

Legislative Bulletin.....April 1, 2009

Contents:

H.R. 1575 – End of Government Reimbursement of Excessive Executive Disbursements (End GREED) Act

H.Res. 298 – Congratulating the on-premise sign industry for its contributions to the success of small businesses

H.R. 1575, End of Government Reimbursement of Excessive Executive Disbursements (End GREED) Act (*Conyers, D-MI*)

Key Conservative Concerns

Take-Away Points

--***Two Wrongs Don't Make a Right.*** Most conservatives remain opposed to the massive taxpayer “bailouts” of private organizations and the bonuses that followed. However, without the bailouts, the taxpayers would never have been put in the position of their dollars being doled out for executive bonuses. Since the bonuses became an issue when congressional Democrats snuck language into the Stimulus bill to protect them, and they have already been distributed, the solution is not to compound the problem with more inappropriate actions by the federal government.

--***More Uncertainty in the Market.*** Since the legislation applies to *existing* compensation agreements, Congress is signaling to investors that it has the right to change the rules in the middle of the game. This will frighten financial institutions away from participating in the government’s financial rescue programs.

--***Bill of Attainder.*** The bill, while not mentioning AIG by name, is clearly meant to punish AIG executives who received large bonuses—a specific group of individuals in response to public outrage over the bonuses. Given this motivation, many conservatives may believe that the legislation is a bill of attainder, and thus prohibited by Article I, Section 9, Clause 3 of the Constitution.

-- ***Puts Bonus Decisions in the Hands of Judges.*** The bill will not constrain executive compensation. It will merely leave the issue up to over a thousand judges to determine for themselves whether compensation exceeds, “reasonable equivalent value” for services.

Order of Business: The bill is scheduled to be considered on Wednesday, April 1, 2009, under a motion to suspend the rules and pass the bill.

Background: On October 3, 2008, Congress passed H.R. 1424, the [Emergency Economic Stabilization Act of 2008](#), by a vote of [263 to 171](#). The President subsequently signed the bill into law. This legislation was intended to provide a total of \$700 billion of purchasing authority for the Treasury Secretary to purchase trouble assets from financial institutions.

On February 13, 2009, Congress enacted H.R. 1, the so-called “stimulus” bill, with House Republicans unanimously opposed to the legislation. This legislation included the following provision:

“The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.”

In March, AIG announced that it would pay out \$165 million in bonuses, and the provision noted above in the “stimulus” exempts these bonuses from the executive compensation standards for TARP recipients established by the “stimulus” bill. Overall, the company has received \$170 billion of taxpayer money.

On March 19, 2009, the House passed H.R. 1586, by a vote of [328-93](#). The legislation imposes a **90%** tax for bonuses received by an employee of a company that has received Troubled Assets Relief Program (TARP) funds in excess of \$5 billion, as well as employees of Fannie Mae and Freddie Mac. The tax would be *retroactive* to December 31, 2008 and apply to income in excess of \$250,000 (or \$125,000 in the case of a married individual filing separately).

The bill we are considering today goes further in that it applies to a broader range of institutions and creates a statute to restrict their bonuses in advance.

Summary (as amended after being reported from committee): According to the Judiciary Committee Minority, the bill would create a federal “fraudulent transfer” statute to go after bonuses and other compensation paid by financial institutions that have received or are receiving federal aid.

Definitions

- **Covered direct capital investment** – a direct capital investment received under TARP or, with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (Fannie Mae and Freddie Mac), or a Federal home loan bank, under the amendments made by section 1117 of the Housing and Economic Recovery Act of 2008;
- **Compensation arrangement** – an arrangement that provides for the payment of compensation (including performance of incentive compensation, a bonus of any kind, or any other financial return designed to replace or enhance incentive, stock, or other compensation);

- **Officer, Director, or Employee** – includes an officer, director, or employee of an recipient entity, and an officer, director, or employee of a subsidiary of a recipient entity; and
- **Recipient entity** – a person (including any subsidiary of such person) that on or after September 1, 2008, is holding (or has the direct benefit of) a covered direct capital investment that exceeds \$5,000,000,000 outstanding.

The Attorney General may begin a civil action in a district court to avoid any transfer of compensation by (or on behalf of) a recipient entity to an officer, director, or employee that was made on or after September 1, 2008, and to recover such compensation for the benefit of such entity, to the extent such entity received **less than a reasonably equivalent value** (undefined in the bill) **in exchange for such compensation** and the entity:

- Was insolvent on the date that the compensation was transferred; or
- Was engaged in business or a transaction, or was about to engage in business or a transaction, for which property remaining the recipient was an unreasonably small capital.

The Attorney General may issue a subpoena requiring the attendance, testimony of witnesses and documentary evidence relevant to the bill.

Possible Conservative Concerns:

- ***Two Wrongs Don't Make a Right.*** Most conservatives remain opposed to the massive taxpayer “bailouts” of private organizations and the bonuses that followed. However, without the bailouts, the taxpayers would never have been put in the position of their dollars being doled out for executive bonuses. Since the bonuses were doled out because congressional Democrats snuck language into the Stimulus bill to protect them, and they have already been distributed, the solution is not to compound the problem with more inappropriate actions by the federal government.
- ***More Uncertainty in the Market.*** Since the legislation applies to *existing* compensation agreements, Congress is signaling to investors that it has the right to change the rules in the middle of the game. This will frighten away financial institutions that might be considering participation in the government’s financial rescue programs.
- ***Bill of Attainder.*** The bill, while not mentioning AIG by name, is clearly meant to punish AIG executives who received large bonuses—a specific group of individuals in response to public outrage over the bonuses. Given this motivation, many conservatives may believe that the legislation is a bill of attainder, and thus prohibited by Article I, Section 9, Clause 3 of the Constitution.
- ***Puts Bonus Decisions in the Hands of Judges.*** The bill will not constrain executive compensation. It will merely leave the issue up to over a thousand judges to determine for themselves whether compensation exceeds, “reasonable equivalent value” for services.
- ***Constitutional Concerns:*** As Ranking Member Smith of the Judiciary Committee states in the minority views of the committee report, “This sweeping

bill raises clear constitutional concerns under the Bankruptcy Clause and the Takings Clause. It may raise concerns under other clauses of the Constitution as well, such as Article III's Case or Controversy Clause. It is likely to trigger litigation on one or more of these grounds; if those challenges are successful, the statute will accomplish nothing to remedy the enormity that is the AIG bonuses. The bill also, by its highly unusual, overly broad and open-ended incursion on contracts, threatens to chill lenders from seeking needed federal aid, and to chill investors from investing in our markets for fear of what the Congress might do next.”

Committee Action: H.R. 1575 was introduced on March 17, 2009. It was referred to the House Committee on the Judiciary and was marked up on March 18, 2009, and reported out of committee by voice vote. The committee report can be found here: [111-50](#). The bill was further amended after being reported from committee.

Administration Position: No Statement of Administration Policy was available at press time.

Cost to Taxpayers: According to CBO, any associated costs to this bill would be negligible.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? Yes. H.R. 1575 would impose a private-sector mandate, as defined in UMRA, to the extent that it would require individuals to pay back certain compensation received from companies that accepted \$10 billion or more in financial assistance from the federal government on or after September 1, 2008. The costs of complying with that mandate would be the lost compensation, plus court costs and attorney fees. Because those costs, if any, would depend on future court decisions and settlements, CBO cannot determine whether they would exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1575 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

Constitutional Authority: Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 1 (general welfare), 3 (commerce), 4 (uniform laws on the subject of bankruptcies), and 18 (necessary and proper clause) of the Constitution.

RSC Staff Contact: Natalie Farr; natalie.farr@mail.house.gov; 202 226-0718

H.Res. 298—Congratulating the on-premise sign industry for its contributions to the success of small businesses. (Steve King, R-IA)

Order of Business: The resolution is scheduled to be considered on Wednesday, April 1, 2009, under a motion to suspend the rules and pass the resolution.

Summary: H.Res. 298 would express that the House of Representatives:

- “Applauds the United States Small Business Administration for educating small business owners on the benefits of using well-placed, well-designed on-premise signs to overcome competitive disadvantages in the areas of marketing and advertising, and
- “Encourages the on-premise sign industry to continue its efforts to produce a new and greater understanding of how to develop safer, more effective, and more affordable signage products so as to alleviate small businesses' competitive disadvantages in marketing and advertising.”

The resolution lists a number of findings including:

- “The on-premise sign industry in turn sustains millions of additional entities covered under the Small Business Act by providing to retail businesses across the country an affordable and effective advertising medium through which they can communicate to potential customers about goods and services they offer, direct those customers to their small business sites, and reinforce the memory of existing customers about the locations and the nature of these small businesses;
- “The Small Business Administration has recognized the value of on-premise signage as a remedy to these competitive disadvantages and has taken action to remediate this disadvantage by collaborating with the sign industry to collect educational information about signs and to publish that information on its website that is free of charge and easily accessible to all small businesses.”

Committee Action: H.Res. 298 was introduced on March 30, 2009 and referred to the House Small Business Committee, which took no subsequent public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: The resolution would not authorize any additional expenditures.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

RSC Staff Contact: Bruce F. Miller, bruce.miller@mail.house.gov, (202)-226-9720.