

SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION
ACT

APRIL 16, 2007.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1257]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1257) to amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shareholder Vote on Executive Compensation Act”.

SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

(a) AMENDMENT.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(h) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

“(1) IN GENERAL.—Any proxy or consent or authorization for an annual or other meeting of the shareholders occurring on or after January 1, 2009, shall permit a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission’s compensation disclosure rules (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material). The shareholder vote shall not be binding on the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

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

“(A) DISCLOSURE.—In any proxy solicitation material for an annual or other meeting of the shareholders occurring on or after January 1, 2009, that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy solicitation material, in a clear and simple form in accordance with regulations of the Commission, any agreements or understandings that such person has with any principal executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that are based on or otherwise relate to the acquisition, merger, consolidation, sale, or other disposition, and that have not been subject to a shareholder vote under paragraph (1).

“(B) SHAREHOLDER APPROVAL.—The proxy solicitation material containing the disclosure required by subparagraph (A) shall require a separate shareholder vote to approve such agreements or understandings. A vote by the shareholders shall not be binding on the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.”.

(b) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall issue any final rules and regulations required by the amendments made by subsection (a).

PURPOSE AND SUMMARY

H.R. 1257, the Shareholder Vote on Executive Compensation Act, amends the Securities and Exchange Act of 1934 to provide shareholders with a meaningful say on their company’s executive compensation practices without setting any caps on executive pay or micromanaging the company. It will do this by (1) requiring that public companies include in their annual proxy a nonbinding shareholder vote on the executive compensation disclosures already required by the Securities and Exchange Commission; and (2) requiring a separate shareholder vote for additional compensation that is tied to the sale or purchase of a company.

BACKGROUND AND NEED FOR LEGISLATION

According to the Corporate Library's 2006 Chief Executive Officer (CEO) Pay Survey of roughly 1400 CEOs (covering pay in FY 2005), the median CEO received \$13.51 million in total compensation, up 16 percent over FY 2004. This came on the heels of a 30 percent increase over FY 2003, 15 percent over FY 2002 and 9.5 percent over FY 2001. In addition to the compounding effect of this year-over-year growth, some note that looking at median pay alone artificially reduces the problem because medians do not account for the large pay increases at the upper extreme. (For example, the 2005 Pay Survey found that the average CEO pay was up 91 percent, after 27 CEOs received over 1,000 percent more than their previous year's pay).

Another report, done by USA Today in March 2005, found that median CEO compensation in 2004 was \$14 million (with one CEO receiving \$84 million exercising options, and new options grants worth more than \$130 million). In comparison, the same study found that the average rank-and-file worker's pay increased 2.5 percent.

The disparity between workers and executives has grown significantly in recent years. In their book *Pay Without Performance*, Lucian Bebchuk and Jesse Fried found that in 1991, the average large-company CEO received approximately 140 times the pay of an average worker; in 2003, the ratio was about 500 to 1. Researchers argue that the amounts have risen so far so fast that they can no longer be explained by traditional valuation models. Even when adjusting for other variables, researchers found that executive compensation is significantly higher today than in the early 1990s. For example, Lucian Bebchuk and Yaniv Grinstein found "[d]uring this period [1993–2003], pay has grown much beyond the increase that could be explained by changes in firm size, performance and industry classification. Had the relationship of compensation to size, performance and industry classification remained the same in 2003 as it was in 1993, mean compensation in 2003 would have been only about half of its actual size."¹

The Cost of Executive Compensation. The amount of money paid to executives of public companies reflects real costs to shareholders and the economy. According to Bebchuk and Grinstein's research, in 1993, the aggregate compensation paid to the top five executives of U.S. public companies represented 5 percent of company profits; by 2003 the ratio had more than doubled to 10 percent and the total amount paid to these executives during this period was roughly \$350 billion.

Concerns Over Incentives for Executives. In addition to concerns about the sheer size, some have noted that these packages may be giving executives incentives that undermine shareholder value and market confidence:

- *Earnings Manipulation.* Putting aside outright earnings fraud, because accounting standards are not always clear, excessive compensation (particularly very large bonuses based on meeting "Wall Street expectations") may be giving executives an incentive to use "aggressive" accounting methods that maximize their compensation. By meeting certain triggers (even by

¹ Lucian Bebchuk and Yaniv Grinstein, "The Growth in Executive Pay," 2005.

hundredths of a percentage point), executives can reap enormous sums of money. Years (or months) later, if a company is forced to restate its earnings—and shareholder value plummets—executives may retain their bonuses.²

- *Unprofitable Mergers/Acquisitions.* Because senior executives may receive additional compensation when they buy a new company or sell their current one (and are responsible for negotiating or agreeing to the overall deal), there can be a conflict of interest between the executives' interest (i.e. closing the deal and obtaining a "golden parachute") and the company's interest (i.e. maximizing shareholder value). Studies of mergers have found that target CEOs were willing to accept lower acquisition premiums when the acquirer promised them high-ranking managerial post after the acquisition.³ There are concerns that similar results might follow from direct monetary compensation.

Growth in Compensation Does Not Appear Tied to Performance. Several observers have argued that executive compensation is not tied to company performance. Others have noted that in many instances senior executives appear to be being "paid for failure." As the Financial Services Committee has seen first hand, even executives of institutions that lose money, restate earnings, and face extensive regulatory scrutiny have received (and retained) substantial compensation packages. After being forced out of Fannie Mae because the company used faulty accounting—resulting in a multi-billion dollar restatement—former Fannie Mae CEO Franklin Raines may receive a pension worth roughly \$1.4 million per year for life and prorated portions of incentive stock awards that could be worth millions of dollars.⁴ Most recently, Home Depot CEO Robert Nardelli, who was paid millions over the course of a six-year tenure when the company's stock price fell 7.9 percent, left with a \$210 million separation package.⁵

Securities and Exchange Commission Compensation Disclosures. Last year, the Securities and Exchange Commission revised its disclosure rules to require that public companies provide more disclosure of executive compensation than had previously been the case. After overwhelming response (over 20,000 comments), the SEC's final rules require that companies disclose to shareholders, in plain English and significantly greater detail, their executive compensation practices. In particular, it requires greater disclosure of the company's compensation plans for the CEO, CFO and highest paid executive officers and board members.

Although the SEC's executive compensation rules were considered by many to have made substantial progress on disclosure, some have noted that it did not (1) provide any new tools for owners to tailor/improve their company's compensation approach; nor (2) change the fundamental relationship between CEOs and Boards that gives rise to high CEO pay: in general, management (CEOs) select the Boards that set CEO pay.

² See, e.g., "Sorry, I'm Keeping the Bonus Anyway" New York Times, Mar. 13, 2005.

³ See Hartzell, Ofek and Yermack, "What's In It For Me? CEOs Whose Firms Are Acquired." Review of Financial Studies 17:37-61 (2004); and Julie Wulf "Do CEOs in Mergers Trade Power for Premium? Evidence from 'Mergers of Equals,'" Journal of Law, Economics & Organization 20 (2004): 60-101.

⁴ See, "Fannie Mae Exit Packages Face Review," Washington Post, Dec. 23, 2004.

⁵ "Home Depot Chief's Pay in 2007 Could Reach \$8.9 Million," New York Times, Jan. 25, 2007.

Shareholder Vote on Executive Compensation Act. Building off the new SEC disclosures, H.R. 1257, “The Shareholder Vote on Executive Compensation Act” would require that public companies ensure that shareholders have:

1. an annual nonbinding advisory vote on their company’s executive compensation disclosures; and
2. an additional nonbinding advisory vote *if* the company awards a new golden parachute package while simultaneously negotiating the purchase or sale of the company.

This second vote is designed to help address a CEO’s natural conflict of interest when negotiating the selling price of a company while simultaneously negotiating an additional personal exit package (e.g., as noted above, a CEO may be willing to sell the company for less if he/she personally receives more—thereby reducing shareholder value). This provision would not apply to long disclosed “change in ownership” agreements—and would only apply to new provisions added while negotiating the sale/purchase.

The nonbinding advisory vote will give shareholders a mechanism for supporting or opposing a company’s executive compensation plan without micromanaging the company. Knowing that they will be subject to some collective shareholder action will help give boards pause before approving questionable compensation plans.

The nonbinding advisory vote approach has been used in the United Kingdom since 2003 and is now used in Australia as well. The policy change is credited with improving management/shareholder dialogue on executive compensation matters and increasing the use of long-term performance targets in incentive compensation.⁶ It was recently adopted voluntarily by Aflac, and is currently pending before numerous U.S. public companies.

HEARINGS

The Committee on Financial Services held a hearing on March 8, 2007, titled “Empowering Shareholders on Executive Compensation: H.R. 1257, The Shareholder Vote on Executive Compensation Act.” The following witnesses testified:

- Lucian Bebchuk, Professor, Harvard Law School;
- John J. Castellani, President, Business Roundtable;
- Stephen M. Davis, Fellow, Millstein Center for Governance and Performance;
- Richard Ferlauto, Director of Pension and Benefit Policy, American Federation of State, County, and Municipal Employees (AFSCME);
- Steven N. Kaplan, Neubauer Family Professor of Entrepreneurship and Finance, University of Chicago Graduate School of Business; and
- Nell Minow, Editor, the Corporate Library.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 21 and 22, 2007, and on March 28, 2007, ordered H.R. 1257 reported, as amended, with a favorable recommendation by a record vote of 37 yeas and 29 nays.

⁶See, e.g., “Global Investor Support for Advisory Shareholder Votes on Executive Compensation,” Letter to SEC Chairman Chris Cox, Jan. 25, 2007.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 37 yeas and 29 nays (Record vote FC-26). The names of Members voting for and against follow:

RECORD VOTE NO. FC-26

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski				Mr. Baker			
Ms. Waters	X			Ms. Pryce (OH)		X	
Mrs. Maloney	X			Mr. Castle		X	
Mr. Gutierrez	X			Mr. King (NY)		X	
Ms. Velázquez	X			Mr. Royce		X	
Mr. Watt	X			Mr. Lucas		X	
Mr. Ackerman	X			Mr. Paul		X	
Ms. Carson	X			Mr. Gillmor	X		
Mr. Sherman	X			Mr. LaTourette		X	
Mr. Meeks	X			Mr. Manzullo		X	
Mr. Moore (KS)	X			Mr. Jones	X		
Mr. Capuano	X			Mrs. Biggert		X	
Mr. Hinojosa	X			Mr. Shays		X	
Mr. Clay	X			Mr. Miller (CA)		X	
Mrs. McCarthy	X			Mrs. Capito		X	
Mr. Baca	X			Mr. Feeney		X	
Mr. Lynch	X			Mr. Hensarling		X	
Mr. Miller (NC)	X			Mr. Garrett (NJ)		X	
Mr. Scott	X			Ms. Brown-Waite		X	
Mr. Green	X			Mr. Barrett (SC)		X	
Mr. Cleaver	X			Mr. Renzi		X	
Ms. Bean	X			Mr. Gerlach		X	
Ms. Moore (WI)	X			Mr. Pearce		X	
Mr. Davis (TN)	X			Mr. Neugebauer		X	
Mr. Sires	X			Mr. Price (GA)		X	
Mr. Hodes	X			Mr. Davis (KY)		X	
Mr. Ellison	X			Mr. McHenry		X	
Mr. Klein	X			Mr. Campbell		X	
Mr. Mahoney (FL)	X			Mr. Putnam		X	
Mr. Wilson	X			Mrs. Bachmann		X	
Mr. Perlmutter	X			Mr. Roskam		X	
Mr. Murphy	X			Mr. Marchant			
Mr. Donnelly	X						
Mr. Wexler	X						
Mr. Marshall	X						
Mr. Boren							

The following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment in the nature of a substitute, by Mr. Price (GA), No. 4, was not agreed to by a record vote of 26 yeas and 35 nays (Record vote FC-14):

RECORD VOTE NO. FC-14

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		

RECORD VOTE NO. FC-14—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor			
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones		X	
Mr. Capuano		X		Mrs. Biggert	X		
Mr. Hinojosa		X		Mr. Shays	X		
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca				Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi			
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)				Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam			
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam			
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Feeney, No. 5, providing that the cost of a shareholder vote be borne by requesting shareholder in certain circumstances, was not agreed to by a record vote of 28 yeas, 36 nays, and 1 present (Record vote FC-15):

RECORD VOTE NO. FC-15

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays			
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca				Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite		X	
Mr. Green		X		Mr. Barrett (SC)	X		

RECORD VOTE NO. FC-15—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Cleaver		X	.....	Mr. Renzi	X	.....	.....
Ms. Bean		X	.....	Mr. Gerlach	X	.....	.....
Ms. Moore (WI)		X	.....	Mr. Pearce	X	.....	.....
Mr. Davis (TN)	Mr. Neugebauer	X	.....	.....
Mr. Sires		X	.....	Mr. Price (GA)	X	.....	.....
Mr. Hodes		X	.....	Mr. Davis (KY)	X	.....	.....
Mr. Ellison		X	.....	Mr. McHenry	X	.....	.....
Mr. Klein		X	.....	Mr. Campbell	X	.....	.....
Mr. Mahoney (FL)		X	.....	Mr. Putnam	X	.....	.....
Mr. Wilson		X	.....	Mrs. Bachmann	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Roskam	X	.....	.....
Mr. Murphy		X	.....	Mr. Marchant	X	.....	.....
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment by Mr. Pearce, No. 6, on compensation to non-executives paid over \$1 million, was not agreed to by a record vote of 15 yeas, 47 nays, and 4 present (Record vote FC-16):

RECORD VOTE NO. FC-16

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus		X	.....
Mr. Kanjorski	Mr. Baker .....		.....	.....
Ms. Waters		X	.....	Ms. Pryce (OH)		X	.....
Mrs. Maloney		X	.....	Mr. Castle		X	.....
Mr. Gutierrez		X	.....	Mr. King (NY)		X	.....
Ms. Velázquez		X	.....	Mr. Royce		X	.....
Mr. Watt		X	.....	Mr. Lucas		X	.....
Mr. Ackerman		X	.....	Mr. Paul		X	.....
Ms. Carson		X	.....	Mr. Gillmor		X	.....
Mr. Sherman		X	.....	Mr. LaTourette		X	.....
Mr. Meeks		X	.....	Mr. Manzullo		X	.....
Mr. Moore (KS)		X	.....	Mr. Jones		X	.....
Mr. Capuano		X	.....	Mrs. Biggert			X
Mr. Hinojosa		X	.....	Mr. Shays	X	.....	.....
Mr. Clay		X	.....	Mr. Miller (CA)	X	.....	.....
Mrs. McCarthy		X	.....	Mrs. Capito		X	.....
Mr. Baca	Mr. Feeney			X
Mr. Lynch		X	.....	Mr. Hensarling .....			.....
Mr. Miller (NC)		X	.....	Mr. Garrett (NJ)			X
Mr. Scott		X	.....	Ms. Brown-Waite			X
Mr. Green		X	.....	Mr. Barrett (SC)	X	.....	.....
Mr. Cleaver		X	.....	Mr. Renzi	X	.....	.....
Ms. Bean		X	.....	Mr. Gerlach	X	.....	.....
Ms. Moore (WI)		X	.....	Mr. Pearce	X	.....	.....
Mr. Davis (TN)		X	.....	Mr. Neugebauer	X	.....	.....
Mr. Sires		X	.....	Mr. Price (GA)	X	.....	.....
Mr. Hodes		X	.....	Mr. Davis (KY)	X	.....	.....
Mr. Ellison		X	.....	Mr. McHenry	X	.....	.....
Mr. Klein		X	.....	Mr. Campbell	X	.....	.....
Mr. Mahoney (FL)		X	.....	Mr. Putnam	X	.....	.....
Mr. Wilson		X	.....	Mrs. Bachmann	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Roskam	X	.....	.....
Mr. Murphy		X	.....	Mr. Marchant	X	.....	.....
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment by Mr. Pearce, No. 7, regarding compensation to individuals making over \$1 million, was not agreed to by a record vote of 11 yeas, 52 nays, and 2 present (Record note FC-17):

RECORD VOTE NO. FC-17

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus		X	
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)		X	
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez		X		Mr. Royce		X	
Mr. Watt		X		Mr. Lucas		X	
Mr. Ackerman		X		Mr. Paul		X	
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette		X	
Mr. Meeks		X		Mr. Manzullo		X	
Mr. Moore (KS)		X		Mr. Jones		X	
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays		X	
Mr. Clay		X		Mr. Miller (CA)		X	
Mrs. McCarthy		X		Mrs. Capito		X	
Mr. Baca				Mr. Feeney			X
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)			
Mr. Scott		X		Ms. Brown-Waite		X	
Mr. Green		X		Mr. Barrett (SC)		X	
Mr. Cleaver		X		Mr. Renzi		X	
Ms. Bean		X		Mr. Gerlach		X	
Ms. Moore (WI)		X		Mr. Pearce		X	
Mr. Davis (TN)		X		Mr. Neugebauer		X	
Mr. Sires		X		Mr. Price (GA)		X	
Mr. Hodes		X		Mr. Davis (KY)		X	
Mr. Ellison		X		Mr. McHenry		X	
Mr. Klein		X		Mr. Campbell		X	
Mr. Mahoney (FL)		X		Mr. Putnam		X	
Mr. Wilson		X		Mrs. Bachmann		X	
Mr. Perlmutter		X		Mr. Roskam		X	
Mr. Murphy		X		Mr. Marchant		X	
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Putnam, No. 8, on deferred compensation exemption, was not agreed to by a record vote of 28 yeas, 38 nays, and 1 present (Record vote FC-18):

RECORD VOTE NO. FC-18

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce		X	
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays	X		

RECORD VOTE NO. FC-18—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite		X	
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Campbell, No. 9, on majority-elected board exemption, was not agreed to by a record vote of 29 yeas, 37 nays, and 1 present (Record vote FC-19):

RECORD VOTE NO. FC-19

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays	X		
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		

RECORD VOTE NO. FC-19—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Murphy		X	.....	Mr. Marchant	X	.....	.....
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment by Mr. McHenry, No. 11, on shareholder vote, was not agreed to by a record vote of 21 yeas, 45 nays, and 1 present (Record vote FC-20):

RECORD VOTE NO. FC-20

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski	Mr. Baker .....			.....
Ms. Waters		X	.....	Ms. Pryce (OH)	X	.....	.....
Mrs. Maloney		X	.....	Mr. Castle	X	.....	.....
Mr. Gutierrez		X	.....	Mr. King (NY)	X	.....	.....
Ms. Velázquez		X	.....	Mr. Royce		X	.....
Mr. Watt		X	.....	Mr. Lucas	X	.....	.....
Mr. Ackerman		X	.....	Mr. Paul		X	.....
Ms. Carson		X	.....	Mr. Gillmor .....			.....
Mr. Sherman		X	.....	Mr. LaTourette		X	.....
Mr. Meeks		X	.....	Mr. Manzullo	X	.....	.....
Mr. Moore (KS)		X	.....	Mr. Jones		X	.....
Mr. Capuano		X	.....	Mrs. Biggert			X
Mr. Hinojosa		X	.....	Mr. Shays		X	.....
Mr. Clay		X	.....	Mr. Miller (CA)	X	.....	.....
Mrs. McCarthy		X	.....	Mrs. Capito	X	.....	.....
Mr. Baca		X	.....	Mr. Feeney	X	.....	.....
Mr. Lynch		X	.....	Mr. Hensarling	X	.....	.....
Mr. Miller (NC)		X	.....	Mr. Garrett (NJ)	X	.....	.....
Mr. Scott		X	.....	Ms. Brown-Waite		X	.....
Mr. Green		X	.....	Mr. Barrett (SC)	X	.....	.....
Mr. Cleaver		X	.....	Mr. Renzi	X	.....	.....
Ms. Bean		X	.....	Mr. Gerlach		X	.....
Ms. Moore (WI)		X	.....	Mr. Pearce	X	.....	.....
Mr. Davis (TN)		X	.....	Mr. Neugebauer	X	.....	.....
Mr. Sires		X	.....	Mr. Price (GA)	X	.....	.....
Mr. Hodes		X	.....	Mr. Davis (KY)	X	.....	.....
Mr. Ellison		X	.....	Mr. McHenry	X	.....	.....
Mr. Klein		X	.....	Mr. Campbell		X	.....
Mr. Mahoney (FL)		X	.....	Mr. Putnam	X	.....	.....
Mr. Wilson		X	.....	Mrs. Bachmann	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Roskam		X	.....
Mr. Murphy		X	.....	Mr. Marchant	X	.....	.....
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment by Mr. McHenry, No. 12, on disclosure of vote to pension fund beneficiaries, was not agreed to by a record vote of 26 yeas, 39 nays, and 1 present (Record vote FC-21):

RECORD VOTE NO. FC-21

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski	Mr. Baker .....			.....
Ms. Waters		X	.....	Ms. Pryce (OH)	X	.....	.....
Mrs. Maloney		X	.....	Mr. Castle	X	.....	.....

RECORD VOTE NO. FC-21—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce		X	
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul		X	
Ms. Carson		X		Mr. Gillmor			
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays	X		
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce			
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell		X	
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Garrett, No. 13, setting conditions triggering a vote, was not agreed to by a record vote of 28 yeas, 39 nays, and 1 present (Record vote FC-22):

RECORD VOTE NO. FC-22

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo		X	
Mr. Moore (KS)		X		Mr. Jones		X	
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays	X		
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		

RECORD VOTE NO. FC-22—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Garrett, No. 14, setting conditions triggering a vote, was not agreed to by a record vote of 28 yeas, 39 nays, and 1 present (Record vote FC-23):

RECORD VOTE NO. FC-23

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo		X	
Mr. Moore (KS)		X		Mr. Jones		X	
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays	X		
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Price (GA), No. 15, ensuring fair competition and level playing field, was not agreed to by a record vote of 27 yeas, 32 nays, and 1 present (Record vote FC–24):

RECORD VOTE NO. FC–24

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney				Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo			
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays			
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer			
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)		X	
Mr. Ellison		X		Mr. McHenry		X	
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter				Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant			
Mr. Donnelly							
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren							

An amendment by Mr. Price, No. 16, providing relief from cost of new burdensome regulation, was not agreed to by a record vote of 20 yeas, 42 nays, and 1 present (Record vote FC–25):

RECORD VOTE NO. FC–25

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus		X	
Mr. Kanjorski				Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez		X		Mr. Royce		X	
Mr. Watt		X		Mr. Lucas			
Mr. Ackerman		X		Mr. Paul		X	
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette		X	
Mr. Meeks		X		Mr. Manzullo		X	
Mr. Moore (KS)		X		Mr. Jones		X	
Mr. Capuano		X		Mrs. Biggert			X
Mr. Hinojosa		X		Mr. Shays			

RECORD VOTE NO. FC-25—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter				Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant			
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren							

The following other amendments were also considered by the Committee:

An amendment by Mr. Frank, No. 1, delaying votes to 2009 and providing a rule of construction, was agreed to, as amended, by voice vote.

An amendment by Mr. Shays, No. 1(a), to the amendment by Mr. Frank, regarding fiduciary duty by such board, was agreed to by voice vote.

An amendment by Mr. Roskam, No. 2, on additional disclosures, was offered and withdrawn.

An amendment by Mr. Price, No. 3, ensuring fair competition and level playing field, was offered and withdrawn.

An amendment by Mr. McHenry, No. 10, on votes cast on behalf of pension funds, had a point of order sustained against its consideration.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The goal of H.R. 1257, the Shareholder Vote on Executive Compensation Act, is to provide shareholders with a meaningful say on their company’s executive compensation practices without setting any caps on executive pay or micromanaging the company. It will do this by (1) requiring that public companies include in their annual proxy a nonbinding shareholder vote on the executive compensation disclosures already required by the Securities and Ex-

change Commission; and (2) requiring a separate shareholder vote for additional compensation that is tied to the sale or purchase of a company.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 13, 2007.

Hon. BARNEY FRANK,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1257, the Shareholder Vote on Executive Compensation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 1257—Shareholder Vote on Executive Compensation Act

H.R. 1257 would require all companies that trade stock on public exchanges to allow shareholders to vote annually to approve the compensation received by executives. Additionally, public companies, in the event of a proposed sale, acquisition, merger, or consolidation, would be required to allow shareholders to vote on compensation agreements between the entity acquiring the company and principal executive officers of the company to be acquired. In either case, the results of the shareholder votes would not be binding on the board of directors, and would apply only to shareholders' meetings occurring on or after January 1, 2009. The bill would require the Securities and Exchange Commission (SEC) to develop regulations to implement the bill's requirements.

Based on information from the SEC, CBO estimates that implementing H.R. 1257 would cost about \$1 million in 2008 to develop regulations, and less than \$500,000 per year thereafter to review and monitor compliance by companies affected by the regulations. Such spending would be subject to the availability of appropriated funds; enacting the bill would not affect direct spending or receipts.

H.R. 1257 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 1257 would impose private-sector mandates, as defined in UMRA, on publicly traded companies and entities making certain proposals by proxy solicitation. The bill would require them, beginning on January 1, 2009, to allow a nonbinding vote by shareholders on certain executive compensation and to make certain disclosures related to such compensation. Based on information from industry and government sources, CBO estimates that the cost to comply with those mandates would fall below the annual threshold established by UMRA (\$131 million in 2007, adjusted annually for inflation).

According to government sources, about 6,000 publicly traded companies would be required to provide shareholder votes on executive compensation each year. The cost of the mandate would be the expenditure to cover any additional programming, paper, printing, postage, and tabulation to allow for the shareholder vote. Based on information from industry and government sources, CBO expects that the incremental cost to provide shareholder voting would fall well below the annual threshold for private-sector mandates.

The bill also would require any entity making a proposal by proxy solicitation regarding an acquisition, merger, sale, or other disposition of substantially all the assets of an issuer, to disclose in the solicitation materials any agreements or understandings concerning any type of compensation, such as golden parachutes, related to the disposition. In addition, the bill would require those entities to allow a separate shareholder vote to approve such agreements or understandings in the proxy solicitation materials containing the disclosure. According to industry and government sources, such proxy solicitations occur infrequently. Therefore, CBO expects that the incremental cost for the industry to provide the disclosures and shareholder voting would be minimal.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1257 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “Shareholder Vote on Executive Compensation Act.”

Section 2. Shareholder vote on executive compensation disclosures

This section requires that public companies include, in their annual proxies, a nonbinding shareholder vote on their executive compensation disclosures; and hold an additional nonbinding advisory vote if the company awards a new golden parachute package while simultaneously negotiating the purchase or sale of the company.

The annual nonbinding advisory vote is designed to give shareholders a mechanism for supporting or opposing a company’s executive compensation plan without micromanaging the company. Knowing that they will be subject to some collective shareholder action will help give boards more pause before approving a questionable compensation plan. As is the case in other countries, we expect this tool will improve dialogue between management and shareholders on compensation and make compensation a more efficient tool for improving/rewarding management performance.

The rare second vote is designed to help address a CEO’s natural conflict of interest when negotiating the price of a company while simultaneously negotiating an additional personal exit package (e.g., as noted above, a CEO may be willing to sell the company for less or pay more for another if he/she personally receives a larger package—thereby reducing shareholder value). This provision would not apply to long-disclosed “change in ownership” agreements—and would only apply to new provisions added while negotiating the sale/purchase.

This section also clarifies that the results of the shareholder vote (e.g., approval or disapproval) will be nonbinding on a company’s board or its shareholders. The results will create no new duties on the board nor be used to limit any other mechanisms available to

shareholders such as to offer other executive compensation proposals on their company's proxy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**SECTION 16 OF THE SECURITIES EXCHANGE ACT OF
1934**

SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

(a) * * *

* * * * *

(h) *ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.*—

(1) *IN GENERAL.*— Any proxy or consent or authorization for an annual or other meeting of the shareholders occurring on or after January 1, 2009, shall permit a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission's compensation disclosure rules (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material). The shareholder vote shall not be binding on the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

(2) *SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.*—

(A) *DISCLOSURE.*— In any proxy solicitation material for an annual or other meeting of the shareholders occurring on or after January 1, 2009, that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy solicitation material, in a clear and simple form in accordance with regulations of the Commission, any agreements or understandings that such person has with any principal executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that are based on or otherwise relate to the acquisition, merger, consolidation, sale, or other disposition, and that have not been subject to a shareholder vote under paragraph (1).

(B) *SHAREHOLDER APPROVAL.*— The proxy solicitation material containing the disclosure required by subparagraph (A) shall require a separate shareholder vote to approve such agreements or understandings. A vote by the shareholders shall not be binding on the board of directors and shall not be construed as overruling a decision by such

board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

DISSENTING VIEWS ON H.R. 1257

H.R. 1257 gives the Securities and Exchange Commission (SEC) the power to force publicly traded corporations to conduct shareholder votes on non-binding resolutions concerning the compensation packages of Chief Executive Officers (CEOs). Giving the SEC the power to require shareholder votes on any aspect of corporate governance—even on something as seemingly inconsequential as a non-binding resolution—illegitimately expands federal authority into questions of private governance.

In a free market, shareholders who are concerned about CEO compensation are free to refuse to invest in corporations that do not provide sufficient information regarding how CEO salaries are set or do not allow shareholders a say in setting compensation packages. Since shareholders are corporations' owners, the CEO and board of directors have a great incentive to respond to shareholders' demands. In fact, several corporations have recently moved to amend the ways they determine executive compensation in order to provide increased transparency and accountability to shareholders.

Some shareholders may not care about a CEO's compensation package; instead they may want to devote time at shareholders' meetings to reviewing corporate environmental policies or ensuring the corporation has "family-friendly" workforce policies. If H.R. 1257 becomes law, the concerns of those shareholders will take a back seat to corporations' attempts to meet the demands of Congress.

It is ironic that Congress would concern itself with high salaries in the private sector when, according to data collected by the CATO Institute, federal employees, on average, make twice as much as their private sector counterparts. One of the examples of excessive compensation cited by the supporters of the bill is the multi-million dollar package paid to the former CEO of Freddie Mac. As a government sponsored enterprise that, along with its counterpart Fannie Mae, received almost 20 billion dollars worth of indirect federal subsidies in fiscal year 2004 alone, Freddie Mac is hardly a poster child for the free market!

Past government actions have made it more difficult for shareholders to hold CEOs and boards of directors accountable for disregarding shareholder interests by, among other things, wasting corporate resources on compensation packages and golden parachutes unrelated to performance. During the 1980s, so-called corporate raiders helped keep corporate management accountable to shareholders through devices such as "junk" bonds that made corporate takeovers easier.

The backlash against corporate raiders included the enactment of laws that made it more difficult to launch hostile takeovers. Bruce Bartlett, writing in the *Washington Times* in 2001, commented on

the effects of these laws, “Without the threat of a takeover, managers have been able to go back to ignoring shareholders, treating them like a nuisance, and giving themselves bloated salaries and perks, with little oversight from corporate boards. Now insulated from shareholders once again, managers could engage in unsound practices with little fear of punishment for failure.” The federal “crackdown” on corporate raiders, combined with provisions in Sarbanes-Oxley disqualifying the people who are the most capable of serving as shareholder watchdogs from serving on corporate boards, contributed to the disconnect between CEO salaries and creation of shareholder value that is being used to justify another expansion of the regulatory state.

In addition to repealing laws that prevent shareholders from exercising control over corporations, Congress should also examine United States monetary policy’s effects on income inequality. When the Federal Reserve Board injects credit into the economy, the result is at least a temporary rise in incomes. However, those incomes do not rise equally. People who first receive the new credit—who in most instances are those already at the top of the economic pyramid—receive the most benefit from the Fed’s inflationist policies. By the time those at the lower end of the income scale experience a nominal rise in incomes, they must also contend with price inflation that has eroded their standard of living. Except for the lucky few who take advantage of the new credit first, the negative effects of inflation likely more than outweigh any temporary gains in nominal income from the Federal Reserve’s expansionist policies.

For evidence of who really benefits from a system of fiat money and inflation, consider that in 1971, before President Nixon severed the last link of the American currency to gold, the typical CEO’s salary was 30 times higher than the average wage of the typical employee; today it is 500 times higher.

Explosions in CEO salaries can be a sign of a federal credit bubble, which occurs when Federal Reserve Board-created credit flows into certain sectors such as the stock market or the housing market. Far from being a sign of the health of capitalism, excessive CEO salaries in these areas often signal that a bubble is about to burst. When a bubble bursts, people at the bottom of the economic ladder bear the brunt of the bust.

Instead of imposing new laws on private companies, Congress should repeal the laws that have weakened the ability of shareholders to discipline CEOs and boards of directors that do not run corporations according to the shareholders’ wishes. Congress should also examine how fiat money contributes to income inequality. I therefore request that my colleagues join me in opposing H.R. 1257 and instead embrace a pro-freedom, pro-shareholder, and pro-worker agenda of free markets and sound money.

RON PAUL.