Summary of H.R. 3269 – Corporate and Financial Institution Compensation Fairness Act of 2009

Based on the "Say-on-Pay" legislation that passed the House in 2007 and the compensation-related legislative proposals released July 16th by the Treasury Department, H.R. 3269 bill has four major components:

Say-on-Pay

- Applies to public companies
- Requires annual shareholder advisory vote on compensation
- Requires shareholder advisory vote on golden parachutes
- SEC allowed to exempt categories of public companies;
  - In determining exemptions, SEC shall take into account the potential impact on smaller companies
- Requires at least annual reporting of annual say-on-pay and golden parachutes votes by all institutional investors, unless such votes are otherwise required to be reported publicly by SEC rule
- Provides that compensation approved by a majority say-on-pay vote is not subject to clawback, except as provided by contract or due to fraud to the extent provided by law

Independent Compensation Committee Requirement

- Applies to only public companies
- Requires compensation committees be made up of independent directors
  - Makes provision for smaller companies whose boards may not have separate compensation committee
- Requires that compensation consultants satisfy independence criteria established by the SEC
- SEC allowed to exempt categories of public companies;
  - In determining exemptions, SEC shall take into account the potential impact on smaller companies

Incentive Based Compensation Disclosure Requirements

- Applies to all "financial institutions" with more than $1B in assets.
  - Definition specifically includes banks, bank holding companies, broker-dealers, credit unions, investment advisors, Fannie Mae & Freddie Mac.
  - Definition also includes any financial institution identified as appropriate during joint rulemaking by the "relevant Federal financial regulators" (see below).

- Requires all “financial institutions” to disclose compensation structures that include any incentive based elements
- Financial companies that do not have incentive-based payment arrangements are not required to make disclosures regarding incentive-based payment arrangements

Incentive Based Compensation Standards

- Applies to all “financial institutions” with more than $1B in assets
  - See definition of “financial institutions,” above.
- Requires federal regulators to proscribe inappropriate or imprudently risky compensation practices as part of solvency regulation

“Appropriate Federal Regulators”– as referenced above, the bill requires the following federal regulators to jointly determine the disclosure requirements and incentive-based compensation standards in Sec. 4 of the bill:

- Federal Reserve Bank
- Office of the Comptroller of the Currency
- Federal Deposit Insurance Corporation
- Office of Thrift Supervision
- National Credit Union Administration Board
- Securities & Exchange Commission
- Federal Housing Finance Agency

Additional Features

- Bill also requires GAO study of the correlation between compensation structure and excessive risk-taking.