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- Treasury Says Insurers Can Participate in TARP if They Have Federal Regulator
- Baucus Brings Back Mandates
- Update: New Laws Affecting Group Health Insurance
- State Election Results Shift Power to Democratic Insurance Commissioners
- NAIFA Members and Clients Have a Lot of Tax Incentives on the Line per Report Released by Congressional Joint Committee on Taxation
- CMS Issues Agent Compensation Requirements for Medicare Advantage & Prescription Drug Programs
- Words to the Wise: How Not to Be a Freeloader by former NAIFA President Thomas Wolff, CLU, ChFC
- Did You Know?

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## **Treasury Says Insurers Can Participate in TARP if They Have Federal Regulator**

The Treasury Department announced it will allow insurers to participate in the Troubled Assets Relief Program (TARP) if they have a federal regulator. Eligible insurers are those that have a thrift charter or a bank holding company charter as part of their business structure.

According to a Treasury official, insurers that want to participate could apply for a thrift or bank charter at the same time they apply for TARP aid. The deadline for applications was Friday, November 14.

The TARP program was created out of the Emergency Economic Stabilization Act (EESA) that passed the Congress to address the current market crisis. While most insurers have declined to comment on whether they would apply, MassMutual and New York Life Insurance announced that they would not seek TARP assistance. Hartford Financial Group, Lincoln Financial, and Genworth all said they were interested but are ineligible.

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## Baucus Brings Back Mandates

On November 12, Senate Finance Chairman Max Baucus unveiled his proposal "[Call to Action: Health Care Reform 2009](#)" for overhauling the nation's healthcare system.

The white paper includes a number of concerning provisions including:

- Individual mandate
- Employer "Pay or Play" requirement
- Health Insurance Exchange – a nationwide insurance pool

The proposal also includes a number of favorable recommendations to improve health care quality and health information technology as well as provisions aimed at identifying and decreasing excess spending including reformation of medical malpractice laws to reduce administrative costs.

To learn more about the "Call to Action: Health Care Reform 2009," view the November 12 [GovWatch](#).

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## State Election Results Shift Power to Democratic Insurance Commissioners

### *Gubernatorial Races Split Between Democrats and Republicans*

2008 was a very active election year at the state level. Almost 80 percent of the 7,382 legislative seats were part of this year's campaigns. Only six states did not hold elections for legislatures: AL, LA, MD, MS, NJ and VA. Also in the mix were 11 governor's seats, the fate of 10 insurance commissioners, several attorneys general and a number of Supreme Court justices.

#### **New Executives:**

In 2008, Republicans held 22 gubernatorial offices compared to the Democrats 28. This year there were 11 governor's seats up for election. After the November elections the Democrats increased their number by one and now control 29 states with the Republicans controlling governorships in 21.

As for insurance commissioners, elections took place in Delaware, Montana, North Carolina, North Dakota, and Washington. In Indiana, Missouri, Utah, Vermont and West Virginia the appointed commissioners will be determined by the gubernatorial elections.

#### **Partisan Control of Statehouses:**

There are several changes of control in legislative chambers. Those switching to Democratic control from Republican are the Delaware House, the New York Senate, the Nevada Senate, the Ohio House, and the Wisconsin Assembly. Switching to Republican control from Democratic are the Montana Senate and the Tennessee House. Switching from tied to

Republican control are the Oklahoma Senate and the Tennessee Senate. Switching to tied are the Alaska Senate (from Republican) and the Montana House (from Democratic).

After the 2008 elections, state senates nationally will be made up of 1026 Democrats, 891 Republicans and 52 independents. State Houses of Representatives will be made up of 3064 Democrats, 2330 Republicans and 16 independents.

#### Insurance Commissioner Results:

State	Winner	Democrat	Republican
Delaware	Karen Weldon	X	
North Carolina	Wayne Goodwin	X	
North Dakota	Adam Hamm		X
Montana	Monica Lindeen	X	
Washington	Mike Kreidler	X	
<b>Totals:</b>		<b>4</b>	<b>1</b>

#### Gubernatorial Results:

State	Winner	Democrat	Republican
Delaware	Jack Markell	X	
**Indiana	Mitch Daniels		X
**Missouri	Jay Nixon	X	
Montana	Brian Schweitzer	X	
**New Hampshire	John Lynch	X	
North Carolina	Beverly Perdue	X	
North Dakota	John Hoeven		X
**Utah	Jon Huntsman		X
**Vermont	Jim Douglas		X
Washington	Christine Gregoir	X	
**West Virginia	Joe Machin	X	
**American Samoa	Undecided		
**Puerto Rico	Luis Fortuno		X
<b>Totals:</b>		<b>7</b>	<b>5</b>

\*\*Indicates Governor has power to appoint insurance commissioner

#### State Lawmakers Results (Races Involving NCOIL Participants):

State	House	Winner	Democrat	Republican	Independent
Rhode Island	House	Brian Kennedy	X		
New York	Senate	James Seward		X	
Kentucky	House	Robert Damron	X		
Florida	Senate	Eleanor Sobel	X		
Georgia	Senate	Ralph Hudgens		X	
Kansas	Senate	Ruth Teichman		X	
Kentucky	House	Tommy Thompson	X		
Kentucky	House	Steven Riggs	X		
Kentucky	House	Ron Crimm		X	
Kentucky	House	Susan Westrom	X		
Michigan	House	Bob Genetski		X	

Michigan	House	Michael Den Dekker	X		
New York	House	Joe Morelle			X
Pennsylvania	House	Robert Godshall		X	
Texas	House	Craig Eiland	X		
Texas	House	Larry Taylor		X	
<b>Totals:</b>			<b>8</b>	<b>7</b>	<b>1</b>

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## NAIFA Members and Clients Have a Lot of Tax Incentives on the Line per Report Released by Congressional Joint Committee on Taxation

On November 6, Congress' Joint Committee on Taxation (JCT) released its annual tax expenditure report. The report calculates the tax expenditure value of federal tax exclusions, exemptions, deductions, and deferrals for the period 2008-12. The total attributable to provisions that affect insurance products and programs is enormous although the exact total depends on judging which provisions to include on the "insurance" list.

**Importance to NAIFA Members and Clients:** The tax expenditure list is frequently used by lawmakers as a fertile source for identifying potential revenue "pay-fors" or offsets for competing federal programs. Whether that will be the case this year remains to be seen. But at a minimum, the list puts into sharp focus just how sensitive to federal tax rules the business of NAIFA members is. It highlights the urgency of the need to analyze carefully, and respond appropriately, to *any* future federal tax challenge.

**What's on the List?** The five year projection of expenditures tops \$1 trillion in direct insurance-related tax expenditures. When related or shared—but not direct—tax expenditures are added in, (for example: capital gains,) the total jumps to over \$2.5 trillion. Here's is a list of projected five year tax expenditures directly related to the life and health insurance and advisor industry:

*	Inside buildup of individual life insurance and annuities:	\$141.1 billion
*	Inside buildup of business owned life insurance:	\$ 13.7 billion
*	Employer-paid health and long-term care insurance:	\$680.3 billion
*	Self-employed health and long-term care insurance:	\$ 6.3 billion
*	Health Savings Accounts	\$ 4.9 billion
*	Cafeteria plans:	\$ 201.4 billion
*	Pensions:	
	- Defined contribution plans (e.g., 401(k)s):	\$314.9 billion
	- Defined benefit plans:	\$212.9 billion
	- Partners/sole proprietors plans:	\$ 71.4 billion
	- Traditional (deductible) IRAs:	\$ 78.0 billion
	- Roth IRAs:	\$ 20.3 billion
*	Employer-paid disability income insurance:	\$ 15.8 billion

* Group term life insurance:	\$ 13.4 billion
* Special tax rate for long-term capital gains:	\$668.1 billion
* Exclusion of capital gains at death:	\$168.0 billion

**A Break from the Past:** This year, JCT revamped the methodology by which it identifies and calculates tax expenditures. Under the prior methodology, a tax expenditure was defined as a provision of federal tax law that would result in revenue losses as a result of a special exclusion, exemption or deduction from gross income, or from a special credit, a preferential rate, or a deferral of tax liability. In short, Treasury would call tax expenditures under the old methodology “substitutes for direct spending.”

The new methodology instead classifies code provisions as tax subsidies or as tax-induced structural distortions. In the process of redefining and reclassifying, it eliminated some “old” tax expenditures entirely, (e.g., the subpart F exception for active financing.) That’s a provision important to many life insurance companies.

**Keep Your Guard Up:** The fact that a tax provision is not on the tax expenditure list should be of little practical comfort to NAIFA members who guard life and health insurance tax incentives that benefit the public. In the future, JCT will attribute a revenue loss (or gain) to a proposal even if it does not appear on the tax expenditure list.

For example, life insurance death benefits do not appear on the tax expenditure list. But if a member of Congress proposes changing the tax rule that specifies that death benefits are payable tax-free to beneficiaries, there would be a JCT-generated revenue score for the proposal.

Another example is the estate tax. Estate tax rules, generally, do not appear on the tax expenditure list. Whether the estate tax remains in the law at all, and if so, what the rules are for exclusions, tax rates, or basis, any Congressional proposal aimed at the estate tax will certainly generate a revenue score.

Please view a copy of JCT’s “Estimates of Federal Tax Expenditures for Fiscal Years 2008-12” here. [[Link to 2008 tax expenditure report.pdf](#)]

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## **CMS Issues Agent Compensation Requirements for Medicare Advantage & Prescription Drug Programs**

In a second round of rulemaking since September, the Centers for Medicare & Medicaid Services (CMS) has revised requirements for how Medicare Advantage and Medicare prescription drug plans can compensate sales and marketing agents.

The new [Interim Final Rule with Comment Period](#) revises guidelines that were issued on Nov. 10. Compensation levels under the new scheme must meet one of the following two standards:

1. For organizations that offered plans in 2006, and used agents and brokers the “initial year” compensation under the six-year cycle is the same—adjusted for inflation—that was paid for the same plan type in the same area in 2006. The inflation adjustment will be based on the average change in MA growth rates and Part D growth rates as published in the MA and Part D rate announcements published on the first Monday in April. Organizations are to pay 50% of the inflation adjusted amount of the initial enrollment compensation it paid in 2006.
2. This is the only option for organizations that did not offer a plan of the type in question in 2006 and may be used as an option for organizations that did offer a plan in 2006 – Renewal compensation initially paid in 2009 must be 50% of an initial rate that was determined, based on market analysis to be commensurate with the “market” rates paid by all organizations in the geographic area for an initial enrollment in the plan type in question during 2006 and 2007, also adjusted for inflation based on changes in MA and Part D growth rates.

It is also important to note that CMS does not have the administrative capability to notify plans whether an individual enrolling in a plan in 2009 is a new enrollee as part of its enrollment acceptance. This means agents will initially be paid the renewal compensation amount for all enrollees. CMS will run reports “several times” in 2009 and will notify organizations which agents would be entitled to an initial compensation amount.

While CMS will accept comments on the rule until December 15, plans must incorporate the latest requirements into their sales compensation structures no later than Nov. 15, when open enrollment begins for the 2009 plan year. All provisions in the Sept. 18 rule not revised in the new rule remain unchanged and still are effective.

AHIA-NAIFA Health & Employee Benefits continues to have concerns with the new guidelines and will be submitting additional comments to CMS.

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## **Words to the Wise: How Not to Be a Freeloader by former NAIFA President Thomas Wolff, CLU, ChFC**

Since the recent passing of former NAIFA President, Thomas Wolff, CLU, ChFC, NAIFA’s Advisor Today team found the following article he wrote in 2005 about the importance of growing membership and being politically involved. Given the current market crisis, the new President, and the new Congress, NAIFA and the industry are preparing for what is expected to be an unprecedented year to come for legislative issues impacting insurance agents and financial advisors. The federation must be ready for the fights to come, and with that a strong membership base and active grassroots political involvement from every NAIFA member will be critical to our success. As we prepare, please take this time to reflect on the words of our former leader.

[“How Not to Be a Freeloader” by Thomas Wolff, CLU, ChFC.](#)

## **Did You Know?**

Did you know that personal donations from 14,250 NAIFA members made it possible for NAIFA's Political Action Committee (IFAPAC) to support almost 300 candidates to the U.S. House and Senate in the 2008 elections?