

113TH CONGRESS  
2D SESSION

# H. R. 5662

To amend the Internal Revenue Code of 1986 to expand the denial of deduction for certain excessive employee remuneration.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2014

Mr. VAN HOLLEN (for himself and Mr. CLYBURN) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to expand the denial of deduction for certain excessive employee remuneration.

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 “CEO–Employee Pay  
5 Fairness Act of 2014”.

6 **SEC. 2. EXPANSION OF DENIAL OF DEDUCTION FOR CER-**  
7 **TAIN EXCESSIVE EMPLOYEE REMUNERA-**  
8 **TION.**

9 (a) EXPANDED APPLICATION OF DEDUCTION DE-  
10 NIAL IF PAY FAIRNESS REQUIREMENT NOT MET.—Sec-

1 tion 162(m) of the Internal Revenue Code of 1986 is  
2 amended by adding at the end the following new para-  
3 graph:

4           “(7) SPECIAL RULE IN CASE OF COMPANIES  
5           NOT MEETING PAY FAIRNESS REQUIREMENT.—

6                   “(A) IN GENERAL.—In the case of a pub-  
7           licly held corporation which does not meet the  
8           pay fairness requirement of subparagraph (B)  
9           for the taxable year—

10                           “(i) no deduction shall be allowed  
11                           under this chapter for applicable employee  
12                           remuneration with respect to any employee  
13                           to the extent that the amount of such re-  
14                           muneration for the taxable year with re-  
15                           spect to such employee exceeds  
16                           \$1,000,000, and

17                           “(ii) paragraph (4) shall be applied  
18                           without regard to subparagraphs (B), (C),  
19                           and (D) thereof.

20           For purposes of the preceding sentence, the  
21           term ‘employee’ includes any officer or director  
22           of the taxpayer and any former officer, director,  
23           or employee of the taxpayer.

1           “(B) PAY FAIRNESS REQUIREMENT.—The  
2 pay fairness requirement of this subparagraph  
3 is satisfied if—

4           “(i)(I) the average compensation paid  
5 by the taxpayer to or for all applicable  
6 United States employees for the taxable  
7 year, exceeds

8           “(II) the inflation and productivity  
9 growth adjusted average of such compensa-  
10 tion for the preceding taxable year, and

11           “(ii) the aggregate compensation paid  
12 by the employer to or for all applicable  
13 United States employees for the taxable  
14 year is not less than the aggregate of such  
15 compensation for the preceding taxable  
16 year.

17           “(C) APPLICABLE UNITED STATES EM-  
18 PLOYEE.—For purposes of this paragraph, the  
19 term ‘applicable United States employee’  
20 means, with respect to any taxable year, any  
21 employee—

22           “(i) whose services with respect to the  
23 employer are substantially all performed  
24 within the United States, and

1           “(ii) whose compensation from the  
2           employer for the taxable year does not ex-  
3           ceed the dollar amount in effect under sec-  
4           tion 414(q)(1)(B)(i) with respect to the  
5           calendar year in which such taxable year  
6           begins.

7           “(D) INFLATION AND PRODUCTIVITY  
8           GROWTH ADJUSTED AVERAGE.—The inflation  
9           and productivity growth adjusted average of  
10          compensation under subparagraph (B)(i)(II) for  
11          any taxable year shall be determined by multi-  
12          plying—

13           “(i) the average of the compensation  
14           paid by the taxpayer to or for all applica-  
15           ble United States employees for the taxable  
16           year, by

17           “(ii) the sum of the cost-of-living ad-  
18           justment and the productivity adjustment  
19           for the taxable year.

20          “(E) COST-OF-LIVING ADJUSTMENT.—For  
21          purposes of subparagraph (D)(ii), the cost-of-  
22          living adjustment for any taxable year shall be  
23          the cost-of-living adjustment determined under  
24          section 1(f)(3) for the calendar year in which  
25          the taxable year begins, determined by sub-

1           stituting ‘the second preceding calendar year’  
2           for ‘calendar year 1992’ in subparagraph (B)  
3           thereof.

4           “(F) PRODUCTIVITY ADJUSTMENT.—For  
5           purposes of subparagraph (D)(ii)—

6           “(i) IN GENERAL.—The productivity  
7           adjustment for the taxable year shall be an  
8           amount (expressed as a percentage) equal  
9           to the average annual increase in the busi-  
10          ness productivity index for the period be-  
11          ginning with calendar year 2000 and end-  
12          ing with the calendar year preceding the  
13          calendar year in which the taxable year be-  
14          gins.

15          “(ii) BUSINESS PRODUCTIVITY  
16          INDEX.—The term ‘business productivity  
17          index’ means the nonfarm business produc-  
18          tivity index published by the Bureau of  
19          Labor Statistics as adjusted by the Sec-  
20          retary to account for depreciation.

21          “(G) COMPENSATION.—For purposes of  
22          this subparagraph, the term ‘compensation’  
23          means, with respect to any employee, the sum  
24          of—

1 “(i) the employee’s wages on which  
2 the tax under section 3101(b) is imposed,  
3 plus

4 “(ii) any amount described in para-  
5 graph (9), (11), (12), or (14) of section  
6 6051(a) with respect to the employee.

7 “(H) AGGREGATION RULES.—Rules simi-  
8 lar to the rules of paragraph (5)(B)(iii) shall  
9 apply for purposes of this paragraph.

10 “(I) REGULATIONS.—The Secretary may  
11 prescribe such regulations as are necessary to  
12 carry out the purposes of this paragraph, in-  
13 cluding adjustments to the pay fairness require-  
14 ments of subparagraph (B)—

15 “(i) to prevent avoidance of this para-  
16 graph through changes in the composition  
17 of the taxpayer’s workforce, and

18 “(ii) to account for significant, non-  
19 tax-motivated changes in the size and com-  
20 position of the taxpayer’s workforce (in-  
21 cluding mergers, spinoffs, or changes in  
22 the occupational composition of a tax-  
23 payer’s workforce).”.

24 (b) MODIFICATION OF DEFINITION OF COVERED EM-  
25 PLOYEES.—

1           (1) IN GENERAL.—Paragraph (3) of section  
2 162(m) of such Code is amended—

3           (A) in subparagraph (A), by striking “as  
4 of the close of the taxable year, such employee  
5 is the chief executive officer of the taxpayer or  
6 is” and inserting “such employee is the chief  
7 executive officer or the chief financial officer of  
8 the taxpayer at any time during the taxable  
9 year, or was”,

10           (B) in subparagraph (B) by striking  
11 “(other than the chief executive officer)” and  
12 inserting “(other than any individual described  
13 in subparagraph (A))”, and

14           (C) by striking “or” at the end of subpara-  
15 graph (A), by striking the period at the end of  
16 subparagraph (B) and inserting “, or”, and by  
17 adding at the end the following:

18           “(C) was a covered employee of the tax-  
19 payer (or any predecessor) for any preceding  
20 taxable year beginning after December 31,  
21 2014.”.

22           (2) TECHNICAL AMENDMENT.—Section  
23 162(m)(3)(B) of such Code is amended by striking  
24 “4 highest” and inserting “3 highest”.

1           (c) APPLICABLE EMPLOYEE REMUNERATION PAID  
2 TO BENEFICIARIES, ETC.—Paragraph (4) of section  
3 162(m) of such Code is amended by adding at the end  
4 the following new subparagraph:

5                   “(H) SPECIAL RULE FOR REMUNERATION  
6 PAID TO BENEFICIARIES, ETC.—Remuneration  
7 shall not fail to be applicable employee remun-  
8 eration merely because it is includible in the  
9 income of, or paid to, a person other than the  
10 covered employee, including after the death of  
11 the covered employee.”.

12           (d) EXPANSION OF APPLICABLE EMPLOYER TO IN-  
13 CLUDE NON-LISTED PUBLIC COMPANIES.—Paragraph  
14 (2) of section 162(m) of such Code is amended to read  
15 as follows:

16                   “(2) PUBLICLY HELD CORPORATION.—For pur-  
17 poses of this subsection, the term ‘publicly held cor-  
18 poration’ means any corporation which is an issuer  
19 (as defined in section 3 of the Securities Exchange  
20 Act of 1934)—

21                           “(A) that has a class of securities reg-  
22 istered under section 12 of such Act, or

23                           “(B) that is required to file reports under  
24 section 15(d) of such Act.”.

1       (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2014.

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