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**Legislative Bulletin.....July 31, 2009**

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**Take-Away Points**

- Federal Control of Employee Compensation.** The legislation requires federal regulators to review employee compensation practices at covered financial institutions (including banks, credit unions, and investment advisors). The legislation further requires federal regulators to issue regulations banning certain employee compensation practices, and gives the federal regulators *very* broad authority to determine what compensation practices should be prohibited.
- Expensive, and Undefined, Mandates on the Private-Sector.** The legislation establishes broad new mandates on the private-sector that CBO is unable to quantify the cost of (per the requirements of the Unfunded Mandates Reform Act of 1995), since the legislation delegates much of the authority to establish the mandates to federal agencies.
- Delegates Broad Authority to Federal Regulators.** The legislation gives federal regulators, such as the SEC, very broad authority to promulgate regulations carrying out the vaguely worded provisions of the bill. Many conservatives may believe that Congress should not delegate such vast authority to unelected regulators.

*For more details, see below.*

**H.R. 3269— Corporate and Financial Institution Compensation Fairness Act  
 (Frank, D-MA)**

**Order of Business:** The House is scheduled to consider H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act on Friday, July 31, 2009 under a structured rule ([H.Res. 697](#)). The rule waives all points of order against consideration of the bill except for Clause 9 (earmark disclosure) and 10 (PAYGO) of Rule XXI, and provides one hour of debate. The rule makes in order 2 amendments, which the RSC will summarize in a separate document.

Legislation dealing with the same general subject matter (H.R. 1257) was considered by the House in the 110<sup>th</sup> Congress. See the RSC Legislative Bulletin for that bill [here](#).

**Summary:** Highlights of the legislation are as follows:

**Annual Shareholder Vote on Executive Compensation:** The legislation requires an annual, non-binding, shareholder vote to approve the compensation of executives. The Republican Dissenting Views section of the Committee Report notes that, even though this section of H.R. 3269 requires an annual vote, most executive compensation agreements cover more than one year. Consequently, the Garrett substitute offered in committee would have required a triennial vote instead.

The legislation also requires a similar nonbinding vote for compensation that an individual would receive if a company is acquired or merged with another company (what the bill refers to as “golden parachute compensation”).

The legislation further requires institutional investment fund managers to report at least annually how they voted on any executive compensation agreement.

H.R. 3269 gives the Securities Exchange Commission (SEC) broad authority to promulgate rules, required within 6 months of enactment, to implement the provisions concerning shareholder votes on executive compensation. The legislation gives the SEC the authority to exempt certain categories of public companies from the reporting requirements of the bill.

The legislation prohibits, except under circumstances specified in the legislation, any compensation that has been approved by a majority of shareholders from being subject to any clawback, and gives the SEC the authority to promulgate rules to implement and enforce this provision.

**Compensation Committee:** Within 9 months of enactment, the legislation requires the SEC to prohibit the listing of any class of security that is not in compliance with a requirement that each member of the public company’s compensation committee *not* receive consulting, advisory, or compensatory fees from the company (other than compensation for being a member of the committee).

The legislation allows the compensation committee to use the services of a compensation consultant, and gives the SEC the authority to promulgate regulations providing “standards of independence.” If a company chooses to use the services of such a compensation consultant, the bill requires the company to disclose this. H.R. 3269 legislation gives the SEC the authority to exempt certain categories of issuers from this requirement “where appropriate in view of the purposes of this section.”

The bill further requires the SEC to conduct a study and report to Congress on the “use of compensation consultants meeting the standards of independence...”

**Federal Review of Employee Compensation Practices:** Within 9 months of enactment, the legislation requires the “appropriate federal regulators” to prescribe regulations that would require covered financial institutions (including banks, credit unions, broker-dealers, and

investment advisors) to disclose to the “appropriate” federal agency the structures of all incentive-based compensation arrangements.

**Prohibition of Compensation Arrangements:** The bill requires, within 9 months of enactment, that the “appropriate” federal regulators jointly prescribe regulations that prohibit any incentive-based payment arrangement that the regulators determine encourage “inappropriate” risks by covered financial institutions that:

- Could threaten the safety and soundness of covered financial institutions; or
- Could have serious adverse effects on economic conditions or financial stability.

Federal regulators would have very broad authority to determine what compensation arrangements fit this criteria. The legislation provides an exemption for financial institutions with assets of less than \$1 billion (per the adoption of an amendment offered by Rep. Hensarling in committee). The legislation requires the Government Accountability Office (GAO) to conduct a study on the correlation between compensation structures and excessive risk-taking.

**Potential Conservative Concerns:** Many conservatives may have concerns with H.R. 3269, including the following:

**Expensive, and Unknown, New Mandates on the Private-Sector:** The legislation establishes broad new mandates on the private-sector that CBO cannot quantify the cost of, since the legislation delegates much of the authority to establish the mandates to federal agencies. As CBO puts it:

“Because the cost of some of the mandates in the bill would depend on federal regulations yet to be established, CBO cannot determine whether the total cost of those mandates would exceed the annual threshold in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).”

**Delegates VERY Broad Authority to Regulators:** As noted above, the legislation gives federal regulators, such as the SEC, very broad authority to promulgate regulations for the provisions of the legislation. The shape of the regulations that will result, and the cost this will impose on the private-sector, is unknowable. Many conservatives may believe that Congress should not delegate such vast authority to unelected regulators.

**Federal Control of Employee Compensation:** Among other things, the legislation takes the constitutionally dubious step of requiring regulatory agencies to review all employee compensation practices at financial institutions, and to issue regulations prohibiting certain employee compensation practices that are, in the view of the regulators, harmful.

**Committee Action:** The legislation was introduced on July 21, 2009 and referred to the House Financial Services Committee, which, on July 28, 2009, marked up and ordered the bill reported (as amended) to the full House by a vote of 40-28.

**Administration Position:** A Statement of Administration Policy (SAP) for H.R. 3269 was not available at press time.

**Cost to Taxpayers:** [CBO](#) estimates that the bill would not have a significant impact on either direct spending or revenues, and would authorize \$1 million (subject to appropriation) in FY 2010.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill would further expand the federal encroachment to the private-sector decision-making.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes, but the legislation itself makes it unclear just how expensive these mandates will be. CBO states: “Because the cost of some of the mandates in the bill would depend on federal regulations yet to be established, CBO cannot determine whether the total cost of those mandates would exceed the annual threshold in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).”

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The House Financial Services Committee, in House Report [111-236](#), states that the [committee report](#) does not contain any earmarks.

**Constitutional Authority:** The House Financial Services Committee, in House Report [111-236](#), cites constitutional authority in “Article I, Section 8, Clause 1 of the Constitution (relating to the general welfare of the United States) and Clause 3 (relating to the power to regulate interstate commerce).” Some conservatives may question the legitimacy of this cited authority.

**Outside Groups Opposed to Legislation:** The Chamber of Commerce and the National Association of Manufacturers (NAM) are opposed to the legislation.

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