



Capitol Update 06-4

April 3, 2006

FPA® Government Relations Advocacy Site Online. The GR web site contains recent FPA comment letters, links to important CFP® professional issues, securities, insurance, tax and compliance information. For the latest information on advocacy issues, please go to http://www.fpanet.org/member/govt_relation/index.cfm.

FEDERAL ACTIVITIES

Securities Issues

Firms' Annual Compliance Program Reviews Due April 5th. Under the SEC's rule for advisers' compliance programs (effective October 2004), investment advisory firms must complete their annual compliance program reviews by April 5th. A written report is not required and some firms have opted for bullet-point summaries and/or spreadsheets. However, the SEC's Office of Compliance Inspections and Examinations (OCIE) has expressed a preference for a written report. According to OCIE Associate Director Gene Gohlke, a written report "is useful for client due diligence and documentation purposes."

Chairman Cox Reaffirms Plans for Investor Protection Study. In remarks made on March 3rd, SEC Chairman Christopher Cox announced that a study will soon be commenced to compare the levels of protection afforded consumers under the Securities Exchange Act and the Investment Advisers Act. Cox said the SEC is "now prepared to move ahead with a study to address the issues specified in the IA/BD release" and will announce "[i]n the near future... how exactly the study will be conducted." Text of the speech is at <http://www.sec.gov/news/speech/spch030306cc.htm>

FPA Files Opening Brief in SEC Lawsuit. FPA has filed its opening brief in its ongoing legal challenge against the so-called Broker-Dealer Rule. According to FPA's brief, the SEC improperly created a new exemption for the brokerage industry that defies congressional intent and puts the investing public at risk. Filed in the D.C. Circuit Court of Appeals, FPA argued that the SEC appears more concerned with protecting brokers than with protecting the investing public by allowing them to offer the same advisory services without being subject to the fiduciary standards of the Investment Advisers Act of 1940. In essence, FPA says the Commission has interpreted Congress' intent to be that the Advisers Act should provide "less and less protection" as brokers continue to provide "more and more investment advice." In opposing that position, FPA's brief concluded, "[t]he 'Incredible Shrinking Statute' that facilitates self-dealing is a carnival caricature of what Congress passed." The brief was filed in the D.C. Circuit Court of Appeals on March 23rd. To review the 126-page document, please go to http://www.fpanet.org/member/govt_relation/lawsuit-against-sec-broker-dealer-rule.cfm

SEC May Require IAs to Retain Internal E-Mail. The SEC may soon require federally registered investment advisers to retain internal electronic communications,

according to Douglas Scheidt, chief counsel and associate director of the Division of Investment Management. The records requirement of the Investment Advisers Act was written long before the existence of electronic communications and current rules are unclear whether retention requirements are limited to external communications.

Investment Adviser Count Reaches 10,000 at SEC. As of February 2006, there were 10,054 investment advisers registered with the SEC, which is 1,500 more than last year. It is due primarily to the new registration requirements for hedge fund managers. According to the IARD data, more than 7,000 of the advisers are managing \$25 million to \$1 billion of assets. 1,143 firms report assets under \$25 million and approximately the same number report managing between \$1 and \$5 billion. The remaining 1,738 firms manage the most assets, with 112 firms controlling more than \$50 billion apiece.

House Approves Regulatory Relief Bill for Financial Institutions. By a vote of 415-2, the House approved H.R. 3305, the Financial Services Regulatory Relief Act. The legislation was unanimously approved by the Financial Services Committee last November. It would ease the regulatory burden on banks, thrifts and credit unions. FPA opposes the legislation because it would extend Investment Adviser Act registration exemption to thrifts and credit unions. Sen. Michael Crapo (R-ID) is drafting similar legislation at the behest of Senate Banking Committee Chairman Richard Shelby (R-AL), though he has no timetable for introduction of a bill and Chairman Shelby has not committed to a mark-up. To review H.R. 3305, go to <http://thomas.loc.gov/>.

Tax Issues

FPA Publishes Summary of Medicaid Look-Back Changes. FPA has published a summary of the changes to Medicaid Look-back included in the Deficit Reduction Act of 2005. The Act revises the look-back provisions for Medicaid coverage so those with substantial assets will have a more difficult time qualifying for long-term Medicaid coverage in nursing homes. These changes include increasing the look-back period for Medicaid coverage from 36 months to 60 months and imposing a federal home equity cap of \$500,000. The summary can be found at http://www.fpanet.org/member/govt_relation/federal/taxes/index.cfm.

Pension Reform Conference Underway. Pension Reform conferees met for the first time on March 8th to reconcile differences between the House and Senate versions of pension reform legislation (H.R. 2830). FPA sent a letter to the conferees on March 10th expressing general support for the Senate's investment advice provision, which continues a ban on direct advice from fund firms. The letter urges conferees to require fiduciary adviser disclosure to plan participants based on Form ADV. Also affecting financial planners are the EGTRRA retirement provisions and long-term care financing. To read FPA's letter, go to http://www.fpanet.org/member/govt_relation/comments/index.cfm For a comparison of the provisions of the House and Senate bills, go to <http://www.house.gov/jct/pubs06.html> and click on the fourth document reference number JCX-13-06.

Debt Limit Increased. President Bush has signed H.J. Res. 47, increasing the federal government's borrowing limit to \$781 billion, after the Senate approved it by a slim margin (52-48). This is the fourth increase in five years and raises the debt ceiling to \$8.965 trillion. Budget projections indicate that another increase in the debt limit may be needed as soon as June 2007.

Tax Reconciliation Conference on Hold. A lack of consensus on how to pay for capital gains and dividend rate extensions is preventing the tax reconciliation conference from convening while legislators search for solutions. One compromise includes temporarily removing the income limits for conversions from traditional IRAs to Roth IRAs. It is likely that either the capital gains and dividends rates or a one-year AMT patch will be moved outside of this reconciliation bill to make room for other priorities within the \$70 billion budget. For the bill language, go to <http://thomas.loc.gov/> and type H.R. 4297 into the search engine.

House Ways and Means Committee Chairman Announces Retirement. Rep. Bill Thomas (R-Calif.) has announced that he will retire at the end of the year after serving as the House Ways and Means Committee chairman for six years. House term limits require Thomas to give up his chairmanship before the next Congress. Rep. Jim McCrery (R-La.) is currently seen as the front-runner to succeed Thomas if Republicans maintain control of the House in the upcoming election.

FDIC Increases Retirement Account Insurance. The FDIC and the National Credit Union Administration (NCUA) have raised the insurance coverage on self-directed retirement accounts, including Keoghs and 457s, from \$100,000 to \$250,000. This increase is the first in over 25 years and becomes effective April 1st. The basic insurance for individual, joint and trust accounts remains at \$100,000. For more information, go to: <http://www.fdic.gov/consumers/consumer/news/special/index.html>.

Phishing Scams on the Rise this Tax Season. The IRS and Treasury Department are warning that "phishing" schemes are on the rise this tax season. These ploys often involve an email message which appears to come from a government agency. It directs the recipient to a false Web site where people are asked for financial account numbers, passwords, credit card numbers or other personal information. The IRS has established a new address for electronic reporting of suspicious emails (phishing@irs.gov). For more information, go to www.irs.gov, enter the term "phishing" in the search box and click on the document titled "How to Protect Yourself from Suspicious E-Mails".

Savings Legislation Introduced in Senate. Senate Finance Committee ranking Democrat Max Baucus (D-Mont) has introduced savings legislation (S. 2431) to boost personal savings. The Savings Competitiveness Act expands the availability of payroll deductions for retirement savings and includes automatic enrollment in 401(k) plans and other payroll deduction retirement accounts. It also offers small employers a tax credit for their contributions to new retirement plans. The bill provides a \$50,000 exemption from minimum distribution requirements for retirees with modest savings, and simplifies distribution rules for individual retirement accounts and 401(k) plans. For the actual wording of the bill, go to <http://thomas.loc.gov/> and type S. 2431 into the search engine.

Long-Term Care Trust Account Legislation Introduced. The Chairman of the Senate Special Committee on Aging has introduced legislation (S. 2397) creating a new Long-Term Care Trust Account. Sen. Gordon Smith's (R-OR) bill allows individuals to save for future health expenditures by contributing up to \$5,000 per year and receiving a refundable 10 percent tax credit on the contribution. Interest accrued on the accounts would be tax-free and funds could be withdrawn to purchase long-term care insurance or to pay for long-term care services. For the wording of the bill, go to <http://thomas.loc.gov/> and type S. 2397 into the search engine.

IRS Extends Amendment Time for SIMPLE IRAs. The IRS is extending the deadline for small employers to comply with EGTRRA provisions for SIMPLE IRAs. The new deadline is December 31, 2006. The IRS is warning that noncompliance with requirements outlined in Revenue Procedure 2002-10 could result in the loss of "all the retirement savings and tax benefits that these plans provide to both the employers sponsoring them and the employees participating in them." For more information on SIMPLE IRAs and compliance with EGTRRA, go to <http://www.irs.gov/retirement/article/0,,id=111420,00.html#13>.

Senate Committee Approves Small Business Health Plan Legislation. The Senate Health, Education, Labor and Pensions Committee has passed legislation in a straight party line vote (11-9) that would enable small business health plans to purchase health insurance coverage across state lines, free from state insurance mandates. The "Health Insurance Marketplace Modernization and Affordability Act" (S. 1955), if approved by the full Senate, will go to a conference with the House "association health plans" (H.R. 525) legislation. The House bill would allow for small businesses health plans to "pool" together to purchase health insurance coverage. Both bills are controversial and are prompting a variety of concerns from insurers, state officials and consumer groups. For the wording of the bills, go to <http://thomas.loc.gov/> and type S. 1955 or H.R. 525 into the search engine.

Final Rules on 409A Postponed. Final rules under Internal Revenue Code Section 409A governing nonqualified deferred compensation plans are not expected before the fall due to the volume of comments and the complexity of the issues surrounding the proposed regulations. The executive compensation branch of the IRS's Tax Exempt and Government Entities Division is working on guidance for income requirements in cases involving Section 409A violations. The proposed regulations were issued in October 2005.

STATE ACTIVITIES

Insurance and Trust Issues

Colorado Uniform Trust Code Sent to Study Committee. FPA Colorado Chapter GR Director Kate Scott and past GR Director Ray Benton have participated in a recent hearing on H.B. 1258, a bill to enact the Uniform Trust Code ("UTC") in Colorado. They delivered FPA testimony in support of UTC because it creates a set of basic default rules that are clear, fair, and consistent in governing voluntary trusts, and because the UTC promotes uniformity with other states trust laws. The bill did not have enough support this year, so it will probably be sent to a summer study committee. To review H.B.

1258, go to

http://www.leg.state.co.us/clics2006a/csl.nsf/fsbillcont3/D6B3CCF0D1660143872570F4006DC396?Open&file=1258_01.pdf

Insurance Producer Licensing Exemption Proposed in Maryland. Maryland S.B. 67 would exempt CFP® certificants from taking the life insurance producer licensing exam. The bill would also reduce annual continuing education requirements for insurance producers. Producers who have been licensed fewer than 25 years will need 16 hours per license renewal period rather than 24; producers holding a license for more than 25 years will need 8 hours per renewal period. The bill also creates a new requirement that 3 of the required hours must relate to ethics. The Senate has approved the bill, and the House of Delegates is now considering the measure. To review S.B. 67 go to <http://mlis.state.md.us/2006rs/billfile/SB0067.htm>

NAIC Panel Approves Strengthened Annuity Suitability Standards. A high-level panel at the National Association of Insurance Commissioners (NAIC) has approved a proposal that could require annuity sellers to review the financial needs of young annuity purchasers. The amended model would require annuity sellers to check the finances of potential buyers to determine the suitability of the annuity purchases. Suitability reviews are currently required only for prospective buyers who are age 65 and older. FPA supports the broader suitability standard. It will reduce conflicts of interest in annuity sales and create a standard for insurance producers similar to that required of broker-dealer representatives.

Securities Issues

State Licensing of Financial Planners Stalls in Pennsylvania. As reported last month, Pennsylvania House Bill 2179 would create a new state licensing requirement and a professional regulatory board specifically for financial planners. The Pennsylvania Securities Commission is currently reviewing the legislation to determine its cost. Although legislative action on the proposal appears unlikely, FPA remains in regular contact with legislative staff and the Pennsylvania Securities Commission. To review H.B. 2179 go to <http://www.legis.state.pa.us/WU01/LI/BI/BT/2005/0/HB2179P3018.HTM>

Uniform Securities Act Adoption Likely in Hawaii and Minnesota. The National Conference of Commissioners on Uniform State Laws (NCCUSL) believes Hawaii and Minnesota will enact the updated Uniform Securities Act 2002 during their current legislative sessions. The model act was introduced in Alaska and Washington earlier this year. Michigan, Wisconsin and the District of Columbia are considering possible legislation later this year, and Alabama has tabled the bill until 2007. For additional information on the Uniform Securities Act 2002 and links to state legislation, go to <http://www.nccusl.org/Update/ActSearchResults.aspx>.

Tax Issues

Alabama House Passes Income Tax Cuts. The Alabama House voted to pass a state income tax cut proposal (H.B. 292) providing tax relief to 98 percent of the state's

taxpayers. It now goes to the Senate for consideration. If the plan is passed without changes, an estimated 131,000 taxpayers will no longer be required to file state income tax returns under the new increased income threshold. The plan increases the standard deduction for families from the current maximum of \$4,000, to \$7,000. The dependent exemption increases from \$300 to \$1,000. The personal deduction would be increased from \$1,500 to \$1,700 but will include a phase out. For more information, see <http://alisd.b.legislature.state.al.us/acas/ACASLogin.asp> and type H.B. 292 in the search engine.

Retirement Income Tax Exclusion Possible Ballot Initiative in Georgia. Georgia voters may be asked to amend the state's constitution to provide a retirement income exclusion in November. The initiative would provide for an exclusion of \$75,000 for taxpayers age 62 and older. A Georgia state House Ways and Means subcommittee approved the measure (S.R. 1085) and it now goes to the full Committee. The state Senate passed the bill on a vote of 49-2. It provides an income tax exclusion on the first \$100,000 of income, regardless of the source, for taxpayers age 70 and older. If approved, the tax exclusions will be effective for taxable years beginning Jan. 1, 2009. Text of S.R. 1085 is available at http://www.legis.state.ga.us/legis/2005_06/sum/sr1085.htm.

Pennsylvania House Passes Tax Deduction for HSA Contributions. The Pennsylvania House has passed legislation (H.B. 2125) allowing employers and individuals to deduct contributions to HSAs from income subject to state personal income tax. The measure will be considered next in the state Senate. It would apply retroactively to tax years beginning after Dec. 31, 2005 and is a companion bill to H.B. 107 enacted in July 2005. The earlier bill provides for a state income tax exemption for investment growth within an HSA as long as the withdrawn funds are used to pay for eligible medical or dental expenses.. The text of H.B. 2125 is available at <http://www2.legis.state.pa.us/WU01/LI/BI/BT/2005/0/HB2125P3583.pdf>.

Texas Tax Reform Commission to Release Recommendations. The Texas Tax Reform Commission gave its recommendations on March 29th for overhauling the tax structure used to fund public education. A public hearing was held on March 31st. Recommendations include a new or reformed business tax. Governor Rick Perry announced that he will call lawmakers into special session April 17th to reform the tax system for funding public education. The Texas Supreme Court had given the legislature a June 1st deadline for fixing the system. The court found the system unconstitutional because it is based on a statewide property tax. For more information, go to <http://ttrc.state.tx.us/index.html>.

Michigan House Votes to Repeal Estate Tax. The Michigan House has approved six bills that would repeal the Estate Tax Act and eliminate its references in state law. Michigan has not collected estate taxes from taxpayers since 2004. H.B. 4486 would repeal the Estate Tax Act, and the next five bills (H.B. 4487, H.B. 4488, H.B. 4489, H.B. 4490, H.B. 4491) would delete the mention of the estate tax in other state laws. For the actual wording of the bills, go to <http://www.michiganlegislature.org>.

Indiana Passes Emergency Property Tax Relief. Gov. Mitch Daniels has signed H.B. 1001 providing emergency property tax relief through a one-time credit to help mitigate

an expected property tax increase later this year. This bill provides an additional 8 percent homestead credit for 2006 property taxes and increases the standard deduction for homeowners from \$35,000 to \$45,000 for 2007. For more information, go to <http://www.in.gov/serv/presscal?PF=gov2&Clist=196&Elist=86155>.

Maryland Legislature Approves Property Tax Credit and Estate Legislation. The Maryland General Assembly has approved legislation (H.B. 5) which would expand the state's homeowner property tax credit program by increasing the maximum assessed value for eligible property from \$150,000 to \$300,000. The House has also passed H.B. 1219 which would modify procedures for calculating the Maryland estate tax and other estate tax issues. The Senate has given unanimous approval to an identical estate tax measure (S.B. 2). Each bill is now pending in the opposite chamber, where final passage is expected. For more information, go to <http://mlis.state.md.us/> and type in the corresponding bill number. Additional information about Maryland's estate tax is available at <http://individuals.marylandtaxes.com/estatetax/default.asp>.

Oklahoma Senate Cuts Income Tax Rate. The Oklahoma Senate has approved legislation (S.B. 2022) cutting the top income tax rate from 6.25 percent to 4.9 percent. The cut would take effect July 1, 2006 and would be the largest in the state's history. For more information, go to <http://www.lsb.state.ok.us/> and type in the corresponding bill number.

Utah Enacts Tax Legislation, Rejects Flat Tax. In response to a \$1 billion surplus in revenues, Governor Jon Huntsman has signed a bill (H.B. 55) increasing state property tax credits for homeowners. This action follows the failure of a flat tax proposal in tax reform bill (S.B. 242), legislation that also would reduce the state's upper income tax rate from 7 percent to 4.95 percent and eliminate most exemptions, including the deduction for charitable contributions. Because lawmakers failed to act on that bill, Huntsman said he will call them back into a special session in May. Governor Huntsman also signed into law the Nonrefundable Tax Credit Act and the Refundable Tax Credit Act (SB37) which makes several changes to the income taxation of individuals, estates, and trusts. For more information, go to <http://www.utah.gov/governor/>.

Financial Education

Florida Establishes Financial Fitness Friday. The Florida legislature has declared April 21, 2006 as the first Financial Fitness Friday. This day is to encourage residents to improve their financial stability. Also, two bills in committee (HB 825 and SB 1368) would create a Financial Literacy Council. Two other bills (SB 1224 & HB 531) require that financial literacy instruction be included in high school coursework. For more information, go to <http://www.myfloridahouse.gov/Sections/Bills/bills.aspx> and type the corresponding bill number into the search engine.

CA Introduces Bills for Financial Literacy Month. The California legislature also has several financial literacy bills in committee. HCR 120 establishes April 2006 as Financial Literacy Month; HB1950 allows school districts to provide instruction on personal finances, including budgeting, savings, credit, and identity theft. For more information,

go to <http://www.leginfo.ca.gov/bilinfo.html> and type the corresponding bill number into the search engine.

Mississippi Law Allows for Financial Literacy Program. Governor Haley Barbour signed HB 944 into law, giving school districts the option to implement a financial literacy program for students in Grades 10 and 11. The program includes personal business and finance instruction, and allows for coordination with volunteer teachers from local community organizations. For more information, go to <http://www.jumpstart.org/legislation.cfm>.

South Carolina Introduces Financial Literacy Trust. A bill has been introduced in South Carolina (HB 4707) to create a financial literacy trust act to provide grants to school districts to provide financial literacy instruction for students K-12. Another bill (HB 4774) has been introduced requiring all students to pass a class in financial literacy before they graduate. For more information, go to http://www.scstatehouse.net/cgi-bin/web_bh10.exe and type the corresponding bill number into the search engine.

Other Financial Education Initiatives. Two Tennessee bills (HB 3753 and SB 3741) requiring the Department of Education to develop a high school financial literacy curriculum are awaiting action in legislative committees. In Maryland, HB 1297 establishes a task force to convene a summit on financial literacy in order to evaluate existing school literacy programs. The Iowa Legislature has filed a resolution (HR 148) urging the Iowa Department of Education to integrate basic principles of personal finance into the public school curricula. For more information on these bills and other financial education legislation, go to <http://www.jumpstart.org/legislation.cfm>.

FPA POLITICAL ACTION COMMITTEE

FPA Political Action Committee. Thank you for your recent contributions from Chairman Dave Yeske's call to action for FPA-PAC. FPA wishes to thank the following contributors to FPA-PAC:

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Please make a personal check payable to FPA-PAC and mail to:

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