

111TH CONGRESS
1ST SESSION

S. 431

To establish the Temporary Economic Recovery Adjustment Panel to curb excessive executive compensation at firms receiving emergency economic assistance.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2009

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish the Temporary Economic Recovery Adjustment Panel to curb excessive executive compensation at firms receiving emergency economic assistance.

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.**

4 This Act may be cited as the “Economic Recovery
5 Adjustment Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the deterioration of financial firms in 2008
9 and the resulting crisis of confidence in the financial

1 markets have required broad intervention by the
2 Federal Government in the financial sector;

3 (2) the Emergency Economic Stabilization Act
4 of 2008, signed by President Bush on October 3,
5 2008, included a \$700,000,000,000 Troubled Asset
6 Relief Program (or “TARP”) for the express pur-
7 pose of “providing stability to and preventing dis-
8 ruption in the economy and financial system”;

9 (3) the investment and commercial banks and
10 other financial institutions that have received tax-
11 payer-funded bailouts perform public functions sup-
12 porting the operation of the economy, in addition to
13 their private profit-making functions;

14 (4) reports of billions of dollars in compensation
15 and obligations to executives have eroded public con-
16 fidence in the TARP, and have caused increasing
17 opposition to other bailout proposals, thereby imped-
18 ing the Government’s ability to address the financial
19 crisis;

20 (5) participation in the TARP and any other
21 Federal Government bailout program should be con-
22 ditioned on a fair restructuring of executive com-
23 pensation obligations;

24 (6) taxpayer dollars should not support unrea-
25 sonable compensation to executives, particularly

1 when in the absence of taxpayer support, such com-
 2 pensation would be reduced as part of a bankruptcy
 3 restructuring or liquidation; and

4 (7) establishing a due process forum will allow
 5 the Government to ensure that executive compensa-
 6 tion relying on taxpayer funds is fair and reason-
 7 able, and that all sides enjoy an opportunity to be
 8 heard.

9 **SEC. 3. DEFINITIONS.**

10 In this Act, the following definitions shall apply:

11 (1) **ASSISTED ENTITY.**—The term “assisted en-
 12 tity” means any recipient or applicant for assistance
 13 under the TARP.

14 (2) **PANEL.**—The term “Panel” means the
 15 Temporary Economic Recovery Oversight Panel es-
 16 tablished under section 7.

17 (3) **EXECUTIVE COMPENSATION.**—The term
 18 “executive compensation” means wages, salary, de-
 19 ferred compensation, benefits, retirement arrange-
 20 ments, options, bonuses, office fixtures, goods, or
 21 other property, travel, or entertainment, vacation ex-
 22 penses, and any other form of compensation, obliga-
 23 tion, or expense that is not routinely provided to all
 24 other employees of the assisted entity.

1 (4) OFFICE.—The term “Office” means the Of-
 2 fice of the Taxpayer Advocate, established under sec-
 3 tion 4.

4 (5) TARP.—The terms “TARP” and “TARP
 5 funds” mean the Troubled Asset Relief Program es-
 6 tablished under section 101 of the Emergency Eco-
 7 nomic Stabilization Act of 2008 and funds received
 8 thereunder, respectively, or pursuant to any suc-
 9 cessor program.

10 (6) SECRETARY.—The term “Secretary” means
 11 Secretary of the Treasury.

12 **SEC. 4. TAXPAYER ADVOCATE.**

13 (a) ESTABLISHMENT.—There is established within
 14 the Department of Justice, the Office of the Taxpayer Ad-
 15 vocate.

16 (b) ADVOCATE.—The Office shall be headed by an
 17 Advocate, to be appointed by the Attorney General of the
 18 United States for such purpose.

19 (c) DUTIES.—The Advocate is authorized to conduct
 20 ongoing audits and oversight of the recipients of TARP
 21 funds with respect to compensation of the officers and di-
 22 rectors of such entities.

23 (d) ACCESS TO RECORDS.—

24 (1) IN GENERAL.—To the extent otherwise con-
 25 sistent with law, the Advocate and the Office shall

1 have access, upon request, to any information, data,
2 schedules, books, accounts, financial records, re-
3 ports, files, electronic communications, or other pa-
4 pers, things, or property belonging to or in use by
5 the assisted entity and to the officers, directors, em-
6 ployees, independent public accountants, financial
7 advisors, and other agents and representatives there-
8 of (as related to the agent or representative's activi-
9 ties on behalf of or under the authority of the as-
10 sisted entity) at such reasonable time as Office may
11 request.

12 (2) COPIES.—The Advocate may make and re-
13 tain copies of such books, accounts, and other
14 records as the Advocate deems appropriate for the
15 purposes of this Act.

16 (e) REPORTING.—The Advocate shall submit quar-
17 terly reports of findings under this Act to the appropriate
18 committees of Congress, the Secretary and the Special In-
19 spector General for the TARP established under the
20 Emergency Economic Stabilization Act of 2008 on the ac-
21 tivities and performance of the Office.

22 (f) AUDITS.—The Office is authorized to conduct an
23 audit of any assisted entity for purposes of this Act.

1 **SEC. 5. POWERS OF THE OFFICE.**

2 (a) INVESTIGATIONS AND EVIDENCE.—The Office
3 may, for purposes of carrying out this Act—

4 (1) take depositions or other testimony, receive
5 evidence, and administer oaths; and

6 (2) require, by subpoena or otherwise, the at-
7 tendance and testimony of witnesses and the produc-
8 tion of books, records, correspondence, memoranda,
9 papers, and documents.

10 (b) SUBPOENAS.—

11 (1) SERVICE.—Subpoenas issued under sub-
12 section (a)(2) may be served by any person des-
13 ignated by the Office.

14 (2) ENFORCEMENT.—

15 (A) IN GENERAL.—In the case of contu-
16 macy or failure to obey a subpoena issued
17 under subsection (a)(2), the United States dis-
18 trict court for the judicial district in which the
19 subpoenaed person resides, is served, or may be
20 found, or where the subpoena is returnable,
21 may issue an order requiring such person to ap-
22 pear at any designated place to testify or to
23 produce documentary or other evidence. Any
24 failure to obey the order of the court may be
25 punished by the court as a contempt of that
26 court.

1 (B) ADDITIONAL ENFORCEMENT.—Sec-
2 tions 102 through 104 of the Revised Statutes
3 of the United States (2 U.S.C. 192 through
4 194) shall apply in the case of any failure of
5 any witness to comply with any subpoena or to
6 testify when summoned under the authority of
7 this section.

8 (c) INFORMATION FROM FEDERAL AGENCIES.—The
9 Office may secure directly from any department, agency,
10 or instrumentality of the United States any information
11 related to any inquiry of the Office conducted under this
12 Act. Each such department, agency, or instrumentality
13 shall, to the extent authorized by law, furnish such infor-
14 mation directly to the Office, upon request.

15 **SEC. 6. EXECUTIVE COMPENSATION AUTHORITY.**

16 (a) NEGOTIATED REDUCTIONS AUTHORIZED.—The
17 Advocate is authorized to assist the Secretary in the nego-
18 tiation of assistance under the TARP, in order to assure
19 that fair and reasonable executive compensation is paid
20 by entities receiving TARP funds, and to defend any such
21 agreements in the event of any challenge to the adjust-
22 ments to compensation obligations. If, after an audit au-
23 thorized by this Act, the Advocate finds reason to believe
24 that any assisted entity would have become insolvent if
25 not for the receipt of assistance under the TARP, the Ad-

1 vocate shall negotiate a reduction in the executive com-
 2 pensation obligations of the assisted entity as a condition
 3 of the continuing use or future receipt of such TARP as-
 4 sistance.

5 (b) FORM.—Negotiated reductions in compensation
 6 under subsection (a)—

7 (1) may include vested deferred compensation;
 8 and

9 (2) shall be in an amount that is fair and rea-
 10 sonable in light of the taxpayers' assistance, but not
 11 less than the estimated value of the compensation
 12 obligations that would face the estate or debtor-in-
 13 possession if the TARP funds had not been granted
 14 and the entity had filed for bankruptcy protection.

15 (c) CERTIFICATION TO ADJUSTMENT PANEL.—The
 16 Advocate shall certify the findings of the Office under this
 17 section to the Panel.

18 **SEC. 7. TEMPORARY ECONOMIC RECOVERY OVERSIGHT**
 19 **PANEL.**

20 (a) ESTABLISHMENT.—There is established the Tem-
 21 porary Economic Recovery Oversight Panel.

22 (b) MAKEUP OF PANEL.—The Panel shall be com-
 23 prised of 5 members, appointed by the President for such
 24 purpose from among United States bankruptcy court

1 judges. The Secretary shall provide for appropriate space
2 and staff to support the functioning of the Panel.

3 (c) DUTIES.—The Panel shall—

4 (1) promptly evaluate each proposed settlement
5 reached under section 6;

6 (2) approve or deny such proposed settlement;
7 and

8 (3) if no settlement is reached under section 6,
9 upon petition of the Advocate or any individual sub-
10 ject to the actions of the Advocate under section 6,
11 issue an order establishing an executive compensa-
12 tion program for such individuals in accordance with
13 this section.

14 (d) NOTICE AND HEARING REQUIRED.—The Advo-
15 cate shall provide adequate notice to all affected persons
16 of its intention to seek an order from the Panel in accord-
17 ance with this section, and the Panel shall hold an evi-
18 dentiary hearing on any proposed settlement or petition
19 of the Advocate.

20 (e) STANDING.—Under any proceeding before the
21 Panel, any individual whose compensation might be ad-
22 versely affected by Panel action shall be a party in inter-
23 est, having full procedural rights, including the right to
24 challenge a settlement between the assisted entity and the

1 Advocate, to challenge the certified findings of the Advo-
2 cate, or to appeal any order of the Panel.

3 (f) APPEALS.—The Advocate and any party having
4 standing before the Panel shall have the right to appeal
5 an order under this Act directly to the United States
6 Court of Appeals for the District of Columbia Circuit.

7 (g) EFFECTIVE PERIOD.—Any order of the Panel
8 setting forth a reduction in compensation shall be effective
9 6 months after confirmation, and shall remain in effect
10 while any obligation arising from assistance provided
11 under the TARP remains outstanding.

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