



FEDERAL ACTIVITIES

House Passes Sweeping Financial Services Reforms- Calls for Study of Financial Planning, No FINRA Authority Over Advisers. On December 11th, the US House of Representatives approved legislation that would mean major changes for regulation of the financial services sector. The Wall Street Reform and Consumer Protection Act passed along largely partisan lines and includes provisions creating a Consumer Financial Protection Agency and a Financial Stability Council to deal with institutions deemed “too big to fail.” Importantly, the bill provides for a study on the regulation and oversight of financial planning by the Government Accountability Office (GAO). FPA worked with its Financial Planning Coalition partners to push for the study which would require the GAO to make recommendations to Congress for the appropriate regulation of financial planning. The bill also includes a provision requiring brokers who provide personalized investment advice to retail customers to adhere to the same fiduciary standard of care as investment advisers. The coalition supported this as an important consumer protection, though it has expressed concerns about how it will be applied, with the SEC having broad authority to implement the standard. Also of note, the bill was stripped of a provision which would have given FINRA oversight of dually registered broker/advisers. FPA and the coalition lobbied to kill the FINRA provision.

The Senate’s banking committee is now working on its version of financial services reform, which is likely to differ significantly from the House version in key aspects.

In This Issue:

[House Passes Financial Service Reforms](#)
[SEC Approves New Custody Rules](#)
[SEC Extends Temporary Rule on Principal Trading](#)
[Congress Fails to Enact Estate Tax Fix](#)
[Healthcare Will Likely Change FSAs, Medical Deductions, Medicare Taxes](#)
[New Rules for Some Tax Preparers](#)
[IRS’ Strained to Meet Taxpayers Service Levels](#)
[IRS Issues Proposed Basis Tracking Rules](#)
[Ohio Nixes Tax Cuts](#)

WEB LINK

For more information on the legislation approved by the House, click [here](#).

SEC Approves New Custody Rules. On December 16, 2009 the SEC approved changes to the custody rules for client assets held by investment advisers. During its presentation to the Commission at the December meeting, the SEC staff explicitly stated that one of the main purposes of the new rules were to “promote independent custody and require the use of independent public accountants as third-party monitors.” The staff believes that such arrangements offer one of the best methods of avoiding another Madoff-type fraud.

The SEC originally proposed changes to the rules in May 2009. The original proposal contained a provision requiring a surprise audit for RIAs whose sole access to client assets was their ability to deduct fees from the client accounts. FPA filed a comment letter on July 28, 2009 objecting to this provision. The final rule no longer has this requirement.

Under the new rules RIAs that maintain assets at an *affiliated* qualified custodian will be subject to an annual surprise audit by an independent auditor. In addition the RIA will have to implement new custody control reviews and obtain an internal control report (commonly called a SAS 70 report). RIAs that are under common control with their custodian are subject to a rebuttable presumption that they are not independent and therefore subject to the new requirements.

RIAs that have some authority over client assets because they serve as trustee to a client trust or have the authority to write checks or have a power of attorney will also be required to undergo the surprise audit. Since many of the RIAs that fall into these categories are smaller firms, the Commission has directed the SEC staff to monitor the issue and study the impact of these expenses on these smaller firms.

The rule goes into effect on March 12, 2010. For those firms required to have a surprise audit, the first audit must occur by no later than December 31, 2010.

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Here is a [copy](#) of our letter and the [final](#) SEC Rule.

[FPA® Government Relations Advocacy Web Site](#)

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, click on this box and then bookmark the page.

SEC Extends Temporary Rule on Principal Trading. The SEC has extended a temporary rule on principal trading which was set to expire on December 31, 2009. The rule was put in place in the wake of FPA's lawsuit which overturned the SEC rule allowing brokers to offer fee-based accounts without being subject to the Investment Advisers Act. The rule provides streamlined procedures for complying with disclosure and customer approval requirements under the Advisers Act. FPA urged the SEC to carefully monitor compliance with the temporary rule, as well as to assess its effectiveness. Reflecting some of FPA's concerns, the SEC has extended the temporary rule for only one year and has indicated it will "assess whether the rule is operating, and firms are applying it, in a manner consistent with protecting investors."

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For more information on the temporary rule, click [here](#).

•Federal Tax Issues

Congress Fails to Enact Estate Tax Fix. The Senate was unable to address an estate tax bill passed by the House that would have permanently extended the 2009 rates and exemptions. The result was the expiration of the estate tax on December 31, 2009. Congressional tax writers plan to address the issue this winter and are expected to make the tax changes retroactive. Some legal scholars question the constitutionality of such a move, but the courts have upheld numbers retroactive changes in the past. It is not yet clear exactly when or how the estate tax will be addressed.

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Click [here](#) for more info.

Healthcare Will Likely Change FSAs, Medical Deductions, Medicare taxes. Negotiations between the House and Senate over how to pay for Healthcare reform will most likely favor the Senate-passed version of the legislation. The major sticking point is the Senate's proposal to apply a 40-percent surtax on 'Cadillac' health insurance plans costing more than \$8,500 for individuals and \$23,000 for families. The House wants to raise those amounts but will need to come up with additional revenues. Under consideration is a proposal to further increase to the Medicare payroll tax on individuals with wages over \$200,000 or \$250,000 married filing jointly (the Senate's version already includes an increase). Another proposal that has been floated would apply the Medicare tax to "unearned" income, such as dividends and capital gains, as well as to wages. Some of tax increases of note in the Senate healthcare bill:

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- 40% excise tax on plans that are above \$8,500 for singles or \$23,000 for family
- Additional 0.9% Medicare payroll tax on wages in excess of \$200,000 (single) or \$250,000 (jointly).
- Limit FSAs to \$2,500. Limit reimbursement of over-the-counter medications.
- Increase floor on medical expenses from 7.5% to 10% of Adjusted Gross Income, except individuals 65 and older.

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New Rules for Some Tax Preparers. The IRS proposed new registration testing and continuing education for all tax return preparers. The change is backed by H&R Block and Jackson Hewitt, the two largest tax preparers. Under current law, anyone may prepare a tax return for compensation, with no training, licensing, or oversight required. While attorneys, CPAs, and Enrolled Agents must pass difficult examinations to practice, others (known as “unenrolled preparers”) are not required to do so. The IRS plan announced this week would impose these requirements on return preparers who sign tax returns but not on preparers who meet with taxpayers and prepare their returns if someone else signs them. A return preparation business may decide to employ one “signing” preparer who is certified under the new IRS rules and an unlimited number of “nonsigning” preparers. The nonsigning preparers would not have to register, pass an exam, or take continuing education courses

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<http://www.irs.gov/newsroom/article/0,,id=217782,00.html>

IRS' Strained to Meet Taxpayers Service Levels. National Taxpayer Advocate Nina E. Olson released her annual report to Congress, warning that increased demands on the IRS have eroded the agency's ability to meet taxpayer service needs and expressing concern that IRS collection practices are harming financially struggling taxpayers without producing significant revenue gains.

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<http://www.irs.gov/newsroom/article/0,,id=217903,00.html>

IRS Issues Proposed Basis Tracking Rules. IRS issued proposed regulations on basis reporting requirements passed by Congress in the fall of 2008. The proposed regulations require reporting of basis and other information by stock brokers and mutual fund companies for most stock purchased in 2011 and all stock purchased in 2012 and later years. This additional reporting will be optional for stock purchased prior to these dates.

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<http://www.irs.gov/newsroom/article/0,,id=217167,00.html>

State Activities

Ohio Nixes Tax Cuts. December 22, Governor Ted Strickland signed a law that would delay the last phase of a gradual income tax reduction enacted under the previous governor, which lowered the state's income tax rates by 20% over five years.

Issues of Note

GR Teleconference Call Schedule for 2010.

The following is the 2010 schedule for all GR teleconference calls with chapter leaders. Each call will be held on the second Tuesday of the month at **4:00 p.m. Eastern**, unless otherwise noted:

January 12th

February 9th

March 9th

April 13th

May 11th

June 8th

July 13th

August 10th

September 14th

October 13th **Please Note: This is on a Wednesday due to FPA's annual conference**

November 9th

December 14th

CAPITOL UPDATE

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