SFG
A Legacy of Trust and Innovation

Health Care and Financial Regulation…How It May Affect You

Two huge pieces of legislation were signed into law this year. On March 23rd President Obama signed the Patient Protection and Affordable Care Act and in July, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed.

The healthcare legislation is so voluminous and many of the provisions don't take effect until 2013 and beyond. The major tax provisions that will affect high-income taxpayers are not scheduled to be implemented until 2013. These include 1) increasing the threshold for medical itemized deductions from the current 7.5% of adjusted gross income (AGI) to 10% of AGI; 2) increasing the Medicare tax rate on earnings over $200,000 for individual taxpayers and $250,000 for married couples filing jointly from 1.45% to 2.35%; and 3) assessing a 3.8% tax on unearned income for higher-income taxpayers.

A few of the provisions that will be implemented in 2010 or 2011 that may affect our clients and their families are:

1) Prohibits insurers from excluding from coverage children with pre-existing health conditions. This provision takes effect immediately. (The bill would also prohibit insurers from excluding adults with pre-existing conditions, but not until 2014. In the meantime it establishes a temporary national high-risk pool to provide health coverage to individuals with pre-existing medial conditions.)
2) Allows dependent children up to age 26 to stay on their parents' family policy.
3) Provides a $250 rebate to Medicare beneficiaries who reach the Part D coverage gap in 2010 and gradually eliminate this gap by 2020.
4) As of January 1, 2011, the costs for over-the-counter drugs not prescribed by a doctor will be excluded from being reimbursed through a health Flexible Spending Account and from being reimbursed on a tax-free basis through a Health Savings Account. The tax on distributions from a health savings account that aren't used for qualified medical expenses will increase to 20% of the disbursed amount (from 10%).

The Dodd-Frank act is the most comprehensive piece of financial system reform legislation since all those passed following the Great Depression. It will affect everyone involved in the financial services and banking industries. Most provision will become effective within one year of the Act's effective date. Again, here a few provisions that may affect you:

1) Reforms federal deposit insurance system by permanently increasing federal deposit insurance from $100,000 to $250,000 per account.
2) Creates the Bureau of Consumer Financial Protection (BCFP) as an independent agency within the Federal Reserve Board to ensure American consumers get the clear, accurate information they need to shop for mortgages, credit cards, and other financial products, and protect them from hidden fees, abusive terms and deceptive practices.
3) Implements various mortgage reforms and anti-predatory lending provisions, including requiring lenders to establish that borrowers have a reasonable ability to repay at the time a mortgage is closed.
4) Establishes a Financial Stability Oversight Council to identify risks to U.S. financial stability and identify "too big to fail" nonbank financial companies that will be subject to Federal Reserve Board oversight, increasing their reporting requirements and requiring annual stress tests.

5) Requires hedge funds and private equity advisors to register with the SEC as investment advisers and provide information about their trades and portfolios necessary to assess systemic risk. (Most hedge fund advisors are already SEC-registered.)
6) Authorizes the SEC (after a six-month study) to develop rules to create a higher ethical standard for brokers who give investment advice to retail customers. The SEC may establish rules holding broker dealers to a fiduciary duty similar to investment advisers. (Several industry and professional organizations, including NAPFA, worked together in support of a strong fiduciary standard.)
7) Extends for at least four more years, a $1 million minimum net-worth requirement for investors to be eligible to purchase private placements. This figure, however, now excludes the value of an investor's primary home, which has counted toward reaching that threshold for nearly two decades.
8) Establishes a new Office of Credit Ratings within the SEC to regulate and examine nationally recognized statistical rating agencies, including addressing conflicts of interest.

Many of these provisions set forth guidance to the regulators for implementing the new law, so that many of the difficult policy decisions that will produce the true impact of the reforms will be left to regulators.

(Thanks to our securities legal firm, Paul Hastings, for their great summary of this act.)

I read an article recently by John Bogle, founder of the Vanguard Group, which talked about the lack of ethics in our society today—an issue that we have been discussing for quite a while. We can have the strictest of regulations, but if there is a dearth of business ethics and professional standards, we will surely face another financial crisis. We have to get back to a time where we can trust that people will act responsibly and have some ethical and moral principles.