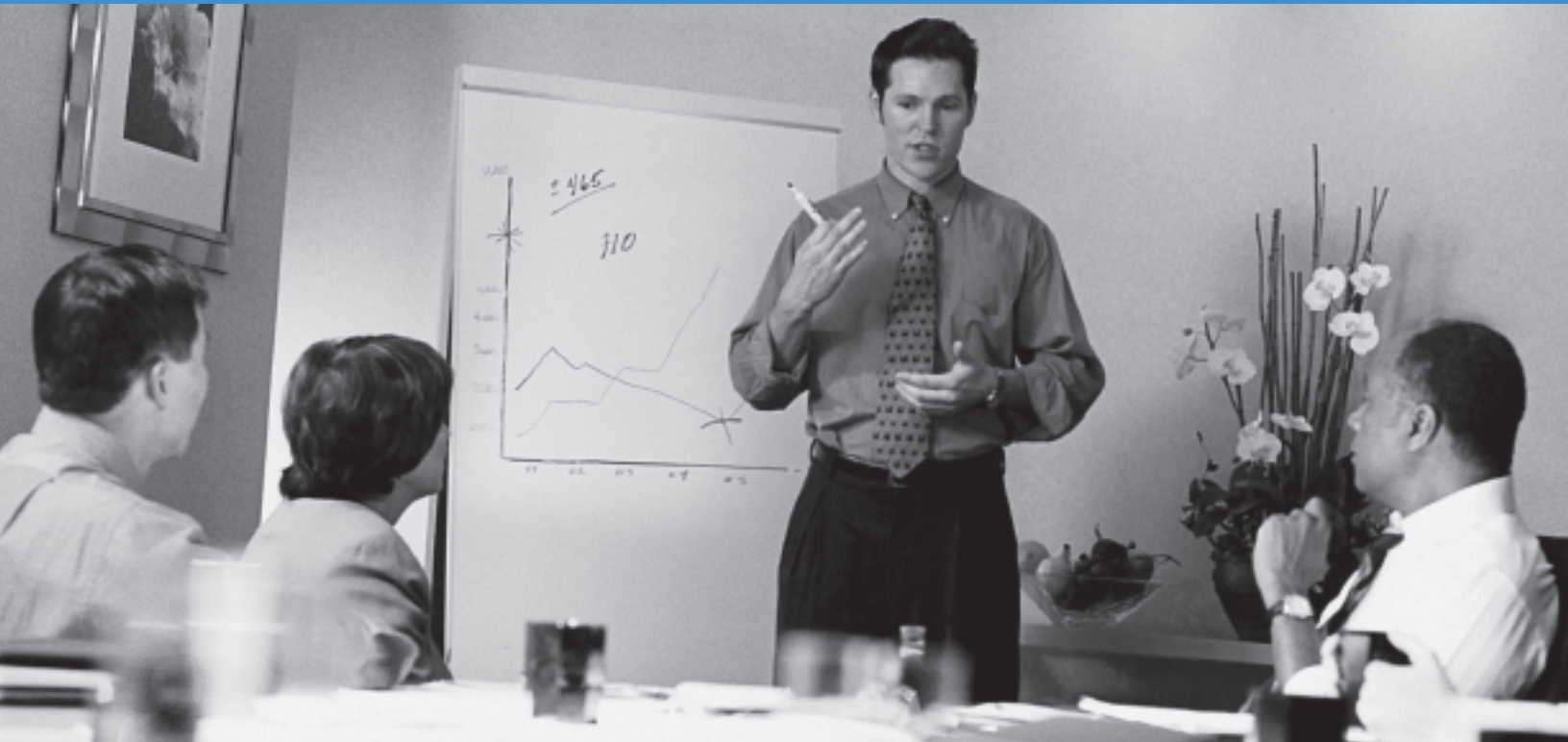


# 10 Trends

*That Will Change the Way You Do Business*



1. Modest Economic Growth Ahead .....	2
2. Slow Thaw for Credit .....	3
3. Commercial Real Estate Dogging the Economy .....	3
4. The Postrecession Consumer .....	4
5. The Way We Sell .....	5
6. Federal Deficit in the Danger Zone .....	7
7. State Budget Nightmares Mount .....	8
8. Federal Regulators Taking The Offensive .....	9
9. Tighter Scrutiny for Business Deals .....	10
10. Employees Eyeing the Door .....	11

**A Special Report Prepared Exclusively for Kiplinger Clients**

## 1

# Modest Economic Growth Ahead

Originally published Jan. 2010 on [Kiplinger.com/your-business](http://Kiplinger.com/your-business).

**2010 WILL BE ONE OF TRANSITION AND LUKE-WARM GROWTH FOR A SHAKY U.S. ECONOMY.** Federal aid will carry the economy into the second half of the year as it struggles to overcome lingering challenges. But the government will begin to carefully withdraw this year after pulling the economy back from the brink and spurring a recovery through massive intervention. Expect a very different landscape a year from now. Government will still be an active player, but look for the economy to stand more on its own feet.

**GONE WILL BE MANY OF THE EMERGENCY PROPS** put in place when fears of a depression reigned. Taking their place: More federal regulation, as Congress and the administration increase oversight in hopes of preventing another financial crisis.

We expect moderate growth: a gain of about 3.5% in GDP for 2010 with a net increase of 1 million jobs. That will be a welcome change after two years of job losses, but the payroll gains will still leave the unemployment rate close to double digits. Recoveries from a financial crisis are typically slow.

On the plus side, consumers will spend about 2% more in 2010, after cutting back by a bit less than 1% in a dismal 2009. Retail sales will gain a modest 3%. Exports are set to rise as foreign economies, especially in Asia and Latin America, keep growing. But imports will gain even more, widening the U.S. trade deficit and acting as a net negative on economic growth.

Businesses, which are sitting on a lot of cash, will help fuel economic gains in coming months, as confidence in the recovery grows and spending, especially on equipment and software, on the rise. Rising operating rates are driving the gain, and higher profit margins are enabling it. Replenishing depleted inventories is also

playing a role. They plunged over the past two years.

Housing is likely to add a tad to GDP, after dragging it down a percentage point in each of the last three years. Look for housing starts to total 715,000 this year, up from 600,000 in 2009 but well below the pace seen during much of the 1990s—about 1.5 million a year.

Inflation should remain in check at about 2%, assuming no big oil supply disruptions. And there are signs that venture capital firms are ready to begin funneling money to start-ups again. Venture capital virtually dried up last year.

**BUT, AS THE ECONOMY PICKS UP AND GOVERNMENT PULLS BACK, BIG CHALLENGES LOOM,** threatening a sustained recovery. The federal stimulus—especially spending on infrastructure—won't be nearly as large. Parts of the two-year, \$787-billion stimulus program will continue to help

some, but temporary boosts—tax breaks for home buyers, extended jobless benefits, subsidies that keep mortgage rates low, extra food stamps and COBRA subsidies, to name a few—are set to expire this year.

State governments will cut back, too, as they struggle with budget shortfalls that already total more than \$170 billion. Deficit spending isn't an option for them. Any additional federal aid forthcoming won't be enough to avoid significant state austerity measures.

In fact, economic growth will hinge in no small part on the skill of government officials. If they pull back too quickly or too slowly, it could have a devastating effect, either snuffing out a nascent recovery or bringing on a dangerous round of inflation. Banking regulators and the Federal Reserve jumped in with both feet when the financial crisis hit in late 2008 and followed up with scores of additional steps in 2009. Getting out won't be so easy.

Expect  
a very  
different  
landscape  
a year  
from now.



# 2

## Slow Thaw for Credit

Originally published April 2010 on [Kiplinger.com/your-business](http://Kiplinger.com/your-business).

**IT MAY NOT FEEL LIKE IT YET, BUT THE CREDIT LANDSCAPE IS STARTING TO COME OUT OF THE DEEP FREEZE**, thawing after three years of being buried in ice. It'll be a very gradual warming to be sure, likely to take a year or even longer to bring the borrowing environment back to "normal."

And it'll be spotty. The climate in areas where the economy is in the worst shape will remain frigid longer. In Calif., Fla., Ga., Mich. and the Upper Midwest, Nev., Ariz. and Utah, for example, the struggle won't fade for a long time.

But easier borrowing will nurture growth in much of the rest of the country. And that, in turn, will spur more hiring, more income and more buying, initiating a virtuous circle that will eventually spread the gains widely.

The fact is, banks have pots of money. Bank losses, it's true, remain huge. The industry racked up a whopping \$187 billion in losses in 2009, and another giant hole is likely again this year. But delinquencies and charge-offs are slowing. And reserves have been greatly strengthened: At 3.1% at the end of 2009, they were greater than at any time since 1934, when the Federal Deposit Insurance Corporation first started to keep such records.

Banks' equity-to-asset ratio is high as well: 11%, the highest that percentage has been since 1938. And that's despite banks paying back about three-quarters of what they owe U.S. taxpayers — a debt incurred when the fed-

eral government poured capital into banks and financial corporations in 2008 to avert a systemwide meltdown.

It's not just big banks, either. Most community banks are plenty liquid, though commercial real estate woes will cause well over a hundred to fail this year. As rents continue to fall, some borrowers won't be able to meet their loan payments.

So it's not lack of funds, but a combination of lack of confidence and tougher lending and regulatory standards that are keeping bankers' fists clenching the pursestrings.

But there are signs that the grip is loosening. In Jan., for the first time since 2007, the share of banks tightening terms on business loans was nearly offset by the share that told the Federal Reserve they were easing terms. As the year unfolds, a majority are likely to report that they are willing to cut borrowers some more slack. And fewer businesses will find that loans are hard to get.

For creditworthy businesses, the milder climate will be welcome news. They'll have an easier time with their bankers. More who want to grow will be able to. And it's heartening across the board. As the federal stimulus winds down toward year-end, somewhat easier credit will help the private sector carry the ball.

It's not lack of funds, but lack of confidence and tougher lending and regulatory standards that are keeping bankers' fists clenching the pursestrings.

# 3

## Commercial Real Estate Dogging the Economy

Originally published March 2010 on [Kiplinger.com/your-business](http://Kiplinger.com/your-business).

**COMMERCIAL REAL ESTATE IS THE BIGGEST SOFT SPOT IN THE ECONOMY RIGHT NOW.** Although sales are finally starting to tick up after sliding for six straight quarters, that's just the first step in a long slog to recovery, and the troubled sector will remain a drag on the economy for at least another year.

Transaction volume is still light, but there are signs of healing. The value of deals made inched higher in the third quarter of last year and increased a bit more in the fourth. Investors decided to come off the sidelines, attracted by bargains on top-tier malls, offices and apartment buildings. Still, there's a long slog ahead.

The troubled sector will remain a drag on the economy for at least another year.

**THE VACANCY RATE WON'T TOP OUT UNTIL THE END OF 2010**, however, at around 17.5% for offices and 15% or so—a record high—for industrial property. Making matters worse, there's plenty of “shadow space”—offices that were emptied by layoffs but are still leased. That space doesn't show up in vacancy rates, but until companies refill it, they won't be looking for additional space.

Defaults and foreclosures will climb as well. Between a quarter and half of all commercial real estate loans maturing this year and next are underwater, reflecting inflated purchase prices at the peak of the boom in 2006 and early 2007 and the subsequent 40% plunge in values.

**INEVITABLY, MORE BANKS WILL BITE THE DUST.**

Our estimate: about 350 in 2010-2011. We expect as many as 700 institutions to fail by 2014, mostly small banks that avoided the subprime housing collapse but went heavy into commercial property. Since January 2008, about 190 banks have fallen by the wayside.

Regulators are urging lenders to be flexible, amending and extending loans that are coming due — about \$150 billion this year and \$170 billion more in both 2011 and 2012. And many banks are modifying terms if a borrower has decent cash flow. But with rents down more than 10% on average over the past year, that's limiting the number of loans that qualify.

And the fact is, even if banks don't foreclose or write down loans that have gone sour, they are winding up with less money to lend. During the boom, loans were repackaged and sold to investors as securitized debt. That replenished banks' supply of lendable funds. But that market has dried up. With no way to offload outstanding loans, and relying more heavily on deposits to fund loans, banks are much more tightfisted when borrowers want to renegotiate loans coming due. In 2007, investors bought nearly \$20 billion a month in securitized debt. In January 2009, the total was just \$80 million.

**THE TIGHT CREDIT SITUATION IS CRIMPING GROWTH ACROSS THE BOARD**, not just in construction and industries tied to real estate. There's little risk, however, of the problems triggering another big downturn in the economy. Ailing commercial real estate doesn't pack the punch that problems in the residential market did, when defaults and foreclosures prompted the financial markets to freeze and nearly sparked a panic.

Washington can do little to speed the recovery. The Federal Reserve's program to buy securities backed by commercial real estate hasn't helped much. It's a case of waiting for the fever to run its course and patiently looking forward to a better 2011.

## 4 The Postrecession Consumer

*Originally published Sept. 2009 on Kiplinger.com/your-business.*

**THOUGH IT HURT DURING THE RECESSION, CONSUMERS PULLING BACK THEIR SPENDING IS A GOOD THING**, restoring balance to the economy after a binge of credit-driven spending and a decade or more of chronic undersaving. There's no question that the abrupt withdrawal was painful, exacerbating the depth and duration of the economic downturn. And the moderation of consumer spending spells a recovery plagued with pokey growth, paltry hiring and piddling wage gains.

**IN TIME, THE CHANGE IN BEHAVIOR WILL MEAN A MORE STABLE ECONOMY**—one that draws its strength from multiple sources—and a return to healthier growth, less dependent on borrowed money. The share of gross domestic product (GDP) generated by consumer expenditures will return to the previous norm—the 66%-68% slice it held before the dot-com boom in the late 1990s.

Turbocharged spending, fueled first by broad stock mar-

ket gains and then by years of easy credit and a skyrocketing housing market, swelled consumers' share of GDP to about 71%. Now the recession, a plunge in home prices, rising unemployment, a credit freeze and scant wage gains are applying the brakes.

**WHAT WILL TAKE UP THE SLACK SHED BY CONSUMERS? EXPORTS, FOR ONE.** They're likely to grow by about 14% in 2010, the same as imports. But as other economies around the globe shake off the recession and begin to expand again, exports should soar. Aircraft, tech and financial services will all benefit.

In time, the change in behavior will mean a more stable economy, drawing its strength from multiple sources and less dependent on borrowed money.

### COUNT ON BUSINESS SPENDING TO ALSO PICK UP.

Look for firms to start buying equipment, bumping up capital investment (including inventory accumulation) by 15% for the year. What's more, within a few years, as the overhang of office, retail and factory space is worked through, businesses will start to invest in construction as well, building new plants and offices.

Odds are it will take four or five years to make the adjustment. By about 2014, the engine of consumer growth will get an assist from these smaller, but potentially powerful, locomotives. Average yearly growth of just 5% for exports and business investment—well within recent historical boundaries—would easily offset the loss of consumer steam power.

A drop of three percentage points in the personal consumption spending share of GDP amounts to about \$420 billion today. Exports alone increased by \$350 billion in the two-year period of 2006 and 2007.

**IN THE MEANTIME, THE ECONOMIC PACE WILL BE DISTINCTLY SUBPAR.** Growth will be slower and unemployment

higher than during much of the 1990s and early 2000s.

In the 12 months following a recession, GDP typically racks up a gain of about 6.5%. Not so this time. With unemployment remaining well above 9% through all of 2010 and consumers holding back—chalk-ing up a mere 2% increase in spending—overall economic growth is likely to be less than half of the usual postrecession glow. We anticipate a gain of 3.25% in 2010.

### FOR BUSINESSES, THE ABSENCE OF OVERHEATED CONSUMERS HAS A SILVER LINING.

Inflation will remain subdued. Measuring from Dec. to Dec., the Consumer Price Index should increase only about 2% in 2010 and won't head much higher for a few years. In such a climate,

stocks should do well, providing businesses with a favorable return on investment.

The one threat to the new balance: Continuing increases in federal spending. Unless President Obama and Congress apply a brake, big deficits will lead to rising interest rates and higher inflation.



# 5

## The Way We Sell

*Originally published Feb. 2010 on [Kiplinger.com/your-business](http://Kiplinger.com/your-business).*

**IN THE MARKETING AND ADVERTISING WORLD, NEW TECHNOLOGY IS SPARKING A REVOLUTION.** The ability to reach customers anytime, anywhere, and to target only the most promising prospects is altering how would-be sellers and buyers interact.

Those forces are reshaping the \$600-billion-plus industries. And it's affecting companies of all kinds, posing challenges and offering new opportunities.

**ONE DEVELOPMENT KEY TO THE CHANGES: THE GROWTH OF DATA MINING**—the collection and analysis of billions of bits of information, which lets marketers figure out the needs and wants of individual shoppers and how to appeal to them. Instead of marketing to all—using the same television ad broadcast nationwide, for example,

or an ad in the local newspaper—and hoping to snag the interest of some potential buyers, marketers can filter their potential audience to only those who are most likely to be interested. The consumers—whether recipients of direct mail, e-mail, text messages on smart phones, Web surfers, magazine subscribers or others—can be screened by age, gender, location, income, kids' ages, household size, previous purchases and much more.

Targeted campaigns, which are far more cost effective than broad-sweep campaigns, will nab 75% of spending on marketing and advertising by 2013.

Such targeted campaigns, which are far more cost effective than broad-sweep campaigns, will nab 75% of spending on marketing and advertising by 2013, up from 55% in 2003. That's because a company's best future customers are those they already have; money spent on marketing promotions and loyalty programs targeted at known buyers are the most likely to pay off.

**THE SECOND CRITICAL DEVELOPMENT: THE BLOSSOMING OF THE WEB AND NEW MEDIA.** Today companies have at least 60 ways to reach consumers, up from about a dozen 30 years ago, says media-focused private equity firm Veronis Suhler Stevenson. And most of those routes aren't conventional ads. Rather, they are Twitter messages, product placements in movies, video games and the like, Facebook pages, online contests, coupons sent via cell phones and more. Although marketplaces have been getting more crowded for decades, the speed and density of the crowding has accelerated in the past 10 years. Today, companies are less sure of who is listening or watching and they need to find an audience wherever they can.

What's more, consumers at this media buffet are choosing less ad-supported media than in the past, opting instead to subscribe to premium cable or social network sites, for example. By 2013, only about 45% of all media consumption will be ad-supported. In 2003, 60% was. As a result, businesses will have to reach consumers in nontraditional ways—creating events around media properties, the way Martha Stewart or *American Idol* has done, for example. Traditional ads can still be successful marketing tools, but they're just a jumping-off point. Businesses need to have other components that build on them—TV ads that feature Web site addresses and social networking opportunities, for example.

**THE RECESSION HAS PLAYED A ROLE IN THIS DRAMATIC SHIFT IN THE INDUSTRIES,** of course. The economic downturn took a toll on all types of advertising

and marketing spending. It reached a peak in 2007 and probably won't chalk up gains again until at least 2011.

**THE ECONOMIC SLUMP WORSENERD THE HIT THAT PRINT AND BROADCAST ARE TAKING** from the technology changes. With money tight, companies put more of their resources into online and other media where ads can be closely targeted, getting a bigger bang for their buck. Newspaper ad revenue has plunged 40% since 2003 and will slide by an additional 20% by 2013. Magazines are faring a bit better: A drop of 20% since 2003, with 12% more decline likely by 2013. Network television ad revenue, which shrank by a whopping 15% in 2009 alone, will also continue to shrivel. Meanwhile, online advertising suffered a milder blow and will grow about 7% this year, though it still only makes up about 10% of all media advertising. That's why it's important for marketers to sustain a mix of approaches.

For buyers of marketing and advertising, this new modus operandi is a boon. Not only is targeted marketing more cost effective, but results are more measurable. For example, now marketers expect to be able to tally the time and money customers spend on Web sites and to count not only the number of coupons redeemed, but how

many additional purchases were made at the same time.

Small firms may particularly benefit from the ability to target local audiences. Ditto, niche firms that market solely to consumers who fit a specific profile. If a company has a customer universe of 5,000 people, it can reach them pretty efficiently without the expense of a mass advertising campaign, through a local e-mail campaign, for example.



## 6

# Federal Deficit in the Danger Zone

Originally published Jan. 2010 on [Kiplinger.com/your-business](http://Kiplinger.com/your-business).

**TIME IS RUNNING OUT FOR ATTACKING THE DEFICIT.** The danger, once distant, is now close. Soaring deficits are jacking up the national debt, resulting in higher interest rates and raising the odds of an even weaker dollar, which would stunt economic growth and lower Americans' future standard of living.

**SPENDING IS OUT OF CONTROL.** For years it has averaged about 20% of GDP. In 2010, it'll be about 25%. Some of that is due to spending on war in the Middle East as well as efforts to cushion the effects of the recession through higher unemployment benefits, aid to banks and state governments, spending on roads and highways, and more. Plus, tax receipts diminished as the economy shrank.

**BUT EVEN AFTER THE ECONOMY FULLY RECOVERS,** outlays won't ebb. The growing ranks of retirees mean that Medicare and Medicaid costs will keep soaring, even if health care reform successfully curbs increases in the cost of care—an iffy proposition at best.

Such entitlement programs—those that lawmakers don't control on a year-to-year basis but that run on a sort of autopilot—account for 54% of federal spending. And they've climbed 6.4% on average every year since 2000. When it comes to spending that it can control annually, Congress has shown little restraint. Discretionary spending, which includes defense and an array of domestic programs from national parks to the FBI, has risen over the past decade at an average of 7.5% a year.

The result is an annual deficit that in fiscal 2009 was equal to nearly 10% of GDP, the largest since it hit 21.5% in 1945 at the end of World War II. What's worse is that a mountain of debt will continue to pile up even if the politicians in Washington manage to keep a rein on spending and trim the yearly deficit. In fiscal 2009, federal debt held by the public jumped by a third, to \$7.8 trillion. At the end of fiscal 2008, debt held by the

public measured 41% of GDP. By 2014, it'll equal a whopping two-thirds of GDP.

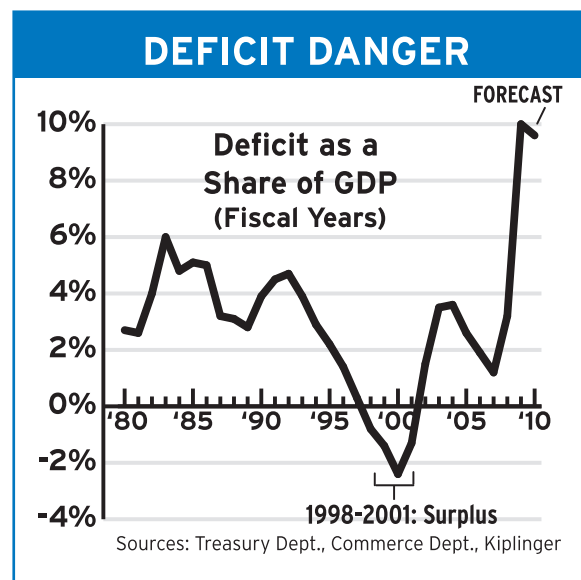
The interest payments on the debt will be staggering. They could soar to as much as \$800 billion a year by the end of this decade, gobbling up 16% of the total budget. Indeed, servicing the debt may become the single biggest item in the federal budget, surpassing Medicare, defense and Social Security.

That would raise the cost of borrowing for everyone—households and businesses alike. And it threatens to derail the U.S. economic engine. A jump in the debt from 40% of GDP to 60% would boost the rate on Treasury bonds by a full percentage point. Other interest rates, such as those for mortgages and corporate bonds, would follow. And if the U.S. loses its top credit rating—until recently, an unimaginable event—interest rates will increase even more.

China, Saudi Arabia and other cash-rich nations would insist on higher returns to keep buying U.S. Treasuries at auctions. Foreign nations, which own about half of the \$7.8 trillion public debt, don't need to sell to make waves. They could simply slow their rate of buying. That might tempt the Federal Reserve to buy debt in order to stave off a rise in interest rates. But that's no way out. Countries that have tried that have wound up with double-digit inflation.

**THERE ARE NO EASY FIXES.** The fact is that eliminating the federal deficit by the end of this decade—as some politicians propose—is a pipe dream. Even paring it to 3% of GDP by 2015, as Obama wants to do, will be tough. Holding it at that level, economists say, is critical to stabilizing the federal debt level and relieving pressure on interest rates.

A mountain of debt will continue to pile up, even if the politicians in Washington manage to keep a rein on spending and trim the yearly deficit.



The political obstacles are huge. Elected officials in both parties agree that belt-tightening is needed. But it's usually someone else's waist they want cinched. The simple fact is, politicians respond to the concerns of the constituents, and though voters are increasingly troubled by swollen deficits in the abstract, they're not enthusiastic about cutting programs that directly benefit them. And proposals for tax hikes—or the loss of current tax

breaks—are embraced or rejected by members of Congress depending on whose ox will be gored.

**SOLVING THE PROBLEM WILL TAKE UNPARALLELED RESTRAINT AND DETERMINATION** by elected officials of all stripes. And spending cuts or tax hikes alone won't provide a cure. Real deficit trimming is likely to come only with robust economic growth, as Uncle Sam's coffers start to fill with tax revenues from thriving businesses.

# 7 State Budget Nightmares Mount

Originally published Jan. 2010 on [Kiplinger.com/your-business](http://Kiplinger.com/your-business).

**THE BUDGET PICTURE IN THE STATES IS WORSE THAN BLEAK.** Even as the national economy shows some signs of improvement, states will continue to wrestle for several years with large and looming budget strains that will force them into strict austerity.

State budget holes are getting deeper. Revenues fell dramatically in 2009—down 11.1% in the sharpest decline in 46 years. Corporate income taxes slid the most, 17.5%, but individual income and sales tax revenues were also down, by 11.3% and 8.8%, respectively.

Making it worse are publicly-supported health benefit cost hikes, unemployment payouts and larger social welfare rolls due to the recession and its lingering effects.

The result: A combined shortfall of \$170 billion for the fiscal year that will end in five months. Worst off: California, Michigan, Ohio, Florida, New Jersey, Arizona and Illinois. Only four states—North Dakota, South Dakota, Wyoming and Montana (all of them low in population and rich in natural resources)—are on track for balanced budgets in fiscal 2010. Alaska, too, is better off than most, but it faces some budget shortfalls because of the drop in the price of oil.

**NEXT FISCAL YEAR WILL BE EVEN TOUGHER FOR MOST.** The states will need to cut a total of about \$180 billion, some 15%-20%, from this year's levels. That's due to skimpy revenue flows

continuing in personal income, the exhaustion of one-time budget fixes and the end of large federal economic stimulus funding still in the pipeline. Also looming on the horizon are immense and mounting costs related to public-worker pensions and health care.

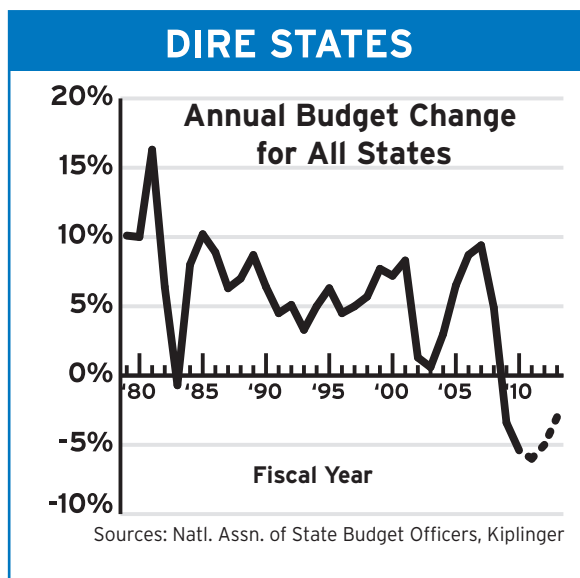
The deficit-saddled Congress can't afford a real rescue, but federal aid doled out in a jobs bill will help some. With many state rainy-day funds depleted, deep spending cuts are unavoidable. That will mean smaller state governments, with fewer services, for years.

Governors, lawmakers and mayors are scrounging for any and all savings. Obvious cuts, including state worker layoffs and furloughs and postponing infrastructure projects, have helped a bit, but most states are being forced to dig deeper and find more innovative approaches.

**ALL STATES ARE TRIMMING SERVICES.** Nevada has closed its consumer affairs office for at least six months. Washington will end funding for 75 state commissions and

boards. Michigan is consolidating public service and other departments to save \$2 billion in overhead and administration. Massachusetts has the same idea. It may combine

States will wrestle for years with large and looming budget strains that will force them into strict austerity.



about two dozen transportation agencies into one, with projected savings of \$7 billion over a decade. Alabama is likely to adopt a 3%-4% across-the-board agency spending cut.

Many states are contracting out key functions to save. Colorado will privatize all of its minimum security prisons. South Carolina may farm out administrative management of its entire motor vehicle department.

Some cuts will hurt businesses. Iowa, Missouri and Arkansas will scale back aid for rural businesses, meaning fewer business-expansion tax incentives and less marketing aid. Iowa will also put a hold on tax incentives for biotechnology firms. Farmers in Montana, New York, North Dakota and Vermont will get less help.

California and New York will borrow billions. That's a risky step, but it's one they will be forced to take as state legislatures are gridlocked for the time being over serious annual budget restructuring.

**ONE THING STATES ARE STILL VERY RELUCTANT TO DO: RAISE TAXES TO FIX SHORTFALLS.** But that may change. A referendum vote in Oregon to confirm a boost in taxes on some businesses and on individuals making over \$125,000 a year (and couples making more than \$250,000) may be a sign the public won't accept more cuts in education and other services.

In the past year, eight states have raised taxes on wealthier families, a move also favored by President Obama on a national scale. Republicans object to hikes on the rich, calling it a new form of class warfare. And most economists believe that tax hikes in a struggling economy are counterproductive. Still, the Oregon vote and similar moves by other states suggest that legislators are getting desperate. They're required to balance budgets but often can't without more revenue, even as they scour their budgets for savings on the spending side.

## 8

# Federal Regulators Taking The Offensive

*Originally published Jan. 2010 on Kiplinger.com/your-business.*

**A NOT-SO-SUBTLE SHIFT IS UNDER WAY IN WASHINGTON**—from Congress to executive agencies, as regulators opt to tackle key issues themselves. That means a wide array of decisions in 2010 with important implications for businesses and individuals.

**IN SOME CASES, THE MOTIVE IS FRUSTRATION WITH CONGRESS.** Officials are tired of waiting for the House and Senate—with their full agendas and perennial gridlock—to act. In other cases, agencies are hoping to forestall action by Congress that would preempt the administration's regulatory authority. Fear that the 2010 midterm elections will put a lot more Republicans in Congress and give the GOP greater ability to block or delay Obama administration goals, makes some regulators particularly eager to act quickly. It's harder to undo something already in place, so agencies will do their best to set agendas and adopt changes before November.

Much of the new activity involves organized labor. With labor's agenda stalled in Congress—especially the prize goal of replacing secret ballot elections with card check—Obama appointees are eager to help in other ways. A faster union election process, the motive unions cite for card check, is likely now that the National Labor Relations Board has a quorum to set guidelines. Unions charge that many employers take advantage of the current system, delaying elections and using the extra time to

pressure workers. Among the options being studied by the NLRB: Telephone and Internet balloting. To make up for lost time, the NLRB may use the rulemaking process rather than wait for cases to work their way up. The NLRB could make changes through case adjudication, but rulemaking will get it done faster.

The National Mediation Board will give unions a big boost on elections at airlines and railroads, where the board has jurisdiction. Under current rules, unions can only organize if they win a majority of all eligible workers; anyone who doesn't vote is considered an automatic "no." The new rules will allow a union to win the right to organize with a majority of the votes that are cast. This is a case, say critics, that demonstrates how far the board is willing to go to push its agenda, ramming the proposal through without giving the minority a chance to respond.

Look also for OSHA to introduce an ergonomics rule through the back door. The Occupational Safety and Health Administration is barred from issuing a rule similar to the one rescinded by Congress in 2001. But OSHA plans to get around that by requiring firms to count musculoskeletal disorders in injury reports.

It's harder to undo something already in place, so agencies will do their best to set agendas and adopt changes before November.

Eventually OSHA will use that data in setting rules to deal with workplace safety hazards.

A potentially bigger cost to employers may come from greenhouse gas rules. The Environmental Protection Agency will impose caps on greenhouse gas emissions because lawmakers are stuck on climate change legislation. But it will be a long time before EPA can put anything into effect. New rules will face years of court challenges.

**CONSUMER PROTECTION WILL BE A KEY THEME IN RULES FROM FINANCIAL AGENCIES.** The Federal Reserve is trying to make up for lost time. Many law-

makers say the Fed let consumers down and should be stripped of its authority in that area. They want to create a separate consumer agency. To forestall that effort, the Fed plans consumer protection rules on everything from ATM fees to gift card expirations.

The Transportation Department is also promising to help consumers. By midyear, new rules will effectively establish a passenger bill of rights similar to the legislation stuck in Congress. A key element: No more endless runway waits in cramped planes. Travelers will get the right to deplane after three hours, with airlines facing fines of \$27,500 per passenger if they fail to comply.

# 9

## Tighter Scrutiny for Business Deals

The new focus on mergers coincides with a postrecession pickup in M&As.

*Originally published Nov. 2009 on Kiplinger.com/your-business.*

**THERE'S A NEW COP ON THE ANTITRUST BEAT,** one who's tougher and more aggressive and who has the solid backing of the White House.

Expect more scrutiny of mergers, especially as merger and acquisition (M&A) activity picks up. More heat, too, on anticompetitive moves, such as collusion, price-fixing or predatory behavior, among and between businesses in markets where few players dominate. That'll be a big change from the Bush administration, which took a more hands-off approach and only went after companies if there was clear evidence that consumers were being hurt. The Bush administration believed mergers were generally good for the economy and that a light regulatory hand was more beneficial than aggressive inspections of business practices.

**RUNNING THE CRACKDOWN: CHRISTINE VARNEY,** who heads the Justice Department's Antitrust Division. She's a former member of the Federal Trade Commission (FTC) and a Washington lawyer specializing in the Internet. She'll soon be a familiar name in many boardrooms.

**VARNEY'S FIRST MOVE WAS TO LOWER THE BAR FOR WHAT WILL TRIGGER AN ANTITRUST INQUIRY.** She's more willing to look closely at complaints that business practices limit competition, not only that consumers may be put at a disadvantage by a particular business practice.

Big companies will get the most attention, but mid-size firms, including restaurant chains, and smalls, such as regional movers, will be tagged if they appear to cut prices to kill off independents, for instance.

Internet and other high-tech firms are high on Justice's new watch list. Google is already under the microscope for its plans to launch an operating system and provide it free to netbook suppliers; for its close ties to Apple; and for its pact with authors and publishers to digitize millions of books. Although Google won't get a free ride, antitrust regulators don't go after a company only because it is big and getting bigger. Google has become a huge part of the economy.

Look for clues in the new approach to antitrust, also, in how the FTC handles ongoing allegations against Intel. The chip maker's settlement with rival Advanced Micro Devices takes some pressure off, but it won't end probes into allegations of unfair practices.

Also noteworthy is the Justice Department's investigation into makers of optical disc drives that read DVDs and CDs. Among the big players being eyed are Sony, Hitachi and Toshiba.

Other industries on the patrol list: Airlines, for possible collusion under marketing and ticketing alliances; large commercial truckers, for temporary cuts in prices that may drive independents out of business; and brand-name-drug firms for policies that allegedly delay generic alternatives. Also included are electric power providers, refiners, food processors, packers, ranchers, dairy operators and seed suppliers.

The new focus on mergers coincides with a postrecession pickup in M&As. The wider scrutiny from Washington will delay some deals, but it isn't likely to slow down interest.

# 10

## Employees Eyeing the Door

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**COMPANIES WORRIED ABOUT LOSING CRITICAL EMPLOYEES MAY HAVE GOOD REASON TO BE.** Some savvy firms are already trying to pick off the cream of the crop, and when the job market improves, more workers will gratefully seize the opportunity to jump ship. Now is the time to take actions to hang on to the most valuable employees.

**NO COMPANY SHOULD THINK IT'S IMMUNE.**

According to a survey from The Conference Board, 22% of workers want to switch jobs as soon as they can—a painful prospect. Recruiting and training a replacement, plus the loss in productivity, can cost up to three times a wage earner's annual pay.

**EMPLOYEES WITH IMPORTANT SKILLS WILL LEAVE FIRST.** Later on, the floodgates will start to open, though probably not until the jobless rate falls to 7% or so. That's not expected until 2012 at the earliest.

Now is the time for companies to take preventive steps, even while asking staffers to do more for less. Waiting until a worker who is pivotal has an offer from another firm is waiting until it's probably too late.

**FIRMS CAN TAKE SOME RELATIVELY EASY AND LOW COST STEPS:**

■ Show appreciation. Offer flexible hours and telecommuting options. Say “thanks” and “well done” whenever they're deserved. Give some extra days off or offer gift cards and bigger discounts on your own firm's products. “Employers need to show the love—job advancement, leadership, and support and recognition are high on employees' lists of what's important to them,” says Jeff Schwartz of Deloitte Consulting.

■ Take an interest in career goals and emphasize training opportunities. If promotion slots are few, offer lateral moves that allow workers the opportunity to broaden their knowledge and increase their skills.



Now is the time to take actions to hang on to the most valuable employees.

■ Keep promises, if at all possible. If a pay freeze or cut came with a pledge to catch up later, do it. Or at least explain why you can't now and when you might. “Companies that don't keep their promises will see even more dramatic losses,” says Ray Baumruk of Hewitt Associates.

■ Reduce unnecessary tasks—maybe make monthly reports quarterly instead.

■ Save what cash you have for the most important people on your staff. That may be a line foreman rather than a vice president. Think productivity, experience and the availability of a replacement when deciding who gets a bonus.

**REMEMBER THE OTHER SIDE OF THE COIN:** Now's a good time to fill staff holes and to plot a hiring strategy so businesses can compete when they're ready to add more employees.

Money will always be the primary lure, but a good approach needs more. If a firm has a prospect in mind, it needs to home in on his or her personal goals and needs. Be willing to offer flexible work schedules, training and advancement potential. Some workers hunger for informal dress codes or the occasional right to bring a child or even a dog to work. Introduce prospects to fellow employees who can seal a deal by telling them the company is a good place to work. Show that the firm is financially secure, if that's the

case, so workers won't worry about the long-term viability of a move.

Take generational differences into account. No one size fits all. What attracts a 20-something technology whiz who hates being tied to a desk can be very different from a seasoned baby boomer's wants. Flexibility in schedules and in tasks assigned, autonomy, company stability and more are part of the package.

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