



**2010 Exempt Organizations Conference  
December 2, 2010  
Buffalo Niagara Marriott  
8 am – 3 pm**

<b>TAB 1 BALLROOM 5</b>	<b>8:30 – 9:20 am HEALTH CARE REFORM – WHAT HAPPENS NOW? Raymond McCabe, Esq., Hiscock &amp; Barclay, LLP</b>
<b>TAB 2 BALLROOM 5</b>	<b>9:25 -10:15 am – Concurrent Session 1 (A) EMPLOYMENT TAX Dianne S. Morse, Agent-FSLG, Internal Revenue Service</b>
<b>TAB 3 BALLROOM 4</b>	<b>9:25 -10:15 am – Concurrent Session 1 (B) MANEUVERING THROUGH THE NEW STANDARDS AND REGULATORY REQUIREMENTS RELATED TO TRUSTS AND ENDOWMENTS Richard F. Larkin, CPA, BDO</b>
	<b>10:15 – 10:30 am – Break</b>
<b>TAB 4 BALLROOM 5</b>	<b>10:30 – 11:20 pm –Concurrent Session 2 (A) GASB 54 Sara M. Dayton, CPA and John P. Schiavone, CPA, Lumsden &amp; McCormick, LLP</b>
<b>TAB 5 BALLROOM 4</b>	<b>10:30 – 11:20 pm –Concurrent Session 2 (B) UNRELATED BUSINESS INCOME TAX: GENERAL ISSUES AND TIPS Geanne Blazkow, Esq., Hodgson Russ, LLP</b>
<b>TAB 6 BALLROOM 5</b>	<b>11:30 – 12:20 am HUMAN MOTIVATION Lori E. Miller, President, Developing Professionals</b>
<b>BALLROOM 3</b>	<b>12:30 – 1:20 pm – Lunch</b>
<b>TAB 7 BALLROOM 5</b>	<b>1:20 – 2:10 pm MAKING BIG CHANGE Kathryn A. Foster, Ph.D., Director, University at Buffalo Regional Institute</b>
<b>TAB 8 BALLROOM 5</b>	<b>2:15 – 3:05 pm TODAY'S CYBER THREAT ENVIRONMENT Aaron L. Pinder, Special Agent, Federal Bureau of Investigation</b>
<b>TAB 9</b>	<b>SPEAKER BIOGRAPHIES</b>
<b>TAB 10</b>	<b>CONFERENCE EVALUATION FORM</b>

**HEALTH CARE REFORM:  
WHAT HAPPENS NOW?®**

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**Presented to the Lumsden & McCormick, LLP**

**EXEMPT ORGANIZATIONS CONFERENCE**

December 2, 2010

# Health Care Reform : What Happens Now? ©

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## Health Care Reform: What Happens Now?

Raymond N. McCabe

Hiscock & Barclay, LLP

1. Introduction. In March 2010, Democratic majorities in the United States Senate and House of Representatives passed sweeping health care reform legislation. President Obama signed the into law on March 23, 2010 and March 30, 2010. The Mid-Term Congressional Elections of November 2, 2010 swept away the Democratic majority in the United States House of Representatives and substantially reduced the Democratic majority in the Senate. Immediately after the election, the Republican leadership of both Houses called for complete repeal of Health Care Reform. Repeal of health care reform during the Obama administration is extremely likely. However, modification of certain aspects of the law may occur prior to the 2012 Presidential election.

a. The Big Picture. Spending on health care in the United States accounts for nearly 1/6<sup>th</sup> (16.2%) of the nation's gross domestic product ("GDP") Health care cost each American an average of \$7,681 in 2008 (\$2.3 Trillion in the aggregate). Between 1999 to 2008, family premiums for employer-sponsored health care increased by 131%. Medicare and Medicaid per capita spending has grown at a slower rate than private insurance, but still outpace increases in the cost of living. *National Health Expenditure Data.* Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group. ([http://www.cms.gov/NationalHealthExpendData/02\\_NationalHealthAccountsHistorical.asp#TopOfPage](http://www.cms.gov/NationalHealthExpendData/02_NationalHealthAccountsHistorical.asp#TopOfPage))

According to the Kaiser Family Foundation, the number of uninsured people in the United States rose dramatically in 2009 from approximately 46 million people to approximately 50 million people. *Five Facts About the Uninsured.* Kaiser Commission on Medicaid and the Uninsured, September 2010. (<http://www.kff.org/uninsured/7806.cfm>).

b. The Health Care Reform Law. The law popularly referred to as "Health Care Reform" consists to two pieces of legislation. President Obama signed the Patient Protection and Affordable Care Act ("PPACA") into law on March 23, 2010. PPACA was almost immediately amended by the Health Care and Education Affordability Reconciliation Act of 2010. Together, the two laws are referred to in this outline as the," the "Health Care Reform Act" or the "Act."

c. Goals of Health Care Reform. The primary goals of the Health Care Reform Act are to:

- Expand health insurance coverage;
- Improve coverage for those with health insurance;
- Improve access to and quality of care; and
- Control rising health care costs

To achieve the first objective, PPACA places insurance coverage "mandates" on employers and individuals. Failure to comply with these mandates

will result in penalties, payable as additional taxes. The Federal government will use the revenue generated from these penalties and from a host of other tax increases to provide subsidies to assist lower income individuals purchase health insurance coverage. In addition, the Health Care Reform Act calls for the creation of health insurance exchanges in each state to serve as clearing houses for competing health insurance products. This system of mandates, surcharges, subsidies and exchanges will not be fully implemented until 2018.

Perhaps the most significant of the four goals of health care reform is the fourth – to control rising health care costs. The Act seeks to accomplish this by changing the method by which health care providers are paid to provide health care from the current “pay-per-procedure” method, to a more holistic “patient-centered-outcome” method.

At the same time, PPACA will impose new responsibilities on employers and insurers, as well as government programs such as Medicare and Medicaid. Employers will be required to make substantial changes to their group health plans' design and employee benefit communications to employees. Employers must take immediate steps to assess their plans and prepare for plan design, communication and administrative changes that will be required as the elements of the Health Care Reform Act come on line.

c. The Future of Health Care Reform. Politics remains the wild card in health care reform. Three Congressional elections (in 2012, 2014 and 2016) and two Presidential elections (in 2012 and 2016) stand between PPACA in its present form and full implementation in 2018. If the November 2010 mid-term elections were an early referendum on health care reform, it received very low marks from the public. Repeal prior to full implementation of Health Care Reform appears likely if a Republican candidate wins the 2012 Presidential election. Should President Obama win re-election in 2012, it is likely that the major provisions of the health care reform law will remain intact until fully implemented. Prior to 2012, it appears that wholesale repeal of Health Care Reform is unlikely, although certain provisions could be amended.

2. Implementation Timeline. The Health Care Reform Act is scheduled to be implemented in phases over eight years. The timeline below assumes that PPACA will not be amended or repealed from its current form:

<b><u>2010</u></b>	
<b>DATE</b>	<b>PROVISION</b>
Date of Enactment (3/23/2010)	<ul style="list-style-type: none"> <li>- <u>Automatic Enrollment.</u> Pursuant to regulations yet to be issued, large employers (those with more than 200 employees) that offer health insurance coverage will be required to automatically enroll employees, subject to an opt-out of coverage.</li> <li>- <u>Rate Review.</u> Department of Health &amp; Human Services (HHS) to review “unreasonable” increases in premiums.</li> <li>- <u>Consumer Information.</u> HHS directed to award grants to states to establish offices of health insurance ombudsman to help consumers encountering coverage problems, conduct consumers rights education, and resolve problems regarding premium tax assistance.</li> </ul>
January 1, 2010	<ul style="list-style-type: none"> <li>- <u>Small Business Tax Credit.</u> IRS to implement tax credits to small employers (those with fewer than 25 full-time equivalent employees earning \$50,000 or less per year) who provide employer paid coverage. The amount of the credit is up to 35% through 2013, and up to 50% from 2014 through 2016.</li> </ul>
90 Days after Enactment (6/21/2010)	<ul style="list-style-type: none"> <li>- <u>Temporary High Risk Pool.</u> A temporary high risk pool will provide coverage to persons with pre-existing conditions who have no health care coverage. The pool coverage ends in 2014, when exchanges become operational. Employers and insurers that encourage employees to dis-enroll from employer provided coverage in order to opt for the temporary high risk pool must reimburse the pool.</li> <li>- <u>Temporary Reinsurance for Early Retirees.</u> This temporary program (EERP) reimburses health plans for the 80% of the cost of benefits between \$15,000 and \$90,000 incurred by the plans to provide benefits to early retirees who are not Medicaid eligible. Program ends in 2014 or when \$5 Billion pool is exhausted. <ul style="list-style-type: none"> <li>- HHS published guidance on September 28, 2010 clarifying the relationship between Medicare coverage and ERRP reimbursement providing instructions to sponsors regarding submission of early retiree lists that must be submitted before such reimbursements are requested.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- The HHS guidance is available at <a href="http://www.errp.gov">http://www.errp.gov</a></li> </ul>
July 1, 2010	<ul style="list-style-type: none"> <li>- <u>Indoor Tanning Services Excise Tax</u>. 10% tax on the cost of indoor tanning services performed on and after July 1, 2010.</li> <li>- <u>Internet Portal</u>. HHS required to create an Internet Portal to help individuals and small businesses to shop for affordable coverage. (Now running - <a href="http://finder.healthcare.gov/">http://finder.healthcare.gov/</a>)</li> </ul>
Six Months After Enactment (9/23/210) <i>All Plans</i>	<ul style="list-style-type: none"> <li>- Elimination of Pre-existing Conditions Exclusions for Enrollees under Age 19.</li> <li>- Extension of coverage to all children up to age 26 regardless of college enrollment.</li> <li>- Elimination of annual limits and lifetime limits on “essential health benefits”.</li> </ul>
Six Months After Enactment (9/23/210) <i>Not Applicable to “Grandfathered Plans”</i>	<ul style="list-style-type: none"> <li>- New internal and external review process required for denied claims.</li> <li>- Insured health plans subject to same non-discrimination rules as self-insured plans.</li> <li>- Plans must cover all emergency services without prior authorization.</li> <li>- Plans allow designation of OB/GYN and Pediatrician as primary care provider.</li> <li>- Plans must cover preventative care without cost sharing.</li> </ul>
<b>2011</b>	
DATE	PROVISION
January 1, 2011	<ul style="list-style-type: none"> <li>- <u>Medical Loss Ratio</u>. Insurers will be required to report “medical loss ratios” to HHS and rebate to insureds premiums to extent medical loss ratio (the percentage of premiums used to provide benefits) is not 85% or greater.</li> <li>- HHS issued interim regulations regarding the calculation of the medical loss ratio on November 22, 2010. 45 CFR Part 158 (<a href="http://www.ofr.gov/OFRUpload/OFRData/2010-29596_PL.pdf">http://www.ofr.gov/OFRUpload/OFRData/2010-29596_PL.pdf</a>)</li> </ul>

	<ul style="list-style-type: none"> <li>- <u>Changes to FSAs, HSAs and HRAs.</u> <ul style="list-style-type: none"> <li>- The definition of qualified medical expense will no longer include over-the-counter medications</li> <li>- The additional tax on distributions from HSAs not used for qualified medical care is increased from 10% to 20%.</li> </ul> </li> <li>- <u>W-2 Reporting.</u> Employer cost of employer-sponsored health insurance must be included on form W-2. <ul style="list-style-type: none"> <li>- The IRS has announced that compliance for 2011 will be voluntary. IRS Notice 2010-69 (Oct. 12, 2010).</li> </ul> </li> <li>- <u>Annual fee Imposed on Manufacturers and Importers of Branded Prescription Drugs.</u> Amount is allocated among manufacturers and importers who sell to patients receiving care under specific programs (Medicare Parts B and D, Veteran’s Administration, TRICARE (for military personnel and families). Fee is pro-rata share of specified totals (\$2.5 Billion for 2010, increasing to \$4.1 Billion by 2018).</li> </ul>
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**2012**

DATE	PROVISION
Two Years After Enactment (March 23, 2012)	<ul style="list-style-type: none"> <li>- <u>Required Summary of Coverage.</u> Insurers and plan sponsors must provide a standardized statement of coverage not exceeding 4 pages describing coverage, cost-sharing provisions (deductibles, coinsurance and co-pays, whether the plan provides minimum essential coverage, and whether the plan’s cost is at least 60% of actuarial coverage.</li> <li>- <u>Advance Notice of Mid-Year Changes.</u> A material change in coverage that occurs mid-year cannot take affect until 60 days after notice of the change in provided to the enrollees.</li> <li>- <u>Quality of Care Reporting.</u> HHS, in consultation with outside experts and stakeholders, must develop reporting requirements for plans and insurers monitor implementation of case management, care coordination and other programs designed to reduce medical errors and hospital readmissions.</li> </ul>
Plan or Policy Years ending after 9/30/12	<ul style="list-style-type: none"> <li>- <u>Health Policy Surcharge to Fund Research on Patient-Centered Outcomes.</u> Insurers and sponsors of self-insured plans must begin paying a surcharge of \$2 per life to fund a new Patient-Centered Outcomes Research Trust Fund.</li> </ul>

<p>Beginning 2012 and extending through 2016</p>	<ul style="list-style-type: none"> <li>- <u>Development of Uniform Electronic Transaction Standards.</u> Beginning in 2012, HHS is required to develop uniform standards to determine electronically and in real time, patient insurance coverage, eligibility, enrollment and dis-enrollment, and provide for payment of health care providers by electric fund transfer.</li> </ul>
<b>2013</b>	
<b>DATE</b>	<b>PROVISION</b>
<p>January 1, 2013</p>	<ul style="list-style-type: none"> <li>- <u>Medicare Tax increase from 2.9% to 3.8% on wages and self-employed income over threshold.</u> An additional 0.9% FICA / SECA tax for hospital insurance (Medicare) Insurers applies to wages and or self-employment income in excess of \$250,000 for joint filers, \$125,000 for married persons filing separately and \$200,000 in all other cases. Paid by employee / self-employer person only (not employers).</li> <li>- <u>New 3.8% Medicare Tax on Net Investment Income.</u> Net investment income of individuals, trusts and estates in excess of dollar thresholds becomes subject to Medicare tax at 3.8%. Dollar thresholds are same as for the 0.9% Medicare tax increase on wages and self-employment income.</li> <li>- 2.3% excise tax on sale of medical equipment takes effect.</li> <li>- <u>Deduction for Executive Compensation of Insurers Capped at \$500,000.</u> Insurers will not be allowed to deduct compensation paid to any executive to the extent the value of the compensation (including deferred compensation for service performed after 2009) exceeds \$500,000 during the calendar year.</li> <li>- <u>FSA Contribution Limits Reduced.</u> The amount an employee may contribute to a health FSA is reduced from \$5,000 per year to \$2,500.</li> </ul>
<p>March 1, 2013</p>	<ul style="list-style-type: none"> <li>- <u>Employer Must Provide Notice of Available Coverage Through Exchange.</u> Applies to all employees and all new hires after March 1, 2013. If employer pays less than 60% of premium, notice must describe employee eligibility for premium tax credit and cost-sharing reduction (<i>i.e.</i> a subsidy).</li> </ul>

**2014**

DATE	PROVISION
January 1, 2014	<ul style="list-style-type: none"> <li>- <u>Health Insurance Exchanges Become Operational.</u> Each state is required to operate a health insurance exchange for individual coverage. Each state must also begin operating a separate exchange for group coverage for small employers.</li> <li>- <u>Individual Mandate.</u> Takes effect, with penalty for noncompliance equal to greater of \$95 per individual or 1% household income in excess of the filing threshold. (Penalty rises to \$695 by 2016)</li> <li>- <u>Individual Subsidies.</u> Premium credits and cost-sharing subsidies become available</li> <li>- <u>Employer Mandate.</u> Employer with more than 50 employees that does not provide affordable insurance to full-time employees is subject to penalty. Penalty is \$166.67 per employee per month for no coverage (no penalty for the first 30 employees), and \$250 per employee per month for unaffordable coverage.</li> <li>- <u>Employer and Provider Information Reporting Begins.</u> Employers and providers must provide annual statements to individual insureds regarding the existence of coverage during the preceding year, and file the same information with the IRS.</li> <li>- <u>Other Employer Provisions.</u> <ul style="list-style-type: none"> <li>- Employers must provide free choice vouchers to “qualified employees” or pay penalty; and</li> <li>- Employers must report whether it provides minimum essential coverage.</li> </ul> </li> <li>- <u>Plan Design Changes and Benefit Mandates.</u> Coverage requirements outside the state Exchange must include:           <ul style="list-style-type: none"> <li>- Provision of “essential health benefits” for individual and small group plans;</li> <li>- Cost sharing limits (<i>e.g.</i> co-pays and deductibles) for group health plans;</li> <li>- Guaranteed issue;</li> <li>- No pre-existing condition exclusions (includes Grandfathered Plans);</li> <li>- No discrimination against any provider with respect to participation in the plan;</li> <li>- No eligibility waiting periods greater than 90 days</li> </ul> </li> </ul>

	<p>(includes Grandfathered Plans); and</p> <ul style="list-style-type: none"> <li>- Coverage of routine costs for clinical participants in clinical trials.</li> <li>- <u>Insurers Annual Fee Takes Effect.</u> Insurers must pay their pro-rata share of industry-wide annual fee measured by premiums derived from writing insurance cover. Industry-wide for 2014 is \$8 Billion, increasing to \$14.3 Billion by 2018.</li> </ul>
<b>2015</b>	
DATE	PROVISION
January 1, 2015	<ul style="list-style-type: none"> <li>- Exchanges Must be Self-Sustaining.</li> <li>- <u>Increase in Individual Mandate Penalty.</u> The individual penalty for failure to carry coverage increases from \$85 per person to \$325 per person or 2% of household income.</li> <li>- <u>Employer Mandate Indexing Begins.</u> The employer mandates of 167.67 per month for failure to provide coverage, and \$250 per month for providing coverage that is not affordable becomes indexed for inflation.</li> </ul>
January 31, 2015	<ul style="list-style-type: none"> <li>- <u>Deadline for Employers to File First Report of Health Insurance Coverage.</u> Employers must file information return for each employee for which it provided minimum essential coverage in 2014.</li> </ul>
<b>2016</b>	
DATE	PROVISION
January 1, 2016	<ul style="list-style-type: none"> <li>- <u>Increase in Individual Mandate Penalty.</u> The individual penalty for failure to carry coverage increases from \$325 per person to \$625 per person, or 2.5% of household income.</li> </ul>
<b>2017</b>	
DATE	PROVISION
January 1, 2017	<ul style="list-style-type: none"> <li>- <u>State Exchanges May Offer Large Employer Plans.</u> Each state may permit large employers (those with over 100 employees) to purchase coverage through an exchange.</li> </ul>

<b>2018</b>	
<b>DATE</b>	<b>PROVISION</b>
January 1, 2018	- <u>Tax on “Cadillac” Health Plans Takes Affect.</u> A 40% excise tax applies to health plans with premiums equal to the 2018 equivalent of the following amounts (indexed for inflation from 2010): \$10,200 per year for single coverage; \$27,500 for family coverage.

3. Mandatory Coverage for Individuals. - Effective in 2014, most Americans other than prisoners, undocumented aliens and Medicare recipients will be required to maintain "essential health benefits", or pay a penalty (termed a “shared responsibility payment”).

a. Essential Health Benefits. Essential health benefits include: ambulatory patient services; emergency services; hospitalizations; maternity and newborn care; mental health and substance abuse services; prescription drugs; rehabilitative services and devices; laboratory services; preventative and wellness services; chronic disease management; pediatric services; and other services as defined by the Department of Health and Human Services.

b. Minimum Level of Coverage. To avoid the penalty, the individual must obtain health coverage that covers at least 60% of the actuarial value of covered services.

- annual out-of-pocket limits cannot exceed those that currently apply to high deductible health care plans associated with Health Savings Accounts. (For 2010, this would be \$5,950 for an individual and \$11,900 for a family.)
- Employer-sponsored plans in the small group market (generally the market for employers with fewer than 50 employees) will not be able to impose deductibles that exceed \$2,000 for individuals and \$4,000 for families.
- A plan providing coverage at 60% of the actuarial value of covered services is referred to as a “bronze level” plan. Other coverage plans and the percentage of coverage provided are: silver (70%), gold (80%), and platinum (90%).

c. Sources of Coverage. Provided that the coverage provides essential health benefits and covers at least 60% of the cost of those benefits, the employee may obtain coverage from:

- an employer plan,
- an individual policy purchased through an Exchange,
- a governmental program (Medicare, Medicaid, Children’s Health Insurance Program (CHIP), TRICARE (for individuals in military service and their families), a veteran’s health care program, or

- Any other program recognized by HHS as meeting the requirements for essential health coverage.
- d. Amount of Penalty. Generally, the penalty for each individual who does not have this coverage will be the greater of \$95 or 1% of income in 2014. This will increase to the greater of \$695 or 2.5% of income in 2016.
- The tax will be assessed on the individual's personal income tax return. The person(s) subject the penalty is the filer or filers of the tax return.
  - The flat dollar penalty is computed by reference to the number of filers of the return and each dependent included on the return. However, the flat dollar penalty cannot exceed 300% of the applicable dollar amount for that year.
- e. Exemptions from Penalty. Individuals will not be subject to the penalty if:
- The individual's income does not meet threshold to trigger a filing requirement;
  - The individual's required contribution for the coverage exceeds 8% of the individual's "household income"
4. The Employer Mandate. Effective in 2014, employers with more than 50 full-time employees will be subject to monthly health coverage excise tax if it (i) fails to offer health coverage, (ii) offers minimum essential coverage that is not affordable, or (iii) offers less than minimum essential coverage (*i.e.* coverage for less than 60% of the actuarial cost of the health benefits) will be subject to an excise tax.
- a. Amount of Excise Tax. The monthly tax for failure to provide coverage is \$167.67 per month (1/12 of \$2,000 per year) times the number of full-time employees not offered coverage (subject however to a flat reduction of 30 employees.)
- an employer becomes subject to tax if at least one full-time employee has been certified to the employer as eligible for a premium subsidy or reduced cost-sharing.
  - the monthly tax for failure to provide "affordable" coverage is \$250 per month (1/12 of \$3,000 per year) times the number of employees certified to the employer as eligible for premium assistance of the premium tax credit.
  - Employer provided coverage is "unaffordable" if the premium contribution from the employee is more than 9.5% of the employee's "household income".

- Whether employer coverage is “unaffordable” for an employee will be determined by State Exchanges. Employers are not subject to the excise tax unless notified by the Exchange that the coverage is unaffordable.
- Excise tax for providing unaffordable coverage will not apply with respect to any employee for whom the employer provides a “free choice voucher” equal to the amount the employer would have contributed to cover the employee under the employer provided plan.
- The two penalties are subject to an overall limitation determined by multiplying \$167.67 times the total number of employees (reduced by 30).

b. Automatic Enrollment by Large Employers. Employers with more than 200 employees will be required to automatically enroll employees and provide the employees the right to opt out of coverage

- Any automatic enrollment program must include adequate notice and the opportunity to for an employee to opt out of coverage.
- This provision will be effective upon the issuance of implementing regulations.

5. Premium Assistance and Premium Tax Credit - Individuals with incomes between the Federal Poverty Level (“FPL”) and 400% of the FPL, and who do not receive affordable coverage from an employer or a governmental source (such as Medicare or Medicaid) will be eligible for two forms of financial assistance beginning in 2014.

a. Premium Assistance Subsidy. Beginning in 2014, individuals may will receive a refundable premium tax credit if their incomes are between 100% and 400% of the FPL.

- Eligibility for and the amount of the subsidy will depend on the cost of the base coverage expressed as a percentage of the individual’s household income.
- To be eligible for the subsidy, an employee who is offered coverage by his employer must either:
  - have an employee contribution to the cost of the coverage that exceeds 9.5% of the employee's household income; or
  - be covered by a plan that fails to provide minimum essential coverage (*i.e.* the employer's group health plan does not pay at least 60% of covered benefit costs).

- The subsidy is available only for coverage purchased through the State Exchange. The baseline coverage for purposes computing the amount of the subsidy is the Exchange’s second lowest cost silver plan.
- The amount of the subsidy is determined by subtracting the cost of the baseline coverage by the individual’s mandated share of the cost of the coverage. The individual’s mandated share of the cost of the coverage depends on the individual’s household income:

Subsidy Pays Premiums in Excess of  
Household Income Between:

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Household Income Relative to FPL	Initial (Minimum) Premium Percentage	Final (Maximum) Premium Percentage
Up to 133%	2.0%	2.0%
133% to 150%	3.0%	4.0%
150% to 200%	4.0%	6.3%
200% to 250%	6.3%	8.05%
250% to 300%	8.05%	9.5%
300% to 400%	9.5%	9.5%

- The subsidy will be claimed as a credit on the taxpayer’s individual income tax return. It will be a refundable credit which is payable in advance directly from the IRS to the State Exchange.

(b) Cost-Sharing Reduction Payments. PPACA provides federal cost-sharing reduction subsidies to eligible individuals with incomes below 400% of the federal poverty level.

- A “cost-sharing reduction subsidy” refers to a federal payment program intended to subsidize the cost to the individual of group health plan “cost-sharing” provisions, (*e.g.* deductibles and co-pays).
  - PPACA provides that a group health plan cannot impose deductibles and co-pays that are greater than those permitted under a high deductible health plan (described in IRC § 223(c)). For 2010, the maximum deductible under a high deductible health plan is \$5,590 for single coverage and \$11,900 for family coverage.
- For individuals with incomes more than 100% but less than 200% of the FPL, the subsidy will reduce cost-sharing costs by two-thirds. For individuals with incomes more than 20% but less than

30% of the FPL, the subsidy will reduce cost-sharing costs by one-half. For individuals with incomes more than 300% but less than 400% of the FPL, the subsidy will reduce cost-sharing costs by one-third.

- Additional cost-sharing reduction subsidies are available to eligible individuals with incomes less than 200% of the FPL.

6. Health Benefit Exchanges - The Health Care Reform Act creates "American Health Benefit Exchanges" through which individuals may purchase insurance coverage. States may opt to have regional exchanges.

The Health Care Reform Act also require the creation of Small Business Health Option Program (SHOP) Exchanges through which small business (those with 100 or fewer employees) may purchase group coverage.

The Exchanges are to be operational in 2014, and self-sustaining by 2015.

a. Functions of Exchanges. The Exchanges must carry out a host of functions integral to individual coverage, group coverage, eligibility for subsidies, certification to employers (necessary to impose employer penalties). A partial list of responsibilities includes:

- implement procedures for the certification, recertification and decertification of health plans as qualified;
- assign a rating to each qualified plan offered through the Exchange;
- provide a toll-free telephone and web based for enrollees and prospective enrollees can obtain information about available plans;
- grant certifications granting exemptions from the individual penalty by reason of lack of affordable coverage through the exchange or other reasons;
- provide each employer the name of each of its employees who ceases coverage under a qualified plan during the year and the date of cessation;
- certify to employers the eligibility of its employees for premium assistance subsidies for coverage obtained through the Exchange.

(b) Operation and Oversight of Exchanges. HHS, in conjunction with the National Association of Insurance Commissioners (NAIC) is required to set standards for Exchanges that the states will be required to implement.

- HHS has general authority to investigate, audit and review the activities of state exchanges.
- The General Accounting Office (GAO) is required to conduct a study of Exchange activities and enrollees in plans offered through Exchanges by 2019. The study is to include a report on the cost

and affordability of individual and small group coverage offered through the Exchanges.

7. Insurance Market Reforms – The Health Care Reform Act mandates a host of changes to group health plans, whether they are insured plans or self-insured by sponsoring employers. Certain of the changes either do not apply to, or apply after a delayed effective date to “Grandfathered” plans (generally, health plans in existence when Health Care Reform was enacted). Unless otherwise indicated, the changes listed below apply equally to Grandfathered plans and non-Grandfathered plans.

a. Restrictions on Lifetime and Annual Benefits. Effective plan years beginning on and after September 23, 2010, group health plans and group or individual insurance policies may not impose annual or lifetime caps on “essential health benefits.” *Annual limits (but not lifetime limits) may still apply to individual Grandfathered policies.*

b. Prohibition on Rescission. Effective plan years beginning on or after September 23, 2010, a group health plan or a group or individual insurance policy may not rescind coverage, except in cases of fraud or intentional misrepresentation of material fact.

- Exceptions are provided for cases involving individuals who live outside the plan’s service area, or if the issuer demonstrates that it cannot provide service.
- Issuer must also guaranty renewability of the coverage except for nonpayment of premiums, fraud or misrepresentation, cessation of coverage within the market, the insured moves outside the service area served by a network plan, or if coverage is provided through an association and the employer ceases to be a member of the association.
- A plan must provide at least 30 days advance notice to an individual before coverage may be rescinded.

c. Preventive Health Services Coverage. Effective plan years beginning on and after September 23, 2010, a group health plans or a group or individual insurance policy must cover the following preventative care, without co-pay or deductible:

- evidence-based items or services that are currently recommended by the U.S. Preventative Services Task Force,
- immunizations that are currently recommended by the Centers for Disease Control Advisory Committee on Immunization Practices, and
- for infants, children and adolescents evidence informed preventative care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration.

- A complete list of required preventative care services can be found at [www.HealthCare.gov/center/regulations/prevention.html](http://www.HealthCare.gov/center/regulations/prevention.html).
- IRS, HHS and the Department of Labor (DOL) issued joint temporary regulations implementing the preventative care requirement on July 19, 2010 (*See* IRS Treasury Decision 9493).
- *This rule does not apply to Grandfathered Plans*

d. Expansion of Dependent Coverage to Children to Age 26.

Effective plan years beginning on or after September 23, 2010, a group health plan or a group or individual insurance policy that provides dependent coverage must define a “dependent” eligible for coverage to include adult children until the child turns age 26.

- Participants cannot be required to pay more for coverage of adult children than they would for similarly situated younger children (e.g., the plan would have to charge the same amount for family coverage regardless of the age of the covered children).
- Effective March 30, 2010, coverage and benefits for adult children are tax exempt, regardless of whether the child is a dependent for income tax purposes. The exemption applies for any child who has not attained age 27 as of the end of the participant's tax year. *See*, IRS Notice 2010-38 (April 27, 2010).
- Cafeteria plans, including premium conversion plans and health care flexible spending account plans, may need to be amended to permit pre-tax contributions and payment of health care expenses that relate to adult non-dependent children. To apply to the 2010 calendar year must be made no later than December 31, 2010.

e. Nondiscrimination Rules to Apply to Insured Plans. Effective plan years beginning on or after September 23, 2010, an insured group health plan will be subject to the same nondiscrimination rules that apply to self-insured plans.

- Under the nondiscrimination rules for self-insured plan, a self-insured plan must cover 70 percent of all employees, or 80% of all eligible employees if more than 70% of all employees are eligible to participate.
- The IRS has requested comments on the application of this rule to insured plans. IRS Notice 2010-63 (September 10, 2010).
  - The IRS notice states that while the penalty for violation of nondiscrimination rules for self-insured plans is limited to inclusion of benefits in income of the highly compensated employees, the penalty for violation of the same rule by an *insured* plan is a civil penalty of up to \$100 per day per participant.

f. Medical Loss Ratio Rebates. Beginning in plan years after March 23, 2010, a health insurer offering group or individual coverage must publicly report the percentage of total premium revenue spent:

- on health care expenses of enrollees,
- activities to improve health care quality; and
- on all other non-claims costs, including costs of complying with PPACA.
- Beginning in 2011, insurers must rebate to enrollees any amounts expended on non-claim costs that exceed specified percentages of premium revenues:
  - 15% with respect to large group coverage;
  - 20% with respect to small group coverage.

g. Claims Appeals Process. Insurers and self-insured plans must implement effective claims procedures by plan years beginning after September 23, 2010 which include at least one level of objective, external review.

- Most states, including New York already require external claims review for insured benefits. HHS is authorized to rule whether state claims laws in any state meet the requirements of PPACA.
- *This rule does not apply to Grandfathered Plans.*

h. Patient Protections. Group and individual plans must:

- allow enrollees to select any primary care physician (PCP) that participates in the plan's network.
  - Parents may designate an in-network pediatrician the PCP for their child;
  - A woman may designate an in-network OB/GYN her PCP; and
- cover emergency services without prior authorization and regardless of whether service is "in-network"
- *These rules do not apply to Grandfathered plans.*

8. Grandfathered Plans - Many of the insurance reforms described in Paragraph 7 above do not apply to Grandfathered Plans. Those provisions include:

- Preventative care services must be provided without cost sharing requirements,
- Participants may select primary care providers, including pediatric care providers, and OB/GYNs from any such provider who participates in the plan's network,

- Emergency care services must be provided without prior authorization and without regard to whether the emergency health care provider is a participating provider in the plan's network,
- Insured group health plans will be subject to nondiscrimination rules similar to those currently in effect for self funded plans, and
- Group health plans must have "effective" internal and external appeals processes for coverage determinations and claims.

Accordingly, it is important to many sponsors of group health plans in existence on March 23, 2010 to retain Grandfathered plan status for their plans.

a. Grandfathered Plans – Generally. A grandfathered plan is a group health plan that was in existence on March 23, 2010.

- The plan does not lose its grandfather protection merely because certain participants cease to be covered, even if all individuals who were participants as of March 23, 2010 lose coverage, as long as at least one person remains covered under the plan at all times. New participants or family members may be added to the plan without jeopardizing its grandfather status. However, each benefit package within a plan is examined separately to determine if it falls within the grandfather rule.

b. Maintaining Grandfathered Status To maintain grandfather status, a plan must:

- include in any materials describing plan benefits, a statement saying the plan believes it is a grandfathered health plan;
- maintain records that document the terms of the plan in effect on March 23 and other records needed to verify the plan's grandfather status;
- make such records available for examination; and
- provide contact information for questions or complaints.

c. Events Resulting in Loss of Status. Grandfather status is lost if the employer "enters into a new policy, certificate, or contract of insurance" after March 23, 2010. (Special rules apply to collectively bargained plans.) In addition, grandfather status will be lost if the plan:

- eliminates substantially all benefits to diagnose or treat a specific illness (e.g., if a plan provides treatment for a particular mental illness which consists of counseling and prescription drugs, and then eliminates counseling benefits, the plan would lose its grandfather protection);
- increases the participants' fixed percentage co-insurance requirements (e.g., increasing a co-pay from 20% to 30%);
- increases fixed dollar amount cost sharing requirements (e.g., increasing deductibles or out-of-pocket expenses) beyond a specified amount based on medical inflation plus 15%;

- increases co-payment amounts more than the rate of medical inflation plus 15%, or if greater, by \$5.00;
- decreases the employer contribution percentage for any tier of coverage by more than 5% (e.g., decreasing the employer's share of premiums from 60% to 50%); or
- imposes certain new annual limits on benefits.
- Grandfather status may also be lost through "abusive transactions" where plans are merged or employees are transferred between plans in an effort to maintain grandfather protections.
- The regulations state that a change made before March 23, 2010 which is pursuant to a plan amendment and which takes effect on or after March 23, will not affect grandfather status.
- The regulations also include a transition rule under which an employer may revoke a plan change which was made on or after March 23, 2010 and which would have resulted in the loss of grandfather status, if the revocation is effective as of the first day of the first plan year beginning on or after September 23, 2010.

9. Paying for Health Care Reform. According to the Congressional Budget Office, the Health Care Reform Act will be financed by revenue raisers totaling approximately \$979 Billion over ten years. A summary of the major revenue raisers, by year follows:

- **2010.** The following revenue raisers take effect in 2010:
  - *Codification of Economic Substance Doctrine.* Effective upon enactment, PPACA codifies the economic substance doctrine, under which a transaction must have an economic purpose other than the reduction of tax liability in order to be considered valid.
    - Penalties will be imposed for underpayments, with an increase from 20 percent under the economic substance doctrine previously to 40 percent under this law.
    - This provision is expected to raise \$100 million in 2010 and \$4.5 billion over 2010-2019.
  - *Excise Tax on Indoor Tanning Services.* Took effect on July 1, 2010. The tax applies to services that use an electronic product with one or more ultraviolet lamps to induce skin tanning.
    - This provision is expected to raise less than \$50 million in revenues in the first year and \$2.7 billion over 2010-2019.
  - *Denial of Tax Benefits to Nonprofit Insurers.* Beginning tax years beginning in 2010 or Later, nonprofit Blue Cross Blue Shield organizations will be denied certain tax benefits under Code Section 833, such as the deduction for 25 percent of claims

and expenses, and the 100 percent deduction for unearned premium reserves, unless the insurer's medical loss ratio is 85 percent or higher.

- This change is expected to yield less than \$50 million in 2010 and \$400 million over 2010-2019.
- *Restrictions on Biofuel Producer Credit.* The cellulosic biofuel producer credit will no longer include unprocessed fuels that contain more than 4 percent by weight water and sediment, or more than 1 percent by weight ash. This change applies to fuel sold or used after January 1, 2010. The impact of this change to the credit falls primarily on paper manufacturers.
  - This change is expected to yield \$23.6 billion in revenue over 2010-2019.

**2011** The following revenue raisers take affect in 2011:

- *Pharmaceutical Manufacturer Fee.* Beginning in 2011, Pharmaceutical manufacturers and importers of branded drugs will pay an allocable share of an industry-wide, annual fee allocated according to market share within the government program marketplace (Medicaid Part B and D recipients, Medicare recipients, VA beneficiaries and TRICARE participants).
  - The annual fee will total \$2.5 billion in 2011, \$2.8 billion in 2012 and 2013, \$3.0 billion 2014-2016, \$4.0 billion in 2017, \$4.1 billion in 2018, and \$2.8 billion in 2019 and thereafter, with an estimated total of \$27 billion raised over 2011-2019.
- *Conformed Definition of Medical Expenses.* Beginning in 2011, the definition of medical expenses for the itemized medical expenses deduction will be extended to apply to HSAs, Archer MSAs, health FSAs, and health reimbursement arrangements. This will restrict the field of previously qualifying services and expenses.
  - Generally, this means that HSAs, Archer MSAs and FSAs will no longer be able to reimburse plan participants for expenses relating to non-prescribed, over-the-counter medications (with the exception of insulin).
  - This provision is expected to raise \$400 million in 2011 and \$5 billion over 2011-2019.
- *Increased Penalties for Nonmedical Use of HSA Funds.* Effective January 1, 2011, the excise tax imposed on nonqualifying distributions from HSAs and Archer MSAs (*i.e.*

not used for qualified medical expenses based on conformed definition of medical expenses) is increased from 10 percent to 20 percent.

- This change is estimated to yield less than \$50 million in revenues in the first year and \$1.4 billion over 2011-2019.

**2012** The following revenue raisers take affect in 2012:

- *1099 Reporting for Payments Made to Corporations.* Payers will be required to report payments to corporations on 1099-MISC for any payments made on or after January 1, 2012.
  - Reporting these payments is estimated to yield new tax revenue from payees in the amounts of \$400 million in 2012 and \$17.1 billion over 2012-2019.
- *Excise Tax on Charitable Hospitals.* The Health Care Reform Act requires charitable hospitals to produce a “community health needs assessment” every three years beginning in 2010. Charitable hospitals that fail to conduct such an assessment are subject to an excise tax of \$50,000. Thus, 2012 is the first year for which the tax would apply.

**2013** The following revenue raisers take affect in 2013:

- *Medicare Contribution Increases.* Beginning in 2013. The Medicare Hospital Insurance tax will be increased by 0.9 percent for single individuals with adjusted gross incomes over \$200,000, joint filers with adjusted gross incomes over \$250,000, and married taxpayers filing separately with adjusted gross incomes over \$125,000.
- Individuals, estates and trusts will also be subject to a 3.8 percent Medicare Hospital Insurance tax on unearned income. The income thresholds are unindexed after 2013.
  - These provisions are estimated to raise \$1.3 billion in 2012 from accelerated realization of capital gains prior to the tax rate change, \$20.5 billion in 2013 from the increased tax rate, and \$210 billion over 2012-2019.
- *Excise Tax on Sales of Medical Devices.* Effective for sales made on or after January 1, 2013, an excise tax of 2.3 percent will be imposed on manufacturers and importers of medical devices, except for those generally purchased by the public at retail for individual use, such as eyeglasses and hearing aids.
  - This provision is expected to yield \$1.8 billion in 2013 and \$20 billion over 2013-2019.
- *Limits on Flexible Spending Arrangements.* For tax years beginning in 2013, maximum contributions to health FSAs will be reduced from \$5,000 per year to \$2,500.
  - The \$2,500 limit will be indexed for inflation index after 2013.

- This change is estimated to yield \$1.5 billion in 2013, and \$13 billion over 2013-2019,
- *Elimination of Deduction for Employer Part D Subsidy.* For tax years beginning in 201, employers will no longer be permitted to deduct the cost of maintaining a prescription drug plan for their Medicare Part D-eligible retirees.
  - This is expected to raise \$400 million in 2013 and \$4.5 billion over 2013-2019.
- *Increase in AGI Limitation for Itemized Medical Expenses.* For tax years beginning 2013 and later, the threshold to deduct medical expenses will increase from 7.5 percent of adjusted gross income (AGI) to 10 percent of AGI.
  - The threshold increase will be delayed until 2017 for those age 65 or older.
  - This change is estimated to yield \$400 million in 2013, \$2.5 billion in 2017, and \$15.2 billion over 2013-2019.
- *Cap on Deductible Executive Compensation for Insurers.* Beginning in 2013, insurance company deductions for compensation paid to officers, employees, directors, and other workers or service providers will be capped at \$500,000 if at least 25 percent of the insurance provider's gross premium income from health business is from plans that meet the minimum creditable coverage requirements.
  - This is estimated to raise \$100 million in 2013 and \$600 million over 2013-2019.

**2014** The following revenue raisers take affect in 2014:

- *Insurance Industry Fee.* Beginning in 2014, insurers will pay a pro-rata share of an industry-wide annual fee, allocated according to market share. The fees collected will total \$8 billion in 2014, \$11.3 billion in 2015 and 2016, \$13.9 billion in 2017, \$14.2 billion in 2018, and will be indexed to medical cost growth in 2019 and thereafter.
  - This is estimated to yield \$60.1 billion over 2014-2019.
- *Individual Mandate and Penalty Takes Affect.* See Paragraph 3 above.
- *Employer Mandate and Penalty Takes Affect.* See Paragraph 4 above.

**2015** The following revenue raiser takes effect in 2015:

- *Individual Penalty Increases Affect.* The penalty on individuals who fail to carry coverage increases from \$95 per person to \$325 per person, or 2.0% of household income.

**2016** The following revenue raiser takes effect in 2016:

- *Individual Penalty Increases Affect.* The penalty on individuals who fail to carry coverage increases from \$325 per person to \$625 per person, or 2.5% of household income.

**2018** The following revenue raiser takes effect in 2018:

- *Excise Tax on High-Cost Insurance Plans.* Beginning in 2018, insurers will pay a 40 percent excise tax on health coverage with premiums in excess of \$10,200 for an individual or \$27,500 for family coverage.
  - The above thresholds are increased to \$11,850 for individuals or \$30,950 for families in the case of retirees over age 55, electrical or telecommunications repairmen, law enforcement or fire protection workers, out-of-hospital emergency medical providers, and those engaged in the construction, mining, agriculture, forestry, and fishing industries.
  - The thresholds are subject to adjustment for an unexpected increase in medical costs prior to the effective date, and will be indexed for inflation by the consumer price index plus 1 percent, with additional adjustment based on age and gender profiles of covered employees.
  - The tax will be levied at the insurer level, with employers aggregating and reporting information for insurers indicating the amount subject to the excise tax.
  - This will yield an estimated \$12.2 billion in 2018 and \$32 billion total over 2018-2019.

10. Information Reporting and Related Penalties. PPACA introduces a number of new information reporting obligations on employers, payors, and certain health care providers.

- *New Information Return for Employer Provided Coverage.* Beginning in 2014, “large employers” (those with at least 50 full-time employees) and all “offering employers” (all employers who offer minimum essential coverage and pay any part of the premium) must file a new information return with the IRS:

- The information return must include (i) the employer’s identifying information, (ii) a certification whether the employer offers minimum essential coverage, (iii) the number of full-time employees enrolled in coverage *in each month* of the preceding year, (iv) identifying information for each covered employee in the preceding year, (v) for large employer’s only, the length of any waiting period for coverage, (vi) the months during the year that coverage was available, (vii) the monthly premium for the lowest cost coverage offered, (viii) for any offering employer, the option for which the employer pays the largest portion of the cost and the portion of the cost paid by the employer in each employment category for each offered option.
- The employer must provide individual information returns to each covered employee containing the information reportable to the IRS with respect to that employee.
- An employer that fails to provide this statement will be subject to the same penalty as a payor that fails to provide an information return. Generally, that penalty is \$50 per information return, up to \$250,000 per year (with reductions based on the size of the employer and timeliness of correction).
- *New Information Return for Insurers Providing “Minimum Essential Coverage”.* Beginning in 2014, health insurance providers (including sponsors of self-insured plans) will be required to provide to insureds for whom they provide “minimum essential coverage”, an annual tax statement to that effect.
  - The annual statement must include the name and identification number of the primary insured and each other covered person, the dates of coverage, whether the coverage was provided through an exchange, the amount of any premium tax credit or cost sharing reduction received, and, if the plan is provided through an employer plan, identifying information regarding the plan.
  - A health insurance provider that fails to provide this statement will be subject to the same penalty as a payor that fails to provide an information return. Generally, that penalty is \$50 per information return, up to \$250,000 per year (with reductions based on the size of the employer and timeliness of correction).
- *New Information on form W-2.* Beginning in 2011 the form W-2 wage and tax statement an employer provides to an employee must include the aggregate cost of employer-sponsored health coverage.
  - The amount to be reported is the total premium cost determined in the same manner as required under COBRA continuation rules. Therefore, the total premium must be reported, not merely the employer paid portion of the premium.

- The Act does not impose a separate penalty on employers that fail to provide this information. Arguably, an employer that fails to provide the information could be penalized for failure to provide a complete form W-2. That penalty ranges between \$30 and \$100 per form (depending on whether and when the incomplete return is corrected), subject to a cap of \$1,500,000 (or \$500,000 for certain small employers).
- *“Community Health Needs Assessment” Reporting by Private Tax-Exempt Hospitals.* The Act requires private, tax-exempt hospital organizations to conduct a “community health needs assessment” and to adopt an implementation strategy to meet the community health needs identified through such assessment.
  - The new requirement also requires tax-exempt hospitals to file its audited financial statement with the IRS with its annual information return (Form 990).
  - A tax-exempt hospital that fails to include this information with its annual report is subject to a \$50,000 excise tax.
- *Expansion of Information Reporting to Payments Made to Corporations.* All persons engaged in a trade or business must generally report payments of commissions, fees, interest, rents, royalties, annuities, gains, profits and similar items exceeding \$600 made to any “person” during the year on form 1099. However, current law provides that the term “person” does not include “corporations”. Accordingly, no form 1099 is currently required for payments made to corporations. Effective in 2012, the exception from information reporting for payments made to corporations will be repealed.
  - The exception will remain in place for tax-exempt organization.

11. Relief for Small Businesses. The Health Care Reform Act contains a few incentive programs to encourage small business to offer health insurance coverage to its employees.

a. Small Business Tax Credit. The Act adds a new tax credit to encourage small businesses to offer private health insurance to employees and to pay at least 50 percent of the cost of that coverage. The credit is available only to employers with 25 or fewer full-time equivalent employees (“FTEs”) earning an average of \$50,000 or less per year. Seasonal employees are not counted for this purpose.

- For an employer with 10 or fewer FTEs, the credit is equal to 35 percent of the employer’s contribution to the cost of the premium. The credit is phased out for employers with more than 10 but not more than 25 FTEs. If the actual premiums for the coverage exceed a “small business benchmark premium” determined by the IRS, the credit will be computed by reference to the benchmark premium rather than the actual premium. The IRS published benchmarks by State in Revenue Ruling 2010-03, 2010-21 IRB.

- The credit is also reduced if the average compensation of qualifying employer's FTEs exceeds \$25,000. The reduction is computed by multiplying the otherwise available credit by a fraction, the numerator of which is the FTE's average compensation in excess of \$25,000 and the denominator of which is \$25,000.
- The credit is not refundable. It may be applied against the employer's alternative minimum tax liability. The credit may be carried back one year and may be carried forward for 20 years.
- The credit is available for the years 2010 through 2013. Effective in 2014, the credit will be available only with respect to qualified employers that purchase coverage through a state insurance exchange established under the Act. The credit will increase from 35 percent to 50 percent, and will be available through 2016.
- The IRS released additional guidance concerning the credit in Notice 2010-44 (May 17, 2010).

b. Simple Cafeteria Plans. Beginning in 2011 a small employer (one with 100 or fewer employees) may sponsor a "Simple Cafeteria Plan". A Simple Cafeteria Plan will be exempt from all non-discrimination rules otherwise applicable to cafeteria plans. To qualify as "simple", the cafeteria plan must:

- be offered to all employees (subject to certain exclusions such as for employees under age 21 or collectively bargained employees) who have at least one year of service and worked at least 1,000 hours in the immediately preceding year; and
- provide a minimum employer contribution:
  - a uniform percentage of at least 2% of compensation, or
  - a 100% matching contribution up to 6% of compensation.

## 12. Changes to Medicare and Medicaid.

a. Medicaid will be expanded to cover everyone under age 65 having incomes up to 133% of the federal poverty level.

b. Medicare payments will generally be reduced. An Independent Payment Advisory Board is tasked to make recommendations to reduce the growth of Medicare payments. Medicare Advantage payments will be restructured to be based, in part, on the local market and on performance bonuses.

c. The Medicare Part D prescription drug "doughnut hole" will be eliminated. Currently, Medicare stops paying after an individual has spent \$2,830 on prescription drugs and does not resume payments until out-of-pocket spending reaches \$4,550. Coverage will be gradually provided for amounts within the gap until the doughnut hole is completely eliminated in 2020.

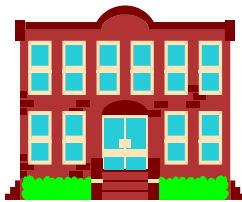


# Federal State & Local Governments

December 2010 Seminar

2

## F S L G



County Governments



Federal Agencies



Municipal Governments



State Governments



School Districts

3

## What Does FSLG Do?

- Education
  1. Seminars
  2. Compliance Checks
- Examinations

4

## **COMPLIANCE CHECKS**

A compliance check is a review conducted by the IRS to determine whether a GE is adhering to record keeping and information reporting requirements.

- It's a tool to help educate GE's about their reporting requirements, to help increase voluntary compliance.

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## **COMPLIANCE CHECKS**

- In a compliance check, Information returns such as 941's, W-2's, 1099's and 945 are reviewed.
- However, no books and records are examined.

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## **EXAMINATION**

An examination is an inspection of a government entity's books and records, in order to determine whether the entity correctly complied with tax laws.

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## **AREAS TO BE DISCUSSED**

- Common errors found in exams, including 1099 - MISC, W-2's, W-9's, backup withholding
- Fringe Benefits – where to find information about the taxability of a specific fringe benefit
- Employee/Independent Contractor information
- Other helpful information for govt. entities at the IRS.gov website
- New provisions in the law that may affect you.

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## **FORMS 1099-MISC**

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## **FORMS 1099-MISC**

**What is a 1099-MISC information return?**

**Form required to report payments for:**

- **Services, or**
- **A combination of services and products**

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## **What payments must be reported?**

- **Payments of \$600 or more for the year**
- **Paid in the course of your trade or business**
- **Certain payments to corporations**
  - **attorneys' fees (box 7)**
  - **payments for medical or healthcare services (box 6)**

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## Payments to Attorneys

- If the attorney is not a W-2 employee, payments of \$600. or over must be put on a 1099-MISC regardless of whether they are a:
  - Sole Proprietor
  - Partnership
  - Corporation

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## Payments to an Attorney -Defining Gross Proceeds

- Gross proceeds are the payments made to an attorney as part of a legal settlement or court order
- Gross proceeds may be issued in the names of the attorney and the client
- Gross proceeds may include an amount for the attorney's services

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## Reporting Gross Proceeds

If you cannot determine the attorney fees, report all of gross proceeds in Box 14.

Report the amount paid with the letter "A" after it. The designation "A" shows this is gross proceeds paid to an attorney.

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## Reporting Gross Proceeds

If you can determine the amount of attorney fees included in the gross proceeds:

- Report the fee in Box 7
- Report nothing in Box 14

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## Medical and Healthcare Payments

- Report payments of \$600 or more in Box 6
- Report payments to all individuals, partnerships, and corporations
- Medical payments include doctor fees, drug testing, physical therapy, etc.
- \* *Do not report payments to pharmacies or tax exempt or govt. hospitals*

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## CORPORATIONS

- Are a separate entity from the owner(s).
- Payments made to John Brown require a 1099.
- Payments made to John Brown Inc. do not require a 1099 (unless he is an atty. or medical service provider)

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## Never assume an entity is incorporated!

- LLC – Limited Liability Company
- LP – Limited Partnership
- LLP – Limited Liability Partnership

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## LLC's and Reportable Payments

- An LLC can have one or more owners
- An LLC can be taxed as either a sole proprietor, partnership or a corporation
- Obtain a W-9 from payee (LLC) to determine its status
- Report payments on a 1099 to sole proprietors & partnerships; and, in some cases, to corps. (if attorney or medical service provider)

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## Common Errors Related to 1099's

- A W-2 and 1099 incorrectly provided to the same person.
- Related to 1099's - Failure to obtain identifying info before making payment. If you make reportable payments (\$600. and over) & you have not been given a TIN - Backup Withhold at 28% - F. 945
- Incorrectly assuming payee is a corporation:
  1. because the vendor's name includes the words Company or Associates, or
  2. because EIN is furnished, or
  3. if the vendor gives you a d/b/a name

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## Payments that should not be reported on Form 1099-MISC

Payments to employees; such as taxable fringe benefits or travel reimbursements

*(Note: if not paid as part of an accountable plan, travel reimbursements and auto expenses should be included in wages and reported on W-2)*

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## **Form W-9 Request for Taxpayer ID Number and Certification**

Why is a W-9 important? It provides the following information-

- Name of vendor
- d/b/a of vendor
- Filing status
- SSN or EIN

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## **Points to Remember about a W-9**

Sole proprietor's name should be shown on line 1 – not their d/b/a name

- LLC – make sure they check the box to tell you how they file- just noting that they are an LLC is not sufficient
- The latest revision of the W-9 has a section specifically for LLC's

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## Question Related to Vendor Payments

Your government entity hired a vendor to paint the interior of your administrative offices. The vendor's name is "A Painting Company LLC". What steps should your office take to get the necessary information from the vendor to determine whether you need to provide them with a F. 1099 at the end of the year?

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## Answer

- Give the vendor a W-9 to complete when he/she is hired
- Make sure the vendor completes the form and indicates on it how he/she files – either as a sole proprietor, partnership or corporation
- If the vendor is a sole proprietor, insure their first and last name are on the W-9, because that's the name you will have to put on the first line of the F. 1099

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## IRS TIN Matching Program

- Online System
- Open to all payers of “reportable payments”
  - Interest, Dividends, Payments Subject to Backup Withholding (Non Employee Compensation)
- Allows you to verify the payee TINs required on 1099s *BEFORE* filing
- System allows user to input TIN/Name combination; the system matches against master files.
- IRS will inform payer if name/TIN combo matches database
- Find out more at our [www.irs.gov](http://www.irs.gov) website under E Services or call 1-866-255-0654

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## Benefits of Using TIN Matching:

- Avoid TIN Errors
- Reduce backup withholding notices
- Meet reasonable cause to avoid penalties
- Save time and money!

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## **ARE YOU REQUIRED TO BACKUP WITHHOLD?**

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## **BACKUP WITHHOLDING**

If you make reportable payments to persons who have not furnished their valid TIN, backup withholding becomes an issue – the withholding rate is 28%.

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## When to Begin Backup Withholding Tax

General Rule - For vendors who haven't given you a TIN, backup withholding begins when aggregate payments for the calendar year equal or exceed \$600.

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## How to Report Backup Withholding Tax

Report backup withholding tax to payee and to IRS in Box 4 of Form 1099-MISC

- Form 945 is used to report and pay backup withholding tax to the IRS.

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## Form 945 - Annual Return on Which to Report Backup Withholding Tax

- This is an annual return, due 1/31 of the following year
- Ordinary deposit rules apply (However, because F. 945 is an annual return, rules related to the deposit schedule are different. See Instructions for Form 945 and Pub. 15 to determine your deposit schedule)
- Make Form 945 deposits separate from Form 941 deposits
- Do not report backup withholding tax amounts on your Form 941.

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## **Where to get addl. information related to W-9's and BWH Tax?**

- W-9 instructions
- 1099 General Instructions
- Pub. 1281 – Guide to BWH for Missing and Incorrect Name/TIN(s)
- Form 945 Instructions
- All forms and publications can be accessed at the IRS.gov website

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# WHAT IS A FRINGE BENEFIT?

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## Definition and Taxability of Fringe Benefits

- A fringe benefit is a **form of pay** for the performance of services.
  - Property,
  - Services,
  - Cash or Cash Equivalent
- **All** fringe benefits are taxable and must be included in the recipients' pay unless the law **specifically** excludes it.

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## **WHAT TO DO?**

1. Identify specific benefit provided to employees
2. Determine if benefit is excluded by law; and
3. If not excludable, determine if benefit is fully taxable, or only partially taxable.

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## **Sources of Information Related to Fringe Benefits**

- Taxable Fringe Benefits Guide
- Publication 15-B
- Quick Reference Guide for Public Employers
- Pub. 963

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## **Taxable Fringe Benefits Guide** **irs.gov Website**

How to find this publication online:

- Tab titled “government entities”, then
- Click on “Tax information for Federal, State & Local governments”
- Left side of screen – click on “Educational Products”
- Click on “Taxable Fringe Benefits Guide”

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## **Other Publications Found Online**

Also found under **Educational Products online**:

- **Pub. 963** also has a great deal of helpful information on fringe benefits, EE/IC issues, social security, as well as many other areas
- **Quick Reference Guide for Public Employers**

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## **ACCOUNTABLE PLAN**

A plan under which an EE is reimbursed for expenses is an accountable plan only if:

1. Expense must be in connection with the performance of the EE's work (it must be for an expense the EE could deduct on his/her tax return)
2. There must be an adequate accounting by the recipient- verify dates, place, amount, and business purpose of expenses – usually on a voucher or expense report
3. EE must return to the ER any advance amounts they receive from ER in a reasonable amount of time

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## **NON-ACCOUNTABLE PLAN**

- An allowance or reimbursement program that does not meet ALL 3 requirements for an Accountable Plan
- Amounts made under a non-accountable plan are income to the EE and must be included in wages with p/r/t withheld
- Details related to accountable and non-accountable plans, withholding, per diem rules, and travel advances, are all found in the Taxable Fringe Benefits Guide.

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## **EXPENSE ALLOWANCE**

An expense allowance given to an EE without accountability is taxable wages to the EE. (for example, \$300. per month)

It does not matter whether it is for mileage, or any other business expenses.

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## **EXPENSE ALLOWANCE EXAMPLE**

A school district assistant superintendent is provided with a \$400. per month allowance for his business expenses, including the business usage of his personal automobile. (This is not part of an accountable plan.)

**Is this a non-taxable fringe benefit?**

**No, the \$4,800. (\$400. x 12) must be added to his wages with p/r/t withheld.**

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## **EXPENSE ALLOWANCE EXAMPLE**

A city administrator is given \$300. per month so that he can purchase life insurance for himself.

**Is this a non-taxable fringe benefit?**

**No, the \$3,600. ( $\$300. \times 12$ ) must be added to his wages with p/r/t withheld.**

**(The only exclusion for life insurance is group term coverage with very specific requirements to qualify, and its only non-taxable up to a certain amount. An expense allowance for it would never qualify.)**

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**INDEPENDENT  
CONTRACTOR  
OR  
EMPLOYEE?**

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## Independent Contractor or Employee

There are three categories of evidence to consider:

- Behavioral Control – how, when & where to do the work; business provides supplies; worker required to follow established routines & policies;
- Financial Control – right to control the financial aspects of the job -significant investment, overhead expenses, opportunity for profit or loss, services available to the public
- Relationship of the Parties – EE benefits, written contracts, integration of the worker's activities into the operations of the business

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## INDICATORS OF INDEPENDENT CONTRACTOR STATUS

- Workers are not required to follow specific methods or instructions for completing their work
- Worker makes own schedule
- Worker furnishes own supplies and equipment to perform the work
- Workers can hire assistants to complete the job (worker pays assistants)
- The business relationship is often short term
- Worker might an investment into a facility with overhead expenses
- Workers have opportunity for profit or loss

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## **INDICATORS OF EMPLOYEE STATUS**

- Worker is required to follow specific methods or instructions for completing their work.
- Required to work a set amount of hours and/or days each week.
- Employer supplies the office, equipment, and tools needed to complete the work.
- Worker can receive training from the employer for completing assignments.
- Work assigned is part of the operations of the business.
- The business relationship is often longer term.
- Worker does not handle own sales receipts
- Worker can receive fringe benefits from business
- Worker has no risk of loss from the business

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## **THE RIGHT TO DIRECT AND CONTROL**

- ET regulations provide that an ER-EE relationship exists when the business for which the services are performed has the right to direct and control the manner in which the services are performed.
- Not necessary for the GE to actually direct or control; they only need the right to do so.
- The nature of a worker's occupation affects the degree of direction. (for example, a physician on staff would require less supervision as related to his duties)

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## COMMON MISCONCEPTIONS:

- EMPLOYEES CAN BE:
  - ▣ Part-time workers
  - ▣ Temporary workers
  - ▣ Probationary period workers
  - ▣ Workers who say they are Independent Contractors

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## Weighing the Evidence

- Apply each element to the facts and circumstances surrounding the relationship
- Evaluate the relative impact of each element
- Determine if autonomy or control predominates – remembering that the business only needs the right to direct and control
- Pub 963 chapter 4 has detailed information for government entities related to this area.

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**Independent Contractor or  
Employee??**

Still not Sure? Complete and  
submit Form SS-8

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**Additional Sources of Information**

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## IRS WEBINARS

Currently, there are two free one-hour webinars available at:

[www.irs.gov/govt/fslg](http://www.irs.gov/govt/fslg)

- 1099 MISC Forms
- Fringe Benefits

Both Webinars provide detailed information in each area they cover.

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## Additional Online Information

- FSLG Fact Sheets
- FSLG FAQs
- FSLG Newsletter - Semi-annual newsletter in electronic format published by FSLG. Provides information for all types of government entities on current developments. Sign up on line to receive the Newsletter

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## FSLG NEWSLETTER

- Topical Index on line as well as past issues which can be printed or read on line.
- Past articles on fringe benefits, deposit rules, emergency workers, excise tax issues, home care services, retirement plans, student issues, bonds, and many more areas.

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## FSLG TOOLKIT

- Contains links to **useful publications and tax related forms** that you may need during the course of a year.

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## **New Provisions to Consider**

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## **Contact Information**

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## 2010 Exempt Organizations Conference

### Maneuvering through the New Standards and Regulatory Requirements Related To Trusts And Endowments

Presented by, Richard F. Larkin, CPA  
Technical Director, Institute for Nonprofit Excellence, BDO USA, LLP, Bethesda, Md.

\* \* \* \* \*

**I. UMIFA/UPMIFA** - The National Conference of Commissioners on Uniform State Laws prepared a revised version of the Uniform Management of Institutional Funds Act and sent it for consideration by the states. It is called the Uniform Prudent Management of Institutional Funds Act and is known by the acronym, UPMIFA.

There do not appear to be major changes from UMIFA that would affect accounting, but, by removing the reference to ‘historic dollar value,’ the new act gives nonprofit governing boards somewhat more flexibility in making expenditure decisions, which in some cases could affect classification of net assets – especially permanently restricted. Other than that, any effects on accounting and financial reporting are not expected to be significant in most states, unless a state makes significant changes in its law beyond the uniform act. But FASB has issued a FSP on this subject – see below, which does affect accounting.

As of November 2010, Washington, D.C. and every state except Pennsylvania and Florida have adopted the new act.

#### **II. Accounting Implications of UPMIFA**

##### **FASB Staff Position on Endowments**

FASB has issued FSP 117-1, *Endowments of Not-for-Profit Organizations: Net Asset Classification of Funds Subject to an Enacted Version of the Uniform Prudent Management of Institutional Funds Act, and Enhanced Disclosures for All Endowment Funds*, (codified in ASC 958-205) which deals with the implications of UPMIFA, the Uniform Prudent Management of Institutional Funds Act. As discussed below, this FSP requires implementation even by organizations not (yet) subject to UPMIFA.

Effective date: Fiscal years ending after 15 December 2008

There are two main parts to the document:

- A conclusion as to net asset classification under UPMIFA; and
- Enhanced disclosures; **these affect all nonprofits, whether or not they are in a jurisdiction that has adopted UPMIFA, and all endowments, whether donor-restricted or not.**

##### Net asset classification

The FSP provides as follows:

Paragraph 5. “A not-for-profit organization that is subject to an enacted version of UPMIFA shall classify a portion of a donor-restricted endowment fund of perpetual duration as permanently restricted net assets. Consistent with paragraph 14 of FASB Statement No. 116, *Accounting for Contributions Received and Contributions Made*, and paragraph 22 of FASB Statement No. 117, *Financial Statements of Not-for-Profit Organizations*, the amount classified as permanently restricted shall be the amount of the fund (a) that must be retained permanently in accordance with explicit donor stipulations, or (b) that in the absence of such stipulations, the organization’s governing board determines must be retained (preserved) permanently consistent with the relevant law.”

This may or may not require any reclassification of previous amounts. Note the reference to the governing board's interpretation of the law. Presumably organizations will wish to obtain legal advice on this point.

The FSP also provides the following:

Paragraph 8. "For each donor-restricted endowment fund for which the restriction described in subsection 4(a) of UPMIFA is applicable, a not-for-profit organization shall classify the portion of the fund that is not classified as permanently restricted net assets as temporarily restricted net assets (time restricted) until appropriated for expenditure by the organization."

This paragraph is a departure from previous practice by many organizations, and may require that certain amounts be reclassified by some organizations from unrestricted to temporarily restricted net assets (per Paragraph 17 of the document). **Note that it applies to current income (interest & dividends) as well as capital gains.**

A question may arise as to what constitutes 'appropriation' for this purpose.

#### Enhanced disclosures

The proposed disclosures are quite extensive, and are set forth in Paragraphs 11 and 12:

11. "At a minimum, an organization shall disclose the following information for each period for which the organization presents financial statements:

- a. A description of the governing board's interpretation of the law(s) that underlies the organization's net asset classification of donor-restricted endowment funds.
- b. A description of the organization's policy(ies) for the appropriation of endowment assets for expenditure (its endowment spending policy(ies)).
- c. A description of the organization's endowment investment policies. The description shall include the organization's return objectives and risk parameters; how those objectives relate to the organization's endowment spending policy(ies); and the strategies employed for achieving those objectives.
- d. The composition of the organization's endowment by net asset class at the end of the period, in total and by type of endowment fund, showing donor-restricted endowment funds separately from board-designated endowment funds.
- e. A reconciliation of the beginning and ending balance of the organization's endowment, in total and by net asset class, including, at a minimum, the following line items (as applicable): investment return, separated into investment income (for example, interest, dividends, rents) and net appreciation or depreciation of investments; contributions; amounts appropriated for expenditure; reclassifications; and other changes.

12. In accordance with the requirements of Statements 117 and 124, an organization also shall provide information about the net assets of its endowment funds, including:

- a. The nature and types of permanent restrictions or temporary restrictions (paragraphs 14 and 15 of Statement 117)
- b. The aggregate amount of the deficiencies for all donor-restricted endowment funds for which the fair value of the assets at the reporting date is less than the level required by donor stipulations or law (paragraph 15(d) of Statement 124)."

Appendix C to the document contains illustrative disclosures.

Organizations with endowment funds - whether donor-restricted or board-designated - will need to gather the information needed to make these disclosures, as this may require changes to how data are accumulated and summarized by their accounting systems. Also, consider which state's law applies in each case.

- The complete text of the FSP is at: [http://www.fasb.org/pdf/fsp\\_fas117-1.pdf](http://www.fasb.org/pdf/fsp_fas117-1.pdf)
- A summary of the enactment status of UPMIFA is at: <http://www.upmifa.org/DesktopDefault.aspx?tabindex=5&tabid=68> (Obviously this is subject to change.)
- The text of UPMIFA is at: [http://www.law.upenn.edu/bl/archives/ulc/umoifa/2006final\\_act.pdf](http://www.law.upenn.edu/bl/archives/ulc/umoifa/2006final_act.pdf)

However, each state's version of the law should be reviewed for its applicability in that state.

### **III. UPMIFA in New York State**

New York's version of UPMIFA: NYPMIFA, became law in September 2010; it is effective immediately.

This website has a lot of information about it:

<http://theplannedgivingblog.wordpress.com/category/endowments/upmifa-new-york/>

and it is expected that the Attorney General will issue some sort of interpretive guidance.

An 'endowment fund' is defined as an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. An endowment fund does not include assets that an institution itself designates as not expendable on a current basis ('quasi-endowment').

Following are some key points:

- It applies only to organizations incorporated or otherwise organized in NY
- There are some significant differences from the 'generic' version of UPMIFA
- One major effect is to 'unfreeze' funds that are underwater, but it divides endowments into three categories:

Funds created prior to 17 September 2010, for which the donor is 'available', and for which the gift instrument does not provide otherwise	Charity must notify donor in writing of the applicability of NYPMIFA; if no objection is received within 90 days, it will apply. Donor may modify gift instrument.
ditto, but the donor is not available after reasonable effort to locate	NYPMIFA automatically applies, unless gift instrument provides otherwise
Funds created on and after 17 Sept. 2010	NYPMIFA automatically applies unless donor indicates otherwise; all solicitation materials must so indicate (this last requirement is not in UPMIFA)

- It includes 8 factors to consider in the determination of the prudence of spending from a fund; consideration of each of these factors must be contemporaneously documented; 7 of these are in UPMIFA\*, but New York has added an *eighth* factor: '(8) where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the organization.'

- There is a rebuttable presumption of imprudence (only for funds created after the law) for spending rates above 7% (average over 5 years), but charity must justify the prudence of any spending rate
- Small (under \$100,000), old (over 20 years) funds whose purpose has become obsolete may be modified if notice is given to the Attorney General (who has 90 days to object), and to a living donor, if available (donor's consent is not required) (previous methods of modification - e.g., *cy pres*, are still available)
- Several standards of prudence for investment management policies are included
- There is an investment diversification requirement, which can be overcome
- A written investment policy is required (not in UPMIFA)

\* - (1) the duration and preservation of the endowment fund;  
(2) the purposes of the institution and the endowment fund;  
(3) general economic conditions;  
(4) the possible effect of inflation or deflation;  
(5) the expected total return from income and the appreciation of investments;  
(6) other resources of the institution; and  
(7) the investment policy of the institution.

# **GASB 54 – Fund Balance Reporting and Governmental Fund Type Definitions**

PRESENTED BY:

SARA M. DAYTON  
JOHN P. SCHIAVONE



## Reasons for the change

- Considerable differences found in the way governments interpret and apply the standards of GASB 34 for fund balance reporting
- Inconsistent and noncomparable information reduced usefulness and led to confusion
- Confusion between restricted net assets under GASB 34 and reserved fund balance
- GASB 54 intended to improve the usefulness and understandability of fund balance information and clarify the fund type definitions to improve comparability

## Effective Date

- Financial statements for periods beginning after June 15, 2010 (June 30, 2011 year end governments will be first to implement)
- Early implementation is encouraged
- For reporting to the State, the ST-3 and Annual Update Document (AUD) will be updated during 2011

## Fund Balance Classifications

### Old classifications

- Reserved
- Unreserved

### New GASB 54 classifications

- Nonspendable
- Restricted
- Committed
- Assigned
- Unassigned

## Nonspendable

- Amounts that cannot be spent because they are:
  - Not in spendable form
    - × Inventory
    - × Prepaid expenses
  - Legally or contractually required to be maintained intact
    - × Corpus (principal) of a permanent fund

## Restricted

- Amounts with constraints placed on the use of resources that are:
  - Externally imposed by creditors, grantors, contributors, or laws or regulations of other governments
  - Imposed by law through constitutional provisions or enabling legislation
    - × Enabling legislation includes a *legally enforceable* requirement that those resources be used only for the purposes stipulated in the legislation

## Committed

- Amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the government's highest level of decision-making authority, e.g. Board of Education, Board of Trustees, County Legislature, City/Town Council
- Amounts cannot be used for any other purpose unless the government removes or changes the specified use by taking the same type of action used to create the commitment
- Not considered to be legally enforceable
- Commitment must occur prior to year end, but amount to be committed can be determined subsequent to year end

## Assigned

- Amounts that are constrained by the government's intent to be used for specific purposes, but are neither restricted nor committed
  - Intent can be expressed by the governing body, or a body (e.g. finance or budget committee) or official to which the governing body has delegated such authority
- Residual balance of special revenue, capital projects, debt service, or permanent funds that is not already restricted or committed
- Specifically includes appropriated fund balance

## Unassigned

- Residual balance in the general fund
- *Cannot* be positive in special revenue, capital projects, debt service, and permanent funds (all funds but the general fund)
- May be positive or negative in the general fund

## Fund Balance Classifications

- Policy should dictate whether restricted or unrestricted (committed, assigned, unassigned) fund balance is used first when an expenditure is made
- Policy should also dictate order of usage of unrestricted amounts; otherwise, default usage is first committed, followed by assigned and unassigned fund balance
- Nonspendable fund balance should be determined first

## Positive and Negative Fund Balance

- **Restricted, committed, and assigned amounts should never be negative in any fund**
- **Negative unassigned fund balance should be reduced by assigned fund balance; if net amount is negative, it should be shown as unassigned (with no amounts assigned)**

## Stabilization Arrangements

- **Amounts held in a stabilization reserve should be recorded as restricted or committed fund balance only if the amount is reserved for a specific purpose that is not expected to occur routinely**
- **Amounts set aside for general emergencies or nonspecific purposes would be reported as unassigned fund balance in the general fund (assigned in other funds)**

## Balance Sheet Presentation

- **Nonspendable amounts may be reported in total or broken out between its two categories (amounts not in spendable form and amounts legally or contractually required to be maintained intact)**
- **Restricted fund balance may distinguish between the major restricted purposes or may be shown in the aggregate**
- **Committed and assigned amounts may be shown in detail or in the aggregate**
- **If amounts are shown in the aggregate, the notes should include specific purposes/details**

## Fund Balance Note Disclosures

- **The government's policy as to whether restricted or unrestricted amounts are spent first and the order in which committed, assigned, and unassigned amounts are considered to be spent**
- **For committed fund balance:**
  - The government's highest level of decision-making authority
  - The formal action required to be taken to establish (and modify or rescind) a commitment
- **For assigned fund balance:**
  - The body or official authorized to assign amounts
  - The policy established by the governing body pursuant to which that authorization is given

## Fund Balance Note Disclosures *(con't)*

- **All stabilization arrangements should be disclosed in the notes to the financial statements and should include:**
  - The authority for establishing stabilization arrangements
  - The requirements for additions to the stabilization amount
  - The conditions under which stabilization amounts may be spent
  - The stabilization balance, if not apparent
- **Minimum fund balance policies, if any**

## Encumbrances

- **Each encumbrance should be included within restricted, committed, or assigned amounts as appropriate based on its purpose**
- **Significant encumbrances should be disclosed in the notes to the financial statements by major funds and nonmajor funds in the aggregate in conjunction with required disclosures about other significant commitments**

## Governmental Fund Type Definitions

- General fund – used to account for and report all financial resources not accounted for and reported in another fund
- Special revenue funds – used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects
  - Specific revenue sources should comprise a substantial portion of the inflows of the fund
  - The purpose of each major special revenue fund should be disclosed in the notes, including the revenues and other resources reported in each fund

## Definitions (con't)

- Capital projects funds – used to account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets
- Debt service funds – used to account for and report financial resources that are restricted, committed, or assigned to expenditure for principal and interest

## Definitions *(con't)*

- Permanent Funds – used to account for and report resources *that are restricted* to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs

## Special Revenue Funds

- GASB 54 clarifies what constitutes a special revenue fund
- Governments were often using special revenue funds to account for specific *spending*; definition requires that the fund be used for purposes that have a specific and substantial *revenue source*
- Revenue source must be an ongoing influx of money, not a one-time sum that is used over time
- Funds that do not meet these requirements should now be reported within the general fund

## Special Revenue Funds *(con't)*

- **Funds that are legally mandated to be accounted for as special revenue funds:**
  - Highway (DA, DB)
  - County Road (D)
  - County Road Machinery (DM)
- **Funds that meet the definition:**
  - Sewer (G)
  - Special Grant (CD)
  - Public Library (L)
  - Special Districts (Sx)

## Special Revenue Funds *(con't)*

- **Funds that may or may not meet the definition of a special revenue fund, dependent on the government's availability of a specific revenue source:**
  - Water (FX)
  - Parking (CP)
  - Miscellaneous (CM)
- **The School Store Fund (B) is *not* considered to be a special revenue fund and the fund has been deleted from the ST-3 for 2011**

## Resources and additional information

- GASB 54 (summary at [www.gasb.org](http://www.gasb.org))
- OSC Accounting Bulletin
- Lumsden & McCormick Government Services Team
  - John P. Schiavone, [jschiavone@lumsden CPA.com](mailto:jschiavone@lumsden CPA.com)
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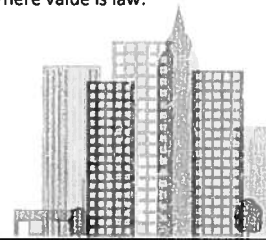
# Unrelated Business Income Tax: General Issues and Tips

December 2, 2010

Where value is law.



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[www.hodgsonruss.com](http://www.hodgsonruss.com)

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## Background

The primary objective of adoption of the unrelated business income tax is to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. An activity carried on for the production of income, which possesses the characteristics of a "trade or business" and which is not substantially related to the performance of exempt functions presents sufficient likelihood of unfair competition to be within the policy of the tax.



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### Unrelated Business Income Tax

a. What is UBIT?

It is a tax applicable to the net income of an exempt organization that arises from an "unrelated trade or business."

b. Income generally excluded from UBIT:

Dividends, interest, payments with respect to securities loans, amounts received or accrued as consideration for entering into agreements to make loans, royalties, rents from real and personal property with some specific limitations, gains from the sale, exchange, or other disposition of certain property.

3

### Entities Subject to UBIT

The tax applies to all organizations that are exempt from taxation by reason of Internal Revenue Code Section 501(a), with some exceptions, such as certain elementary and secondary schools operated by a government (foreign or domestic).



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### Definition of "Unrelated Trade or Business"

Unrelated Trade or Business is any trade or business the conduct of which is not substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) of the Internal Revenue Code.

Therefore, unless an exception applies, gross income of an exempt organization is subject to UBIT if

1. It is income from a trade or business;
2. Such trade or business is regularly carried on by the organization; and
3. The conduct of such trade or business is not substantially related to the organization's performance of its exempt functions.



5

### Income from a "Trade or Business"

The term "trade or business" generally includes any activity carried on for the production of income from the sale of goods or performance of services. Thus, the term is not limited to integrated aggregates of assets, activities and goodwill which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code.



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### "Regularly Carried On"

The important factors to be considered in determining whether the business is "regularly carried on" are the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued. The requirement is applied in light of the purpose of UBIT to place exempt organization business activities upon the same tax basis as the nonexempt business endeavors with which they compete.

Normal Time Span of Activities: Where income producing activities are of a kind normally conducted by nonexempt commercial organizations on a year-round basis, the conduct of such activities by an exempt organization over a period of only a few weeks does not constitute the regular carrying on of trade or business. However, the conduct of year-round business activities for one day each week would constitute the regular carrying on of trade or business. Where income producing activities are of a kind normally undertaken by nonexempt commercial organizations only on a season basis, the conduct of such activities by an exempt organization during a significant portion of the season ordinarily constitutes the regular conduct of trade or business.

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### "Regularly Carried On"

Intermittent Activities: In determining whether or not intermittently conducted activities are regularly carried on, the manner of conduct of the activities must be compared with the manner in which commercial activities are normally pursued by non-exempt organizations. In general, business activities which are engaged in only discontinuously or periodically will not be considered regularly carried on if they are conducted without the competitive and promotional efforts typical of commercial endeavors.

Intermittent Activities; Special Cases: Certain intermittent income producing activities occur so infrequently that neither their recurrence nor the manner of their conduct will cause them to be regarded as trade or business that is regularly carried on. Certain income producing or fund raising activities lasting only a short period of time will not ordinarily be treated as regularly carried on if they recur only occasionally or sporadically. Such qualifying activities will not be regarded as regularly carried on merely because they are conducted on an annually recurrent basis.

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**“Not Substantially Related” to the Organization’s Performance  
of its Exempt Functions**

**Substantially Related:** The presence of this requirement requires an examination of the relationship between the business activities generating the particular income in question and the accomplishment of the organization's exempt purposes.

**Type of Relationship Required:** Trade or business is related to exempt purposes only where the conduct of the business activities has causal relationship to the achievement of exempt purposes. It is substantially related only if the causal relationship is a substantial one. Thus, the production or distribution of goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of exempt purposes.

9

**“Not Substantially Related” to the Organization’s Performance  
of its Exempt Functions**

**Size and Extent of Activities:** In determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve. Thus, where income is realized from activities which are related to the performance of exempt functions, but which are conducted on a larger scale than is reasonably necessary for the performance of such functions, the income attributable to the portion of the activities that is in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business.

Note that income from the sale of products that resulted from the performance of exempt functions does not constitute gross income from the conduct of unrelated trade or business if the product is sold in substantially the same state it is in on completion of the exemption functions.

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**“Not Substantially Related” to the Organization’s Performance  
of its Exempt Functions**

1. **Dual Use of Assets or Facilities:** In certain cases, an asset or facility necessary to the conduct of exempt functions may also be employed in a commercial endeavor. In such cases, the mere use of the asset or facility in exempt functions does not, by itself, turn all income into income from a related trade or business. The test, instead, is whether the activities productive of the income in question contribute importantly to the accomplishment of exempt purposes. If they do not, then income arising from such activities is subject to UBIT.
  
2. **Exploitation of Exempt Functions:** In certain cases, exempt activities carried on by an organization may generate goodwill or other intangibles that could be exploited in commercial endeavors. Where an organization exploits such an intangible in commercial activities, such commercial activities must contribute importantly to the accomplishment of an exempt purpose in order for resulting income to be exempt.

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**Trades or Businesses Excluded from the Definition**

The term “Unrelated Trade or Business” does not include any trade or business:

- in which substantially all the work in carrying on such trade or business is performed for the organization without compensation;
  
- which is carried on, in the case of certain exempt organizations (such as state colleges or universities), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or
  
- which is the selling of merchandise substantially all of which has been received by the organization as gifts or contributions (i.e. certain thrift shops).

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### Activities of Trade Shows, State Fairs, Etc.

Unrelated Trade or Business does not include the qualified public entertainment activities of certain organizations. Public Entertainment Activities are defined as any entertainment or recreational activity traditionally conducted at fairs or expositions promoting agricultural and educational purposes. To be treated as "qualified" public entertainment activities, these activities must be conducted:

- i. In conjunction with certain fairs or expositions or
- ii. In accordance with certain State laws.

The activities must also be conducted by certain specific types of exempt organizations, including exempt corporations, community chests, funds, or foundations, certain civic leagues or organizations operated exclusively for the promotion of social welfare, certain associations of employees, and certain labor, agricultural, or horticultural organizations.

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### Qualified Convention and Trade Show Activities

Unrelated Trade or Business does not include qualified convention and trade show activities.

Qualified Convention and Trade Show Activities: These are activities of a kind traditionally conducted at conventions, annual meetings or trade shows. The activity must be carried out in conjunction with an international, national, State, regional, or local convention or show conducted by qualifying exempt organizations. In addition, the activity must be carried out by certain types of exempt organizations (including those listed for "Public Entertainment Activities") which regularly conduct as a substantial exempt purpose a show that stimulates interest in products of a particular industry or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization.



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### Sponsorship Payments

Unrelated trade or business does not include the activity of soliciting and receiving qualified sponsorship payments. These are payments made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo of such person's trade or business in connection with the activities of the organization that receives such payment.

1. Limitations: Qualified Sponsorship Payments do not include:
  - a. payments contingent upon the level of attendance, broadcast ratings, or other factors indicating the degree of public exposure.
  - b. income derived from the sale of advertising or acknowledgments in exempt organization periodicals.
  - c. payments made in connection with qualified convention or trade show activity.

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### Sponsorship Payments

2. Substantial Return Benefit: It is any benefit other than (a) a use or acknowledgement or (b) certain disregarded benefits. If the fair market value of all the benefits provided to the payor exceeds 2% of the amount of the payment, then the entire payment could be treated as a substantial return benefit (and thus subject to UBIT).

Benefits include advertising, exclusive provider arrangements, goods, facilities, services or other privileges, and exclusive or nonexclusive rights to use an intangible asset (i.e. trademark, patent, logo, or designation) of the exempt organization.

3. A use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price, information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services). It may include, however, exclusive sponsorship arrangements; logos and slogans that do not contain qualitative or comparative descriptions of the payor's products, services, facilities or company; a list of the payor's locations, telephone numbers, online addresses, etc.

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### Sponsorship Payments

Advertising means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed, and which promotes or markets any trade or business, or any service, facility or product. A single message that contains both advertising and an acknowledgment is advertising.

Exclusivity Arrangements are arrangements that acknowledge the payor as the exclusive sponsor of an exempt organization's activity, or the exclusive sponsor representing a particular trade, business or industry. Such an arrangement generally does not, by itself, result in a substantial return benefit.

\*Exclusive Provider Arrangements: An arrangement that limits the sale, distribution, availability, or use of competing products, services, or facilities in connection with an exempt organization's activity generally results in a substantial return benefit.

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### Other Activities Generally Excluded from UBIT:

- a. Certain Hospital Services: Services must be provided by qualifying hospitals.
- b. Certain Bingo Games: Games must be of a type in which usually: (a) wagers are placed, (b) winners are determined, and (c) distribution of prizes and other property is made in the presence of all persons placing wagers in such game. The bingo game cannot be an activity ordinarily carried out on a commercial basis, and it must not violate any State or local law.
- c. Certain Electrical Pole Rentals: Services must be provided by qualifying mutual or cooperative telephone or electric companies.



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**Other Activities Generally Excluded from UBIT:**

- d. **Certain Distributions of Low Cost Articles without the Obligation to Purchase:** For certain specific types of exempt organizations, unrelated trade or business does not include activities relating to the distribution of low cost articles if such distribution is incidental to the solicitation of charitable contributions.

A distribution is treated as incidental to solicitation of charitable contributions only if:

1. It is not made at the request of the distributee;
2. It is made without the express consent of the distributee, and
3. The articles so distributed are accompanied by (i) a request for a charitable contribution by the distributee and (ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization.

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**Other Activities Generally Excluded from UBIT:**

- e. **Exchanges & Rentals of Member Lists:** For certain exempt organizations, unrelated trade or business does not include a trade or business which consists of exchanging with another such organization names and addresses of donors, or renting such names and addresses to another such organization.
- f. **Debt Management Services:** May be excluded from the term "unrelated trade or business" if such services are provided by certain qualifying credit counseling organizations.
- g. **Travel and Tour Activities:** May be excluded from the term "unrelated trade or business" if the activities are related to the organization's exempt purposes.



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**Income Generally Not Subject to UBIT:**

- a. **Certain Investment Income:** Dividends, interest, payments with respect to securities loans, annuities, income from notional principal contracts, certain other substantially similar income from ordinary routine investments, and all deductions directly connected with any of the foregoing items are generally excluded in computing unrelated business taxable income (UBTI).
  
- b. **Royalties:** Royalties income and deductions associated with such income are generally excluded from computing UBIT. However, certain royalties income and deductions associated with debt-financed property are included in computing UBIT. There are also certain peculiar rules with respect to royalties from mineral property.



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**Income Generally Not Subject to UBIT:**

- c. **Rents:** Rents from real property are generally excluded from UBIT. Rents from personal property leased with real property are also generally excluded from UBIT, so long as the amount of rent attributable to the personal property is incidental to the total amount of rents received under the lease. The amount is not treated as incidental if it exceeds 10% of the total rents from all the property leased.

No rents, whether attributable to real or personal property, will be excluded from UBIT if more than 50% of the total rents are attributable to personal property. Rents for real or personal property are also not excluded from UBIT if the amount of rents depends on the income or profits derived by any person from the property leased, other than an amount based on a fixed percentage or percentages of the gross receipts or sales.



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### Gains/Losses From the Sale of Property

Unrelated Business Taxable Income excludes gains or losses from the sale, exchange or other disposition of property except with respect to property that qualifies as (i) stock in trade or other property of a kind which would properly be included in the inventory of the organization if on hand at the close of the taxable year, or (ii) property held primarily for sale to customers in the ordinary course of the trade or business. Special rules apply to the cutting of timber, the disposition of debt-financed property, and the termination of options to buy or sell securities



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### Research

Income (and deductions) derived from research conducted for the U.S. government or a State government (and subdivisions and instrumentalities) is generally excluded in computing unrelated business taxable income.

With respect to certain colleges, universities, and hospitals, all income (and deductions) derived from research is excluded from computing unrelated business taxable income.

The term "research" does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations (i.e. the ordinary testing or inspection of materials or products).



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### Charitable Contributions

In computing UBTI, the deduction for charitable contributions is allowed, whether or not the contribution is directly connected with the carrying on of the trade or business. The deduction shall not exceed 5% of the organization's UBTI (computed without regard to this deduction). Special rules apply to exempt trusts. The contribution must be paid to another organization to be allowed.



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### Net Operating Losses

Net operating losses are allowed in computing UBTI. However, an NOL carryback or carryover is determined without taking into account any amount of income or deduction not included in computing UBTI.



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### Debt-Financed Property

A certain amount of income arising from debt-financed property is taxed as unrelated trade or business income. Such income is called unrelated debt-financed income.

Unrelated debt-financed income will be an amount that is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of debt-financed property as the average acquisition indebtedness of the property is of the average adjusted basis of such property.

1. Debt-financed property is defined as any property held to produce income and with respect to which there is an acquisition indebtedness.



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### Debt-Financed Property

The following are not treated as debt-financed property:

- a. Property related to exempt purposes: Any property substantially all of the use of which is substantially related to the exercise or performance of the organization's charitable, educational, or other exempt purposes. Or, if not substantially all of the use of the property is used for such purposes, then exclusion still applies to the extent that its use is so substantially related.
- b. Property used in an unrelated trade or business: To the extent that the gross income from any property is treated as income from the conduct of an unrelated trade or business, such property is not treated as "debt-financed property." However, gain on the disposition of such property that would be otherwise excluded from UBIT is includible as income derived "from or on account of debt-financed property."
- c. Property related to Research Activities: To the extent that income from any property is derived from research activities excluded from UBIT, such property is not treated as debt-financed property.

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### Debt-Financed Property

- d. Property used in "thrift shops", etc.: Property is not treated as debt-financed to the extent used as a business involving the selling of merchandise substantially all of which has been received by the organization as gifts or contributions.
  - e. Property qualified as a brownfield: Property the gain or loss from the disposition of which is excluded from UBIT for being a brownfield is not treated as debt-financed property.
2. The "average acquisition indebtedness" with respect to debt-financed property is the average amount of the outstanding principal indebtedness during that portion of the taxable year the property is held by the organization.
  3. "Average adjusted basis" for debt-financed property is the average amount of the adjusted basis of such property during that portion of the taxable year it is held by the organization.

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### How much will UBIT cost you?

- a. Entities subject to UBIT are taxed at corporate tax rates provided by Internal Revenue Code Section 11. Certain exempt trusts are taxed at the individual rates prescribed in Section 1(d) of the Internal Revenue Code.
- b. The amount of income subject to UBIT is the gross income arising from an unrelated trade or business, less otherwise allowable deductions directly connected with the carrying on of that trade or business (i.e. ordinary and necessary expenses; net operating losses; charitable deductions in a certain amount).
- c. Filing Requirements:  
Exempt organizations that are subject to UBIT, must report its unrelated business taxable income in Form 990-T. Failure to comply with the reporting requirements under the UBIT rules may subject an exempt organization to penalties and interest.



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In accordance with Internal Revenue Service Circular 230, we advise you that unless otherwise expressly stated, any discussion of a federal tax issue in this communication or in any attachment is not intended to be used, and it cannot be used, for the purpose of avoiding federal tax penalties.

## Human Motivation



### *Participant Workbook*

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# Human Motivation

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## Introductions

Find a partner. Introduce yourself, role at organization and share three reasons for why your company needs you.



### The company needs you/employees because:

1. The worker role has \_\_\_\_\_.
2. Empowerment, participative management and \_\_\_\_\_ are part of today' organizational cultures.
3. The term \_\_\_\_\_ is no longer used but associate, partner, and \_\_\_\_\_ is part of today's language.

### Technology has changed the way we do business:

1. Telecommunications created a \_\_\_\_\_ marketplace.
2. Customers demand greater reliability, \_\_\_\_\_ services and products, and speed.
3. Computers and automation changed the nature of our \_\_\_\_\_ and reduced the need for \_\_\_\_\_ labor.
4. Tall \_\_\_\_\_ became unnecessary and actually interfered with workers' abilities to respond quickly to customer needs.
5. Organizations have downsized and eliminated many of the middle level \_\_\_\_\_ positions.

### Today's workers are required to:

1. Make adjustments and \_\_\_\_\_.
2. Communicate \_\_\_\_\_ with others and be a team player.
3. Initiate and manage \_\_\_\_\_.
4. Problem-solve and make \_\_\_\_\_.

## Workshop Outline

- Understanding Motivation
- Five Keys to Success

### What is motivation?

**Motivation:** an incentive, stimuli to promote action. A motivation is anything verbal, physical or psychological that causes someone to do something in response.

#### Facts:

- Individuals are motivated by \_\_\_\_\_ things.
- What motivates us \_\_\_\_\_ throughout our lives.
- What motivates somebody one day might not motivate them the \_\_\_\_\_.
- One type of motivation repeated many times becomes an \_\_\_\_\_ and also loses its \_\_\_\_\_ quality.

*“I think any company...has got to find a way to engage the mind of every single employee...if you are not thinking all the time about making every person more valuable, you don't have a chance. What's the alternative? Wasted minds? Uninvolved people? A labor force that's angry or bored? That doesn't make sense.”*

*---Jack Welch, previous CEO of General Electric*

## Team Exercise

Identify situations that require motivation.

Motivating Others	Reasons/Goals



## About Motivation

### When do we motivate?

- Anytime we are persuading, selling or convincing
- Anytime we are getting ourselves or others focused on a goal
- When you are trying to get an associate to perform a task

### Reasons for Motivating

- Reach goals
- To feel good about ourselves
- To enhance performance
- Help employees adapt and grow
- To increase employee satisfaction

### The Exchange Relationship



Position, expectations and payment of services based on value and contributions the employee brings to helping the organization achieve goals and mission.

Time, talents, efforts and results to helping the organization achieve goals and mission.

## What are the Top Three Drivers?

**Benefits**

**Earning Potential**

**Time & Flexibility**

**Compensation**

**Mgmt Climate**

**Training**

**Culture**

**Supervisor**

### Management Says

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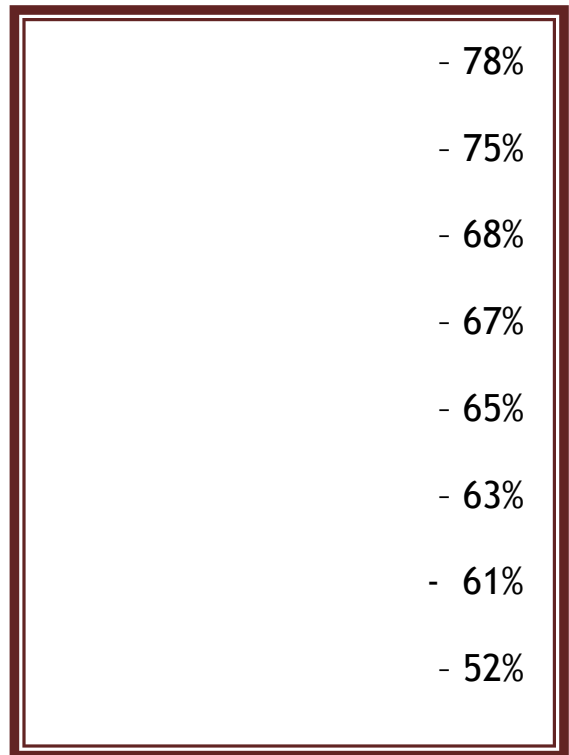
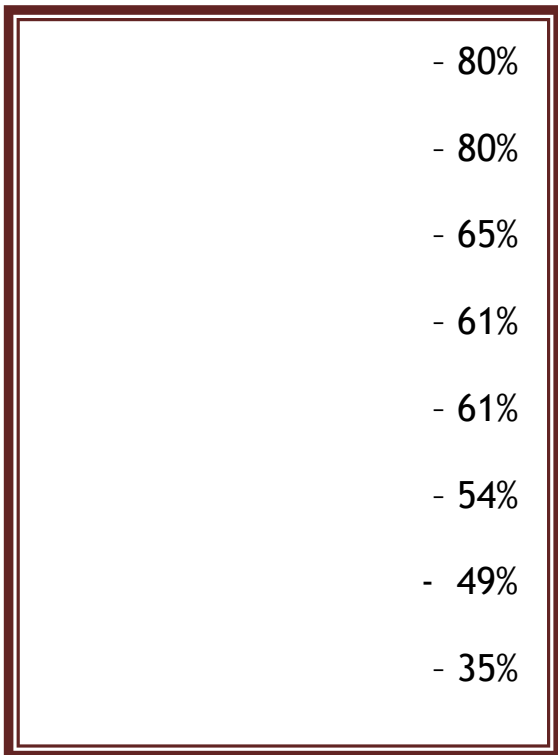
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### Employee Says

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## Five Keys to Success

### Overview

1. Align Strengths
2. Set Performance Expectations
3. Communicate
4. Create a Culture of Accountability
5. Have Rewards & Consequences Management Systems in Place

*We are motivated to the degree that the decisions we make are our decisions. To be honest with ourselves, to sincerely know what we want is the key to motivation. We are always in a position to decide. We can decide to do something or we can decide to do nothing. The choice is ours.*

### Align Strengths

• Ability to consistently produce a positive outcome through near-perfect performance in a specific task

• Naturally recurring patterns of thought, feeling or behavior that can be productively applied

• Ability to perform the fundamental steps of a task

• Facts and lessons learned – what you know

## Clearly Defined Performance Expectations

\_\_\_\_\_ Helps with selection process and determining what you need to measure on performance appraisal process.

\_\_\_\_\_ Need to have a consistent measurement system that measures job methods and output core behaviors and goal setting for employees.

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Need to make sure your employees are being coached daily. Your responsibility as a manager/leader is to help them reach their fullest potential by setting standards and goals; aligning them appropriately based on their skills, values, and interests; training on core behaviors; and removing barriers to their performance.

## Communicate



## Culture of Accountability

Element	Definition	Advice
<b>Agreements</b>	Your shared understanding about what needs to be accomplished.	Begin by establishing your _____. Clear agreements are just as important in your _____ as they are in annual performance planning.
<b>Responsibility</b>	A prevailing sense of ownership of assignments and challenges.	Find ways to indicate that you are placing responsibility for achieving the agreed upon outcomes with the employee. You will need to reinforce this idea of responsibility both _____ as well as through your _____.
<b>Empowerment</b>	An environment in which the employee feels safe taking calculated risks. Along with coaching from the supervisor and the proactive removal of obstacles from the employee's path, this environment enables the employee to succeed.	Be sure to ask yourself the important question, "will my actions encourage, or discourage my employee in the future?" If you are correcting an employee it will be important to differentiate between the _____ and the _____ of the rule.
<b>Accountability</b>	The manner in which the results of an individual's actions are accepted.	Create positive and negative consequences. Although the employee needs to be responsible and accountable, you still need to be _____.

## Developing Clear Agreements

1	_____
2	_____
3	_____
4	_____

### TASK

- Communicate the \_\_\_\_\_ and \_\_\_\_\_ of the assignment.
- Explain \_\_\_\_\_ you want the assignment.

### OWNER

- Identify \_\_\_\_\_ who may need to become involved.
- Clarify \_\_\_\_\_.
- Anticipate resources and \_\_\_\_\_.

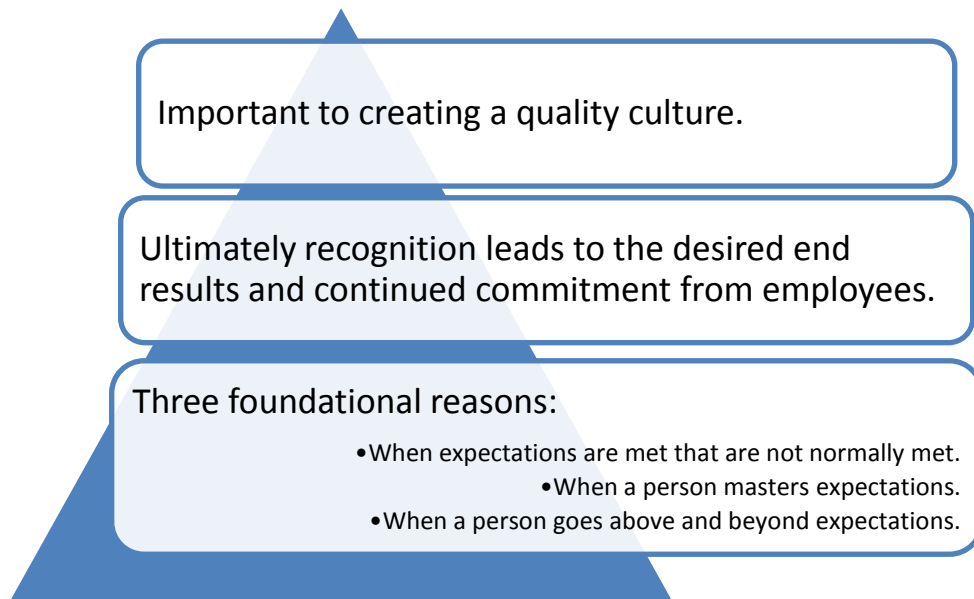
### DESIRED RESULTS

Check for: How \_\_\_\_\_? How much \_\_\_\_\_? What \_\_\_\_\_? What level of \_\_\_\_\_ & \_\_\_\_\_?

### DEADLINE

- Discuss expectations for \_\_\_\_\_ & \_\_\_\_\_ during the process.
- Clarify \_\_\_\_\_.

## Rewards & Consequences Management



### Managing Poor Performers

- **Address situation immediately.** Set sufficient time aside ASAP so issue can be addressed.
- **Recognize issue.** Prepare to discuss specific examples of behavior and how their attitude and actions are affecting their performance and other areas of the company. Document everything.
- **Set up meeting.** Provide a safe, secure and neutral environment where the employee will be comfortable speaking with you. If possible, include another management-level person in meeting.
- **Get employee buy-in.** People want to control their environment. Since they know their job best, let them share ideas and provide suggestions on how they are going to improve situation.
- **Reinforce positive outcomes.** Reinforce what they have done well. Outline results you are looking for and make sure expectations are clear, specific, attainable and realistic.
- **Set goals and time frame.** Together, break down into manageable chunks. Obtain employee commitment and deadline dates. Set a time to assess progress.
- **Provide written summary.** After meeting summarize issues, objectives and goals. Keep copy on file.
- **Assess employee progress.** Conduct follow-up sessions when needed.
- **Dismiss or reassign employee.** If efforts fail, you may need to reassign or let employee go.







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Ms. Blazkow is a Brazilian-born, U.S.-trained attorney working as an associate with Hodgson Russ LLP. She is a member of the firm's Federal/International Tax Practice and Nonprofit Law Practice Groups. She concentrates her practice in the areas of tax and estate planning with particular emphasis on business transactions, cross-border matters, and taxation of nonprofit/charitable organizations (with extensive experience in the area of unrelated business income tax). She is also an author and presenter on a number of Federal and cross-border tax topics. Ms. Blazkow received her juris doctor, *magna cum laude*, from the State University of New York at Buffalo School of Law and received her B.S., *magna cum laude*, in Business (with a concentration in International Business) from Georgian Court University. She is admitted in New York and New Jersey.

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Sara is an audit principal with over 12 years experience in services to governments, nonprofits, and commercial businesses. She specializes in counties, school districts, and towns and is involved in the Firm's government niche. She is a member of the American Institute of Certified Public Accountants, New York State Society of Certified Public Accountants (NYSSCPA), the NYSSCPAs Public Schools Accounting Committee, the Association of School Business Officials, the Western Chapter of the Government Finance Officers' Association, the Institute of Internal Auditors, and is active in the New York State Association of Counties. She graduated from the State University of New York at Geneseo where she obtained a Bachelor of Science degree in accounting. Sara serves on the board of directors of the SPCA Serving Erie County, where she is also the chairperson of the development committee and a member of the finance committee.

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Dr. Kathryn A. Foster is Director of the University at Buffalo Regional Institute. Prior to assuming her current position in 2005, she was chair of the UB Department of Urban and Regional Planning where she remains an associate professor (on leave). An expert in regions and governance, she is the author of *The Political Economy of Special-Purpose Government* (1997), *Regionalism on Purpose* (2001), and numerous book chapters, policy reports, and articles. At the Institute, Foster directs an eight-member staff of professionals engaged in research and policy analysis on a host of regional issues. A frequent public speaker, she directed the Regional Institute's award-winning performance measurement project, *State of the Region: Performance Indicators for the Buffalo-Niagara Region in the 21<sup>st</sup> Century*. In April 2007, she was appointed to the New York State Commission on Local Government Efficiency and Competitiveness, and also served on the statewide Task Force on Maximizing School District Resources. In August 2007, *Business First* selected Foster as its 2007 Woman of Influence in public policy. She received her Ph.D. in public and international affairs from Princeton University.

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Mr. Larkin is Technical Director for Not-for-Profit accounting and auditing for the Institute for Nonprofit Excellence in the Washington, D.C. office of BDO Seidman, LLP. Previously he was Technical Director in the Not-for-Profit Industry Services Group in the national office of PricewaterhouseCoopers LLP, with responsibility for assisting firm partners and staff worldwide with accounting and auditing issues involving not-for-profit organizations. He is a certified public accountant with over forty years of experience serving a wide variety of not-for-profit organizations as independent accountant, board member, treasurer, and consultant. He teaches, speaks and writes extensively on not-for-profit industry matters and is active in many professional and industry organizations. Professional memberships have included the Financial Accounting Standards Board Not-for-Profit Advisory Task Force, the AICPA Not-for-Profit Organizations Committee (three terms), the Evangelical Joint Accounting Committee, and the AICPA Not-for-Profit Audit Guide Task Force (chair). He has been a member of the governing boards of several not-for-profit organizations, including Children's Hospice International, the Grass Foundation, and the Washington Cathedral Choral Society (also a singing member of the chorus). He is a co-author of the fourth, fifth, and sixth editions of *Financial and Accounting Guide for Not-for-Profit Organizations*, author of the first edition of *Financial Statement Presentation and Disclosure Practices for Not-for-Profit Organizations* (published by the AICPA), as well as numerous articles. He is an adjunct professor of not-for-profit management at Georgetown University, and is a member of the Peace Corps taught business administration at Haile Sellassie I University in Addis Ababa, Ethiopia.

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Raymond N. McCabe is a partner with the Buffalo office of Hiscock & Barclay, LLP. Mr. McCabe concentrates his practice in the areas of federal and state taxation and employee benefit law (ERISA). Mr. McCabe also practices in the areas of corporate law and not-for-profit corporate law. Mr. McCabe has substantial experience in the areas of corporate reorganization and mergers, business tax planning, retirement planning, tax audit and appeals, and tax litigation. His practice is enriched by his prior work experience with the office of Chief Counsel of Internal Revenue Service. Mr. McCabe is a frequent speaker in areas involving taxation and employee benefits.

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Lori E. Miller is owner and president of Developing Professionals, a company that provides training, consulting, and coaching services to organizations in Leadership and Professional Development. She has conducted hundreds of seminars and workshops both locally and nationally for corporations, non-profit groups and professional associations. Her areas of expertise include soft skills training for professional development; management and leadership development programs; process improvement and model creation; and employee engagement and goal attainment. She serves as a part-time adjunct communications professor at Buffalo State College. Her background includes 20 years of management experience in Human Resources and Communications working in Fortune 500 companies, media, and higher education. She has a M.S. in Organizational Communication and Development from Canisius College, and a M.A. in Student Personnel Administration, and B.A. in Journalism from Buffalo State College. Her company was awarded WBE certification in New York State in 2006.

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Dianne is a Specialist with the IRS's Federal, State & Local Government Division (FSLG). Having been with the IRS as a Revenue Agent since 1975, she first worked in the Exempt Organizations division and then in FSLG, helping government entities with their federal employment tax requirements. During her years with the government, she has also taught employment taxes and conducted outreaches to various groups to help them with their employment tax responsibilities. Her work includes conducting employment tax examinations and compliance checks of local government entities as well as assisting them with questions related to various employment tax issues.

### **AARON L. PINDER**

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Special Agent Aaron Pinder currently works on the Cyber squad in the Buffalo Division of the Federal Bureau of Investigation, primarily investigating Computer Intrusion and Crimes Against Children cases. Prior to joining the Bureau, SA Pinder worked for several years as an Information Security consultant in Tampa and Miami, FL. Working for several large financial institutions conducting web application security testing. SA Pinder has a Bachelors Degree in Computer and Information Science and a Masters in Business Administration from the University of Florida.

### **JOHN P. SCHIAVONE, CPA**

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John leads our Governmental Services Niche, where his responsibilities include management and oversight of our school district practice, consisting of internal and external auditing and reporting services for school districts throughout New York State. John is also responsible for other governmental agencies including counties, towns, villages, public authorities and fire districts. John has extensive knowledge in GASB reporting standards and leads our group in assisting clients with the implementation of newly required standards. John's diversified industry experience includes manufacturing, construction, retail petroleum distribution, convenient stores, cooperatives, nonprofits, single audits under OMB A133, employee benefit plans, closely-held businesses and individuals. He is responsible for supervision of various services in these industries including auditing, consulting, tax compliance, cost reporting and government auditing standard applications. John has nearly 30 years of public accounting experience. Formerly with a national accounting firm, he has been with Lumsden & McCormick since 1989 and was named partner in 1995. He is a member of the American Institute of Certified Public Accountants; New York State Society of Certified Public Accountants Government Accounting and Auditing Committee; Association of Business School Officials WNY Chapter; Government Finance Officers Association; past Treasurer of the Niagara USA Regional Chamber; and served on the Erie County Audit Committee. John is a graduate of Duquesne University, with a Bachelor of Science in Business Administration, Accounting concentration.

**LUMSDEN & McCORMICK, LLP**  
**EXEMPT ORGANIZATIONS CONFERENCE - DECEMBER 2, 2010**  
**EVALUATION FORM**

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Thank you for attending. Please take a moment to complete this evaluation form. Your comments and suggestions will help us effectively plan future conferences. Rate the conference and speakers using the 5-point scale below.

<b>Evaluation Rating Scale</b>	<b>5</b> Excellent	<b>4</b> Above Average	<b>3</b> Average	<b>2</b> Below Average	<b>1</b> Poor
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1. Please indicate the number rating that applies using the 5 point scale above:

	Overall impression of the seminar
	Course content was consistent with your expectations
	Quality of topics/information presented
	Length of seminar
	Conference facilities were comfortable
	Conference was well administered and organized
	Conference was worthwhile to attend

2. Please indicate the number rating for each of the three colored areas using the 5 point scale:  
*If you did not attend a particular session, please indicate N/A.*

	Extended Topic Knowledge	Speaker Knowledge & Skills	Presentation Materials/ Handouts
Health Care Reform – Raymond McCabe			
Employment Tax - Dianne Morse			
UPMIFA - Richard Larkin			
GASB 54 - Sara Dayton			
GASB 54 - John Schiavone			
UBIT - Geanne Blazkow			
Human Motivation - Lori Miller			
Big Change - Kate Foster			
Cyber Fraud - Aaron Pinder			

