

**Buck Consultants Summary of Executive Compensation Legislation in the 111<sup>th</sup> Congress (Non-TARP Related)**

Bill	Summary	Status
<b>Investors Rights and Corporate Accountability Act of 2009</b> <b>S. 2813</b> <b>Menendez (D-NJ)</b>	<p><b>Fiduciary Standards for Broker-Dealers</b></p> <ul style="list-style-type: none"> <li>• Amends the Securities Exchange Act of 1934 (Exchange Act) to require the Commission to promulgate rules, within one year of the date of enactment, to provide that the standard of care for all brokers and dealers in providing investment advice to retail customers or clients will be the fiduciary duty established under the Investment Advisers Act of 1940, including the duty to act solely in the best interest of the customer or client without regard to the financial or other interest of the broker or dealer.</li> </ul> <p><b>Clawback of Incentive Compensation and Bonuses</b></p> <ul style="list-style-type: none"> <li>• Amends the Exchange Act to provide that if a trier of fact specifically determines that a covered person knowingly violated the securities laws, the covered person must be ordered to reimburse an issuer for: <ul style="list-style-type: none"> <li>○ Any bonus or other incentive-based or equity-based compensation received by the covered person from the issuer during the period of the violation of the securities laws; and</li> <li>○ Any profits realized by the covered person from the sale of securities of the issuer during the period of the violation of the securities laws.</li> </ul> </li> <li>• Amends the Sarbanes-Oxley Act of 2002 to provide that a shareholder may bring an action on behalf of the issuer if the chief executive officer or the chief financial officer of the issuer has not made a reimbursement required under this Act within 90 days of the accounting restatement.</li> </ul>	<p>Introduced on November 20, 2009 and referred to the Senate Committee on Banking, Housing and Urban Affairs.</p>

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	<p><b>Protecting the Confidentiality of Whistleblowers</b></p> <ul style="list-style-type: none"> <li>• Amends the Exchange Act to provide that allegations by a confidential source will give rise to a strong inference that the defendant acted with the required state of mind if the source is described in the complaint with sufficient particularity to support the probability that a person in the situation of the source would possess the information alleged.</li> <li>• Provides that the weight given allegations by a confidential source will depend on the level of detail provided by the source, the corroborative nature of the other facts alleged, the coherence and plausibility of the allegations, the number of sources and the reliability of the sources.</li> <li>• Provides that a confidential source described in a complaint will be accorded the same protection received by a confidential source who provides comparable information to the Commission.</li> <li>• Provides that upon motion, a court must enter an order reasonably limiting the scope of nondisclosure required by a post-employment agreement. Such an order will not impair a legitimate interest of a former employer in the confidentiality of documents and information subject to the order.</li> </ul> <p><b>Prohibition of Certain Voting by Brokers</b></p> <ul style="list-style-type: none"> <li>• Amends the Exchange Act to provide that the rules of the exchange prohibit any member from granting any proxy to vote any security in connection with an election for membership to the board of directors or analogous governing body of any issuer of a listed security, unless the beneficial owner of the security gives specific instructions regarding the election.</li> </ul> <p><b>Independence of Compensation Advisers</b></p>	

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	<ul style="list-style-type: none"> <li>• Provides that within a year of enactment, the Commission must:                             <ul style="list-style-type: none"> <li>○ Require any adviser retained by the board of directors or a committee of the board of directors of an issuers in conjunction with the negotiation of an employment contract or a compensation agreement with an executive of the issuer to be independent of the issuer and the executives and directors of the issuer and to report solely to the board of directors or the committee of the board of directors responsible for executive compensation; and</li> <li>○ Prohibit an issuer from agreeing to indemnify or limit the liability of an adviser.</li> </ul> </li> </ul> <p><b>Aiding and Abetting Liability</b></p> <ul style="list-style-type: none"> <li>• Amends the Exchange Act and the Investment Advisers Act to provide that any person who provides substantial assistance to another person to recklessly disregard either Act will be liable in a private action to the same extent as the person who violated either Act.</li> </ul> <p><b>Shareholder Approval of Golden Parachute Compensation</b></p> <ul style="list-style-type: none"> <li>• Amends the Exchange Act to provide that within 270 days of enactment of this Act, the Commission must issue rules directing the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that allows for any severance payments to a senior executive officer who was terminated because of poor performance. The rules must provide for an opportunity to cure any defects and with regard to contracts in existence on the date of enactment.</li> </ul>	

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<p><b>Proxy Voting Transparency Act of 2009</b>  <b>H.R. 3351</b>  <b>Kilroy (D-OH)</b></p>	<p><b>Say on Pay</b></p> <ul style="list-style-type: none"> <li>Proxy executive compensation disclosure must be subject to a non-binding shareholder advisory vote. The vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>Disclosure of Golden Parachute Compensation and Shareholder Approval</b></p> <ul style="list-style-type: none"> <li>Proxy disclosure is required for golden parachute compensation relating to a corporate transaction (i.e. merger or acquisition of substantially all of an employer's assets) that has not been previously subject to a shareholder vote. Disclosure must be in a clear and simple tabular format.</li> <li>This golden parachute compensation disclosure will be subject to a non-binding shareholder advisory vote. The advisory vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>Disclosure of Institutional Investment Manager Vote</b></p> <ul style="list-style-type: none"> <li>Every institutional investment manager that file 13(f) reports (generally those with investment discretion over at least \$100 million of exchange-traded equity securities) must report how it voted on any shareholder vote.</li> </ul>	<p>Introduced on July 27, 2009 and referred to the House Committee on Financial Services.</p>
<p><b>Ending Excessive Corporate Deductions for Stock Options Act</b></p>	<p><b>Cap on Corporate Deductions for Stock Options</b></p> <ul style="list-style-type: none"> <li>Corporate deduction for stock options must not exceed the company accounting expense taken for the same stock options on its financial</li> </ul>	<p>Introduced on July 22, 2009 and referred to the Senate Finance Committee.</p>

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<b>S. 1491</b> <b>Levin (D-MI)</b> <b>McCain (R-AZ)</b>	<p>statements.</p> <ul style="list-style-type: none"> <li>• Deduction must be taken in the same period the accounting expense is taken (i.e., the deduction cannot be delayed until options exercised).</li> <li>• Wages for purposes of the research tax credit must match deduction for stock option compensation.</li> <li>• New rules will apply to options exercised after the Act takes effect. Options granted before enactment and vested before June 15, 2005 will be grandfathered.</li> <li>• The Internal Revenue Code (IRC) section 162(m) \$1 million cap on the corporate deduction for certain top officer compensation will be expanded to include stock option compensation. Stock option compensation will not qualify as performance-based for purposes of the exception to IRC section 162(m).</li> <li>• Does not change rules for individuals, or incentive stock options under IRC section 422, used by some small businesses and start-ups.</li> </ul>	
<b>Corporate and Financial Institution Compensation Fairness Act of 2009</b> <b>H.R. 3269</b> <b>Frank (D-MA)</b>	<p><b>Say on Pay</b></p> <ul style="list-style-type: none"> <li>• Proxy executive compensation disclosure must be subject to a non-binding shareholder advisory vote. The advisory vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>Disclosure of Golden Parachute Compensation and Shareholder Approval</b></p> <ul style="list-style-type: none"> <li>• Proxy disclosure is required for golden parachute compensation</li> </ul>	<p>Introduced on July 21, 2009 and referred to the House Committee on Financial Services.</p> <p>Amended version passed by the House on July 31, 2009.</p> <p>Referred to Senate on August 3, 2009 and referred to the Senate Committee on Banking, Housing and Urban Affairs.</p>

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	<p>relating to a corporate transaction (i.e. merger or acquisition of substantially all of an employer's assets) that has not been previously subject to a shareholder vote. Disclosure must be in a clear and simple tabular format.</p> <ul style="list-style-type: none"> <li>This golden parachute compensation disclosure will be subject to a non-binding shareholder advisory vote. The advisory vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>Independence of Compensation Committee and Advisers</b></p> <ul style="list-style-type: none"> <li>Each compensation committee member of the board must be independent. To satisfy the criteria to be considered independent, a committee member may not (1) accept any consulting, advisory, or other fee from the company or (2) be an affiliated person of the company.</li> <li>Any compensation consultant, legal counsel, or other adviser to the compensation committee must also satisfy the independence requirements established by the SEC by regulation.</li> <li>The compensation committee will have full discretion to retain a compensation consultant, legal counsel, or other advisers, that meet the independence requirements. The company must provide funding to the compensation committee to hire such independent advisers. The committee will not be required to follow the recommendations of such advisers and will retain the obligation to exercise its own judgment in fulfilling its duties.</li> <li>Proxy disclosure is required with respect to whether the compensation committee retained a compensation consultant meeting the</li> </ul>	

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	<p>independence requirements, or, if a consultant was not retained, a disclosure explaining why the retention of such independent consultant was not in the interests of shareholders.</p> <ul style="list-style-type: none"> <li>• The Securities and Exchange Commission (SEC) will review the use of independent compensation consultants and provide a report to Congress within two years of the Act's enactment with the results of the study.</li> </ul> <p><b>Enhanced Compensation Structure Reporting to Reduce “Perverse Incentives” for Financial Institutions</b></p> <ul style="list-style-type: none"> <li>• The “appropriate federal regulators” (<i>Board of Governors of the Federal Reserve, Office of the Comptroller of the Currency, Board of the FDIC, Director of the Office of Thrift Supervision, National Credit Union Administration Board, and the SEC</i>) will provide regulations applicable to each “covered financial institution” (<i>depository institutions and holding companies, broker-dealers, credit unions, investment advisors, and any other financial institutions that the federal regulators shall jointly determine to treat as a covered institution</i>) to disclose to the appropriate federal regulator the structures of the incentive-based compensation arrangement for officers and employees in general sufficient to determine whether the compensation structure is: <ul style="list-style-type: none"> <li>○ Aligned with sound risk management</li> <li>○ Structured to account for the time horizon of risks</li> <li>○ Meets other criteria as the federal regulators may determine to reduce unreasonable incentives for officers and employees to take undue risks that could threaten the safety and soundness of covered financial institutions or have serious adverse effects on economic conditions or financial stability.</li> </ul> </li> </ul>	

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	<ul style="list-style-type: none"> <li>The federal regulators shall jointly issue regulations that prohibit any compensation structure or incentive-based payment arrangement, or any feature of any such compensation structure or arrangement that the regulators determine encourages inappropriate risks by financial institutions that could threaten the safety and soundness of covered financial institutions or have serious adverse effects on economic conditions or financial stability.</li> </ul>	
<p><b>Corporate Governance Reform Act of 2009</b>  <b>H.R. 3272</b>  <b>Ellison (D-MN)</b></p>	<p><b>Independence of Chairman of the Board</b></p> <ul style="list-style-type: none"> <li>The Chairman of a Board must be independent. The Chairman may not serve as an executive officer while serving as the Chairman of the Board of the same company.</li> </ul> <p><b>Risk Management Committee</b></p> <ul style="list-style-type: none"> <li>Each member of the risk management committee must be independent.</li> <li>Every company must have a Chief Risk Officer that establishes, evaluates and enforces risk management policies and reports directly to the risk management committee.</li> </ul> <p><b>Say on Pay</b></p> <ul style="list-style-type: none"> <li>Proxy executive compensation disclosure must be subject to a non-binding shareholder advisory vote. The advisory vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>SEC Study on Director Certification</b></p>	<p>Introduced on July 21, 2009 and referred to the House Committee on Financial Services.</p>

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	<ul style="list-style-type: none"> <li>• Within one year of enactment, the SEC must issue a study of the feasibility and logistics of a certification process under which the SEC would certify that individuals who seek membership on a Board have the experience and expertise necessary to carry out board of director functions.</li> </ul>	
<b>Shareholder Empowerment Act of 2009</b> <b>H.R. 2861</b> <b>Peters (D-MI)</b>	<p><b>Voting Standards for Director Elections</b></p> <ul style="list-style-type: none"> <li>• In board elections, directors in uncontested elections will require a majority vote (more than 50%). Contested elections will require a plurality vote (if less than 50%, candidate with most votes). The board must adopt resignation procedures for directors who are not re-elected, including a public disclosure of the resignation and the rationale for the decision within a reasonable period after the election.</li> </ul> <p><b>Shareholder Access to Proxy in Director Elections</b></p> <ul style="list-style-type: none"> <li>• The company must provide shareholders with the opportunity to vote for candidates nominated by “eligible shareholders” (a shareholder who has held at least 1% of voting securities for at least 2 years). Disclosure in the proxy regarding candidates nominated by eligible shareholders must be the same as candidates nominated by the company.</li> </ul> <p><b>Broker Voting in Uncontested Director Elections</b></p> <ul style="list-style-type: none"> <li>• In uncontested director elections, brokers cannot vote proxies without customer directions.</li> </ul> <p><b>Independence of Board Chairman</b></p> <ul style="list-style-type: none"> <li>• Each company must have in its governing documents or a written public policy that the chairman of the board of directors will be an</li> </ul>	<p>Introduced on June 12, 2009 and referred to the House Committee on Financial Services.</p>

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	<p>independent director who has not previously served as an executive officer of the company.</p> <ul style="list-style-type: none"> <li>• An “independent director” is defined as someone who during the past five years has not been:                             <ul style="list-style-type: none"> <li>○ Employed by the company in an executive capacity</li> <li>○ An employee, director, or owner of greater than 20% of the shares of a firm that is a paid adviser to the company</li> <li>○ Employed by a significant customer or supplier of the company</li> <li>○ Party to a personal services contract with the company, chair, CEO, or other senior executive officer of such company</li> <li>○ Employee, officer, or director of a foundation, university or other non-profit organization that receives the greater of \$100,000 or 1% of total annual donations from the company</li> <li>○ A relative of an executive of the company</li> <li>○ Part of an interlocking directorate – i.e., the company’s CEO or another executive who serves on the board of another company employing the director</li> <li>○ Engaged in any other situation the SEC determines would render the director not independent.</li> </ul> </li> </ul> <p><b>Say on Pay</b></p> <ul style="list-style-type: none"> <li>• Proxy executive compensation disclosure must be subject to a non-binding shareholder advisory vote. The vote does not change the board’s fiduciary duties or limit the ability of shareholders to make</li> </ul>	

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	<p>proposals in proxy materials relating to executive compensation.</p> <p><b>Independence of Compensation Advisers</b></p> <ul style="list-style-type: none"> <li>• If a company’s board or committee of the board retains an adviser to negotiate employment contracts or compensation agreements with the company’s executives, the adviser must be independent and solely report to the board or committee. Companies cannot indemnify or limit the liability of compensation advisers or advisory firms.</li> <li>• Factors in determining “independence” include: <ul style="list-style-type: none"> <li>○ Extent (measured by annual fees and other metrics) to which adviser provides executive compensation services, as compared to other services the adviser provides to the company or executives</li> <li>○ Whether advisers are permitted to hold equity and do hold equity</li> <li>○ Whether an advisor’s incentive compensation plan links the compensation of individual advisers to the advisory firm’s provision of other services to the company.</li> </ul> </li> </ul> <p><b>Severance Agreements Tied to Performance</b></p> <ul style="list-style-type: none"> <li>• A company’s board or committee of the board cannot enter into severance agreements with a senior executive officer who is terminated because of poor performance or cause.</li> </ul> <p><b>Disclosure of Compensation Targets</b></p> <ul style="list-style-type: none"> <li>• Disclosure will be required of specific performance targets used by companies to determine a senior executive officer’s eligibility for bonuses, equity, and incentive compensation. The SEC will consider</li> </ul>	

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	<p>methods to improve disclosure in situations where companies have claimed disclosure would result in competitive harm, e.g., by requiring the company describe past experience with similar target levels, disclose inconsistencies between targets in compensation and other contexts, or requests for confidential treatment of targets, or disclosure of the data after disclosure would no longer be considered competitively harmful.</p>	
<p><b>Shareholder Bill of Rights Act of 2009</b>  <b>S. 1074</b>  <b>Schumer (D-NY)</b></p>	<p><b>Say on Pay</b></p> <ul style="list-style-type: none"> <li>Proxy executive compensation disclosure must be subject to a non-binding shareholder advisory vote. The vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>Disclosure of Golden Parachute Compensation and Shareholder Approval</b></p> <ul style="list-style-type: none"> <li>Proxy disclosure is required of golden parachute compensation relating to a corporate transaction (i.e. merger or acquisition of substantially all of an employer's assets) that has not been previously subject to a shareholder vote. Disclosure must be in a clear and simple format.</li> <li>This golden parachute compensation disclosure must be subject to a non-binding shareholder advisory vote. The advisory vote does not change the board's fiduciary duties or limit the ability of shareholders to make proposals in proxy materials relating to executive compensation.</li> </ul> <p><b>Shareholder Input in Board Elections</b></p> <ul style="list-style-type: none"> <li>The SEC will have the authority to allow shareholder access to proxies</li> </ul>	<p>Introduced on May 19, 2009 and referred to the Senate Committee on Banking, Housing, and Urban Affairs.</p>

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	<p>for board member nominations if the shareholder has held at least 1% of the voting securities for at least 2 years. The SEC will establish rules for shareholder use of proxy materials for purposes of the nomination of board of director members.</p> <p><b>Director Independence</b></p> <ul style="list-style-type: none"> <li>The company must provide in its governing documents or in a public statement of corporate policy that the chairperson of the board of directors will be independent, as determined by the rules of exchange on which the securities of the company are listed or by SEC rule, and also that such chairperson must not have previously served as an executive officer of the company.</li> </ul> <p><b>Annual Board Member Elections by Shareholders Required</b></p> <ul style="list-style-type: none"> <li>A company will provide in its governing documents that each member of the board must be subject to annual election by shareholders. However, this requirement does not mean there is a maximum period of service or a limit on the term of service for a board member.</li> </ul> <p><b>Director Elections</b></p> <ul style="list-style-type: none"> <li>In board elections, directors in uncontested elections will require a majority vote (more than 50%). For contested elections, if the number of nominees exceeds the number of directors to be elected, directors require a plurality vote (if less than 50%, candidate with most votes).</li> </ul> <p><b>Risk Committee</b></p> <ul style="list-style-type: none"> <li>A risk committee must be established entirely of independent directors, which shall be responsible for the establishment and evaluation of the risk management practices of the company.</li> </ul>	

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<p><b>Excessive Pay Shareholder Approval Act</b>  <b>S. 1006</b>  <b>Durbin (D-IL)</b></p>	<p><b>Compensation Cap Subject to Shareholder Supermajority Vote</b></p> <ul style="list-style-type: none"> <li>• Compensation for any employee in any single tax year may not exceed 100 times the average compensation of the entire employee workforce for that tax year, unless at least 60% (a supermajority) of the shareholders vote to approve such compensation through a proxy or similar consent.</li> </ul> <p><b>Proxy Disclosure</b></p> <ul style="list-style-type: none"> <li>• The proxy materials for shareholder advisory approval must include the following employee compensation information <ul style="list-style-type: none"> <li>○ the lowest paid employee's compensation</li> <li>○ the highest paid employee's compensation</li> <li>○ the average amount of compensation paid to all employees</li> <li>○ the number of employees who are paid more than 100 times the average amount of compensation for all employees, and</li> <li>○ the total amount of compensation paid to employees who are paid more than 100 times the average amount of compensation for all employees.</li> </ul> </li> </ul> <p><b>Definition of Compensation</b></p> <ul style="list-style-type: none"> <li>• For purposes of the above disclosure, compensation includes wages, salary, fees, commissions, fringe benefits, deferred compensation, retirement contributions, options, bonuses, property, and any other form of remuneration that the SEC determines is appropriate, in consultation with the Secretary of the Treasury. Compensation of part-time employees will be annualized.</li> </ul>	<p>Introduced on May 7, 2009 and referred to the Senate Committee on Banking, Housing, and Urban Affairs.</p>

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<p><b>Excessive Pay Capped Deduction Act</b>  <b>S. 1007</b>  <b>Durbin (D-IL)</b></p>	<p><b>Denial of Deduction for Excessive Compensation</b></p> <ul style="list-style-type: none"> <li>No deduction will be allowed for any excessive compensation for any employee. "Excessive compensation" is defined as the amount by which the compensation for the tax year exceeds 100 times the average compensation for all employees during the tax year.</li> </ul> <p><b>Definition of Compensation</b></p> <ul style="list-style-type: none"> <li>Compensation is defined as wages, salary, fees, commissions, fringe benefits, deferred compensation, retirement contributions, options, bonuses, property, and any other form of remuneration that the Internal Revenue Service (IRS) deems is appropriate. Compensation of part-time employees will be annualized. Issuers treated as a single employer under IRC sections 52(a) or (b) or 414(m) or (o) shall be aggregated and treated as a single taxpayer.</li> </ul> <p><b>IRS Reporting</b></p> <ul style="list-style-type: none"> <li>If any employer provides "excessive compensation" to any employee, it must provide a report to the IRS with respect to such tax year that includes: <ul style="list-style-type: none"> <li>the lowest paid employee's compensation</li> <li>the highest paid employee's compensation</li> <li>the average amount of compensation paid to all employees</li> <li>the number of employees who are paid more than 100 times the average amount of compensation for all employees, and</li> <li>the total amount of compensation paid to employees who are paid more than 100 times the average amount of compensation for all employees.</li> </ul> </li> </ul>	<p>Introduced on May 7, 2009 and referred to the Senate Committee on Banking, Housing, and Urban Affairs</p> <p>Referred to the Senate Finance Committee on June 2, 2009.</p>

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