

***The Affordable Care Act:
Rules, Regulations and
Implementation***

***Federal Reserve Bank of Atlanta
January 9, 2014***

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Likelihood of “Accommodative” Actions

The recent federal budget agreement demonstrates that legislative conditions have shown modest improvement. But the overall level of partisanship remains elevated – especially in the medium-term through Q4 of 2014. Hence, expectations of significant legislative improvements in the foreseeable future would represent unwarranted, irrational exuberance.

- **Republicans: ACA is fundamentally flawed.**
 - ACA will remain focus of at least one more election cycle
 - Long term objective – “Repeal and Replace”
- **Democrats: ACA is “too big to fail”**
 - Recognize areas requiring improvement
 - Concerned they cannot control legislative process; therefore rely on unilateral executive branch actions

Opportunities for Consensus

Cooperative bi-partisan legislative activity is expanding – albeit at a moderate pace – and as modified by political expediency.

- ◉ **Practicalities of ACA implementation for multiple stakeholders**
- ◉ **Topics of possible emerging bi-partisan agreement**
 - Medical device tax
 - Transitional Reinsurance Program fee
 - Full-time employee definition
 - Individual mandate delay
 - ◉ End of Q 1 enrollment period
 - ◉ Obama Administration will “closely monitor” public sentiment
 - ◉ GOP will seek to force a vote on repeal or delay (e.g. debt ceiling extension?)

“Retrenchment” of a Federal Role

Consistent with its statutory mandate, the ACA permits the federal government to engage in “swap arrangements” with state governments.

- ◉ **States have many decisions to make**
 - Expansion of Medicaid
 - Take over operation of the insurance exchanges/ marketplaces
- ◉ **State Innovation Waivers**
 - Move up timetable from 2017
 - Narrow or broad interpretation
- ◉ **Other state efforts**
 - Taxing large self-insured health plans
 - Erosion of uniform federal framework

Significant Fiscal Policy Factors

Given the likelihood of health care inflation persistently outpacing general CPI-U, the 40% excise tax on high-cost “Cadillac” plans, increases the risk of future imbalances and, over time, could cause a decrease in workers’ expectations of continued employer-sponsorship of health coverage.

- **Elements of the “Cadillac” tax**

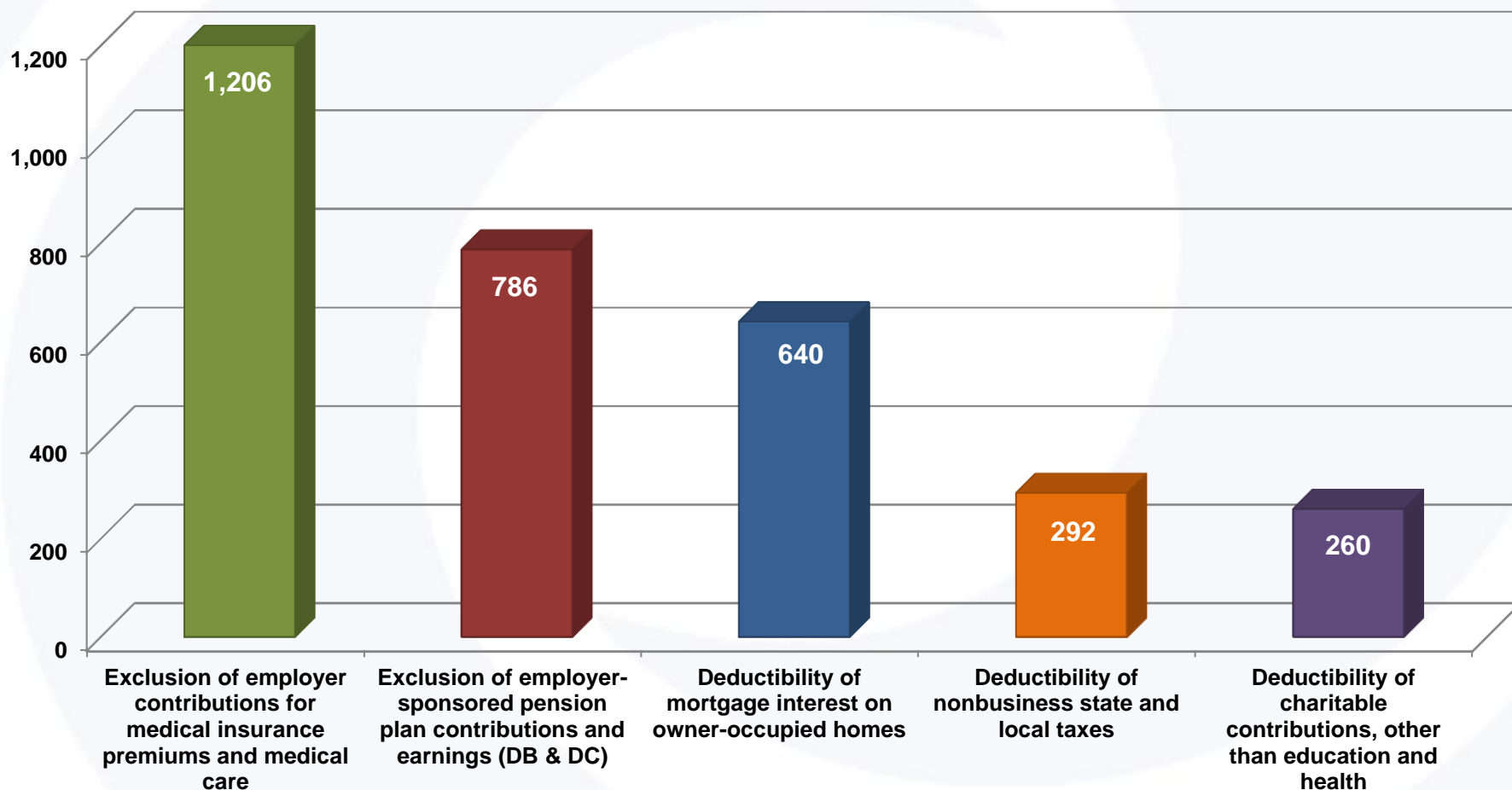
- In 2018: \$10,200/ single and \$27,500/ family
- Indexed to CPI-U + 1% in 2019 and CPI-U thereafter
- The next Alternative Minimum Tax scenario?

- **Political and policy dimensions of the “Cadillac” tax**

- Alternative to limiting tax-excludability
- Assumption of revenue gain; increasingly costly to modify/ repeal
- Prospects for comprehensive tax reform and/ or deficit reduction

Significant Fiscal Policy Factors

Tax Expenditures, Fiscal 2014-2018: Projected Dollars in Billions



Source: U.S. Office of Management and Budget (OMB), *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2014*

Taxing Health Benefits

- ◉ **Limit excludability for employees of high cost plans; no specific proposals to limit employer deductibility**
 - Link exclusion to Cadillac tax threshold
 - Simpson-Bowles: phase out exclusion entirely; and reduce excise tax from 40% to 12%
- ◉ **American Health Care Reform Act (H.R. 3121)**
 - Limit excludability: \$7,500 single/\$20,000 family
 - Standard deduction: \$7,500 single/\$20,000

Taxing Health Benefits

- ◉ Limit excludability for high earners
- ◉ Subject cost of health coverage to payroll taxes
- ◉ Limit ability to pay employee share of premiums on a pre-tax basis
- ◉ Congress is politically sensitive – at the moment – to taxing employees on the cost of coverage
- ◉ Impact on continued support for employer-sponsored coverage and interaction with reformed health system

Conclusion

Our current assessment is that the prospect of near-term legislative improvements in the ACA remains low. Of course, the various sectors of the public policy advocacy community will continue to evaluate the systemic risks to their respective interests and will do so with due regard for the efficacy and costs of their lobbying efforts, and in a way that is consistent with the forward guidance of their constituencies and responsive to the outlook for the evolution of health care reform's cumulative progress.

For more information:

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