert after paragraph (2) the following:

"(3) CONDITIONAL EXEMPTION.—

"(A) REPAYMENT AGREEMENT.—Paragraph (1) shall not apply to a financial institution that has entered into a comprehensive agreement with the Secretary to repay the United States, in accordance with a schedule and terms established by the Secretary, all outstanding amounts of any direct capital investment or investments received by such institution under this title.

"(B) DEFAULT.—If the Secretary determines that an institution that has entered into an agreement as provided for in subparagraph (A) has defaulted on such agreement, the Secretary shall require that any compensation payments made by such institution that would have been subject to paragraph (1) if the institution had not entered into such an agreement be surrendered to the Treasury.".

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BILIRAKIS OF FLORIDA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (e)(1) of the matter proposed to be inserted by section 1(a) of the bill, in the matter following subparagraph (B), strike "Provided that" and all that follows through "under the TARP" and insert "An institution shall not become subject to the requirements of this paragraph as a result of doing business with a recipient of a direct capital investment under the TARP or under the amendments made by the Housing and Economic Recovery Act of 2008".

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DEFAZIO OF OREGON, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill insert the following:

(c) SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—Subsection (f)(2) of section 111 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221) is amended—

(1) by striking "shall not be binding" and inserting "shall be binding"; and

(2) by striking "and may not be construed" and all that follows and inserting "and any compensation payment arrange-

ment not approved by such a vote may not be entered into by the TARP recipient.".

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DAHLKEMPER OF PENNSYLVANIA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In subsection (e)(1)(B), of the matter proposed to be inserted by section 1(a), insert after "payment" the following: ", whether payable before employment, during employment, or after termination of employment,".

In subsection (e), of the matter proposed to be inserted by section 1(a), add at the end the following new paragraph:

"(4) COMPENSATION CONSIDERATIONS UNDER THE STANDARDS.—In establishing standards under this subsection, the Secretary shall consider as compensation any transfer of property, payment of money, or provision of services by the financial institution that causes any increase in wealth on the part of an executive or employee.".

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