

Towers Watson Legislative Tracking Chart

-- Retirement and Executive Compensation --

Updated February 25, 2010

What's New:

Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Republican Charles Grassley (R-IA) released a draft of the Hiring Incentives to Restore Employment Act, a jobs creation bill, which includes pension funding relief provisions.

Rep. Doggett (D-TX) circulated draft changes to the Retirement Fairness Act of 2009 (H.R. 4126) that would require Treasury to change the nondiscrimination rules to prevent abusive testing practices and plan designs.

Rep. Sestak (D-PA) introduced a bill (H.R. 4421) that would extend the WRERA waiver of the required minimum distribution rules for certain retirement plans through 2010.

Sen. Boxer (D-CA) introduced a bill (S. 2994) that would impose an excise tax on "excessive" 2009 bonuses paid by certain major recipients of TARP assistance and limit the deduction allowable for such bonuses.

Issues:

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Thousands of bills are introduced in Congress but only a select few are summarized on this chart. This selection represents our best judgment on the likelihood of enactment and the relevance of the issue for employers.

Tax-Qualified Retirement Plans

Bill	Summary	Status
<p>Retirement Fairness Act of 2009</p> <p>H.R. 4126 Doggett (D-TX)</p>	<p><i>Coverage and nondiscrimination testing.</i> Under the bill: (i) employers would be required to count part-time non-highly compensated employees (NHCEs) on a fractional basis (i.e., actual hours performed divided by 2,080) when performing coverage testing; (ii) only vested benefits of NHCEs could be taken into account when performing nondiscrimination testing, whereas all benefits (whether or not vested) would be taken into account for HCEs; and (iii) cross-testing (e.g. testing contributions on the basis of equivalent benefits), would be eliminated and cash balance plans would generally be required to be tested on a contributions basis.</p> <p>Responding to criticism over the breadth of the bill, Rep. Doggett's office has released a revised draft of the bill. Under the revised draft, (ii) and (iii) above would be replaced with a direction to Treasury to modify the nondiscrimination testing regulations to address abusive practices that comply with the current rules but that have the effect of significantly discriminating in favor of HCEs. Also, with respect to the requirement to fractionally count part-time NHCEs, Treasury would be directed to issue regulations that make the rule easier to administer and to limit its application in cases where it is not required to prevent discrimination.</p>	<p>H.R. 4126 was introduced on November 19, 2009 and referred to the House Ways and Means Committee.</p> <p>The Ways and Means Committee may consider this legislation in the context of pension funding relief.</p>
<p>Pension Benefit Guaranty Corporation Governance Improvement Act of 2009</p> <p>S. 1544 Kohl (D-WI)</p>	<p><i>PBGC restructuring.</i> Strengthens the PBGC by allowing more transparency and by establishing greater accountability. Specifically, the bill would (i) expand PBGC board membership from 3 to 7, stagger board member terms, and require the board to meet four times a year; (ii) ensure the PBGC Advisory Council, Inspector General, and General Counsel have full and direct access to the board; and (iii) require recusal of the PBGC Director and the board members from participation in activities which present a potential conflict of interest or appearance of such conflict.</p>	<p>S. 1544 was introduced on July 30, 2009 and referred to the Senate Health, Education, Labor, and Pension Committee.</p>
<p>Lifetime Income Disclosure Act</p> <p>S. 2832 Bingaman (D-NM)</p>	<p><i>Encouragement of annuitization.</i> Require sponsors of participant-directed individual account plans (such as 401(k) plans) to provide participants and beneficiaries with an annual statement projecting the monthly benefit payment they would receive if their present account balance were used to purchase a guaranteed annuity commencing at normal retirement age. The legislation also directs the DOL to issue factors that employers may use in calculating an annuity equivalent, as well as a model disclosure. Employers and service providers using the model disclosure and following the prescribed assumptions and DOL rules would be insulated from liability.</p>	<p>S. 2832 was introduced on December 3, 2009 and referred to the Senate Health, Education, Labor, and Pension Committee.</p>
<p>Retirement Security Needs Lifetime Pay Act of 2009</p> <p>H.R. 2748 Pomeroy (D-ND)</p>	<p><i>Encouragement of annuitization.</i> Encourages retirees to receive some of their retirement savings in the form of guaranteed lifetime income payments by (i) excluding from tax, 25% of lifetime income payments from qualified retirement savings plans and IRAs, subject to a maximum annual exclusion of \$5,000 for an individual return and \$10,000 for a joint return and (ii) excluding from tax, in the case of non-qualified annuities, 50% of lifetime income payments, subject to a maximum annual exclusion of \$10,000 per year. The bill also provides that the value of longevity insurance held in an IRA or a qualified plan is not subject to the required minimum distribution rules.</p>	<p>H.R. 2748 was introduced on June 8, 2009, and referred to the House Ways and Means Committee.</p>

Tax-Qualified Retirement Plans

Bill	Summary	Status
<p>Hiring Incentives to Restore Employment Act (HIRE Act)</p> <p>[No bill number] Baucus (D-MT) Grassley (R-IA)</p>	<p><i>Pension funding relief.</i> The draft legislation, which is focused on job creation, includes a number of defined benefit funding relief provisions. For single employer plans, the bill would allow sponsors to choose two years of relief between 2009 and 2011 (with some limited availability for the 2008 plan year). Plans could amortize shortfall amortization bases established using a “2+7 rule” (2 years of interest followed by 7 year amortization) or a 15 year amortization rule. Required contributions would be increased (for any plan year during the 9-year or 15-year period, as applicable) if the sponsor pays “excess compensation” (i.e., generally, for any employee for any plan year, the amount by which compensation and funded deferred compensation exceeds \$1 million), declares “extraordinary dividends,” or engages in certain stock redemptions. The draft legislation would also provide an AFTAP lookback to help plan sponsors avoid the restriction on benefit accruals for plans that are less than 60% funded.</p>	<p>Senate Majority Leader Harry Reid (D-NV) decided to pursue multiple bills beginning with a scaled-down jobs bill (H.R. 2847) with just a few elements from the Baucus-Grassley proposal. This initial jobs bill was passed by the Senate on February 24, 2010. The pension funding relief provisions were not included. However, Senator Reid has reportedly circulated a second jobs bill, the “American Workers, State and Business Relief Act,” which includes these provisions. Senator Reid has indicated that he would like to take action on the bill as early as March.</p>
<p>401(k) Fair Disclosure and Pension Security Act of 2009</p> <p>H.R. 2989 Miller (D-CA)</p>	<p><i>Pension funding relief/Professional investment advice/Fee disclosure.</i> Combines temporary pension funding relief provisions along with fee disclosure provisions similar to those in H.R. 1984 and investment advice provisions similar to those in H.R. 1988. Unlike H.R. 1988, this bill does not include a carve out for investment advice arrangements modeled on the SunAmerica advisory opinion.</p> <p>The funding relief provisions would: (i) for 2009 and 2010, require only interest payments on 2008 losses and extend the seven year amortization of 2008 losses to nine years; (ii) permit plans to revoke a yield curve election made for 2009 without IRS approval; (iii) post-pone the effective date of the final regulations on minimum funding and benefit restrictions under IRC sections 430 and 436 to no earlier than plan years beginning after December 31, 2009, with a reasonable interpretation standard applicable before that time; (iv) clarify that investment expenses are not included for purposes of calculating the target normal cost; and (v) expand ERISA section 4010 to require reporting if a plan either has underfunding of at least \$50 million or is less than 80% funded. The bill does not include a “maintenance of effort” requirement (i.e., sponsors taking advantage of the relief would not be prevented from freezing the plan).</p>	<p>On June 24, 2009 the House Education and Labor Committee approved H.R. 2989 by a vote of 29 to 17.</p> <p>On October 1, 2009, the House Ways and Means Committee held a hearing that sought to determine the impact of the current financial crisis on the funding levels of defined benefit plans and whether additional funding relief is necessary. With respect to defined contribution plans, the hearing focused on plan participant access to investment advice and whether such advice is unbiased.</p>

Tax-Qualified Retirement Plans

Bill	Summary	Status
<p>Preserve Benefits and Jobs Act of 2009</p> <p>H.R. 3936 Pomeroy (D-ND) Tiberi (R-OH)</p>	<p><i>Pension funding relief.</i> Provides an extended period of time to amortize 2008 investment losses (by allowing sponsors to choose between extending the period to 9 years (from 7) with interest-only payments for the first 2 years, subject to a minimum contribution based on 2008 contribution levels OR to fund losses over a 15 year period). To take advantage of this relief, sponsors would need to satisfy a “maintenance of effort” requirement. Specifically, sponsors would need to either continue providing a minimum level of accruals under their defined benefit plan, make a 3% nonelective contribution to a defined contribution plan for any employees frozen out of the defined benefit plan, or freeze all nonqualified deferred compensation plans with respect to key employees and subject them to the same benefit restrictions that apply to the qualified plan. The duration of this maintenance of effort requirement would be either 2 years or 8 years depending on the extended amortization schedule elected.</p> <p>The bill would also: (i) expand the corridor within which asset values can be smoothed from 10% to 20% for 2009 and 2010; (ii) use the plan’s 2008 funded status to determine if the benefit restriction that freezes benefit accruals for plans that are less than 60% funded applies in 2010; (iii) for 2010 and 2011, use the plan’s 2008 funded status for purposes of the rule that prohibits the use of credit balances with respect to a plan that was under 80% funded in the prior year; (iv) delay the effective date of benefit restrictions for collectively bargained plans until plan years beginning after 2011; (v) modify the criteria for 4010 reporting from less than 80% funded to less than 90% funded; (vi) clarify that investment related expenses are not included in target normal cost; (vii) exclude social security level income options from the accelerated distribution restriction; and (viii) prohibit the adoption of early retirement window arrangements under which benefits are payable in a lump sum unless the plan after taking into account the additional benefits is at least 120% funded (or the company funds the full cost of the additional benefits).</p>	<p>H.R. 3936 was introduced on October 27, 2009 and referred to the House Ways and Means Committee.</p> <p>The Ways and Means Committee may consider including other provisions (e.g., modifications to the nondiscrimination testing rules similar to those in H.R. 4126 and the 401(k) fee disclosure provisions in H.R. 2989) in any pension funding relief legislation.</p>
<p>Savings Recovery Act of 2009</p> <p>H.R. 2021 Boehner (R-OH)</p>	<p><i>Pension funding relief.</i> Provides temporary funding relief beyond that provided in the Worker, Retiree and Employer Recovery Act of 2008. Specifically, the bill would: (i) for 2009 and 2010, expand the asset smoothing corridor from 10% to 20%; and (ii) for 2009 and 2010, require only interest payments on 2008 losses and extend the seven year amortization of 2008 losses to nine years. There would be no “maintenance of effort” requirement (i.e., sponsors taking advantage of the relief would not be prevented from freezing the plan). The bill would also (i) extend the suspension of required minimum distributions for three years, through 2012; (ii) permanently increase the IRA contribution limit to match the limit for employer-sponsored plans; (iii) increase the employer-sponsored plan contribution limit from \$16,500 to \$33,000 for three years; (iv) permanently increase the catch-up limit for IRAs to match the limit for employer-sponsored plans; and (v) raise the catch-up limit for employer-sponsored plans to \$10,000 for three years.</p>	<p>H.R. 2021 was introduced on April 22, 2009 and referred to the House Ways and Means Committee.</p> <p>The bill was developed without consultation with Democrats and certain elements of the bill (e.g., higher contribution limits) are almost certain to face Democratic opposition.</p>

Tax-Qualified Retirement Plans

Bill	Summary	Status
<p>Conflicted Investment Advice Prohibition Act of 2009</p> <p>H.R. 1988 Andrews (D-NJ)</p>	<p><i>Professional investment advice.</i> Eliminates the Pension Protection Act (“PPA”) prohibited transaction exemptions for providing investment advice to participants and replaces them with new rules intended to prevent conflicted advice. The bill would preclude 401(k)-type plan fiduciaries from arranging for the provision of investment advice unless the adviser is an “independent investment adviser.” To be an “independent investment adviser,” advice would need to be provided either: (i) using a computer model certified as unbiased and meeting certain other rules (similar to the PPA provision) or (ii) by an adviser that would not be permitted to provide or manage any plan investments (either directly or through an affiliate) and that would not be permitted to receive fees from any person (or affiliate of a person) that markets, sells, manages or provides plan investments unless the fees are level (i.e., the same regardless of investment option recommended). The bill includes a safe harbor for computer model arrangements based on the “SunAmerica” advisory opinion and for other pre-PPA advisory opinions and exemptions (subject to DOL review).</p>	<p>H.R. 1988 was introduced on April 21, 2009, and referred to the House Education and Labor Committee.</p> <p>On June 17, 2009, the Health, Employment, Labor and Pensions Subcommittee of the House Education and Labor Committee approved H.R. 1988 by a 13-8 vote.</p>
<p>Sensible Transparency for Retirement Plans Act of 2009</p> <p>H.R. 4146 Kline (R-MN)</p>	<p><i>Fee disclosure.</i> Requires service providers to disclose to plan sponsors “total compensation,” including direct and indirect compensation. Service providers would be able to rely on information provided by unrelated entities that are regulated by the Federal Government or a State. Disclosure would have to be made before the arrangement is entered into and within 60 days after the end of each plan year or calendar year thereafter. The bill also requires 401(k)-style plan administrators to provide participants with an advance notice of the fees and expenses that will be charged to participants’ accounts and whether fees of investment options are used to defray costs of plan administration. Quarterly benefit statements would also be required to disclose certain account activity information including “direct charges” assessed during the quarter.</p>	<p>H.R. 4146 was introduced on November 19, 2009, and referred to the House Education and Labor Committee.</p> <p>This is a less-onerous Republican alternative to Rep. Miller’s fee disclosure bill (H.R. 2989). Unlike H.R. 2989, this bill would not require 401(k)-style plans to include a passively managed equity or bond fund in order to receive 404(c) protection. Also, unlike H.R. 2989, plan fiduciaries would be able to rely on disclosures from service providers.</p> <p>This bill is not likely to be taken up by the Education and Labor Committee but may influence the debate.</p>
<p>Defined Contribution Plan Fee Transparency Act of 2009</p> <p>H.R. 2779 Neal (D-MA)</p>	<p><i>Fee disclosure.</i> Requires sponsors of self-directed 401(k) and similar plans to provide employees, both at enrollment and quarterly, with detailed information regarding plan investments and fees. Treasury would be directed to develop model notices and to provide guidance for delivering these disclosures. In addition, service providers would be required to provide plan sponsors with detailed information about investment fees, service offerings and any revenue sharing arrangements. This information would need to be provided in advance of a contract for service and generally annually thereafter. Tax penalties would be imposed for failure to comply.</p>	<p>H.R. 2779 was introduced on June 9, 2009, and referred to the House Ways and Means Committee.</p> <p>Unlike H.R. 1984, this bill applies to all tax-preferred participant-directed defined contribution plans, including non-ERISA 403(b) plans and governmental 457(b) plans.</p>

Tax-Qualified Retirement Plans

Bill	Summary	Status
<p>401(k) Fair Disclosure for Retirement Security Act of 2009</p> <p>H.R. 1984 Miller (D-CA)</p>	<p><i>Fee disclosure.</i> This bill requires: (i) 401(k) plan administrators to provide an advance notice identifying each of the plan's investment options along with its risk level, investment objective, historical returns, a fee comparison chart and other information; (ii) quarterly benefit statements disclosing certain account activity information including fees assessed during the quarter; (iii) 401(k)-style plans to include at least one lower-cost, balanced index fund in order to receive protection against liability for participants' investment losses under ERISA section 404(c); (iv) service providers to disclose to plan sponsors fee information broken down into four prescribed categories, any financial relationships or potential conflicts of interest, the existence of different share classes and the basis for the differences, and, in situations where services are provided to the plan for "free" or at a discount, the extent to which and the amount by which the service provider or its affiliates are otherwise compensated; and (v) the Department of Labor to provide model notices and to review compliance with these requirements.</p>	<p>H.R. 1984 was introduced on April 21, 2009 and referred to the House Education and Labor Committee.</p> <p>On June 17, 2009, the House Health, Employment, Labor, and Pensions Subcommittee of the House Education and Labor Committee approved H.R. 1984 by a 13-8 vote.</p>
<p>Defined Contribution Fee Disclosure Act of 2009</p> <p>S. 401 Harkin (D-IA)</p>	<p><i>Fee disclosure.</i> Requires: (i) service providers to disclose to plan administrators of defined contribution plans the services to be provided, the entities that will be performing such services (including affiliated or third party providers), the expected total annual charges (with a breakout of those charges into four categories), relationships between parties with financial interests in the plan, and certain other information; (ii) plan administrators of participant-directed defined contribution plans to provide participants and beneficiaries with advance notice of investment options available under the plan including information about the investment objectives, risk level, historical return and an investment comparison chart disclosing the potential service fees imposed on plan investments (with a breakout of those fees into four categories); (iii) additional information (including fee information) to be included in quarterly benefit statements with an exception for certain small employers; (iv) the DOL to develop model statements that may be used to satisfy the aforementioned disclosure requirements; and (v) the DOL to publish data on investment options and median fee levels. The bill would be effective for plan years beginning after December 31, 2011, and would require the DOL to issue final regulations a year earlier.</p>	<p>S. 401 was introduced on February 9, 2009 and referred to the Senate Health, Education, Labor and Pension Committee.</p>
<p>[untitled]</p> <p>H.R. 4421 Sestak (D-PA)</p>	<p><i>Required minimum distribution relief.</i> Extends the Worker, Retiree and Employer Recovery Act (WRERA) waiver of the required minimum distribution rules for certain retirement plans and accounts through 2010.</p>	<p>H.R. 4421 was introduced on January 12, 2010 and referred to the House Ways and Means Committee.</p>
<p>[untitled]</p> <p>H.R. 882 King (R-NY)</p>	<p><i>Required minimum distributions.</i> Increases the age at which distributions from qualified retirement plans, 403(b) plans, 457 plans and IRAs are required to begin from 70-1/2 to 75.</p>	<p>H.R. 882 was introduced on February 4, 2009 and referred to the House Ways and Means Committee.</p> <p>H.R. 2331 (discussed below) and H.R. 2637 would make a similar change.</p>
<p>Pension Security Act of 2009</p> <p>H.R. 712 Castle (R-DE)</p>	<p><i>Pension plan reporting.</i> Requires the financial statement filed with the annual report for a defined benefit pension plan covered by ERISA to include a separate schedule identifying each hedge fund (i.e., unregistered investment pool) in which plan funds are invested and the amount of the investment.</p>	<p>H.R. 712 was introduced on January 27, 2009 and referred to the House Education and Labor Committee.</p>

Executive Compensation

Bill	Summary	Status
<p>Ending Excessive Corporate Deductions for Stock Options Act</p> <p>S. 1491 Levin (D-MI)</p>	<p><i>Stock option compensation deductions.</i> This bill would: (i) limit the corporate tax deduction for nonqualified stock option compensation to the amount of the stock option book expense shown on a corporation's financial statement; (ii) allow corporations to deduct nonqualified stock option compensation in the same year it is recorded on the company books, without waiting for the options to be exercised; and (iii) bar nonqualified stock options from qualifying as performance-based compensation so as to be exempt from the \$1 million deduction cap under section 162(m) that applies to other types of compensation paid to the top executives of publicly held corporations. The bill also includes a transition rule providing that the new tax deduction rule would not apply to stock option exercises occurring prior to the date of enactment. For exercises after the date of enactment, the bill would permit the old tax deduction rule to apply to options vested prior to effective date of Financial Accounting Standard (FAS) 123R (generally, June 15, 2005) and exercised after the adoption of the bill, and allow a catch-up deduction in the first year after enactment for options that vested after the effective date of FAS 123R but that were exercised after the date of enactment.</p>	<p>S. 1491 was introduced on July 22, 2009, and referred to the Senate Finance Committee.</p> <p>Prospects for the bill are uncertain. Similar proposals have been introduced in the past but have failed to gain traction. However, the legislative environment has changed and there is pressure on Congress to rein in executive pay.</p>
<p>Restoring American Financial Stability Act of 2009</p> <p>[Chairman's Mark] Dodd (D-CT)</p>	<p><i>Executive compensation and governance reform.</i> The bill, which is intended to reform the financial system, makes a number of changes relating to executive compensation and corporate governance. In particular, the bill would (i) give shareholders of public companies an annual advisory vote on the executive compensation disclosed in a company's proxy materials; (ii) require disclosures respecting any compensation to the CEO that is related to corporate transactions (i.e., "golden parachutes)" and give shareholders a separate advisory vote on such compensation unless it was previously the subject of a shareholder vote under the more general "say on pay" requirement above; (iii) require compensation committees of public companies to be independent; (iv) require proxy disclosure regarding the decision to combine or separate the CEO and chairperson of the board roles; (v) require that compensation consultants and legal counsel satisfy independence standards established by the SEC; (vi) require public companies to establish policies to recover incentive-based compensation from any current or former executive officer received during the three-year period preceding an accounting restatement, to the extent the amount of such compensation was larger based on the inaccurate financial statements; (vii) require the use of a majority vote standard for uncontested director elections and plurality standard for contested elections; (viii) prohibit staggered boards without shareholder approval; (ix) enhance proxy disclosures relating to the relationship between pay and the company's financial performance; (x) require proxy disclosure about whether employees are permitted to purchase financial instruments designed to hedge against a decrease in the market value of equity granted as compensation; and (xi) direct the SEC to adopt proxy access rules.</p>	<p>A mark-up by the Senate Banking, Housing and Urban Affairs Committee is expected.</p>

Executive Compensation

Bill	Summary	Status
<p>Wall Street Reform and Consumer Protection Act of 2009</p> <p>H.R. 4173 Frank (D-MA)</p>	<p><i>Executive compensation and governance reform.</i> This bill, which is intended to reform the financial system, makes a number of changes relating to executive compensation and corporate governance. In particular, the bill would: (i) give shareholders of public companies (unless exempted by the SEC) an annual advisory vote on the executive compensation disclosed in a company's proxy materials; (ii) require disclosures respecting any compensation that is related to corporate transactions (i.e., "golden parachutes") and give shareholders a separate advisory vote on such compensation, unless it was previously the subject of a shareholder vote under the more general "say on pay" requirement above; (iii) require compensation committees of public companies to be independent; (iv) require that compensation consultants satisfy independence standards established by the SEC which would have to be "competitively neutral" among categories of consultants (e.g., firms that only provide compensation advisory services to compensation committees of a public company and multi-disciplinary firms that also provide other services to public companies) and preserve the ability of compensation committees to retain the services of members of any such category; (v) require disclosures by most large financial institutions about incentive pay programs sufficient for their regulators to evaluate whether these programs are properly aligned with risk; and (vi) require the appropriate federal regulators to jointly issue regulations prohibiting certain incentive arrangements that they determine encourage inappropriate risks by covered financial institutions.</p>	<p>The House passed H.R. 4173 on December 11, 2009 by a vote of 223-202.</p> <p>The executive compensation and governance provisions were originally part of the Corporate and Financial Institution Compensation Fairness Act of 2009 (H.R. 3269), which was passed by the House on July 31, 2009.</p> <p>The House Financial Services Committee has scheduled a hearing on January 22, 2010, to discuss compensation in the financial services industry.</p>
<p>Corporate Governance Reform Act of 2009</p> <p>H.R. 3272 Ellison (D-MN)</p>	<p><i>Executive compensation and governance reform.</i> This bill would: (i) provide for an annual advisory vote on the compensation of senior executives; (ii) require that the chairman of the board of a public company be independent and prohibit such individual from serving as an executive officer of the company; (iii) require public companies to establish a risk committee comprised entirely of independent directors (to evaluate risk management practices of the company); (iv) require public companies to establish a compensation committee comprised entirely of independent directors (to evaluate compensation practices and structures of the company); and (v) require the SEC to study the feasibility of requiring SEC certification for all board candidates.</p>	<p>H.R. 3272 was introduced on July 21, 2009 and referred to the House Committee on Financial Services.</p>
<p>Shareholder Empowerment Act of 2009</p> <p>H.R. 2861 Peters (D-MI)</p>	<p><i>Executive compensation and governance reform.</i> Makes a number of corporate governance changes to public companies including several with a direct impact on executive compensation. This bill would: (i) provide for an annual advisory vote on the compensation of senior executives; (ii) require compensation consultants to be "independent"; (iii) require companies to recover or cancel payments that were awarded to executives on the basis of fraud or faulty earnings statements; (iv) prohibit the same person from serving as CEO and chairman of the board; (v) prohibit golden parachute payments to executives who are terminated for poor performance; (vi) require disclosure of the performance targets being used to determine bonuses and other incentives; (vii) require directors to receive a majority vote in uncontested elections; (viii) give shareholders that have held at least 1% of a company's shares for at least one year access to proxy forms to nominate directors; and (ix) eliminate uninstructed broker votes that allow fund managers to vote on behalf of investors.</p>	<p>H.R. 2861 was introduced on June 12, 2009 and referred to the House Committee on Financial Services.</p>

Executive Compensation

Bill	Summary	Status
<p>Shareholder Bill of Rights Act of 2009</p> <p>S. 1074 Schumer (D-NY)</p>	<p><i>Executive compensation and governance reform.</i> Makes a number of changes relating to corporate governance, including several with a direct impact on executive compensation. In particular, the bill would (i) give shareholders of public companies an annual advisory vote on the executive compensation disclosed in a company's proxy materials; (ii) require disclosures respecting any compensation that is related to corporate transactions (i.e., "golden parachutes") and give shareholders a separate advisory vote on such compensation (unless it was previously the subject of a shareholder vote under the more general "say on pay" requirement above); (iii) confirm the authority of the SEC to give certain shareholders access to the company proxy materials for nominations to the board of directors; (iv) require the chairman of the board of a public company to be independent and not to have served as an executive officer of the company; (v) require all board members to be subject to annual elections by shareholders; (vi) require the use of a majority vote standard for director elections (while maintaining a plurality standard for contested elections); and (vii) require public companies to establish a risk committee comprised entirely of independent directors (to evaluate risk management practices of the company).</p>	<p>S. 1074 was introduced on May 19, 2009 and referred to the Senate Banking, Housing and Urban Affairs Committee.</p>
<p>Excessive Pay Shareholder Approval Act</p> <p>S. 1006 Durbin (D-IL)</p>	<p><i>Shareholder approval of compensation.</i> Requires a supermajority (i.e., 60%) of the shareholders of publicly-traded companies to approve the compensation structure of any employee for any year in which the employee receives in excess of 100 times the average compensation of all employees at that company. Compensation would be defined to include salary, commissions, fringe benefits, deferred compensation, retirement contributions, options, bonuses, property and other pay.</p>	<p>S. 1006 was introduced on May 7, 2009, and referred to the Senate Banking, Housing and Urban Affairs Committee.</p>
<p>Patient Protection and Affordable Care Act</p> <p>H.R. 3590 Reid (D-NV)</p>	<p><i>Limits on deductible compensation.</i> This bill, the Senate's version of comprehensive health care reform legislation, includes a provision that would limit the deduction for compensation paid to officers, employees, directors, and other workers or service providers (such as consultants) of certain health insurance providers to \$500,000. In addition, the exceptions from the long-standing section 162(m) \$1 million deduction limit for performance-based compensation, commissions, or remuneration under existing binding contracts would no longer apply. The deduction limit would continue to apply to amounts earned by persons subject to the limit but paid after they terminate employment. Covered insurers are those who derive at least 25% of their gross premium income in their health business from health insurance plans that meet the individual mandate requirements of the bill.</p>	<p>The Senate approved H.R. 3590 by a 60-39 vote on December 24, 2009.</p> <p>The bill is a combination of the America's Healthy Future Act (S. 1796) and the Affordable Health Choices Act (S. 1679).</p> <p>Last year, Congress adopted similar limits on deductible compensation with respect to financial institutions that received TARP assistance, albeit limited to the top 5 executives.</p>

Executive Compensation

Bill	Summary	Status
<p>Excessive Pay Capped Deduction Act</p> <p>S. 1007 Durbin (D-IL)</p>	<p><i>Limits on deductible compensation.</i> Limits the normal tax deduction for compensation for any employee to 100 times the average compensation for all employees at that company. Compensation would be defined to include salary, commissions, fringe benefits, deferred compensation, retirement contributions, options, bonuses, property and other pay. Employers exceeding this deduction limit would need to report certain pay information to the IRS.</p>	<p>S. 1007 was introduced on May 7, 2009, and referred to the Senate Banking, Housing and Urban Affairs Committee.</p> <p>A similar bill (H.R. 1594) was introduced in the House and would limit the tax deduction for compensation paid to any employee to the greater of 25 times the compensation paid to the lowest paid employee or \$500,000.</p>
<p>Taxpayer Fairness Act</p> <p>S. 2994 Boxer (D-CA)</p>	<p><i>TARP bonuses.</i> Imposes a 50% excise tax on individuals on the amount of any bonus paid in 2009 in excess of \$400,000 by financial institutions that received more than \$5 billion in TARP assistance and would limit the deduction available for such bonuses.</p>	<p>S. 2994 was introduced on February 4, 2010 and referred to the Senate Finance Committee.</p> <p>Rep. Peter Welch (D-VT) introduced a similar bill, the Wall Street Bonus Tax Act (H.R. 4426), on January 12, 2010.</p>
<p>Pay for Performance Act of 2009</p> <p>H.R. 1664 Grayson (D-FL)</p>	<p><i>TARP bonuses.</i> Adds new compensation restrictions to the existing restrictions on executive compensation in the Emergency Economic Stabilization Act (as modified in February 2009 by the American Recovery and Reinvestment Act ("ARRA")). Under the bill, organizations that have received assistance under the Troubled Asset Relief Program ("TARP") and Federal home loan banks and other designated organizations that have received government assistance would, while such assistance is outstanding, be prohibited from paying compensation to any executive or any other employee that is: (i) "unreasonable or excessive", or (ii) includes a "bonus or other supplemental payment" that is not directly based on acceptable performance measures. Treasury is required to establish, within 30 days of enactment, standards for affected entities to determine whether a payment is unreasonable or excessive and whether the performance measures on which a bonus or other supplemental payment is based are acceptable.</p> <p>The bill also provides that the restriction on bonuses of highly-compensated employees adopted in ARRA would apply regardless of when the arrangement to pay such bonus was entered into. This provision is intended to repeal the current exemption for bonuses due under employment contracts entered into on or before February 11, 2009.</p>	<p>H.R. 1664 was approved by the House on April 1, 2009, by a 247-171 vote.</p> <p>A more controversial bill (H.R. 1575) that would have treated certain bonuses as fraudulent payments and authorized the attorney general to recover them, was also considered by the House on April 1, 2009, but was defeated.</p>

Executive Compensation

Bill	Summary	Status
<p>[untitled]</p> <p>H.R. 1586 Rangel (D-NY)</p> <p>Compensation Fairness Act of 2009</p> <p>S. 651 Baucus (D-MT)</p>	<p><i>TARP bonuses.</i> Taxes at a 90% rate certain bonuses paid to employees at entities that received more than \$5 billion in TARP assistance and certain other entities. The tax would apply to any portion of the bonus that exceeds the \$250,000 total adjusted gross income limitation (for married or single individuals – \$125,000 if married filing separately). Employees who irrevocably waive or return a bonus payment before the close of the taxable year in which such payment is due would be exempt. The bill would apply to bonuses received on or after January 1, 2009.</p> <p>A broader Senate alternative (S. 651) imposes an excise tax of 35% on both the employer and employee on retention bonuses and non-retention bonuses (to the extent over \$50,000). The bill would also impose a \$1 million cap on nonqualified deferred compensation over a 12 month period. These provisions would apply to recipients of TARP assistance in which the government holds an equity interest, with exceptions for small banks and entities that received less than \$100 million in government assistance.</p>	<p>H.R. 1586 was approved by the House on March 19, 2009 by a 328-93 vote.</p> <p>S. 651 was introduced on March 19, 2009 and placed on the Senate Legislative Calendar.</p> <p>Several other bonus surtax bills (e.g., H.R. 1527 and H.R. 1518) have also been introduced. However, the rush to enactment has slowed. This may be attributable to concerns about the constitutionality of this type of targeted, retroactive tax.</p>
<p>American Recovery and Reinvestment Act of 2009</p> <p>H.R. 1 Obey (D-WI)</p> <p>P.L. 111-5</p>	<p><i>Troubled Asset Relief Program.</i> Law imposes a number of executive compensation restrictions and corporate governance standards applicable to all past and future recipients of financial assistance from the federal government under the Troubled Asset Relief Program (“TARP”). Specifically, the law: (i) prohibits incentives for senior executive officers (“SEO”) that would encourage unnecessary and excessive risks and prohibits any compensation plan that would encourage manipulation of reported earnings; (ii) requires the clawback of compensation based on criteria found to be materially inaccurate with respect to SEOs and the next 20 most highly paid employees; (iii) limits the tax deduction for SEOs’ pay to amounts at or below \$500,000 per year, without any exemption for performance-based compensation; (iv) prohibits any “golden parachute” (i.e., severance) payments to an SEO and any of the next 5 most highly paid employees; (v) requires the board to have a company-wide policy regarding excessive or luxury expenditures; (vi) requires the CEO and the CFO to annually certify as to the entity’s compliance with these pay restrictions; (vii) prohibits the payment or accrual of any “bonus, retention award or incentive compensation” to a group of executives whose size depends on the level of assistance received (with exceptions for “long-term” restricted stock and for bonuses required to be paid pursuant to grandfathered contracts); (viii) requires shareholders to have a nonbinding say-on-pay to approve the compensation of executives as reflected in the proxy materials; (ix) authorizes Treasury to conduct a retroactive review of any bonuses, retention awards and other compensation paid to any employee of an entity that received TARP assistance before the law was enacted to determine whether such payments were inconsistent with the purposes of the assistance program or otherwise contrary to public policy and permits Treasury to seek reimbursement of payments found to violate this standard; and (x) requires companies to have a compensation committee comprised solely of independent directors.</p>	<p>President Obama signed H.R. 1 into law on February 17, 2009.</p> <p>The Senate version of the bill contained a provision that would have capped annual compensation paid to any employee or director of any entity that receives or has received TARP assistance to the level of compensation paid to the President of the United States (approximately \$400,000). This provision was dropped in conference.</p>

Executive Compensation

Bill	Summary	Status
[untitled] S. 431 Whitehouse (D-RI)	<i>Troubled Asset Relief Program.</i> Establishes an Office of the Taxpayer Advocate in the Justice Department that would conduct audits of TARP recipients with respect to officer and director compensation. The Advocate would be authorized to assist Treasury in the negotiation of TARP assistance in order to ensure that only "fair and reasonable executive compensation is paid by entities receiving TARP funds."	Introduced on February 12, 2009 and referred to the Senate Committee on Banking, Housing, and Urban Affairs.
Cap Executive Officer Pay Act of 2009 S. 360 McCaskill (D-MO)	<i>Troubled Asset Relief Program.</i> Limits the annual amount of compensation (including wages, salary, deferred compensation, retirement contributions, stock options, bonuses, property, and any other form of compensation) paid to officers, directors, executives and employees of financial institutions and other entities that receive or have in the past received assistance under TARP to the amount paid to the President of the United States (approximately \$400,000). The limitation would apply while any TARP assistance was outstanding.	Introduced on January 30, 2009 and referred to the Senate Committee on Banking, Housing and Urban Affairs.

Miscellaneous Benefit Issues

Bill	Summary	Status
<p>Respect for Marriage Act of 2009</p> <p>H.R. 3567 Nadler (D-NY)</p>	<p><i>Same-sex marriage.</i> The bill would repeal the Defense of Marriage Act (under which marriage is defined as the union of one man and one woman for federal law purposes) and would instead provide that if a marriage is valid under state law, it must be recognized for purposes of federal law (e.g., ERISA and the Internal Revenue Code). However, states that have not previously recognized same-sex marriage would not be required under the bill to do so.</p>	<p>H.R. 3567 was introduced on September 15, 2009 and referred to the House Judiciary Committee.</p> <p>The Administration has expressed support for the repeal of DOMA.</p> <p>If enacted, the bill would have significant implications for qualified plans (e.g., same-sex spouses would be recognized for purposes of the survivor annuity rules).</p>
<p>Savings for American Families' Future Act of 2009</p> <p>H.R. 1961 Pomeroy (D-ND)</p>	<p><i>Saver's credit.</i> Expands the Saver's Credit (formally known as the Retirement Savings Contributions Credit). Currently, low- and moderate-income taxpayers who contribute to an IRA or certain employer-sponsored plans can receive a non-refundable tax credit of up to \$1,000 (up to \$2,000 if filing jointly). The bill would: (i) expand the number of families and individuals eligible for the credit by doubling the income limits for the full credit; (ii) make the credit refundable; (iii) require that the credit be paid only to the taxpayer's retirement account, and (iv) establish the maximum amount of the credit as a 50% match on the first \$1,000 of retirement savings for families (\$500 for individuals), indexed for inflation.</p>	<p>H.R. 1961 was introduced on April 2, 2009, and referred to the House Ways and Means Committee.</p> <p>This bill reflects the Saver's Credit proposal offered by the President in the Fiscal Year 2010 budget blueprint.</p>
<p>Individual Recovery Assistance Act of 2009</p> <p>H.R. 2331 Latta (R-OH)</p>	<p><i>Taxation of distributions.</i> Waives the 10% penalty on early distributions from qualified retirement plans (i) where the amount of distributions for the year do not exceed the amount of a participant's mortgage payments on a primary residence, and (ii) for participants who have lost jobs and have received unemployment compensation for 12 consecutive weeks. These two exceptions would apply for one year, dating from passage of the bill. The bill would also increase the age at which distributions from qualified retirement plans are required to begin from 70-1/2 to 75.</p>	<p>H.R. 2331 was introduced on May 7, 2009, and referred to the House Ways and Means Committee.</p> <p>H.R. 656 would provide similar relief.</p>
<p>Unemployment Assistance Act of 2009</p> <p>H.R. 1311 Paul (R-TX)</p>	<p><i>Taxation of distributions.</i> Excludes from gross income amounts distributed from tax-exempt retirement plans, health savings accounts, Roth IRAs, and qualified tuition programs to pay for certain living, health care and education or job training expenses of a taxpayer during a period of unemployment not exceeding two years. The individual receiving these unemployment distributions would have the option of repaying them.</p>	<p>H.R. 1311 was introduced on March 4, 2009, and referred to the House Ways and Means Committee.</p>
<p>Older Worker Opportunity Act of 2009</p> <p>S. 502 Kohl (D-WI)</p>	<p><i>Flexible work programs.</i> Provides a tax credit of up to 25% of the first \$6,000 in wages paid annually to each worker age 62 and older in a flexible work program meeting certain requirements if the employer: (i) provides health insurance to these workers on the same basis as other employees; (ii) allows these employees to continue to participate in the employer's defined benefit and defined contribution plans; (iii) eliminates the option of suspending retirement benefits; and (iv) calculates final average earnings (for plans that use final average earnings) so that it is no less than such earnings before the participant entered the program. The credit would sunset after 2012.</p>	<p>S. 502 was introduced on February 27, 2009, and referred to the Senate Finance Committee.</p>

Miscellaneous Benefit Issues

Bill	Summary	Status
Lilly Ledbetter Fair Pay Act of 2009 S. 181 Mikulski (D-MD) P.L. 111-2	<i>Wage discrimination and retirement plans.</i> Law amends various federal laws to provide that a discriminatory act occurs each time compensation is paid pursuant to an allegedly discriminatory compensation decision. This law essentially provides a renewable statute of limitations for claims of compensation discrimination. The original bill was introduced in response to the U.S. Supreme Court's 5-4 ruling in <i>Ledbetter v. Goodyear Tire & Rubber</i> that the filing deadline begins to run when the employer initially made the allegedly discriminatory compensation decision. This law may have implications for retirement plans (e.g., by forcing employers to recalculate benefits using increased compensation).	President Obama signed S. 181 into law on January 29, 2009.
The Paycheck Fairness Act H.R. 12 DeLauro (D-CT)	<i>Wage discrimination and retirement plans.</i> Bill addresses gender-based pay discrimination by strengthening the Equal Pay Act of 1963. Specifically, the bill: (i) requires that employers seeking to justify unequal pay bear the burden of proving that its actions are job-related and consistent with a business necessity and (ii) allows for unlimited compensatory and punitive damages under certain circumstances. This bill could have implications for retirement plans (e.g., by forcing employers to recalculate benefits using increased compensation).	On January 9, 2009, the House approved H.R. 12 by a vote of 256-163. A related bill (S. 182) was introduced in the Senate on January 8, 2009.