



Capitol Update 06-5

May 1, 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

Should you wish to communicate with FPA about these or other issues, please note that the FPA staff directory is online. To locate government relations or other FPA staff, go to <http://www.fpanet.org/member/about/who/Staff.cfm>

Important Notice about May 1st Membership Survey: The CFP® Board of Standards is reviewing the CFP Code of Ethics and Professional Responsibility FPA is surveying all members to identify any issues of concern and communicate these issues to the CFP Board. Because the principles of the CFP Code apply to all FPA members, in addition to CFP certificants, membership feedback is critical. **Please take a few moments to respond to the ten question survey. Your feedback will help FPA determine the best course of action on critical compliance issues.** A link to the survey was emailed to all members on Monday, May 1st.

FEDERAL ACTIVITIES

Securities Issues

Donohue Appointed Director of Investment Management. SEC Chairman Christopher Cox has appointed Andrew “Buddy” Donohue as Director of the SEC’s Division of Investment Management. In announcing Donohue’s appointment, Chairman Cox cited his “extensive knowledge of mutual fund regulation and compliance issues.” Donohue, whose appointment becomes effective May 15th, currently serves as Global General Counsel for Merrill Lynch and previously was Executive Vice President and General Counsel of Oppenheimer Funds. In response to his appointment, FPA issued a statement that “it will be important for Mr. Donohue to study closely the different cultures and compliance issues” faced by smaller advisory firms. To read the SEC’s press release, go to <http://www.sec.gov/news/press/2006/2006-52.htm>

SEC to Enhance Oversight of Small Advisers. According to a recent article in *Compliance Reporter*, SEC examiners are working with state regulators to study smaller investment advisory firms. John Walsh, chief counsel of the SEC’s Office of Compliance Inspections and Examinations (OCIE), told *CR* that firms with three to four persons present different issues than larger firms and the SEC is trying to enhance its oversight of small advisory firms. Under the National Securities Markets Improvement Act of 1996 (NSMIA), state regulators have jurisdiction over IA’s with assets less than \$25 million, while the SEC regulates advisers whose assets exceed that amount.

SEC to Issue Electronic Notifications. Effective May 22, the Divisions of Corporation Finance and Investment Management will begin using the EDGAR system to issue notifications of effectiveness for Securities Act registration statements and post-effective

amendments, other than those that become effective automatically by law. These notifications will be posted to the EDGAR system the morning after a filing is determined to be effective. The Divisions will no longer prepare and mail paper effectiveness orders associated with these filings. Registrants will continue to be notified promptly by telephone that their registration statements or post-effective amendments are effective. For more information, go to <http://www.sec.gov/news/press/2006/2006-61.htm>

Tax Issues

Pension Bill Conferees Set New Deadline. Conference negotiations are well underway on pension reform legislation (H.R. 2830). Conferees were unable to complete the conference report by April 15 and now have a target deadline of May 29. According to one conferee, the investment advice provision has become a point of “significant negotiation” in this conference. The provision in the Senate bill (S. 1783) would encourage companies to hire RIAs or broker-dealers to advise employees about their plans by limiting the employers’ liability for the advice provided. It is favored by FPA over the House version (H.R. 2830) of the investment advice provision that would allow mutual fund companies to offer advice provided they disclose their fees and conflicts of interest. For additional information on the pension legislation, see <http://thomas.loc.gov/> and type H.R. 2830 in the search engine.

Tax Reconciliation Conference Completing Negotiations. Conferees for the tax reconciliation legislation (H.R. 4297) are expected to reach a deal by the end of this week. Details of the negotiations are not yet known, though the bill is expected to include a two-year extension of the capital gains and dividends rates and at least a one-year AMT patch. It is also likely to include a provision removing income limits on Roth IRA conversions and increase Section 179 small business expensing. There are still several other tax break extenders likely to appear in a separate bill after the reconciliation legislation has been passed. Two charitable giving provisions would allow tax-free distributions from IRAs to charities for taxpayers over 70 ½ and similar tax-free contributions to split-interest trusts for taxpayers over 59 ½. For actual wording of the bill, go to <http://thomas.loc.gov/> and type H.R. 4297 in the search engine.

Estate Tax Legislation on Senate Agenda Once Again. Senator Charles Grassley (R-IA), Chair of the Senate Finance Committee, and Senate Majority Leader Bill Frist (R-TN) have put estate tax relief on the Senate agenda for May. It is estimated there are approximately 55 senators who, along with Senator Grassley, favor full repeal of the estate tax, although it is doubtful that Senate leadership will be able to garner the 60 votes that will be required. Compromises on estate tax repeal are expected to include an exemption amount between \$3.5 and \$5 million and an estate tax rate between 15 and 35 percent. The issue was expected for a vote in September 2005, but was pushed off the agenda when Congress responded to Hurricane Katrina.

Tax Season Ends with Several Landmarks and Controversies. The IRS has reported a record season for electronic filings. Seventy million tax returns have been filed electronically, but the Government Accountability Office found several serious problems in the work of paid return preparers at major chains. In response, Senate Finance Committee Chairman Charles Grassley (R-IA) suggested that the IRS provide electronic filing or tax preparation services directly to taxpayers. However, Treasury Secretary John Snow testified the government should not compete with the private sector in this

matter. There is a bill pending in the Senate, the Taxpayer Protection and Assistance Act of 2005 (S. 832), that would give the IRS Office of Professional Responsibility authority to regulate paid income tax preparers, require advisers who prepare federal income tax returns to undergo examinations and maintain continuing education requirements, and impose sanctions for failure to comply.

Taxpayer privacy has also become an issue this season. Legislation in the Senate (S. 2498) has been introduced to protect taxpayer privacy by prohibiting tax preparers from soliciting taxpayer consent for disclosure or sharing tax return information with third parties. In the House, two bills, H.R. 5075 and H.R. 5138, have been introduced that would prevent the sale and distribution of confidential taxpayer information and prohibit tax preparers from sending returns overseas to be processed. For the actual wording of the bills, go to <http://thomas.loc.gov/> and type H.R. 5075, H.R. 5138, S. 832, or S. 2498 in the search engine.

Mutual Fund Bills in Committee. Two mutual fund bills have been introduced that would allow investors to defer taxation of reinvested capital gains in taxable mutual fund accounts until the shares are redeemed. H.R. 2121 has been referred to the House Ways and Means Committee and a companion bill, S. 1740, is in the Senate Finance Committee. Neither bill is likely to be scheduled for a hearing or receive consideration in committee. For the actual wording of the bills, go to <http://thomas.loc.gov/> and type H.R. 2121 or S. 1740 in the search engine.

IRS Issues New Sample Plan Amendments for Roth 401(k) Contributions. The IRS has issued a notice that provides sample plan language to Roth 401(k) plan sponsors. Roth 401(k) accounts, which began this year, allow participants to make designated Roth elective deferrals with after-tax income. The language in Notice 2006-44 may be used by pre-approved plans and individually designed plans. For more information, go to www.irs.gov and type Notice 2006-44 into the search engine.

STATE ACTIVITIES

Insurance and Trust Issues

Pennsylvania Hearing on Insurance Solicitation to Elders. On April 27, Pennsylvania legislators convened a hearing on H.B. 2178, legislation intended to protect elders from fraud in insurance sales by so-called “financial advisers.” The Pennsylvania Insurance Division, AARP, NAIFA, the Pennsylvania Bar Association, and others testified on the bill before a joint hearing of the Assembly Committees on Insurance and Aging. Representative Crahalla, the sponsor, acknowledged that the bill is still a “work in progress.” FPA supports efforts to protect elderly investors and ensure that unqualified and unlicensed individuals do not hold themselves out as financial planners. To review H.B. 2178 go to: <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2005&ind=0&body=H&type=B&BN=2178>

FPA to Participate in NASD Panel on Annuities. FPA will participate in a roundtable discussion on annuities May 5th at the Washington, DC office of the NASD. NASD hopes to begin a dialogue on possible improvements to the regulatory framework for sales and marketing of these products to better serve investors’ needs. Panelists will include a cross-section of federal and state regulators, securities firm and insurance firm executives, industry representatives and consumer groups.

Securities Issues

FPA Persists in Clarifying AML Requirements in Texas. Texas FPA members who are state-registered investment advisers continue to report that state examiners are citing them for failure to have anti-money laundering policies and procedures in place. During a recent examination, the Texas Securities Board asserted that it considered adoption of the federal Patriot Act's anti-money laundering provisions to be a best practice and that failure to do so may be deemed an inequitable practice under the Texas Securities Act. In its second comment letter on the issue to the Texas securities commissioner, FPA reemphasized: "There is no basis for the Board to threaten a Texas investment adviser with punitive action... when that action would be based on a federal law that does not apply." Full text of the letter is posted on the FPA website at: http://www.fpanet.org/member/govt_relation/comments/index.cfm

Florida Expected to Mandate Electronic Filing for State-Registered Advisers. Florida Senate Bill 2744 would require state-registered investment advisers to register with the state via the Investment Adviser Registration Depository (IARD). IARD is a nationwide electronic filing system operated by the NASD which has streamlined the filing process. It is currently required for federal advisers and state advisers in 47 states. Applicants will pay the NASD an initial system fee of \$150 and an annual fee of \$70, in addition to the annual state registration fee. FPA will provide additional information to affected members if Senate Bill 2744 becomes law. To see S.B. 2744 go to: http://www.flsenate.gov/cgi-bin/view_page.pl?Tab=session&Submenu=1&FT=D&File=sb2744c1.html&Directory=session/2006/Senate/bills/billtext/html/

Louisiana to Update State Securities Laws. Louisiana has introduced several bills that will update the state's securities laws. Louisiana's unique securities laws do not define "federal covered adviser" or "investment adviser representative." Senate Bill 552 defines these terms and Senate Bill 578 amends that state's definition of "investment adviser" to accommodate the new definitions. In addition, Senate Bill 551 gives the Commissioner the power to issue interpretive opinions and no-action determinations. To review these bills go to: <http://www.legis.state.la.us/archive/06rs/06rs.htm>

Tax Issues

Massachusetts Mandates Health Insurance Coverage. Gov. Mitt Romney (R) signed landmark legislation April 12 requiring every resident of Massachusetts to buy medical insurance by July 1, 2007. The legislation was approved in the House by a 154-2 margin and a 37-0 vote in the Senate. Beginning January 1, 2008, failure by individuals to purchase health insurance will result in the loss of their state tax refund equal to 50 percent of an affordable health insurance premium. Penalties will be assessed for each month without creditable coverage. The law also creates the Commonwealth Care Health Insurance Connector allowing individuals to purchase affordable plans on a pre-tax basis. For more on this new law, go to <http://www.mass.gov/?pageID=gov2subtopic&L=3&L0=Home&L1=In+Focus&L2=Governor's+Health+Care+Plan&sid=Agov2>

Nebraska Governor signs LTC Savings Plan. Nebraska Gov. Dave Heineman (R) signed L.B. 965 allowing for tax-exempt funds to be placed in a long-term care (LTC)

savings plan. It also permits tax-free withdrawals for long-term care expenses. Taxpayers can contribute \$2,000 per year for married filing jointly or \$1,000 per year for individuals, up to a lifetime limit of \$160,000. Participants can make tax-free withdrawals for long-term care expenses after age 65 or at any age for those with disabilities. A provision also allows participants over age 62 to make tax-free withdrawals to cover the premium cost. To read the specifics of the bill, go to

<http://www.unicam.state.ne.us/documents/bills.htm> Governor Heineman has also signed L.B. 968 adjusting all income tax bracket thresholds for all filing categories, and eliminating the current phase-outs of the personal credit, itemized deductions, and standard deductions for high-income taxpayers. For the actual text of the legislation, go to <http://www.unicam.state.ne.us/documents/bills.htm>

Texas House Passes Property Tax Bills in Special Session. On April 24, the Texas House passed four school tax bills reducing property taxes and replacing the lost revenue through a new business tax. The legislation is now being considered in the Senate. One of the bills, H.B. 3, introduces a new 1 percent margin tax for businesses making more than \$300,000. It was sent back to the attorney general by the state comptroller to determine if the tax is considered a state income tax. H.B. 1 proposes using \$2.1 billion of the state surplus to buy down property taxes in an effort to temporarily fix the system by June 1st. For all Texas legislation, go to <http://www.capitol.state.tx.us>

Maryland Governor Signs Tax Measures. Gov. Robert Ehrlich (R) recently signed two tax bills. S.B. 382 expands the state's homeowner property tax credit program by increasing the maximum assessed value for eligible property from \$150,000 to \$300,000. S.B. 545 clarifies that state inheritance tax does not apply to property passed on to partnerships and limited liability companies if all partners are direct beneficiaries. There are still two estate tax measures awaiting the Governor's signature. S.B. 2/H.B. 1219 limit the amount of the federal credit used to calculate the Maryland estate tax to 16 percent of the amount by which the decedent's taxable estate exceeds \$1 million. For a more information on Maryland legislation, go to <http://mlis.state.md.us/index.html>

Idaho Governor Increases State Homestead Deduction. Gov. Dirk Kempthorne (R) signed a bill (H. 421) increasing the state's homestead tax deduction by an additional \$25,000. This law is retroactive to Jan. 1, 2006. The new law allows an exemption from property taxes for \$75,000 or 50 percent of the homestead's value, whichever is less. It also indexes the exemption amount in future years to the federal COLA. For Idaho legislation, go to <http://www3.state.id.us/legislat/legtrack.html>

OK House Votes to Repeal Estate Tax. The Oklahoma House has voted 79-17 to abolish the state estate tax. The Senate, however, unanimously passed legislation that phases out the tax over a three-year period and exempts nonlinear heirs, such as nephews and nieces. For more information, go to <http://www.lsb.state.ok.us/>

GA Governor Signs Legislation for Child Care Credit and Senior Citizens. Gov. Sonny Perdue (R) has signed H.B. 1080 into law, allowing for a state income tax credit for child or dependent care expenses beginning in tax year 2006. He also signed H.B. 848 exempting elderly state residents (ages 65 and older) from the state property tax beginning in 2007. For the tax break to become effective, state voters must still approve the exemption when it appears on the Nov. 7 ballot. Text of H.B. 1080 and 848 are available at http://www.legis.ga.gov/legis/2005_06/

California Announces New Website for Tax Service Center. California's three tax agencies have announced a new website containing information, forms, publications, and filing options. The website includes all tax forms from the State Board of Equalization, Franchise Tax Board, and Employment Development Department. It can be accessed at: <http://www.taxes.ca.gov>.

Professional Issues

FPA Seeks Advisory Opinion from CFP Board. FPA has asked the CFP Board to clarify ethical and disclosure standards in the CFP® Code of Ethics, in light of the SEC's adoption of the Broker-Dealer Rule. The SEC Rule fails to distinguish financial planning from full-service brokerage programs and creates confusion about professional standards governing financial planning. FPA is concerned the Rule could result in two different standards under the Code for certificants holding themselves out as financial planners and has urged the Board to clarify the issue. FPA has also asked the Board whether a CFP practitioner providing modular financial planning services should be held to the same ethical and disclosure standards that apply to a CFP certificant offering comprehensive financial planning. To view the letter, go to:

http://www.fpanet.org/member/govt_relation/professional/index.cfm

In addition, as noted at the top of this issue of *Capitol Update*, FPA is currently surveying its membership about the CFP® Code of Ethics and issues relating to the Broker-Dealer Rule.

Financial Education

FPA Participates in Financial Literacy Day on Capitol Hill. FPA's Washington, D.C. office sponsored a booth at the Financial Literacy Day in the Senate on April 25. The Jump\$tart Coalition, Junior Achievement and the National Council on Economic Education sponsored the event that was hosted by Senator Daniel K. Akaka (D-HI). Senators Akaka and Paul Sarbanes (D-MD), as well as Representatives Judy Biggert (R-IL) and Rubén Hinojosa (D-TX), spoke during the event that attracted over 200 legislators and staff members.

April Slated as Financial Literacy Month. The House and Senate both adopted resolutions declaring April as Financial Literacy Month. Several state legislatures, including Texas, Idaho, Hawaii, Pennsylvania, Rhode Island, and California, also proclaimed April as Financial Literacy Month. Several events were held throughout the U.S. to encourage families, children, and workers to learn about their finances. For more information on legislative initiatives for financial education, go to

<http://www.jumpstart.org/legislation.cfm>

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FPA POLITICAL ACTION COMMITTEE

FPA-PAC Now Accepts Online Contributions. You now have the option of supporting FPA-PAC by giving annual contributions online or by using the form printed below. To contribute online, go to http://www.fpanet.org/member/govt_relation/fpa_pac.cfm, log in as a member, then click on the donation form.

FPA wishes to thank the following recent contributors to FPA-PAC:

Platinum Level (\$1000 or more): Thomas Buresh and Norman Lehrer **Silver Level (\$200 to \$499):** Timothy Wyman **Bronze Level (under \$200):** Erik Jensen, Jonathan Brandt, John S. Ruzza, Allen Sumida, Harvey Berger, Aniello Franzese, John Chandler, Edward Kohlhepp, Gregory Walters, Merrell Dean, Jennifer Cray, Marion Steward, Marjorie Burnett, Sheila Graham, Holly Sansing, Thomas Archer, Oscar Snyder, Ann Fenwick, Caragh Fahy, Keith Wanless, Anneliese D'Souza, Larry Schneider, Glenn Mars, J. Richard Coe, Dean Buford, and George Cox.

Please join your colleagues in supporting FPA-PAC by completing the FPA-PAC contribution form below.

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OR

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

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