111TH CONGRESS
2D SESSION

S. 3149

To amend the Internal Revenue Code of 1986 to limit certain executive compensation paid by systemically significant financial institutions.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 19), 2010

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1986 to limit certain executive compensation paid by systemically significant financial institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Wall Street Compensation Reform Act of 2010''.

SEC. 2. EXECUTIVE COMPENSATION PAID BY SYSTEMICALLY SIGNIFICANT FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Subsection (m) of section 162 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR APPLICATION TO SYSTEMICALLY SIGNIFICANT FINANCIAL INSTITUTIONS.—

"(A) IN GENERAL.—In the case of an employer which is a systemically significant financial institution, this subsection shall apply with the following modifications:

"(i) NON-PUBLIC ENTITIES.—Paragraph (1) shall be applied by substituting 'employer' for 'publicly held corporation'.

"(ii) COVERED EMPLOYEES.—Paragraph (3) shall be applied—

"(I) by substituting 'such employee is among the 25 highest compensated employees' for so much of subparagraph (B) as precedes 'for the taxable year (other than the chief executive officer).', and

"(II) in addition to the individuals described in such paragraph (including the individuals described in subclause (I) of this clause), by treating any employee whose actions have a material impact on the risk exposure of the taxpayer as a covered employee.

Any employee whose applicable employee remuneration for the taxable year exceeds \$1,000,000 is presumed to engage in actions which have a material impact on the risk exposure of the taxpayer unless the taxpayer submits an information return to the Secretary which describes the role and responsibilities of such employee and the reason such employee should not be considered to have a material impact on the risk exposure of the taxpayer. Such return shall be deemed to have been approved unless the Secretary notifies the taxpayer in writing within 90 days of the submission of such return. For purposes of this clause, the term ‘employee’ includes employees within the meaning of section 401(c)(1).

"(iii) REMUNERATION PAYABLE ON COMMISSION BASIS.—Subparagraph (B) of paragraph (4) shall not apply.

"(iv) DEFERRED DEDUCTION EXECUTIVE REMUNERATION.—In the case of any deferred deduction executive remuneration (as determined under rules similar to the rules of paragraph (5)(F), if executive remuneration for purposes of such paragraph included remuneration of covered employees as defined in clause (ii) of this paragraph, and if the year in which the applicable services were performed were treated as an applicable taxable year), rules similar to the rules of paragraph (5)(A)(ii) shall apply by substituting '$1,000,000' for '$500,000'.

"(B) SYSTEMICALLY SIGNIFICANT FINANCIAL INSTITUTION.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'systemically significant financial institution' means an entity which engages primarily in activities which are financial in nature (as determined under section 4(k) of the Bank

Holding Company Act of 1956), and which—

"(I) owns or controls assets greater than $25,000,000,000, or

"(II) owns or controls assets greater than $10,000,000,000 and maintains a ratio of debt to equity which is greater than 20 to 1.

"(ii) CLASSIFICATION.—A taxpayer which is a systemically significant financial institution for any taxable year shall be a systemically significant financial institution for purposes of all subsequent taxable years.

"(C) SPECIAL RULES FOR PERFORMANCE-BASED COMPENSATION.—Remuneration payable solely on account of the attainment of one or more performance goals (hereinafter 'performance-based remuneration') which is paid by any systemically significant financial institution to any covered employee (as determined under subparagraph (A)(ii)) shall not be excluded under subparagraph (C) of paragraph (4) from treatment as applicable employee remuneration unless the following requirements are met:

“(i) PERFORMANCE-BASED COMPENSATION POOL.—The amount and allocation of the taxpayer’s performance-based remuneration for covered employees are determined by the compensation committee required under paragraph (4)(C)(i) by taking into account—

“(I) the cost and quantity of capital required to support the risks taken by the taxpayer in the conduct of the financial activities of the taxpayer,

“(II) the cost and quantity of the liquidity risk assumed by the taxpayer in the conduct of such activities, and

“(III) the timing and likelihood of potential future revenues from such activities.

“(ii) MATERIAL TERMS.—The material terms of performance-based remuneration paid to covered employees specify that—

“(I) not less than 50 percent of such remuneration must vest no earlier than 5 years after the date of payment,

“(II) the proportion of such remuneration payable under vesting arrangements must increase based on the level of seniority or responsibility of the employee,

“(III) such remuneration payable under vesting arrangements must vest on a basis no faster than pro rata over the specified number of years of such arrangement (not to be less than 5),

“(IV) such remuneration is contingent on a formal agreement between the taxpayer and the employee which forbids the use of personal hedging strategies, remuneration-related insurance, or liability-related insurance which undermines the risk alignment effects of this paragraph,

“(V) in the case of an employer which is a publicly held corporation, not less than 50 percent of such remuneration must be in the form of stock in the employer, and

"(VI) in the case of remuneration paid to a chief executive officer or chief financial officer (if such chief financial officer is a covered employee) of a publicly held corporation, such remuneration must be subject to substantial forfeiture requirements in the event the taxpayer is required to prepare an accounting restatement due to material noncompliance, as a result of misconduct, with any financial reporting requirement under Federal securities laws.

For purposes of this clause, the date on which remuneration is deemed to have vested is the first date on which such remuneration is not subject to a substantial risk of forfeiture (within the meaning of section 409A(d)(4)).

"(D) SPECIAL RULE FOR PERFORMANCE-BASED COMPENSATION PAID BY NON-PUBLIC ENTITIES.—In the case of a systemically significant financial institution which is not a publicly held corporation, in addition to the requirements of subparagraph (C), paragraph (4)(C) shall be applied by substituting the following for clauses (i) through (iii) thereof:

"(i) the taxpayer commissions an annual, external review of its compensation policies and practices, including an examination and analysis of the taxpayer's compliance with the requirements of this subsection, and

"(ii) the taxpayer obtains certification from an unrelated third party commissioned to evaluated compensation practices that performance goals and other material terms under which the remuneration is to be paid are satisfied before any payment of such remuneration is made.'.

For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (b) or (c) of section 414 shall be treated as related taxpayers.

"(E) COORDINATION WITH RULES FOR EMPLOYERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF PROGRAM.—In the case of any systemically significant financial institution to which paragraph (5) applies for any taxable year, this paragraph shall not apply to any payment of remuneration to which such paragraph applies.

"(F) REGULATORY AUTHORITY.—Not later than 180 days after the date of the enactment of this paragraph, the Secretary shall prescribe such guidance, rules, or regulations of general applicability as are necessary to carry out the purposes of this paragraph, including—

"(i) the method for valuing assets for purposes of subparagraph (B)(i),

"(ii) the method for calculating the ratio described in subparagraph (B)(i)(II),

"(iii) criteria for use in determining whether the actions of an employee have a material impact on the risk exposure of the taxpayer, and for determining what constitutes a substantial forfeiture requirement with respect to executive remuneration,

"(iv) criteria for determining whether a remuneration agreement constitutes a hedging strategy, and "(v) anti-abuse rules to prevent the avoidance of the purposes of this paragraph, including by use of independent contractors.

"(G) APPLICATION OF PARAGRAPH.—This paragraph shall apply—

"(i) in the case of an entity which is a systemically significant financial institution in calendar 2010, to remuneration for services performed in calendar years beginning after 2010, and

"(ii) in the case of an entity which becomes a systemically significant financial institution in a calender year after 2010, to remuneration for services performed in calendar years beginning with the second calendar year after the year in which such entity first becomes a systemically significant financial institution.".

(b) CONFORMING AMENDMENT.—Subparagraph (G) of section 162(m)(5) of the Internal Revenue Code of 1986 is amended by adding at the end the following: "Paragraph (6) shall not apply to any payment of remuneration to which this paragraph applies.".

(c) REPORT ON PERFORMANCE-BASED COMPENSATION PAID BY PUBLICLY HELD CORPORATIONS.—

(1) IN GENERAL.—Each systemically significant financial institution which is a publicly held corporation shall submit to the Chairman of the Securities and Exchange Commission, and shall make publicly available, an annual report on compensation policies and practices which describes—

(A) the process used to develop and modify such institution's compensation policies, including the composition and the mandate of such institution's compensation committee,

(B) the actions taken by such institution to comply with section 162(m)(6) of the Internal Revenue Code of 1986,

(C) any additional actions taken to implement the Principles for Sound Compensation Practices adopted by the Financial Stability Board established by the G–20 Finance Ministers and Central Bank Governors,

(D) the most important design characteristics of such institution's compensation policies, including criteria used for performance measurement and risk adjustment, the linkage between pay and performance, vesting policy and criteria, and the parameters used for allocating cash versus other forms of remuneration,

(E) aggregate quantitative information on remuneration paid by such institution, differentiating between remuneration paid to senior executive officers and to employees whose actions have a material impact on the risk exposure of such institution, which indicates the amounts of remuneration for the financial year (divided into fixed and variable remuneration) and the number of employees to which such remuneration was paid, and

(F) the amount of remuneration paid by such institution during the financial year preceding the year of the report which was nondeductible by reason of section 162(m) of such Code.

(2) TIMING OF REPORT.—The report required under paragraph (1) shall be submitted beginning in calendar year 2011 (or, if later, the calendar year after the year in which an entity first becomes a systemically significant financial institution which is a publicly held corporation), at such time during such year and each subsequent year as the Chairman of

the Securities and Exchange Commission shall specify.

(3) DEFINITIONS.—Any term used in this subsection which is also used in section 162(m)(6) of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to remuneration for services performed after December 31, 2010.

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