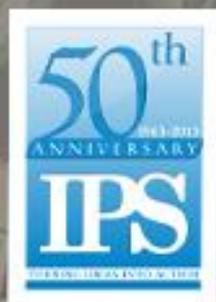


# 'FIX THE DEBT' CEOs ENJOY TAXPAYER-SUBSIDIZED PAY

INSTITUTE FOR POLICY STUDIES AND  
CAMPAIGN FOR AMERICA'S FUTURE

RELEASE DATE: MAY 2, 2013



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## Key Findings

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**T**hanks to a “performance pay” tax loophole, large corporations in the United States today are routinely deducting enormous executive payouts from their income taxes. In effect, these companies are exploiting the U.S. tax code to send taxpayers the bill for the huge rewards they’re doling out to their top executives.

- During the three-year period 2009-2011, the 90 publicly held corporate members of the austerity-focused “Fix the Debt” lobby group shoveled out \$6.3 billion in pay to their CEOs and next three highest-paid executives.<sup>1</sup>
- **These 90 Fix the Debt member firms raked in at least \$953 million — and as much as \$1.6 billion — from the “performance pay” loophole between 2009-2011.** The exact full value of corporate windfalls from this loophole will remain impossible to compute until we have more complete mandated disclosure for executive compensation.
- Top executives at these same Fix the Debt companies are aggressively advocating cuts to government programs that benefit the ordinary American taxpayers subsidizing their compensation. Many of these executives have also added to America’s debt and deficit by using tax havens and other accounting tricks to have their corporations avoid paying their fair tax share.<sup>2</sup>
- Health insurance giant UnitedHealth Group enjoyed the biggest taxpayer subsidy for its CEO pay largesse. The nation’s largest HMO paid CEO Stephen Hemsley \$199 million in total compensation between 2009 and 2011. Of this, at least \$194 million went for fully deductible “performance pay.”<sup>3</sup> **That works out to a \$68 million taxpayer subsidy to UnitedHealth Group – just for one individual CEO’s pay.** A just-released proxy reveals that Hemsley pocketed another \$28 million in “performance pay” in 2012, which computes into a tax break for UnitedHealth of nearly \$10 million.
- Discovery Communications stood next in line for a government handout. Between 2009 and 2011, CEO David Zaslav pocketed \$114 million, \$105 million of this in exercised stock options and other fully deductible “performance pay.” That translates into a \$37 million taxpayer subsidy for Discovery and its lavish executive pay policies. In 2012, Zaslav hauled in enough additional “performance pay” to generate a tax break worth \$9 million.
- Even big losers win with the “performance pay” loophole. Gambling titan Caesars Entertainment has hemorrhaged money in recent years, driving CEO Gary Loveman’s stock options underwater. Loveman managed, even so, to take home \$9.6 million in cash bonuses between 2009-2011, a windfall that’s generating taxpayer subsidies the firm can cash in to lower its taxes over years to come.

America’s top CEOs are pocketing massive taxpayer subsidies at the same time they’re pushing austerity cutbacks in government programs that benefit ordinary citizens.

# Introduction

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**F**ix the Debt is a corporate-backed lobby group committed to slashing Social Security and other earned benefits and social insurance programs — all under the veil of “deficit reduction.” But, as this report documents, the very taxpayers who pay into and depend on these programs and benefits are subsidizing excessive compensation for the top executives of Fix the Debt member corporations and other large firms.

These pages calculate how much the corporations Fix the Debt CEOs manage have benefited from a federal tax code loophole that lets major firms deduct unlimited amounts off their income taxes for the expense of executive stock options and other so-called “performance-based” pay. These CEOs are raking in huge taxpayer-funded bonuses at the same exact time they’re insisting on deep cuts in the government programs that benefit ordinary Americans.

*“We have to convince our lawmakers that they need to address overall spending levels including entitlements.”*

Fix the Debt Campaign [press release](#)

## A loophole history

In 1993, amid widespread public revulsion at executive pay excess, Congress passed legislation that capped the tax deductibility of executive pay at \$1 million. The ostensible message this legislation sent: No rational society can view annual executive compensation over \$1 million as a reasonable business expense worthy of a tax deduction. Without putting a ceiling on executive pay, this reform aimed to prevent taxpayers from subsidizing amounts over \$1 million per executive. But the law left a huge loophole. Corporations could exempt “performance-based” pay from the \$1 million limit. This loophole quickly led to an explosion of “performance-based” compensation, particularly in the form of stock options.

Corporate boards of directors touted this new surge in stock options as a means to align the interests of executives and shareholders. In practice, options align only greed and the tax code. If a firm’s shares decline in value over time, shareholders lose wealth. But executives with stock options lose nothing. In fact, during stock slumps, executives often receive boatloads of new options with lower exercise prices. In 2007, for instance, Goldman Sachs gave executives options to purchase 3.5 million shares. In December 2008, after the crash had driven Goldman shares to record lows, the bank’s top executives received nearly [36 million stock options](#), ten times the previous year’s total. This new grant positioned Goldman executives for massive new windfalls even if the bank’s shares never regained their 2007 price level.

On the upside, stock options gains have no limit, a reality that encourages reckless, short-sighted executive behaviors designed to jack up share prices by whatever means necessary. What sort of reckless behaviors? Over the past two decades, the [Institute for Policy Studies has documented](#) the connections between massive CEO options payouts and corporate tax-dodging, excessively risky financial gambles, and accounting fraud.

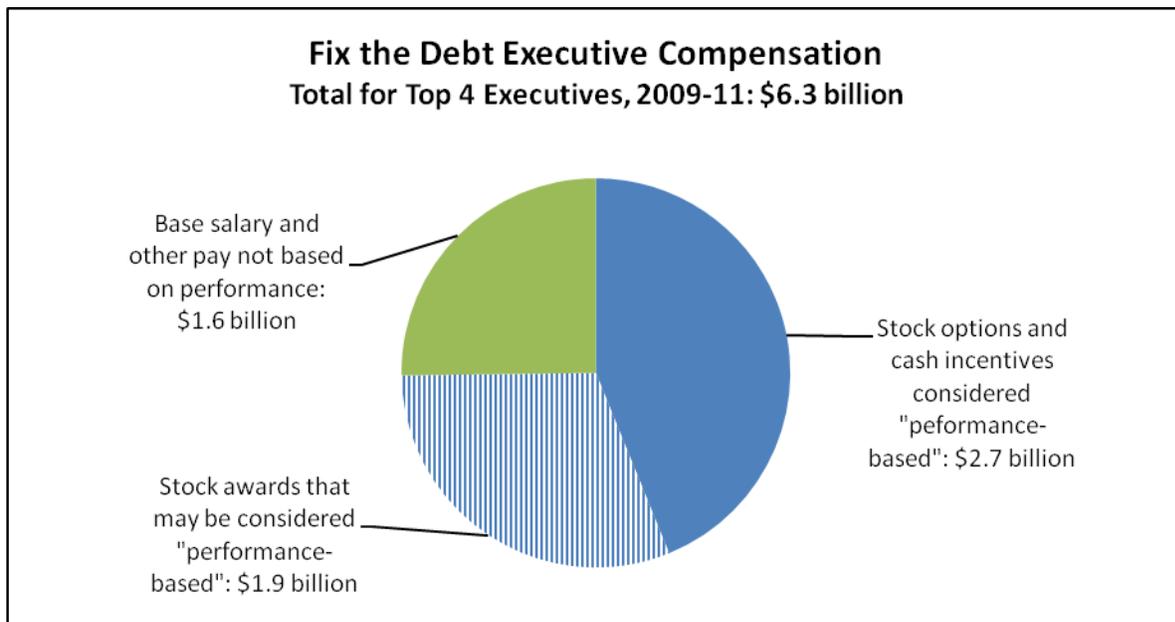
The performance pay loophole, in short, serves as a critical subsidy for excessive compensation. The larger the executive payout, the less the corporation pays in taxes. And average taxpayers wind up footing the bill.

## Total Fix the Debt Member Tax Breaks from the ‘Performance Pay’ Loophole

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Of the 90 publicly held corporations that back the “Fix the Debt” lobby campaign,<sup>4</sup> all but two exploit the “performance pay” loophole. Their exploitation of the loophole reduces their corporate tax obligation and adds to the national debt.

During the three-year period 2009-2011, the CEOs and next three highest-paid executives of each of the 90 Fix the Debt firms pocketed a combined total of \$6.3 billion.<sup>5</sup> Of this, 75 percent came in categories that can count as fully deductible “performance-based” pay. Exercised stock options and non-equity incentives — two categories the IRS almost always deems qualified for the “performance-based” exemption — equaled \$2.7 billion of the total. Vested stock grants accounted for an additional \$1.9 billion. These vested stock grants can be deductible if tied to specific “performance” objectives. Corporations often do not clearly disclose what portions of their executive compensation actually qualify as “performance-based.” (See Appendix 1 for more detail).



At a corporate tax rate of 35 percent, the Fix the Debt firms garnered tax breaks from the “performance pay” loophole of at least \$953 million during this period. If stock awards are included in the calculation, the total “performance pay” tax break for these 90 firms grows to \$1.6 billion, the equivalent of **nearly \$18 million in taxpayer subsidies per company or nearly \$1.5 million per executive.**

The total tax break these corporations enjoyed would have been even larger if not for the Troubled Asset Relief Program, the federal bailout program that involved nine of the banks that have signed up for Fix the Debt. TARP rules subject bailed-out banks to an executive pay deductibility cap of \$500,000 per executive, with no exceptions for “performance-based” pay.<sup>6</sup>

This special TARP deductibility cap applies only until firms pay back their bailout money, a move most of these nine firms made in 2010. These nine banks, in other words, only had to do without their “performance pay” loophole for a brief period of time. But even that brief period of time saved American taxpayers appreciable millions.

The following chart incorporates the brief TARP window into our total calculations for what the performance-based loophole cost U.S. taxpayers in the three years before 2012.

### **Fix the Debt Corporations: Tax Breaks from the “Performance Pay” Loophole**

Sample includes 1,085 executive pay packages at 90 firms for the years 2009-2011

	<b>MINIMUM</b>	<b>MAXIMUM</b>
	Forms of compensation typically considered "performance-based" (realized stock options and non-equity incentive pay)	All forms of compensation that may be considered "performance-based" (realized options, non-equity incentive pay, and vested performance stock awards)
<b>"Performance-based" pay</b>	\$2,742,807,765	\$4,683,427,031
<b>Adjustment for special caps on TARP recipients</b>	-\$20,996,000	-\$155,063,000
<b>Subtotal</b>	\$2,721,811,765	\$4,528,364,031
<b>Tax break from “performance pay” loophole (based on 35% federal corporate income tax rate)</b>	\$952,634,118	\$1,584,927,411

## Top 10 Recipients of ‘Performance Pay’ Tax Breaks

Based on available information in company proxy statements, we identified the 10 Fix the Debt member CEOs that were the top beneficiaries of the “performance pay” loophole during the three-year period 2009-2011.<sup>7</sup> For these 10 CEOs, we also calculated the tax breaks generated by the “performance pay” they received in 2012, based on recently released proxy statements.

### Top 10 “Performance Pay” Tax Break Recipients for the 2009-2011 Period

CEO	Company	Total compensation, 2009-2011	Portion of compensation that is "performance-based"	Value of "performance pay" corporate tax break
1. Stephen J. Hemsley	UnitedHealth Group	\$198,864,759	\$193,562,033	\$67,746,712
2. David M. Zaslav	Discovery Communications	\$113,648,658	\$105,551,679	\$36,943,088
3. Ivan G. Seidenberg*	Verizon	\$94,243,247	\$85,434,375	\$29,902,031
4. George Paz	Express Scripts Holdings	\$74,699,783	\$63,028,313	\$22,059,910
5. Michael Jon Ward	CSX	\$63,662,830	\$59,909,000	\$20,968,150
6. Alexander M. Cutler	Eaton	\$61,241,905	\$57,494,000	\$20,122,900
7. David M. Cote	Honeywell	\$70,136,915	\$61,433,000	\$21,501,550
8. Laurence Douglas Fink	BlackRock	\$82,555,123	\$54,260,158	\$18,991,055
9. Paul E. Jacobs	Qualcomm	\$58,129,638	\$47,740,000	\$16,709,000
10. J. Willard Marriott, Jr.	Marriott	\$56,441,070	\$46,160,000	\$16,156,000

\*Seidenberg stepped down as CEO in 2011, but serves on Fix the Debt’s Business Leaders Council.

### 2012 Tax Breaks for Top 10 “Performance Pay” Recipients

(based on recently released 2013 proxy statements)

CEO	Company	Total compensation, 2012	Portion of compensation that is "performance-based"	Value of "performance pay" corporate tax break
1. Stephen J. Hemsley	UnitedHealth Group	\$34,720,679	\$27,650,010	\$9,677,504
2. David M. Zaslav	Discovery Communications	\$30,080,750	\$26,647,750	\$9,326,713
3. Ivan G. Seidenberg	Verizon	N/A (retired)		
4. George Paz	Express Scripts Holdings	\$27,340,000	\$23,469,000	\$8,214,150
5. Michael Jon Ward	CSX	\$5,329,000	\$4,120,000	\$1,442,000
6. Alexander M. Cutler	Eaton	\$36,056,198	\$12,552,379	\$4,393,333
7. David M. Cote	Honeywell	\$67,865,000	\$22,596,000	\$7,908,600
8. Laurence Douglas Fink	Blackrock	\$75,751,315	\$65,674,473	\$22,986,066
9. Paul E. Jacobs	Qualcomm	\$31,534,248	\$26,430,736	\$9,250,758
10. J. Willard Marriott, Jr.	Marriott	\$52,230,162	\$47,732,571	\$16,706,400

# Top ‘Performance-Pay’ Loophole ‘Performers’

## Stephen Hemsley, UnitedHealth Group

*America’s biggest health insurer gets a \$64 million “performance pay” subsidy for its top executive’s compensation*

Over the 2009-2011 timespan, UnitedHealth Group CEO Stephen Hemsley cashed in \$171 million in options, nearly \$100 million in 2010 alone. UnitedHealth is also making use of “performance-based” stock awards. The company’s proxy statement for 2011 indicates that the vast bulk of Hemsley’s vested stock rates as fully deductible “performance pay.” Hemsley’s total of \$194 million in deductible “performance pay” during the 2009-2011 period works out to a \$68 million taxpayer subsidy. A just-released UnitedHealth proxy reveals that Hemsley pocketed another \$28 million in “performance pay” last year, which computes into another tax break for UnitedHealth worth nearly \$10 million.

UnitedHealth has shown strong earnings over the past several years, a record [analysts have attributed](#) to America’s depressed economy, not any brilliant managerial “performance” on Hemsley’s part. In the face of high costs for deductibles and co-pays, financially strapped policyholders tend to avoid seeking medical treatment, except in emergencies, and this avoidance, by cutting what insurers have to expend on care, increases insurer profit margins.

UnitedHealth is a corporate endorser of Fix the Debt. Hemsley also belongs to the Business Roundtable, a CEO group that has proposed an increase in the retirement age from 67 to 70 and the “chained CPI” method of calculating inflation, a change that would reduce benefits for Social Security recipients.

Hemsley himself has little to lose from such Social Security cuts. According to the company’s new proxy statement, he’s sitting on an employer-provided retirement fund worth \$19.4 million. That’s enough to provide him a \$110,004 monthly retirement check if he converted his golden egg into an annuity at age 65.<sup>8</sup>

## David Cote, Honeywell

*The highest-profile CEO advocate of benefit cuts pockets more than \$60 million in taxpayer-subsidized pay*

Among CEOs of large U.S. corporations, David Cote has emerged as the most vocal proponent of deep federal spending cuts, including reductions to Social Security and Medicare. Cote served on [President Obama’s deficit panel](#), the Simpson-Bowles Commission, and [now sits](#) on the Fix the Debt Steering Committee. He also serves as the vice chair of the [Business Roundtable](#), the CEO club calling for cuts in the corporate tax rate and an increase in the Social Security retirement age from 67 to 70.

Amid all this fiscal policy activity, Cote has had the company he runs take full advantage of the tax code's lucrative loopholes that benefit CEOs and large corporations. Between 2009 and 2011, Cote hauled in "performance pay" worth \$61.4 million, a sum that translates into a Honeywell tax break worth more than \$21 million. The Honeywell proxy for 2012 reveals that Cote cashed in another pile of stock options last year that added \$23 million more to his total tax-deductible "performance pay." This latest windfall computes into another \$8 million tax break for Honeywell.

In an appearance on "[Meet the Press](#)," Cote described Social Security and other earned-benefit programs as "the ticking time bomb that's going to kill us." In reality, Social Security has [sufficient funds](#) to pay full benefits until 2033. And with modest changes to ensure the rich pay their fair share of the costs, the system could provide full benefits into the foreseeable future.

Cote personally has virtually no stake in the Social Security debate. He has amassed [more than \\$134 million in his Honeywell retirement account](#), enough to generate a monthly retirement check of \$762,004 for himself starting at age 65. By contrast, the average Social Security retiree [receives just \\$1,265 each month](#).

In Cote's frequent statements on our country's fiscal challenges, he never mentions the rampant problem of corporate tax dodging. Honeywell offers a prime example. The firm has shown a significant profit in each of the last four years, reporting \$5 billion in U.S. earnings over the period. Yet the company has paid just \$113 million in federal income taxes over that same span, [according to SEC filings](#).

## **Laurence Fink, BlackRock**

*Fix the Debt's most vocal proponent of raising the retirement age hauls in more than \$50 million in taxpayer-subsidized pay in 2009-2011 and \$66 million in 2012 alone*

Laurence Fink, the head of money manager BlackRock, pocketed at least \$54 million in "performance pay" between 2009-2011, providing the firm a corporate tax break worth nearly \$19 million.<sup>9</sup> In 2012, Fink hit an even bigger jackpot, with nearly \$65 million in "performance pay" — for a tax break worth a whopping \$23 million.

In the aftermath of the 2008 financial crash, BlackRock raked in substantial taxpayer dollars via [contracts to manage the toxic assets](#) of failed financial firms like AIG. BlackRock, ironically, [had earlier pushed the mortgage-backed securities](#) that helped cause the crash, before going on to make millions more advising the government on how to clean up the mess. In 2012, he received another massive reward

As a Fix the Debt spokesperson, Fink has been a particularly passionate advocate of raising the retirement age. "Retirement should be at 70," he pronounced in one appearance on Bloomberg TV. "Most men and women in this country have jobs that we sit around. We're in offices. Even factory work in many cases is not as backbreaking as it used to be. Now, some of them clearly are, but — and so we as humans, as Americans, we could work longer."<sup>10</sup>

Raising the retirement age to 70 would mean [a benefit cut of about 20](#) percent for average Americans, including many forced into retirement because of the physical demands of their jobs. One study has shown that 40 percent of American workers retire earlier than planned, most often because of health problems.<sup>11</sup>

## Gary Loveman, Caesars Entertainment

*One of the country's poorest-performing CEOs reaps massive "performance pay"*

The most outrageous aspect of the "performance-based" pay loophole? Taxpayers are subsidizing "performance pay" for extremely poorly performing executives.

U.S. corporations do not have income tax obligations for years when they have losses, not income, to report. But corporations can keep losses on their books and use them to offset profits in future years, lowering their future tax burden, a piece of tax-time generosity not available to ordinary individual taxpayers. Thanks to these loss carry-forwards, any big bonuses that go to the CEOs of unprofitable firms can easily translate into bigger tax deductions for those firms down the road.

The best recent example of this phenomenon may be Gary Loveman, the CEO of Caesars Entertainment, the world's largest "gaming corporation," with more than 50 casinos and hotels. Caesars Entertainment's gambles with its own business operations haven't paid off of late. The company suffered losses of \$688 million in 2011 and \$831 million in 2010. But that didn't prevent Loveman from making off with huge taxpayer-subsidized bonuses. He pocketed \$3.9 million in "performance-based" cash bonuses in 2011 and \$2.7 million in 2010, for a total of nearly \$10 million in fully deductible bonuses. In 2012, Loveman pocketed another \$2.4 million "performance" bonus.

In a January 2013 [Wall Street Journal](#) commentary, Loveman called for the raising of the Social Security retirement age and means-testing for Medicare and Social Security. "We must get serious about entitlement reform and government spending," he wrote.

The Caesars that Loveman manages, meanwhile, is sitting on nearly [\\$20 billion](#) in long-term debt.

## How to End Taxpayer-Subsidies for Excessive Executive Pay

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If Fix the Debt CEOs were serious about addressing our nation's fiscal challenges, they would push for greater fairness in the tax code, including the elimination of entitlement programs benefiting CEOs like the "performance pay" loophole.

Rep. Barbara Lee (D-Calif.) has introduced legislation, the Income Equity Act (H.R. 199), that would do just that. The bill would 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.

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 from their taxes. Corporations could still freely pay their executives outlandishly large sums. But the federal government — and average American taxpayers — would no longer pick up the tab.

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.

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. The TARP restrictions applied to financial firms only until they repaid their bailout funds. And yet, as noted above, even this temporary elimination of the performance pay loophole resulted in significant taxpayer savings.

The deductibility caps on health insurance firms, designed to discourage these corporations from using profits from premiums to overcompensate their executives, go into effect this year. With this cap in effect, taxpayers won't have to worry so much about their hard-earned dollars going to subsidize fat paychecks for CEOs like Stephen Hemsley of UnitedHealth. But taxpayers may want to wonder why — at a time of scarce government resources — their tax dollars are subsidizing fat paychecks at *any* American corporate giant.

## Appendix 1: Sources and Methodology

**Corporations surveyed:** The 90 publicly held corporations listed as members of Fix the Debt on the campaign web site ([www.fixthedebt.org](http://www.fixthedebt.org)) as of March 13, 2013.

**Executives surveyed:** The executives covered by Section 162(m) of the tax code: the CEO and next three highest-paid executives, excluding the CFO. For banks in the Troubled Asset Relief Program (TARP), 162(m) also applied to CFOs. We added the CFO data for these banks during the years they participated in TARP. (For more on treatment of TARP banks, see next section.) In addition, three companies only named the CEO and two other executives in some years. These three: Corporate Executive Board (all three years), Textron (2010 and 2011), and Prologis (2009).

**Treatment of TARP participant banks:** The Troubled Asset Relief Program capped the tax deductibility of executive compensation at \$500,000 with no exceptions for “performance pay” for all banks that received \$300 million or more in bailout funds. This affected 2009 tax deductibility for the following Fix the Debt members: AIG, Bank of America, Bank of New York Mellon, CIT Group, Citigroup, Goldman Sachs, JP Morgan, M&T Bank, and Morgan Stanley. Those banks affected in 2010: AIG, CIT, and M&T Bank. For 2011: AIG and M&T. When calculating potential “performance pay” tax breaks, we did not include figures for the executives of these firms during the years in which they participated in TARP, except in a small number of cases in which the executive’s non-performance-based compensation added up to less than \$500,000. For more detail on the TARP compensation restrictions, see: [http://www.irs.gov/irb/2008-44\\_IRB/ar08.html](http://www.irs.gov/irb/2008-44_IRB/ar08.html)

**Total compensation:** An Institute for Policy Studies analysis based on data provided by Economic Policy Institute research assistant Natalie Sabadish at authors’ request, March 20, 2013. Unpublished analysis (in Excel files) of data from Compustat ExecuComp database. To analyze the tax implications, we included in “total compensation” forms of pay that were taxable for the corporation in the years surveyed: salary, bonus, non-equity incentives, perks, and the value of options realized and vested stock. Corporations do not deduct the expense of stock options until the year in which they are exercised and do not deduct the expense of stock award grants until the year they “vest,” i.e., they become the property of the employee.

**“Performance-based” compensation:** Internal Revenue Code Section 162(m) imposes a \$1 million corporate deduction limit for compensation to the company’s CEO and its three other highest-paid executive officers (excluding the CFO), unless the compensation is “performance-based” and provided under a plan that has been approved by the shareholders. Determining exactly how much of a company’s executive compensation qualifies for this “performance-based” exception can be difficult to impossible. Corporate proxy statements include a description of the company’s 162(m) policy. But most corporations simply include vague boilerplate language stating that they endeavor to structure most of their compensation to qualify as fully deductible under 162(m), while maintaining the flexibility to provide some forms of compensation that are not performance-based for retention purposes.

Given the lack of full transparency, we opted to present aggregate figures in the form of a range, from a minimum tax break based on those forms of compensation the IRS generally deems to be performance-based (realized stock options and non-equity incentive pay) to a maximum that would

include those forms of compensation as well as the value of vested stock grants that are increasingly also tied to performance objectives.

To identify the biggest individual beneficiaries of the “performance pay” loophole, we did a thorough review of each company’s proxy. If the corporation did not provide sufficient clarity as to whether a vested stock grant rated as “performance-based,” we did not include it. In cases where a portion of the vested stock was “performance-based,” we included only that portion. We also included compensation in the “bonus” column of the summary compensation table when the corporation explicitly identified this as 162(m)-compliant.

For more background on Section 162(m), see: [http://www.irs.gov/irb/2008-44\\_IRB/ar08.html](http://www.irs.gov/irb/2008-44_IRB/ar08.html)

**Value of “performance pay” tax break:** To compute the tax break on deducted executive pay, we applied a 35 percent tax rate, the statutory federal corporate income tax rate.

## Summary of Executive Compensation Components

**Salary:** Not performance-based.

**Perks and other forms included in the “all other compensation” column:** Not performance-based.

**Bonus:** Generally not considered performance-based. The reason: Corporate boards do describe bonuses as rewards for performance, but they typically do not award or pay bonuses pursuant to a written plan approved by shareholders, one of the conditions for qualifying as “performance-based” under Section 162(m). But some corporations are starting to configure their bonus plans to be 162(m)-compliant. For the list of Top 10 Recipients, we included bonuses that identified in this way.

**Non-equity incentive plan compensation:** Similar to a bonus, but paid under a written plan and therefore considered “performance-based.”

**Stock options:** Performance-based. We included the value of options exercised, rather than the estimated value of a stock options grant, since stock options do not become taxable until an executive exercises them.

**Stock grants:** Considered “performance-based” under 162(m) only when tied to specific performance benchmarks. Purely time-based benchmarks do not qualify for the “performance-based” exemption. Like stock options, stock grants are not taxable in the year they are granted, but rather when they “vest,” that is, become the property of the employee. We included vested stock in our calculations of “performance pay,” but only when the proxy clearly linked the stock to specific performance criteria.

**Pensions and deferred compensation:** Not “performance-based.”

## Appendix 2: Fix the Debt Corporations, Executive Compensation, Tax Breaks

All top executives, 2009-2011, \$000

Company	Total compensation	Maximum "performance pay" (realized stock options, non-equity incentive pay, vested stock)	Minimum "performance pay" (realized options and non-equity incentive pay)	Maximum "performance pay" corporate tax break
ACE LTD	77,796	39,940	9,050	13,979
AES CORP	46,777	30,641	28,427	10,724
AETNA INC	93,684	83,230	72,281	29,131
AFFILIATED MANAGERS GROUP	102,940	96,398	79,914	33,739
AIR PRODUCTS & CHEMICALS INC	31,466	22,747	16,868	7,961
ALCOA INC	37,603	23,741	17,386	8,309
ALLSTATE CORP	23,780	14,431	11,484	5,051
AMERICAN INTERNATIONAL GROUP	92,629	0	0	0
ASHFORD HOSPITALITY TRUST	25,437	11,177	0	3,912
AT&T INC	121,462	106,273	28,003	37,195
ATLAS AIR WORLDWIDE HLDG INC	45,733	38,376	17,966	13,432
BANK OF AMERICA CORP	79,635	26,699	234	9,345
BANK OF NEW YORK MELLON CORP	76,719	46,204	26,348	16,171
BELK	21,468	11,268	7,506	3,944
BLACKROCK INC	178,842	97,742	41,004	34,210
BROADRIDGE FINANCIAL SOLUTNS	23,404	16,351	8,422	5,723
CA INC	53,593	33,807	10,008	11,833
CAESARS ENTERTAINMENT CORP	36,001	16,839	16,839	5,894
CALIX	26,866	23,726	132	8,304
CATERPILLAR INC	113,981	99,446	68,273	34,806
CISCO SYSTEMS INC	89,806	67,711	47,165	23,699
CIT GROUP INC.	22,530	3,567	2,500	1,249
CITIGROUP INC	70,724	24,864	0	8,703
COOPER INDUSTRIES PLC	55,812	42,241	32,338	14,784
CORNING INC	72,234	57,691	42,087	20,192
CORPORATE EXECUTIVE BOARD	11,450	6,769	4,005	2,369
CSX CORP	100,965	91,997	44,365	32,199
CVS CAREMARK CORP	123,357	108,601	73,973	38,010
DEERE & CO	64,869	53,886	41,953	18,860
DELTA AIR LINES INC	65,033	56,834	6,737	19,892
DIRECTV	71,771	56,248	34,259	19,687
DISCOVERY COMMUNICATIONS INC	246,923	228,118	228,118	79,841

Company	Total compensation	Maximum "performance pay" (realized stock options, non-equity incentive pay, vested stock)	Minimum "performance pay" (realized options and non-equity incentive pay)	Maximum "performance pay" corporate tax break
DONNELLEY (R R) & SONS CO	40,839	32,372	15,243	11,330
DOW CHEMICAL	64,687	41,853	15,926	14,649
DUKE REALTY CORP	16,711	10,236	6,188	3,583
EARTHLINK INC	29,415	19,185	8,498	6,715
EATON CORP	92,675	82,778	69,620	28,972
EBAY INC	59,142	43,527	15,481	15,235
EMC CORP/MA	148,679	138,532	82,775	48,486
ENTRAVISION COMMUNICATIONS	5,743	0	0	0
EQUIFAX INC	30,926	20,590	10,419	7,207
EXPRESS SCRIPTS HOLDING CO	104,126	95,172	52,384	33,310
FOOT LOCKER INC	38,462	24,271	19,832	8,495
GENERAL ELECTRIC CO	82,920	17,477	0	6,117
GOLDMAN SACHS GROUP INC	154,661	102,186	14,752	35,765
HONEYWELL INTERNATIONAL INC	109,685	80,985	63,281	28,345
HUMANA INC	60,211	49,775	49,775	17,421
IAC/INTERACTIVECORP	44,865	16,880	11,516	5,908
INGERSOLL-RAND PLC	41,223	29,124	20,005	10,193
INVESTMENT TECHNOLOGY GP INC	16,674	6,825	3,465	2,389
JETBLUE AIRWAYS CORP	12,797	6,937	4,376	2,428
JPMORGAN CHASE & CO	178,324	84,077	23,328	29,427
KELLY SERVICES INC -CL A	17,009	7,885	4,216	2,760
KNIGHT CAPITAL GROUPS	72,497	51,785	29,685	18,125
LOEWS CORP	52,785	37,811	37,811	13,234
LUMINEX	13,704	9,135	2,827	3,197
M & T BANK CORP	31,626	37	37	13
MACY'S INC	119,803	105,365	43,252	36,878
MARRIOTT INTL INC	97,161	84,400	67,483	29,540
MARSH & MCLENNAN COS	76,388	63,948	42,015	22,382
MERCK & CO	101,951	69,105	30,802	24,187
MICROSOFT CORP	73,887	44,170	6,237	15,460
MORGAN STANLEY	101,855	27,030	0	9,461
MOTOROLA SOLUTIONS INC	73,596	59,517	19,141	20,831
NASDAQ OMX GROUP INC	38,018	29,505	19,085	10,327
NORFOLK SOUTHERN CORP	50,366	42,063	16,710	14,722
NYSE EURONEXT	45,142	15,855	0	5,549
PRICE (T. ROWE) GROUP	93,311	88,329	80,558	30,915
PROLOGIS INC	48,126	26,322	5,797	9,213
QUALCOMM INC	111,894	97,939	96,884	34,279

Company	Total compensation	Maximum "performance pay" (realized stock options, non-equity incentive pay, vested stock)	Minimum "performance pay" (realized options and non-equity incentive pay)	Maximum "performance pay" corporate tax break
SALESFORCE.COM	31,176	24,151	20,568	8,453
SIRIUS XM RADIO INC	60,523	12,802	8,837	4,481
STANLEY BLACK & DECKER INC	82,876	69,295	46,606	24,253
STAPLES INC	50,651	39,128	24,954	13,695
STARWOOD HOTELS&RESORTS WRLD	75,616	64,987	45,980	22,745
SUNGARD DATA SYSTEMS INC	30,858	19,142	18,142	6,700
TENNECO INC	30,271	19,112	10,234	6,689
TEREX CORP	23,959	13,149	5,151	4,602
TEXTRON INC	37,190	26,312	6,584	9,209
THERMO FISHER SCIENTIFIC INC	35,165	26,156	16,127	9,155
TIME WARNER INC	91,148	76,597	63,336	26,809
TIVO	21,967	15,148	8,729	5,302
UNITED PARCEL SERVICE INC	28,717	21,101	3,257	7,385
UNITEDHEALTH GROUP	249,265	236,975	200,221	82,941
VERIFONE SYSTEMS INC	39,251	32,525	18,799	11,384
VERIZON COMMUNICATIONS INC	176,401	139,020	20,175	48,657
VORNADO REALTY TRUST	221,108	198,198	141,140	69,369
WEYERHAEUSER CO	13,196	5,804	4,879	2,031
WORLD FUEL SERVICES CORP	58,113	51,772	43,198	18,120
YAHOO INC	46,150	31,180	7,844	10,913
<b>TOTAL</b>	<b>6,260,775</b>	<b>4,523,105</b>	<b>2,721,812</b>	<b>1,583,087</b>

## Endnotes

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- <sup>1</sup>To analyze the tax implications of compensation, we included forms of pay that were taxable in the year received: salary, bonus, non-equity incentives, perks, and the value of options realized and vested stock. (Stock options are taxed in the year they are exercised and stock awards in the year they vest). The executives in the sample are those covered by Section 162(m) of the tax code: the CEO and next three highest-paid executives, excluding the CFO. For banks in the Troubled Asset Relief Program (TARP), 162(m) also applied to CFOs, and we added the CFO data for these banks during the years they participated in TARP. See annex for more detail.
- <sup>2</sup> See: <http://www.alternet.org/economy/10-filthy-rich-tax-dodging-hypocrites-pushing-disastrous-austerity-america>.
- <sup>3</sup>Hemsley received the bulk of his compensation in the form of exercised stock options, a pay category considered “performance-based.” He received much smaller amounts in the form of vested stock awards. For 2011, the company identified what portion of the value of this stock qualified “performance-based.” For the other two years, it did not.
- <sup>4</sup>The 90 companies are those listed on the Fix the Debt web site ([www.fixthedebt.org](http://www.fixthedebt.org)) as of March 13, 2013.
- <sup>5</sup>To analyze the tax implications of compensation, we included forms of pay that were taxable in the year received: salary, bonus, non-equity incentives, perks, and the value of options realized and vested stock. (Stock options are taxed in the year they are exercised and stock awards in the year they vest). The executives in the sample are those covered by Section 162(m) of the tax code: the CEO and next three highest-paid executives, excluding the CFO. But for banks in the Troubled Asset Relief Program (TARP), 162(m) also applied to CFOs, and we added the CFO data for these banks during the years they participated in TARP. A few other firms reported executive pay for less than four executives. (See annex for more detail). As a result, the sample includes 1,085 pay packages over the three-year period. Only 101 of these pay packages amounted to less than \$1 million. If the “performance pay” loophole did not exist and corporations could deduct no more than \$1 million per executive for the expense of executive compensation, these companies only would have been able to deduct \$369 million from their corporation income taxes during this period. Calculation: difference between these 101 executives’ combined pay and the \$1 million per executive threshold = \$30,195,000. (1,085 executives x \$1 million) - \$30,195,000 x 0.35 = \$369,182,000. Because the bulk of executive compensation is now supposedly “performance-based,” these firms were able to deduct as much as five times that amount.
- <sup>6</sup>For banks that received \$300,000 or more in TARP funds, tax breaks to the CEO, CFO, and other three top NEOs were modified by amendment 162(m)(5) to the tax code, which capped deductibility at \$500,000 with no exception. This affected 2009 tax deductibility for the following Fix the Debt members: AIG, Bank of America, BNY Mellon, CIT Group, Citigroup, Goldman Sachs, JP Morgan, M&T Bank, and Morgan Stanley. For 2010: AIG, CIT, and M&T Bank. For 2011: AIG and M&T. For more detail on the TARP restrictions, see: [http://www.irs.gov/irb/2008-44\\_IRB/ar08.html](http://www.irs.gov/irb/2008-44_IRB/ar08.html)
- <sup>7</sup> The portion of compensation that is “performance-based” is made up of the value of options realized, non-equity incentives, and vested stock that was explicitly identified as “performance-based.” In two cases, we also included the values reported in the “bonus” column of corporate proxies: Honeywell and Blackrock. These two companies are unusual in that they have configured these payments to be tax-deductible under 162(m) of the tax code and state this in their proxies.
- <sup>8</sup> Monthly pension derived from [www.immediateannuities.com](http://www.immediateannuities.com) annuity calculator, using total retirement assets, and assuming payments would start at age 65. Based on rates available in New York and assume payments to one individual with no benefits for spouse.
- <sup>9</sup> Fink also received more than \$24 million in vested stock, but the proxy statement did not make clear whether this was tax-deductible.
- <sup>10</sup> “CEO Panel Talks Debt on Bloomberg TV,” Analyst Wire, October 15, 2012.
- <sup>11</sup> Joanna Rotenberg, McKinsey and Company, “The Retirement Challenge: Expectations vs. Reality,” presentation for the EBRI/AARP Pension Conference, 2006.