

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3269

---

## AN ACT

To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Corporate and Finan-  
3 cial Institution Compensation Fairness Act of 2009”.

4 **SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**  
5 **TION DISCLOSURES.**

6 Section 14 of the Securities Exchange Act of 1934  
7 (15 U.S.C. 78n) is amended by adding at the end the fol-  
8 lowing new subsection:

9 “(i) ANNUAL SHAREHOLDER APPROVAL OF EXECU-  
10 TIVE COMPENSATION.—

11 “(1) ANNUAL VOTE.—Any proxy or consent or  
12 authorization (the solicitation of which is subject to  
13 the rules of the Commission pursuant to subsection  
14 (a)) for an annual meeting of the shareholders to  
15 elect directors (or a special meeting in lieu of such  
16 meeting) where proxies are solicited in respect of  
17 any security registered under section 12 occurring  
18 on or after the date that is 6 months after the date  
19 on which final rules are issued under paragraph (4),  
20 shall provide for a separate shareholder vote to ap-  
21 prove the compensation of executives as disclosed  
22 pursuant to the Commission’s compensation disclo-  
23 sure rules for named executive officers (which disclo-  
24 sure shall include the compensation committee re-  
25 port, the compensation discussion and analysis, the  
26 compensation tables, and any related materials, to

1 the extent required by such rules). The shareholder  
2 vote shall not be binding on the issuer or the board  
3 of directors and shall not be construed as overruling  
4 a decision by such board, nor to create or imply any  
5 additional fiduciary duty by such board, nor shall  
6 such vote be construed to restrict or limit the ability  
7 of shareholders to make proposals for inclusion in  
8 such proxy materials related to executive compensa-  
9 tion.

10 “(2) SHAREHOLDER APPROVAL OF GOLDEN  
11 PARACHUTE COMPENSATION.—

12 “(A) DISCLOSURE.—In any proxy or con-  
13 sent solicitation material (the solicitation of  
14 which is subject to the rules of the Commission  
15 pursuant to subsection (a)) for a meeting of the  
16 shareholders occurring on or after the date that  
17 is 6 months after the date on which final rules  
18 are issued under paragraph (4), at which share-  
19 holders are asked to approve an acquisition,  
20 merger, consolidation, or proposed sale or other  
21 disposition of all or substantially all the assets  
22 of an issuer, the person making such solicita-  
23 tion shall disclose in the proxy or consent solici-  
24 tation material, in a clear and simple form in  
25 accordance with regulations to be promulgated

1 by the Commission, any agreements or under-  
2 standings that such person has with any named  
3 executive officers of such issuer (or of the ac-  
4 quiring issuer, if such issuer is not the acquir-  
5 ing issuer) concerning any type of compensation  
6 (whether present, deferred, or contingent) that  
7 is based on or otherwise relates to the acquisi-  
8 tion, merger, consolidation, sale, or other dis-  
9 position of all or substantially all of the assets  
10 of the issuer and the aggregate total of all such  
11 compensation that may (and the conditions  
12 upon which it may) be paid or become payable  
13 to or on behalf of such executive officer.

14 “(B) SHAREHOLDER APPROVAL.—Any  
15 proxy or consent or authorization relating to  
16 the proxy or consent solicitation material con-  
17 taining the disclosure required by subparagraph  
18 (A) shall provide for a separate shareholder  
19 vote to approve such agreements or under-  
20 standings and compensation as disclosed, unless  
21 such agreements or understandings have been  
22 subject to a shareholder vote under paragraph  
23 (1). A vote by the shareholders shall not be  
24 binding on the issuer or the board of directors  
25 of the issuer or the person making the sollicita-

1           tion and shall not be construed as overruling a  
2           decision by any such person or issuer, nor to  
3           create or imply any additional fiduciary duty by  
4           any such person or issuer.

5           “(3) DISCLOSURE OF VOTES.—Every institu-  
6           tional investment manager subject to section 13(f)  
7           shall report at least annually how it voted on any  
8           shareholder vote pursuant to paragraphs (1) or (2)  
9           of this section, unless such vote is otherwise required  
10          to be reported publicly by rule or regulation of the  
11          Commission.

12          “(4) RULEMAKING.—Not later than 6 months  
13          after the date of the enactment of the Corporate and  
14          Financial Institution Compensation Fairness Act of  
15          2009, the Commission shall issue final rules to im-  
16          plement this subsection.

17          “(5) EXEMPTION AUTHORITY.—The Commis-  
18          sion may exempt certain categories of issuers from  
19          the requirements of this subsection, where appro-  
20          priate in view of the purpose of this subsection. In  
21          determining appropriate exemptions, the Commis-  
22          sion shall take into account, among other consider-  
23          ations, the potential impact on smaller reporting  
24          issuers.”.

1 **SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.**

2 (a) STANDARDS RELATING TO COMPENSATION COM-  
3 MITTEES.—The Securities Exchange Act of 1934 (15  
4 U.S.C. 78a et seq.) is amended by inserting after section  
5 10A the following new section:

6 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-  
7 MITTEES.**

8 “(a) COMMISSION RULES.—

9 “(1) IN GENERAL.—Effective not later than 9  
10 months after the date of enactment of the Corporate  
11 and Financial Institution Compensation Fairness  
12 Act of 2009, the Commission shall, by rule, direct  
13 the national securities exchanges and national secu-  
14 rities associations to prohibit the listing of any class  
15 of equity security of an issuer that is not in compli-  
16 ance with the requirements of any portion of sub-  
17 sections (b) through (f).

18 “(2) OPPORTUNITY TO CURE DEFECTS.—The  
19 rules of the Commission under paragraph (1) shall  
20 provide for appropriate procedures for an issuer to  
21 have an opportunity to cure any defects that would  
22 be the basis for a prohibition under paragraph (1)  
23 before the imposition of such prohibition.

24 “(3) EXEMPTION AUTHORITY.—The Commis-  
25 sion may exempt certain categories of issuers from  
26 the requirements of subsections (b) through (f),

1 where appropriate in view of the purpose of this sec-  
2 tion. In determining appropriate exemptions, the  
3 Commission shall take into account, among other  
4 considerations, the potential impact on smaller re-  
5 porting issuers.

6 “(b) INDEPENDENCE OF COMPENSATION COMMIT-  
7 TEES.—

8 “(1) IN GENERAL.—Each member of the com-  
9 pensation committee of the board of directors of the  
10 issuer shall be independent.

11 “(2) CRITERIA.—In order to be considered to  
12 be independent for purposes of this subsection, a  
13 member of a compensation committee of an issuer  
14 may not, other than in his or her capacity as a  
15 member of the compensation committee, the board  
16 of directors, or any other board committee accept  
17 any consulting, advisory, or other compensatory fee  
18 from the issuer.

19 “(3) EXEMPTION AUTHORITY.—The Commis-  
20 sion may exempt from the requirements of para-  
21 graph (2) a particular relationship with respect to  
22 compensation committee members, where appro-  
23 priate in view of the purpose of this section.

24 “(4) DEFINITION.—As used in this section, the  
25 term ‘compensation committee’ means—

1           “(A) a committee (or equivalent body) es-  
2           tablished by and amongst the board of directors  
3           of an issuer for the purpose of determining and  
4           approving the compensation arrangements for  
5           the executive officers of the issuer; and

6           “(B) if no such committee exists with re-  
7           spect to an issuer, the independent members of  
8           the entire board of directors.

9           “(c) INDEPENDENCE STANDARDS FOR COMPENSA-  
10          TION CONSULTANTS AND OTHER COMMITTEE ADVI-  
11          SORS.—Any compensation consultant or other similar ad-  
12          viser to the compensation committee of any issuer shall  
13          meet standards for independence established by the Com-  
14          mission by regulation.

15          “(d) COMPENSATION COMMITTEE AUTHORITY RE-  
16          LATING TO COMPENSATION CONSULTANTS.—

17                 “(1) IN GENERAL.—The compensation com-  
18          mittee of each issuer, in its capacity as a committee  
19          of the board of directors, shall have the authority,  
20          in its sole discretion, to retain and obtain the advice  
21          of a compensation consultant meeting the standards  
22          for independence promulgated pursuant to sub-  
23          section (c), and the compensation committee shall be  
24          directly responsible for the appointment, compensa-  
25          tion, and oversight of the work of such independent



1 compensation consultant. This provision shall not be  
2 construed to require the compensation committee to  
3 implement or act consistently with the advice or rec-  
4 ommendations of the compensation consultant, and  
5 shall not otherwise affect the compensation commit-  
6 tee’s ability or obligation to exercise its own judg-  
7 ment in fulfillment of its duties.

8 “(2) DISCLOSURE.—In any proxy or consent  
9 solicitation material for an annual meeting of the  
10 shareholders (or a special meeting in lieu of the an-  
11 nual meeting) occurring on or after the date that is  
12 1 year after the date of enactment of the Corporate  
13 and Financial Institution Compensation Fairness  
14 Act of 2009, each issuer shall disclose in the proxy  
15 or consent material, in accordance with regulations  
16 to be promulgated by the Commission whether the  
17 compensation committee of the issuer retained and  
18 obtained the advice of a compensation consultant  
19 meeting the standards for independence promulgated  
20 pursuant to subsection (c).

21 “(3) REGULATIONS.—In promulgating regula-  
22 tions under this subsection or any other provision of  
23 law with respect to compensation consultants, the  
24 Commission shall ensure that such regulations are  
25 competitively neutral among categories of consult-

1       ants and preserve the ability of compensation com-  
2       mittees to retain the services of members of any  
3       such category.

4       “(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-  
5       SEL AND OTHER ADVISORS.—The compensation com-  
6       mittee of each issuer, in its capacity as a committee of  
7       the board of directors, shall have the authority, in its sole  
8       discretion, to retain and obtain the advice of independent  
9       counsel and other advisers meeting the standards for inde-  
10      pendence promulgated pursuant to subsection (c), and the  
11      compensation committee shall be directly responsible for  
12      the appointment, compensation, and oversight of the work  
13      of such independent counsel and other advisers. This pro-  
14      vision shall not be construed to require the compensation  
15      committee to implement or act consistently with the advice  
16      or recommendations of such independent counsel and  
17      other advisers, and shall not otherwise affect the com-  
18      pensation committee’s ability or obligation to exercise its  
19      own judgment in fulfillment of its duties.

20      “(f) FUNDING.—Each issuer shall provide for appro-  
21      priate funding, as determined by the compensation com-  
22      mittee, in its capacity as a committee of the board of direc-  
23      tors, for payment of compensation—

24               “(1) to any compensation consultant to the  
25      compensation committee that meets the standards

1 for independence promulgated pursuant to sub-  
2 section (c), and

3 “(2) to any independent counsel or other ad-  
4 viser to the compensation committee.”.

5 (b) STUDY AND REVIEW REQUIRED.—

6 (1) IN GENERAL.—The Securities and Ex-  
7 change Commission shall conduct a study and review  
8 of the use of compensation consultants meeting the  
9 standards for independence promulgated pursuant to  
10 section 10B(c) of the Securities Exchange Act of  
11 1934 (as added by subsection (a)), and the effects  
12 of such use.

13 (2) REPORT TO CONGRESS.—Not later than 2  
14 years after the rules required by the amendment  
15 made by this section take effect, the Commission  
16 shall submit a report to the Congress on the results  
17 of the study and review required by this paragraph.

18 **SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORT-**  
19 **ING TO REDUCE PERVERSE INCENTIVES.**

20 (a) ENHANCED DISCLOSURE AND REPORTING OF  
21 COMPENSATION ARRANGEMENTS.—

22 (1) IN GENERAL.—Not later than 9 months  
23 after the date of enactment of this Act, the appro-  
24 priate Federal regulators jointly shall prescribe regu-  
25 lations to require each covered financial institution

1 to disclose to the appropriate Federal regulator the  
2 structures of all incentive-based compensation ar-  
3 rangements offered by such covered financial institu-  
4 tions sufficient to determine whether the compensa-  
5 tion structure—

6 (A) is aligned with sound risk manage-  
7 ment;

8 (B) is structured to account for the time  
9 horizon of risks; and

10 (C) meets such other criteria as the appro-  
11 priate Federal regulators jointly may determine  
12 to be appropriate to reduce unreasonable incen-  
13 tives offered by such institutions for employees  
14 to take undue risks that—

15 (i) could threaten the safety and  
16 soundness of covered financial institutions;

17 or

18 (ii) could have serious adverse effects  
19 on economic conditions or financial sta-  
20 bility.

21 (2) RULES OF CONSTRUCTION.—Nothing in  
22 this subsection shall be construed as requiring the  
23 reporting of the actual compensation of particular  
24 individuals. Nothing in this subsection shall be con-  
25 strued to require a covered financial institution that

1 does not have an incentive-based payment arrange-  
2 ment to make the disclosures required under this  
3 subsection.

4 (b) PROHIBITION ON CERTAIN COMPENSATION AR-  
5 RANGEMENTS.—Not later than 9 months after the date  
6 of enactment of this Act, and taking into account the fac-  
7 tors described in subparagraphs (A), (B), and (C) of sub-  
8 section (a)(1), the appropriate Federal regulators shall  
9 jointly prescribe regulations that prohibit any incentive-  
10 based payment arrangement, or any feature of any such  
11 arrangement, that the regulators determine encourages in-  
12 appropriate risks by covered financial institutions that—

13 (1) could threaten the safety and soundness of  
14 covered financial institutions; or

15 (2) could have serious adverse effects on eco-  
16 nomic conditions or financial stability.

17 (c) ENFORCEMENT.—The provisions of this section  
18 shall be enforced under section 505 of the Gramm-Leach-  
19 Bliley Act and, for purposes of such section, a violation  
20 of this section shall be treated as a violation of subtitle  
21 A of title V of such Act.

22 (d) DEFINITIONS.—As used in this section—

23 (1) the term “appropriate Federal regulator”  
24 means—

1 (A) the Board of Governors of the Federal  
2 Reserve System;

3 (B) the Office of the Comptroller of the  
4 Currency;

5 (C) the Board of Directors of the Federal  
6 Deposit Insurance Corporation;

7 (D) the Director of the Office of Thrift  
8 Supervision;

9 (E) the National Credit Union Administra-  
10 tion Board;

11 (F) the Securities and Exchange Commis-  
12 sion; and

13 (G) the Federal Housing Finance Agency;  
14 and

15 (2) the term “covered financial institution”  
16 means—

17 (A) a depository institution or depository  
18 institution holding company, as such terms are  
19 defined in section 3 of the Federal Deposit In-  
20 surance Act (12 U.S.C. 1813);

21 (B) a broker-dealer registered under sec-  
22 tion 15 of the Securities Exchange Act of 1934  
23 (15 U.S.C. 78o);

24 (C) a credit union, as described in section  
25 19(b)(1)(A)(iv) of the Federal Reserve Act;

1 (D) an investment advisor, as such term is  
2 defined in section 202(a)(11) of the Investment  
3 Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

4 (E) the Federal National Mortgage Asso-  
5 ciation;

6 (F) the Federal Home Loan Mortgage  
7 Corporation; and

8 (G) any other financial institution that the  
9 appropriate Federal regulators, jointly, by rule,  
10 determine should be treated as a covered finan-  
11 cial institution for purposes of this section.

12 (e) EXEMPTION FOR CERTAIN FINANCIAL INSTITU-  
13 TIONS.—The requirements of this section shall not apply  
14 to covered financial institutions with assets of less than  
15 \$1,000,000,000.

16 (f) LIMITATION.—No regulation promulgated pursu-  
17 ant to this section shall be allowed to require the recovery  
18 of incentive-based compensation under compensation ar-  
19 rangements in effect on the date of enactment of this Act,  
20 provided such compensation agreements are for a period  
21 of no more than 24 months. Nothing in this Act shall pre-  
22 vent or limit the recovery of incentive-based compensation  
23 under any other applicable law.

24 (g) GAO STUDY.—

25 (1) STUDY REQUIRED.—

1           (A) IN GENERAL.—The Comptroller Gen-  
2 eral of the United States shall carry out a  
3 study to determine whether there is a correla-  
4 tion between compensation structures and ex-  
5 cessive risk taking.

6           (B) FACTORS TO CONSIDER.—In carrying  
7 out the study required under subparagraph (A),  
8 the Comptroller General shall—

9                   (i) consider compensation structures  
10 used by companies from 2000 to 2008; and

11                   (ii) compare companies that failed, or  
12 nearly failed but for government assist-  
13 ance, to companies that remained viable  
14 throughout the housing and credit market  
15 crisis of 2007 and 2008, including the  
16 compensation practices of all such compa-  
17 nies.

18           (C) DETERMINING COMPANIES THAT  
19 FAILED OR NEARLY FAILED.—In determining  
20 whether a company failed, or nearly failed but  
21 for government assistance, for purposes of sub-  
22 paragraph (B)(ii), the Comptroller General  
23 shall focus on—

24                   (i) companies that received excep-  
25 tional assistance under the Troubled Asset



1 Relief Program under title I of the Emer-  
2 gency Economic Stabilization Act of 2009  
3 (12 U.S.C. 5211 et seq.) or other forms of  
4 significant government assistance, includ-  
5 ing under the Automotive Industry Financ-  
6 ing Program, the Targeted Investment  
7 Program, the Asset Guarantee Program,  
8 and the Systemically Significant Failing  
9 Institutions Program;

10 (ii) the Federal National Mortgage  
11 Association;

12 (iii) the Federal Home Loan Mort-  
13 gage Corporation; and

14 (iv) companies that participated in the  
15 Security and Exchange Commission's Con-  
16 solidated Supervised Entities Program as  
17 of January 2008.

18 (2) REPORT.—Not later than the end of the 1-  
19 year period beginning on the date of the enactment  
20 of this Act, the Comptroller General shall issue a re-

1 port to the Congress containing the results of the  
2 study required under paragraph (1).

Passed the House of Representatives July 31, 2009.

Attest:

*Clerk.*



111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

---

---

**H. R. 3269**

**AN ACT**

To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.