

CFDD Legislative Update

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Pending Legislation October 2009

With economic concerns and health care reform stepping to center stage, retirement-related legislative initiatives have taken somewhat of a back seat. While time is running out on this edition of Congress, there may yet be some movement on fee disclosure, investment advice, executive pay and defined benefit plan funding relief. The Obama Administration's package of reform initiatives released before Labor Day may spur legislative action on "automatic IRAs" and an expanded savers tax credit. The following represent bills that are actively being considered by Congress at this time. For more information on these and other bills, go to the Library of Congress website at <http://thomas.loc.gov>.

Bill	Description	Outlook/Effective Date
Executive Pay		
Ending Excessive Corporate Deductions for Stock Options Act - S. 1491 Levin (D-MI)	Would limit a corporation's ability to write off executive compensation as a business expense by disallowing corporate tax deductions for stock option compensation greater than the correlating expense shown on a corporation's financial statement.	Introduced 7/22/09 – referred to Finance Committee.
Corporate and Financial Institution Compensation Fairness Act of 2009 - HR 3269 Frank (D-MA)	<ul style="list-style-type: none"> • Would give shareholders of public companies (unless exempted by the SEC) a "say on pay" for top executives and ensure they have a nonbinding advisory vote on their company's pay practices. • Require federal regulators to proscribe inappropriate or imprudently risky compensation practices as part of solvency regulation of all financial institutions. • Require financial firms (with \$1 billion or more in assets) to disclose any compensation structures that include incentive-based pay provisions. 	<p>On 7/31/09, the House passed this bill by a vote of 237-185.</p> <p>Once the Senate debates the similar Shareholder Bill of Rights Act of 2009 (S. 1074), the two bills will likely be reconciled in conference.</p>
Shareholder Empowerment Act of 2009 – HR 2861 Peters (D-MI)	<ul style="list-style-type: none"> • Provide for an annual advisory vote on compensation of senior executives • Require companies to recover or cancel payments that were awarded to executives on the basis of fraud or faulty earnings statements • Prohibit golden parachute payments to executives who are terminated for poor performance 	Introduced on 6/12/09 – referred to Committee on Financial Services.
Shareholder Bill of Rights Act of 2009 - S 1074 Schumer (D-NY)	Would give shareholders an advisory role on compensation packages and provide them with a way to nominate board directors.	Introduced 5/19/09 – referred to the Committee on Banking, Housing and Urban Affairs
Executive Pay Shareholder Approval Act - S 1006 Durbin (D-IL)	Would require a supermajority (i.e. 60%) shareholder approval for any compensation more than 100 times the average compensation for employees at that company.	Introduced 5/7/09 – referred to the Committee on Banking, Housing and Urban Affairs
Executive Pay Capped Deduction Act of 2009 - S 1007 Durbin (D-IL)	Would limit the normal tax deduction for compensation for executives to 100 times the average compensation for all employees at that company.	Introduced 5/7/09 – referred to Committee on Banking, Housing and Urban Affairs
Pay for Performance Act - HR 1664 Grayson (D-FL)	Would amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit unreasonable and excessive compensation and compensation not based on performance standards.	Introduced 3/23/09, passed 4/1 in House, to Senate 4/2.

Bill	Description	Outlook/Effective Date
Executive Pay (continued)		
American Recovery and Reinvestment Act of 2009 – H.R. 1 Obey (D-WI) Public Law 111-5	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”).	Signed into law by President Obama on 2/17/09. (Amends and replaces corporate governance and executive compensation requirements of the TARP as created under the Emergency Economic Stabilization Act of 2008.)
Economic Recovery Adjustment Act of 2009 - S.431 Whitehouse (D-RI)	Establishes an Office of the Taxpayer Advocate in the Justice Department that would conduct ongoing audits and oversight of executive compensation received by TARP recipients.	Introduced on 2/12/09 and referred to the Committee on Banking, Housing and Urban Affairs.
Cap Executive Officer Pay Act of 2009 – S. 360 McCaskill (D-MO)	Would require entities that receive or have received emergency economic assistance under the TARP to cap annual compensation paid to officers, directors, executives or other employees. Compensation would be capped at the salary paid to the President of the United States (\$400,000). This limitation would apply while any TARP assistance was outstanding.	Introduced on 1/30/09 and referred to the Committee on Banking, Housing and Urban Affairs.
Fee Disclosure		
401(k) Fair Disclosure and Pension Security Act of 2009 - HR 2989 Miller (D-CA)	Combines temporary pension funding relief provisions along with fee disclosure provisions similar to those in HR 1984 and investment advice provisions similar to those in HR 1988.	On 6/24/09, the House Education and Labor Committee approved HR 2989 by a vote of 29 to 17.
Defined Contribution Plan Fee Transparency Act of 2009 - HR 2779 Neal (D-MA)	<ul style="list-style-type: none"> • Would mandate that plan participants receive an enrollment notice upfront and a quarterly notice with detailed information concerning plan investments and fees. • Would require disclosure of the plans’ risk/return characteristics, historic rates of return in comparison to a benchmark and whether plan providers would receive payments from a third party in connection with providing services to the plan. Plan providers would have to unbundle fees (if applicable) or list fees individually. 	Introduced 6/9/09 – referred to Ways and Means Committee.

Bill	Description	Outlook/Effective Date
Fee Disclosure (continued)		
<p>401(k) Fair Disclosure for Retirement Security Act of 2009 - HR 1984 Miller (D-CA)</p>	<ul style="list-style-type: none"> • Ensure that workers receive basic investment information, including information on risk, return, complete fees and investment objectives before signing up for a plan. • Require that all fees – in one number – that are charged against a worker’s account be included in the account holder’s quarterly statement. • Require service providers to disclose to employers all fees assessed against the participant’s account, broken down into four categories: administrative fees, investment management fees, transaction fees and other fees. • Require plan administrators to offer at least one low-cost index fund to plan participants in order to receive protection against liability for participants’ investment losses. • Require service providers to disclose any financial relationships or potential conflicts of interest to 401(k) plan sponsors. • Give the Department of Labor the authority to enforce new disclosure rules and fine service providers who violate them. 	<p>Introduced 4/21/09 – referred to Committee on Education and Labor (bill reintroduced from last year).</p> <p>On 6/17/09, the Health, Employment, Labor and Pensions subcommittee approved HR 1984 by a 13-8 vote.</p> <p>Most provisions combined into HR 2989.</p>
<p>Defined Contribution Fee Disclosure Act – S. 401 Harkin (D-IA)</p>	<ul style="list-style-type: none"> • Increase the fee information required to be provided to sponsors of defined contribution plans. This information would then be passed on to participants upon request. • Require participants to be given information about the overall levels of fees when they choose investment options and on their quarterly statements. The pre-selection notice would include other critical information for plan selection such as historical returns, the level of risk and basic investment guidance. A quarterly statement would help individuals to understand over time how much they have paid in fees and help them to compare fees against returns. • Require disclosure of relationships between all parties with financial interest in the plan. 	<p>Introduced on 2/9/09—referred to Health, Education, Labor and Pension Committee. Would be effective for plan years beginning after 12/31/11 and would require Department of Labor (DOL) to issue final regulations a year earlier.</p>

Fiduciary Liability		
<p>Lilly Ledbetter Fair Pay Restoration Act – S. 181 Mikulski (D-MD) Public Law 111-2</p>	<p>Overturns Supreme Court decision in Ledbetter vs. Goodyear Tire and Rubber Co. Court had ruled that time limit for filing discrimination claim does not restart with each paycheck. Law now allows paycheck restart. [This law may have implications for retirement plans (e.g. by forcing employers to recalculate benefits using increased compensation).]</p>	<p>Signed into law by President Obama on 1/29/09—effective 5/28/07 (the day before the Supreme Court’s decision).</p>

Bill	Description	Outlook/Effective Date
Investment Advice		
Conflicted Investment Advice Prohibition Act of 2009 - HR 1988 Andrews (D-NJ)	Would require investment advisers to be “independent investment advisers”, who must not “provide or manage” any plan assets in the individual accounts. Fees must not vary based on advice provided and must be calculated pursuant to a flat dollar, flat percentage of plan assets or per participant basis. Advice must be provided pursuant to a written agreement that provides that (a) the investment adviser is a fiduciary of the plan with respect to the provision of the advice, (b) the advice be provided only by registered representatives of the investment adviser or an affiliate and (c) the adviser discloses whether he or she has any material, financial, referral or other relationship or arrangement with an entity that creates or may create a conflict of interest for the adviser—and, if so, discloses that arrangement.	Introduced 4/21/09 – referred to Committee on Education and Labor. On 6/17/09, the Health, Employment, Labor and Pensions subcommittee approved HR 1988 by a 13-8 vote. Most provisions combined into HR 2989.
IRAs		
IRA Charitable Giving Act - HR 2435 Kosmas (D-FL)	Would extend the law that allows tax-free gifts from IRAs to charities (would permit such IRA distributions through the end of 2010).	Introduced 5/14/09 – referred to Ways and Means Committee
IRA Assistance Act of 2009 - HR 1628 McCotter (R-MI)	Would allow premature distributions from IRAs (other than Roth IRAs) without penalty to make hardship loans	Introduced 3/19/09 – referred to Ways and Means Committee.
Required Minimum Distributions		
Individual Recovery Assistance Act of 2009 - HR 2331 Latta (R-OH)	Waives the 10% penalty on early withdrawals from qualified retirement plans for participants who (a) use the funds to make mortgage payments on a primary residence and (b) have lost jobs and have received unemployment compensation for 12 consecutive weeks. The 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.	Introduced 5/7/09 – referred to the Ways and Means Committee
(untitled) H.R. 882 King (R-NY)	Would raise age at which distributions from qualified retirement plans were required to begin from 70-1/2 to 75.	Introduced on 2/4/09—referred to Ways and Means Committee.
Retirement Account Distribution Improvement Act of 2009 – S. 157 Snowe (R-ME)	<ul style="list-style-type: none"> • Expands the temporary waiver of required minimum distribution rules from tax-deferred retirement plans to 2008, 2009 and 2010. • Provides for recontribution of distributions made in 2008 or early 2009. 	Introduced on 1/6/09—referred to Finance Committee Similar legislation was introduced in the House.

Bill	Description	Outlook/Effective Date
Savings Accounts		
<p>The Retirement Security Needs Lifetime Pay Act - HR 2748 Pomeroy (D-ND)</p>	<ul style="list-style-type: none"> • Would encourage workers to annuitize some of their retirement savings by providing a 50% tax exclusion for up to \$10,000 of lifetime annuity payments annually. • Would exclude from taxes 25% of lifetime income payments from IRAs, qualified plans and similar employer-sponsored retirement savings plans other than defined benefit plans. • Would also exclude the value of longevity insurance from amounts subject to required minimum distributions (RMDs) and clarify the taxation of partial annuity payments. 	<p>Introduced 6/8/09 – referred to the Ways and Means Committee</p>
<p>Savings Recovery Act - HR 2021 Boehner (R-OH)</p>	<ul style="list-style-type: none"> • Increase the contribution and catch-up limits for individuals and families. • Extend the existing saver's credit to contributions made to 529 college savings accounts. • Double the Social Security earnings limit from \$14,160 to \$28,320. • Extend the suspension of required minimum distributions through 2012. • Immediately suspend the capital gains tax on newly acquired assets for the next two years, raise and index to inflation the amount of capital losses allowed against ordinary income to \$10,000 and suspend taxes on dividend income through 2011. • Temporarily provide an increased glide path for recognizing losses and two additional years to resolve pension funding shortfalls. • Block efforts to wipe out 401(k)s entirely and replace them with government-run accounts. 	<p>Introduced 4/22/09 – referred to Committee on Ways and Means and the Committee on Education and Labor.</p>
<p>The Savings for American Families' Future Act of 2009 - HR 1961 Pomeroy (D-ND)</p>	<ul style="list-style-type: none"> • Would make saver's credit refundable and require that it be paid only into the taxpayer's retirement accounts. • Expand the number of families and individuals who would be able to use the full saver's credit by more than doubling the existing income limits for the full credit. The new limits would be set at adjusted gross incomes ("AGI") of \$32,500 for individuals and \$65,000 for couples. A phase-out range gradually lowers the credit until AGI reaches \$42,500 for individuals and \$85,000 for couples, at which time taxpayers are no longer eligible. • Establish the maximum amount of an employee's contribution that is eligible for the saver's credit at \$500 for an individual and \$1,000 for a couple, with the limits to increase by \$100 and \$200, respectively, each year until 2020 and after that time, to increase with inflation. 	<p>Introduced 4/2/09 – referred to Ways and Means Committee (bill largely tracks the saver's credit expansion proposal contained in the FY2010 budget recently approved by Congress).</p>

Bill	Description	Outlook/Effective Date
Savings Accounts (continued)		
Worker Savings Account Act of 2009 – H.R. 153 McHugh (R-NY)	<ul style="list-style-type: none"> • Would create a program allowing workers to contribute up to \$5,000 annually on a tax-advantaged basis to use tax-free during times of unemployment or disability. • Employers could match the worker's contributed amount 100%. • Would make a portion of the saver's credit refundable and require increases in the saver's credit to be paid into a worker's savings account. 	Introduced on 1/6/09—referred to Ways and Means Committee (bill reintroduced from last year).

Source: Library of Congress

H.R. = House of Representatives; IRA = Individual Retirement Account

Consider the investment objectives, risks, and charges and expenses carefully. For this and other information about AIM funds, obtain a prospectus from your financial advisor and read it carefully before investing.

Please note: This primer is not intended to be investment advice. The information presented is based on current interpretation of pending retirement legislation. State laws may differ.

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