

Center For Due Diligence (CFDD) Legislative Update

Written By: Kathryn Capage, Invesco

Pending Legislation July 2010

It's a race to the finish to see whether fee disclosure will surface first legislatively [via the final House/Senate negotiations over a job creation bill (HR 4213)] or in Department of Labor (DOL) regulations. [There is some concern about potential content conflicts between the two sources.] Defined benefit funding relief may be part of the same legislation. The DOL is sifting through the comments it received on its proposed investment advice regulations; final regulations should be available later this year. There is still a high level of interest in annuities within retirement plans, but legislative and/or regulatory action may not take place until later this year or next year. 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
Annuities		
Lifetime Income Disclosure Act - S. 2832 Bingaman (D-NM)	Require plan sponsors of defined contribution plans to inform plan participants on an annual basis of the projected monthly income they could anticipate receiving if they took distributions as annuities, based on the amount of money in their accounts. The bill directs the DOL to issue factors that employers may use in calculating an annuity equivalent, as well as a model disclosure.	Introduced 12/3/09 – referred to Health, Education, Labor and Pension Committee.
The Retirement Security Needs Lifetime Pay Act - HR 2748 Pomeroy (D-ND)	<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. 	Introduced 6/8/09 – referred to the Ways and Means Committee
Executive Pay		
Taxpayer Fairness Act S. 2994 Boxer (D-CA)	Would impose a 50% tax on bonuses (including retention bonuses) exceeding \$400,000 paid in 2009 to employees of financial institutions that received \$5 billion or more in emergency economic assistance from the government and would limit the deduction to 50% of the amount of such bonuses.	Introduced 2/4/10 – referred to Finance Committee.
Patient Protection and Affordable Care Act - HR 3590 Reid (D-NV) Public Law No. 111-148	This bill (the Senate's version of comprehensive health care reform legislation) includes a provision that would limit to \$500,000 the corporate deduction for compensation paid to workers at certain health insurance providers.	On 12/24/09, the Senate approved HR 3590 by a 60-39 vote. Amended by the Health Care and Education Reconciliation Act of 2010 (PL 111-152).

Bill	Description	Outlook/Effective Date
Executive Pay (continued)		
<p>Wall Street Reform and Consumer Protection Act of 2009 - HR 4173 Frank (D-MA)</p>	<p>This bill includes the Corporate and Financial Institution Fairness Act (HR 3269) which passed the House on 7/31/09. It would also extend application of the executive compensation restrictions imposed on TARP recipients to those financial institutions for which a receiver has been appointed under the dissolution provisions section of the bill. It would regulate the compensation of senior executives of financial holding companies whose financial distress is determined to pose a threat to financial stability or the economy as established in the bill.</p>	<p>On 12/11/09, the House passed the bill by a vote of 223-202.</p> <p>This bill seeks to impose new regulations on the U.S. financial system in order to prevent another financial crisis and to create a process to shut down large financial institutions that are "too big to fail" instead of providing a taxpayer bailout.</p> <p>As of 5/25/10, House and Senate committees are meeting to resolve differences.</p>
<p>Corporate and Financial Institution Compensation Fairness Act of 2009 - HR 3269 Frank (D-MA)</p>	<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>Provisions combined into HR 4173.</p>
<p>Ending Excessive Corporate Deductions for Stock Options Act - S. 1491 Levin (D-MI)</p>	<p>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.</p>	<p>Introduced 7/22/09 – referred to Finance Committee.</p>
<p>Shareholder Empowerment Act of 2009 – HR 2861 Peters (D-MI)</p>	<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 	<p>Introduced on 6/12/09 – referred to Committee on Financial Services.</p>
<p>Shareholder Bill of Rights Act of 2009 - S 1074 Schumer (D-NY)</p>	<p>Would give shareholders an advisory role on compensation packages and provide them with a way to nominate board directors.</p>	<p>Introduced 5/19/09 – referred to the Committee on Banking, Housing and Urban Affairs</p>
<p>Executive Pay Shareholder Approval Act - S 1006 Durbin (D-IL)</p>	<p>Would require a supermajority (i.e. 60%) shareholder approval for any compensation more than 100 times the average compensation for employees at that company.</p>	<p>Introduced 5/7/09 – referred to the Committee on Banking, Housing and Urban Affairs</p>
<p>Executive Pay Capped Deduction Act of 2009 - S 1007 Durbin (D-IL)</p>	<p>Would limit the normal tax deduction for compensation for executives to 100 times the average compensation for all employees at that company.</p>	<p>Introduced 5/7/09 – referred to Committee on Banking, Housing and Urban Affairs</p>

Bill	Description	Outlook/Effective Date
Executive Pay (continued)		
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.
American Recovery and Reinvestment Act of 2009 – HR 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		
Sensible Transparency for Retirement Plans Act of 2009 - HR 4146 Kline (R-MN)	Requires service providers to disclose to plan sponsors “total compensation” including direct and indirect compensation. 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. Participants would be provided with an advance notice of the fees and expenses that would be charged to their accounts and whether fees of investment options are used to defray costs of plan administration.	Introduced on 11/19/09 – referred to Education and Labor Committee. 1/4/10 – referred to subcommittee on Health, Employment, Labor and Pensions.
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. 5/28/10 – discharged by Ways and Means Committee. Some provisions are in the final House version of HR 4213.

Bill	Description	Outlook/Effective Date
Fee Disclosure (continued)		
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. Some provisions are in the final House version of HR 4213.
401(k) Fair Disclosure for Retirement Security Act of 2009 - HR 1984 Miller (D-CA)	<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. 	Introduced 4/21/09 – referred to Committee on Education and Labor (bill reintroduced from last year). On 6/17/09, the Health, Employment, Labor and Pensions subcommittee approved HR 1984 by a 13-8 vote. Most provisions combined into HR 2989.
Defined Contribution Fee Disclosure Act – S. 401 Harkin (D-IA)	<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. 	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.

Bill	Description	Outlook/Effective Date
Fiduciary Liability		
Lilly Ledbetter Fair Pay Restoration Act – S. 181 Mikulski (D-MD) Public Law 111-2	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).]	Signed into law by President Obama on 1/29/09—effective 5/28/07 (the day before the Supreme Court’s decision).
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		
Small Business Investment Penalty Relief Act of 2010 HR 5318 Gingrey (R-GA)	Would waive the 10% penalty on early distributions from individual retirement plans for small business investments.	Introduced 5/14/10 – referred to Ways and Means Committee.
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.

Bill	Description	Outlook/Effective Date
Nondiscrimination Rules		
Retirement Fairness Act of 2009 - HR 4126 Doggett (D-TX)	<ul style="list-style-type: none"> • Would require plans to include certain part-time employees who are not highly compensated in meeting minimum coverage requirements. • Determine nondiscrimination compliance by considering only vested benefits of non-highly compensated employees while considering all benefits (vested or not) for highly compensated employees. • Cross-testing (i.e. testing contributions on the basis of equivalent benefits) would not be allowed and cash balance plans would generally be required to be tested on a contributions basis. • A revised draft of this bill would direct Treasury to modify the nondiscrimination rules to address abusive practices that comply with the current rules but that have the effect of discriminating in favor of highly compensated employees. 	Introduced 11/19/09 – referred to Ways and Means Committee. This legislation may be considered in the context of pension funding relief.
Pension Funding Relief		
American Workers, State and Business Relief Act of 2010 - HR 4213 Rangel (D-NY) New name: American Jobs and Closing Tax Loopholes Act of 2010	While the bill primarily features the retroactive reinstatement and extension through 2010 of a number of provisions that expired at the end of 2009, the Senate-passed version also provides special funding relief for defined benefit pension plans that suffered losses due to recent stock market reversals. The funding relief was part of an amendment (S. Amdt 3430) sponsored by Sen. Isakson (R-GA) and Sen. Cardin (D-MD). The amendment's main provision would allow employers to choose from 2 options to spread out their pension obligations: (1) repay the shortfall over 7 years, but the 7 year amortization would start 2 years late (during the 2 year period, the employer would only owe interest on the shortfall) or (2) repay the shortfall over 15 years. Employers would be entitled to apply either rule for any 2 of plan years 2009, 2010 and 2011. In addition, any employer taking relief under either of these rules would need to satisfy both requirements of the "cash flow" rule: (a) if any employee's taxable compensation for a year exceeds \$1 million (indexed), the employer must make a matching contribution to the plan for that year of an amount equivalent to the excess and (b) employers must make a matching contribution to the plan equal to the aggregate amount of "extraordinary dividends" plus the aggregate fair market value of the "stock redeemed" in excess of a company's net income for accounting purposes. If the employer elects the "2 and 7" relief, the cash flow rule applies for 3 years; if the employer elects the 15 year amortization rule, the cash flow rule applies for 5 years.	The Senate passed the bill on 3/10/10. It will need to be reconciled with the version that the House passed on 12/9/09 (without the funding relief measure) as the "Tax Extenders Act of 2009". The Senate version also contains a provision allowing participants in 401(k) and 403(b) plans to transfer distributable amounts built up in their accounts directly to a Roth account within the same plan. 5/28/10 – House and Senate resolving differences. Modifications to the nondiscrimination testing rules from HR 4126 are not in the final House version. Fee disclosure provisions from HR 2989 and HR 2779 are in the final House version.

Bill	Description	Outlook/Effective Date
Pension Funding Relief (continued)		
Preserve Benefits and Jobs Act of 2009 – HR 3936 Pomeroy (D-ND) Tiberi (R-OH)	<ul style="list-style-type: none"> • Allow a sponsor of a single-employer defined benefit pension plan to elect in 2009 or 2010 extended amortization periods (9 or 15 years) for investment losses incurred in prior years. • Allow an increase in the valuation range of plan assets. • Use the funded status of a plan in 2008 to determine benefit restrictions in 2009 and 2010 and prohibit the use of credit balances by pension plans that are under 80% funded in the prior year. • Exclude plan-related administrative expenses (including investment expenses) from normal cost targets. • Delay until 2012 the application of certain benefit restrictions to collectively bargained plans. • Require a 120% funding target for plans adopting ad hoc amendments that allow lump sum benefits payments and increased plan liabilities. 	Introduced 10/27/09 – referred to Ways and Means Committee. Fee disclosure provisions (HR 2989) may be included in any pension funding relief legislation.

Required Minimum Distributions		
Untitled - HR 4421 Sestak (D-PA)	Would extend through 2010 the suspension of required minimum distribution rules for tax-exempt retirement plans.	Introduced 1/12/10 – referred to Ways and Means Committee.
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 - HR 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		
Savings Recovery Act - HR 2021 Boehner (R-OH)	<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. 	Introduced 4/22/09 – referred to Committee on Ways and Means and the Committee on Education and Labor.
The Savings for American Families' Future Act of 2009 - HR 1961 Pomeroy (D-ND)	<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. 	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).
Worker Savings Account Act of 2009 – HR 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

HR= House of Representatives; IRA= Individual Retirement Account
DOL= Department of Labor; SEC= Securities Exchange Commission

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.

Before investing, investors should carefully read the prospectus and/or summary prospectus and carefully consider the investment objectives, risks, charges and expenses. For this and more complete information about the fund(s), investors should ask their advisers for a prospectus/summary prospectus or visit invesco.com/fundprospectus.

Note: Not all products, materials or services available at all firms. Advisers, please contact your home office.

