



# National Policy Bulletin

NAREIT's Update on Emerging Policy Developments

## House Passes "Say on Pay" Bill; Provides for Greater Shareholder Input and Independence Standards Regarding Executive Compensation Committees at SEC-Registered Companies

### Executive Summary

On July 31, the House of Representatives passed legislation that would require tighter shareholder review of executive compensation for all companies registered with the Securities and Exchange Commission (SEC) and mandate significantly more disclosure and regulation of executive compensation packages at financial institutions. The legislation, H.R. 3269, the "Corporate and Financial Institution Compensation Fairness Act of 2009," was crafted by House Financial Services Committee Chairman Barney Frank (D-MA) and adopted by a vote of 237-185. [CLICK HERE](#) to view H.R. 3269 as considered on the House floor.

This legislation is the first measure considered by Congress this year as part of a comprehensive plan to overhaul the nation's financial regulatory system announced by the Obama Administration on June 17, 2009. The other pieces of the plan are likely to be considered by the 111<sup>th</sup> Congress before the end of the year. [CLICK HERE](#) to view the Obama Administration's proposed Financial Regulatory Reform proposal. House Speaker Nancy Pelosi (D-CA) scheduled H.R. 3269 for final passage before the full House adjourned for the annual August congressional recess to address recent media reports about executive compensation by financial and Wall Street firms.

### Major Provisions

The "Corporate and Financial Institution Compensation Fairness Act" includes three major provisions. The first two are similar to the executive compensation proposals included in President Obama's regulatory overhaul plan.

First, the bill contains the so-called "Say on Pay" provision that authorizes the SEC to require an annual nonbinding vote by the shareholders of all SEC-registered companies, whether listed or unlisted, to approve compensation for the company's executives. Under this proposal, annual shareholder meetings occurring after December 15, 2009, would have to include a vote on executive compensation. Similar nonbinding votes by shareholders would be required on compensation relating to mergers and acquisitions – sometimes known as "golden parachute" compensation.

Second, the bill would also require the compensation committees of all listed SEC-registered companies to be composed exclusively of independent directors. To be considered independent, an individual could not, other than in his or her capacity as a member of the board of directors, accept any consulting, advisory, or other fee from the company. When it comes to compensation consultants, legal counsel and other advisors, the SEC would be required to set new standards to establish independence for those services. To ensure compliance, the SEC would direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that has not met the requirements related to compensation committees nine months after the bill becomes law. This proposal will also impact REITs that are, or seek to be, listed on bulletin boards maintained by

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national securities associations or securities exchanges.

The third major provision of the bill was crafted by Chairman Frank specifically to target the compensation structure of “financial institutions.” Under this provision, which was inserted into the bill before it came before the full House of Representatives, Federal regulators would have the authority to impose two new requirements on banks, bank holding companies, broker-dealers, credit unions, investment advisors, Fannie Mae and Freddie Mac, and any other institution identified as appropriate by the regulators.

First, covered financial institutions with assets of more than \$1 billion would be required to disclose the incentive-based compensation arrangements for their officers and employees. Federal regulators would then determine if the arrangements properly measure and reward performance, are aligned with sound risk management, are structured to account for the time horizon of risks, and meet other criteria to “reduce unreasonable incentives for officers and employees to take undue risks.”

Second, Federal regulators would be authorized to prohibit any financial institution from structuring a compensation arrangement in such a way that it encourages inappropriate management risk-taking that could threaten the safety and soundness of the institution or have serious adverse effects on economic conditions and financial stability. Financial institutions that do not use incentive-based pay would be exempted from the requirement to report to regulators.

Under current law, REITs would generally not be affected by these new requirements on financial institutions. However, other Obama Administration proposals seek to modify the definition of in-

vestment advisor. If the definition changes, these provisions could have broad implications for many REITS.

## Outlook

The House-passed bill is one part of a broader financial regulatory reform effort being undertaken by Chairman Frank’s Committee in conjunction with the Obama Administration and the Senate. Meanwhile, the Senate Banking Committee has not yet voted on issues related to executive compensation and is not expected to turn its full attention to this issue until September.

At that time, the Senate Banking Committee will likely consider broader corporate governance and executive compensation proposals contained in S. 1074, the “Shareholder Bill of Rights Act of 2009,” as introduced by Senators Charles Schumer (D-NY) and Maria Cantwell (D-WA). [CLICK HERE](#) to view S. 1074. In addition to “Say on Pay,” this bill also includes proposals to require annual reelection for all directors, prohibit CEOs from also serving as the Chairman of the Board, and allow shareholders who own 1% of a companies stock for at least two years to nominate directors to the board.

NAREIT will continue to work on behalf of its membership to ensure that policy makers understand the impact all of these proposals will have on REITs and publicly traded real estate companies.

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