



## HIGHLIGHTS:

- ✓ *Required Individual Coverage*
- ✓ *Affordability Credits*
- ✓ *Enhanced Employer Responsibility*
- ✓ *Small Business Tax Credits*
- ✓ *Surtax On Higher-Income Individuals*
- ✓ *Tax On High-Cost Insurance*
- ✓ *New Caps On FSAs*
- ✓ *Economic Substance Codification*

## Senate Finance Committee Approves Health Care Reform Bill With New Taxes/Fees

After weeks of lengthy debates and consideration of more than 500 amendments, the Senate Finance Committee (SFC) approved, by a 14-9 vote on October 13, an \$829 billion health care reform bill. America's Healthy Future Act contains approximately \$300 billion in revenue raisers. Additional revenues would come from cuts to federal government health programs. The SFC is the final Congressional committee to tackle health care reform. Four committees (House Ways and Means, House Education and Labor, House Energy and Commerce, and Senate Health, Education, Labor, and Pensions (HELP)) previously reported out different versions of health care reform (America's Affordable Health Choices Act, H.R. 3200). House and Senate leaders will now try, with strong encouragement from the White House, first to reconcile competing proposals within their own chambers, and then to hammer out a final bill in Conference.

At the same time, momentum appears to be building on Capitol Hill for a second stimulus, although many lawmakers prefer not to call it that. The expected extension of unemployment benefits may be coupled with extensions of the first-time homebuyer tax credit, COBRA premium assistance, and expanded net operating loss (NOL) carrybacks for small businesses. Other incentives being discussed in Congress include a new tax credit to reward employers that create jobs and a one-time

additional Social Security payment to offset the lack of a COLA increase for 2010.

**Impact** *The Tax Code plays a critical role in promoting the health bill's core concepts. On the one hand, it provides tax incentives and penalties to channel behavior; on the other hand, it raises a significant portion of the revenues Congress needs to implement its reform measures. In addition, the government is looking to health insurers and, to a lesser extent, pharmaceutical companies and medical equipment providers to share in the costs of reform. All of these "revenue-related" components, as well as other ways to pay for the bill, will form a major part of the debate before a final bill comes to a vote.*

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## CORE CONCEPTS

Although many details still need to be worked out before Congress passes a final bill, the core concepts that are emerging would fundamentally alter the health care landscape.

**First.** All individuals would be required to obtain health care coverage. Under all of the proposals, employer-provided coverage would generally satisfy the universal-coverage requirement. Individuals without employer-provided coverage would be allowed

to shop among private insurers and a possible public insurance plan or consumer-owned cooperatives. Individuals who do not obtain qualifying coverage would be subject to a penalty. Lower-income individuals would receive a credit or voucher to help pay for health insurance.

**Second.** Employers currently offering health insurance could elect to continue offering coverage so long as their plans meet certain minimum requirements. Employers electing not to offer qualifying coverage would be subject to an additional payroll tax to help finance the health care coverage for their employees. Exceptions would be made for small businesses.

**Impact** *Two elements of the SFC bill stand in contrast to other pending health care proposals: First, the SFC bill imposes a new excise tax on high-dollar health insurance plans. Second, the SFC bill does not include a public option. The first difference may prove a stumbling block. More than 150 members of the House said on October 7 that they will not support taxing health insurance policies. However, House members are looking for an alternative to a proposed surtax on higher-income individuals to respond to Senate objections. Lack of a public option, nevertheless, is certain to encounter resistance in the House. House Speaker Nancy Pelosi, D-California, said recently that the SFC's proposed non-profit health insurance cooperatives are not a substitute for a public option.*

**Impact** *SFC ranking member Charles Grassley, R-Iowa, recently asked Treasury Secretary Timothy Geithner for details on how the IRS would implement some of the measures in the pending bill.*

## INDIVIDUAL COVERAGE

Individuals would be required to obtain health insurance - or pay a penalty - under the bills coming out of all Congressional committees. Individuals without employer-provided health insurance would have the option of securing coverage through a national exchange or, under the SFC proposal, in the individual market. If individuals do not obtain eligible coverage, they would be liable for an additional tax.

The SFC bill also creates a reinsurance program for employer-sponsored retiree coverage.

**“The Tax Code plays a critical role ... it provides tax incentives and penalties to channel behavior [and] raises the revenues the government needs to implement reform”**

**Senate.** Under the SFC proposal, individuals without qualifying coverage would pay an annual nonrefundable excise tax. Depending on income, the excise tax would start at \$200 per year for individuals in 2014 and climb to \$750 per year for individuals by 2017. The Senate HELP Committee would impose a similar penalty; generally remaining fixed at \$750 per year for an individual without coverage with a maximum \$3,000 penalty for a family of four.

**Comment** Under the original chair's mark of the SFC bill, individuals with income between 133 and 200 percent of the poverty level would be eligible for tax subsidies to help them afford individual health insurance coverage.

The bills would generally expand Medicaid to cover more lower-income individuals. The SFC approved an amendment that redirects these funds to the states so the 50 states can negotiate with insurers to provide coverage for these individuals.

**House.** Under the House Ways and Means bill, the additional tax would equal 2.5 percent of the taxpayer's modified adjusted gross income (AGI) that exceeds the taxpayer's applicable exemption amount plus the standard deduction for the year. The additional tax would be in addition to both the regular income tax and the alternative minimum tax (AMT).

**Impact** *The additional tax would not exceed a yet-to-be-determined average premium for individual coverage (or family coverage) under a basic plan that is offered by the national exchange. The tax would be prorated for partial year failures.*

**Impact** *The tax would not apply to any individual properly claimed as a dependent. However, parents or guardians claiming qualified children as dependents would be required to maintain health care coverage for them.*

**Comment** Under all of the bills, individuals eligible for Medicaid and Medicare would not be required to obtain health insurance from other sources. Under the SFC bill, children enrolled in the Children's Health Insurance Program (CHIP) would be exempt from the individual mandate.

**Affordability credits.** To reduce the economic burden of mandatory health care coverage, the House Ways and Means bill would provide lower-income individuals with “affordability credits,” vouchers to help pay for the

cost of coverage purchased through the national exchange or gateway. The credits would be available on a sliding scale. Individual and family incomes must be below 400 percent of the federal poverty limit (\$88,080 for a family of four) to qualify. Individuals eligible for employer-provided health insurance or Medicaid would not qualify for affordability credits.

## EMPLOYERS

**Senate.** The SFC bill does not mandate employer coverage. But under its “play-or-pay” strategy, employers with more than 50 employees that do not offer coverage would be assessed a fee for each full-time employee who secures individual coverage. Generally, the maximum fee would be \$400 per employee or an amount determined by the U.S. Department of Health and Human Services. Additionally, employers with 200 or more employees would be required to automatically enroll employees into their health insurance plans. Employees would be able to opt-out of automatic enrollment if they can show other qualifying coverage.

The Senate HELP committee, on the other hand, would impose a blanket \$750 annual fee per full-time employee and \$375 for each part-time employee (first 25 employees exempt) on employers who chose to “pay” instead of “play.”

**House.** All of the House bills would require employers to satisfy certain minimum coverage requirements. Under the House Ways and Means bill, an employer that offers a health benefit plan to its employees must offer both individual and family coverage. In addition, the employer’s minimum contribution to plan premiums must be 72.5 percent of the lowest cost plan offered to individuals under the national exchange, and 65 percent of the lowest cost plan offered to families. For part-time employees, the minimum contribution amounts could be prorated.

Employers electing to provide health care coverage that fails to meet the minimum coverage requirements

would be subject to a penalty. Ways and Means would impose a \$100 per day excise tax for each uncovered employee. The House Energy and Commerce would exempt small businesses with annual payrolls of \$500,000 or less.

Employers electing not to provide health care coverage would be subject to an additional payroll tax. The House Ways and Means Committee set that payroll tax at eight percent of the wages paid to employees who are not offered health care benefits. The FICA concept of “wages” would be used (except that there would be no annual taxable wage base).

**Impact** *An employer could make separate elections to provide health care coverage for separate lines of businesses, or full-time employees and part-time employees (or vice versa).*

## SMALL BUSINESSES

Lawmakers intend to mitigate the impact of mandatory employer-provided health care by providing tax credits to small businesses to subsidize coverage. The limits on this tax credit regime vary among the House and Senate versions.

**Senate.** The SFC bill would provide small businesses with fewer than 25 employees tax credits to offset the cost of offering health insurance to employees. In certain cases, hours worked by seasonal employees would be excluded from computation for the credit. Special rules would apply to tax-exempt employers offering them a reduced credit.

The Senate HELP Committee bill would target tax credits to employers with 50 or fewer full-time employees and that pay 60 percent or more of their employee’s health insurance premiums. Credits would be available for up to three consecutive years.

**House.** The House Ways and Means bill would provide a credit for up to 50 percent of qualified health coverage expenses for the tax year for qualified small employers. These are employers with no

more than 10 employees and whose average annual employee compensation does not exceed \$20,000. A reduced credit would be available for employers with no more than 25 employees and whose average annual employee compensation does not exceed \$40,000. Additionally, employers with annual payrolls not exceeding \$250,000 during the preceding calendar year would not be subject to the additional tax. Employers with annual payrolls between \$250,000 and \$400,000 during the preceding calendar year would be subject to reduced rates.

**Comment** The House Ways and Means bill would not provide a credit for expenses incurred to cover any employee earning more than \$80,000 per year. Also under special rules applicable to unincorporated businesses, a sole proprietor would be treated as an employee, as would each partner in a partnership.

The House Energy and Commerce version would exempt small businesses with annual payrolls of \$500,000 or less.

## SURTAX

The House Ways and Means bill would impose a surtax on higher-income individuals to help pay for health care reform. None of the Senate bills contain a surtax and, at present, such a provision is perceived as taking away a critical number from the 60 needed in the Senate to pass a health bill outside of the budget reconciliation process.

Under the Ways and Means bill, a surtax of one percent would apply to married couples filing jointly with modified AGI that exceeds \$350,000 but does not exceed \$500,000; a 1.5 percent rate would apply to a couple’s modified AGI that exceeds \$500,000 but does not exceed \$1 million; and a 5.4 percent rate would apply to a couple’s modified AGI that exceeds \$1 million.

For single individuals and heads of household, the dollar amounts would be

80 percent of the above amounts. For married couples filing separately, the dollar amounts would be 50 percent of the above amounts.

### Comment

House Speaker Nancy Pelosi, D-Calif., has indicated that Democrats are reviewing the income thresholds and they may be raised if cost savings are achieved in other areas. The threshold is expected to be raised from \$350,000 to \$500,000 for married couples. A \$1 million level also has been discussed. Democrats are also reportedly considering substituting, in part or all, a windfall profits tax on insurance companies for the surtax.

### Impact

*The health care surtax would kick-in at the same time as anticipated increases in the top individual marginal income tax rates. President Obama has proposed raising the top two individual marginal tax rates to 36 percent and 39.6 percent respectively, starting in 2011. This increase, which has been proposed independent of any health care surtax, would affect individuals with taxable incomes of more than \$200,000 (\$250,000 for married couples filing jointly).*

The surtax would apply to tax years beginning after December 31, 2010 and would be indexed for inflation after 2011. It would not be taken into account in computing alternative minimum tax (AMT)

liability. Modified AGI for purposes of the surtax means AGI reduced by the amount of the investment interest deduction.

## TAX ON HIGH-COST INSURANCE

**Senate.** The SFC bill would impose a 40 percent nonrefundable excise tax on group insurers if the aggregate value of employer-provided health coverage exceeds \$8,000 for individual coverage and \$21,000 for family coverage. Designed principally to limit use of so-called "Cadillac plans," the excise tax for these high-end policies would be imposed pro-rata on issuers. For self-insured plans, the plan administrator (including employers that act as plan administrators) would pay the excise tax. Transition relief would be available for coverage in high-cost states. The excise tax is estimated to generate approximately \$200 billion over 10 years but would not take effect until 2013.

### Impact

*Some taxpayers would be insulated from the excise tax. Under the SFC bill, the thresholds would be \$9,850 for single coverage and \$26,000 for family coverage for high-risk jobs such as law enforcement personnel, fire fighters and other first responders, as well as individuals in high risk occupations, such as mining. Retired individuals age 55 and older would also be eligible for the higher thresholds.*

*The SFC rejected an amendment that would have exempted all individuals with incomes under \$200,000 for individuals and \$250,000 for families.*

### Comment

The SFC bill would also exclude fixed indemnity health plans purchased with after-tax dollars from the excise tax. These are employee-paid plans that pay a fixed dollar amount for certain medical procedures and/or hospitalization.

The SFC bill would require employers to disclose the value of employer-provided health insurance to employees on their annual Forms W-2. The disclosure requirement has been proposed to start for tax years beginning after December 31, 2009.

### Comment

The threshold amounts would be indexed for inflation.

**Example.** Abby, age 36, elects family coverage under an employer-provided fully-insured health care policy covering major medical and dental with a value of \$28,000. The amount subject to the proposed excise tax would be the \$7,000 above the \$21,000 threshold for family coverage. Abby's employer would report \$7,000 as taxable to the insurer. The insurer calculates and pays the tax to the IRS.

### Impact

An insurer would be free to pass along the excise tax to consumers in the form of higher premiums as an alternative to, or in combination with, finding cost-cutting opportunities.

**House.** House Democrats, led by Speaker Nancy Pelosi and Ways and Means Chair Charles Rangel, are opposed to a tax on high-cost plans. Labor unions are opposed on the grounds that many high-cost plans are the result of hard-fought negotiations under which wage concessions on the part of middle-

### PROPOSED SURTAX

	Adjusted Gross Income (AGI) Level	Surtax Rate
Joint Filers:	\$350K to \$500K	1.0%
	\$500K to \$1 Million	1.5%
	Over \$1 Million	5.4%
Single Filers:	\$280K to \$400K	1.0%
	\$400K to \$800K	1.5%
	Over \$800K	5.4%

class workers have been made. Certain industries in which workers have higher health costs are also opposed. One alternative suggested by Pelosi would be placing a windfall-profits type tax on insurance companies.

**Comment** The SFC bill, but not the House bills, includes limits on the deductibility of executive compensation by insurance providers.

## FSA's/HSAs

**FSA's.** A health flexible spending arrangement (FSA) allows employees to pay for eligible out-of-pocket health care and dependent care expenses with pre-tax dollars. Taxpayers may use savings in a health FSA to purchase over-the-counter medications.

**Senate.** In imposing its excise tax on high-cost plans that exceed a certain dollar amount (\$8,000 for individual coverage and \$21,000 for family coverage), the SFC would count an employee's contribution to a health care

flexible spending arrangement toward the overall dollar limit.

**House and Senate.** The House Ways and Means bill and the SFC bill would prohibit taxpayers from using health FSA dollars to pay for over-the-counter medications (unless prescribed by a health professional). The SFC bill would also cap annual contributions to a health FSA at \$2,500.

**Comment** The House Ways and Means and SFC chair's FSA proposals would also extend to health savings accounts (HSAs), health reimbursement arrangements (HRAs) and Archer Medical Savings Accounts (Archer MSAs). The dollar limits on HSAs may be higher in any final bill to fully cover, pre-tax, the high-deductible requirements for using HSAs.

**HSAs.** Generally, individuals under age 65 must pay an additional tax if distributions from a health savings account (HSA) are not used for qualified medical expenses.

**Senate.** The SFC bill would increase the additional tax from 10 to 20 percent. The proposal is estimated to raise \$1.3 billion over 10 years. A similar provision does not exist currently in any of the House bills.

## MEDICAL EXPENSE DEDUCTION/EXCLUSION

**Senate.** The SFC bill would raise the threshold for the itemized medical expense deduction from 7.5 percent of adjusted gross income (AGI) to 10 percent of AGI for regular income tax purposes. However, individuals age 65 and older (and their spouses) would be exempt from the increase.

**Impact** *The exemption for senior citizens would sunset after December 31, 2016.*

**House.** A similar provision does not exist currently in any of the House bills. However, the House Ways and Means bill would extend the exclusion from gross income for employer-provided health coverage for employees' spouses and dependent children to coverage provided to domestic partners. The proposal would cost \$4 billion over 10 years. A similar provision does not exist at present in any of the Senate bills.

**Impact** *Domestic partners are not treated as spouses for federal tax purposes. Consequently, an employee currently pays tax on the fair market value of the cost of coverage for the employee's domestic partner.*

## MARKET SECTOR FEES

**Senate.** Under the SFC proposal, annual nondeductible fees would be imposed on various health-related industries over 10 years. The annual fees would be allocated across industry sectors according to market share. The an-

### Timetable

It is unclear at this time if the House and Senate will craft a final Health Care Reform Bill in conference or if they will "punt" their different versions between the two chambers until a final bill emerges. Moreover, it is also unclear if health care reform will move under the reconciliation process in the Senate, which requires a mere 51-vote majority rather than a filibuster-proof 60 vote majority to pass.

During the mark up of the SFC bill, many amendments were ruled non-germane because they were not offset. These amendments could be raised again before a final bill comes to a vote. A final vote is not anticipated until late November or early December.

No single effective date has been set for all health care reform provisions. While many of the "play-or-pay" provisions will not go into full effect until 2013, long transition rules and grandfather provisions exist. Some details will likely be fleshed out by regulations issued in 2010 and 2011.

**Impact** *Certain revenue raising provisions may be accelerated, however, if conferees find the need for higher revenue offsets in conference negotiations. For example, even now there is some talk of accelerating the higher cap on the itemized medical expense deduction (from 7.5 percent to 10 percent of AGI) starting in 2010.*

nual fees would be: \$2.3 billion on manufacturers and importers of branded drugs; \$4 billion on manufacturers and importers of medical devices; and \$6 billion on health insurance providers. The House bills would impose no direct fees on these industries.

**Comment**

The SFC bill includes a new tax credit for industries that invest in chronic disease therapies.

The SFC bill would also require 501(c)(3) hospitals to conduct periodic community health needs assessments and adopt written financial assistance policies. Individuals who qualify for financial assistance would be billed at the same rates as insured individuals. The SFC bill would also add some consumer protection provisions to debt collection activities by non-profit hospitals.

**Comment**

The IRS would be required to review a nonprofit hospital's community benefit activities at least once every three years.

## RETIREE PRESCRIPTION DRUG SUBSIDY

**Senate.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 created a retiree drug subsidy program to encourage employers to provide prescription drug coverage to their retirees. Employers receive a tax-favored subsidy. The subsidy, which is excluded from an employer's income, is equal to 28 percent of the allowable costs, including administrative costs, attributable to covered prescription drug costs incurred by a qualifying retiree of between \$295 and \$6,000 in 2009. The SFC bill would eliminate the exclusion. The proposal is estimated to raise \$4 billion over 10 years.

**House.** The House bills also look toward Medicare for certain savings and efficiencies. Among those changes,

the House would alter existing drug rebate provisions.

## CAFETERIA PLANS

**Senate.** In the only tax cut (\$4 billion) in its tax title, the SFC bill would relax the cafeteria plan rules to encourage more small employers to offer tax-free benefits to employees, including those related to health insurance coverage. Additionally, there would be a safe harbor from the nondiscrimination requirements for cafeteria plans for qualified small employers. The SFC bill defines a small employer as an employer that employed an average of 100 or fewer employees on business days during either of the preceding two years, with special rules for controlled groups and leased employees.

**House.** While loosening some tax rules was not among the original parameters of the House bills, House members apparently are interested in taking a close look at the Senate cafeteria provision, especially since general concern exists over how small business will deal with new health care mandates.

## NON-HEALTH-SPECIFIC REVENUE RAISERS

While tax changes directly related to health care are the primary concern of each committee at this time, there is little doubt that non-health related revenue raisers will rise in importance as last-minute negotiations in the conference committee require a little more revenue here, and a little more there, to balance the bill's final cost/revenue score. The House has already included several such provisions (for example, the delay of worldwide allocation of interest and codification of the economic substance doctrine, in addition to its controversial income tax surtax). Senate Finance Chair Max Baucus, D-Montana, has remained adamant that the bill not lose its exclusive focus on health care.

**Impact**

*Tax practitioners should look carefully at any proposal raising revenue through a tax increase or benefits limitation, irrespective of whether it is included in health reform. With members of Congress eager to provide tax relief in a variety of forms such as extenders and small business provisions, the likelihood is high that all these revenue raising proposals will be used in one shape or form in fairly short order.*

**Economic substance doctrine.** The House Ways and Means bill would codify the economic substance doctrine. A transaction would have economic substance only if the taxpayer's economic position (other than its federal tax position) changed in a meaningful way and the taxpayer had a substantial purpose (other than a federal tax purpose) for engaging in the transaction. While the provision provides a uniform definition of economic substance, it does not change the current standards for determining when the economic substance analysis applies.

**Impact**

*President Obama's Fiscal Year (FY) 2010 Revenue Proposals released in May also recommends codification. The proposal is projected to raise \$3.6 billion over 10 years. Taxpayers with understatements attributable to a transaction lacking economic substance would be liable for a 20 percent penalty. The penalty would be 40 percent where relevant facts affecting the tax treatment of the transaction are not adequately disclosed.*

**Worldwide allocation of interest.**

The American Jobs Creation Act of 2004 allowed a worldwide affiliated group to make a one-time election to determine the foreign source taxable income of the group by allocating and apportioning the domestic members'

interest expense on a worldwide basis, as if all members of the group were a single corporation. The Housing and Economic Recovery Act of 2008 delayed the effective date of the worldwide interest allocation rules until tax years beginning after December 31, 2010. The House Ways and Means bill would delay the effective date of worldwide allocation of interest rules until tax years beginning after December 31, 2019.

**Impact** *The proposal is projected to raise \$26.1 billion over 10 years. While the revenue gain for the Treasury is tempting, many experts argue that interest allocation would be better discussed within the context of overall reform of international taxation, which is on schedule to begin next year.*

**Treaty benefits.** New limits would be put in place to prevent foreign multinational corporations from avoiding tax on income earned in the U.S. The House Ways and Means bill targets the practice of having a U.S. subsidiary of the foreign corporation making a deductible payment to a tax treaty jurisdiction before repatriating those earnings. The proposal is projected to raise \$7.5 billion over 10 years.

**Information reporting.** A trade or business must file an annual information return with respect to certain payments. Taxpayers file Form 1099-MISC for each person for whom they have paid at least \$600 for services, rents or other income payments. Under current rules, payments to most corporations are exempt. The SFC bill, in an effort to raise more revenue by reducing unreported income on the corporate level, would eliminate the exemption for payments to all corporations effective for payments made after December 31, 2011.

**LIFO repeal.** Lawmakers also may repeal the last-in, first-out (LIFO) method of accounting. According to the White House, LIFO repeal would raise approximately \$61 billion over 10 years.

**Carried interest.** The Obama administration has endorsed a change in the tax treatment of so-called carried interest. A partner's share of carried interest not attributable to invested capital would be taxed as ordinary income. The White House predicts the change in tax treatment would raise approximately \$24 billion over 10 years.

**Cap and trade.** The House-passed climate change legislation, the American Clean Energy and Security Act, would raise revenues from auctioning emissions allowances that so far have not been earmarked.

**Tax shelters.** The Senate may consider the Stop Tax Haven Abuse Act. Another Senate bill up for consideration would impose a 100 percent excise tax on SILO and LILO transactions. The chief sponsor of the bill, Sen. Carl Levin, D-Michigan, has indicated he will attempt to add it to the Senate's health care bill.

## SECOND STIMULUS

The American Recovery and Reinvestment Act of 2009 (2009 Recovery Act) created a variety of tax incentives for individuals and businesses. Nearly all of them are temporary and will expire either at the end of 2009 or shortly thereafter. The approaching sunset dates have many lawmakers contemplating extending them to 2010 and beyond.

**First-time homebuyer credit.** The first-time homebuyer credit, which reaches 10 percent of the purchase price of a qualified residence (up to \$8,000) expires after November 30, 2009, a deadline already too late for many homebuyers to close on their purchases. Pending legislation would extend the credit through December 1, 2010.

**Comment** The House has approved the ServiceMembers Home Ownership Tax Act of 2009, which extends the first-time homebuyer tax credit through December 1, 2010 for members of the U.S. Armed Forces serving on

qualified official extended duty outside the U.S.

**Unemployment compensation.** The House and Senate have approved legislation extending unemployment benefits but need to reconcile minor differences in their bills. The 2009 Recovery Act temporarily excludes up to \$2,400 of unemployment compensation from a recipient's income for 2009. Pending legislation would extend the exclusion through December 31, 2010.

**Comment** The House and Senate unemployment extension bills would also extend the "temporary" FUTA surtax.

**NOL carryback.** The 2009 Recovery Act allows qualified small businesses the choice to carry back 2008 NOLs three, four or five years. Generally, the small business must have average gross receipts of \$15 million or less.

**Comment** The White House has indicated its support for extending the NOL carryback but has not been clear if it supports expanding the incentive beyond small businesses.

**COBRA premium assistance.** Individuals involuntarily separated from employment between September 1, 2008 and January 1, 2010 may elect to pay 35 percent of their COBRA coverage and be treated as paying 100 percent. The federal government reimburses employers for their 65 percent portion of the premium through a payroll tax credit. Pending legislation would extend COBRA premium assistance one more year.

**More Incentives.** Other temporary incentives that could be extended include:

- Bonus depreciation;
- Code Sec. 179 expensing;
- New Markets Tax Credit;
- Transit benefits parity;
- Motor vehicle sales tax deduction; and
- American Opportunity Tax Credit.

**Comment**

Along with these temporary provisions are a host of other “extenders.” These include the research tax credit, state and local sales tax deduction, teachers’ classroom expense deduction, Indian employment credit, some residential and business energy credits, and more.

***Consumer financial protection.***

Pending legislation in the House and Senate would extend overall financial regulations and consumer protections. The House version would exclude tax preparation from the definition of covered financial services but it is unclear if tax consulting would also be excluded.

***Estate Tax Reform.***

Under 2001 legislation, the estate tax is scheduled to be completely repealed in 2010, only to return at high, pre-2001 levels in 2011. Congress apparently will not let either event happen and will likely extend the estate tax at current 45 percent/\$3.5 million exemption levels. Congressional leaders are struggling over when to work this “must pass” legislation into the calendar for a vote.