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# Congressional Budget Committees Approve FY 09 Budget Blueprints

***Tax Bills Fate to Be Determined in April***

**Issue: Tax**

**Date: March 7, 2008**

**Action Taken:** House and Senate Budget Committee work doesn't get much public attention. But the actions of those committees frequently are an early indicator of future tax developments. So NAIFA pays attention to budget developments.

Kicking off the process for 2008, yesterday both the House and Senate Budget Committees approved $3 trillion budget blueprints for fiscal years starting October 1, 2008 and beyond. Both committees (controlled by the Democratic majority) defeated Republican amendments to instruct the tax writing committees to craft legislation to make permanent the 2001 and 2003 tax cuts. To name a few, the 2001 and 2003 tax cuts included estate tax repeal, the15 percent rate on capital gains and dividends, and lower marginal tax rates for high income taxpayers.

Right now there is one crucial difference between the House and Senate budget versions. The House bill includes procedural protections to make it easier to pass a future budget tax bill, while the Senate version does not. The House "protection" measure prevents a Senate filibuster of a future budget tax bill, thereby making it much easier to pass one in the Senate. That difference could be crucial to the insurance industry. Here's why.

**Background:** If the Senate Budget Committee's version prevails through Senate floor debate and a House-Senate conference, the way would be clear for Congress to approve some "must-do" tax legislation without offsetting revenue increases. That would make it much easier, for example, for Congress to pass a $70 billion "patch" of the alternative minimum tax (AMT), a move necessary to prevent more than 20 million more taxpayers from having to pay the AMT in 2008. On the other hand, the House committee bill includes in its budget blueprint instructions to offset fully the revenue lost by such an AMT patch. If this provision holds, NAIFA is concerned that Congress will then have to review all tax incentives it has granted in the past in order to make up the lost revenue. The list could include tax incentives applying to life insurance, annuities, employer-provided benefits such as health insurance, cafeteria plans, long-term care insurance, and health savings accounts.

**Next Steps:** The House and Senate are both scheduled to debate their respective Budget Committees' blueprints during the week of March 10. Amendments are unlikely in the House, but inevitable in the Senate. It is impossible to predict at this point whether any amendments will pass the Senate.

After House and Senate action, Congress will recess for a two-week spring district/state work period. When Congress returns to Washington in early April, negotiations will begin between the House and Senate to devise one budget for both chambers to approve. Those negotiations will determine whether revenue raising offsets will be required for budget-related tax legislation this year.

Incidentally, President Bush's approval of the Congressional budget is not required. The budget is not a law in the traditional sense. Its importance mostly comes from the limits it places on Senate filibusters. Even the threat of a filibuster usually

leads to Senate compromise.

**NAIFA Staff Contact:** For additional information on this issue, please contact Michael L. Kerley at Mkerley@naifa.org or Danea M. Kehoe, Outside NAIFA Counsel, at DaniKehoe@aol.com.

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# Senate Finance Committee Chairman Offers Permanent Estate Tax Reform as Budget Amendment

**Issue: Estate Tax**

**Date: March 11, 2008**

**Action Taken:** The full Senate began debate this week on a proposed federal budget that the Senate's Budget Committee passed last week. Senate Finance Committee Chairman Max Baucus (D-MT) today offered an amendment to the Senate Budget Resolution that provides permanent estate tax reform in the years 2010 and beyond — as apposed to complete repeal. The Baucus amendment would authorize future tax legislation to set estate tax rules at the level they are currently scheduled to be in 2009. If ultimately adopted, the individual exemption would be set at $3.5 — $7 million for a married couple. The top estate tax rate would be set at 45 percent.

**Background:** The Congressional Budget will determine the rules by which tax legislation will be considered by the Congress later this year. Thus, inclusion in the budget of authority to set the estate tax top rate at 45 percent and the personal exemption at $3.5 million would make it much more possible (although by no means certain) that legislation establishing those rules could be enacted this year. Many roadblocks to enactment of this type of legislation remain, but budget authority to do so removes one very significant hurdle.

The Baucus amendment would "pay for" estate tax reform by using a projected surplus that the budget anticipates in future years. That projected surplus is widely viewed as an "accounting gimmick" that will have little or no impact on the debate on the actual estate tax bill if it develops later this year. But it is enough to allow Senators to support the Baucus amendment now and still argue that they are not supporting anything that would add to the federal deficit.

**Next Steps:** The Senate will vote on this amendment to the budget proposal later this week. Most insiders think the Baucus amendment will pass, although on a mostly or purely party-line vote.

Later this week, the House is expected to vote on its version of a budget — probably Thursday, March 14. The House budget does not include authority for an estate tax reform bill. Most insiders do not believe such authority will be added to the House budget proposal during the House debate.

On Friday, the Congress recesses for a two-week in-state/in-district work period. Upon their return April 1, the House and Senate will begin negotiating the differences between their separate budget resolutions.

**Insider News:** In his remarks to the Senate, Senator Baucus indicated he intends to revisit the estate tax issue later this year. Leading up to that, the Finance Committee will hold a hearing on the estate tax March 12. (A report on the hearing will be in an upcoming issue of GovTalk.) Sen. Baucus indicated he intends to "at least" fashion legislation that would set the personal exemption at $5 million — $10 million for a married couple — and a top tax rate at 35 percent. However, the revenue needed to offset such an estate tax reform plan could prove prohibitive, particularly without budget authority to do so. But the NAIFA Government Affairs Department does expect considerable debate about the estate tax this year, even if final action on a reform proposal waits until next year (or possibly even the year after).

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# U.S. House Introduces the National Association of Registered Agents & Brokers Reform Act

**Issue: Agent Licensing**

**Date: March 13, 2008**

**Action Taken**: Today Rep. David Scott (D-GA) and Rep. Geoff Davis (R-KY) introduced H.R. 5611, a proposal to create a national licensure clearinghouse for insurance producers. As previously reported in the March 3 edition of GovTalk, if enacted the bill -- dubbed "NARAB II" -- would establish an organization known as the National Association of Registered Agents and Brokers (NARAB) to oversee reciprocal licensing standards on a national scale. NAIFA is pleased to have worked closely with Reps. Scott and Davis to bring about introduction of H.R. 5611 and are joined in our support for NARAB II by the Independent Insurance Agents and Brokers of America.

- Read NAIFA's press release on the introduction of this bill.

**How NARAB II Could Affect Agents:** To learn quick facts about NARAB II and what it could mean for your business, visit the NARAB II section of our website: www.naifa.org/advocacy/irr/narabII.cfm

**Background:** The concept of NARAB was first introduced as part of the Financial Services Modernization Act of 1999. The original NARAB legislation aimed to establish a national licensure clearinghouse if a majority of states could not pass uniform licensing regulations within three years of NARAB's passage. A sufficient number of states did comply and NARAB was not established. However, issues hindering the ability for individuals and agencies to receive multiple state licenses remain; and therefore, efforts to create a national clearinghouse have been renewed.

**Next Steps**: NAIFA supports this legislation and will continue to keep members informed of its progress.

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## NAIFA, AALU and ACLI Issue STOLI Primer

**Issue: Stranger-Originated Life Insurance (STOLI)**

**Date: March 21, 2008**

**Action Taken:** NAIFA, AALU and the ACLI recently issued a primer on stranger-originated life insurance (STOLI), entitled *STOLI: The Problem and the Appropriate State Response*. The primer is a brief background paper designed for use by our members and spells out what we see as the problem with STOLI, what we think is the best way to stop STOLI, and responds to some of the myths being spread by proponents of STOLI. The primer can be found on the STOLI information page on NAIFA's website at www.naifa.org/stoli.

**Background:** STOLI transactions are used by unrelated investors and speculators as a way to circumvent state insurable interest laws. In STOLI transactions, investors entice seniors to take out policies, with the intent of all the parties to the transaction being that the policyholder will transfer most of the policy benefits to those investors, who will then profit when the senior citizen dies. The sooner the policyholder dies, the greater the investor's profit. The seniors purchase the policies in their own names but agree to an arrangement where the investors, after a period of time (usually the expiration of a two-year contestability period) get beneficial ownership of the policy. The seniors receive some financial inducement for this, be it an up-front payment, a portion of the profit when policies are sold or a small continuing interest in the policy death benefit.

**NAIFA Position:** NAIFA opposes STOLI transactions. STOLI violates the essential social purpose of life insurance, which is protection. Life insurance developed as a means to protect families from the unexpected death of a breadwinner, or businesses from the financial consequences of the death of an owner or key employee. Life insurance was not intended to be used as a vehicle for financial speculation on human life. STOLI also could potentially expose consumers to unexpected taxes, loss of privacy, and inability to obtain needed life insurance in the future.

NAIFA does not oppose legitimate life settlements. In a typical life settlement, the policy was purchased for its intended use—to protect family members or a small business from the risk of a premature death. But after the policy is purchased, something changes in the life of the policy owner that leads him or her to decide that the policy is no longer needed. In such cases, the policy owner may decide to sell the policy to a third party. NAIFA is not trying to enact laws that prevent or restrict such transactions where the policy was acquired in good faith.

**Next Steps:** More than 25 state legislatures are currently considering legislation that attempts to restrict or prohibit STOLI transactions. The STOLI Primer will assist state associations and their members in their efforts promote passage of appropriate legislation and stop STOLI.

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## U.S. Treasury Department Proposes Far Reaching Financial Services Regulatory Reform Plan

**Issue: Regulatory Reform**

**Date: March 31, 2008**

**Action Taken:** On March 31, Secretary of the Treasury Henry Paulson announced a financial services regulatory reform plan that, if enacted, would profoundly change the way the insurance, securities, and banking industries are regulated. The plan is extensive, complex, and will require Congress to enact implementing legislation. It is not possible to predict at this time whether or how long the Treasury Department's report will take to work its way through the legislative process.

**Relevance to NAIFA Members:** The plan's impact on NAIFA members is impossible to overstate, even if Congress modifies it or ultimately rejects it. Congressional interest in setting the ground rules for overall regulation of all financial industries –including insurance regulation-- has been simmering for years. The Treasury Deportment Report will certainly kick-start an intensive new round of scrutiny on the subject in Congress. Some very partisan Democrats praised the report as an approach that could be useful in preventing another financial services meltdown like the one taking place now in the mortgage and credit markets. All aspects of the NAIFA federation should pay close attention to this development for the foreseeable future.

The heart of the Treasury's proposal calls for migrating from regulating each component of financial services by industry separately to regulation by objective. Instead of regulating banking, insurance, securities, and other industries under separate systems, all financial industries would come under the same regulatory system based on objectives such as market stability, "prudential financial" regulation (regulation of any product, business or practice that has a government guarantee connected to it) and business conduct regulation. That means, for example, that under the "optimal regulatory structure" that the Treasury is proposing, all sales practices—whether of insurance, securities, or banking products—would come under one regulatory body. Needless to say this is a sea change from the current regulatory system.

**First Look at Proposed Regulation by Objective:** Following below is a general outline of the Treasury plan taken from its Executive Summary. Keep in mind that it will take time to analyze all the relevant details fully. Plus, it is too early to know any but the most general reactions. How Congress and the collective financial services industry receive these proposals will significantly influence the extent to which it has legislative potential.

**Optimal Regulatory Structure**: The Treasury plan is motivated by a need to modernize financial services regulation in order to maintain the US's leadership role in world capital markets. Treasury envisions a regulatory structure headed by the Federal Reserve Board (Fed). Under the Fed, and answerable to the Fed, would be three objectives-based regulatory agencies: market stability, prudential financial services, and business conduct. Each of these agencies would in turn have more specialized regulatory bodies under them. Insurance regulation involving products and carriers would begin in an agency called the Federal Insurance Institution (FII) within the Prudential Financial Regulation agency. Regulation of sales practices, marketing, licensing, continuing education, etc. would reside within the Business Conduct Agency. Business Conduct regulation would cover all sales situations including insurance, securities or banking.

**Short and Intermediate-Term Recommendations**: Prior to enactment of the optimal regulatory structure, there should

be several short-term and intermediate-term changes made to the current regulatory structure, the Treasury Report envisions. The short-term recommendation involves expansion and continuation of the President's Working Group(PWG) on Capital Markets.

The intermediate-term recommendations have significant direct impact on NAIFA members. They include:

- ***Optional Federal Charter for Insurance Companies***: The Treasury report calls for giving insurance companies the option to be federally chartered and regulated (OFC). It specifies that no carrier should have an OFC for both life/health and property-casualty insurance business. Carriers would have to choose one or the other. It also would establish an Office of National Insurance (ONI) to deal with insurance issues. The report also recommends that pending enactment of legislation establishing an OFC and/or an ONI there should be established an agency within the Treasury Department called the Office of Insurance Oversight (ONI) to deal with international insurance issues, and to serve as an advisor on insurance issues to the Treasury Secretary.
- ***SEC***: The report calls for merging the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC). It calls on the SEC to reform itself along the lines of the CFTC to facilitate the merger, moving from an after-the-fact enforcement regulatory focus to a principles-based regulatory focus. Treasury also called on the SEC to reform its Self-Regulatory Organizations (SROs) including FINRA. Further, the Treasury report recommended that regulation of broker-dealers and investment advisors should be rationalized and modernized so that both groups operate under essentially the same rules.

**State Regulation of Insurance:** The report lays out arguments for retaining state insurance guarantee funds, but also provides a framework for a federal insurance guarantee program, leaving up to Congressional policymakers the choice between the two. It also emphasizes that it is not suggesting elimination of state insurance regulation. For example, it acknowledges the states' likely decisions to continue their premium tax regimes. But pending further, more detailed analysis of this very complex plan, it appears that state insurance regulation would be vastly diminished if the Treasury plan were to be enacted into law.

**Next Steps:** NAIFA will continue its close study of the Treasury proposal, and will keep members apprised of nuances and positions as they are identified and developed.

**NAIFA Staff Contact:** For additional information on this issue, please contact Jill Edwards, Director of Federal Relations.

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