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## Capitol Update 06-1

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January 5, 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](http://www.fpanet.org/member/govt_relation/index.cfm).

### FEDERAL ACTIVITIES

#### Securities Issues

**SEC Issues Guidance on Broker-Dealer Rule.** In a Dec. 16, 2005 letter to the Securities Industry Association, SEC staff provided a list of factors in a question-and-answer format that brokerage firms may use to determine whether fee-based services might be subject to jurisdiction of the Investment Advisers Act of 1940. The restriction in the rule on financial planning services is scheduled to take effect on 1/31/06. The guidance appears to generally permit brokerage firms to offer segmented financial planning services, such as retirement and education planning, as long as the term “financial planning” is not used on account forms or in marketing materials. In addition, the rule allows brokers who hold the CFP® or other financial planning accreditation to use the marks on business cards and not register as investment advisers if they do not provide financial planning services to their clients. The SEC does not elaborate on when a brokerage service is financial planning, except to reiterate its view that it would consider factors such as whether a particular document or financial calculator bears the characteristics of a financial plan, or if a reasonable investor would perceive such services to be financial planning. The letter may be viewed at under “What’s New” on the government relations pages on FPA’s website at [http://www.fpanet.org/member/govt\\_relation/new/](http://www.fpanet.org/member/govt_relation/new/). FPA continues to challenge the rule in the U.S. Court of Appeals for the D.C. Circuit and has asked that the rule be vacated.

**Court Hearing on SEC Hedge Fund Rule.** A controversial SEC rule tightening oversight of hedge fund advisers came under sharp questioning at a hearing on Dec. 9 before the U.S. Court of Appeals for the D.C. Circuit. The rule, adopted last December, requires most hedge fund advisers to register with the SEC starting in February and undergo routine inspections. Two members of the three-judge panel expressed skepticism about the rule stating that the authority for policymaking resides in Congress, not the SEC. The court’s decision is expected in two to three months.

**SEC Faces Management Issues.** SEC Chairman Cox has several important decisions that must be made in the upcoming months, including filling four top staff positions, naming a new chairman of the Public Accounting Oversight Board, and proposing new disclosure requirements for executive compensation. Of particular importance to financial planners, Chairman Cox must hire a Director of the Division of Investment Management since Acting Director Meyer “Mike” Eisenberg will retire in January. Eisenberg, who was filling-in at IM following the resignation of former director Paul Roye, has accepted an appointment as a visiting professor of law at Willamette University College of Law in Salem, OR.

**Treasury Moves on Anti-Money Laundering Rule for Broker-Dealers.** The Treasury Department has finalized rules for the anti-money laundering rule, which implements Section 312 of the USA Patriot Act. The new rules – jointly proposed by the Treasury and the SEC in 2003 – require new responsibilities for U.S. banks, broker-dealers, futures commission merchants, certain commodities brokers, and mutual funds. Investment advisors are not included in this new rule. Until the new rules are released at the first of 2006, the interim rules under Section 312, created in July 2002, still apply until the final rules take effect. For the fact sheet on the final regulation of Section 312, see <http://www.fincen.gov/312factsheet.pdf>.

### Tax Issues

**Treasury and IRS Finalize Rules Regarding ROTH 401(k) Contributions.** The Treasury Department and the IRS late last month issued final regulations regarding sections 401(k) and 401(m) related to Roth contributions. Roth contributions were added to the Internal Revenue Code by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and are effective for taxable years beginning after December 31, 2005. Designated Roth contributions allow for employees to designate all or a portion of their section 401(k) employee deferrals as Roth contributions, which would receive treatment much like a Roth IRA contribution (i.e., they would be contributed on an after tax basis, but qualified distributions of those contributions, plus earnings, would be tax-free). Major ERISA plan administrators were awaiting IRS guidance and you can expect to see many offering these new options to plan sponsors in the near future. There are several key issues for planners to be aware of including separate accounting rules for Roth IRAs and Roth 401(k)s, required minimum distributions for Roth 401(k)s, and the incapability to roll from a Roth IRA to a Roth 401(k). For the actual rules and regulations, go to <http://www.ustreas.gov/press/releases/js3068.htm>. FPA plans to post an executive summary on the new guidance soon. It will be posted on the members-only section of FPA’s website at

[http://www.fpanet.org/member/govt\\_relation/index.cfm](http://www.fpanet.org/member/govt_relation/index.cfm) and under the "Compliance Info" tab.

**Pension Legislation Goes to Conference.** In January, Congress will attempt to reconcile the House and Senate-adopted versions of comprehensive pension reform legislation. The House bill H.R. 2830, passed on December 15, includes Education and the Workforce Chairman John Boehner's (R-OH) investment advice provision that eliminates liability for employers that provide their workers with access to professional investment advice as long as the advisors fully disclose their fees and any potential conflicts. The Senate version (S. 1783) includes the investment advice provision drafted by Sen. Jeff Bingaman (D-NM) with FPA's assistance. It requires the advisors to be independent of the employer and employed by an investment advisory firm, bank or insurance company. The advisor must also be a SEC or state-registered investment adviser or are registered as a broker/dealer.

The House bill provisions include permanent increases in 401(k) plan and IRA contribution limits, which were set to expire in 2010. Both bills also include provisions to induce employers to offer "automatic enrollment" 401(k) plans. House and Senate lawmakers are expected to hold a conference in 2006 to reconcile the differences in these two bills. It is expected that final action on the legislation will take place before the April 15th pension-plan contribution deadline with many cuts in the House version because of financial restrictions. For actual wording of the bills, go to <http://thomas.loc.gov/> and type S. 1783 or H.R. 2830 in the search engine.

**Tax Reconciliation Bills.** On December 8, the House passed its version of the tax reconciliation bill (H.R. 4297), which includes a two-year extension of the capital gains and dividends rates. It includes a two-year extension of the 15 percent top rates on capital gains and dividend income. The House also passed a stand-alone bill (H.R. 4096) that extends the AMT patch to help shelter middle class taxpayers. The Senate approved its reconciliation package (S. 2020), including an AMT patch, on Nov. 18. The outstanding issues to be resolved in conference when Congress reconvenes in 2006, include whether the Senate will move separately on AMT or push for its inclusion in the reconciliation, and whether the capital gains and dividend rate extensions will be for one or two years. For actual wording of the bills, go to <http://thomas.loc.gov/> and type S. 2020 or H.R. 4297 and 4096 in the search engine.

**Deficit Reduction Act of 2005.** On Dec. 21, the Senate approved a budget reconciliation bill conference report, which would cut spending in social programs, including student loans, Medicare and Medicaid, by \$40 billion over five years. Vice-President Dick Cheney cast the deciding vote (51-50) for the

passage of the conference report. The report included several last minute changes, which will require the House to reconsider the bill before it is enacted, which will take place after the House reconvenes on January 31. The House originally approved the report on Dec. 19 by a 212-206 vote. Some of the major provisions of the bill include large cuts in Medicare and Medicaid, changes to eligibility rules for people seeking long-term care coverage, and increasing FDIC coverage limits on retirement accounts from \$100,000 to \$250,000 and indexing the limits on all accounts for inflation after 2010. This bill has many legislators carefully maneuvering with the tax reconciliation bill, since this bill is cutting large amounts from federal programs and the tax bill is allowing for more tax cuts. For the wording of the conference report, go to <http://thomas.loc.gov/>, enter S. 1932 in the search engine, and then select the Deficit Reduction Act of 2005 (Engrossed Amendment as Agreed to by House).

**Gulf Opportunity Zone Act.** On December 21, President Bush signed into law the Gulf Opportunity Zone Act (GO Zone - H.R. 4440), which gives hurricane reconstructions breaks to businesses and individuals. Some of the relief includes doubling expensing for investments and new equipment from \$100,000 to \$200,000; 50 percent bonus depreciation for businesses that purchase new equipment and build new structures; and increased funding for Hope scholarships and lifetime learning credits for students attending colleges and graduate schools in the zone. For the wording of the bill, go to <http://thomas.loc.gov/>, enter H.R. 4440 in the search engine, and then select the Gulf Opportunity Zone Act of 2005 (Enrolled as Agreed to or Passed by Both House and Senate).

**IRS Estate Tax Report.** The IRS recently reported that the number of estates subject to the estate tax fell in 2004 from 72,540 filed in 2003 to 62,718 filed in 2004. Most of those in 2004 (45,974) involved estates worth more than \$1 million but less than \$2.5 million. The number of taxable estate returns went from 32,991 in 2003 to 30,276 in 2004. About 21,152 of those taxable returns were in the \$1 million to \$2.5 million range. Only, 808 were taxable returns involving estates worth \$10 million to \$20 million and 520 returns were worth more than \$20 million. Earlier this year, Congress debated whether to repeal or reform the estate tax. A bill calling for repeal of the tax passed the House, and the Senate was poised to vote on it in early September. The Senate vote was pushed aside after Hurricane Katrina relief reformulated the agenda. The 2004 and 2003 IRS data is on the Web at <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96442,00.html>.

**Tax Reform Falls on Bush's Agenda.** Recently the White House has shifted focus away from tax reform in favor of making the tax cuts from 2003 permanent. Social Security and tax reform were two of the President's highest priority issues

for second-term initiatives, but because of the political environment and lack of support, both have lost momentum.

## STATE ACTIVITIES

**NASAA Warns of 'Senior Specialists'.** NASAA has issued a notice encouraging older Americans to carefully check the credentials of individuals holding themselves out as 'senior specialists'. There has been a significant increase in designations claiming to provide the holder with expertise in providing services to investors 55 years and older. While certain of these certifications may be valid, there have been numerous cases in the past year where older investors have been taken advantage of through marketing and selling techniques targeting the elderly. Senior citizens are encouraged to check with state regulators to see if their advisor is properly licensed or if they have had any disciplinary problems in the past. For more information, please see the release on NASAA's website at [http://www.nasaa.org/NASAA\\_Newsroom/Current\\_NASAA\\_Headlines/4028.cfm](http://www.nasaa.org/NASAA_Newsroom/Current_NASAA_Headlines/4028.cfm).

**South Carolina Expands Job Tax Credit.** South Carolina small businesses can now receive a new tax credit beginning January 1, 2006, if the business creates and maintains at least two new fulltime jobs whose pay exceeds 120 percent of the state or county per capita income. The credit ranges from \$750 to \$8,500. For more information, see <http://www.sctax.org/NR/rdonlyres/ED491C8D-F9EF-4EC8-898B-F1B2DAAD3A3D/0/RR0517.pdf>.

**Kentucky and Massachusetts Relief Measures.** IRS disaster tax relief for those affected by the recent tornado in Hopkins and Marshall counties in Kentucky. See <http://www.irs.gov/newsroom/article/0,,id=151559,00.html> for more information. Massachusetts Department of Revenue is giving an automatic extension to taxpayers affected in nine counties by heavy flooding. The new date is January 9, 2006. For more information, see [http://www.dor.state.ma.us/rul\\_reg/tir/tir\\_05\\_19.htm](http://www.dor.state.ma.us/rul_reg/tir/tir_05_19.htm).

## FPA POLITICAL ACTION COMMITTEE

**FPA-PAC Closes Out the Most Successful Year in History.** FPA-PAC has received over \$55,000 in contributions for 2005, with over 415 members contributing to the PAC. A total of \$44,000 was distributed to leaders in both the House and Senate who are in leadership positions that affect financial planners. Thank you for your contributions to the PAC, and we look forward to your contributions for next year.

**FPA Political Action Committee.** Our thanks and appreciation to the most recent contributors to FPA-PAC: **Bronze Level (under \$200):** Nancy Kistner, Carol Smith, Dr. Somnath Basu, Patricia Dillaman, Gerald Gasber, Joel Bruckenstein, Ross Marino, Nancy Ferriss, Ross Mongiardo, Ellen Resneck, Edward Katarsky, Larry Eye, William Russo, Anthony Papa, Cynthia Turoski, Robert Lozzi, Edward Fatla, Louis Miceli, Rodney Van Loon, Andrew Gardener, Dwight Mikulis, Raymond Benton and Lauren Schadle.

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