

Executive Excess 2012: 19th Annual Executive Pay Survey

The CEO Hands in Uncle Sam's Pocket

How our tax dollars subsidize exorbitant executive pay



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NOTE: This is a corrected version of the report as of August 22, 2012. Halliburton was deleted from our list of companies that paid their CEOs more than they paid in federal corporate income taxes after we discovered that they deviate from standard reporting by reporting their taxes paid as a negative number in the tax footnote of their annual report. Therefore, the figure we had originally reported as a tax refund was in fact a tax payment.



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Table of Contents

| | |
|--|----|
| Key Findings | 1 |
| Introduction | 3 |
| <i>Part One:</i> | |
| Executives who make more than their companies pay in federal income taxes | 5 |
| Case Studies: Executives who out-earn their firm's corporate income tax bill | |
| <i>Part Two:</i> | |
| Executives who reap rewards from loopholes that encourage excessive pay | 11 |
| Unlimited tax deductibility of executive pay | |
| Unlimited deferred compensation | |
| Preferential treatment of carried interest | |
| Stock option accounting double standard | |
| Box: Putting taxpayer subsidies for executive pay to better use | |
| <i>Part Three:</i> | |
| Executives who have saved the most from the Bush tax cuts | 18 |
| <i>Part Four:</i> | |
| Executive Pay Reform Scorecard | 20 |
| The Passed | |
| The Pending | |
| The Promising | |
| Appendix 1: Companies that paid their CEOs more than Uncle Sam in 2011: compensation, taxes, tax havens, global profits, and headquarters | 32 |
| Appendix 2: Frequently asked questions about corporate tax research..... | 35 |
| Appendix 3: Executives who have saved the most from the Bush tax cuts | 37 |
| Endnotes..... | 40 |

Key Findings

CEOs continue to take home more than their companies pay Uncle Sam in taxes

- In 2011, for the second year in a row, one full quarter of America's 100 highest-paid corporate chief executives took home more in CEO pay than their company paid in federal income taxes. Seven firms made the list in both 2011 and 2010.
- Once again, low corporate tax bills—or large refunds¹—cannot be explained by low profits. On average, the 25 firms had nearly \$1 billion in U.S. pre-tax income but still received net tax benefits that averaged \$129 million.
- The CEOs of these 25 firms received \$20.6 million in average total compensation last year. That's a 24 percent increase over the average for last year's list of 2010's tax dodging executives.
- Two of the firms that paid their CEOs more than Uncle Sam—Citigroup and AIG—owe their very continued existence to taxpayer bailouts.
- Combined, the 25 firms have 533 subsidiaries in tax-haven countries such as the Cayman Islands, Bermuda, and Gibraltar.

Executives are gaining big-time from tax loopholes that encourage and reward excessive pay

- The four most direct tax subsidies for excessive executive pay cost taxpayers an estimated \$14.4 billion per year—\$46 for every American man, woman, and child. That amount could also cover the annual cost of hiring 211,732 elementary-school teachers or creating 241,593 clean-energy jobs.
- The tax code currently places no real limit on how much “performance-based” compensation corporations can deduct from their taxes. The top five 2011 beneficiaries of this loophole had a combined \$232 million in deductible “performance-based” pay. Absent this loophole, the tax bills for these companies would have jumped \$81 million, or an average of more than \$16 million *per CEO*.
- The tax code also allows corporations to defer unlimited sums of CEO compensation. The top five executive beneficiaries of this loophole in 2011 deferred \$48 million in compensation. Without this loophole, their combined personal tax bills would have been \$17 million higher.
- Four years after the crash, the billionaire hedge fund managers at Wall Street's pinnacle still pay taxes at lower rates than their secretaries, thanks to the preferential treatment of “carried interest” income.
- The top five corporate beneficiaries of the stock option accounting loophole, which allows corporations to show one set of books to shareholders and another to the IRS, reduced their federal and state tax bills in 2010 by almost \$683 million.

Executives are saving mega millions from the Bush tax cuts

- CEOs have benefited enormously from the Bush tax cuts for upper-income taxpayers. Last year, 57 CEOs saved more than \$1 million on their personal income tax bills, thanks to these Bush-era cuts.
- The top CEO beneficiary of the Bush tax cuts in 2011, James Mulva of ConocoPhillips, saved \$6.7 million. Mulva cashed in more than \$140 million in stock options in his last year at the energy company's helm.

Despite continued executive excess, CEO pay reforms are stalled

- Regulators have failed to implement most of the executive pay-related provisions in the 2010 Dodd-Frank financial reform legislation.
- Among the delayed rules is a requirement that firms report the ratio between their CEO and employee pay. The pay gap between CEOs of S&P 500 companies and average U.S. workers widened last year to 380-to-1, according to the AFL-CIO. In 1980, the average large company CEO received 42 times the average worker's pay.
- In one sign of growing public outrage, executive pay proposals failed to receive a majority of shareholder support at 53 U.S. companies in 2012, up from 40 last year. Three of these firms were on our list of 25 companies that paid their CEO more than they paid Uncle Sam in income taxes in 2011: Chesapeake Energy, Citigroup, and Cooper Industries. The non-binding shareholder "say on pay" vote is one of the few Dodd-Frank rules actually in force.

Introduction

In Bridgeport, Connecticut, a high school teacher ends the school year without enough paper for final exams.² In Pennsylvania, 61,000 poor residents, almost all of them disabled, lose their \$200 monthly general assistance grant.³ In Monterey County, California, massive cutbacks in judicial system funding mean stalking victims have a harder time getting restraining orders.⁴

Welcome to austerity, the new normal for the American public sector. Nationwide, budget cuts have axed 627,000 public service jobs since June 2009, all but 6 percent of that total at the state and local level.⁵ Schools, health clinics, fire stations, parks, and recreation facilities—virtually no public service has gone unsqueezed. Tax dollars haven't seemed this scarce in generations.

Yet tens of billions of these scarce tax dollars are getting diverted. These tax dollars are flowing from average Americans who depend on public services to the kingpins of America's private sector. They're subsidizing, directly and indirectly, the mega-million paychecks that go to the top executives at our nation's biggest banks and corporations.

Exorbitant CEO pay packages have, of course, been outraging Americans for quite some time now. Every new annual CEO pay report seems to bring a rash of predictably angry editorials and calls for reform, and this past year has added to the mix a record number of negative shareholder votes on advisory "say on pay" resolutions. But little overall has changed. Wages for average Americans continue to stagnate. Pay for top executives continues to soar.

One key reason why: Our nation's tax code has become a powerful enabler of bloated CEO pay.

Some tax rules on the books today essentially encourage corporations to compensate their executives at unconscionably higher multiples of what their average workers are paid.

Other rules let executives who run major corporations routinely reduce their corporate tax bills. The fewer dollars these corporations pay in taxes, the more robust their cash flow and eventual earnings. The more robust these cash and earnings numbers, the higher the "performance-based" pay for the CEOs who produce them.

In effect, we're rewarding corporate executives for gaming the tax system. Our tax code is helping the CEOs of our nation's most prosperous corporations pick Uncle Sam's pocket.

In this yearly Institute for Policy Studies *Executive Excess* report, our 19th consecutive, we take a close look at the most lucrative tax incentives and subsidies behind bloated CEO pay.

We begin by examining the incredibly perverse outcomes these incentives and subsidies are generating. Appreciable numbers of American corporate executives now annually take home more in compensation than the billion-dollar corporations they run pay in federal income taxes.

We first pointed out this shameful absurdity in last year's edition of *Executive Excess*. The cohort of CEOs who "earn" more than their companies pay in federal corporate income tax has increased since

that report brought major media attention to the phenomenon.

In Part Two of our 2012 *Executive Excess* report, we highlight those executives who have reaped the highest rewards from the four major tax code provisions that actively encourage outrageously disproportionate executive pay.

In Part Three, we identify the top executives who have benefited the most from what have become known as “the Bush tax cuts”—the reductions in federal income tax rates on top-bracket, capital gains, and dividend income enacted in 2001 and 2003.

Why discuss federal personal income tax rates in a rundown of tax loopholes that encourage CEO pay excess? Simply put, low tax rates on high incomes serve as a powerful incentive for companies to ladle out outrageous executive compensation. The modern era of CEO pay excess only began when federal income tax rates on income in the top tax bracket started plummeting.

The highest federal marginal tax rate on income over \$400,000 stood at 91 percent throughout the 1950s and early 1960s. Few executives in this era ever made more than 30 to 40 times the pay of their workers. By 1981, the year Ronald Reagan entered the White House, this top rate had dropped to 70 percent. Under Reagan, the top rate quickly fell further, first to 50, then to 28 percent.

The current top federal tax rates: 35 percent on “ordinary” income and just 15 percent on dividends and capital gains. The pay ratio between CEOs of S&P 500 Index companies and average U.S. workers widened to 380-to-1 in 2011. In 1980, the average large company CEO only received 42 times the average worker’s pay.⁶

What can be done to end today’s incredibly gross pay divide between top executives and average workers? There is certainly no shortage of executive pay reform ideas. We survey these reform notions in Part Four with a “scorecard” that notes those reforms that have already been enacted, those still pending before Congress, and those proposals not yet before Congress that we believe hold the most CEO pay-deflating promise.

Some of these promising proposals have surfaced elsewhere in the world, and that makes for a rather fascinating irony. Corporate America has exported executive compensation excess all over the globe. Now the rest of the world is exporting back to us bold new ideas for ending this scourge.

In France, for instance, the newly elected government of François Hollande is ordering those companies where the French government holds a majority stake to limit CEO pay to 20 times the pay of the company’s lowest-paid worker. In the works for next year: a new 75 percent marginal tax rate on income over 1 million euros, the equivalent of about \$1.3 million.

A year ago, ideas like these would have struck most Americans as preposterous. But our political culture is changing. Everything from the Occupy movement to the perpetual state of scandal in the American financial system has Americans paying closer attention to executive excess than ever before.

The tax outrages we detail in this new *Executive Excess* report, we suspect, might just have even more Americans paying attention.

Part One

Executives who make more than their companies pay in federal income taxes

For the second year in a row, we have analyzed the compensation of America's 100 highest-paid CEOs to determine how many of them were paid more than their company paid in 2011 federal income taxes.

Our basic finding: 25 U.S. corporations last year gave their CEO more than they paid in taxes to Uncle Sam.

The 25 CEOs who pocketed more than their company paid in federal income taxes in 2011 raked in average compensation worth \$20.6 million, up 24 percent over the previous year's list of 25 executives who fit this profile.

Seven firms made the list both years: Boeing, Chesapeake Energy, Ford Motor, International Paper, Marsh & McLennan, Motorola Mobility Holdings, and Motorola Solutions.

What explains the small sums these companies paid in taxes — or the large tax refunds they received? Not low profits. On average the 25 firms registered nearly \$1 billion in U.S. pre-tax income and still managed to reap net tax benefits that averaged \$129 million.

Only seven of the 25 companies in this year's list of high-CEO-pay, low-corporate-tax companies reported losses in U.S. pre-tax income, and only three reported losses on total global operations. The low IRS bills these companies faced reflected tax avoidance pure and simple.

(See details on the 25 tax dodging firms and methodology in Appendices 1 and 2.)

How do corporations avoid taxes?

Some tax breaks do have a redeeming social value. Most don't. In fact, most create incentives for things companies would have done anyway or reward corporate behaviors that deserve no encouragement from taxpayers, especially at a time of fiscal crisis.

What sort of tax breaks do we have in mind here? Four tax-dodging opportunities stand out.

Tax Havens

Of the 25 firms we found that paid their CEO more than they paid in federal income taxes, 18 operate subsidiaries in tax havens. These countries, such as the Cayman Islands or the Isle of Man, operate as secrecy jurisdictions where corporations can shift around profits, avoid accountability, and reduce tax obligations. The 25 firms on our list, all combined, operated 533 tax-haven subsidiaries last year.⁷

These hefty numbers are no surprise. Offshoring corporate activities and transactions to low- or no-tax jurisdictions offers CEOs a lucrative tax dodge. Over half of global trading activity currently passes through tax havens, and collectively, as the London-based Tax Justice Network recently reported, the world's wealthiest have \$21-\$32 trillion stashed in them.⁸ Some 90 percent of the income from assets in these tax havens, estimates former McKinsey & Company

chief economist James Henry, goes totally unreported.⁹ Citizens for Tax Justice estimates that tax evasion by individuals costs the Treasury \$70 billion a year while corporate tax avoidance adds an additional \$90 billion revenue loss.¹⁰

Corporations can easily shift profits offshore through a common corporate accounting technique known as “transfer pricing.” Technology and drug companies, for instance, regularly have shell companies in tax havens hold their intellectual property rights. The shells then charge their U.S.-based operations inflated amounts to tap these rights. The subsequent inflated costs get deducted off U.S. taxes. The overseas tax haven profits go un- or lightly taxed.

Accelerated Depreciation Provisions of the 2009 Economic Stimulus Plan

Our tax code lets companies write off the value of their investments in buildings and equipment more quickly than the useful life of the asset. This is called accelerated depreciation. The 2009 Economic Stimulus Act enormously expanded this corporate capacity to “depreciate.” The legislation essentially lets corporations immediately write off 100 percent of the value of their investments.

Since 2009, in effect, American taxpayers have been footing 35 percent—the standard corporate income tax rate—of the cost of corporate purchases for everything from new machines to corporate aircraft and office redecoration.

The 2009 legislation aimed to create incentives for corporations to make purchases and help get a Great Recession economy moving again. But the legislation, in real daily corporate life, has created a situation where taxpayers foot the bill for many investments companies would have made anyway.

In 2011, telecom giant AT&T paid no corporate income taxes, thanks largely to the 2009 accelerated depreciation provisions provide.

Research and Experimentation Tax Credit

The Research and Experimentation Tax Credit allows companies to deduct off their federal tax bills 14 percent of what they shell out for research and development.

This tax credit has helped develop breakthrough technologies, but more typically underwrites far more mundane corporate R&D that would have been conducted anyway as a part of normal business. This credit last year saved Boeing \$146 million.

Energy Development Tax Subsidies

Many energy tax incentives date back nearly a century to a time when exploring for oil and gas involved substantial financial risks. Modern technologies have greatly reduced the risk of drilling a dry hole, but energy tax rules remain largely unchanged.

These energy tax credits form the keystone of the tax-dodging strategies that two top energy companies, Devon Energy and Chesapeake Energy, use to minimize their federal income tax expenses.

These tax breaks have helped U.S. corporations enormously shrink their contribution for the nation's upkeep. The share of U.S. federal revenue generated by corporate income taxes has dropped from 35 percent in 1945, to just 7.9 percent in 2011—a 50-year low.¹¹ In 1952, the effective corporate income tax rate stood at 52.8 percent. The 2011 rate on profits earned within the U.S. was 12.1 percent.¹²

Case Studies

Executives who out-earn their federal corporate income tax bill

The ranks of chief executives who have been pocketing more in pay than their companies pay in taxes include some of the most familiar names in America's corporate culture. We highlight here six executives whose stories give a sense of the breadth of corporate tax-avoiding creativity.



Vikram Pandit, Citigroup

A special IRS waiver keeps tax refunds rolling in

2011 CEO compensation: \$14.9 million

2011 Citigroup federal income tax bottom line: \$144 million refund

Four years after the bailout that saved the firm from ruin, Citigroup and CEO Vikram Pandit are still living off taxpayer largesse. The firm, now profitable again, obtained a \$144 million tax refund last year, thanks to some spectacular preferential tax treatment.

Companies undergoing significant changes in ownership normally have to forfeit tax benefits associated with past losses, a wise tax code rule designed to prevent profitable companies from buying up unprofitable ones for tax avoidance purposes.

Under this tax code rule, Citigroup should have been required to give up its tax benefits in 2009 when federal officials sold the government's one-third bailout ownership stake in the banking behemoth. But Pandit lobbied hard and won a special exemption. Accounting experts estimate the long-term value of the waiver at several billion dollars.¹³

Citi, of course, owes its very existence to the massive bailout the bank received in 2008. According to the TARP Congressional Oversight Panel, the firm gleaned more government bailout subsidies than any other bank. Its haul totaled nearly half a trillion dollars in assistance through TARP, FDIC, and Fed liquidity programs.¹⁴

Pandit, after receiving \$38.2 million in 2008 compensation, famously agreed to accept a mere \$1 in salary until the troubled firm returned to profitability. But then the firm offered him \$14.9 million for 2011 and shareholders, angered by the firm's dismal stock performance, rebelled. In April 2012, 55 percent of shareholders voted to reject Pandit's outsized pay package. As of July, Citi's board of directors still hadn't revealed whether this nonbinding shareholder vote will trim Pandit's pay package.¹⁵



Miles D. White, Abbott Laboratories
Take 64 tax havens and call me in the morning

2011 CEO compensation: \$19.0 million

2011 Abbott federal income tax bottom line: \$586 million refund

Drug companies have been notorious tax haven abusers. Their considerable “nontangible” marketing and patent assets make shifting profits to offshore tax havens ridiculously easy. How easy? In 2011, 41 percent of the sales Abbott reported were in the U.S. market. Yet the pharmaceutical giant also reported that U.S. operations accounted for only 7 percent of the company’s overall profits.¹⁶

In 2011, Abbott Laboratories had 64 subsidiaries operating in 16 countries considered tax havens. These subsidiaries helped the firm claim a \$586 million tax refund.

Those millions in tax savings are likely to come in handy. After a May 2012 settlement with the Justice Department, the drugmaker must now pay out \$1.6 billion for promoting unapproved uses of Depakote, an epilepsy medication. Abbott, the Justice Department alleges, marketed the drug to nursing homes as a cost-effective way to control patients with dementia and downplayed the firm’s own research that indicated high risks for the elderly.¹⁷



Randall Stephenson, AT&T
Wiring the tax code with subsidies

2011 CEO compensation: \$18.7 million

2011 AT&T federal income tax bottom line: \$420 million refund

Capital-intensive telecom firms like AT&T are major beneficiaries of new “accelerated depreciation” rules that allow companies to turbo-charge tax deductions in the early years of the life of an asset. A 2009 accelerated depreciation rule saved the company \$5.2 billion on their 2011 taxes, according to the firm’s 10-K report.

Even greater savings will likely show up in AT&T’s future annual reports. In 2011, Congress expanded depreciation rules and allowed businesses to deduct the entire cost of new long-term investment purchases.¹⁸ Although billed as an anti-recession move, such tax breaks often result in taxpayers bearing a substantial portion of the cost of investments firms would’ve made anyway.

AT&T chief Randall Stephenson may be a whiz at garnering massive tax refunds. But he has been somewhat less successful at managing his company’s future. The telecom giant had to fork over \$3 billion in cash and \$1 billion worth of wireless spectrum to Deutsche Telekom after a failed takeover attempt of the German firm’s T-Mobile subsidiary. But rather than showing Stephenson the door, AT&T’s board merely sliced \$2 million, less than 10 percent, off Stephenson’s ample pay package.¹⁹



James McNerney, Boeing
Boeing's double dip in Treasury's pool

2011 CEO compensation: \$18.4 million

2011 Boeing federal income tax bottom line: \$605 million refund

Boeing CEO James McNerney chairs the Business Roundtable, which aggressively lobbies for ever more corporate tax breaks. He certainly has plenty of the tax-avoidance knowhow.

In 2011, Boeing grabbed a \$605 million tax refund, despite reporting more than \$5 billion in U.S. pre-tax profits. Over the last decade, the airplane maker has reported \$31.8 billion in U.S. pre-tax profits and still been able to claim total refunds of more than \$2 billion. Boeing, in fact, has only paid federal corporate tax in two of the last 10 years.²⁰

Boeing has avoided the tax collector, in no small part, by getting the rest of us to subsidize the company's R&D. This subsidy last year saved the firm \$137 million.²¹ The Research and Experimentation Tax Credit first crept into the tax code as a temporary measure during the 1981 recession. Lawmakers have since renewed it 13 times.²²

Government investment in basic research and development can be valuable, but the tax credit for R&D as currently structured is subsidizing large, well-resourced high-tech firms like Boeing that would have conducted the research anyway. What's even more disturbing about Boeing's R&D tax credit: The company is already billing the Pentagon for research costs. As the third-largest military contractor, Boeing has landed more than \$54 billion in military deals over the past nine years.²³ America's taxpayers essentially get to pay for Boeing's research twice over.



Robert Benmosche, American International Group
Enjoying a "stealth bailout"

2011 CEO compensation: \$13.9 million

2011 AIG federal income tax bottom line: \$208 million refund

In 2008, AIG's reckless uncovered bets almost collapsed the entire global financial industry. The subsequent federal bailout handed the rogue insurer some \$182 billion.²⁴

Less well-known: AIG also received a perk from the U.S. Treasury that allowed the company to retain its losses to offset against future profits. These tax losses have enabled AIG to report more than \$19 billion in tax-free profits in 2011, an additional "stealth bailout."²⁵

AIG CEO Robert Benmosche has benefited sweetly since the initial 2008 bailout days.²⁶ Despite a loss of nearly \$2 billion in U.S. pre-tax profits, Benmosche took home \$13.9 million in compensation last year, up from \$8.4 million in 2010 and \$2.7 million in 2009.

Meanwhile, in a classic gesture of biting the hand that feeds you, AIG has sued the federal government, still the owner of 60 percent of AIG's shares, seeking \$30 million in interest on the taxes the company overpaid in 1991.²⁷



Aubrey McClendon, Chesapeake Energy
Drilling for loopholes

2011 CEO compensation: \$17.9 million

2011 Chesapeake federal income tax bottom line: \$13 million payment

Chesapeake Energy paid only \$13 million in federal income taxes in 2011, after reporting \$2.8 billion in U.S. pre-tax profits.²⁸ According to Bloomberg, the firm's effective tax rate over the course of its 23-year-history has averaged only about 1 percent.²⁹

Chesapeake and other U.S. oil and gas producers benefit from a "drilling-costs tax benefit" that allows generous income tax deferrals. This tax rule may have made some sense a century ago when drilling involved high risks. But today's technology has enormously reduced the drilling risk of coming up dry.

Archaic tax rules have helped subsidize outrageous rewards for billionaire Chesapeake CEO Aubrey McClendon, all over and above the more than \$1 billion in shady personal loans the CEO has received from the firm's corporate lenders. SEC and IRS investigations into the dark recesses of Chesapeake's compensation history with McClendon are now ongoing.³⁰

Shareholders are speaking out as well. At Chesapeake's most recent annual meeting, 80 percent of shareholder votes went against McClendon's \$17.9 million pay package for 2011.³¹

What can we do to prevent corporate tax dodging?

The specific corporate tax dodges we discuss in this report break no laws. Closing corporate tax loopholes, as a result, will mean changing current tax laws. New legislation recently introduced in Congress would do just that.

The Cut Unjustified Tax (CUT) Loopholes Act (S. 2075), introduced by Senators Carl Levin (D-MI) and Kent Conrad (D-ND), builds on two pieces of legislation previously introduced by Senator Levin, The Stop Tax Havens Abuse Act (S. 1346) and the Ending Excessive Corporate Deductions for Stock Option Act (S. 1375).

The CUT Loopholes Act would close a variety of loopholes that facilitate tax dodging through offshoring. This bill would treat the foreign subsidiaries of U.S. corporations whose management and control occur primarily in the United States as U.S. domestic corporations for income tax purposes.

Passing this legislation would reduce the incentive to shift profits and jobs overseas and could raise an additional \$130 billion over ten years, without raising corporate tax rates, according to the Congressional Joint Tax Committee. The stock option accounting portion of the CUT Loopholes Act would require companies to expense options for tax purposes at the time they are granted, just as companies must already do when they report to shareholders. This portion of the Act would raise an estimated \$25 billion over 10 years.³²

Part Two

Executives who reap rewards from loopholes that encourage excessive pay

The U.S. tax code is riddled with loopholes that allow top executives to boost the after-tax “performance” of the enterprises they manage. In this section, we look at other loopholes that allow corporations to claim generous—and unwarranted—deductions for the resulting “performance-based” pay that goes to these executives.

The table below identifies the four most direct tax subsidies for executive excess. The first and fourth of these subsidies give employers an incentive to dole out excessive executive awards, while the second and third place cash directly into executive pockets.

The estimated potential revenue that could be generated by closing these loopholes amounts to \$14.4 billion per year.

Tax Loopholes that Boost Executive Pay³³

| Loophole | Potential revenue from closing the loophole |
|---|---|
| 1. Unlimited tax deductibility of executive pay | \$9.7 billion |
| 2. Unlimited deferred compensation | \$80.6 million |
| 3. Preferential treatment of carried interest | \$2.1 billion |
| 4. Stock option accounting double standard | \$2.5 billion |
| Total | \$14.4 billion |

Unlimited tax deductibility of executive pay

The more corporations pay their CEO, the lower their tax bill

Annual cost to taxpayers: \$9.7 billion³⁴

Our laws currently impose no meaningful limit on how much corporations can deduct off their income taxes for the expense of executive compensation.

A 1993 law capped executive pay deductions at \$1 million, but left a huge loophole. Corporations can exempt “performance-based” pay. Most companies simply limit top executive salaries to \$1 million or so and then add on to that total various “performance-based” awards, with stock options making up the largest share.

These options supposedly “align” the interests of executives and shareholders. In practice, they align only greed and the tax law. If a firm’s shares decline in value over time, executives lose nothing. In fact, during stock slumps, they often receive boatloads of new options with

lower exercise prices. Stock option gains on the upside, by contrast, have no limit, a reality that encourages high-risk executive behavior.

The unlimited tax deductibility of executive pay loophole operates as a powerful subsidy for excessive compensation. The more corporations pay out in executive compensation, the less they owe in taxes. And average taxpayers wind up paying the bill. According to the Economic Policy Institute, this loophole cost American taxpayers as much as \$9.7 billion in 2010.³⁵

Company proxy statements do not always clearly disclose whether their executive compensation qualifies as “performance-based” under the tax code. Based on the best-available information, the chart below identifies the top five beneficiaries of this loophole in 2011.

These five CEOs had a combined \$232 million in deductible “performance-based” compensation. Without the loophole, the firms’ tax bills related to just these five pay packages would have been \$81 million higher.³⁶

Top Five CEO Beneficiaries of the Tax Deductibility Loophole³⁷

| Company | CEO | Portion of 2011 total compensation qualifying as “performance-based” |
|--|--------------------|--|
| Oracle | Larry Ellison | \$76,010,194 |
| Discovery Communications | David M. Zaslav | \$49,012,201 |
| Viacom | Philippe P. Dauman | \$39,315,306 |
| Motorola Mobility Holdings | Sanjay K. Jha | \$35,973,179 |
| CBS Corporation | Leslie Moonves | \$31,566,789 |
| Total | | \$231,877,669 |
| Potential tax revenue (at 35% corporate income tax rate) | | \$81,157,184 |

Top Deductibility Loophole Beneficiary in 2011: Larry Ellison, Oracle



Business software king Larry Ellison did not rate as the highest-paid U.S. CEO last year, but he amassed the biggest pile of pay dollars that qualified for the deductibility loophole. The Oracle CEO raked in \$63 million in stock options and \$13 million in non-equity incentive pay, for a total of \$76 million in fully deductible “performance-based” pay. Nothing new here for Ellison. Since 2008 he has helped lower his firm’s tax bill by hauling in over \$60 million in options every year.³⁸ What’s he doing with these massive payouts? Recently he purchased a Hawaiian island for somewhere between \$500 and \$600 million.³⁹

What can we do to close the deductibility loophole?

Rep. Barbara Lee (D-Calif.) has introduced a bill, the Income Equity Act (H.R. 382), to deny all firms tax deductions on any executive pay that runs over 25 times the pay of a firm's lowest-paid employee or \$500,000, whichever runs higher. The bill would build on precedents in the TARP and the Affordable Care Act that set a \$500,000 deductibility cap on pay for bailout recipients and health insurance firms.

This approach does not set a ceiling on, or dictate in any way, how much corporations can pay their executives. The bill would instead place a cap on the amount of pay that corporations can deduct off their taxes. Corporations could still freely pay their executives outlandishly large sums. But the federal government—and average American taxpayers—would no longer reward these corporations for their excessive generosity.

The Income Equity Act could have an important impact on lower-level workers as well. By including the option of limiting deductibility to no more than 25 times the pay of the lowest-paid employee, Rep. Lee's bill would encourage corporations to raise pay at the bottom of the corporate pay ladder. The greater the pay for a company's lowest-paid worker, the higher the tax-deductible pay for the company's highest-paid executives.

Unlimited deferred compensation

Dancing all the way to the country club

Annual cost to taxpayers: \$80.6 million⁴⁰

The vast majority of CEOs at large companies now legally shield unlimited amounts of compensation from taxes through special deferred accounts their employers set up.

According to researchers at Equilar, a compensation analytics firm, 79 percent of S&P 500 companies offered such accounts for their top brass in 2010. Equilar put the median value of deferred compensation plans at \$4 million in 2010, a 5 percent increase over the previous year.⁴¹

At least nine CEOs currently have over \$50 million stashed away in tax-deferred retirement accounts.⁴² By contrast, ordinary taxpayers currently face strict limits on how much income they can defer from taxes via 401(k) plans. The cap maxes out at \$22,000 per year for workers over 50.

Unlimited pay deferrals offer the executives who get them an obvious economic advantage. The dollars they stash in deferred-pay pots grow and grow, untaxed, until executives start withdrawing from them.

Top deferral beneficiary in 2011: Michael Duke, Wal-Mart



Wal-Mart CEO Michael Duke socked away \$17,028,615 in his deferred compensation account in 2011, 774 times the amount that a Wal-Mart employee of Duke's age could set aside tax-free. This CEO pay loophole saved Duke nearly \$6 million in 2011 federal income taxes.

| Other top beneficiaries | 2011 deferred compensation | Tax savings in 2011 |
|---|----------------------------|---------------------|
| David Zaslav, Discovery | \$14,133,256 | \$4.9 million |
| James Gorman, Morgan Stanley | \$6,207,978 | \$2.2 million |
| David Novak, YUM Brands | \$5,066,880 | \$1.8 million |
| Douglas Conant, Campbell Soup ⁴³ | \$5,016,732 | \$1.8 million |

The Tax Benefits from Deferring Compensation

A hypothetical based on two taxpayers in the top income tax bracket

| Taxpayer who <i>can</i> defer compensation | Taxpayer who <i>cannot</i> defer compensation |
|---|---|
| 1. Receives compensation in the amount of \$100 | 1. Receives compensation in the amount of \$100 |
| 2. Defers compensation for five years, earning 10 percent return each year, for a total of \$161.05 | 2. Pays a tax of \$35, leaving only \$65 to invest. |
| 3. Amount the taxpayer can pocket after paying a one-time tax of 35 percent: \$104.68 | 3. Amount available to the taxpayer after earning an after-tax return of 6.5 percent per year (10 percent return less 35 percent tax on earnings per year) for five years: \$89.06 |

Source: Based on analysis by the Joint Committee on Taxation⁴⁴

What can we do to close the deferral loophole?

In 2007, Senate Finance Committee chairman Max Baucus (D-Montana) and the panel's ranking minority member, Senator Charles Grassley (R-Iowa), pushed all the way to a House-Senate conference committee legislation that would have limited annual executive pay deferrals to \$1 million per year per executive.⁴⁵

This extremely modest cap, if enacted, would have generated an estimated \$806 million over 10 years.⁴⁶ Attacked fiercely by corporate interests, this proposal did not survive the conference committee deliberations.

Preferential treatment of carried interest

Why hedge fund managers pay a lower tax rate than their secretaries

Annual cost to taxpayers: \$2.1 billion⁴⁷

Our current tax code allows hedge fund managers to pay taxes, as investor Warren Buffett has famously noted, at lower rates than their office receptionists.⁴⁸

The carried-interest loophole plays off the peculiarities of pay practices in private investment funds. In a publicly traded corporation, a CEO pay package typically includes salary, bonus, perks, and stock awards of various sorts. Private investment fund managers take their rewards through two distinctly different revenue streams. They first collect annual management fees, usually set at 2 percent of the capital they oversee. But these wheeler-dealers also collect a share of the profits realized when they sell fund assets.

Within the financial industry, this share goes by the label of “carried interest.” Private investment fund managers usually claim, for themselves, a 20 percent “carried interest” share.

Fund managers report this carried interest as a capital gain, not ordinary income. This categorization, critics note, distorts marketplace reality. Carried interest, they point out, clearly represents payment for the delivery of a professional service—the managing of other people’s money. Such professional fees, everywhere else in the economy, face the same tax rate as ordinary wage and salary income, up to 35 percent for income in the highest tax bracket. Personal injury lawyers, for example, pay ordinary income taxes on the percentage of a client’s award they receive as their fee.

The capital-gains tax rate for most investors has stood at only 15 percent since 2003. On every \$1 million they pocket in “carried interest,” in other words, hedge fund managers save about \$200,000 in taxes.

Top carried-interest beneficiary in 2011: Ray Dalio, Bridgewater Associates

Ray Dalio, last year’s top-earning hedge fund manager, raked in \$3 billion (yes, billion, not million), according to *Forbes*.⁴⁹ The magazine calculates that if Dalio had paid ordinary income tax rates on his earnings, he would have contributed an extra \$450 million to the Treasury.⁵⁰

Other top beneficiaries

James Simons, Renaissance Technologies
Carl Icahn, Icahn Capital Management
Steve Cohen, SAC Capital Advisors
David Shaw, D. E. Shaw & Co.

Personal earnings in 2011

\$2.1 billion
\$2.0 billion
\$600 million
\$580 million

What can we do to close the carried-interest loophole?

In 2007, the House of Representatives passed a tax reform bill, H.R. 3996, that closed the carried interest loophole by defining “carried interest” as ordinary income. The Senate did not take action on this legislation. Several subsequent attempts to close the loophole have failed.

A carried-interest tax fix appears in President Obama’s proposed budget for FY2013.⁵¹

Stock option accounting double standard

Show one set of books to shareholders, another to the IRS

Annual cost to taxpayers: \$2.5 billion⁵²

U.S. corporations annually supply shareholders with a value for the stock options granted to executives. Corporations calculate this expense based on standardized accounting assumptions about when the options will be exercised and the stock's trading price on those future dates.

But companies do not take any deduction for executive stock options on their tax returns until their executives exercise the options, usually years later. The amount of compensation the executive receives on the exercise date can be substantially higher than the book expense originally estimated for the options. That gives the executive’s corporation a larger option value to deduct off its taxes. Corporations do not report this larger value to shareholders.

The result: earnings reported to shareholders end up overstated, a neat twist that allows executives to grab more in “performance-based” pay, and the corporate tax bill ends up reduced. A win-win for everyone except the average American taxpayer.

For many companies, the numbers involved here can be significant. In 2010, Apple deducted \$742 million in “excess stock compensation” expenses from its income and slashed its federal and state tax bills by \$260 million, while Goldman Sachs shaved \$123 million from its taxes, according to a 2011 report by Citizens for Tax Justice.⁵³

CTJ has identified 170 companies that collectively saved \$2 billion in taxes in 2010, an average excess stock compensation subsidy of \$11 million per company.

But these impressive numbers pale against the tax savings generated earlier this year when Facebook launched its public offering. Facebook founders all took the bulk of their compensation in stock during the company’s early years. With the stock having soared in value, Facebook claimed a \$16 billion deduction for “excess stock-based compensation” on its tax returns. The deduction will save the company \$5.6 billion in taxes.⁵⁴

Tax laws allow companies to apply these sorts of deductions retroactively. Facebook now stands poised to collect an additional \$500 million refund check from the IRS, a sum that will return all the taxes the company has paid since becoming profitable.

Top beneficiary of the accounting double standard in 2010: Apple



This tech giant deducted \$743 million and received \$260 million in tax subsidy. Apple established a new CEO pay record in 2011 with \$374 million for new CEO Timothy D. Cook. At the same time the company has been struggling with revelations that the Chinese workers who assemble Apple phones endure sweatshop-like conditions. The labor cost of the iconic iPhone runs only about \$8, less than 2 percent of the product's retail price.⁵⁵

| Other top beneficiaries | "Excess stock compensation" deduction in 2010 | Related tax subsidy |
|-------------------------|---|---------------------|
| Goldman Sachs | \$352 million | \$123 million |
| Hewlett Packard | \$294 million | \$103 million |
| EMC | \$282 million | \$99 million |
| Exxon Mobil | \$280 million | \$98 million |

Source: Citizens for Tax Justice⁵⁶

What can we do to close the option accounting loophole?

The Ending Excess Corporate Deductions for Stock Options Act (S. 1375) would limit corporate tax deductions to the amount expensed for financial statement (book) purposes at the time of the option grant. The Joint Committee on Taxation has estimated that closing this loophole would add an estimated \$25 billion to federal tax revenues over 10 years.⁵⁷ This appears to be very conservative, considering (as noted above) that one company alone—Facebook—saved an estimated \$5.6 billion on its taxes, thanks to this loophole.

Putting taxpayer subsidies for executive pay to better use

The estimated cost to taxpayers of the four most direct tax subsidies for excessive executive pay amount to \$14.4 billion per year. How significant a contribution to the public good could this total make? A quite substantial contribution.

What \$14.4 billion could pay for:⁵⁸

Health care for 7,370,673 low-income children for one year **OR**

Salaries for 211,732 elementary school teachers for one year **OR**

Head Start slots for 1,892,024 pre-school children for one year **OR**

VA medical care for 1,843,510 veterans for one year **OR**

Salaries for 206,826 police or sheriff's patrol officers for one year **OR**

Pell Grants worth \$5,550 each for 2,591,021 college students **OR**

241,593 clean-energy jobs for one year



Part Three

Executives who have saved the most from the Bush tax cuts

Parts One and Two of this report document the enormous CEO pay tax subsidies that annually flow to corporations and help their top executives reduce their personal tax bills. CEOs have also been prime beneficiaries of the Bush tax cuts enacted in 2001 and 2003. These cuts lowered the maximum tax rate on “earned” income in the top income bracket from 39.6 percent to 35 percent and slashed the tax rate on capital gains and dividend income down to 15 percent.

The individuals who benefit the most from these rate cuts often remain faceless. And we cannot specifically calculate how much any individual CEO has saved from the Bush tax cuts since we don’t know how much investment income, above and beyond corporate compensation, has been reported on that CEO’s tax return.

In this analysis, we use the compensation data available in corporate proxy statements to produce a most decidedly conservative estimate of how much the country’s highest-paid CEOs are saving from the Bush tax cuts. We have calculated how much these executives saved on their income last year over \$250,000.

All the CEOs on this list certainly saved significantly more from the Bush tax cuts than the sums listed here, since they had additional income from other sources, including their investments. But considering the tax savings on just corporate pay alone can help us understand how much the benefits from the Bush tax cuts have been concentrated at the top. Our findings:

- Some 57 CEOs received more than \$1 million in individual tax breaks on their compensation over \$250,000 last year.
- These 56 men and one woman collectively snagged more than \$100 million in tax breaks from the Bush tax cuts.

Top Five CEO Beneficiaries in 2011 of the Bush Tax Cuts

| CEO | Company | Taxable pay, 2011* | Bush tax cut savings |
|------------------|-----------------------------------|--------------------|----------------------|
| James Mulva | ConocoPhillips | \$145,897,390 | \$6,699,780 |
| Leslie Moonves | CBS | \$82,123,068 | \$3,766,161 |
| Richard Adkerson | Freeport-McMoRan Copper & Gold | \$77,787,750 | \$3,566,737 |
| Jeffrey Boyd | Priceline | \$73,537,685 | \$3,371,234 |
| Ronald Johnson | JC Penney | \$69,784,563 | \$3,198,590 |

*Compensation here is calculated differently than in other sections of this report. Rather than including stock and options awards granted in 2011, we included options *exercised* and stock awards that *vested and thus were taxable* during 2011. For details on methodology and the full list of CEOs that received more than \$1 million in savings from the Bush tax cuts, see Appendix 3.

Five of the CEOs who pocketed more than \$1 million in personal tax savings from the Bush tax cuts last year also appear on our list of CEOs who collected more in compensation than their firms paid in federal income taxes. These five: Alan Mulally of Ford, Michael Polk of Newell Rubbermaid, Randall Stephenson of AT&T, Aubrey McClendon of Chesapeake Energy, and Brian Duperrault of Marsh & McLennan.

Not surprisingly, CEOs have strong feelings about extending the Bush tax cuts for America's wealthiest taxpayers. The Business Roundtable, the nation's leading CEO network, last month urged Congress and President Obama to renew all expiring tax cuts, including those individual tax breaks that would put millions of dollars in their own pockets.

The Business Roundtable CEOs, by urging an across-the-board tax cut renewal, encourage our nation's leaders to focus instead on what they see as the real source of our fiscal problems: earned benefits like Social Security, Medicare, and Medicaid.⁵⁹

Part Four

Executive pay reform scorecard

In the United States and elsewhere in the world, public interest groups and lawmakers are working, on a variety of fronts, to rein in excessive executive compensation. This Executive Pay Reform Scorecard covers reform proposals that have recently been enacted into law, others that have been introduced in the Congress, and other promising proposals from here and around the world.

The Scorecard also offers a status report on the executive pay-related provisions in the Dodd-Frank financial reform legislation. Today, two years after President Obama signed that bill into law, many of its most important provisions have not yet been implemented. Federal regulators have simply been overwhelmed by an intense corporate backlash against the Dodd-Frank bill, including those provisions that impact executive pay.

We have based our pay reform rating system in this scorecard on the following five principles that advance economic fairness and stability in executive pay policy and practice:

1. Encourage narrower CEO-worker pay gaps.

Extreme pay gaps — situations where top executives regularly take home hundreds of times more in compensation than average employees — run counter to basic principles of fairness. These gaps also endanger enterprise effectiveness. Management guru Peter Drucker, echoing the view of Gilded Age financier J.P. Morgan, believed that the ratio of pay between worker and executive can run no higher than 20-to-1 without damaging company morale and productivity.⁶⁰ Researchers have documented that Information-Age enterprises operate more effectively when they tap into — and reward — the creative contributions of employees at *all* levels.⁶¹

2. Eliminate taxpayer subsidies for excessive executive pay.

Ordinary taxpayers should not have to foot the bill for excessive executive compensation. And yet they do, as we explain in detail in Part Two of this report.

3. Encourage reasonable limits on total compensation.

The greater the annual reward an executive can receive, the greater the temptation to make reckless executive decisions that generate short-term earnings at the expense of long-term corporate health. Government policies can encourage more reasonable compensation levels without micromanaging pay levels at individual firms.

4. Bolster accountability to shareholders.

On paper, the corporate boards that determine executive pay must answer to shareholders. Recent reforms have made some progress toward forcing corporate boards to defend before shareholders the rewards they extend to corporate officials.

5. Extend accountability to broader stakeholder groups.

Executive pay practices, as the 2008 financial crisis demonstrated most vividly, impact far more than shareholders. Effective pay reforms need to encourage management decisions that take into account the interests of all corporate stakeholders, not just shareholders but consumers, employees, and the communities where corporations operate.

In the tables below, we grade each reform by assigning a rating for each of these five principles.

Ratings

- 1 = Represents a small step toward achieving the principle
- 2 = Represents substantial progress
- 3 = Represents major progress
- 4 = Achieves the principle

| Passed / recently enacted through statute or regulation | | | | | | | | |
|---|---|--|------------------|--------------------|------------------|--------------|--------------|-------|
| Reform | Description and Status | Significance | Progress Ratings | | | | | |
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Disclosure | | | | | | | | |
| CEO-worker pay ratio | The Dodd-Frank financial reform law (Sec. 953b) requires all U.S. corporations to compute and report the median annual total compensation of their employees, excluding the CEO, and reveal the ratio between CEO and employee pay. But regulators have still not implemented the provision. Corporate lobby groups are pressing regulators to water down the rule, and Republicans in Congress are pushing a bill to repeal the rule altogether (HR 1062). | This provision, if actually implemented, would for the first time ever require major U.S. firms to reveal how much they value the contributions of all employees, not just top executives. Enterprises operate more effectively when they tap the creativity of all who labor within them. This provision could boost efforts (see Pending) to limit pay excess via tax and procurement policies that leverage the public purse. | 2 | | 1 | 1 | 2 | 6 |
| Pay versus performance | The Dodd-Frank financial reform law (Sec. 953) requires all U.S. corporations to disclose the relationship between executive pay and corporate financial performance, including changes in share prices over the previous year. SEC action on this provision has been delayed. | This disclosure requirement reinforces the excessive fixation on short-term, narrowly defined performance criteria and does little to advance long-term investor interests. | | | | 1 | | 1 |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|--------------------------------------|---|--|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Employee and director hedging | The Dodd-Frank financial reform law (Sec. 955) requires firms to disclose whether they have a policy on hedging by employees or directors. SEC action on this provision has been delayed. | Top executives use hedging contracts to bet against their own firm's success. By so hedging their bets, they win whatever the ultimate cost to company and community. But merely requiring disclosure may not end this practice. | | | | 1 | 1 | 2 |
| Government contractor pay | Rules stemming from the 2008 Government Funding Transparency Act require government contractors and subcontractors to annually disclose the names and total pay, including bonus and stock options, of their five top-paid officers. The rule applies to companies that earn at least 80 percent of their revenue from federal contracts, grants, and loans and that have received \$25 million in fed funding the previous year. ⁶² | This reform expands executive pay reporting requirements that already apply to publicly held companies to privately held firms that rely heavily on federal contracts. By helping taxpayers see how much of their money is filling the pockets of the executives who run businesses with big federal contracts, this mandate could speed procurement reforms that encourage more reasonable pay (see Pending). | | 2 | 1 | | 1 | 4 |
| Governance | | | | | | | | |
| Shareholder 'Say on Pay' | The Dodd-Frank financial reform law (Sec. 951) requires firms to provide shareholders the right to a nonbinding vote on the compensation of executives. Dodd-Frank also requires an advisory vote regarding compensation arrangements ("golden parachutes") that are triggered by a merger or acquisition. These new rules went into effect for large firms in January 2011. ⁶³ | Pay proposals failed to receive a majority of shareholder support at 53 companies this year, up from 40 last year. ⁶⁴ According to compensation expert Nell Minow, some companies are revising their pay packages to avoid "no" votes. ⁶⁵ But "say on pay," while encouraging some companies to eliminate egregious abuses, has not resulted in lower total executive pay, not in either the United States or those European nations where "say on pay" mandates have been on the books for as much as a decade. | 1 | | 1 | 2 | | 4 |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|---|--|--|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Proxy access | The Dodd-Frank financial reform (Sec. 972) gives the SEC the authority to adopt rules allowing shareholders to place candidates on the ballots for board of director elections. But this authority was overturned in 2011 on cost-benefit grounds. And corporate lobby groups are threatening to file similar lawsuits over other proposed regulations. Notes Americans for Financial Reform: "This legal threat is creating a serious chilling effect on regulators' implementation of new Dodd-Frank rules." ⁶⁶ | If these rules are ever implemented, institutional investors will have a greater capacity to challenge incumbents and incumbents may become more attentive to broader perspectives on executive compensation. | 1 | | 1 | 2 | | 4 |
| Compensation committee and consultant independence | The Dodd-Frank financial reform law (Sec. 952) requires securities exchanges to set listing standards related to the independence of board compensation committees and their advisers. The SEC adopted rules designed to implement Section 952 in June 2012. ⁶⁷ | Cracking down on board and consultant conflicts of interest remains an important objective, but the SEC's ruling will have extremely limited impact. The SEC ignored recommendations by independent groups to bar stock exchanges from listing companies that do not have compensation committees and failed to give guidance to the exchanges on defining "independence." ⁶⁸ The defining will be left to stock exchanges. Legal analyst J. Robert Brown Jr. argues that the rule may actually provide an incentive for companies to avoid creating compensation panels, a move that could give CEOs a greater say in the hiring of pay consultants. ⁶⁹ | | | 1 | 2 | | 3 |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|--|--|---|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Tax Policy | | | | | | | | |
| Cap on the deductibility of the pay packages executives in the health insurance industry obtain | Since 1993, all U.S. companies have been subject to a \$1 million cap on the tax deductibility of executive pay, but this cap comes with a giant loophole that exempts “performance-based” pay. The Affordable Care Act eliminates this loophole — in the health insurance industry — and lowers the cap to \$500,000 starting in 2013. ⁷⁰ A similar rule for TARP recipients applied only to top executives. This provision covers all firm employees. | This rule, while applying only to health insurance companies, does set a valuable precedent for reducing taxpayer subsidies for excessive executive pay and provides an incentive for lowering overall CEO compensation. This provision could give impetus to proposals noted below to cap the tax deductibility of executive pay at all U.S. firms. | 1 | 3 | 1 | | | 5 |
| Other | | | | | | | | |
| Pay restrictions on executives of large financial institutions | The Dodd-Frank financial reform law (Sec. 956) prohibits large financial institutions from granting incentive-based compensation that “encourages inappropriate risks.” After issuing an initial proposal in 2011, regulators have still not produced a final rule for this provision. | The jury remains out. Member groups of the Executive Compensation Task Force of Americans for Financial Reform have made numerous recommendations that would increase the impact but were ignored in the regulators’ proposal. These include: <ul style="list-style-type: none"> • prohibit stock options, since they can encourage excessive risk-taking; • extend deferral of 50 percent of bonuses from three to five years; • and apply rules to any employee who could put the firm at substantial risk.⁷¹ Given strong Wall Street pressure, the already weak regulations that are still pending may be further watered down. ⁷² | | | | | | ? |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|---|--|---|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Clawbacks | The Dodd-Frank financial reform law (Sec. 954) requires executives to repay compensation gained as a result of erroneous data in financial statements. Executives must repay "excess" incentive compensation received during the three-year period preceding an accounting restatement. SEC action on this provision has been delayed. | This rule takes an important step toward ensuring that executives do not get to keep pay based on performance goals not actually achieved. Previous clawback provisions in the Sarbanes-Oxley law only apply to restatements resulting from misconduct. The Dodd-Frank rule, unfortunately, applies only to top execs, leaving high-bonus traders off the hook. | | | 1 | 2 | 1 | 4 |
| Federal Reserve guidance on incentive compensation | In June 2010, the Fed released its guidelines on financial firm incentive pay. Unlike the European Union (see below), the Fed chose not to require firms to impose standard formulas for bonus payouts or to set compliance deadlines. Instead, the Fed offers general principles to encourage longer-term performance and avoid undue risks for the firm or financial system. | Given the vagueness of the guidelines and the confidentiality of the Federal Reserve's reviews of company compliance, evaluating the impact of this guidance on actual pay practices will be next to impossible. | | | | | | 0 |

| Proposed / introduced in U.S. Congress | | | | | | | |
|--|---|---|-------------------------|---------------------------|-------------------------|---------------------|---------------------|
| Reform | Description | Significance | Progress ratings | | | | |
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | stakeholders |
| Tax and Procurement Policy | | | | | | | |
| Ending the preferential capital gains treatment of carried interest | Under current law, hedge and private equity fund managers pay taxes at a 15 percent capital gains rate on the profit share — "carried interest" — they get paid to manage investment funds, rather than the 35 percent rate they would pay under normal tax schedules. In 2007, the House passed a tax reform bill, H.R. 3996, that defines "carried interest" as ordinary income. The Senate did not take action. A fix is included in President Obama's FY2013 budget. ⁷³ | Closing the carried interest loophole would address the most extreme example of Wall Street privilege. | 1 | 3 | 1 | | 5 |
| Limiting the deductibility of executive compensation | To prevent corporations from deducting excessive executive pay off their taxes, Congress in 1993 set a \$1 million cap on the individual executive pay corporations could deduct. But that cap did not apply to "performance-based" pay, a giant loophole that exempted stock options and other pay "incentives" from the \$1 million cap. In 2011, Rep. Barbara Lee (D-Calif.) introduced the Income Equity Act (H.R. 382) to deny all firms tax deductions on any executive pay that runs over 25 times the pay of a firm's lowest-paid employee or \$500,000, whichever is higher. | The Income Equity Act would eliminate a perverse incentive for excessive compensation. Under current rules, the more a firm pays its CEO, the more the firm can deduct from its taxes. Other taxpayers bear the brunt of this loophole, either through the increased taxes needed to fill the revenue gaps or through cutbacks in public spending. As noted above, TARP and the Affordable Care Act set important precedents by applying \$500,000 deductibility caps on pay for bailout recipients and health insurance firms. | 2 | 3 | 2 | | 7 |

| Reform | Description | Significance | Progress ratings | | | | | |
|---|--|--|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | stakeholders | Total |
| Ending the stock option accounting double standard | Current accounting rules value stock options on their grant date. The current tax code values stock options on the day that executives cash them in, often a much higher figure. In July 2011, Senators Carl Levin (D-Mich.) and Sherrod Brown (D-Ohio) introduced the Ending Excessive Corporate Deductions for Stock Options Act (S. 1375) to require the corporate tax deduction for stock option compensation to be not greater than the stock option book expense shown on a corporation's financial statement. | Under current rules, companies can lower their tax bill by claiming deductions for options that are much higher than the option value they report in their financial statements. This tax incentive encourages corporate boards to hand executives huge stock option windfalls. The Joint Committee on Taxation has estimated that ending this tax break would raise \$24.6 billion over 10 years. ⁷⁴ | 1 | 3 | 1 | | | 5 |
| Limiting deferred compensation | Most CEOs at large companies now legally shield unlimited amounts of compensation from taxes through special deferred accounts set up by their employers. By contrast, ordinary taxpayers face strict limits on how much income they can defer from taxes via 401(k) plans. In 2007, the Senate passed a minimum wage bill that would have limited annual executive pay deferrals to \$1 million, but the provision was dropped in conference committee. ⁷⁵ | These special deferred compensation plans cost U.S. taxpayers an estimated \$80.6 million per year. Beyond that, these plans widen the divide between CEOs and ordinary workers, whose pension benefits have declined significantly at most firms. ⁷⁶ | 2 | 1 | 1 | | | 4 |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|--|---|--|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Leveraging federal procurement dollars to discourage excessive executive compensation | Firms that rely heavily on government subsidies, contracts, and other forms of support continue to face no meaningful restraints on pay. Every year, the Office of Management and Budget does establish a maximum benchmark for contractor compensation, currently \$693,951. But this benchmark only limits the executive pay a company can directly bill the government for reimbursement. It does not curb windfalls that contracts with the federal government generate for top executives. The Patriot Corporations Act (H.R. 1163) would extend tax breaks and federal contracting preferences to companies that meet good behavior benchmarks, including not compensating any executive at more than 100 times the income of the company's lowest-paid worker. | By law, the U.S. government denies contracts to companies that discriminate, in their employment practices, by race or gender. This reflects clear public policy that our tax dollars should not subsidize racial or gender inequality. In a similar way, this reform would tap the power of the public purse to discourage extreme economic inequality. | 2 | 3 | 2 | | 3 | 10 |
| Progressive taxation | Executive pay can be affected indirectly through reforms that tax income in top brackets at high rates. A number of proposals before Congress are designed to ensure the ultra rich pay their fair share. Two of particular note are: the Fairness in Taxation Act (HR 1124), which would create new rates and additional tax brackets for higher incomes (45 percent for incomes from \$1-10 million and topping out at 49 percent for incomes over \$1 billion) ⁷⁷ and the Sensible Estate Tax Relief Act (HR 16), which would exempt up to \$3.5 million of an estate from taxes and apply a 45 percent rate to the rest. | In the quarter-century after World War II, with tax rates in effect that took a substantial bite out of income in the highest tax brackets, corporate boards simply did not compensate executives at lush levels — because the bulk of that excessive pay would simply be taxed away. Steeply graduated progressive taxation can serve as a significant disincentive for excessive executive compensation. Some CEOs themselves have argued that policymakers should not alter the compensation system, but just tax incomes at higher levels. ⁷⁸ | 1 | 3 | 1 | | | 5 |

| Promising / not yet before Congress | | | | | | | | |
|---|---|---|------------------|--------------------|------------------|--------------|--------------|-------|
| Reform | Description | Significance | Progress ratings | | | | | |
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| EU bonus limits | The European Union appears on track to limit banker bonuses to no more than their annual salary. The European Parliament approved the proposal in a draft banking law in April and now must agree on the details with member states. As designed, the rule would apply to senior staff (including Americans) working for EU-based banks anywhere in the world as well as to EU-based staff of U.S. and Asian banks. The rule would cover every kind of bonus, including so-called long-term incentive plans for senior staff. | This reform does not set a numerical limit on pay, but will likely go much further than many other reforms to bring down CEO pay levels by limiting total compensation to no more than the amount of executive salary. Bonus pay typically runs up to 10 times straight salary payouts. This approach also helps counter the “bonus culture” that encourages high-risk investing. | 3 | | 3 | 2 | 2 | 10 |
| ‘Skin in the game’ mandate | All new top corporate executives, under a proposal from veteran investment adviser Vincent Panvini, would be required to place a significant share of their own financial assets in escrow for five or ten years. If a CEO’s company lost value over that time, the CEO would forfeit money from that escrow. ⁷⁹ | Small business entrepreneurs seldom behave recklessly because they typically have their own personal wealth tied up in their business. This proposal aims to give corporate executives a similar incentive for responsible behavior. | | | | 3 | 3 | 6 |
| Strict caps on executive compensation for bailout firms — before the next crisis | In 2009, the Senate approved an amendment to the stimulus bill that would have capped total pay for all employees of all bailout companies at no more than \$400,000, the salary of the U.S. President. Such a restriction could be enacted today for application in the event of future bailouts. | This restriction could have an important preventive effect. Given a clear warning about the consequences for their own paychecks, executives might think twice about taking actions that endanger their own future — and ours. | 3 | 3 | 3 | 3 | 3 | 15 |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|--|---|---|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| A CEO pay limit for firms in bankruptcy | The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Sec. 331) prohibits companies in bankruptcy from giving executives any “retention” bonus or severance pay that runs over ten times the average bonus or severance awarded to regular employees in the previous year. This legislation could be strengthened by closing a loophole that exempts “performance-based pay.” | This reform would help end the unjust practice whereby executives, after declaring bankruptcy and eliminating workers’ jobs and pensions, then turn around and pocket millions in severance. | 2 | | | 2 | 1 | 5 |
| Corporate board diversity | At least a dozen EU countries require firms above a certain size to include worker representatives on their boards. ⁸⁰ | Investment portfolio diversity decreases risk and improves overall performance. Corporate board diversity could have the same impact. European executive pay over the recent decades has consistently run at much lower levels than U.S. executive pay. | | | | | 3 | 3 |
| "Say on Pay" with teeth | A UK law set to go into effect in 2013 will require public companies to give shareholders a binding vote on compensation every three years. Michel Barnier, the EU's internal markets commissioner, is proposing that shareholders also have the power to vote on the ratio between the lowest and highest-paid employees in the company. ⁸¹ In 2011, Australia gave shareholders the power to remove directors if a company's executive pay report gets a “no” vote from 25 percent of shareholders or more at two consecutive corporate annual meetings. ⁸² | Policies like these give shareholders much more power than they received through the purely advisory “Say on Pay” rules in the United States. Four U.S. companies whose shareholders rejected a pay plan in 2011 received a second no vote in 2012, and yet the firms still have no legal obligation to alter the pay packages. ⁸³ | 2 | | 2 | 5 | | 9 |

| Reform | Description and Status | Significance | Progress Ratings | | | | | |
|--|---|--|------------------|--------------------|------------------|--------------|--------------|-------|
| | | | CEO-worker gap | Taxpayer subsidies | Total pay limits | Shareholders | Stakeholders | Total |
| Pay ratio limit | French President François Hollande is planning to cap executive pay at firms in which the government owns a majority stake to no more than 20 times that of their lowest-paid worker. ⁸⁴ In the United States, veteran management consultant Douglas Smith has called for a similar limit on firms receiving taxpayer funds. ⁸⁵ In New York State, Assemblywoman Deborah Glick has taken a step in this direction with a proposal to limit CEO salaries to \$250,000 at hospitals that take in state tax dollars. ⁸⁶ Amalgamated Transit Union president Lawrence Hanley, a member of the AFL-CIO Executive Board, has just called for a "maximum wage law" that would limit executive pay to a "specific multiple" of the wage earned by their lowest-paid employees. ⁸⁷ | Corporate salary differentials near 10 and 20:1 have been commonplace in Japan and some European nations for many years. A government could step toward mandating such a limit by denying government contracts, tax breaks, or subsidies to any corporations that compensate executives at a set ratio of worker pay. | 5 | | 4 | | | 9 |
| Allow tax deductions for incentive pay only if they share incentive rewards broadly within the enterprise | Richard Freeman and Douglas Kruse of Harvard University and Joseph Blasi of Rutgers University propose that Congress only allow tax deductions for executive incentives when corporations award as much incentive pay "to the bottom 80 percent of their workforce as they do to the top 5 percent." ⁸⁸ | Tax deductions for stock option deductions have now reached rather staggering levels. Using figures from Standard & Poor's ExecuComp database, Freeman, Kruse, and Blasi compute that these deductions averaged over \$50 billion a year from 2001 to 2007. This proposal would give major corporations a significant financial incentive to end top-heavy reward distributions. | 2 | 3 | 2 | | | 7 |

Appendix 1: Companies that paid their CEOs more than Uncle Sam in 2011

| Company | CEO | Total executive compensation, 2011 (\$) | percent change over 2010 | U.S. Pretax Income, 2011 (\$mill) | U.S. corporate income tax, 2011 (\$mill) | Subsidiaries in tax havens | Global profits, 2011 (\$mill) | Headquarters |
|--------------------------------------|-------------------------|---|--------------------------|-----------------------------------|--|----------------------------|-------------------------------|-------------------|
| Abbott Laboratories | Miles D. White | 19,001,766 | -5 | 364 | -586 | 64 | 4,728 | Chicago, IL |
| Advanced Micro Devices ⁸⁹ | Rory P. Read | 15,610,351 | 181 | 318 | -3 | 10 | 491 | Sunnyvale, CA |
| Altera | John P. Daane | 29,576,725 | 278 | 95 | 22 | 3 | 771 | San Jose, CA |
| AIG | Robert H. Benmosche | 13,955,605 | 66 | -1,942 | -208 | 22 | 17,798 | New York, NY |
| Anadarko Petroleum | James T. Hackett | 19,489,285 | 4 | -5,416 | -381 | 6 | -2,649 | Woodlands, TX |
| AT&T ⁹⁰ | Randall L. Stephenson | 18,690,824 | -8 | 6,716 | -420 | 0 | 3,944 | Dallas, TX |
| Boeing | W. James McNerney Jr. | 18,403,303 | 34 | 5,083 | -605 | 40 | 4,018 | Chicago, IL |
| Broadcom | Scott A. McGregor | 16,076,291 | 78 | -132 | 0 | 4 | 927 | Irvine, CA |
| Chesapeake Energy ⁹¹ | Aubrey Kerr McClendon | 17,868,076 | -15 | 2,884 | 13 | 0 | 1,742 | Oklahoma City, OK |
| Citigroup ⁹² | Vikram S. Pandit | 14,857,103 | NMF | 1,524 | -144 | 35 | 11,067 | New York, NY |
| Cooper Industries | Kirk S. Hachigian | 21,116,678 | -16 | 221 | -29 | 0 | 828 | Houston, TX |
| Danaher | H. Lawrence Culp Jr. | 21,650,117 | 27 | 1,168 | -6 | 26 | 2,172 | Washington, DC |
| Devon Energy | John Richels | 13,875,668 | 0 | 3,477 | -143 | 0 | 4,704 | Oklahoma City, OK |
| FirstEnergy | Anthony J. Alexander | 14,413,389 | 62 | 2,207 | -243 | 0 | 885 | Akron, OH |
| Ford Motor | Alan Mulally | 29,497,572 | 11 | 6,043 | -4 | 2 | 20,213 | Dearborn, MI |
| International Paper | John V. Faraci | 13,907,447 | 13 | 874 | -78 | 25 | 1,341 | Memphis, TN |
| Leucadia National | Ian Cumming | 28,177,211 | 1,656 | 68 | 0 | 0 | 68 | New York, NY |
| Marathon Oil | Clarence P. Cazalot Jr. | 29,911,662 | 239 | -442 | -210 | 55 | 2,946 | Houston, TX |
| Marsh & McLennan | Brian Duperreault | 14,285,946 | 2 | 121 | 7 | 108 | 993 | New York, NY |
| Motorola Mobility | Sanjay K. Jha | 47,152,687 | 262 | -565 | 0 | 0 | -249 | Libertyville, IL |
| Motorola Solutions | Gregory Q. Brown | 29,313,864 | 113 | 462 | 2 | 1 | 1,158 | Schaumburg, IL |
| Newell Rubbermaid | Michael B. Polk | 18,872,706 | n/a | 34 | -37 | 14 | 125 | Atlanta, GA |
| Salesforce.com | Marc R. Benioff | 17,714,306 | -15 | -27 | 9 | 7 | -11 | San Francisco, CA |
| Travelers Companies | Jay S. Fishman | 15,837,099 | -20 | 1,230 | -176 | 2 | 1,426 | New York, NY |
| Tyco International | Edward D. Breen | 16,499,622 | 3 | -226 | -4 | 109 | 17,355 | Switzerland |
| Total | | 515,755,303 | | 24,138 | -3,224 | 533 | 96,792 | |
| Average | | 20,630,212 | | 966 | -129 | | 3,872 | |
| Median | | 18,403,303 | | 318 | -29 | | 1,341 | |

Sources and methodology: See following page.

Sources and methodology for Appendix 1:

Executive compensation: In determining executive compensation for this report we follow the methodology used by Associated Press. This is the same methodology we have used since 2007, allowing us a consistent time series. The AP includes in its calculation salary, bonus, non-equity compensation, the value of stock awards and stock options on the day of the grant, and gains to deferred compensation accounts that come from above market rate returns. The Associated Press does not include the value realized when stock options are exercised.

We vary from AP's methodology in one important way. We do not have any minimum tenure requirement for CEOs in order to be included in our list. AP requires CEOs to serve for two years, so that they can provide meaningful year-over-year comparisons. Our objective is to look at the pay levels provided atop of corporations and we believe this variant allows us to best do so.

In cases where a company has more than one CEO serving during the year, we took the pay totals for the most highly compensated one. For instance, former Verizon CEO Ivan Seidenberg retired as CEO in August 2011 and as Chairman at the end of 2011. As he served for the CEO for the majority of the year, he was paid more than his successor. Thus, we reflect his pay as Verizon's CEO pay figure.

U.S. pre-tax Income: Domestic pre-tax profits are those reported by corporations in the tax footnote of its 10-K report filed annually with the Securities and Exchange Commission. No attempt has been made to adjust for the domestic profits shifted to offshore subsidiaries through transfer pricing and other aggressive accounting techniques. Insufficient information is provided to accomplish this adjustment with any degree of certainty. It is, however, informative to compare the geographic breakdown of revenue, assets, employees, and reported domestic net profit for clues to companies' profit-shifting behavior.

U.S. corporate income tax: The data in this report is based on the "current U.S. taxes paid" data reported in the tax footnote of corporate Form 10-Ks. The corporate provision for income taxes is comprised of two numbers: the current taxes paid in a given year and the deferred taxes that may or may not be paid in the future. "Current U.S. taxes paid" are the best approximation of the net result of what corporations actually paid in a given year. There are reasons why this number still may be overstated. One of the most significant of these is the tax deduction companies receive for excess executive compensation through the stock option accounting double standard. A more detailed description of this is found on page 17 of this report. The deduction for excess executive compensation is reported in such a manner that it appears that some of the stock-based compensation paid to executives is taxes paid instead to the U.S. government.

One more word here: even the current tax reported is an approximation. For companies with a fiscal year ending in December, tax filings are generally made in September, while 10-

K reports with the SEC are filed in February or March. Thus, what makes its way into the 10-K report is the best guess at the time of the year's tax position. But in most (if not all) cases, adjustments continue to be made up until the tax form is filed with the IRS. For more details on corporate tax research, see Appendix 2.

Subsidiaries in tax havens: These were calculated by the report's authors based on significant subsidiaries reported in 10-K filings and tax haven countries identified by the Government Accountability Office in "International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions," December 2008. See: <http://www.gao.gov/new.items/d09157.pdf>. These countries include: Andorra, Anguilla, Antigua & Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Costa Rica, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Hong Kong, Ireland, Isle of Man, Jersey, Lebanon, Liberia, Liechtenstein, Luxembourg, Macau, Malaysia, Malta, Marshall Islands, Mauritius, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Saint Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, Seychelles, Singapore, Switzerland, Turks & Caicos Islands, U.S. Virgin Islands, and Vanuatu.

Global profits: *Fortune* magazine and 10-K reports.

Headquarters: Corporate 10-K reports. Note: Tyco International is incorporated offshore, but maintains significant management operations in the United States. The AP includes the firm in its list of highest-paid CEOs.

Appendix 2: Frequently asked questions about corporate tax research

In response to last year's *Executive Excess* analysis of the companies that paid their CEOs more than they paid in U.S. federal income taxes,⁹³ we encountered several questions about research on corporate income taxes.

1. Why don't you include deferred income taxes?

The corporate provision for income taxes is comprised of two numbers: the current taxes paid in a given year, and deferred taxes. The analysis in Part One of this report includes only current taxes. This is because some forms of deferred taxes can be put off indefinitely. For instance, taxes on funds held offshore do not become due until those funds are brought home to the U.S. If these funds are never brought stateside, the taxes are never paid.

To create an analogy using two friends, one friend may give another friend a note saying they will give him or her \$100 in 20 years. With this promise of deferred payment they've created a liability for themselves. But no reasonable person would seek to claim that the first friend paid the second the \$100 in the current year. We have sought to measure the money that actually changes hands, not the dollars that might change hands years down the road.

2. Why didn't you include taxes paid to states, cities, and foreign governments?

Our report comes at a time when there is heightened focus on the U.S. government's fiscal situation. Massive cuts to government programs are underway, including programs and government investments that benefit businesses. Our intent is to call into question whether corporations are paying their fair share toward the cost of national government.

3. Couldn't large tax refunds merely be the result of accounting adjustments and settlements?

Accounting adjustments and tax settlements are common elements of corporate tax reporting and they do affect corporations year-to-year. In our report, we took a snapshot of a single year and did not attempt to adjust the numbers reported in the current tax provision for any of the companies in the study. We have noted in the report both that all of the ways corporations reduce their taxes are legal and also noted that in our opinion some are legitimate, while others are not. We have not attempted to explain the reasons behind the particular current tax number for any of the companies in the report.

4. Why do you use the term "tax refund"?

Throughout this report we use the colloquial term "refund" to describe the more technical term "net tax benefit." As with individuals, corporations can wind up with the government owing them money after all tax credits are applied. Corporations have the choice of receiving that excess back as a refund check, or applying it to their estimated taxes for the following year. While some companies may in fact receive

refund checks from the IRS, more choose to have their refunds applied to their account for future taxes due, much in the way that individual taxpayers can choose to have their refunds applied to the following year's estimated tax payments.

Clearer corporate tax reporting is in the interest of all

Our figures are the best available data on corporate income taxes. Corporations could provide precise figures for their tax bills by revealing one line from their annual tax return: Line 31 (Total Tax) of IRS Form 1120 (Corporation Tax Return).⁹⁴

Looking back on our 19 years of work on executive pay, we recall the disputes we now see about taxes happening around how CEO pay was calculated. The SEC stepped in and required that obtuse proxy statements, written in legalese, be re-written in plain English. Many corporations complained it couldn't be done, but it has been accomplished and with great success. There remain today different ways of calculating CEO pay, but the differences are minor and the disputes over accurate numbers have all but disappeared.

We believe we are at the same point today with corporate tax disclosure that we were with executive pay a decade ago. There is obviously an enormous public appetite for more and clearer information on what corporations actually pay in taxes each year, and not just in this country, but in all of the world's taxing jurisdictions. For instance, it would be informative to know what share of profits and taxes are being paid in places like the Cayman Islands or Luxembourg.

While the public is demanding more and clearer disclosures, corporate tax reporting has, in fact, grown more opaque and indecipherable, even to those with advanced degrees in corporate tax law.

We are fortunate to have the work of the Extractive Industry Transparency Initiative (EITI), a cooperative effort between the activist community and energy and mining companies, which has established standards for reporting on taxes and other payments made on a country by country basis throughout the world. Country-by-country reporting has made a huge difference in understanding corporate activities and in cracking down on corruption in many nations. One of the changes we advocate is adopting country-by-country reporting standards for all corporations.

Appendix 3: Executives who have saved the most from the Bush tax cuts

| CEO | Company | Taxable compensation, 2011 | Bush tax cut savings |
|--------------------------|--------------------------------|----------------------------|----------------------|
| James Mulva | ConocoPhillips | \$145,897,390 | \$6,699,780 |
| Leslie Moonves | CBS | \$82,123,068 | \$3,766,161 |
| Richard Adkerson | Freeport-McMoRan Copper & Gold | \$77,787,750 | \$3,566,737 |
| Jeffrey Boyd | Priceline | \$73,537,685 | \$3,371,234 |
| Ronald Johnson | JC Penney | \$69,784,563 | \$3,198,590 |
| Alan Mulally | Ford Motor | \$67,635,115 | \$3,099,715 |
| Richard Kinder | Kinder Morgan | \$60,939,968 | \$2,791,739 |
| Edward Breen | Tyco International | \$57,013,979 | \$2,611,143 |
| Michael Fries | Liberty Global | \$56,117,383 | \$2,569,900 |
| Louis Camilleri | Philip Morris | \$55,322,223 | \$2,533,322 |
| Dave Cote | Honeywell | \$55,238,914 | \$2,529,490 |
| Samuel Palmisano | IBM | \$53,462,481 | \$2,447,774 |
| David Zaslav | Discovery Communications | \$51,019,877 | \$2,335,414 |
| Stephen Hemsley | UnitedHealthcare Group | \$47,638,810 | \$2,179,885 |
| Clarence Cazalot | Marathon Oil | \$43,438,168 | \$1,986,656 |
| John Martin | Gilead Sciences | \$43,181,112 | \$1,974,831 |
| Terry Lundgren | Macy's | \$41,634,118 | \$1,903,669 |
| David Novak | YUM Brands | \$41,624,285 | \$1,903,217 |
| Howard Schultz | Starbucks | \$41,078,204 | \$1,878,097 |
| Steve Ells ⁹⁵ | Chipotle Mexican Grill | \$40,113,969 | \$1,833,743 |
| Robert Iger | Walt Disney | \$38,863,548 | \$1,776,223 |
| Ralph Lauren | Ralph Lauren | \$38,513,722 | \$1,760,131 |
| Tim Manganello | Borg Warner | \$38,325,589 | \$1,751,477 |
| Michael Farrell | Annaly Capital Management | \$35,887,000 | \$1,639,302 |
| William Berkley | WR Berkley | \$35,105,538 | \$1,603,355 |
| Paul Jacobs | Qualcomm | \$34,696,767 | \$1,584,551 |
| Stephen Chazen | Occidental Petroleum | \$33,818,281 | \$1,544,141 |
| David Pyott | Allergan | \$33,770,661 | \$1,541,950 |
| John Hess | Hess | \$33,201,114 | \$1,515,751 |
| Lew Frankfort | Coach | \$32,716,351 | \$1,493,452 |
| Joseph Tucci | EMC | \$32,163,962 | \$1,468,042 |
| Philippe Dauman | Viacom | \$30,630,878 | \$1,397,520 |
| Michael Balmuth | Ross Stores | \$30,596,662 | \$1,395,946 |
| Steven Roth | Vornado Realty Trust | \$30,591,996 | \$1,395,732 |

| CEO | Company | Taxable compensation, 2011 | Bush tax cut savings |
|-------------------------------|------------------------|----------------------------|----------------------|
| Kent Thiry | DaVita | \$29,664,420 | \$1,353,063 |
| John Plant | TRW Automotive | \$28,735,445 | \$1,310,330 |
| Brian Jellison | Roper Industries | \$28,393,001 | \$1,294,578 |
| Michael Ward | CSX | \$28,312,300 | \$1,290,866 |
| David Simon | Simon Properties Group | \$27,035,206 | \$1,232,119 |
| Keith Nosbusch | Rockwell Automation | \$27,027,848 | \$1,231,781 |
| William Lauder ⁹⁶ | Estee Lauder | \$26,645,865 | \$1,214,210 |
| Stephen Angel | Praxair | \$26,309,603 | \$1,198,742 |
| A.M. Cutler | Eaton | \$25,740,221 | \$1,172,550 |
| Ivan Seidenberg ⁹⁷ | Verizon | \$25,296,200 | \$1,152,125 |
| Randall Stephenson | AT&T | \$24,977,305 | \$1,137,456 |
| Fred Smith | FedEx | \$24,943,869 | \$1,135,918 |
| Irene Rosenfeld | Kraft | \$24,885,188 | \$1,133,219 |
| William Sullivan | Agilent Technologies | \$24,814,309 | \$1,129,958 |
| Rupert Murdoch | News Corp | \$24,482,630 | \$1,114,701 |
| William Weldon | Johnson & Johnson | \$24,062,287 | \$1,095,365 |
| Selim Bassoul | Middleby | \$23,496,329 | \$1,069,331 |
| Rex Tillerson | Exxon Mobil | \$23,421,966 | \$1,065,910 |
| James Young | Union Pacific | \$23,354,418 | \$1,062,803 |
| Laurence Fink | BlackRock | \$23,186,880 | \$1,055,096 |
| David Lesar | Halliburton | \$23,045,374 | \$1,048,587 |
| Brian Duperrault | Marsh & McLennan | \$22,553,127 | \$1,025,944 |
| John Hammergren | McKesson | \$22,414,702 | \$1,019,576 |
| Total | | | \$103,592,903 |
| Average | | | \$1,817,419 |

Sources and methodology for Appendix 3:

Taxable compensation in 2011: Compensation here is calculated differently than in other sections of this report. Rather than including stock and options awards granted in 2011, we included options exercised and stock awards that vested and thus were taxable during 2011. We did not distinguish between nonqualified stock options, which are taxable when exercised, and incentive stock options which are not taxable when exercised but instead are taxed as capital gains if held one year before they are sold. Incentive stock options are very limited in size, so they represent a small amount of the total options exercised if any at all. Even if incentive stock options are included, they too benefit from the Bush tax cuts because when they are exercised they would be taxed at only a 15 percent rate, not the 20 percent rate in effect before the Bush tax cuts. Also included here: salary, bonus, and non-equity incentive awards. From this total we subtracted the amount of compensation that

executives deferred and placed into retirement accounts as these amounts are not taxable until the executive retires and withdraws the funds.

We did not include taxable items such as the use of corporate jets for personal travel, though we note that when companies require executives to use corporate aircraft for personal travel, this declaration has as much to do with avoiding taxes as it does with personal safety. If security were not invoked, executives would have to pay taxes on the full cost of their plane tickets. In compiling this data, we used only the publicly disclosed income in corporate proxy statements. Undoubtedly, most executives have additional sources of income that would make their personal tax savings far higher.

Bush tax cut savings: To calculate tax savings, we took total compensation and subtracted \$250,000 (both major political parties agree that CEOs and all other taxpayers should continue to enjoy tax cuts under this amount). We then multiplied the remainder by 4.6 percent, the amount that tax rates above \$250,000 would rise (from 35 percent to 39.6 percent) if Bush tax cuts for upper income tax cuts were left to expire.

Endnotes

- ¹ Throughout this report we use the colloquial term “refund” to describe the more technical term “net tax benefit.” As with individuals, corporations can wind up with the government owing them money after all tax credits are applied. Corporations have the choice of receiving that excess back as a refund check or applying it to their estimated taxes for the following year.
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- ⁷ Calculated by the authors based on 10-K filings and tax haven countries identified by the Government Accountability Office. For details, see Appendix 1.
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- ³⁵ *Ibid.*
- ³⁶ To calculate the portion of total compensation that is "performance-based" and deductible under the tax code, we included: 1) non-equity incentive plan compensation, 2) stock option grants, and 3) stock grants when the company's

proxy statement indicated the grants were “performance-based.” (Some stock grants are time-vesting, with no performance requirements). Although annual cash bonuses may be conditioned on performance, they are only deductible under the tax code if they are awarded pursuant to a written plan approved by shareholders, which is rarely the case. None of the firms we analyzed explicitly stated in their proxies that their executives’ annual cash bonuses were deductible and so we excluded this component of compensation.

- ³⁷ See endnote #36 for methodology. Notes on specific CEOs in the table: Ellison: \$13,341,994 in non-equity incentive plan compensation (NEIP) and \$62,668,200 in stock options. Zaslav: \$20,301,093 in performance-restricted stock awards, \$23,873,389 in stock options, and \$4,837,719 in NEIP. Dauman: \$13,315,301 in performance stock units, \$6,000,005 in stock options, and \$20,000,000 in NEIP. Jha: \$1,782,692 in NEIP and \$34,190,487 in stock options. (The proxy did not make clear whether Jha’s stock awards were performance-based.) Moonves: \$4,249,989 in performance-based stock (50% of his total stock awards, the rest were not performance-based) and \$27,316,800 in stock options.
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