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RETIREMENT SECURITY: CHALLENGES CONFRONTING PENSION PLAN SPONSORS, WORKERS, AND RETIREES

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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RETIREMENT SECURITY: CHALLENGES CONFRONTING PENSION PLAN SPONSORS, WORKERS, AND RETIREES

Tuesday, June 14, 2011
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 11:00 a.m., in room 2175, Rayburn House Office Building, Hon. Phil Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, DesJarlais, Bucshon, Barletta, Roby, Heck, Kline (ex officio), Andrews, Kucinich, Loebsack, Kildee, Hinojosa, McCarthy, Tierney, Wu, Holt and Scott.

Staff Present: Andrew Banducci, Professional Staff Member; Katherine Bathgate, Press Assistant/New Media Coordinator; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Barrett Karr, Staff Director; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Ken Serafin, Workforce Policy Counsel; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Alissa Strawcutter, Deputy Clerk; Aaron Albright, Minority Communications Director for Labor; Kate Ahlgren, Minority Investigative Counsel; Tylease Alli, Minority Clerk; Jody Calemine, Minority Staff Director; John D'Elia, Minority Staff Assistant; Brian Levin, Minority New Media Press Assistant; Megan O'Reilly, Minority General Counsel; Julie Peller, Minority Deputy Staff Director; Meredith Regine, Minority Labor Policy Associate; and Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director (Counsel).

Chairman ROE. A quorum being present, the Subcommittee on Health, Employment, Labor and Pensions will come to order.

Good morning. I would like to welcome our guests and thank our witnesses for being with us today.

Roughly 60 million workers participate in an employment-based retirement plan. They, like so many Americans, have felt the impact of the recession and continue to experience tough times during this slow economy.

As more Americans reach into their retirement savings just to make ends meet, policymakers have a responsibility to examine the difficulties facing workers and retirees and discuss whether Fed-

eral policies are hurting or helping efforts to rebuild retirement savings.

A cornerstone of the Nation's retirement system is pension private plans. Whether through a defined benefits plan or a defined contribution plan, a worker's ability to plan and save for his or her retirement is critical to long-term financial security. Since 1974, the Employee Retirement Income Security Act, ERISA, has governed private pension plans, setting eligibility standards, fiduciary responsibilities for plan managers and the responsibility to disclose information to participants regarding the plan's financial health. Lawmakers have tried to balance the necessary flexibility to allow for investment opportunities with a demand for clear guidelines that protect workers.

Unfortunately, the best efforts of Washington cannot predict the difficulties brought on by deep recession. Today pension plans face a number of challenges that threaten the retirement security of American workers. According to one estimate, defined benefit pension plans were underfunded by more than $500 billion in 2009. This situation may not improve if economic growth remains anemic.

This situation threatens to place an even greater strain on an already burdened Pension Benefit Guaranty Corporation. For nearly 40 years the PBGC has insured the retirement benefits of workers enrolled in a defined benefit plan. Today it insures the benefits of 44 million workers, yet faces obligations that exceed its resources by nearly $22 billion.

A number of ideas have been put forth seeking a solution, and I urge the administration to provide greater details about its own proposals so that we can find a common sense and long-term solution on behalf of the American people.

Additionally, pension plan sponsors and managers must cope with an uncertain regulatory environment. Last year, Congress passed a comprehensive overhaul of the Nation's financial regulatory system. The law has led to thousands of new pages of regulations and rules. Regardless of one's views on the prescription for financial reform, the law has created substantial changes to investment markets and additional uncertainty for pension plan sponsors, workers and retirees.

The administration has also introduced a regulatory proposal that would transform a key part of ERISA. The proposed change to the defined definition of "fiduciary" will disregard 35 years of regulatory guidance without a full understanding of the consequences. Federal policy should help facilitate, rather than undermine, innovation and improvements to investment services. There are real concerns that the administration's proposal will take retirement planning in the wrong direction without a full understanding of the consequences.

These are concerns shared across party lines. In a letter addressed to members of the Obama administration members of the New Democrat Coalition wrote, the proposed rule will result in "limiting access to investment education and information." The letter goes on to say, "This would result in worse investment decisions by participants and would, in turn, increase the costs of investment

products, services, and advice that are absolutely critical parts of a sound investment strategy for consumers."

Washington has a responsibility to provide clear rules of the road to prevent fraud and abuse, but must also be careful not to create an environment that stifles investment and ultimately threatens the income and security of America's retirees. New Democrat Coalition Members of Congress have called on an administration to restart the fiduciary rule process, and I hope the administration will do so.

This hearing is our first opportunity to take a closer look at the challenges facing the pensions and retirement savings of workers and retirees. In recent years, these issues have generated a lively debate and yet have generally resulted in a bipartisan effort to strengthen the retirement security of our Nation. It would be regrettable at such a critical time for our country to abandon that spirit of cooperation today. There is certainly a lot to discuss.

And with that, I will recognize Mr. Andrews, senior Democrat of the subcommittee, for his opening remarks. Mr. Andrews.

[The statement of Chairman Roe follows:]

Prepared Statement of Hon. David P. Roe, Chairman, Subcommittee on Health, Employment, Labor and Pensions

Good morning. I would like to welcome our guests and thank our witnesses for being with us today.

Roughly 60 million workers participate in an employment-based retirement plan. They, like so many Americans, have felt the impact of the recent recession and continue to experience tough times during this slow economy. As more Americans reach into their retirement savings just to make ends meet, policymakers have a responsibility to examine the difficulties facing workers and retirees and discuss whether federal policies are helping or hurting efforts to rebuild retirement savings.

A cornerstone of the nation's retirement system is private pension plans. Whether through a defined benefits plan or a defined contribution plan, a worker's ability to plan and save for his or her retirement is critical to long-term financial security. Since 1974, the Employee Retirement Income Security Act has governed private pension plans, setting eligibility standards, fiduciary responsibilities for plan managers, and the responsibility to disclose information to participants regarding the plan's financial health. Lawmakers have tried to balance the necessary flexibility to allow for investment opportunities with the demand for clear guidelines that protect workers.

Unfortunately, the best efforts of Washington cannot predict the difficulties brought on by a deep recession. Today, pension plans face a number of challenges that threaten the retirement security of America's workers. According to one estimate, defined benefit pension plans were underfunded by more than $500 billion in 2009. This situation may not improve if economic growth remains anemic.

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Washington has a responsibility to provide clear rules of the road to prevent fraud and abuse, but must also be careful not to create an environment that stifles investment and ultimately threatens the income security of America's retirees. New Democrat Coalition members of Congress have called on the administration to restart the fiduciary rule process, and I hope the administration will do so.

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There is certainly a lot to discuss, and with that, I will now recognize Mr. Andrews, the senior Democrat of the subcommittee, for his opening remarks.

Mr. ANDREWS. Thank you, Mr. Chairman. Good morning. Thank you for calling this hearing and I think it is good to see the chairman proceeding in a tradition on this subcommittee where the two sides try to work together on pension issues.

When the present Speaker of the House, Speaker Boehner, chaired this subcommittee a few years ago, we were able to work with him quite successfully on the 2006 Pension Protection Act and I think achieve some good things for the people of our country, and I am glad to see that you are following in that tradition, and I appreciate it very, very much.

I think this is a very timely discussion because anybody who visits retirees in their district now knows the incredible stress that these families are under.

I live in a State that has a very, very high cost of living, high property taxes, high utility bills, high cost of food, all sorts of things. You know, last week was a very hot and humid week in our district, and I visited a number of senior citizens. You know, you see them living in one room because it costs too much to cool the rest of the house so they try to keep their air conditioning bills as low as possible. Some might not even turn on the air conditioning at all because it is a bill that they can't pay.

You know, these are the people that you see at the grocery store searching for whatever aisle might have the deep discount markdown stuff, because the boxes are a little bit defective of cereal or the milk is a little bit older than the rest of the milk. These are the people who, if they get a gift, they save the wrapping paper so they can reuse the wrapping paper if they want to give their grandchild or someone a gift. These are people living at or very close to the edge of oblivion in their economic situation.

And so obviously it makes a lot of sense for us to talk about ways that we can work together to try to enhance and improve retirement income for America's retirees. I know that the panel today will have some very good ideas about that. I would respectfully suggest, though, that there are two things that we ought to do to help retirees through this very, very difficult time.

The first, and I say this with all due respect, would be for the majority to withdraw its ill-considered plan to end Medicare.

The Congressional Budget Office tells us that the additional cost of copays and deductibles and premiums, the additional out-of-pocket health care costs for Medicare recipients, if the Republican plan goes through, would be an additional $6,000 a year. Now, put this in perspective. A person who is 54 years of age today would have to save an additional $182,000 in their 401(k) or some other account just to generate enough income to pay the extra health care bills that the Republican Medicare proposal entails. Put that in some perspective, most people about 5 years out from retirement only have $100,000 in their account to begin with.

So if we want to talk about, you know, elevating the standard of living for America's retirees, we ought to talk about withdrawing this disastrous proposal on Medicare the Congress has looked at this spring.

Second, I would say that, again with all due respect, when it comes to the fiduciary rule that is under consideration here, look, one of the reasons we had the financial collapse of this country of 2008 is the disease of conflict of interest where people were acting on behalf of one set of interests and representing they were really representing another set of interests.

For most Americans, second only to their home equity, their most precious asset is their pension. And I think we definitely need rules that say when someone gives you advice on investing your pension, they should be acting in your interests and not theirs. People should not be receiving advice from someone who would stand to benefit more if you put your account in this mutual fund rather than that one or in a mutual fund rather than a bond fund.

As I understand the proposed rule, it simply says that the interests of people giving advice have to be aligned with the interests of people receiving it, and I think that is something that we need and should be taking a look at.

So I appreciate the chance to explore these issues. I know this panel is an expert panel. We are glad that you are here. We look forward to engaging questions, and I thank you again, Mr. Chairman.

Chairman ROE. I thank the gentleman for yielding. Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record.

Without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses.

Mr. Alex Brill is Research Fellow at the American Enterprise Institute, where he studies private pension systems. He is a former Senior Adviser and Chief Economist to the House Ways and Means Committee and also served on the staff of the President's Council of Economic Advisers. In Congress and at the CEA, Mr. Brill worked on a variety of issues, including dividend taxation, international tax policy, Social Security reform, defined benefit pension reform, and U.S. trade policy. Mr. Brill holds a Bachelor's Degree

from Tufts University and a Master's Degree in mathematical finance from Boston University.

Mr. Dennis Delaney is Executive Vice President of Human Resources & Administration for Ingram Industries, Inc., a book distributor and inland aquatic freight carrier. He is a member of the Employee Benefits Committee, chair of the Retirement Plans Committee, and a member of the Workplace Wellness Alliance Committee of the U.S. Chamber of Commerce, and the Unemployment Rights Committee of the Human Resources Policy Association.

Mr. Delaney is a resident of Nashville, Tennessee—welcome to a fellow Tennessean—where Ingram Industries has headquarters. He holds a Bachelor's Degree from Michigan State University and a Master's Degree from Central Michigan University and a law degree from the University of Detroit. Welcome.

Mr. Max Richtman is the Executive Vice President and acting CEO of the National Committee to Preserve Social Security and Medicare. He served as a Staff Director to the Senate Special Committee on Aging from 1986 to 1989 and the Senate Select Committee on Indian Affairs from 1979 to 1986.

He was born in Munich, Germany, and grew up in Omaha, Nebraska. He graduated cum laude from Harvard College and received a law degree from Georgetown University Law School. Welcome.

Mr. James Klein is President of the American Benefits Council, a trade association based in Washington, D.C., representing primarily Fortune 500 companies that either sponsor or administer health and retirement benefits covering more than 100 million Americans. Mr. Klein is a founding board member of the Americans for Generational Equity and serves on the Government Liaison Committee of the International Foundation of Employee Benefit Plans. Mr. Klein graduated magna cum laude from Tufts University with a degree in bioethics and graduated with honors from the National Law Center, George Washington University.

Before I recognize the witnesses, each of you have provided your testimony, let me briefly explain the lighting system. You each have 5 minutes for your testimony, and with 1 minute remaining, the yellow light will come on. When your time has expired, the red light will come on. If you are in the middle of a thought or sentence, go ahead, obviously, and finish it.

Please be aware and respectful of the time, and I will try to do the same as the chair. So with that, I will begin with Mr. Brill.

STATEMENT OF ALEX M. BRILL, RESEARCH FELLOW, AMERICAN ENTERPRISE INSTITUTE

Mr. BRILL. Chairman Roe, Ranking Member Andrews, and other members of the subcommittee, thank you for the opportunity to appear before you this morning and recognizing the importance of addressing challenges confronting pension and retirement security issues.

This is a policy area with serious, long-term macroeconomic and microeconomic consequences. From a macroeconomic perspective, inadequate national savings reduces investment, a key determinant in future economic growth and prosperity. From a microeconomic

perspective, increased retirement savings are essential for the well-being of future retirees.

I have submitted written testimony for the record and in my oral statement this morning I will briefly cover three areas.

First, I will summarize data described in my testimony regarding the size and scope of the retirement system and the shift in recent years from defined benefit, DB, plans, towards defined contribution plans.

Second, I will discuss problems with underfunding of retirement plans, both on the defined benefit and defined contribution side; and, finally, I will examine the recent recession's effects on retirement savings.

At the end of 2010, retirement assets in the United States totaled approximately $17.5 trillion, with retirement savings making up 37 percent of all household financial assets.

IRAs, defined contribution plans, and government pension plans each accounted for roughly a quarter of all retirement savings in the United States. The remaining quarter of assets was in private DB and annuity plans collectively, annuities collectively.

Total retirement assets have generally grown over time with the exception of the significant but temporary decline in equity values that occurred in 2008 and 2009. Retirement savings in nominal terms have increased 50-fold from $368 billion in 1974 to the present.

At the same time, there has been a shift in the private sector from DB to DC plans. Today, about two-thirds of private employer-sponsored retirement assets are in defined contribution plans, the remaining one-third in defined benefit plans, an increase from about 50/50 20 years ago. However, the shift is, in fact, more dramatic as the share of new contributions to retirement are nearly 90 percent in the form of defined contribution.

Though assets and participation are rising, serious problems still persist in these two areas. In terms of participation, while 65 percent of private sector workers have access to retirement plans, only 50 percent participate.

New policies, encouraged by the Pension Protection Act of 2006, foster auto enrollment and have been successful, but greater participation would further improve the well-being of future retirees.

In terms of underfunding, it is estimated that nearly 50 percent of baby boomers and Generation Xers' defined contribution plans may be at risk of being inadequate to see them through retirement. While these estimates are only tentative, they suggest that more education would be valuable to encouraging more savings.

Underfunding is also a problem in public and private DB plans. The Congressional Budget Office recently found that State and local pension funding levels are below 80 percent by public pension systems' own metrics and by more standard accounting measures face funding levels near 50 percent.

Private DB plans are underfunded as well. At the end of 2010, the largest 100 plans were only 85 percent funded, an improvement from recent years, but a significant gap still exists.

At the economy's low point, the first quarter of 2009, retirement savings in the United States had fallen by $2.7 trillion from pre-recession levels. The stock market, as measured by the S&P 500,

recovered by the beginning of 2011. The damage was done for many approaching or in retirement at the time of the recession.

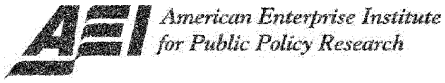
However, it should be understood that the greatest impact of the recession on retirement income is not a result of fluctuations in stock market values, but rather through labor market channels. Not only has the high unemployment rate reduced retirement savings, but anemic wage growth reduces lifetime incomes and, as a result, reduces future Social Security benefits.

And, finally, I have been and remain a strong advocate of policies that establish default savings for retirement savings that encourage more participation, more appropriate asset allocation and higher savings rates, policies commonly known as auto enrollment life cycle investment funds and auto escalation. But I would like to emphasize that it is important that these tools be complements to, not substitutes, for active education, engagement and participation by workers in their own retirement planning.

From a philosophical perspective, our country has foregone its commitment to the value of thrift. From a practical perspective, our workers lack adequate financial literacy.

I would like to thank the committee for the opportunity to testify, and I look forward to your questions.

[The statement of Mr. Brill follows:]



Statement before the House Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions
On

"Retirement Security: Challenges Confronting Pension Plan Sponsors, Workers, and Retirees"

Alex M. Brill

Research Fellow

American Enterprise Institute

June 14, 2011

The views expressed in this testimony are those of the author alone and do not necessarily represent those of the American Enterprise Institute.

Chairman Roe, Ranking Member Andrews, and other members of the subcommittee, thank you for the opportunity to appear before you this morning and discuss an important aspect of retirement security. My name is Alex Brill, and I am a research fellow at the American Enterprise Institute. I commend the Committee for holding this hearing and recognizing that beyond our near-term economic and fiscal challenges, there exist important longer-term policy concerns such as those relating to retirement security.

Introduction

Sound retirement security policy for future retirees requires planning. Ensuring the goal of adequate asset accumulation at retirement necessitates sufficient savings throughout an individual's career. To that end, workers need to be engaged; employers need to be responsible; and policymakers must ensure that pension law, tax law, and the Social Security system operate in a manner that promotes opportunities for private saving, appropriate retirement asset management, and sustainability and predictability. Together, these programs should complement the goal to strengthen the financial security of our workforce.

Pension issues represent a policy area of great concern and with serious long-term consequences. In my view, funding challenges facing defined benefit (DB) plans and inadequate asset accumulation and risk management within defined contribution (DC) plans are under-appreciated long-term risks facing future retirees. These risks are both macroeconomic and microeconomic in nature. From a macroeconomic perspective, inadequate national savings reduces investment, a key determinant to future economic growth and prosperity. At a microeconomic and organizational level, inadequate funding of DB plans poses risks to employers; retirees; and the government backstop, the Pension Benefit Guaranty Corporation.

Proper preparation for workers' eventual retirement is a critical public policy. Yet, while numerous policies exist for this purpose, too many workers' retirements are underfunded. And this underfunding was only exacerbated by the recent financial crisis and recession.

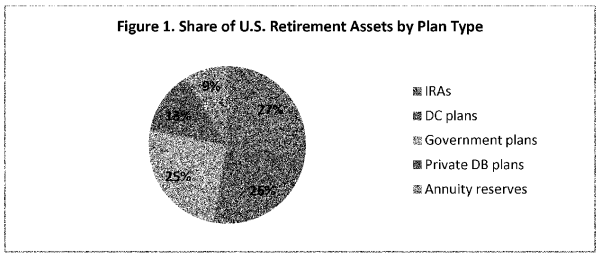
With this in mind, my testimony is organized into three sections, intended to provide a framework for moving forward in the realm of pension policy. First, I will examine the size and scope of the retirement system and the shift in recent years from DB plans toward DC plans. Then, I will discuss the financial crisis and great recession's effects on pension plans and retirement savings. And finally, I will conclude with three policy observations for consideration as the Committee proceeds with its oversight of these areas.

Size, Scope, and Shortcomings of Retirement System

In the fourth quarter of 2010, retirement assets in the U.S. totaled $17.5 trillion.[1] Individual Retirement Accounts totaled roughly 27 percent of all retirement savings in the

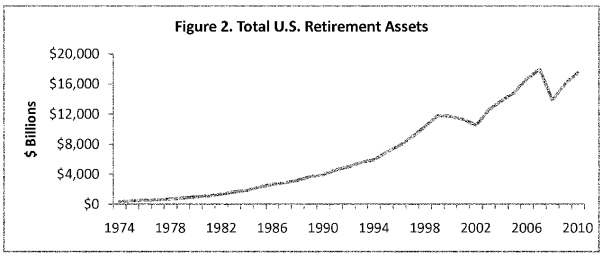
[1] Investment Company Institute, "Retirement Assets Total $17.5 Trillion in Fourth Quarter 2010," April 13, 2011, www.ici.org/pressroom/news/ret_10_q4.

United States. DC plans accounted for approximately 26 percent—with 401(k) assets accounting for 69 percent of DC plan assets and 18 percent of all retirement assets. The remainder of retirement assets was held in government pension plans (25 percent), private DB plans (13 percent), and annuities (9 percent).[2] Figure 1 presents this information graphically. At the end of 2010, retirement savings made up 37 percent of all household financial assets.[3]



Source: Investment Company Institute.

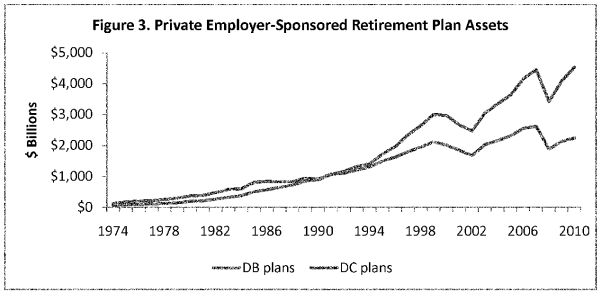
Total retirement assets have generally grown over time, with the exception of the significant, but temporary, decline in equity values that occurred in 2008–2009. As portrayed in Figure 2, retirement savings have increased from $368 billion to $17.5 trillion since 1974.



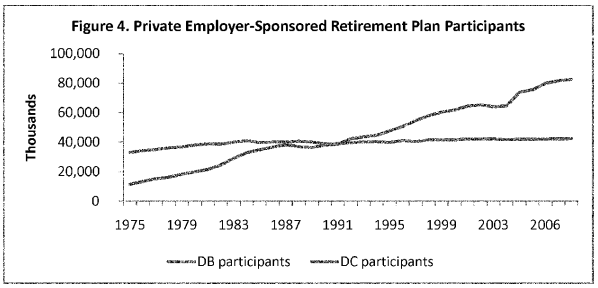
Source: Investment Company Institute.

[2] Ibid.
[3] Ibid.

While overall retirement saving has been increasing, there has been a shift among the types and proportion of retirement assets. Figures 3 and 4 show the rise in assets and participants in private-sector DC accounts over DB plans.



Source: Investment Company Institute.



Source: Department of Labor.

Though assets and participation are rising, serious problems still persist in these two areas. In terms of participation, while 65 percent of private-sector workers have access to

retirement plans, only 50 percent participate.[4] Among state and local government workers, the numbers improve: 90 percent have access, while 85 percent participate.[5]

In terms of underfunding, an assessment by the Employee Benefit Research Institute (EBRI) of the adequacy of Baby Boomers' DC plans to see them through retirement shows that in 2010, 47 percent of "early Boomers" (born between 1948 and 1954) and 44 percent of "late Boomers" (born between 1955 and 1964) were "at risk" of not having enough money for retirement. The "at risk" rating for Gen Xers (born between 1965 and 1974) was 45 percent.[6]

Underfunding is also a problem in both public and private DB plans. State and local government plans are generally DB plans and number over 2,500 nationwide. The Congressional Budget Office recently measured unfunded liabilities of state and local pension plans using two approaches—the Government Accounting Standards Board (GASB) and a more standard fair-value method—and found that plan funding levels are only 80 percent, a shortfall of approximately $600 million by GASB rules in 2009, and underfunding of $2 trillion–$3 trillion by fair-value methods.[7] Using fair-value accounting, the funding ratio of state and local pensions' assets to future liabilities is near 50 percent.[8] The larger funding deficit identified by the fair-value approach reflects differences in actuarial methodology between GASB and measurement assumptions similar to those used by private DB plans. Because public pension underfunding is not adequately measured by GASB standards, the significantly greater underfunding estimate of these plans as measured by fair-value methods is more informative. While beyond the scope of this hearing, the funding status of public pensions should be a matter of important concern for policymakers.

Corporate DB plans are generally better funded than government plans, but still many are significantly underfunded. According to the firm Towers Watson, among Fortune 1000 companies the average ratio of plan assets to projected benefit obligations was 0.77 for 2009, the latest year for which information was available from this source.[9] Funding status improved from 2008 to 2009 as equity values increased significantly and plan contributions were abnormally

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[4] Bureau of Labor Statistics, "Table 1. Retirement Benefits: Access, Participation, and Take-up Rates," July 27, 2010, www.bls.gov/news.release/ebs2.t01.htm.
[5] Ibid.
[6] Jack VanDerhei, "Retirement Income Adequacy: Alternative Thresholds and the Importance of Future Eligibility in Defined Contribution Retirement Plans," *EBRI Notes* 32, no. 4 (April 2011), www.ebri.org/pdf/notespdf/EBRI_Notes_Apr11.RSPM.pdf.
[7] Congressional Budget Office, "The Underfunding of State and Local Pension Plans," May 2011, www.cbo.gov/ftpdocs/120xx/doc12084/05-04-Pensions.pdf. See also Alicia H. Munnell, Jean-Pierre Aubry, and Laura Quinby, "The Funding of State and Local Pensions: 2009–2013," Center for Retirement Research, April 2010, http://crr.bc.edu/images/stories/Briefs/slp_10.pdf.
[8] Alicia H. Munnell, Jean-Pierre Aubry, Josh Hurwitz, Madeline Medenica, and Laura Quinby, "The Funding of State and Local Pension in 2010," Center for Retirement Research, May 2011, http://crr.bc.edu/images/stories/slp_17_508.pdf
[9] Towers Watson, "Accounting for Pensions and Other Postretirement Benefits, 2010: Reporting Under U.S. GAAP Among the Fortune 1000," November 2010, www.towerswatson.com/assets/pdf/3178/TW_AcctngForPension_NA-2010-17799_perspective.pdf.

high. Nevertheless, 31 percent of companies had funding ratios less than 0.70. Towers Watson also reports the values of plan assets, $1.11 trillion, and liabilities, $1.36 trillion. The net gap was $250 billion at the end of 2009. More recent data released by the actuarial firm Milliman indicate that the benefit funding ratio at the 100 largest corporations improved again modestly in 2010 relative to 2009 as a result of large plan sponsor's contributions.[10]

With regard to plan asset allocation, there has been a marked shift toward more diversification in recent years. Fidelity Investments data on corporate DC plans representing 11 million participants indicate that the share of participants holding either 100 percent or 0 percent of their assets in equities has declined from 47 percent in 2000 to 21 percent in 2010.[11] Research by economist Mark Warshawsky estimates that the share of DB assets allocated to equities has declined from 62 percent in 2006 to 45 percent in 2009.[12]

Financial Crisis and the Great Recession

The U.S. economy is recovering from worst recession since the 1930s. While the recession has been officially over for two years, economic growth remains weak, and high unemployment is persistent. Recent evidence of a decline in hiring is troubling for many forecasters as a durable recovery has yet to take hold.

The impact of the recession and financial crisis on retirement security is twofold. A decline in retirement assets (or the failure for assets to increase in value as expected) has left many workers and retirees with less than anticipated. Some older workers have chosen to remain in the workforce longer to offset the decline in retirement assets, but the overall unemployment rate of older workers remains high relative to pre-recession levels. And younger workers unable to find jobs due to the weak economy are not contributing to employer-provided retirement plans, thereby also reducing future retirement income and security.

Barbara Butrica, Richard Johnson, and Karen Smith of the Urban Institute employ a large simulation model with a sample of over 100,000 individuals to project the impact of the recession on individuals in the workforce in 2008.[13] Their results indicate that the recession will reduce average annual retirement wages at age 70 by 4.3 percent. However, this decline is not primarily the result of the decline in equity values. As they describe:

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[10] John W. Ehrhardt and Paul C. Morgan, "Milliman 2011 Pension Funding Study," March 2011, www.milliman.com/expertise/employee-benefits/products-tools/pension-funding-study/pdfs/2011-pension-funding-study.pdf.

[11] Fidelity Investments, "DC Participant Behavior," presentation, May 2011.

[12] Mark J. Warshawsky, "Corporate Defined Benefit Pension Plans and the 2008–2009 Financial Crisis," Pension Research Council Annual Conference, Wharton School, May 5–6, 2011.

[13] Barbara A. Butrica, Richard W. Johnson, and Karen E. Smith, "The Potential Impact of the Great Recession on Future Retirement Incomes," May 2011, Center for Retirement Research, http://crr.bc.edu/images/stories/Working_Papers/wp_2011-9_508.pdf.

> This drop results almost entirely from the anemic wage growth that occurred during the recession, which the model assumes will permanently reduce future wages. Employment declines will have little effect on future aggregate retirement incomes because most workers remained employed during the recession and the losses that occurred are generally inconsequential when averaged over an entire career. Retirement incomes will fall most for high-socioeconomic-status groups, who have the most to lose, but relative income losses will not vary much across groups. Those workers who were youngest when the recession began will be hit hard. They are most likely to have lost their jobs and the impact of lower wages will accumulate over much of their working lives. But retirement incomes will also fall substantially for those in their late fifties in 2008, because the drop in the economy-wide average wage will lower the index factor in the Social Security benefit formula, permanently reducing their annual benefits. Also, many workers who lost jobs late in life will never become reemployed.[14]

With regard to the direct effect of the financial crisis and subsequent recession on pension plans, three metrics can be employed to gauge the impact: market impact, plan and participant behavioral change, and estimated asset adequacy risk for future retirees.

Market decline. The S&P 500 plunged over 40 percent from the third quarter of 2008 through the first quarter of 2009. At the lowest point (first quarter of 2009), retirement savings in the United States had fallen by $2.7 trillion from pre-recession levels (third quarter of 2007).[15] The stock market, as measured by the S&P 500, recovered by the beginning of 2011, and retirement assets are just 5 percent below peak 2007 levels (adjusted for inflation).[16] But damage was already done for those approaching or in retirement at the time of the recession who held equities as a large share of their retirement portfolio.

Behavioral responses. A recent AARP survey found that over 36 percent of workers over 50 had to stop or reduce retirement saving during the recession, while 9.1 percent were compelled to withdraw funds prematurely from retirement accounts.[17] At the same time, employers were cutting back on matching contributions to employees' DC plans. It is estimated that about 5 percent of all 401(k) participants experienced suspension of employer matches after the recent financial crisis, though these are either in the process of being or are likely to be restored.[18] Recent evidence indicates that 83 percent of active plan participants received an employer match in the year ending March 31, 2011, a 1.3 percentage point increase from the year prior.[19]

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[14] Ibid.
[15] Barbara A. Butrica and Philip Issa, "Retirement Account Balances," fact sheet, Urban Institute Retirement Policy Program, April 2011, www.urban.org/UploadedPDF/411976_retirement_account_balances.pdf.
[16] Ibid.
[17] Sara E. Rix, "Recovering from the Great Recession: Long Struggle Ahead for Older Americans," AARP Public Policy Institute *Insight on the Issues* 50 (May 2011), http://assets.aarp.org/rgcenter/ppi/econ-sec/insight50_recovering.pdf.
[18] Alicia H. Munnell and Laura Quinby, "Why Did Some Employers Suspend Their 401(k) Match?" Center for Retirement Research, no. 10-2 (February 2010), http://crr.bc.edu/images/stories/Briefs/IB_10-2.pdf.
[19] Fidelity Investments, "DC Participant Behavior," presentation, May 2011.

Risk for future retirees. Researchers at Boston College have estimated the number of workers "at risk" after the recession of not having the resources to maintain in retirement their pre-retirement standard of living.[20] They found that the financial crisis increased the number of those at risk as well as the level of risk they face. From 2007 to 2009, the percentage of households whose post-retirement standard of living is at risk at age 65 increased by 5 percentage points (from 44 percent to 51 percent).[21] In a post-crisis analysis of Baby Boomers' and Gen Xers' retirement savings, EBRI estimates that 3.8 percent–14.3 percent of at risk households would not currently be at risk had it not been for the recession.[22]

Policy Issues and Conclusion

While savings behavior and plan assets have improved in recent years, there remains additional retirement security challenges. I would like to conclude my testimony with three broad policy observations. The first relates to the importance of individual responsibility and engagement in one's own retirement security. The second and third points focus on broader macroeconomic issues: the need to increase national savings to encourage economic growth and the need for policymakers to focus more on long-run economic policy matters by promoting structural reforms instead of attempting to micromanage the near-term economy.

Greater individual engagement in retirement savings is essential. A recent EBRI survey found that 27 percent of workers are not at all confident that they will have the funds for a comfortable retirement, while only 13 percent are very confident that they do.[23] One popular approach to the apathy that workers display about their retirement security has been to establish various "automatic default" strategies to encourage more retirement savings. Facilitated by provisions in the Pension Protection Act of 2006, these policies include automatic enrollment in employer-sponsored retirement plans, automatic defaults into lifecycle funds, and auto escalation whereby the employee's contribution in a plan increases over time. The purpose of a lifecycle fund is to invest a worker's DC assets more heavily in equities earlier in an individual's work life and move to less risky investments as retirement approaches. Fidelity Investments reports that the share of plans using lifecycle funds increased from 5 percent in December 2005 to 68 percent in December 2010. The participation rate in plans that provide auto-enrollment of workers in DC plans is 82 percent, while the participation rate in non-auto-enrollment plans is only 56 percent.[24]

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[20] Alicia H. Munnell, Anthony Webb, and Francesca Golub-Sass, "The National Retirement Risk Index: After the Crash," Center for Retirement Research, no. 9-22 (October 2009), http://crr.bc.edu/images/stories/Briefs/IB_9-22.pdf.
[21] Ibid.
[22] Jack VanDerhei, "A Post-Crisis Assessment of Retirement Income Adequacy for Baby Boomers and Gen Xers," *EBRI Issue Brief*, no. 354 (Employee Benefit Research Institute, February 2011), www.ebri.org/pdf/briefspdf/EBRI_02-2011_No354_Post-Crisis_Ret-IncAd.pdf.
[23] Ruth Helman, Craig Copeland, and Jack VanDerhei, "The 2011 Retirement Confidence Survey: Confidence Drops to Record Lows, Reflecting 'the New Normal,'" *EBRI Issue Brief*, no. 355 (Employee Benefit Research Institute, March 2011), www.ebri.org/pdf/briefspdf/EBRI_03-2011_No355_RCS-2011.pdf.
[24] Fidelity Investments, "DC Participant Behavior," presentation, May 2011.

While I have been and remain a strong advocate for policies that establish default settings for retirement savings that encourage more participation, more appropriate asset allocation, and higher savings rates, it is important that policymakers understand that these tools should be complements to not substitutes for active education, engagement, and participation by workers in their own retirement planning. Workers need a better awareness of their own retirement security, and this includes an understanding of the risks posed by the current Social Security system as well as the annuity value of their personal retirement assets. Improved financial literacy training, particularly if targeted,[25] and more (not less) appropriate investment advice will contribute to this goal.

Beyond personal retirement security, the macroeconomic consequences of savings are important as well. As I have outlined above, from a microeconomic perspective, increased retirement savings are essential for the well-being of future retirees. But there is a serious macroeconomic concern as well. Long-term, sustainable economic growth comes from businesses and individuals saving and investing. When we save, we defer consumption to the future, allowing our savings to be invested in productive ways that lead to long-term economic growth. In short, my savings account is your investment fund. Our collective savings are the funds available for investing in stocks, bonds, and other securities that allow businesses access to the capital they need to grow. In other words, increasing retirement savings helps improve our economic situation and enable growth.

Policymakers have been plagued in recent years by a myopic fiscal agenda that jeopardizes long-term retirement security. U.S. fiscal policy tilts heavily toward near-term economic, fiscal, and budget concerns at the expense of longer-horizon policy risks. The 2009 stimulus bill, the American Recovery and Reinvestment Act, pumped hundreds of billions of dollar into the economy in an ill-fated attempt at Keynesian stimulus. While adding nearly $1 trillion to the debt, that legislation accomplished little in terms of reducing unemployment and returning our economy to a path of self-sustaining growth. Retirement policy suffers from a similar myopia. The Social Security system, not in crisis today but facing a certain and significant shortfall in two short decades, is being ignored. Medicare, while recognized by some as an unsustainable program as currently constructed, lacks the bipartisan cooperation necessary to achieve meaningful savings through policies geared at reducing utilization and increasing beneficiary responsibility. More broadly, the projected rise in the debt burden as a share of GDP in the absence of serious spending reform poses additional threats to our economy, including the asset values and incomes of retirees.

In conclusion, I would like to thank the Committee for the opportunity to testify on the important topic of retirement security. I look forward to answering your questions.

[25] Annamaria Lusardi and Olivia S. Mitchell, "Financial Literacy and Retirement Planning in the United States," National Bureau of Economic Research, Working Paper no. 17108, June 2011.

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Chairman ROE. Thank you, Mr. Brill.
Mr. Delaney.

STATEMENT OF DENNIS DELANEY, EXECUTIVE VICE PRESIDENT, INGRAM INDUSTRIES, INC.

Mr. DELANEY. Thank you, Chairman Roe, Ranking Member Andrews, and members of the committee, for the opportunity to discuss challenges for sponsors of defined benefit and defined contribution plans.

Ingram Industries is a privately held company headquartered in Nashville, Tennessee, consisting of the Ingram Marine Group,

which is the largest inland marine transportation company in the country, and Ingram Content Group, which provides a broad range of physical and digital services to the book industry.

We administer benefit programs for over 5,000 domestic associates, we have over 2,400 active associates with a frozen defined benefit, 765 retirees and over 1,900 terminated vested plan participants.

While there are challenges, the employer provided retirement system has been successful in providing retirement income. One of the greatest impediments to the employer provided system is a lack of predictability of the rules and regulatory flexibility to adapt to changing situations.

During the recent financial crisis, plan sponsors were negatively impacted by inflexible funding rules. The unpredictability has forced my company to make difficult choices in balancing the needs of our employees with the need for prudent sound financial management of our company.

In mid-2003 we looked at our defined benefit plan which had been in place since 1978. After 18 months of review, the decision was made to maintain the plan but to close it to new entrants effective January 1, 2005. In 2006, the Pension Protection Act changed the funding rules for defined benefit plans.

A major impetus behind the PPA was to increase the funding level of pension plans. Most plan sponsors entered 2008 fully ready to comply, but the severe market downturn at the end of 2008 drastically changed that situation.

Because of the PPA's accelerated funding scenarios, and notwithstanding Congress' efforts to provide temporary funding relief, Ingram was faced with having to contribute tens of millions of dollars beyond our normal costs in a short period of time to a plan that, by design, was intended to bridge generations. The reality for Ingram was defined by one of our owners as unacceptably unpredictable. Consequently, Ingram froze its DB plan effective December 31, 2010.

Adding to the unpredictability in defined benefit plans is the present situation, a consideration or proposal to increase PBGC premiums. Increasing premiums without the opportunity for discussion of details, consideration of the impact or buy-in from interested parties would present another challenge to the defined benefit pension system.

The inclusion of automatic enrollment and automatic escalation in PPA has furthered retirement security. Ingram implemented an auto enrollment plan in 2005. New hires are enrolled in the defined contribution plan at a 3 percent deferral rate. Participation moved from 70 percent in 2005 to 88 percent in 2010. Currently the average pretax deferral of all participants is over 5 percent.

Our plan recognizes service with the company is important, and we match from 50 percent to 100 percent of the first 5 percent, dependent on years of service with the company. To ensure that participants in defined contribution plans are getting the most benefit, investment in financial education is critical. A major concern for employers is the ability to provide investment advice and financial education without incurring liability. Legislation to further encourage such programs would be beneficial.

Ingram has offered workshops for associates nearing retirement. We communicate retirement information through the Internet, postcards, fliers, posters, quarterly newsletters and quarterly reports on investment performance. In addition, we offer asset allocation guidance through Morningstar.

We have hesitated to offer more robust advice in the form of investment recommendations, contribution increases and rebalancing due to the uncertainty of the regulations regarding advice services.

In general, greater regulation often leads to greater administrative complexities and burdens. Plan sponsors are faced with two increasingly conflicting goals, providing information required under ERISA and providing clear and streamlined information.

Accounting changes from FASB can also create worry for plan sponsors. This can discourage participation in the employer provided retirement system and has had a significant impact, for example, on the long-term prospects of providing post-retirement medical benefits.

There has been a shift away from defined benefit plans and an increase in defined contribution plans. The reasons for this shift are numerous, cost considerations, changing demographics, and uncertainty surrounding future liabilities of defined benefit plans.

We implemented a money purchase plan for a segment of our employee population in 2007, and under this plan we make an annual contribution to each associate based on age and years of service.

The key to ensuring the continuation of the private retirement system is flexibility and predictability. The mix and types of benefit plans in the future will be diverse, consequently it is increasingly important to ensure that there are no barriers to innovation.

I hope that Congress continues to work with plan sponsors to enact legislation that will encourage further participation in the employer-provided system and keep them in the game.

I thank you for the opportunity to testify today and look forward to any questions you may have.

[The statement of Mr. Delaney follows:]

Prepared Statement of Dennis T. Delaney, Executive Vice President, Human Resources & Administration, Ingram Industries Inc.

Thank you, Chairman Kline, Ranking Member Miller, and members of the Committee for the opportunity to appear before you today to discuss challenges for sponsors of defined benefit and defined contribution plans. My name is Dennis Delaney, Executive Vice President, Human Resources & Administration for Ingram Industries Inc.

Ingram is a privately held company with a portfolio of operating businesses headquartered in Nashville, Tennessee, consisting of Ingram Marine Group, the largest inland marine transportation company in the country with over 140 motor vessels and 4,000 barges, and Ingram Content Group, which provides a competitive suite of physical book and digital content distribution, print on demand and content management and fulfillment services for retailers, publishers, libraries and educators both in the U.S. and internationally.

Ingram administers benefit programs for over 5,000 domestic associates who live in 36 states. We have over 2,400 active associates with a frozen defined benefit, 765 retirees and over 1,900 terminated vested plan participants. My testimony reflects my 34 years of experience in the human resources field, 14 of which have been with Ingram Industries and 20 of which were with Ford Motor Company.

I appreciate the opportunity to testify before you today on the challenges facing plan sponsors and in particular, Ingram's experience as it relates to our defined benefit and defined contribution plans.

At the outset, I want to emphasize that these challenges do not just impact plan sponsors—they also have the potential to significantly impact the financial security of current workers and retirees. While we can each recognize real problems with the current retirement system, the employer—provided retirement system has been overwhelmingly successful in providing retirement income and security for employees. Private employers, with contributions and fees, spent over $200 billion on retirement income benefits in 2008 [1] and paid out over $449 billion in retirement benefits.[2] According to the Bureau of Labor Statistics, in March of 2009, 67% of all private sector workers had access to a retirement plan at work, and 51% participated. For full time workers, the numbers are 76% and 61%, respectively. Eighty-three percent of workers in private sector firms with 100 or more workers are covered in an employer-provided retirement plan and 68% participate. Because some workers, such as those under age eighteen or twenty-one, or those waiting to meet a minimum service requirement, are often not eligible to participate in a plan, these statistics actually underreport the success of employer-provided retirement plans.

One of the greatest impediments to the employer-provided system today is the lack of predictability of the rules and regulatory flexibility to adapt to changing situations. Since 2002, Congress has passed five laws that address defined benefit funding.[3] For over a decade, the legality of hybrid plans was unresolved and those plan sponsors were unable to get determination letters.[4] During the recent financial crisis, plan sponsors faced unexpected financial burdens due to inflexible funding rules. These issues have each had a negative impact on the employer-provided retirement system and have acted as a disincentive for employers to continue to provide these benefits. Therefore, I strongly urge Congress to provide legislative solutions which inject the necessary predictability and flexibility into the retirement system to ensure that employers can continue to maintain plans that contribute to their workers' retirement security.

Issues Facing the Defined Benefit Funding System

This unpredictability and the resulting inability to assess future funding needs has forced my company to come to grips with this uncertainty by making difficult choices in balancing the needs of our employees with the needs for prudent and sound financial management of our company.

Subsequent to a major acquisition Ingram made in 2002, we took a long look at our defined benefit plan which had been in place since 1978. After 18 months of review and 80 iterations of plan design changes, the decision was made to maintain the defined benefit plan for active participants but to close it to new entrants as of January 1, 2005.

On August 17, 2006, the Pension Protection Act of 2006 ("PPA") was signed into law. The act fundamentally changed the funding rules for both single-employer and multi-employer defined benefit plans. A major impetus behind the PPA funding rules was to increase the funding level of pension plans. Consequently, most plan sponsors entered 2008 fully prepared to comply with the new funding rules, and based their contribution estimates on these rules. However, the severe market downturn at the end of 2008 drastically changed the situation.[5] Because of the ac-

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[1] EBRI Databook, 2009, Chapter 2.

[2] EBSA Private Pension Plan Bulletin Historical Tables and Graphs, 2009

[3] Job Creation and Worker Assistance Act of 2002 (PL 107-147 increasing the range of permissible interest rates for determining pension liabilities, lump sum distributions, and PBGC premiums for under-funded pension plans to 120% of the current 30-year Treasury bond interest rate; Pension Funding Equity Act of 2004 replacing the interest rate assumption for two years; Pension Protection Act of 2006 fundamentally changing the funding rules for both single- employer and multiemployer defined benefit plans; The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") providing limited funding relief; The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, providing defined benefit plan funding relief for both single-employer and multiemployer plans.

[4] In 1999, the Service's Director of Employee Plans issued a Field Directive that effectively halted the determination letter applications of hybrid plans from being processed. In 2002, the Treasury Department, with input from the Equal Employment Opportunity Commission and the Department of Labor, issued proposed regulations addressing the issue of age discrimination in hybrid plans but withdrew the proposed regulations in 2004 in order to clear a path for Congress to act. The uncertainty surrounding hybrid plans has been even more considerable in the litigation arena with contradictory decisions among various circuit courts.

[5] At the beginning of 2008, the average funded level of plans was 100%. Data from a study published by the Center for Retirement Research at Boston College indicates the following as of October 9, 2008:

- In the 12-month period ending October 9, 2008, equities held by private defined benefit plans lost almost a trillion dollars ($.9 trillion).
- For funding purposes, the aggregate funded status of defined benefit plans unpredictably fell from 100% at the end of 2007 to 75% at the end of 2008. (See footnote 5 of the study). [cont.]

celerated funding scenarios spelled out in the PPA, and notwithstanding the efforts of Congress to provide some temporary funding relief, Ingram was faced with the reality of having to contribute tens of millions of dollars beyond our normal costs, in a short period of time, to a plan that, by design was intended to bridge generations and handle the economic cycles—both good and bad—which occur over a long period of time. The persistent turmoil in the market and the interest rate environment created a reality for Ingram that was defined by one of our owners as "unacceptably unpredictable." Consequently, Ingram froze its defined benefit plan effective December 31, 2010.

Adding to the unpredictability in defined benefit plans is the consideration of increases to Pension Benefit Guaranty Corporation (PBGC) premiums. Increasing PBGC premiums without the opportunity for discussion of details, careful consideration of the potential impact, or buy-in from all interested parties would present another challenge to the private sector defined benefit system.

Raising the PBGC premiums, without making contextual reforms to the agency or the defined benefit system, amounts to a tax on employers who have voluntarily decided to maintain defined benefit plans. An increase in PBGC premiums, when added to the multi-billion dollar impact of accelerated funding enacted in 2006, could divert critical resources from additional business investment and subsequent job creation.

The Defined Contribution Plan System

Auto Enrollment and Auto Escalation Programs. The inclusion of automatic enrollment and automatic escalation in PPA has gone a long way to further retirement security.

Ingram implemented auto-enrollment on January 1, 2005. New hires are enrolled in the defined contribution plan at a 3% deferral rate. Participation moved from 70% in 2005 to 88% in 2010. Currently, our lowest participation is 77% for the group of associates with 6–10 years of service. These associates were hired prior to implementation of auto-enrollment. Our highest participation is 96% for associates with 1 year or less of service. Since implementation of auto-enrollment, the average pre-tax deferral of all associates eligible for the defined contribution plan moved from 3.9% in 2005 to 4.6%[6] in 2010. The average pre-tax deferral of all participants in the defined contribution plan moved from 5.57% to 5.31%. This decline is due largely to the number of associates now participating in the plan at the auto-enroll deferral rate of 3%.

Ingram does not currently use auto-escalation. Our plan recognizes that service with the company is important, and Ingram matches 50% of the first 5% contributed during an associate's first 5 years of employment. Between years 5 to 9, Ingram matches 75%, and at 10 years and beyond, the match is 100%.

Investment Advice. Defined contribution plans require greater employee participation than traditional defined benefit plans. To ensure that participants are getting the most benefit from their defined contribution plans, investment and financial education is critical. Ninety-two percent of all 401(k) plan participants are responsible for making investment decisions about their contributions to their retirement plan.getting the most benefit from their defined contribution plans, investment and financial education is critical. Ninety-two percent of all 401(k) plan participants are responsible for making investment decisions about their contributions to their retirement plan.getting the most benefit from their defined contribution plans, investment and financial education is critical. Ninety-two percent of all 401(k) plan participants are responsible for making investment decisions about their contributions to their retirement plan.

In addition to investment advice, some employers would like to provide general financial education. The financial education would make employees more knowledgeable, and thus savvier, in financial matters. Legislation to encourage employers to provide financial advice which includes appropriate protection from liability would be beneficial even if employees pay a nominal fee.

Ingram has offered workshops for associates nearing retirement including overviews of the defined benefit and defined contribution plans, Social Security, personal savings and investments, information on insurance needs (including health (Medicare), life, disability, and long term care), estate planning, common mistakes in retirement, etc. We actively promote National 401(k) Day and communicate retirement information through the internet, postcards, flyers, posters, quarterly

• Aggregate contributions that employers will be required to make to such plans for 2009 could almost triple, from just over $50 billion to almost $150 billion.

[6] United States Government Accountability Office, Private Pensions: Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees 5 (2007).

newsletters and quarterly reports on investment performance. In addition, for the defined contribution plan, we currently offer asset allocation guidance through Morningstar. We have hesitated to offer more robust advice in the form of investment recommendations, contribution increases and rebalancing due to the uncertainty of the regulations regarding advice services. Nearly 30% of our associate population is considered "engaged achievers" (more experienced and well-established participants who are interested and involved in retirement planning) or "aspiring planners" (associates who have a high interest in retirement planning and are willing to contribute to their accounts more than the average). A full 33% are considered "uninvolved savers"—associates who lack the interest or the time for retirement planning.

Challenges in the Regulatory System

In general, greater regulation often leads to greater administrative complexities and burdens. Such regulatory burdens can often discourage plan sponsors from establishing and maintaining retirement plans. The following are just a few examples of these regulatory disincentives.

Notice and Disclosure. Plan sponsors are faced with two increasingly conflicting goals—providing information required under ERISA and providing clear and streamlined information. In addition to required notices, plan sponsors want to make information available that is pertinent to the individual plan and provides greater transparency. However, this is difficult given the amount of required disclosures that currently exist. Although there is usually a good reason for every notice or disclosure requirement, they have a tendency to overwhelm the participants with information, making it difficult for them to distinguish the routine notices, e.g., summary annual reports, from the important information. It is critical that Congress coordinate with the agencies and the plan sponsor community to determine the most effective way to streamline the notice and disclosure requirements.

Accounting Rules. In 2006, the Financial Accounting Standards Board ("FASB") undertook a project to reconsider the method by which pensions and other benefits are reported in financial statements.[7] They completed Phase I of the project but delayed Phase II, which would have removed smoothing periods from the measure of liabilities, until a later date. After significant concerns raised by the plan sponsor community, FASB indefinitely postponed the implementation of Phase II.

Accounting changes from FASB can create worry for plan sponsors. These changes can and have had significant ramifications for businesses—impacting credit determinations and loan agreements—without having any impact on the actual funding of the plans. This can discourage participation in the employer-provided retirement system and has had a significant impact on the long term prospects of providing post-retirement medical plans for new and existing participants.

Current Trends in Retirement Plans—The Shift from DB to DC Plans

The number of defined benefit plans has been declining over the past several years.[8] While there has been a shift away from defined benefit plans, the number of defined contribution plans has increased exponentially. Since 1975, the number of defined contribution plans has almost quadrupled from 207,748 to 658,805 in 2007.[9] In 1992-93, 32 percent of workers in private industry participated in a defined benefit plan, while 35 percent participated in a defined contribution plan.[10] According to the 2008 National Compensation Survey, the participation for private

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[7] Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans" (FAS 158). This statement requires companies to report the net financial status of pension and other benefits on the company's balance sheet rather than in the footnotes. In addition, plan assets and benefit obligations must be measured as of the date of the employer's fiscal year end and employers must use the projected benefit obligation measure of liabilities.

[8] In 2007, 54 of the 100 largest employers offered a traditional pension plan to new workers, down from 58 in 2006, according to Watson Wyatt Worldwide. That 7% decline compares with a 14% drop as recently as 2005. Levitz, Jennifer. "When 401 (k) Investing Goes Bad". The Wall Street Journal Online 4 Aug. 2008. *http://online.wsj.com/article/SB121744530152197819.html* (accessed August 21, 2009) Also see Private Pension Plan Bulletin Historical Tables: U.S. Department of Labor, Employee Benefits Security Administration, June 2010, *http://www.dol.gov/ebsa/pdf/1975-2007historicaltables.pdf* (accessed August 11, 2010).

[9] Private Pension Plan Bulletin Historical Tables: U.S. Department of Labor, Employee Benefits Security Administration, June 2010, *http://www.dol.gov/ebsa/pdf/1975-2007historicaltables.pdf* (accessed August 11, 2010).

[10] Beckman, Allan. "Access, Participation, and Take-up Rates in Defined Contribution Retirement Plans Among Workers in Private Industry, 2006". Bureau of Labor Statistics. December 27, 2006. *http://www.bls.gov/opub/cwc/cm20061213ar01p1.htm* (accessed August 11, 2010).

industry workers in defined benefit plans decreased to 21 percent, while participation in defined contribution plans increased to 56 percent.[11]

The reasons for this shift are numerous: cost considerations; changing demographics of the workforce; uncertainty surrounding future liabilities associated with a defined benefit plan; and a sense that workers undervalue these plans, among other things.

Ingram implemented a money purchase plan for a certain segment of our employee population in 2007. This was in response to the need to "replace" the defined benefit plan, which was closed to new hires in 2005, due to recruiting and retention concerns. Under this plan, Ingram makes an annual contribution to associates based on a formula that uses age, years of service and compensation.

Nonetheless, there is still a great need and desire for some of the characteristics of the traditional defined benefit plan. In many instances, employers like us are freezing or terminating the defined benefit plan while adding features to the defined contribution plan that resemble the benefits of the old plan. For example, employers are adding annuity options to their defined contribution plans. Moreover, new defined contribution plan designs are being introduced that incorporate defined benefit features. Consequently, while the names and designs may end up being different, it is very possible that many of the features that are now in the defined benefit system will continue to be an important part of the private retirement plan landscape. In Ingram's money purchase plan, contributions are invested in a life path fund depending on the associates year of birth. This, along with annuity options, is intended to create a "defined benefit-like" retirement plan for associates.

The keys to ensuring the continuation of the private retirement system are flexibility and predictability. The mix of types of benefit plans in the future will be diverse—defined benefit, defined contribution, multiemployer, cash balance, and hybrid plans. In addition, demographic and competitive needs will spur the creation of plan designs that we have not even begun to contemplate. Consequently, it is increasingly important to ensure that there are no statutory, practical, or political barriers to innovation that would discourage participation in the private retirement system.

Conclusion

The challenges facing plan sponsors are numerous. As stated before, these challenges impact not only the employer but also the retirement security of current and future retirees. I hope that Congress continues to work with plan sponsors to enact legislation that will further encourage participation in the employer-provided system and "keep them in the game". I thank you for the opportunity to testify today and look forward to any questions you may have.

Chairman ROE. Thank you, Mr. Delaney.

Mr. Richtman.

STATEMENT OF MAX RICHTMAN, ESQ., EXECUTIVE VICE PRESIDENT/ACTING CEO, NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE

Mr. RICHTMAN. Mr. Chairman, members of the committee, on behalf of over 3 million supporters of the National Committee to Preserve Social Security and Medicare, I am honored to be here to testify. Our members come from all walks of life and every political persuasion. About one-third identify themselves as Democrats, one-third as Republicans, and the remaining third are unaffiliated with a political party. What unites them is their passion for protecting and strengthening Social Security and Medicare, not just for themselves but for their children and grandchildren.

It is critical that any discussion about retirement security include Social Security and Medicare, because these two programs form the linchpin of most Americans' retirement. About 54 million

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[11] "Percent of Workers in Private Industry With Access to Retirement and Health Care Benefits by Selected Characteristics: 2008", Bureau of Labor Statistics, *http://www.census.gov/compendia/statab/2010/tables/10s0639.pdf* (Accessed August 11, 2010).

individuals receive Social Security benefits today, including 37 million retirees, and these benefits are modest. The average retiree receives about $14,000 in Social Security benefits each year, women receive about $12,000.

Yet today's retirees are heavily dependent on these benefits. About one-third have no other income besides Social Security and two-thirds rely on Social Security for more than half of their retirement income. Younger generations are likely to be just as dependent on Social Security as their parents and grandparents. Just over one-half of the workforce has access to any kind of retirement plan at work and only about half of these people choose to participate. And those individuals who do participate in a retirement plan increasingly must do so within the context of a defined contribution plan rather than a defined benefit plan.

Unfortunately, defined contribution plans place the burden of investment and risk management on individuals. Even in the best of times, defined contribution plans only work if individuals are able to save substantially, make good investment decisions and retain their savings until needed for retirement, as well as develop a retirement drawdown plan that assures a continuous stream of income for the remainder of their lives.

The second major pillar of retirement security for today's retirees is Medicare. Prior to the creation of Medicare, millions of retirees had no health insurance and what insurance existed was very expensive. Private insurance companies shunned older people because they tended to have more expensive claims.

Today little has changed in the private market. Private companies who participate in the Medicare Advantage Program are paid about 10 percent more than it would cost traditional Medicare to cover these same seniors. Without Medicare, health care would be unattainable or unaffordable for millions of seniors.

Even with Medicare, health care costs represent a significant portion of a retiree's income. About 30 percent of the average senior Social Security check is spent on Medicare out-of-pocket costs for Medicare part B and D alone, and this percentage is expected to grow to almost 50 percent by the year 2085.

Social Security and Medicare help keep low-income workers out of poverty, and they provide critical support for middle-class workers who do not earn enough during their working lives to finance decades of living in retirement. This helps explain their enduring popularity, and it explains why Americans are so unwilling to bet their futures on risky schemes to dramatically restructure these programs.

President Bush discovered this when he proposed allowing workers to divert a portion of their payroll taxes into Social Security private accounts in 2005. Although they knew the Bush plan would not affect them, seniors spoke out to preserve the program for their children. Likewise, seniors around the country clearly oppose plans to privatize Medicare and convert it into a voucher program.

As you know, under the House budget resolution workers age 54 and younger today would purchase their health insurance from private companies and be given a voucher or premium support payment to cover a portion of these costs. These dramatic changes in

Medicare will shift trillions of dollars of costs onto future beneficiaries.

According to the CBO, the cost of purchasing insurance from private companies will more than double a retiree's out-of-pocket costs in the first year, and the voucher used to subsidize the premiums will grow more slowly than health inflation, further reducing the value of the Federal contribution.

According to the Center for Economic Policy Research, the impact of these changes, as the ranking member has stated, will be that a 54-year-old will need to save an additional $182,000 during the next decade to afford Medicare.

Younger people, just entering the workforce, will need to save more than $640,000 through their working lives to afford these additional costs. And because these benefits will no longer be guaranteed, it is unclear what kind of health care coverage this extra money will buy.

Mr. Chairman, the National Committee strongly supports enhancing retirement security for American workers, but we do not believe this can be accomplished by privatizing Social Security, Medicare or cutting benefits.

Mr. Chairman, I know my time is up, but I wanted to thank you for your legislation on the Independent Payment Advisory Board. As you know, we have come out strongly for your legislation. We feel that process is the wrong way to go, and we are working hard to garner additional support.

[The statement of Mr. Richtman follows:]

Prepared Statement of Max Richtman, Executive Vice President and Acting CEO, National Committee to Preserve Social Security and Medicare

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: On behalf of over 3 million members and supporters of the National Committee to Preserve Social Security and Medicare, I am honored to testify here today.

Our members come from all walks of life and every political persuasion. About one third identify themselves as Democrats, one third as Republicans, and the remaining third are unaffiliated with a political party. What unites them is their passion for protecting and strengthening Social Security and Medicare—not just for themselves, but for their children and grandchildren.

It is critical that any discussion about Retirement Security include Social Security and Medicare—because these two programs form the lynchpin of most Americans' retirement. About 54 million individuals receive Social Security benefits today, including37 million retirees.

These benefits are modest. The average retiree receives about $14,000 in Social Security benefits each year. Women receive about $12,000. Yet today's retirees are heavily dependent on these benefits. About one-third have no income other than Social Security, and two-thirds rely on Social Security for more than one-half of their retirement income.

Younger generations are likely to be just as dependent on Social Security as their parents and grandparents. Just over one-half of the workforce has access to any kind of retirement plan at work, and only about one-half of these workers choose to participate.

And those individuals who participate in a retirement plan increasingly must do so within the context of a defined contribution plan, such as a 401(k), rather than in a defined benefit pension plan. Unfortunately, defined contribution plans place the burden of investment and risk management on individuals. Even in the best of times, defined contribution plans work only if individuals are able to save substantially, make good investment decisions, retain their savings until needed for retirement, and develop a retirement drawdown plan that assures a continuous stream of income for the remainder of their lives.

The second major pillar of retirement security for today's retirees is Medicare. Prior to the creation of Medicare, millions of retirees had no health insurance, and

what insurance existed was very expensive. Private insurance companies shunned older people because they tend to have expensive claims.

Today, little has changed in the private market. Private companies who participate in the Medicare Advantage program are paid about 10% more than it would cost traditional Medicare to cover the same seniors. Without Medicare, health care would be unattainable or unaffordable for millions of seniors.

Even with Medicare, health care costs represent a significant portion of a retiree's income. About 30% of the average seniors' Social Security benefit is spent on Medicare out-of-pocket costs for Medicare Parts B and D alone. This percentage is expected to grow to almost 50% by 2085.

Social Security and Medicare help keep low-income workers out of poverty in retirement. And they provide critical support for middle-class workers who do not earn enough during their working lives to finance decades living in retirement. This helps explain their enduring popularity. And it explains why Americans are so unwilling to bet their futures on risky schemes to dramatically restructure them.

President George W. Bush discovered this when he proposed allowing workers to divert a portion of their payroll taxes into Social Security private accounts in 2005. Although they knew the Bush plan would not affect them, seniors spoke out to preserve the program for their children. Likewise, seniors all around the country oppose plans to privatize Medicare and convert it into a voucher program.

As you know, under the House budget resolution workers age 54 and younger today would purchase their health insurance from private companies, and be given a voucher—or premium support payment—to cover a portion of their costs.

These two dramatic changes in Medicare will shift trillions of dollars of costs onto future beneficiaries. According to the Congressional Budget Office, the cost of purchasing insurance from private companies will more than double a retiree's out-of-pocket costs in the first year. And the vouchers used to subsidize the premiums will grow more slowly than health inflation, further reducing the value of the federal contribution over time.

According to the Center for Economic and Policy Research, the impact of these two changes will be that a 54-year old will need to save an additional $182,000 during the next decade in order to afford Medicare under the Ryan plan. Young people just entering the workforce will need to save more than $640,000 extra through their working lives to afford the additional costs. And because benefits will no longer be guaranteed, it is unclear what kind of health care coverage this extra money will buy.

Mr. Chairman, the National Committee strongly supports enhancing retirement security for America's workers. But we do not believe that can be accomplished by privatizing Social Security or Medicare, or by cutting benefits.

Thank you.

Chairman ROE. Thank you. Thank you, Mr. Richtman.

Mr. Klein.

STATEMENT OF JAMES KLEIN, PRESIDENT, AMERICAN BENEFITS COUNCIL

Mr. KLEIN. Mr. Chairman, Congressman Andrews, members of the subcommittee, thank you so much for the opportunity to testify today. There are many positive features of the employer sponsored retirement system, and I do sincerely hope that you ask me some questions about them during that period of the hearing.

But since the hearing is really about the challenges facing the retirement system, and I only have 5 minutes, I hope you will indulge me if I use my time to cite five of our principal concerns.

First, there are multiple agencies with regulatory authority over the retirement system. The Department of Labor, the Department of Treasury and the IRS, Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, now the Commodity Futures Trading Commission. While this multi-agency system may be unavoidable, it does put significant responsibility on those agencies to harmonize their initiatives so that regulatory requirements are not duplicative, inconsistent, or, even worse, contradictory.

An example of this are the proposed Commodity Futures Trading Commission business conduct rules issued pursuant to the Dodd-Frank financial reform law that will, if followed, force certain parties to violate the fiduciary standards of ERISA that obviously fall within the jurisdiction of this committee.

Second, Congress needs to assert greater oversight on agencies that issue regulations that are clearly inconsistent with legislative intent. An example of this relates to hybrid convention plans. The statute requires interest crediting rates not to exceed a market rate of return. The proposed Treasury-IRS rules specify a certain interest rate and state that any other higher interest rate will violate the law. So even if the plan is able to get a higher rate in the market, it cannot use it. This will force employers to reduce the rate at which it credits plan accounts to the obvious detriment of plan participants.

Third, agencies need to give adequate time to comply with new rules. The Department of Labor recently announced an extension of the applicability date for new rules governing fee disclosure between service providers and employer plan sponsors. And the DOL is also extending the corresponding transition period for employers to comply with a separate set of finalized rules governing disclosure of fees to participants.

We appreciate very much the recognition by the Department of Labor to extend the date, but the problem here is twofold. The final rules regarding the service provider to plan sponsor disclosures have not yet been sent to the Office of Management and Budget. So it seems very likely that they could come out very close to the end of the year, at which time both service providers and plan sponsors are going to have to be scrambling to comply.

Moreover, and ideally, a new set of separate revised rules on electronic disclosure of information should really be effective before the effective date of the rules governing fee disclosure to plan participants, since those new requirements are going to cause a vast amount of information to have to be provided to millions of plan participants. But it seems highly unlikely that this will happen given the timing of the rules being issued.

Fourth, clearly, plan sponsors need to be held to an appropriate standard of care in handling their various government reporting functions. But when employers are faced with significant additional premiums for what are obviously innocent mistakes, it really undermines their willingness to continue sponsoring a plan.

An example of this is where the PBGC has required additional premiums from companies that actually paid the correct amount of the premium on time but made a simple clerical error when submitting the premiums through the PBGC's new electronic submission system. The agencies are not so flawless in all of their operations that they should be so unforgiving of an inadvertent error that did not even affect the agency receiving the correct payment in a timely fashion.

Fifth, plan sponsors need predictability. Employers know that sponsoring a pension plan will be a costly endeavor and for the most part they are okay with that if they can plan accordingly. But when they are required to implement funding rules, such as those prescribed under the Pension Protection Act that are highly sen-

sitive to minor changes in interest rates or minor changes in the stock market, it leads to a level of volatility that erodes the ability of employers to continue sponsoring plans, especially during tough economic times.

Finally, I must share that employers are very concerned that in the effort to reduce the Federal deficit, Congress may look to the tax expenditure for employer-provided retirement plans that is estimated to be $112 billion in fiscal year 2011 and yet overlook the fact that providing incentives to employers and workers to save for retirement is a lower cost way of providing a needed level of personal financial security than through expanded public programs. For every dollar of tax expenditure, a plan provides about $5 worth of benefits.

Because members of the Education and the Workforce Committee inherently understand the value of employer sponsored retirement plans, you are especially well positioned to be a voice within the forthcoming budget debate on the need for tax policy to support, not erode, employer plans and retirement savings.

Thank you very much.

[The statement of Mr. Klein follows:]

Prepared Statement of James A. Klein, President, American Benefits Council

Chairman Roe, Ranking Member Andrews, and Members of the Subcommittee, I am grateful for the opportunity to appear before you on this critically important topic. My name is James Klein and I am President of the American Benefits Council. The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

My testimony today will cover three areas. First, I will briefly contextualize the critical role employers play in ensuring a secure retirement for American workers. Second, I will identify regulatory developments that threaten to undermine that role, potentially prompting some employers to discontinue or scale back their existing retirement plans, while chilling other employers from adopting new retirement plans. Finally, I will discuss the importance of maintaining the established tax incentives both for employers to promote workplace plans and for employees to contribute to them.

(1) The voluntary system for workplace savings plans

I believe it would be useful to set the stage by briefly reviewing the scope of our voluntary system for workplace savings plans. According to the Bureau of Labor Statistics, just over half of all workers in the private sector participated in an employer-sponsored retirement plan of some kind in 2007. In particular, only one in five private-sector workers participated in a traditional pension (i.e., a defined benefit plan), while about two in five participated in 401(k) and other defined contribution plans. Meanwhile, upwards of two in five private-sector workers had no opportunity whatsoever to participate in a retirement savings plan at work.

There are many recognized advantages of "qualified" plans offered at the workplace. Employers bring unique advantages to bear for employees when it comes to retirement savings and income: noncontributory plans that benefit employees who cannot afford to contribute; matching contribution arrangements that create enormous incentives to save; educational services underscoring the importance of savings; bargaining and purchasing power; economies of scale; fiduciary decision-making and oversight; and access to beneficial products and services. Employers are also in a strong position to know the retirement needs of their employee populations and can tailor retirement programs to these needs.

In short, employers play an important role in promoting a secure retirement for America's workforce. But given the voluntary nature of employer plans, policymakers must seek to support employers in facilitating and, where feasible, financing retirement income for employees. In particular, policymakers should recognize that

providing retirement benefits is not the core business mission of employers. In today's globally competitive marketplace, employers are increasingly sensitive to the costs, risks, and potential liabilities of all their activities. Government policies that raise the costs, risks, and potential liabilities associated with retirement plan sponsorship jeopardize the employer commitment to providing retirement benefits. This danger is present for employers of all sizes. But given the importance of expanding workplace retirement plan coverage for individuals who lack it, policymakers should be particularly sensitive to the effect of such increased costs, risks, and potential liabilities on small employers and on their willingness to initiate employer-sponsored retirement plans for their workers.

(2) Regulatory complexity and burdens

This brings me to my second point: In recent years, the regulation of employee benefit plans has grown considerably, and the employee benefits field has become an area of the law that is well-known for its complexity and burdensome regulatory regime. To be sure, plan sponsors appreciate the importance of rules that are appropriately protective of plan sponsors' and participants' interests. But those interests are not well-served when requirements are unnecessarily broad and overly burdensome. Rather, the government should establish a coordinated legal and regulatory regime under which individual savers and employer plan sponsors can operate effectively.

To achieve these objectives, regulatory activity must be well-coordinated across all agencies of jurisdiction to avoid conflicting or inconsistent guidance and enforcement. President Obama acknowledged the critical importance of this principle and of avoiding such regulatory conflicts in his January 18, 2011, executive order on Improving Regulation and Regulatory Review. Yet current examples of inconsistent guidance abound, particularly between the Department of Labor's current proposed regulations redefining the term fiduciary, and various regulations proposed by the Commodity Futures Trading Commission and the Securities and Exchange Commission under the Dodd-Frank Wall Street Reform and Consumer Protection Act. On January 18, 2011 the President issued an Executive Order emphasizing the importance of agency coordination. This means far more than agencies letting each other know about regulatory projects being developed. In the President's words, coordination means "harmonizing rules" and avoiding "inconsistent" or "overlapping" rules. Such coordination among the Department, the SEC, and the CFTC is essential. The critical need for coordination with the CFTC is discussed further below

Moreover, compliance burdens on employer plan sponsors can be unreasonably magnified by requiring employers to comply first with statutory provisions and subsequently with regulations that articulate an interpretation of the statute that differs substantially from a good faith reading. The hybrid plan provisions of the Pension Protection Act of 2006 (PPA) are one example of this burdensome phenomenon. For example, the Pension Protection Act of 2006 prohibited cash balance plans and other hybrid plans from crediting interest at an above market rate. Treasury has issued proposed regulations that are clearly inconsistent with the statute and that expressly prohibit the use of thousands of interest crediting rates available in the market. Accordingly, these proposed regulations would force countless substantial plan modifications, as well as causing a very substantial portion of the cash balance plans in the country to reduce benefits.

This is but one example of a regulatory interpretation that was issued many years subsequent to the effective date of the statutory provision and bears limited resemblance to the plain meaning of the statute. As a result, plan sponsors face costly and unexpected compliance changes, some of which require substantial plan redesigns. Regulations should be crafted with an eye to effecting legislative intent while limiting and mitigating the unintended consequences for plan administration and plan benefits.

I would like now to turn to some specific developments that evidence this trend toward increased regulation, uncoordinated regulations, and undue burdens on employers who are trying to do the right thing for their workers by providing retirement plans.

(a) Definition of the term "fiduciary"

In October, the Department of Labor proposed regulations on the definition of the term "fiduciary" under the Employee Retirement Income Security Act (ERISA). The proposed regulations would set aside the rule that has defined the term for 35 years. We understand the Department's desire to update and improve the definition, and we agree that the employer community would benefit from rules that establish clear lines between fiduciary advice, on the one hand, and non-fiduciary education, marketing, and selling on the other hand. But the proposed regulations create too

broad a definition of fiduciary. We are very concerned that an overly broad definition would actually have a very adverse effect on retirement savings by inhibiting investment education and guidance for plans and participants, raising costs, and shrinking the pool of service providers willing to provide such investment education and guidance.

There has been some perception that the concerns related to the proposed regulations only relate to service providers, and primarily involve IRAs. That is not the case. The proposed regulations raise very serious issues for plan sponsors.

"May be considered" standard. Under the proposed regulations, an individual can become a fiduciary solely by reason of providing casual investment information that "may be considered" by the recipient. Assume, for example, that a plan participant has consulted with an advisor and has decided tentatively to invest in a group of investment options available under the plan. As a last-minute check, the individual asks a colleague in the employer's human resources department if the participant's fund selections make sense for an individual in her situation. The human resources employee says he is not an expert but the choices make sense to him and are consistent with what many others are doing. Under the regulation, that casual reaction is fiduciary advice. Similarly, if the participant were to ask a call center operator the same question, any answer would be investment advice. But neither interaction is really investment advice. An ERISA fiduciary relationship is a very serious relationship with the highest fiduciary standard under the law. In that context, fiduciary status should not be triggered by casual discussions but only by serious communications that reflect a mutual understanding that an adviser/advisee relationship exists.

If the proposed rule were finalized, plan sponsors may need to inform human resources departments and call centers never to discuss investments in any manner. This would hurt and frustrate participants, which is the last thing that plan sponsors want to do. Nor would that be a positive development from a policy perspective.

Plan sponsor employees. It is, of course, common for a plan sponsor to form a committee of senior executives to oversee plan issues, including plan investment issues. It is certainly clear that such committee has fiduciary status. But under the proposed regulations, large numbers of middle-level employees who frame issues and make recommendations for senior employees to consider would also be fiduciaries. If all of these employees were fiduciaries, the effects would be severely negative. For example, the cost of fiduciary insurance would skyrocket, if such insurance would be available at all for such employees. These costs would ultimately be borne by participants in the form of higher costs and lower benefits.

Plan investment menus. Today, one of our greatest challenges in the retirement security area is broadening retirement plan coverage among small businesses. Small businesses will generally adopt a retirement plan only if the process is simple and inexpensive. In this context, imagine the hardware store owner who would like to adopt a plan for his 12 employees. Assume that the service provider presents its menu of 300 investment options, provides objective data regarding all 300, and tells the hardware store owner (1) to decide how many options to offer and (2) to pick the right options for his employees, subject to fiduciary liability if he picks imprudently. Alternatively, the hardware store owner can find some independent consultants, interview them, choose one (subject to fiduciary liability), and pay that consultant a substantial amount of money to pick and monitor the plan menu.

Needless to say, if that is the message that the hardware store owner receives, he will not adopt a plan for his employees. Yet under the proposed regulations, if the service provider did anything more to help the hardware store owner, the service provider would be deemed a fiduciary. So if the rule set forth in the proposed regulations is finalized in its current form, we are likely to see a marked decline in retirement plan coverage.

Service providers need a way to provide employers with help in choosing the plan menu so that the process is simple and inexpensive. For example, the service provider may screen funds based on objective criteria that are provided by the plan fiduciary or that are commonly used in the industry.

Valuation. We believe that the proposed regulation's application of fiduciary status attributable to the provision of valuation services is overly broad and needs to be reconsidered. First, it would sweep in countless routine valuations, such as valuing annuity contracts for purposes of determining required minimum distributions. Second, even in the areas that are the object of the Department's express concerns—such as ESOP valuations—the nature of the fiduciary duty needs work. The Department wants to ensure an objective valuation. A fiduciary advocates for participants; a fiduciary is precluded by law from being objective.

Management of securities. Under the proposed regulations, advice regarding the management of securities constitutes investment advice. This raises serious issues

for plan sponsors. For example, assume that a plan decides to change trustees and begins negotiating a trust agreement with the new trustee. The trustee is involved in the "management" of plan assets, and the terms of the trust agreement affect that management. Are all of the plan sponsor's legal and compliance personnel fiduciaries by reason of working on the trust agreement? Under the proposed regulations, the answer is yes. This will cause the cost of trust agreements and many other routine plan actions to increase exponentially with the imposition of new duties and large potential liabilities.

What about the persons working on the agreement for the new trustee? If such persons make any "recommendations" to the plan in the course of negotiations, they would become fiduciaries because the seller exemption, on its face, only appears to apply to sales of property and not services. Any such recommendations would thus trigger fiduciary status and corresponding prohibited transactions.

There are many similar examples. To avoid such inappropriate results and enormous new costs and burdens on plan sponsors, the proposed regulations need significant modification.

Legal and other non-investment advice. Assume that ERISA counsel advises the plan that entering into a swap with a particular dealer would raise prohibited transaction issues and counsels the plan not to enter into the swap for that reason. Under the proposed regulations, that would clearly constitute investment advice, making the ERISA attorney a fiduciary. Again, this is an unworkable result for plan sponsors who need to be advised on compliance issues.

In sum, the increased cost and confusion attributable to the proposed regulation is a source of significant concern for our plan sponsors. The Council and many other organizations representing employers have communicated these concerns to the Department of Labor. We appreciate the support we have received from many Members of Congress, and hope that on a bipartisan basis Members of Congress will continue to join us in warning the Department of the dangers inherent in an overly broad proposal that does not fully take account of ramifications that could raise costs or otherwise chill employers from offering plans in the first place.

(b) Electronic disclosure

ERISA requires the extensive provision by plan sponsors of reports, statements, notices and other documents. Unfortunately, current regulations severely restrict the circumstances in which email and other paperless means of communication can be utilized. The regulations contemplate the use of electronic media only if a participant either (i) uses an electronic network (e.g., a computer or a smart phone) as an integral part of his or her duties as an employee, or (ii) affirmatively consents to receiving documents electronically in a manner that demonstrates the ability to access electronic disclosures. This standard severely restricts the use of email as a means of communication for many categories of employees and former employees, even in circumstances where the employer has email addresses and routinely uses email or other electronic disclosure for other forms of communication. As a result, the multitude of notices and statements that plan administrators must provide to plan participants and beneficiaries are typically provided through labor intensive and costly paper media.

There are enormous potential cost savings that would benefit participants, beneficiaries, employers and the environment if the existing regulation were revised to more broadly accommodate electronic communication, including use of home computers and personal cell phones or internet connections. We appreciate that not every participant or beneficiary has access to a particular system, but believe that these participants can be accommodated through rules that allow participants to opt out of electronic delivery and request paper copies of the relevant materials.

DOL recently instituted a Request for Information Regarding Electronic Disclosure by Employee Benefit Plans. We appreciate DOL's initiation of this project, as we believe that appropriate electronic disclosure is a more user-friendly, efficient, and cost-effective means of providing necessary information to plan participants and beneficiaries and is a method that is more popular with participants and beneficiaries. Effective electronic communications can enhance the disclosures for the majority of participants while protecting their rights and ensuring that those who still wish to receive paper notices are entitled to receive them upon request.

More specifically, we strongly believe that a current Department of Labor rule in effect with respect to benefit statements would work very well for all communications. Under that rule, a plan posts information on a secure website, informs participants by non-electronic means of the availability of the information on such website, and also informs participants of their right to receive paper notices. This structure is very protective of participant rights, is very efficient, and is very effective in offering participants the best way to find what they need whenever they need it.

In this regard, we believe that it is critical that all agencies whose rules affect plans adopt the secure website rule described above. I note that DOL's current regulation differs materially from the electronic delivery standards of other regulatory agencies, including the Internal Revenue Service (IRS) and the SEC which share oversight responsibility for employee benefit plans with DOL. These different standards can be very frustrating and burdensome for employers who must comply, for example, with one set of standards in furnishing DOL-required notices, another standard in providing IRS-required disclosures, and a third standard in distributing SEC-required disclosures. Under the President's Executive Order of January 18, discussed above, these standards should be harmonized. The Council recommends that the rules be harmonized by the uniform adoption of the secure website approach described above.

(c) Use of Swaps

Pension plans use swaps to manage interest rate risks and other risks, and to reduce volatility with respect to funding obligations. If swaps were to become materially less available to plans, plan costs and funding volatility would rise sharply. This would undermine participants' retirement security and would force employers to reserve, in the aggregate, billions of additional dollars to address increased funding volatility. These reserves would have to be diverted from investments that create and retain jobs and that spur economic growth and recovery.

In enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress adopted "business conduct" standards to help plans and other swap counterparties by ensuring that swap dealers and major swap participants (MSPs) deal fairly with plans and other counterparties. However, the proposed regulations issued by the Commodity Futures Trading Commission under Dodd-Frank would actually have devastating effects on plans.

The proposed business conduct standards would require swap dealers and MSPs to provide certain services to retirement plans and other plans governed by ERISA with respect to swaps (or potential swaps) with such plans. The required services would likely make the swap dealer or MSP a plan fiduciary under a regulatory definition of a fiduciary recently proposed by the Department of Labor (and under the current-law definition). For example, the proposed business conduct standards would require a swap dealer or MSP (1) to provide a plan with information about the risks of a swap, (2) to provide swap valuation services to a plan, and (3) to review a plan's advisor. Each of these services would likely make the swap dealer or MSP a plan fiduciary under the DOL's proposed regulations, and the third would make swap dealers or MSPs a fiduciary under current law. If a swap dealer or MSP is a plan fiduciary, it would be a prohibited transaction under ERISA for the swap dealer or MSP to enter into a swap with the plan. Thus, the proposed business conduct standards would likely require a swap dealer or MSP entering into a swap with an ERISA plan to violate ERISA. The only way to avoid this result is for all swaps with plans to cease, which would be devastating for plans, as discussed above.

The interaction of the business conduct standards and the DOL's definition of a fiduciary should be publicly and formally resolved in a legally binding way by the time the CFTC finalizes the business conduct standards. If the issue is not resolved before finalization of the business conduct standards, there would be an immediate chilling effect on all swap activity due to uncertainty regarding current and future DOL regulations. Accordingly, prior to finalization of either regulation, the CFTC and the DOL should jointly announce that no action required by the business conduct standards shall cause a swap dealer or MSP to be an ERISA fiduciary.

Furthermore, under the proposed business conduct standards, if a swap dealer or MSP "recommends" a swap to a plan, the swap dealer or MSP must act "in the best interests" of the plan with respect to the swap. Under the proposed rules, many standard communications used by a swap dealer or an MSP in the selling process—such as "this swap may fit your interest rate hedging needs"—would be a recommendation. In fact, it seems clear that the term "recommendation" would include information regarding plan risks that the business conduct standards require a swap dealer or MSP to provide to a plan. This means that swap dealers or MSPs acting solely as counterparties would be required to also act in the best interests of the plan. This is not possible and accordingly would likely cause all swaps with plans to cease. A swap dealer or MSP as a party to a swap transaction cannot have a conflicting duty to act against its own interests and in the best interests of its counterparty with respect to the swap. If a swap dealer or MSP clearly communicates to a plan in writing that it is functioning solely as the plan's counterparty or potential counterparty, no communication by the swap dealer or MSP should be treated as a "recommendation."

Finally, if a swap dealer or MSP is simply acting as a counterparty or potential counterparty with respect to a swap with a plan, the proposed business conduct standards require the swap dealer or MSP to carefully review the qualifications of the advisor advising the plan with respect to the swap, and to veto the advisor if appropriate. This rule is problematic for several reasons. First, there is no basis for this rule in the statute; under the statute, a swap dealer or MSP's duties are fulfilled with respect to a swap with an ERISA plan if the swap dealer or MSP determines that the entity advising the plan is an ERISA fiduciary. Second, if swap dealers or MSPs can veto plan advisors, plan advisors could potentially be reluctant to negotiate in a zealous manner against a dealer, thus severely hurting plans. Third, swap transactions often need to happen quickly to effectively hedge plan risks; there is no time for investigations of advisors. Last, reviewing a plan's advisor may well make a swap dealer or MSP a fiduciary of the plan, which, as discussed above, would in turn make the swap a prohibited transaction. If an ERISA plan represents to a swap dealer or MSP that the plan is being advised or will be advised by a fiduciary subject to the requirements of ERISA, the swap dealer or MSP should not be required, or permitted, to make any further inquiry to satisfy the statutory requirement.

These issues pose a serious threat to the ability of defined benefit plans to manage risk. At a time when plan sponsors face enormous financial and regulatory challenges in maintaining a plan, we must ensure that new swap rules do not create a further disincentive to maintaining the plan.

(d) PBGC disruption of normal business activities

We would also like to express deep concerns regarding the PBGC's proposed regulations under ERISA section 4062(e). First, the proposed regulations are not consistent with the statute. Under the statute, liability is triggered if "an employer ceases operations at a facility in any location". The proposed regulations do not follow the statute, which was clearly intended to be limited to situations where operations at a facility are shut down. Instead, under the proposed regulations, liability can be triggered where no operations are shut down and no employees are laid off, but rather operations are, for example, (1) transferred to another employer, (2) moved to another location, or (3) temporarily suspended for a few weeks to repair or improve a facility. The proposed regulations need to be revised to conform to the statute, so as not to disturb normal business transactions that are not within the intended scope of the statute and pose no risk to the PBGC.

Moreover, the liability created by the proposed regulations can be vastly out of proportion with the transactions that give rise to the liability. For example, where a plan has been frozen for many years, a de minimis business transaction affecting far less than 1% of an employer's employees can trigger hundreds of millions or billions of dollars of liability. This needs to be addressed. In addition, as noted, the proposed regulations would impose enormous liabilities on plan sponsors even in situations where a plan poses no real risk to the PBGC. There should be exemptions for small plans and for well-funded plans. The exemption for well-funded plans should be based on a plan's funded status for funding purposes. If a company has, for example, little or no funding obligation with respect to a plan under the funding rules, it is inappropriate to impose large obligations on such company based on a theory that the obligations are needed to protect the PBGC.

These proposed regulations would clearly hasten the demise of that system. By placing an enormous toll charge on plan sponsors that engage in normal business transactions, these proposed regulations would send a powerful negative message to those left in the defined benefit plan system.

(e) PBGC premium filings

We are also very concerned about a pattern that seems to be developing with respect to the PBGC's review of premium filings. We are receiving repeated reports from our members that filings are being rejected and penalties are being imposed for reasons that seem unnecessarily rigid.

In our view, the relationship between the PBGC and defined benefit plan sponsors should be a cooperative one that furthers the mission of the PBGC. The PBGC's mission includes "encourag[ing] the continuation and maintenance of voluntary private pension plans for the benefit of their participants." In that context, imposing large premium increases and penalties seems inappropriate in the case of conscientious sponsors that are trying to comply with the rules.

Based on our members' experience, we have numerous examples of this concern, but we will only highlight one here today. In the case of one of our members, the premium was paid on October 14th, the day before the deadline. The plan sponsor contacted the PBGC on October 15th to ensure that the payment had been received;

a PBGC representative confirmed orally that the payment had been made. Then on October 19th, the PBGC contacted the plan sponsor and said that the payment had been returned. Apparently, the plan sponsor had made a clerical error with respect to the account number. On the same day—October 19th—the plan sponsor made the full premium payment.

This plan sponsor was assessed a large penalty and all of its requests for reconsideration have been denied. The PBGC stated in its second denial: "the payment failure was the result of a clerical error by the Plan and therefore does not meet reasonable cause. An oversight is not in keeping with ordinary business care and prudence."

It is very disturbing that the PBGC's current position is that any oversight affecting timely payment is a cause for penalties. Regardless of the care used by the plan sponsor, any error apparently triggers penalties. We agree that there need to be incentives for plan sponsors to be conscientious and careful. But in order to be true to its mission, PBGC needs to balance that objective with the need not to act in a punitive way with respect to plan sponsors that make inadvertent errors despite clear evidence of an intent to comply.

The above facts clearly demonstrate the plan sponsor's conscientiousness does not matter under PBGC's penalty system. If a plan sponsor makes any mistake affecting timely payment, penalties apply under PBGC's current system. This is not the right answer. We strongly believe that inadvertent errors, such as clerical errors, that are made despite a clear intent to comply should not give rise to penalties. Any other position would simply be punitive and inconsistent with the PBGC's mission.

PBGC needs to review its filing program to ensure that filings are not rejected or subjected to penalties inappropriately. A failure to do so would just be one more reason—and a very preventable reason—for companies to leave the defined benefit system.

(3) Essential tax incentives

The U.S. retirement savings system successfully encourages individuals to save for retirement by providing tax incentives—typically income tax exclusions or deductions—for contributions to employer-sponsored defined contribution plans and IRAs, up to certain limits. This tax incentive structure is a fundamental pillar of our successful private retirement savings system. It provides a strong incentive for individuals at all income levels to save for retirement and encourages employers to sponsor plans that deliver meaningful benefits to Americans up and down the income scale.

The current pre-tax treatment of retirement savings is a powerful incentive for individuals. It is viewed by taxpayers as the core of our retirement savings regime and allows them to save more on a paycheck-by-paycheck basis than would be the case with after-tax contributions. This financially efficient approach is particularly important for low- and middle-income families trying to make the most of scarce dollars. The payroll tax savings on employer contributions provides another significant advantage for modest-income households, as does the deferral on gains that spares families from annual tax bills on their accumulating savings.

And current incentives efficiently produce retirement benefits. Repeated analyses have shown that, for every dollar of federal tax expenditure devoted to tax-preferred workplace retirement plans, four to five dollars in ultimate retirement benefits result. This extremely efficient catalyst produces a remarkable amount of benefits for workers and their families—in 2008, private employer retirement plans paid out $462 billion in benefits.

Because the employer-sponsored retirement system is premised on its voluntary nature, tax incentives for contributions by employees are important in encouraging plan sponsorship. A move to a capped tax credit that provides a reduced tax benefit could discourage plan sponsorship. If sponsorship declines and more employees are forced to save on their own, they would not receive the many protections and benefits associated with employer-sponsored plans (from ERISA protection to fiduciary oversight—especially of investments and fees—to employer contributions).

Employers play an important role in helping to facilitate the accumulation of retirement savings and income by American workers. We are proud of the role we have played and the unique advantages we can bring to bear when it comes to retirement savings and income. And we urge policymakers to support our role as employers in facilitating and, where feasible, financing retirement income for employees.

Thank you for this opportunity to testify.

Chairman ROE. I thank the panel for their testimony. Our first questioner will be Dr. Bucshon.

Mr. BUCSHON. Thank you, Mr. Chairman. I will make a couple comments. First of all, I am a physician and I assure you that I am very concerned about the future of American seniors and our current seniors, and I just want to go over and remind everyone that according to the recent Medicare trustees report that Medicare will be insolvent in 2024, and, again, that is not my opinion, that is the one that just came out from the Medicare trustees.

And, with all due respect, I would like to have a request that the minority propose a solution, if they don't like our solution, which was, by the way, modeled after what we have as Members of Congress and also was outlined in a Democrat report, the Breaux Commission in the 1990s, under President Clinton.

The status quo under the Affordable Care Act will allow for severe cuts to seniors' benefits in 2024 without action, and the only proposal to address the issue at all under current law is a 15-member board, IPAB, that will certainly result in significant slashes to Medicare funding at the time as we know that the number of people on Medicare will be doubling by 2030.

So with that said, I have a couple of questions as it relates to the pension area.

First of all, Mr. Brill, you mentioned that the trend in retirement security is toward offering more defined contribution plans, but people still don't save. So to what extent can public policy help increase participation in voluntary retirement plans when it really is a matter of personal responsibility, and how do we promote sufficient savings for retirement for our American seniors?

Mr. BRILL. Thank you, Congressman, for your question. As you indicated, there is a need for more workers to save and for those who do save to save more so that they have an adequate nest egg when they reach their retirement age. I don't think that there is a single solution that can help us reach that goal, although I think that there are a set of policies that one could consider pursuing.

As I mentioned in my testimony, auto enrollment, auto escalation policies have shown to be effective in getting more people enrolled and, in particular, getting people enrolled in DB—I am sorry—in DC plans sooner. And one of the keys to having an adequate retirement nest egg is starting when you are young and adopting both that mentality, the value of thrift, the value of savings, and putting those assets aside as early as possible so that they have the opportunity to accumulate.

In addition, evidence from economists Olivia Mitchell and Annamaria Lussardi at Dartmouth College have found that there is an inadequate amount of financial literacy among many workers, particularly minorities and women, who are not well informed about the skills necessary and the appropriate levels of savings in order to have sufficient amounts of savings.

I think that greater awareness, greater communication by employers to employees and other activities like that can help address some of those issues.

Mr. BUCSHON. Okay, thank you. Mr. Delaney, we have heard some testimony that the Department of Labor regulations may reduce investment flexibility for pension plans. Can you discuss how important it is for both defined benefit and defined contribution

plans to have access to a wide range of investment products for our citizens?

Mr. DELANEY. Well, I believe it is very important. First of all, as it relates to a predictability and being able to rely upon what the guidelines are from any particular piece of legislation, we certainly want to provide to our associates a broad range of investment opportunities through the DC plan.

Certainly, if you were to speak with our Treasurer, he certainly wants to be able to talk with people that he deals with respect to investment options with respect to the DB assets. I would tell you that our associates have at this point 17 different investment opportunities in their defined contribution plan, and we spend a lot of time marketing those. They have online capability. We do a lot of things with them in terms of education and being able to provide them with opportunities to have a wide range of options based on their risk tolerance and their personal circumstance.

Mr. BUCSHON. Thank you. I yield back.

Chairman ROE. Mr. Andrews.

Mr. ANDREWS. Thank you. I would like to thank the witnesses for their testimony. It did not disappoint. It was very good for everybody. Thank you.

Mr. Brill, on page 7 of your testimony you cite a Boston College study that found that the financial crisis put the percentage of households at risk of not having sufficient post-retirement standard of living increased from 44 percent to 51 percent. So a lot of retired people in real trouble.

I assume by "at risk" you mean that their incomes would either stagnate or not go up much and their costs would go up by a lot. Is that what "at risk" means?

Mr. BRILL. The trigger for being at risk in the study was that one's expected retirement income was more than 10 percentage points less than the targeted replacement rate.

Mr. ANDREWS. Does it take cost into consideration at all, cost of living?

Mr. BRILL. It does in the sense that it is considering income in real terms, not in nominal terms.

Mr. ANDREWS. If someone's retirement cost went up by $6,000 because of increased out-of-pocket health care costs, do you think that would increase the number of senior households at risk?

Mr. BRILL. Congressman Andrews, with regard to the Medicare issue, what I would note is the greatest concern that I have is the unsustainability of the current system.

Mr. ANDREWS. Well, my greatest concern is the answer to my question. What I asked you was would it put more senior households at risk if their costs went up by $6,000 a year?

Mr. BRILL. I think that what is important is that people have an awareness of the situation that they are in. If they have the opportunity to save that additional——

Mr. ANDREWS. Would they be aware if their out-of-pocket went up by $6,000 a year that they would be in more trouble; is that a fair statement?

Mr. BRILL. Without warning?

Mr. ANDREWS. Yes.

Mr. BRILL. Without warning, yes.

Mr. ANDREWS. Well, with or without warning, I mean, say to somebody here is some news. A few years from now it is going to cost you 6,000 bucks a year more to live. Does the warning really do them any good if they don't have the income?

Mr. BRILL. If they have the opportunity to save, they can mitigate those concerns.

Mr. ANDREWS. If they have the opportunity to save. But your own testimony says that there—the number of households who don't have the opportunity to save and therefore at risk grew from 44 percent to 51 percent because of existing economic conditions. So do you think they are going to have much of an opportunity to overcome that?

Mr. BRILL. I would agree it is important to strengthen our retirement security programs, encourage more people to save, make more people aware of the need to save and facilitate their DC plans.

Mr. ANDREWS. Now on page 8 of your statement you say Medicare, while recognized by some as an unsustainable program as currently constructed, lacks the bipartisan cooperation necessary to achieve meaningful savings.

Is it true or false that the Affordable Care Act had $495 billion in Medicare savings in it?

Mr. BRILL. I am sorry, could you repeat the question?

Mr. ANDREWS. The Affordable Care Act, signed by the President last year, had $495 billion in Medicare savings in it; is that correct?

Mr. BRILL. I believe that—I agree that the——

Mr. ANDREWS. And isn't it also correct that the Republican budget resolution, in its baseline, assumed those $495 billion in savings for future budgets; is that correct?

Mr. BRILL. I am not aware.

Mr. ANDREWS. The record will show that it is.

I want to talk about meaningful savings in Medicare. What do you think about if idea of permitting the Medicare administration to negotiate the price of prescription drug the way the VA does? There are projections, I think, Mr. Richtman's organization projects that that could save $24 billion a year. Is that something we should do?

Mr. BRILL. I don't think that is a policy we should pursue.

Mr. ANDREWS. Why not?

Mr. BRILL. I am concerned about setting the prices in pharmaceuticals, because of the effect it may have on the development of new drugs.

Mr. ANDREWS. Well, has the VA negotiating prices affected the development of new drugs?

Mr. BRILL. The size of the VA market is smaller than the size of the retiree market.

Mr. ANDREWS. So it is your position that we should have a law that says that the Medicare program should pay whatever the drug companies demand to be paid for prescription drugs?

Mr. BRILL. That is not the current policy.

Mr. ANDREWS. That is what the law says. They are prohibited from negotiating the drug prices, aren't they? What's the current policy?

Mr. BRILL. The current policy with regard to part B drugs is that Medicare reimburses what is referred to as ASP plus 6, the average sales price as set by the market.

Mr. ANDREWS. Is CMS allowed to negotiate the price of the Coumadin pill that it buys?

Mr. BRILL. No, they are not.

Mr. ANDREWS. Well, that sounds to me like the present deal is you have got to pay whatever the industry demands. Do you think that is a good idea?

Mr. BRILL. No, the current deal is that you are set to pay what the market demands, not what the industry sets.

Mr. ANDREWS. But you can't participate in the market by being a purchaser, you have to wait and see what everybody else does? I just think that is a meaningful Medicare savings you don't seem to support.

I yield back.

Chairman ROE. I thank the gentleman.

Dr. Heck.

Mr. HECK. Thank you, Mr. Chair. This is for Mr. Delaney. We heard testimony about the lack of participation and extent of savings by employees in the plans that are available and that education is one of the ways that we can try to change that behavior. What obstacles do you face as an employer in providing that type of education, and what could be done to facilitate that process?

Mr. DELANEY. Well, I think as an employer Ingram has done a very good job of getting information out to our associates. One of the things that would be a difficult situation for us is we have a very diverse workforce. We have individuals, for instance, who spend most of their time in a distribution center or individuals who spend most of their time on a tow boat. And so access to online communication is not readily available for those folks in the workplace for sure. And so we have to take a multifaceted view and strategy in terms of how we get information to them.

We have provided, as I mentioned in my statement, retirement planning workshops, and we send a lot of direct mails to folks that we consider to be very, very effective.

In terms of general education, we think that basically the environment today allows us to do what we need to do to get the word out to get people to save more and to participate in higher numbers.

Mr. HECK. Is there any concern over liability with providing financial advice to your employees?

Mr. DELANEY. Well, I would tell you that we go up to a certain line and not, in our opinion, not beyond that. We certainly don't make advice in terms of what they should put money into. I mention that we use, for balancing purposes, Morningstar, a third party, to do that.

But for the most part what we do is we educate. We tell people what their options are but we do not make, but we do not make judgments about their particular circumstances and what they should or should not do with respect to investment.

Mr. HECK. Thank you, Mr. Chair.

Chairman ROE. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Mr. Richtman, the Paul Ryan Republican budget on Medicare indicates that it will affect only those age 54 and younger. Is that actually correct?

Mr. RICHTMAN. Well, it clearly affects, in a dramatic way, as has been pointed out already today, those 54 and younger. But it also has a dramatic effect on current beneficiaries.

Chairman Ryan's proposal repeals the Affordable Care Act. The Affordable Care Act had some improvements that are very important for seniors. The well-known and well discussed donut hole is eliminated in the Affordable Care Act. That disappears under the chairman's legislation.

All of the improvements in preventive care that eliminated out-of-pocket contributions for preventive care, that is gone in the budget that Chairman Ryan has proposed.

So to simply say to seniors, don't worry, this is not going to affect you, is completely inaccurate.

Mr. KILDEE. So the concern, I have talked to others at home for about 9 days and talked primarily to senior citizens, and, being one myself, I generally see a lot of them.

And so their concern is not just out of charity for the younger workers, but they look at their own financial situation and find difficulties created by the Ryan approach.

Mr. RICHTMAN. That is absolutely true and, as Congressman Andrews pointed out, by dividing these two groups by age, it has an impact on the risk pool of older people, and it is virtually impossible to prevent an adverse impact because of those consequences on people currently on Medicare.

Mr. KILDEE. Could we say, then, and I use this and heard it when I was back home in Flint, Michigan, Saginaw, Michigan, Bay City, Michigan, there were a lot of retirees, mostly General Motors or Delphi retirees, and we assume then that by keeping it in Medicare for this new program proposed by Mr. Ryan, is he using an assumed name for this new program?

Mr. RICHTMAN. No. Technically, I suppose it could be Medicare. I have heard people at the town meetings I participated in with seniors, our members, call it coupon care. And, you know, they are okay with clipping coupons for groceries, but they are not too keen on coupons for purchasing their health care.

Mr. KILDEE. And given, comparable to a food stamp, you have to go out and try to find the best bargain you can find? A lot of these people are very, quite old. I am 81 myself, I think I can still do that myself. I do it for the country, I hope I can do it myself. But a lot of these people are going to find it very difficult to have to shop around and look for the most appropriate policy for themselves.

So I really think it is kind of a—they ought to be honest and name it something else because Medicare, from the time that Lyndon Johnson signed that into law, one of the greatest things since Franklin Roosevelt signed Social Security into law in 1935, Medicare means one thing to these older people. And what the shell game has done is put something else there and still call it Medicare. I myself would think that they should not use an assumed name for this new program.

Thank you very much, and thank you for what you do.

Mr. RICHTMAN. Thank you.

Chairman ROE. Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman. As I sit and listen to this discussion and as a family practice physician for the past 18 years prior to coming to Congress, it certainly gives me pause to listen to the various testimony here today and listen to some of the discussions about Social Security and insolvency and Medicare and insolvency. I know a lot of folks who are in my age group, I am 47, for the past decade have wondered whether Social Security is even going to be there, whether Medicare is even going to be there and, you know, we don't seem to be able to give them a real good answer.

But, you know, Social Security back home, at least with my constituents, is something that the government has mismanaged, that they have handled irresponsibly, that they borrowed money from, and it has created a real problem with that certainty of what they will get and what they won't get.

As far as Medicare goes, you know, certainly as a physician, I don't think that I have ever looked at treating a patient as treating a Democrat or a Republican. I just treated a patient. And I know that there is a lot of concern about where the health care is going to come from.

But as far as just talking to the people in general and talking about the facts of Medicare on a bipartisan basis, we know for a fact that there are 10,000 new members entering Medicare every day. We know that in 1965, when Medicare was created, the average life expectancy of a male was 68 years. So the plan was designed to cover them for 3 years. Thankfully, through good medicine males are living at least 10 years longer and females 12 years longer.

Unfortunately, the government didn't account and adjust for that. The average couple pays into Medicare about a dollar for every $3 that comes out.

So to look at Medicare and try to change the name of Medicare or call it something it is not is irrelevant to me. The bottom line is Medicare is going broke and it is going to be insolvent sooner than later. So the cost of doing nothing is to see to end to Medicare as we know it.

So I just wanted to put that out there whether or not you are for or against some of the discussions that have been going on here. I know we can't do nothing.

And getting back to the topic at hand today, Mr. Klein, I wanted to ask you a question about the Department of Labor's proposed amendment to the definition of fiduciary. It has created a lot of uncertainty in the plan's sponsor and financial service community.

You mentioned that you believe that some service providers would leave the market. Can you please how explain how this would negatively impact workers and retirees?

Mr. KLEIN. Yes, thank you, Congressman, I think that the concern here is that the uncertainty around what kind of activity might be deemed to be a fiduciary act would scare away some service providers from providing information that would be very valuable to individuals and, you know, to their detriment. I think it was outlined at the very beginning in the opening statements how

extremely important it is that people have adequate retirement income.

And, you know, I don't think that, we are certainly not opposed to the idea of revisiting rules they have been around for 35 years, recognizing the vast changes that have been made in the financial marketplace.

But a lot of the uncertainty, as I said, around various practices, has both service providers, as well as employers, and it should have participants also very concerned.

Mr. DESJARLAIS. Thank you. We have heard that defined contribution plans are becoming more prevalent. What are some of the industry's best practices that sponsors have taken to increase financial education and participation?

Mr. KLEIN. Several interesting things. I think one of the most fascinating things that represents best practices is the application of behavioral economic concepts, the notion that different people respond to different types of incentives and different kinds of encouragement.

So rather than a one-size-fits-all approach to education, there is actually a lot of fascinating work that is being done in terms of segmenting how to approach different people based upon their different age cohorts, their relationships to their coworkers and so forth.

Other areas involve greater use of electronic means. That is one of the reasons that we are so interested in this. It is much easier for individuals to go on line to model their particular situation, to understand what it is that they might need, and then to seek the appropriate advice and so forth. So these are just a couple of examples.

I guess I would cite one more. There is a lot of awareness that very often an employee's spouse plays a significant role in helping make the decision around various investments. And so a lot of companies sponsor forums not just for their employees, but invite their spouses to come as well, so there could be a joint activity with greater results.

Mr. DESJARLAIS. I see I am out of time. I thank the witnesses for their testimony. And I know that there are a lot of American people watching hearings like this, hoping that we get it right. So we have a lot of work to do.

Thank you. I yield back.

Chairman ROE. Thank you. Mr. Loebsack.

Mr. LOEBSACK. I do applaud having this hearing on retirement issues. I should state that at the outset. I think it is really, really critical, especially when we hear things that young people don't think that Social Security is going to be there for them, when we have been talking about the so-called Ryan budget and ending Medicare, in effect.

But I also wish this hearing could more broadly focus on ensuring real retirement security, which means focusing on making sure that the millions of people currently out of work actually can find a good-paying job and improved opportunities, because as Mr. Brill mentioned, one of the main reasons why we have a reduction right now in retirement savings is because of the recession, because people have been out of work for so long, and so many people have.

And so we have got to make sure that we focus more generally, I think, on making sure that we get people back to work, making sure that we get them good-paying jobs, so that they can in fact take responsibility for themselves, too, and afford to save more for their retirement.

And while I generally would agree more with what Mr. Richtman has said today than the other three of you, nonetheless, I think there are certain things that we can agree on, and I think the point about financial literacy is a really great point. I think we have far too many people in this country who are financially illiterate. I have a bill also that promotes statistical literacy. I think that is important as well and contributes to financial literacy.

I am all for people taking responsibility for themselves, especially when it comes to retirement. But at the same time, of course, I have a lot of concerns about the move from defined benefit to defined contribution. I still think that there is a place, a very important place, for defined benefit plans. And I don't want to see us continue to move in the direction of defined contribution plans.

Also, I hope this hearing really is the beginning of a larger discussion, as I just said, and some ways on how to improve people's retirement savings and get them the information they need. I think that is absolutely critical. But I am also glad that we can use this hearing to focus on other retirement security for all Americans, and that is Medicare and Social Security.

Republicans' budget, as was already mentioned, unfortunately will end Medicare. And not Medicare as we know it, but I think as Mr. Kildee said, Medicare. It wants to replace Medicare with something else. And they can call it Medicare, but it is not Medicare. It is simply something different. It turns it into a voucher program.

Just last week some of our Republican colleagues again introduced legislation that would privatize Social Security. I thought we had gone through that with the Bush administration in 2005, but apparently not. And this proposal that was introduced goes even further than President Bush did. It is not allowing folks to put 1 or 2 percent into private accounts, but the full 6.2 percent that they now pay, as I understand it. And somebody correct me if my information is wrong.

But Mr. Richtman, a question having to do with the Republican budget to transform Medicare, double seniors' out-of-pocket health care costs and, really, with so many Americans already struggling to save enough for retirement, what does this mean for their retirement planning and for employers' future costs, this budget that we have already referred to? Mr. Richtman?

Mr. RICHTMAN. Well, I think that Congressman Andrews tried to elicit that earlier in the hearing. If a senior on Medicare is paying twice as much out of pocket, there is no question that it affects their retirement security. There is less money to spend on other things, other essentials. At the same time, Social Security COLAs have been withheld, there was no COLA in 2010, there was no COLA this year in 2011. And I am sure if you go to your town meetings or any of the members of the committee, and you tell—ask your seniors, do you think the price of the things you count on

has not changed in the last year, they are going to laugh because they know everything has gone up.

So when you combine paying more out of pocket for your health care, receiving a Social Security benefit that is not growing to keep up with inflation, it is going to have an impact on your overall retirement security in my opinion.

Mr. LOEBSACK. I am nearly at the end of my time. I just want to ask, Mr. Brill, I think you referred to long-term trends, and I know that folks who are in favor of defined contribution plans and those who are in favor of putting some Social Security funds into private accounts talk about long-term trends of the stock market and all the rest. But we have to keep in mind that at any given time there can be a crash as we saw in 2008, as we have seen previously, and there will be folks who will have their retirement moneys in the stock market, invested, when those crashes happen. And we can talk all we want about long term and how there is a better return for the money in a private account perhaps than in Social Security, but we have to think about those folks who get caught in the middle of those downturns when they have had that money invested in private accounts. I think that is something that we have to keep in mind and can never forget.

Thank you all for being here. Thank you, Dr. Roe. I appreciate it.

Chairman ROE. Mr. Barletta.

Mr. BARLETTA. Thank you, Mr. Chairman. I would like to yield my time back to the chair.

Chairman ROE. Thank you. Just a few questions and background. I started in a small medical practice with 12 employees, and when I left we had 350-plus employees. And I really prided myself, our practice and our group, on providing retirement benefits. And I agree with you, education is one of the most important things you can talk about. And I have always heard investment advisors say the younger you are, the more aggressive you should be with your investments. I totally disagree. I think the first dollar that you invest has got the most times to turn over. We all know the rule of sevens. You earn 10 percent, your money doubles in 7.2 years.

So we have had employees in our practice for over 30-something years and they are going to have a very generous retirement plan. We began with a defined benefit plan and we looked at that, and for our younger employees we actually could put more money away for them in a defined contribution plan.

The city where I was mayor—this was a public entity—changed from a defined benefit plan to a defined contribution.

And I agree with the education that Dr. Loebsack was talking about is that that is absolutely critical, and Mr. Delaney talked about in educating your employees. I want you to discuss the fiduciary role, because I felt the pressure in our pension meetings in our practice, because you are reluctant to give advice. And what we have done is exactly what Mr. Delaney has done. We have offered about a dozen or maybe 15 different investment options.

And Mr. Loebsack also brought up the idea that the market can crash. That is true, it can do that. Certainly no one would rec-

ommend that at age 65 you have all of your money in equities. And there are various plans that can help with those things.

For instance, in my own personal plan, I use a 401(k). The plan advisor said how much money do you want to retire on, so I gave him a number, and 3 years of that, 36 months, is put in cash. It does not matter what the market does in that time. There is a 3- to 5-year investment strategy and then a longer-term investment strategy. Those are strategies you can use to iron out these things.

But I want to talk about the fiduciary role because that concerned me when I was in practice, and I think it may have held down the return because of my inability to really communicate better with my employees. Mr. Delaney, I think our problems are similar.

Mr. DELANEY. Yes, Mr. Chairman. We approach this on a number of levels. One, we have an Investment and Retirement Plans Committee that meets on a quarterly basis that reviews everything with respect to the defined benefit plan and the defined contribution plan. We look at the returns each of the investments for our associates are providing on a regular basis, both near term and over the course of, say, 5 years. We review those on a regular basis to make sure that our associates have access to the types of investments that will provide them an opportunity to save for retirement and get good returns.

Chairman ROE. I don't mean to interrupt, but as I read this in the fiduciary—and you can correct me, Mr. Klein, if I am wrong—you can't put past performance as part of the formula; is that correct?

Mr. DELANEY. I do not know the answer to that question.

Mr. KLEIN. I don't believe that is fully correct, that you can't discuss past performance. I think you are limited—I can look to my legal counsel sitting behind me—in terms of the extent to which you make a promise about the future in terms of past performance.

Chairman ROE. You can at least say the last 5 years this plan is up 15 percent, or whatever?

Mr. KLEIN. That apparently is included in a proposed reg which is not yet finalized about not looking back at past performance.

Chairman ROE. So it is part of the rulemaking process now that may be a rule?

Mr. KLEIN. Might be, yes.

Chairman ROE. I didn't mean to interrupt, Mr. Delaney.

Mr. DELANEY. That is okay. We will certainly take a look at that. There are things that we do individually for associates who can access information, as I referenced. Morningstar, where they can do—I believe they can do kind of a questionnaire to determine tolerance for risk and so on, and be able to make recommendations in terms of what are the offerings through the plan that would basically fit their profile.

But all of the discussions that we have had today with respect to return and saving enough for retirement, there is probably something beyond that that would make some sense for our associates to have access to; that at this point, we are a little bit hesitant to provide because of some potential fiduciary risks.

Chairman ROE. Thank you. And now I yield to Mr. Holt.

Mr. HOLT. Thank you, Mr. Chairman. You know I, like my colleagues, I thank you for holding this hearing. I wish, I suppose, that it had been held before the Republican majority voted to end Medicare and before introducing legislation to privatize Social Security.

As Mr. Richtman has pointed out, about a third of all Americans have no income other than Social Security, and about two-thirds rely on Social Security for most of their retirement income. We have a responsibility to see that people can enter their nonwage-earning years with dignity. Privatizing Medicare and Social Security will return us to a you-are-on-your-own society, where it used to be to be old meant to be poor. To be old was to have inferior health care.

You know, according to the Ryan plan, which has now been approved twice by the Republican majority, the privatization of Medicare future retirees would have real effects. They claim that those under 55 are not affected, but as Mr. Andrews has pointed out, and as the witnesses I think have been forced to agree, it requires that a 54-year-old would have to set aside about $182,000 to be prepared for the additional out-of-pocket costs. Or a 20-year-old, today's 20-year-old would have to set aside about three-quarters of a million dollars of extra retirement savings to cover the additional out-of-pocket costs.

So this is on top of the problem that we all face of Americans are underprepared and are surprised to learn that they are underprepared; the average American family already a quarter of a million dollars short from what they think they need for retirement. And most are not only unprepared for retirement, they are startled to learn how unprepared they are. So rather than privatizing Medicare and Social Security, we should actually be helping workers save for retirement.

My colleague Tom Petri and I have introduced the Lifetime Income Disclosure Act to inform workers of the projected monthly income they could expect at retirement where they find themselves now in this situation with what they have set aside so far; and it would provide participants with illustrative conversion directly on their annual statements, such as we Members of Congress have now started receiving with our Thrift Savings Plan.

I, like most Members of Congress, I think like most Members of Congress, don't have a dedicated personal financial advisor whose time is dedicated to me. And I know that is true for most Americans so this on the Thrift Savings Plan has actually been helpful.

Congress and the administration must continue to do all they can to make sure that people have access to investment advice. From my own experience, I have seen the benefit of sound, professional investment advice, and I am going to continue to encourage the administration and my colleagues here in Congress to ensure that we don't take actions that could have the unintended effect of limiting the financial advice and leaving Americans even less prepared for their retirement years.

Getting back to Medicare, I mean, really no one disputes that Medicare works very efficiently. So now the opponents have taken to saying, well, but it is unsustainable. Mr. Richtman, I would like to point out what I think should be clear to everyone; that no

health insurance plan is sustainable if we have 10 percent a year inflation over the overall cost of living. The problem is not with Medicare, the problem is with increasing health care costs.

Mr. Richtman, is it not true that Medicare, according to economic studies, is more effective than private insurers in keeping down the costs?

Mr. RICHTMAN. Well, the administrative cost of Medicare is extremely low. Social Security, the administrative cost is nine-tenths of 1 percent, and all of that is paid for out of the payroll tax. So these are very efficient programs.

But on the larger point that you have made, I couldn't agree more. Singling out Medicare without addressing the overall cost of health care will only lead to a way—a system of health care for seniors where seniors pay more and get less. You are absolutely right about that, Congressman Holt. The only way to address effectively Medicare costs is to address overall health care costs in our country.

Mr. HOLT. So private insurance plans could be just as unsustainable?

Mr. RICHTMAN. Absolutely.

Mr. HOLT. Thank you, Mr. Chairman

Chairman ROE. Mrs. Roby.

Mrs. ROBY. Thank you, Mr. Chairman. Thank you to all of you for being here today answering our questions.

And, Mr. Brill, I just want to ask you a couple of questions, if you could expand on your testimony. You have data that shows many defined benefit programs as underfunded, and I find that to be very alarming, the data that you have. How big of a problem is this? And is it a hopeless situation going forward?

Mr. BRILL. Thank you for your question. With regard to the magnitude of the underfunding situation, of course the degree to which plans are underfunded, if a particular plan is underfunded, vary significantly from plan to plan and over time, year to year, as well. Among the largest plans have been suggested that are underfunded, they are about 85 percent underfunded, about 15 percent under. That translates into hundreds of billions of dollars in the aggregate.

A lot of these issues were addressed in legislation in 2006 that Mr. Andrews referenced to help set stricter rules to require plans to fund to higher targets, to fund towards 100 percent, and to have more strict rules regarding the rate at which they catch up when they are underfunded. Nevertheless, there remains these gaps.

With regard to the question of whether it is hopeless, I think it is not. I think that the shifts we have seen in different years in terms of the asset allocation among defined benefit plans and the continued phase-in of the rules from the 2006 act are continuing to improve the solvency of the DB plans so that we are in a better place now than we were.

Mrs. ROBY. Well, just to examine that, the PPA with respect to funding at the macro level, can you discuss even further the impact of that, and specifically what are the most successful aspects of that law as we look forward?

Mr. BRILL. Sure. The legislation certainly was a balancing act of a number of competing forces. The simplest things that I think

were clear positives, as I mentioned earlier, setting a funding target of 100 percent. So you need to put your money where your mouth is. If you are making promises to your workers to have benefits, you have to be putting in the funds at the time that will allow those workers to receive those benefits.

Previous to the 2006 act, that target was only 90 percent. So we were only asking people to get 90 cents on the dollar. Now we are asking people to try to fully fund their plans.

In addition, when a funding gap does originate from a plan, either as a result of the change in asset values or a change in interest rates which affect their liabilities, plans amortize that gap over a 7-year period. Prior law was a hodgepodge of policies, some depending on the cause of your underfunding; sometimes that gap wouldn't necessarily be closed for periods of up to 30 years.

So we want to keep plans closer to fully funded, and raising the targets and shortening the periods in which gaps can be closed has helped, and we have seen the results of that already.

Mr. KLEIN. Congresswoman, would it be okay if I entered some thoughts on this also?

Mrs. ROBY. Surely.

Mr. KLEIN. Hank you. First, a number of comments have been made today about the underfunding of defined benefit plans. And I think it is really important to keep in mind that anytime you take a snapshot view of a long-term obligation like a pension, you are going to get a skewed perspective. And in an environment where the market has had a downturn and interest rates are at a historically low level, plans are going to look today underfunded.

Likewise, you know, when the market was higher and interest rates were higher, we might have looked at overfunded plans and, you know, rested on our laurels over that. That would have been equally a mistake.

So it is important to remember that these benefits are going to be paid out over decades over many, many different economic cycles.

The second question, I would just say that the concern that many employer sponsors of pension plans have around the funding rules in the Pension Protection Act concerns the fact that very minor changes in interest rates and minor, let alone significant, changes in the equity markets can lead to enormous funding obligations at the worst possible time for the company, when you want the company, obviously, to be putting money into retaining jobs and creating opportunities and investing.

Everyone is concerned to make sure that the obligations are honored, but it is really important to recognize the level path and that employers will not sponsor plans if they can't have predictability. And that is what the Pension Protection Act has injected, some unpredictability.

Mrs. ROBY. Thank you. My time has expired.

Chairman ROE. Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Chairman Roe and Ranking Member Andrews for this hearing on retirement security.

It seems to me that in America we are fortunate to have Medicare and Social Security, a safety net for working families and middle-class Americans that must be strengthened and preserved.

While I respect my colleagues on the other side of the aisle, we know the Republican plan to end Medicare as we know it would be devastating to Americans' retirement security.

I have a question for you, Mr. Richtman. In your testimony you indicate that Social Security and Medicare help keep low-income workers out of poverty in retirement and provide critical support for middle-class workers who do not earn enough during their working lives to finance their retirement. So as an expert, why do you believe seniors all across the country oppose plans to privatize Medicare as we know it and convert it into a voucher program?

Mr. RICHTMAN. I think the reaction we have seen lately in the election in New York and also across the country is seniors and younger people have seen that both of these programs work and they work well. One of the members of the panel earlier said the government has not managed Social Security well. I really don't understand how that statement could be made.

Last summer Social Security celebrated its 75th birthday. Here is a program that has paid everybody every penny they were entitled to for 75 years. Now, you as Members of Congress, you know how many times different parts of the government run out of money and come to you requesting emergency supplemental appropriations. Here is a program that has been sound for 75 years; has, as I mentioned, administrative costs of nine-tenths of 1 percent.

Mr. HINOJOSA. I agree with you. I agree with you, and the cost of operating it is extremely cheap for us Americans. And I agree with you.

Tell me, what are your thoughts on 401(k)s? Are they fulfilling the promise to help American workers build their retirement assets?

Mr. RICHTMAN. Well, my 401(k) stopped fulfilling my promise a couple of years ago when it became—somebody said a "201(k)." That is why I am so glad to be invited to this hearing. They are an important part of what has been called a three-legged stool for retirement. Social Security is the one that we really need to make sure continues.

Mr. HINOJOSA. I agree with you. I remember having town hall meetings when we were going to privatize Social Security under the Bush administration. And now when I run into some of those constituents, they tell me thank goodness we did not, because my retirement would have dropped at least 40 percent.

I have a question for Mr. Brill. From your testimony, I understand you want American workers to take more responsibility for their retirement savings and expanded financial education to help them achieve their goal. I believe, as you know, financial literacy is extremely important, especially in low-income and minority communities.

What is it that you would advise us? How do we ensure that financial advisors act in the workers' best interest when they are giving us advice?

Mr. BRILL. Thank you, Congressman. With regard to financial literacy, I would note that on the employer's side there is, of course, important disclosure and fiduciary responsibilities. There is no question that those issues are clear. And as Mr. Klein noted in his remarks, if it is time to review those policies—it may be—I would

hope that it would be undertaken in an open and transparent process.

I am also concerned, however, and in fact more concerned with the inadequate amount of education for many workers. You mentioned low-income workers, but it extends to middle-income workers as well.

Mr. HINOJOSA. Let me stop you, because the Chris Dodd-Frank bill has a component known as Consumer Financial Protection Bureau which creates a financial literacy bureau that would be working out there. Do you support it?

Mr. BRILL. I am not familiar with the provision in Dodd-Frank. I know that at the Treasury Department there were efforts to study and promote these issues. Those are certainly good concepts. I don't see in the data a significant change in the level of financial literacy. So I think we need to do more.

Mr. HINOJOSA. My time has expired.

Chairman ROE. Thank you.

Just a few questions, one on the employer's side. One of the reasons that you want to get very good advice is the fact that my 401(k) is tied exactly into what my employees are doing. So I have a vested interest in getting the best advice I can, because I am doing that. And I also understand that there are people out there who—and I understand what we were trying to do with the fiduciary, is if there is someone giving advice where just they benefit and not the employee and so forth, I get that. I understand that. Those incentives have to be aligned where the person giving you advice benefits and you also benefit.

And as I have said many times, in a particular plan if somebody has 10 percent load and they make me 15 percent, I do better if someone has a half a percent load and they make me 2. It is just common sense that you go out and try to find the best yield and return and do that for your employees. They are happy and the employer is happy; because most of the time, as Mr. Delaney has said, his 401(k) and his retirement plan is tied right in with the employees of the company because that is where he works.

The other thing I think that was brought up a minute ago by the ranking member, Mr. Brill, was asking you about competition. I think he probably did not use a good example when he used Coumadin in the market. You can get that for $4 a month. So the market system works pretty well in that, and being able to keep those drug prices down.

The real problem, as we all know, is bringing a new molecule to market. That is incredibly expensive. And I agree with you that that will dry up and we are seeing it dry up, the new medications being brought to market. And that is a concern for me as a physician being able to prescribe for patients.

I think one of the most important things we can do, we ought to get the financial education even down to elementary and high schools, to educate folks that you need to start planning for your retirement now, at the beginning of your life. And I would like to see us—this is not a new idea at all—is to start saving at birth. We deliver 4 million children a year in America, and I would like to see a retirement plan put away right then for your health care and your retirement, a $2,000 account for each at birth, and let

that go for 65 years in addition to what we are already doing. I think that is something we need do. It would relieve a lot of pressures on future liabilities that we have if we did that.

I think the other thing you can do in your office that I have done time after time after time, I had an employee one time that took $30,000 out of retirement plan, paid the tax, paid the penalty, and bought a car. That was about a $300,000 car, because over time you have a chance to grow that into a very large sum of money. And so I think education is absolutely critical.

Folks watching this may not understand why businesses, at least ours, looked at changing with cost structures. In a defined contribution plan you put away so much money each year, and some of it is usually matched by your employer. Whereas a defined benefit plan, you get a certain benefit at the end of that time, at 30 years or 20 years or whenever it might be.

I think an employer like me was more likely to go with a defined contribution, because each year I knew what my cost was. And in a very volatile market now, I think that is why we are looking and seeing it more and more and more.

The auto-enrollment idea, I would like some comment on that. I think that is a wonderful idea in education. Mr. Klein, if you would.

Mr. KLEIN. Sure. Auto-enrollment is one of those examples of behavioral economics that I was referring to in response to an earlier question. It definitely—the data has definitely shown that those employers who put that in because of general human nature, people who did not get around to participating were perfectly fine for the most part with being automatically enrolled in a plan. They still have the option to opt out or change the allocation or change the amount that is going in. But there is no question that that is a very simple way to increase participation.

Chairman ROE. Mr. Brill brought up a great point a minute ago. How you get more people involved in a pension plan is to give more people a job. Quite frankly, that is the biggest problem in America. When I go around today, the first question I ask is, do you feel that this recession is over? And nobody holds their hand up. And the reason they don't hold their hand up is because they can't go out and find a job. If they could go out and find a job, the recession would be over and many of those jobs would have retirement benefits.

And it just creates, the job creation, the job market now is a disaster in this country and we have to get that straightened out.

All of what we are talking about, what Mr. Richtman is talking about, what everybody is talking about, is amplified and made worse because right now our people cannot find work. And the ones who are working, frankly, are underemployed. You go talk to people in my community at home, and I talked to I don't know how many in the last week that couldn't find a job doing anything. So I think that is the issue we have got to deal with now is to get people back to work.

My time has expired. Mr. Tierney.

Mr. TIERNEY. Thank you. I don't want to deviate from what my questions are going to be, but I do want to say that we are all happy to talk about jobs. We have been here about 160 days and

we are still waiting for the majority to put forth any kind of proposal that would help on the jobs front. And that would certainly play into security and retirement. But we have not seen any bills about infrastructure, banks being created, nothing about research and development, uncertainties going forward, nothing about Workforce Investment Act of any consequence.

So by all means, let's talk about jobs and that will help everybody's security. But for now at this particular hearing, Mr. Richtman, we are supposed to be talking about security retirement. So I think you said one-third of the current retirees rely on Social Security for all of their income.

Mr. RICHTMAN. That is correct.

Mr. TIERNEY. And that is an average of about $14,000 a year?

Mr. RICHTMAN. Fourteen. And for women it is an average of 12,000.

Mr. TIERNEY. And two-thirds rely on Social Security for half of their income, or more.

Mr. RICHTMAN. That is correct.

Mr. TIERNEY. If we were to privatize Social Security so that people didn't get their payments out, as they do under the current system, but instead had to rely on the volatility of the market and investments, would that one-third or two-thirds be more secure or less secure?

Mr. RICHTMAN. Well, they would be suffering is the way I would characterize it. They would be suffering quite a bit. And we are grateful that the Congress did not pursue that approach to Social Security privatization.

Mr. TIERNEY. So for people in general, but specifically for people at the lower end who are earning only enough to get that minimum benefit or to have that minimum benefit be half of their retirement, if they had a defined benefit plan that they could have counted on a certain payout under the formulas for that, but switched to a defined contribution plan where they were subject to the vagaries of the market and their investments on that, would that individual be more secure or less secure?

Mr. RICHTMAN. No, it would be less secure. I guess—I think what you are pointing out, at least the way I see it, we need to have one source of retirement revenue that is secure, that you can count on, that is not subject to the whims of the market.

And as was pointed out earlier, there are ups and downs in the market, but you retire at a certain time and you can't predict whether it is going to be at the top of the market or at the bottom or anywhere in between.

Mr. TIERNEY. So for those individuals who are now paying about 25 percent of the cost of Medicare, under the Republican proposal they would be paying eventually over 60 percent, 65 percent of that. So obviously I assume that would make it a less secure environment for them, less certain. But also right now if you get Medicare you have—stop me if I am wrong—a guaranteed set of benefits; right?

Mr. RICHTMAN. That is correct.

Mr. TIERNEY. You have preventive care now and well-being visits.

Mr. RICHTMAN. After the passage of the Affordable Care Act; that is correct.

Mr. TIERNEY. You have your choice of provider. Everyone who accepts Medicare, has to accept particular patients. So you have a choice of all those providers; correct?

Mr. RICHTMAN. Correct.

Mr. TIERNEY. And is it also true that if you are older and sicker, you don't get penalized for that? Your premiums don't go up through the roof because of that.

Mr. RICHTMAN. That is one of the beauties of the system.

Mr. TIERNEY. So if we switch to the Republican plan on that, do you see any guarantee that an insurance company must provide a plan?

Mr. RICHTMAN. The only guarantee I see is that seniors would pay more and get less. That is the guarantee that I see.

Mr. TIERNEY. But you don't see a guarantee that an insurance company would have to offer a plan?

Mr. RICHTMAN. That is correct.

Mr. TIERNEY. Nobody is assuming that they will. If they do offer a plan, there is no guarantee that they would offer a plan with the same basic guarantees of the Medicare system.

Mr. RICHTMAN. Congressman, you can look at history. Before we had Medicare, what you are describing was a fact of life. At the National Committee to Preserve Social Security and Medicare, our concern is that this whole approach, whether it is privatizing Social Security or privatizing Medicare, is really an effort to go back to the 19th century when, as one of your colleagues said, you are on your own. Good luck, you are on your own. And I don't think most Americans want to go there.

And I was asked why people support the program, both programs. It is because we don't want to go back to that era.

Mr. TIERNEY. I guess that sums it up fine. I yield back.

Chairman ROE. I yield to Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Richtman, you were talking about retirement security challenges and the gentleman from Massachusetts just pointed out that about a third of people over 65, they get virtually all of their income from Social Security; is that right?

Mr. RICHTMAN. That is correct.

Mr. SCOTT. And two-thirds get most of the their income from Social Security. For those who get all of their income from Social Security and have essentially no pension, how would they be helped with education and advice in investments?

Mr. RICHTMAN. Well, that is—I am not sure how they would be helped. They wouldn't have much money to be investing, obviously.

Mr. SCOTT. Whatever kind of education and advice we have, there would be a lot of people that will essentially get to 65 and be virtually dependent on Social Security, and education and advice for those who are broke would be meaningless; is that right?

Mr. RICHTMAN. Once someone pays their rent, their heat, their electricity, there is not going to be much use, no matter what the education would be.

Mr. SCOTT. Now, that is for retirement income. The other challenge, of course, is health care. Now, let's talk about this little

voucher scheme that is going on. Is there anything in that voucher scheme that will reduce or increase costs?

Mr. RICHTMAN. Not that I know of.

Mr. SCOTT. It will not reduce costs. Will it increase costs going to the private sector because the private sector has commissions, advertising, corporate CEO salaries, additional expenses, dividends, expenses that Medicare does not have?

Mr. RICHTMAN. By definition, the private sector is interested in profit.

Mr. SCOTT. So you increase costs. Now, the voucher will not pay the whole cost when it starts. Is it true that the Medicare beneficiaries would be about $6,000 short of what they need?

Mr. RICHTMAN. That is correct. The way I understand it, the voucher is not designed to keep up with health care inflation, so it is virtually certain that individuals will be paying more and more out of pocket.

Mr. SCOTT. So when it starts they are about $6,000 short, and in 10 years they are about $12,000 short?

Mr. RICHTMAN. That is correct.

Mr. SCOTT. Does this scheme improve because they say they are going to delay it for 10 years?

Mr. RICHTMAN. I am sorry?

Mr. SCOTT. Does it improve because they delay it for 10 years? They tell senior citizens it is not going to apply to you, we won't start it for 10 years. Does that improve the plan at all?

Mr. RICHTMAN. It does not improve the plan for current—the plan, it does not for current or future——

Mr. SCOTT. It is not a better scheme because you wait 10 years to inflict it on people?

Mr. RICHTMAN. The longer you wait——

Mr. SCOTT. It is the same bad plan.

Mr. RICHTMAN. The longer you wait, the younger you are when you get into this new plan if it becomes law, the more you will pay out of pocket.

Mr. SCOTT. The promise is that it won't be inflicted on those 55 and above. Ten years from now, what would prevent Congress, which would be composed of people who did not make that promise, from changing its mind and imposing that plan on everybody, rather than protecting those that are 55?

Mr. RICHTMAN. The only thing that would prevent it would be more people in Congress such as yourself.

Mr. SCOTT. Well, that is supposing. But if you had the plan and people were getting older and older, there is nothing to prevent Congress from saying we are going to impose this thing on everybody.

Mr. RICHTMAN. Absolutely.

Mr. SCOTT. And the people who are making the promise today, most of them are not going to be there in 10 years. Now, are we expecting younger people to pay for a Medicare program that they are not going to get anything out of?

Mr. RICHTMAN. You know, when I was asked earlier why people have such strong support for Medicare and Social Security, it is because historically they have seen that the benefits are there when

they do retire. And if there are questions raised, doubts raised, I think that support dissipates pretty quickly.

Mr. SCOTT. In the Judiciary Committee, my other committee, we are considering this thing called the Balanced Budget Amendment, which incidentally does not require a balanced budget. Everybody is discussing the title. There is a provision in there that would require a two-thirds vote to spend more than 18 percent of GDP. We haven't gotten that low in terms of GDP since before Medicare.

What do you think would happen to Medicare if that provision—would Medicare necessarily be in jeopardy if we actually passed—enacted that legislation?

Mr. RICHTMAN. I think both Medicare and Social Security would be in jeopardy. And our organization has opposed every version of the balanced budget that has come through the Congress.

Mr. SCOTT. And most of the discussion has been on the title, not on the provisions. Like you can reduce benefits with a 50 percent vote, but you need 60 percent to save Medicare or Social Security by raising taxes. That is under the title.

Mr. RICHTMAN. Yes.

Mr. SCOTT. Those kinds of things jeopardize both Social Security and Medicare if we adopt the plan as we are considering it in the Judiciary Committee.

Mr. RICHTMAN. That is correct.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman ROE. Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman, for calling this hearing.

To Mr. Richtman, you may have answered this already, so you know, indulge me on this. There are many older baby boomers who are deferring their retirement right now; is that correct?

Mr. RICHTMAN. Many of them have to continue working; that is correct.

Mr. KUCINICH. Because?

Mr. RICHTMAN. Their costs are too high. They don't have a secure retirement arranged for themselves.

Mr. KUCINICH. And so let's talk about this concept of retirement. Because you know, overarching this entire discussion is the theory of retirement, the idea that let's say 40 years ago, 50 years ago, when people entered the workforce, they had some thought that at the end of all their years of work there was going to be something there for them. They are now finding in many cases that is just not true for a lot of reasons.

What is different from this period of time, though, than maybe a few decades ago is the level of unemployment that exists. There aren't opportunities for people to supplement their income. There are 15 million people unemployed and over 20 million at least underemployed, so there is a labor market that is extraordinarily difficult for people who are trying to supplement their income.

What is the practical effect on older workers who are forced to continue working? Are they able to make more money or less? Are they able to put away money for what will finally be their golden years, or are they in their golden years finding that their standard of living is eroding?

Mr. RICHTMAN. I am not really prepared to give you any statistics, but from what I have observed many older people stay in the workforce to make ends meet. The average Social Security check comes out to $14,000 a year. And there are, of course, parts of the country where it is easier to get by on that and many where it is not.

Mr. KUCINICH. But we have Social Security, but we also know when we are talking about private pension plans, which many people have used to supplement their Social Security, we see that the PBGC, depending on who you talk to, is anywhere from $5 billion to $23 billion underfunded. That also depends on interest rate assumptions.

So if we have Social Security benefits on one hand sustaining most people's retirements; but then people who were in the private workforce and had separate pension funds, and they find those funds are not there the way they counted on, that has to have an extraordinary impact on people's standard of living when they reach their senior years; wouldn't you agree?

Mr. RICHTMAN. I would agree with that.

Mr. KUCINICH. Mr. Chairman, what we are looking at here is a condition where this so-called American dream that people bought into when they were in their twenties and in the workforce, it is a myth. It has evaporated. And my concern is that our society isn't paying enough attention to the effects of higher taxes, real estate taxes on seniors who are homeowners, to the limited effects that seniors have to be able to supplement their income, to the impact of Medicare Part D on a lot of seniors' budgets because—you know, the government should be getting a rate similar to what veterans pay, but they are going to be paying a little bit more on prescriptions, depending on what the changes are long term through the Affordable Health Care Act.

And if retirement is about planning, what we are finding is that with employers not willing to pay higher premiums and more and more burdens being put on the Pension Benefit Guaranty Corp., underfunded, and more and more companies in the last years going bankrupt and jettisoning their retirement plans and throwing them into a place where people are lucky to get pennies on the dollar once it goes through the PBGC process, we are creating a whole new potential for poverty among elderly people that the reason why we set a retirement program in place in the first place is being essentially negotiated. It is like everything is coming full circle.

When Roosevelt came forward in 1934 to create Social Security, he did so because elderly people were being driven into poverty. Social Security has rescued them from that. But also people relied on trying to maintain their middle-class status through these pension programs that they had through private sector and other services. This is all changing.

So we are looking at really a very dangerous situation here where we could be—we could see this icy hand of poverty enveloping a senior population that thought that it was going to be okay, thought they saved for a rainy day, thought they worked to get ahead. And they arrived, and all of a sudden it is gone.

I wanted to share that concern with you, Mr. Chairman, because all of these decisions that we are making are affecting tens of mil-

lions of elderly Americans who are really looking at serious financial troubles.

Chairman ROE. Your time has expired. Mr. Wu.

Mr. WU. No questions.

Chairman ROE. I thank you. And Mr. Andrews, for any closing comments.

And I do have a unanimous consent request to enter into the record a letter from Retirement USA and other statements for the record submitted by the AARP.

Without objection, so ordered.

[The information follows:]

Prepared Statement of Retirement USA

We are pleased that the Subcommittee on Health, Employment, Labor, and Pensions is holding this hearing today on retirement income challenges. Retirement USA is a national campaign working to address the challenges facing the nation's private retirement system and to promote the development of a universal, secure, and adequate retirement income system that, in conjunction with Social Security, will provide future generations of workers with sufficient income for retirement. The Pension Rights Center, a nonprofit consumer rights organizations, is submitting this statement on behalf of the five organizations convening Retirement USA—the AFL-CIO, the Economic Policy Institute, the National Committee to Preserve Social Security and Medicare, the Pension Rights Center and the Service Employees International Union—and our 23 supporting organizations.

In recent months, attention has been focused on the long-term federal deficit facing the country. Retirement USA is concerned about another kind of deficit—the massive and growing Retirement Income Deficit that is facing millions of Americans. The Retirement Income Deficit is the gap between what people have currently saved for retirement and what they should have saved by today to be able to meet a basic level of sufficiency in retirement. This deficit is traceable principally to the freezing and termination of private pension plans, the failings of 401(k) plans, and the overall low coverage rates in employer-sponsored retirement plans.

The Center for Retirement Research at Boston College last year calculated the Retirement Income Deficit at $6.6 trillion. To put it in perspective, this is more than four times the size of the federal deficit in 2009. To arrive at this number, the Center on Retirement Research used the same conservative methodology they used to calculate its National Retirement Risk Index. They looked at households in their peak earning years, between 32 and 64 years old, assumed that people would continue to earn pensions and contribute to 401(k)s, and factored in the value of home equity for retirement income.

We are concerned that proposed cuts in Social Security, Medicare and public plans will only worsen the massive Retirement Income Deficit already facing American workers—and will particularly affect future generations of retirees.

What is needed to address the Retirement Income Deficit?

First and foremost, policymakers must keep Social Security strong. All of the participants in Retirement USA are committed to protecting and improving Social Security. Social Security is the economic lifeline that millions of Americans rely on to survive. For the average worker, Social Security provides only slightly more than $14,000 a year. Fully one out of five retirees relies on this steady stream of income for all for all of their income, and two-thirds rely on it for more than half of their income. Social Security is doing an unparalleled job of providing a basic foundation of income for retirees. Cutting Social Security benefits—for example, by increasing the statutory retirement age or changing Social Security's indexing—would increase the Retirement Income Deficit that millions of Americans are already facing—and decimate the retirement prospects for future retirees.

Second, there should be no cuts to Medicare benefits. Voucherizing Medicare will put health costs out of reach for millions of Americans who are already faced with inadequate retirement income. Privatizing Medicare will not control costs. It will simply make healthcare unaffordable and reduce the income that people need to make ends meet. Cuts in Medicare will only make the Retirement Income Deficit worse.

Third, Congress should not undercut state and federal pension plans that have provided critical benefits to millions of teachers, firefighters, and other public servants who have worked to make our society a better place. The average public-sector

employee earns a pension of about $22,000 a year, modest benefits that enable retirees to keep spending on goods and services in their communities—thereby helping to strengthen the economy. Despite the financial crisis and the deepest recession in 75 years, state plans are as well-funded as corporate pension plans. Efforts to weaken public plans, especially by turning guaranteed pension plans into 401(k) plans, will only make the Retirement Income Deficit worse.

Fourth, employers, employees, and policymakers must work together to fix pension problems for private-sector workers. As it is, only 50 percent of the private workforce is covered by any kind of pension or savings plan on top of Social Security. In addition, far too many companies are freezing, terminating, or cutting back on defined benefit plans—pension plans that typically provide guaranteed lifetime income to retirees. Most private-sector retirement plan participants are in 401(k) plans. The problem is that, even in the best of circumstances, these plans only work if people are able to set aside significant amounts of money, make the correct investment choices, keep the money locked in until retirement, and then figure out how to make the money last for the rest of their lives. Even before the recession, retirement savings were low. In 2007, half of all families with 401(k)-type plans or IRA accounts had less than $45,000 saved in these accounts. For families that are headed by older workers, the median account balance was just $98,000.

All the participants in Retirement USA believe in a two-tiered approach to addressing the challenges of the private system. First, we want to do everything possible to encourage and stabilize defined benefits plans, strengthen protections in 401(k) plans, and improve coverage in existing plans.

However, in the long-run, to truly address the need for supplemental income on top of Social Security, Retirement USA believes that we need to start developing a visionary approach to economic sufficiency in retirement. To that end, we have developed 12 principles that incorporate the best parts of defined benefit pension plans and 401(k) savings plans, and include some additional features. We believe these principles should underlie a new system that supplements Social Security.

There are three overarching principles that we believe should guide the reshaping of our pension system for future generations of workers. These are:

(1) Universal Coverage. Every worker should be covered by a retirement plan. A new retirement system that supplements Social Security should include all workers unless they already are in plans that provide equally secure and adequate benefits.

(2) Secure Retirement. Retirement shouldn't be a gamble. Workers should be able to count on a steady lifetime stream of retirement income to supplement Social Security.

(3) Adequate Income. Everyone should be able to have an adequate retirement income after a lifetime of work. The average worker should have sufficient income, together with Social Security, to maintain a reasonable standard of living in retirement.

Other principles include

- Shared Responsibility. Retirement should be the shared responsibility of employers, employees, and the government.
- Required Contributions. Employers and employees should be required to contribute a specified percentage of pay, and the government should subsidize the contributions of lower- income workers.
- Pooled Assets. Contributions to the system should be pooled and professionally managed to minimize costs and financial risks.
- Payouts Only at Retirement. No withdrawals or loans should be permitted before retirement, except for permanent disability.
- Lifetime Payouts. Benefits should be paid out over the lifetime of retirees and any surviving spouses, domestic partners, and former spouses.
- Portable Benefits. Benefits should be portable when workers change jobs.
- Voluntary Savings. Additional voluntary contributions should be permitted, with reasonable limits for tax-favored contributions.
- Efficient and Transparent Administration. The system should be administered by a governmental agency or by private, non-profit institutions that are efficient, transparent, and governed by boards of trustees that include employer, employee, and retiree representatives.
- Effective Oversight. Oversight of the new system should be by a single government regulator dedicated solely to promoting retirement security.

Social Security, of course, meets all of the core Retirement USA principles other than "adequacy." Social Security benefits for the average retiree are less than the federal minimum wage. All of the organizations participating in Retirement USA believe that if there were the political will to do so, expanding Social Security to pro-

vide an adequate level of income would be the most efficient and effective way of strengthening workers' retirement security.

But our groups recognize that our tradition of providing retirement security in America has been a mix of public and private systems. For that reason, our principles focus on features that we believe must be part of a new private system to supplement Social Security. There are proposals and programs both from this country and overseas that meet our principles that we would be pleased to share with Subcommittee members.

We hope that you will consider options for developing a new private retirement system for the 21st century. This would be the best way of meeting the needs of employees—and ultimately of employers and society as well. We look forward to working with you to meet the retirement income challenge.

Prepared Statement of American Association of Retired Persons

On behalf of our members and all Americans age 50 and over, AARP appreciates the opportunity to submit written comments on some of the significant issues surrounding the current and future state of retirement security of American workers and their families. A major priority for AARP has long been to assist all Americans in accumulating and effectively managing the resources they need to supplement Social Security and maintain an adequate standard of living throughout their retirement years. Unfortunately, several key factors and trends over recent decades have made the necessity of achieving and maintaining an adequate income in retirement more challenging than ever before.

These key factors and recent trends require the thoughtful and timely attention of Congress, the President and Executive Branch agencies. They also serve to underscore the critical importance Social Security plays, and will play, in the retirement security of both current and future generations of Americans. Historically, Social Security was designed to provide only a foundation of an individual's retirement security and was never intended to be the sole source of income for people who have retired. Due to shortcomings in other traditional components of retirement security that help individuals achieve an adequate level of income for their golden years—employer-based pension plans, personal savings, home values and affordable health care—the median annual income of households in which the head or spouse was 65 or older was just over $30,000 in 2008.[1] Unfortunately, many Americans rely, and will continue to rely, on Social Security as their primary, if not sole, source of family income for their retirement.

Employer-Based Pension Coverage

It is widely accepted that workplace retirement plans can be an efficient and effective means for individuals to save for their own retirement. As a result, AARP strongly believes that all workers need access to a workplace retirement plan that supplements Social Security's strong foundation. Since the enactment of the Employee Retirement Income Security Act (ERISA), the focus has been on three central issues: coverage and participation; security; and adequacy.

Unfortunately, overall pension coverage in the U.S. private-sector labor force has generally hovered only near 50 percent for decades,[2] with larger employers more likely than smaller ones to offer retirement plans.[3] This means roughly 78 million American workers do not have access to a workplace retirement plan, such as a pension or 401(k) plan. As a result, very few of these individuals save for retirement on their own, and many are currently retired, or will retire, with less than enough money to meet their basic needs.

In response to this significant problem, AARP has been a strong supporter of proposals such as the Auto IRA, which would help bridge this coverage gap and provide access to a workplace retirement vehicle to tens of millions of American workers. Specifically, this proposal would allow workers without access to an employer plan to voluntarily fund their own individual retirement accounts (IRA) through payroll deductions. Harnessing the power of regular, automatic payroll deductions at work would encourage and simplify saving and significantly improve the retirement security of millions of Americans. Moreover, these accounts would be portable, so workers could take them to another job.

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[1] Congressional Research Service, Income of Americans Aged 65 and Older,1968 to 2008,(November 2009) Because of the importance of these issues, AARP would like to thank Chairman Roe and Ranking Member Andrews for convening today's hearing.

[2] S. Mackenzie & K.B. Wu, The Coverage of Employer Provided Pensions: Partial and Uncertain at 7 (AARP 2008).

[3] Id. at 15.

In addition, these automatic accounts involve little or no cost for most employers. Because Auto IRA would establish simple individual retirement accounts rather than employer-sponsored retirement plans, employer responsibilities under this proposal are much more limited. For instance, Auto IRA employers would neither select, hold, nor manage investments, nor would they be required to provide contributions to employee accounts. Finally, Auto IRA provides tax credits for employers to help offset any limited costs of setting up these accounts.

In addition to coverage issues, the actual participation rate of workers in private-sector pension plans varies with age, income, education, ethnicity, size of employer and type of employment. Older, better-educated, full-time, better-paid workers are more likely to be plan members than younger, less educated, part-time, lower-paid workers.[4]

In an effort to increase participation rates in 401(k) plans, AARP supported the auto-enrollment provisions in the bipartisan Pension Protection Act. A May 2011 Aon Hewitt study found that "(t)hree in five employers automatically enrolled employees into their defined contribution plans in 2010, up from 24 percent in 2006. For employees who were subject to automatic enrollment, Aon Hewitt's analysis found that 85.3 percent participated in their DC plan, 18 percentage points higher than those that were not subject to automatic enrollment."[5]

The Move from Defined Benefit to Defined Contribution

For those workers who are fortunate to work for employers who offer access to a workplace retirement vehicle, many of their employers have moved away from providing defined benefit (DB) plans and increasingly offer only defined contribution (DC) plans, such as 401(k) plans. While DC plans can be valuable to many, they transfer investment, longevity, inflation, and interest rate risks entirely to the individual, and could make it more likely that an individual would outlive his or her retirement nest egg. Today, only about 17 percent of workers have DB pension coverage on their current job, compared to 41 percent who have DC plan coverage.

The shift away from DB plans to DC plans places significant responsibility on individuals to make appropriate decisions concerning their contributions, their investments and how they will manage their money once they retire so that they will have adequate income to fund their retirement years. Unfortunately, many individuals are simply not prepared to handle these risks and responsibilities. While DC-type plans can be an effective savings vehicle for retirement—especially if individuals take all the right actions and markets achieve historical rates of return—in practice this is not the case, and many people make mistakes at every step along the way, as evidenced by generally less than adequate DC account balances. Moreover, even if DC plan members make all the right decisions, if they happen to retire in a down market, much like the recent economic downturn, their account balances may still not be adequate for retirement. There is also substantial confusion among 401(k) plan participants as to the fees they pay. The fee information participants currently receive about their plan and investment options is often scattered among several sources, difficult to access, or nonexistent. Even if fee information is accessible, plan investment and fee information is not always presented in a way that is meaningful to participants. Fees are important because they reduce the level of assets available for retirement.

The Government Accountability Office estimated that $20,000 left in a 401(k) account that had a 1 percentage point higher fee for 20 years would result in an over 17 percent reduction—over $10,000—in the account balance. We estimate that over a 30-year period, the account would be about 25 percent less. Even a difference of only half a percentage point, or 50 basis points, would reduce the value of the account by 13 percent over 30 years. In short, fees and expenses can have a huge impact on retirement income security levels. 401(k) plan participants therefore have a need and a right to receive timely, accurate, and informative fee disclosures from their 401(k) plans to help them better prepare for a financially secure retirement.

Because fees reduce the level of assets available for retirement, we have supported both Congressional and regulatory efforts to increase disclosure requirements so that fiduciaries and participants can receive the information they need to make informed choices about these investments. AARP supports increased disclosure of

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[4] S. Mackenzie & K.B. Wu, The Coverage of Employer Provided Pensions: Partial and Uncertain 2, 7-12 (AARP 2008).

[5] Aon Hewitt News Release, May 24, 2011 (*http://aon.mediaroom.com/index.php?s=43&item=2285*)

fees charged by service providers to fiduciaries.[6] Provider fees should be disclosed both to participants and employers, and clearly explained to participants on their annual statements. Participants should have the right to receive more detailed fee information on request.

The Shift from Annuitized to Lump-Sum Distributions

The share of traditional plans offering a lump-sum option has increased in part because plan sponsors shed longevity risk and pension costs by increasing the take-up of lump-sum distributions by plan members. As for DC plans, although more of their participants may be interested in the annuity option than had been previously thought, the lump sum option is still the overwhelming choice.[7]

Traditional DB plans have historically provided lifetime streams of income, while only a small fraction of DC plans offer an annuity or other lifetime income option. Moreover, many DB plan sponsors today offer lump-sum benefits and many retirees are opting for them. Younger workers are more likely than older workers to have only a DC plan, and the number of workers retiring and receiving their retirement account balances as a lump-sum is growing. It is not clear how, or how well, beneficiaries will manage those assets throughout decades of retirement.

The lifetime monthly equivalent of a lump sum distribution of $100,000 would be worth approximately $600, or about half the typical Social Security retirement benefit. However, according to a 2011 Fidelity report, the average 401(k) account balance was still only $71,500 at the end of 2010.[8]

AARP is concerned that—unlike Social Security benefits—many Americans will outlive the retirement assets they have accumulated due to the combined effects of longer life expectancies and the overly optimistic assumptions many individuals make when spending down these assets. Effectively managing this decumulation phase of retirement can be especially complicated, but it is essential for the long term economic security of millions of American workers who can no longer count on the guaranteed lifetime income stream once overwhelmingly provided by workplace DB pension plans.

AARP is therefore pleased to support H.R. 677, the bipartisan Lifetime Income Disclosure Act—legislation that would provide individuals with a better understanding of the lifetime value of their 401(k) plan assets by including in a yearly benefit statement a conversion of their total accrued benefits into a monthly dollar amount as if they had opted to receive a lifetime annuity. This conversion would help provide a more meaningful long term perspective to 401(k) plan participants by giving them a more accurate picture of the lifetime value of their plan and helping them make better decisions about how much they may need to save and how best to manage their retirement assets.

Fiduciary Standards

The impact of bad actors such as Enron, Worldcom and Bernie Madoff on individuals' private retirement savings has been devastating. Accordingly, the importance of strong fiduciary standards cannot be understated and are necessary to protect the security of individuals' hard earned retirement assets both now and in the future.

Because the growth in 401(k) plans places significant responsibility on individuals to make appropriate investment choices so that they have adequate income to fund their retirement, AARP supports the goal of increasing access to investment advice for individual account plan participants so that participants may achieve their objectives. To that end, we have consistently asserted that such advice must be subject to the Employee Retirement Income Security Act's (ERISA) fiduciary rules, based on sound investment principles and protected from conflicts of interest. The recent financial turmoil and scandals on Wall Street once again underscore the imperative that such advice be independent and non-conflicted.

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[6] S. Mackenzie, Determining whether 401(K) plan fees are reasonable: Are disclosure rules adequate? (AARP Sept. 2008), available at *http://www.aarp.org/research/ppi/econ-sec/pensions/articles/i8—fees.html.* In contrast, DB plans generally provide a predictable monthly retirement benefit to employees, lower fees, and professional management of retirement assets. DB plans are also more efficient—that is, they cost less to achieve a particular level of retirement income than defined contribution plans.

[7] An AARP survey of the distribution choices made by workers and retirees with pension plans found that there was definite interest in the annuity option. Specifically, it found that about 31 percent of workers and 25 percent of retirees with DC plans that offered one or more options other than lump sum withdrawal were planning to select or had already selected the annuity option. See Kathi Brown et al. 2010. Annuities and Other Lifetime Income Products: Their Current and Future Role in Retirement Security. AARP Public Policy Institute, Factsheet 189 (May).

[8] Fidelity News Release, February 23, 2011 (*http://www.fidelity.com/inside-fidelity/employer-services/q4-2011-401k-update*)

AARP supports regulations to ensure that participants are provided with objective, non-conflicted investment advice. Consistent with a recent AARP poll, Americans believe that advice should be suitable for their needs, objectives and risk tolerance. AARP supports the Department of Labor's review of the definition of fiduciary regulation given that the current manner in which employee benefits are provided is significantly different from the situation in 1975, as is evident with the shift from defined benefit plans to defined contribution plans. Not only has the emphasis shifted to individual investment advice in 401(k) plans, but the variety and complexity of investments has radically changed. Consequently, AARP believes that a revision of this regulation to reflect the practices in the current market place would better protect the interests of plans and their participants and beneficiaries.

Healthcare

Another key factor to consider when evaluating the retirement security of Americans and their families is the impact of high, and increasing, healthcare costs. Skyrocketing costs plague our entire health care system, burden individuals and employers, and threaten the sustainability of Medicare and Medicaid, vital programs that more than 93 million Americans who are older, living with disabilities, or on very limited incomes rely on. Seniors spend a disproportionate share of their income (about 30 percent on average) on health care costs, which continue to increase at rates well above the rate of overall inflation. We must transform the delivery of health care and bring down costs throughout the system to keep Medicare and Medicaid affordable now and strong for future generations.

These healthcare cost trends are not sustainable and Congress must work thoughtfully to find ways to hold down these costs, not simply shift them to other payors. However, it is important to realize that Medicare is just one part of our nation's health care system, which includes a vast array of other payers including public, individual, and employer-based health insurance. For families and workers, soaring costs compound job losses and other financial problems. For the past eight years, premiums for a family of four outpaced both earnings and overall inflation.[9] The average annual premium for family coverage increased to $12,680 in 2008, almost double the figure in 2000.[10] And the more employees must pay, the less likely they are to enroll in employer plans.[11] People with private non-group insurance are even worse off; they often spend more than 10 percent of their income on health care.[12]

As you examine how to address the growing cost of health care programs, we urge you to reject arbitrary limits and cost shifting and focus instead on ways to make the delivery of health care to all Americans more efficient and cost-effective. Arbitrary cuts simply shift costs on to other payers of health care services, particularly beneficiaries and their families, and undermine current and future beneficiaries' access to quality care.

Social Security

AARP strongly believes that the above trends and factors, as well as the recent economic crisis, highlight the importance of Social Security's guaranteed benefit as the foundation of retirement income for all Americans. In the face of declining traditional pensions or the outright lack of pension coverage, shrinking savings, diminished home values, longer life expectancies and higher healthcare costs, the guaranteed benefit of Social Security will be increasingly important to future generations of Americans.

Social Security is currently the principal source of income for nearly two-thirds of older American households receiving benefits, and roughly one third of those households depend on Social Security benefits for nearly all (90 percent or more) of their income. Despite its critical importance, Social Security's earned benefits are modest, averaging only about $1,200 per month for all retired workers in March 2011. Nonetheless, Social Security keeps countless millions of older Americans out of poverty and allows tens of millions of Americans to live their retirement years independently, without fear of outliving their retirement income. Social Security also provides critical income protection for workers and their families who become disabled or deceased.

Social Security benefits are financed through payroll contributions from employees and their employers, each and every year, throughout an individual's working life.

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[9] HRET/Kaiser Family Foundation. 2008 Employer Health Benefits Survey

[10] Ibid.

[11] Kaiser Family Foundation. February 2007. Snapshots: Health Care Costs. Insurance Premium Cost-Sharing and Coverage Take-up.

[12] Jessica Banthin, "Out-of-Pocket Burdens for Health Care: Insured, Uninsured, and Underinsured" presentation. September 23, 2008.

The program is separate from the rest of the federal budget and has not contributed to our large deficits. According to the Social Security Trustees, the program has sufficient assets to pay 100 percent of promised benefits for a quarter century, and even with no changes, can continue to pay approximately 75 percent of promised benefits thereafter.

AARP believes that the nation's long-term debt requires attention and we are committed to lending our support to a balanced approach that addresses the nation's long-term fiscal challenges. However, AARP members recognize that Social Security is a self-financed program that has run surpluses for nearly 30 years and has not contributed to our large deficits. Accordingly, they firmly believe that using the Social Security benefits Americans have earned to remedy a problem that Social Security did not create is simply unfair.

Given the already modest benefits current Social Security beneficiaries receive, the program's continued critical importance to future generations' income and retirement security, the system's dedicated financing, and the lack of a contributory impact on our current large deficits, AARP firmly believes that Social Security should not be targeted for cuts for deficit reduction or as part of a budget exercise to satisfy arbitrary spending thresholds. While Social Security faces a long-term shortfall, targeting it now for arbitrary, across-the-board cuts is unfair and unnecessary, and will most assuredly mean significant reductions in benefits for not only current beneficiaries, but for their children and grandchildren as well. To the contrary, Social Security solvency deserves to have its own national conversation that focuses on preserving and strengthening the retirement security of Americans and their families for generations to come.

Finally, Congress should work to encourage those who can work longer to do so by removing barriers that deter individuals who either wish to stay—or by necessity must stay—in the workforce. Encouraging job creation and job sustainment for those over age 60, including combating age stereotypes, are particularly important, as requiring people to work longer when there are no jobs is simply ineffective. For those who are able, working longer can have positive impacts both personally and financially, especially as it pertains to an increase in the Social Security benefits many people receive when they retire. Moreover, delayed claiming of one's Social Security benefit is a cost-effective way to increase the share of a retiree's annuitized wealth. At the same time, Congress should ensure that, for those who cannot continue to work, adequate protections are in place for the disabled as well as lower-income groups, who often have below-average life expectancies.

Conclusion

Over the past 25 years, there has been a slow and steady erosion of the adequacy and security of employer provided pensions, an important component of our retirement security framework. As a nation, we need to refocus on the need for strengthened workplace retirement plans, especially given longer life spans and the need for added income to supplement Social Security. Once again, AARP would like to thank Chairman Roe and Ranking Member Andrews for holding today's important hearing. We look forward to working with you and the other Members of this Committee to help ensure that as many Americans as possible are able to achieve a secure and adequate retirement.

Mr. ANDREWS. I would like to again thank the witnesses for their preparation and for the way they have informed the committee.

I would like to thank the chairman for having the hearing, and just briefly say that we can, will, and should work together to find ways to increase income for our retirees by strengthening the private pension system.

But I think there are two other issues that are looming over that discussion. The first is protecting the integrity of Social Security so it is never subject to the wild fluctuations of the marketplace and is a rock-solid promise on which retirees can depend. And second, Medicare shares that same status; that it is not you will have health benefits if we get around to it or if the market conditions are right. Medicare is an intergenerational promise and it is one that ought to be honored. We don't think that the majority plan

does that and we are committed to making sure that promise is honored.

I thank the chairman for the hearing.

Chairman ROE. I thank you all for attending today.

And just a couple of things to touch on. There have been a number of important issues talked about today: plan funding, regulatory challenges, worker participation, education. This is just the first of a number of hearings we are going to have. In subsequent weeks we are going to talk about this in more detail.

And just to summarize and finish, when I came to Congress just 2½ years ago, I really came here to look at our health care system in this country because it is a such a driver for costs, 17 percent of the U.S. economy. The single biggest problem with the American health care system was it costs too much money. It is too expensive. If it was more affordable, we could all have it. We had a segment of our population that could not afford it. We had a liability problem.

Also as we looked at these numbers going forward, we had a huge budget deficit in this country and we have a huge jobs deficit in this country, as Mr. Kucinich pointed out. In going forward, when we look at Medicare—and certainly you have to look at Medicare. When it began in 1965 it was a $3 billion program. Government estimators said that in 25 years this would be a $15 billion program; it was a $100 billion program. Today it is over $500 billion.

The Affordable Health Care Act that was passed—as Mr. Andrews pointed out it is referred to as a savings—I would say that when you take $500 billion out of an already underfunded program you haven't saved it, you have created some real issues with that program because we are adding about 3 million new seniors per year for the next 20 years.

On top of that, as Mr. Richtman pointed out, we have got a program called the IPAB, which is already part of the law, an independent panel advisory board. Fifteen bureaucrats appointed. And I don't want them appointed by a Republican or Democrat. These are administratively appointed people that do not look at quality and access to care; they look at simply costs. So if our costs go above a certain number we are advised—and the Congress has extricated itself from that unless we have a two-thirds majority. It is amazing they gave up that kind of power.

And, frankly, I will tell you in the House of Representatives, our bill did not contain that. That was the Senate bill. And it was later voted on and confirmed by the House. It is a very bad idea, as Mr. Richtman—that will lead to rationing of care. There is no other way around it. When you have 30-something million people chasing 500 billion less dollars, you are going to have less access and costs are going up. So why are we having this discussion? Because the current system is unsustainable.

My mother, right now in Medicare part A, lives on a Social Security check. A small pension. She pays exactly the same thing as Warren Buffett does. And when I heard on the campaign trail when I was out 3 years ago, and now we are out in our town hall meetings, is we don't think that is right. And so the plan is not a

voucher, as I understand it, where you get mailed something in the mail and you go out and negotiate a fee or price.

What the Ryan plan is saying is that the Federal Government will negotiate these plans, a multitude of plans as we currently have, and that we will have, that a citizen will have exactly the same benefit that I have right now as a U.S. Congressman. I heard that 2 years ago during this plan as "I want what you have." And so we feel like that is a fair thing to do. And also a higher-income senior like myself is going to get a bigger part of the bill. We will not be like Warren Buffett. We will be paying more. If you are sick and you have preexisting conditions, you will pay a lot less.

Why does anybody think this will work? Is this just some wild experiment? No, because we tried Medicare Part D as the only government health care program that I know of that has come in under budget. The CBO estimated that this would be a $670 billion program in 10 years and it turned out that it was 41 percent lower. Why? Because seniors had a choice to pick what they wanted, not what someone else picked for them.

We have a difference of opinion here about that, and I could not agree more, we need to have this security for our citizens.

It has been a great hearing. I can't thank you enough for being here.

Mr. ANDREWS. I neglected one other point.

Chairman ROE. I yield to the gentleman.

Mr. ANDREWS. Thank you very much. Sara Outterson, who is behind me on the screen, is finishing her tour of duty with our office this week, and I wanted to thank her for the work she has done for our constituents and for our committee. She is moving on to another office on Capitol Hill; obviously, not one as enlightened as ours, Mr. Chairman. But I wanted to thank her very much for the excellent work and wish her well.

Chairman ROE. I thank you and the ranking member, and this meeting is adjourned.

[Additional submissions of Chairman Roe follow:]

Prepared Statement of the American Bankers Association; the Financial Services Roundtable; the Financial Services Institute; Insured Retirement Institute; National Association of Insurance and Financial Advisors; and the Securities Industry and Financial Markets Association

I. We support retirement security

The undersigned organizations[1] share the Congress' and the Obama Administration's goal of increasing opportunities for Americans to save and plan for their retirement. We support increased incentives and opportunities for Americans to save and invest. It is our belief that providing these opportunities for Americans is important because savings increase domestic investment, encourage economic growth, and result in higher wages, financial freedom, and a better standard of living. We believe that most Americans should approach retirement with a comprehensive strategy that incorporates a number of retirement vehicles. Consumer education about retirement savings products can help consumers make sound investment decisions and allow them to maximize their retirement savings.[2] Further gains can be achieved through better use of investment advice, and by promoting policies that provide for more diversified, dynamic asset allocation, and exploration of new and innovative methods to help individuals make better investment decisions.

As a partner with the Congress and the Obama Administration in our collective efforts to protect Americans' retirement security, we strongly believe that one of the largest challenges currently confronting pension plans, plan sponsors, small business owners, individual retirement account owners, employees, and retirees is the Department of Labor's (the "Department") proposed rule that would expand the defi-

nition of the term fiduciary[3] under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA").[4] In our view, the Department's Proposal will negatively impact the ability of hard-working Americans to save and plan for their retirement. Moreover, the Department's Proposal would substantially increase the categories of service providers who would be deemed fiduciaries for purposes of ERISA,[5] and thereby decrease the availability of retirement planning options for all Americans.[6] We respectfully request the Department formally withdraw its proposed definition of fiduciary[7] and re-propose a more narrow definition of fiduciary that targets specific abuses.

II. We believe that the proposed expansion of the definition of fiduciary would jeopardize the retirement security of millions of Americans

Most Americans rely on retirement plans to supplement Social Security and private savings.[8] For instance, Americans have increased their participation in 401(k) plans by 250 percent over the last twenty-five years.[9] In addition, a 2009 study showed that over two-thirds of "U.S. households had retirement plans through their employers or individual retirement accounts ("IRAs")."[10]

IRAs are the fastest growing retirement savings accounts.[11] IRAs are widely held by small investors[12] who seek to maximize return by minimizing overhead on their accounts. According to the OLIVER WYMAN REPORT, smaller investors overwhelmingly prefer to use a brokerage account for their IRAs (rather than an advisory account)[13] because of the lower operating costs associated with brokerage accounts. In fact, 98% of IRAs with less than $25,000 in assets are serviced by securities brokers.[14]

We believe that the sheer breadth of the proposed expansion of the definition of fiduciary would have the unintended—but entirely foreseeable—consequence of reducing alternatives available to hard-working Americans to help them save for retirement, and increasing the costs of remaining retirement savings alternatives. The resulting increase in the number of persons who could be subject to fiduciary duties, increased costs, and increased uncertainty for retirement services providers will very likely reduce the level and types of services available to benefit plan participants and IRA investors by making benefit plans and IRAs more costly and less efficient.[15]

Thus, if the Department were to adopt the expanded definition of fiduciary in its present form,[16] we believe it is clear that fewer Americans would have access to the advice they need to help them make prudent investment decisions that reflect their financial goals and tolerance for risk as they prepare for their retirement because of their reluctance to pay the increased costs that will likely be associated with professional investment advice.[17]

We also are concerned that the Department's Proposal could lead to lower investment returns, and ultimately, a reduced amount of savings for retirement.[18] Moreover, if the Department were to adopt its expanded definition of fiduciary in its present form, millions of hard-working Americans are likely to have reduced access to meaningful investment services or help from an investment professional,[19] and likely would incur greater expense to access the broad range of product types associated with brokerage accounts.[20] We find the potentially adverse consequences that the Department's proposed expanded definition of fiduciary would have on our nation's retirement system and the retirement security of all Americans to be untenable.

In summary, our specific concerns with the Department's proposed expansion of the definition of fiduciary are:

- The Department has not demonstrated that the current definition needs to be completely re-written.
- The proposed expansion of the fiduciary definition to encompass IRAs is ineffective and counterproductive.
- The Department's rule could result in significantly fewer retirement accounts and less retirement savings.
- The Department has not evaluated the economic impact on small business owners.
- Consultation and coordination with each of the relevant regulatory authorities is needed, including without limitation the Securities and Exchange Commission and the Commodity Futures Trading Commission.
- The Department provided insufficient regulatory analyses.
- Given the substantive concerns raised in the public comment record concerning the adverse impact of the rule, the Department should publish notice of its proposed revisions to the definition of fiduciary, and solicit public comment on the proposed revisions.

1. The Department has not demonstrated that the current definition needs to be completely re-written.

• Despite 35 years of experience with the current definition of fiduciary,[21] the Department has not provided adequate justification for its wholesale revisions to the current definition.

• The Department's stated rationale is to pursue bad actors (i.e., pension consultants and appraisers) who allegedly have provided substandard services and who failed to recognize or disclose conflicts of interest.[22] If this is the goal, then the Department should more narrowly tailor the proposed changes to reach those particular bad actors.

• The Department also should consider whether other regulations (including those enforced by other authorities) already provide adequate safeguards. For example, the Department's recent disclosure regulations will require pension consultants to disclose all direct and indirect compensation they receive before entering into a service arrangement with a plan.[23] This may address the Department's concerns.

2. The proposed expansion of the fiduciary definition to encompass IRAs is ineffective and counterproductive.

• The proposed expansion of the definition of fiduciary would constrain the availability of lower-cost commission-based IRAs, which would increase costs for IRA owners and reduce retirement savings.[24]

• The Department previously expressed the view that regulatory initiatives designed for ERISA employee benefit plans were neither necessary nor appropriate for IRAs.[25]

• Sales practices for IRAs currently are subject to oversight by the Securities and Exchange Commission and FINRA. If the Department is concerned about oversight of sales practices, it should work together with those regulators to address those concerns, as opposed to overhauling a much broader regulatory regime.

• Service providers to IRAs should be expressly excluded from any definition of fiduciary for purposes of Title I of ERISA.

3. The Department's rule could result in significantly fewer retirement accounts and less retirement savings.

• The Department issued the Proposal without having done any study or survey—or providing any data—on the Proposal's projected impact or effect on IRA owners or IRA service providers.[26]

• According to the OLIVER WYMAN REPORT, the effect of the Department's rule "could well result in hundreds of thousands of fewer IRAs opened per year."[27]

• "Nearly 90% of IRA investors will be impacted by the proposed rule."[28]

• The Department's Proposal would make service providers fiduciaries when merely providing a valuation of a security or other asset held in the account. This may lead service providers to withdraw from providing valuation services for real estate, venture capital interests, swaps, or other hard to value assets. As a consequence, investors will have far fewer investment choices available to diversify assets in their accounts as they seek to increase their retirement savings.

4. The Department has not evaluated the economic impact on small business owners.

• Small plan sponsors are not likely to be able to absorb the potentially substantial increase in costs arising from the expanded definition of fiduciary.[29]

• Small business owners are struggling to recover in the U.S. economy.[30]

• We urge the Department to ensure that its regulations not only protect retirement plan participants and beneficiaries, but also remove undue burdens that constrain the feasibility for small business owners to provide retirement plans for their employees.

5. Consultation and coordination with each of the relevant regulatory authorities are needed, including without limitation the Securities and Exchange Commission,[31] FINRA, and the Commodity Futures Trading Commission.

• Investors and retirement services providers need a regulatory regime that provides clarity and certainty.

• Regulations that establish conflicting rules create confusion, increase costs to service providers, and tend to lessen the availability of retirement services overall.

6. The Department provided insufficient regulatory analyses.

• The Department was obligated under Executive Order 12866[32] to determine whether its proposed expansion of the definition of fiduciary was a "significant" regulatory action.[33] Even though the Office of Management and Budget determined the Department's proposed definition was economically significant,[34] the Department performed an insufficient Regulatory Impact Analysis of the Proposal.[35]

• The Department stated "it is uncertain about the magnitude of [the] benefits and potential costs" of its regulatory action.[36] Yet, the Department failed to provide any data whatsoever in support of its Regulatory Impact Analysis, in which the De-

partment "tentatively conclude[d] that the proposed regulation's benefits would justify its costs."[37]

• The Department's Initial Regulatory Flexibility Analysis failed to provide either an estimate of the number of affected small entities[38] or the increased business costs small entities would incur if they were determined to be fiduciaries under the proposal as required by the Regulatory Flexibility Act.[39] As a consequence, it appears that the Department of Labor performed an insufficient analysis under the Regulatory Flexibility Act when it estimated the impact of its rule proposal on small businesses, a segment of the market also impacted by the proposed expansion of the definition of fiduciary.

• On January 18, 2011, President Barack Obama issued Executive Order 13563 "Improving Regulation and Regulatory Review."[40] The Order explains the Administration's goal of creating a regulatory system that protects the "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation,"[41] while using "the best, most innovative, and least burdensome tools for achieving regulatory ends."[42]

• The Department's Proposal contravenes the Obama Administration's publicly articulated goal to "identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public."[43]

7. Given the substantive concerns raised in the public comment record concerning the adverse impact of the rule, the Department should publish notice of its proposed revisions to the definition of fiduciary, and solicit public comment on the proposed revisions.

• The definition as proposed would require substantial changes to address concerns identified in the public comment file.[44]

• It is likely that class exemptions will be necessary and should be part of the rule itself, so that hard-working Americans do not lose access to investment products they need to fund their retirement while the financial services markets wait for the Department to adopt the required prohibited transaction class exemptions.

• The current definition of fiduciary[45] has informed almost 35 years of Department guidance on investment advice for ERISA retirement plans and IRAs. Revisions to such a mature rule ordinarily should not require ancillary exemptions in order for the final rule to work in the real world.

III. In light of the substantive concerns raised by the public, we believe the Department should withdraw its proposed expansion of the definition of fiduciary, and re-propose a defintion of fiduciary that addresses deficiences noted in the public comment file

We and other parties have filed comments and supplemental materials with the Department that generally have raised these and other concerns about the adverse impact of the Proposal.[46] At present, it is our understanding that the Department is considering substantial revisions to its Proposal in response to the views expressed during the public comment period.[47]

It is in the interest of the millions of hard-working Americans who are saving for retirement that the Obama Administration and the Congress collaborate actively with the private sector—in particular, the small business community and the retirement security community—to develop a regulatory regime that will benefit consumers and expand Americans' retirement savings.

IV. Conclusion

In closing, strengthening the retirement security of all Americans is our priority. Strong and vibrant retirement programs benefit employees and their beneficiaries. As well, it strengthens the financial health and well-being of our nation. We, therefore, reiterate our request that the Department withdraw and re-propose a definition of the term fiduciary.

While we support policies that encourage safeguards in retirement savings programs to protect consumers and our markets from fraudulent practices, we vigorously oppose regulations that would discourage participation by employers and employees in retirement programs or would imperil retirement security for millions of hard-working Americans.

We urge policymakers to work with us to preserve a retirement system that helps strengthen retirement security for all Americans. We encourage the Congress to support policies that help promote retirement savings and enable the financial services industry to better meet the long-term retirement needs of hard-working Americans.

We stand ready to work with you and the Department on this important issue.

Respectfully submitted,

AMERICAN BANKERS ASSOCIATION,
THE FINANCIAL SERVICES ROUNDTABLE,
THE FINANCIAL SERVICES INSTITUTE,
THE INSURED RETIREMENT INSTITUTE,
NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS,
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION.

END NOTES

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. Many of these banks are plan service providers, providing trust, custody, and other services for institutional clients, including employee benefit plans covered by the Employee Retirement Income Security Act of 1974. As of year-end 2010, banks held over $8 trillion in defined benefit, defined contribution, and retirement-related accounts (Source: FDIC Quarterly Banking Profile, Table VIII-A (Dec. 2010)).

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Among the Roundtable's Core Values are fairness ("We will engage in practices that provide a benefit and promote fairness to our customers, employees or other partners."); integrity ("[E]verything we do [as an industry] is built on trust. That trust is earned and renewed based on every customer relationship."); and respect ("We will treat the people on whom our businesses depend with the respect they deserve in each and every interaction."). See Roundtable Statement of Core Values, available at *http://www.fsround.org/*.

Roundtable member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

The Financial Services Institute, which was founded in 2004, is the only advocacy organization working on behalf of independent broker-dealers and independent financial advisors. Our vision is that all individuals have access to competent and affordable financial advice, products, and services delivered by a growing network of independent financial advisors affiliated with independent financial services firms. Our mission is to create a healthier regulatory environment for independent broker-dealers and their affiliated independent financial advisors through aggressive and effective advocacy, education, and public awareness. Our strategy supports our vision and mission through robust involvement in FINRA governance, constructive engagement in the regulatory process, and effective influence on the legislative process.

The Insured Retirement Institute has been called the "primary trade association for annuities" by U.S. News and World Report and is the only association that represents the entire supply chain of insured retirement strategies. Our members are the major insurers, asset managers, broker dealers and financial advisors. IRI is a not-for-profit organization that brings together the interests of the industry, financial advisors and consumers under one umbrella. Our official mission is to: encourage industry adherence to highest ethical principles; promote better understanding of the insured retirement value proposition; develop and promote best practice standards to improve value delivery; and to advocate before public policy makers on critical issues affecting insured retirement strategies. We currently have over 500 member companies which include more than 70,000 financial advisors and 10,000 home office financial professionals.

National Association of Insurance and Financial Advisors ("NAIFA") comprises more than 700 state and local associations representing the interests of approximately 200,000 agents and their associates nationwide. NAIFA is one of the only insurance organizations with members from every Congressional district in the United States. Members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. According to a Fall 2010 survey, nearly two-thirds of NAIFA members are licensed to sell securities, and 89% of NAIFA member clients are "main street" investors who have less than $250,000 in household income. The Association's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

Securities Industry and Financial Markets Association ("SIFMA") brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] The financial services industry has developed numerous financial literacy initiatives, including initiatives directed toward elementary and high school students and programs presented to investors in the local community. See The Financial Services Roundtable, COMMUNITY SERVICE IMPACT REPORT at 64-69 (2010), available at *http://www.fsround.org/publications/pdfs/CS10-ImpactReport.pdf;* Insured Retirement Institute, Retirement Planning Resources for Consumers, available at *http://www.irionline.org/consumers/retirementPlanningResources;* Securities Industry and Financial Markets Association Foundation, available at *http://www.sifma.org/Education/SIFMA-Foundation/About-the-SIFMA-Foundation/;* Investment Company Institute, available at *http://ici.org/#investor—education;* and FINRA, available at *http://www.finra.org/Investors/*.

[3] Definition of the Term "Fiduciary" [RIN: 1210—AB32], 75 Fed. Reg. 65263 (Oct. 22, 2010) (the "Proposal").

[4] 29 U.S.C. § 1001, et seq.

[5] See Oliver Wyman, Inc., OLIVER WYMAN REPORT: ASSESSMENT OF THE IMPACT OF THE DEPARTMENT OF LABOR'S PROPOSED "FIDUCIARY" DEFINITION RULE ON IRA CONSUMERS at 13 (Apr. 12, 2011) (the "OLIVER WYMAN REPORT"), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-PH060.pdf* (noting that "practically every investment-related conversation or interaction with a client [could become] subject to [a] fiduciary duty"). "Even * * * discussions with call center and branch staff[ ] could be curtailed (so as to avoid inadvertently establishing a fiduciary duty." Id. at 15. The OLIVER WYMAN REPORT is based on aggregate proprietary data furnished by "[twelve] financial services firms that offer services to retail investors." Id. at 1. These firms "represent over 19 million IRA holders who hold $1.79 trillion in assets through 25.3 million IRA accounts [or roughly forty percent (40%) of IRAs in the United States and forty percent (40%) of IRA assets]." Id.

[6] OLIVER WYMAN REPORT, supra note 5 at 19-20. If the Department were to adopt the Proposal, the likely result would be a "[r]educed choice of investment professional, level of investment guidance, and investment products," according to the OLIVER WYMAN REPORT. Id. at 19.

[7] It also would afford the Department an opportunity to receive further information and analyses from the public on the effectiveness of the proposed revisions. See Natural Resources Defense Council v. Environmental Protection Agency, 279 F.3d 1180, 1186 (9th Cir. 2002) (reviewing the "notice and comment" requirements, the court stated that "one of the salient questions is 'whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule'").

[8] Insurance Information Institute and The Financial Services Roundtable, THE FINANCIAL SERVICES FACT BOOK at 37 (2011) ("THE FINANCIAL SERVICES FACT BOOK"), available at *http://www.fsround.org/publications/pdfs/2011/Financial—Services—Factbook—2011[1].pdf.*

[9] Retirement Security: 401(k)s (Sept. 23, 2010) ("Retirement Security"), available at *http://www.fsround.org/fsr/pdfs/fast-facts/2010-09-23-RetirementSecurity.pdf.* In 2009, $2,121 billion of retirement assets were held in defined benefit plans compared to $3,336 billion of assets in defined contribution plans. THE FINANCIAL SERVICES FACT BOOK, supra note 8 at 43 (2011) (Source: Securities Industry and Financial Markets Association).

[10] THE FINANCIAL SERVICES FACT BOOK, supra note 8 at 37.

[11] OLIVER WYMAN REPORT, supra note 5 at 4.

[12] Id. at 10 ("[A]pproximately half of IRA investors in the report sample have less than $25,000 in IRA assets, and over a third have less than $10,000.").

[13] Id. at 12. Investors who hold IRA assets in a brokerage account pay commissions to the brokers who buy or sell securities for their IRAs. In the alternative, investors can hold IRA assets in an "advisory" account and pay a fee that is a percentage of the assets held in the IRA. A study of 7,800 households conducted by Cerulli Associates found that more affluent investors also "prefer paying commissions." See Fee vs. commission: No doubt which investors prefer, BLOOMBERG (June 8, 2011), *http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20110608/FREE/110609950* (reporting that the survey examined "households with more than $50,000 in annual income or more than $250,000 in * * * assets").

[14] OLIVER WYMAN REPORT, supra note 5 at 2.

[15] Id. at 19-22.

[16] Proposal, supra note 3 at 65277-78.

[17] See OLIVER WYMAN REPORT, supra note 5 at 2; Fee vs. commission, supra note 13.

[18] OLIVER WYMAN REPORT, supra note 5 at 22 ("These increased investment costs would serve as a drag on long-term investment gains, and therefore on the ultimate retirement savings available to impacted [IRA] holders.").

[19] Id. at 19.

[20] Id. at 20.

[21] 40 Fed. Reg. 50842 (Oct. 31, 1975). See also, Mercer Bullard, DOL's Fiduciary Proposal Misses the Mark (June 14, 2011), available at *http://news.morningstar.com/articlenet/article.aspx?id=384065* ("It is unfair to the industry because it disregards decades of administrative law and practice under ERISA. It is bad for investors because it strips them of fiduciary protections when they are needed most.").

[22] Proposal, supra note 3 at 65271 (citing a Securities and Exchange Commission staff report that found a majority of the 24 pension consultants examined in 2002-2003 "had business relationships with broker-dealers that raised a number of concerns about potential harm to pension plans"); GAO, Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans, GAO-09-503T, Testimony Before the Subcommittee on Health, Employment, Labor and Pensions, Education and Labor Committee, House of Representatives at 4 (Mar. 24, 2009), available at *http://www.gao.gov/new.items/d09503t.pdf* (noting that 13 of the 24 pension consultants examined by the Securities and Exchange Commission's staff "had failed to disclose significant ongoing conflicts of interest to their pension fund clients").

[23] Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans; Final Rule [RIN: 1210—AB07], 75 Fed. Reg. 64910 at 64937 (Oct. 20, 2010).

[24] OLIVER WYMAN REPORT, supra note 5 at 2 (noting that "estimated direct costs would increase by approximately 75% to 195% for these investors").

[25] See Preamble to Interim Final 408(b)(2) Regulations, 75 Fed. Reg. 136 (July 16, 2010).

"The Department does not believe that IRAs should be subject to the final rule, which is designed with fiduciaries of employee benefit plans in mind. An IRA account-holder is responsible only for his or her own plan's security and asset accumulation. They should not be held to the same fiduciary duties to

scrutinize and monitor plan service providers and their total compensation as are plan sponsors and other

fiduciaries of pension plans under Title I of ERISA, who are responsible for protecting the retirement security of greater numbers of plan participants. Moreover, IRAs generally are marketed alongside other personal investment vehicles. Imposing the regulation's disclosure regime on IRAs could increase the costs associated with IRAs relative to similar vehicles that are not covered by the regulation. Therefore, although the final rule cross references the parallel provisions of section 4975 of the [Internal Revenue] Code, paragraph (c)(1)(ii) provides explicitly that IRAs and certain other accounts and plans are not covered plans for purposes of the rule." Id.

[26] Proposal, supra note 3 at 65274-76.

[27] OLIVER WYMAN REPORT, supra note 5 at 2.

[28] Id. at 19-20 (IRA holders who cannot qualify for an "advisory account" would be "forced to migrate to a purely 'low support' brokerage model * * * and have little access to investment services, research and tools" to support their IRA savings goals.). See also, Most Americans Haven't Planned for Retirement and Other Areas of Concern, WALL ST. J., June 6, 2011, available at *http://blogs.wsj.com/economics/2011/06/06/most-americans-havent-planned-for-retirement-and-other-areas-of-concern/* ("Efforts to make people essentially their own money managers may also be futile. Only 21% to 25% of respondents said they have used information sent to them from Social Security.")

[29] While the costs associated with providing various employee benefits (including retirement plans) impact all employers, smaller companies typically are more sensitive to the costs associated with these programs. To the extent that service providers' expenses increase, those costs are passed through to their clientele. An example of expenses associated with the Department's Proposal is the legal cost associated with the initial "compliance review." According to the Department, the cost of legal review would average sixteen (16) hours of time at a rate of $119 per hour. Proposal, supra note 3 at 65274. This rate, however, is significantly lower than the average billing rate of $295 per hour for 10,913 lawyers surveyed by the National Law Journal. SURVEY OF LAW FIRM ECONOMICS, NAT'L L. J. (2010) ("LAW FIRM SURVEY"), available at *http://www.alm.com/pressroom/2011/02/10/alm-legal-intelligence-releases-2011-survey-of-billing-and-practices-for-small-and-midsize-law-firms/*.

[30] See, Kelly Greene, Retirement Plans Make Comeback, With Limits, WALL ST. J., June 14, 2011, available at *http://professional.wsj.com/article/SB10001424052702303714704576384072497942338.html* (reporting that in the face of a "slowly improving job market, [many companies] seek to balance the need to retain highly skilled workers with the need to limit costs").

[31] The Securities and Exchange Commission released a study evaluating the regulatory regimes applicable to investment advisers and broker-dealers who provide advice to retail customers, as required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Pub. L. No. 111-203, § 913, 124 Stat. 1824 (2010) (the "Dodd-Frank Act")]. STUDY ON INVESTMENT ADVISERS AND BROKER-DEALERS AS REQUIRED BY SECTION 913 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (Jan. 21, 2011), available at *http://sec.gov/news/studies/2011/913studyfinal.pdf.* Section 913(f) authorized the Commission to engage in rulemaking to address the legal or regulatory standards of care applicable to investment professionals who provide "personalized investment advice about securities" to retail customers. Section 913(f) of the Dodd-Frank Act, 124 Stat.1827-28.

[32] 58 Fed. Reg. 51735.

[33] 75 Fed. Reg. at 65269.

[34] Id. (According to the Office of Management and Budget, the Department's proposed rule "is likely to have an effect on the economy of $100 million in any one year.").

[35] For example, the Department estimated that service providers would incur about sixteen (16) hours of legal review at a rate of $119 per hour. While the complexity of the compliance review likely would far exceed the Department's estimate of sixteen (16) hours, an allocation of just $119 per hour for legal services vastly understates the cost of legal services in the United States. See LAW FIRM SURVEY, supra note 29 and accompanying text.

[36] 75 Fed. Reg. at 65275 ("[The Department's] estimates of the effects of this proposed rule are subject to uncertainty.").

[37] Id.

[38] Id. at 65276.

[39] Id.

[40] Improving Regulation and Regulatory Review—Executive Order 13563 (Jan. 18, 2011), available at *http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order.*

[41] Id. at Section 1.

[42] Id.

[43] Id. at Section 4.

[44] See infra note 46.

[45] 29 C.F.R. § 2510.3-21(c).

[46] See, e.g., Employee-Owned S Corporations of America (Jan. 12, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-040.pdf;* American Council of Engineering Companies (Jan. 19, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-048.pdf;* American Institute of CPAs (Jan. 19, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-050.pdf;* National Association of Realtors (Jan. 20, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-052.pdf;* Glass Lewis & Co. (Jan. 20, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-053.pdf;* Securities Law Committee of Business Law Section of the State Bar of Texas (Jan. 11, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-039.pdf;* Retirement In-

dustry Trust Association (Jan. 26, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-064.pdf;* International Corporate Governance Network (Jan. 21, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-065.pdf;* New York City Bar Committee on Employee Benefits & Executive Compensation (Jan. 28, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-070.pdf;* Investment Adviser Association (Feb. 2, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-082.pdf;* International Data Pricing and Reference Data, Inc. (Feb. 2, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-082.pdf;* The ERISA Industry Committee (Feb. 2, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-090.pdf;* Institutional Shareholder Services Inc. (Feb. 2, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-104.pdf;* U.S. Chamber of Commerce (Feb. 3, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-111.pdf;* CFA Institute (Feb. 2, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-128.pdf;* Business Roundtable (Feb. 3, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-139.pdf;* and Committee of Federal Regulation of Securities of the Section of Business Law of the American Bar Association (Feb. 3, 2011), available at *http://www.dol.gov/ebsa/pdf/1210-AB32-152.pdf*

[47] Definition of the term "Fiduciary" Proposed Rule Public Comments, available at *http://www.dol.gov/ebsa/regs/cmt-1210-AB32.html.*

T-168

House Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions

Hearing on:

"Retirement Security: Challenges Confronting Pension Plan Sponsors, Workers, and Retirees"

Tuesday, June 14, 2011

Submitted Testimony by

Jack VanDerhei, Ph.D.
Research Director
Employee Benefit Research Institute (EBRI)
www.ebri.org

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"Retirement Security: Challenges Confronting Pension Plan Sponsors, Workers, and Retirees"

By Jack VanDerhei, EBRI

Introduction

Since 2003, EBRI has been producing national estimates of retirement income adequacy through its Retirement Security Projection Model® (RSPM). Prior publications using this model have focused on quantifying the relative likelihood that various cohorts will be "at risk" of having inadequate retirement income and estimating the additional amount of savings these households would need to undertake each year until age 65 to have a 50, 70, or 90 percent probability of a "successful" retirement outcome. Unfortunately, many of these cohorts (especially those very close to retirement age, those in the lowest preretirement income quartile and those with limited attachment to employer-sponsored retirement plans) would require an additional savings rate that would be too large to be feasible (in many cases more than 25 percent of compensation annually).

In VanDerhei and Copeland (June 2011), RSPM is modified to allow retirement at ages other than 65 and assess the value of deferring retirement age for increasing the probability of retirement income adequacy. This testimony starts with a review of RSPM and the Retirement Readiness Ratings used to measure those "at risk." It then reviews some of the major findings from the 2010 version of RSPM and discusses how the model was updated and modified to produce the 2011 version.

At that point, RSPM simulations are presented showing the percentage of households with adequate retirement income for retirement ages varying from 65 to 84. Alternative simulations are run to show the impact of increasing the probability of a successful retirement income from 50 percent to 70 percent and then to 80 percent.

Once the value of deferring retirement age has been demonstrated for various preretirement income quartiles, the value of participation in defined contribution plans after age 64 is analyzed.

Brief Description of RSPM

One of the basic objectives of RSPM is to simulate the percentage of the population that will be "at risk" of having retirement income that is inadequate to cover basic expenses and pay for uninsured health care costs for the remainder of their lives once they retire.[1] However, the EBRI Retirement Readiness Rating™ also provides information on the distribution of the likely number of years before those at risk "run short of money," as well as the percentage of compensation they would need in terms of additional savings to have a 50, 70, or 90 percent probability of retirement income adequacy.

The appendix to VanDerhei and Copeland (June 2011) describes how households (whose heads are currently ages 37–63) are tracked through retirement age, and how their retirement income/wealth is simulated for the following components:

- Social Security.
- Defined contribution balances.
- Individual retirement account (IRA) balances.
- Defined benefit annuities and/or lump-sum distributions.
- Net housing equity.[2]

A household is considered to run short of money in this model if aggregate resources in retirement are not sufficient to meet aggregate minimum retirement expenditures, which are defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income), and some

health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living calculations, and other ad hoc thresholds.

The version of the model used in VanDerhei and Copeland (July 2010) assumes all workers retire at age 65 and immediately begin to withdraw money from their individual accounts (defined contribution and cash balance plans, as well as IRAs) whenever the sum of their basic expenses and uninsured medical expenses exceed the after-tax[3] annual income from Social Security and defined benefit plans (if any). If there is sufficient money to pay expenses without tapping into the tax-qualified individual accounts,[4] the excess is assumed to be invested in a non-tax-advantaged account where the investment income is taxed as ordinary income.[5] The individual accounts are tracked until the point at which they are depleted; if the Social Security and defined benefit payments are not sufficient to pay basic expenses, the entity is designated as having "run short of money" at that time.

Brief Review of Previous Results From the 2010 Retirement Security Projection Model

The definition of "at risk" of inadequate retirement income depends to a large extent on the type of model used to analyze the various contingencies. For example, some studies project retirement income and wealth to a particular age, and then simply compare the annuitized value of the various components with a threshold based on some type of replacement rate analysis.[6] While this is a useful metric to determine what percentage of the households being studied will achieve certain benchmarks, it is difficult (if not impossible) to accurately integrate the concepts of longevity risk, post-retirement investment risk, and uninsured post-retirement health care risk in such a formulation.

The EBRI Retirement Readiness Rating,™ as well as other results in VanDerhei and Copeland (June 2011), are based on an updated version of RSPM. As explained briefly below (and in much more detail in the appendix to VanDerhei and Copeland (June 2011)), this model was originally developed in 2003 to provide detailed micro-simulation projections of the percentage of preretirement households "at risk" of having inadequate retirement income to finance basic retirement expenditures, as well as uninsured retiree health care expenses (including nursing home care). This model benefits greatly from having access to administrative records on tens of millions of 401(k) participants,[7] dating back in some cases to 1996, to permit simulating the accumulations under the most important component (but also the most complicated in terms of modeling) of future wealth generated by the employer-sponsored retirement system. These household projections are combined with the other components of retirement income/wealth (such as Social Security, defined benefit annuities and lump-sum distributions, IRA rollovers, non-rollover IRAs, and net housing equity) at retirement age, and run through 1,000 alternative retirement paths to see what percentage of the time the households "run short of money" in retirement. The present value of the deficits generated in retirement are also computed and divided by the accumulated remaining wages of the household to provide a percentage of compensation that would need to be saved in each year (in addition to any employee contributions simulated to be made to defined contribution plans and/or IRAs) to provide alternative probabilities of adequate retirement income.
While knowing the percentage of households that are "at risk" (as well as their composition by age, income levels, and level of participation in defined contribution plans) is obviously valuable, it does nothing to inform policymakers, employers, or workers of how much additional savings is required to achieve the desired probability of success.

Similar to the concepts applied in VanDerhei and Copeland (2003), the analysis in VanDerhei and Copeland (2010) also models how much additional savings would need to be contributed from 2010 until

age 65 (the baseline retirement assumption) to achieve adequate retirement income 50, 70, and 90 percent of the time for each household. While this concept may be difficult to comprehend at first, it is important to understand that a retirement target based on averages (such as average life expectancy, average investment experience, average health care expenditures in retirement) would, in essence, provide the appropriate target only if one was willing to settle for a retirement planning procedure with approximately a 50 percent "failure" rate. Adding the 70 and 90 percent probabilities allows more realistic modeling of a worker's risk aversion.

Baseline by Age Cohort

Figure 1 provides the baseline analysis for the 2010 Retirement Readiness Ratings in terms of the percentage of the population simulated to be "at risk" for three age cohorts:[8]

- Early Boomers (born between 1948–1954, now ages 57–63).
- Late Boomers (born between 1955–1964, now ages 47–56).
- Generation Xers (born between 1965–1974, now ages 37–46).

In 2010, nearly one-half (47.2 percent) of the oldest cohort (Early Boomers) are simulated to be at risk of not having sufficient retirement income to pay for "basic" retirement expenditures as well as uninsured health care costs. The percentage at risk drops for the Late Boomers (to 43.7 percent) but then increases slightly for Generation Xers to 44.5 percent.

For purposes of historical comparisons, the 2003 Retirement Readiness Ratings are also included in Figure 1. The Retirement Readiness Ratings show there has been a significant decrease in the "at-risk" levels for all three groups between 2003 and 2010, with the largest decrease (12.9 percentage points) experienced by the Gen Xers. The major reason for the large magnitude of these decreases is attributed to the projection of future defined contribution account balances (which would have the largest impact on the youngest group). The 2010 Retirement Readiness Ratings fully reflect the trend to auto-enrollment, auto-escalation of contributions, and QDIAs as a result of PPA and subsequent regulations. While some plans had already adopted auto-escalation at the time of the 2003 model, the percentage of workers affected was minimal and hence not included in the simulations.

Baseline by Preretirement Income Groups

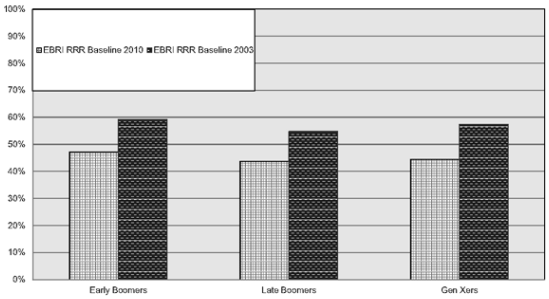
Although the 2010 Retirement Readiness Ratings show relatively little change in "at-risk" probability by age cohort, Figure 2 shows a significant impact of the relative level of preretirement income.[9] In this case, households in the lowest one-third when ranked by age-specific preretirement income are simulated to be "at risk" 70.3 percent of the time, while the middle-income group has an "at-risk" percentage of 41.6 percent. This figure drops to 23.3 percent for the highest-income group.

Again for historical comparisons, the 2003 Retirement Readiness Ratings by income group are included in Figure 2. Both the middle- and high-income cohorts experience a 16 percentage point decrease, while the low-income cohort has a Retirement Readiness Rating that decreases by only 9 percentage points between 2003 and 2010. While this may appear counterintuitive at first given the huge positive impact of auto-enrollment and auto-escalation of contributions on the low income (VanDerhei and Copeland, 2008 and VanDerhei, April 2010), Figure 8 in VanDerhei and Copeland (2010) demonstrates how far many of the lower-income cohorts are from the point they will no longer be classified as "at risk."

Baseline by Future Years of Eligibility in a Defined Contribution Plan

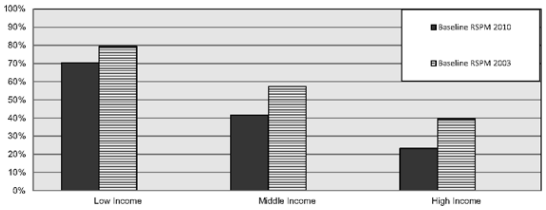
One of the advantages of a national retirement income adequacy model based on micro-simulation data such as RSPM is the ability to correlate statistics such as the "at-risk" percentages with other outcomes for the simulated households. Figure 3 provides an example of the large extent to which "at-risk" percentages are associated with the years of future eligibility in defined contribution plans. The "at-risk"

Figure 1
Baseline EBRI Retirement Readiness Rating™ (RRR)
Percentage of population "at risk" for inadequate retirement income, by age cohort (baseline assumptions)



Sources: EBRI Retirement Security Projection Model™ versions 100504e and 100708e.

Figure 2
Impact of Income Group on At-Risk* Probability
Percentage of population "at risk" for inadequate retirement income, by age-specific remaining career income group (baseline assumptions)

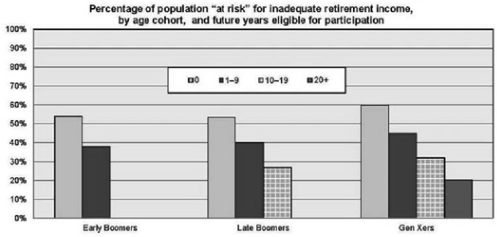


Source: EBRI Retirement Security Projection Model® versions 100504e and 100708e.
* An individual or family is considered to be "at risk" in this version of the model if their aggregate resources in retirement are not sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen) and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard of living and other ad hoc thresholds.

percentages are categorized for each of the three age cohorts into one of the following levels, based on future years of eligibility (whether or not the employee actually chose to participate in a VE plan or opted out of an AE plan):

- Zero years of future eligibility.
- 1–9 years.
- 10–19 years.
- 20 or more years.

Figure 3
Impact of Age and Future Years Eligible for Participation in a Defined Contribution Plan on At-Risk* Probabilities



Source: EBRI/ERF Retirement Security Projection Model® version 100504e.
* An individual or family is considered to be "at risk" in this version of the model if their aggregate resources in retirement are not sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living, and other ad hoc thresholds.

Given their current ages and the assumption under the runs in VanDerhei and Copeland (2010) that everyone retires at age 65, Early Boomers obviously can be in only one of the first two levels. When the results for this age cohort are bifurcated by future eligibility in a defined contribution plan, the difference in the "at-risk" percentages is quite large (16 percentage points), even after at most nine years of future eligibility. Late Boomers and Gen Xers are able to have significantly larger future periods of time eligible to participate in a defined contribution plan and therefore the differences are much larger. Late Boomers with no future eligibility are simulated to have an "at-risk" level 26 percentage points larger than those with 10–19 future years of eligibility. Gen Xers obviously have the largest differential (40 percentage points): Those with no future years of eligibility have an "at-risk" level of 60 percent, compared with only 20 percent for those with 20 or more years of eligibility.

Analyzing the Importance of Retirement Age

Previous EBRI research into retirement income adequacy analyzed the percentage of households at risk for insufficient retirement income as well as how much more at-risk households would need to save to

achieve adequacy for a specified percentage of simulated retirements. Figures 20–22 in VanDerhei and Copeland (2010) present additional savings (expressed as a percentage of compensation) needed to achieve various probabilities of success for retirement age at 65. Unfortunately, the results for many combinations of age/income cohorts would be too high to be feasible.

If additional savings will not be sufficient for some households, it is possible that they may defer retirement age instead. The next section of this report will explore the likely impact on retirement income adequacy of taking this action, but it should be stressed that deferring retirement age will not always be feasible. For example, health problems of either the worker or the spouse may prevent this from happening or a suitable job for the worker's skills may not be available. The Retirement Confidence Survey has consistently found that a large percentage of retirees leave the work force earlier than planned, and 45 percent of retirees reported in 2011 that they were in this situation.[10]

Prior to analyzing the impact of deferring retirement age, the 2010 version of the RSPM was updated with financial market information to January 1, 2011, and several employee behavior assumptions were updated from industry studies. A new subroutine was added to the 2011 version of the RSPM that would allow the expansion of the household's accumulation period (i.e., the time in the work force prior to retirement) to be expanded beyond age 65. Unfortunately, this required the need for many wage and benefit assumptions for very elderly workers in areas where empirical data are quite limited. Therefore, this analysis starts with a set of assumptions that would be most favorable to deferring retirement age:[11]

Wages:
- No age/wage curves were assumed to exist after age 64; instead, it was assumed that the worker's wages grow at average national wage growth.

Job change, disability, unemployment:
- This was assumed to not take place after age 64.

Nursing home or home health care expenses for the worker:
- It was assumed that these costs are not incurred prior to retirement.

Defined contribution plans:
- In terms of employee contributions, it was assumed that the age 64 participating status and contribution rate is continued until retirement age. Implicitly, this means that any employee in an AE plan with auto-escalation has the escalation feature turned off at age 65.
- For employer contributions, match rates are assumed to remain constant and nonelective contributions continue at the age 64 contribution rate.

Social Security:
- Initial receipt is deferred until the earlier of retirement age or age 70.[12]

The Impact of Deferring Retirement Age on Retirement Income Adequacy

Figure 4 shows the value of deferring retirement age for Baby Boom and Gen X households assuming that a 50 percent probability of "success" is sufficient (where success is defined as not running short of money in retirement). For the lowest preretirement income quartile, only 29.6 percent of these households would have sufficient resources to not run short of money in retirement 50 percent of the time; however, this increases to 34.6 percent if retirement is deferred until age 67 and 46.5 percent if retirement is deferred until age 69. The incremental increase in the percentage of households in the lowest preretirement income quartile having at least a 50 percent probability of success levels off for several years (in large part due to the elimination of the delayed retirement credits under Social Security) but then picks up again after age 75. Approximately one-half (49.1 percent) of the lowest preretirement income quartile households retiring at age 75 would have at least a 50 percent probability of success, but that increases to 61.7 percent at age 80 and 90.2 percent at age 84.

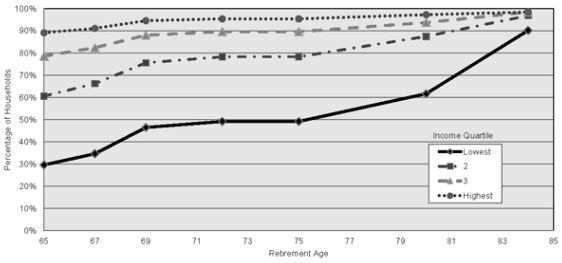
Given that the other preretirement income quartiles will start with a larger percentage of households achieving the 50 percent probability of success threshold in Figure 4, there will be less dramatic impacts (in terms of the additional households satisfying the thresholds). Focusing on the highest preretirement income threshold, 89.1 percent already have at least a 50 percent probability of success by age 65. This value increases to 94.5 percent by age 69 but then levels off for several years before finally reaching 98.4 percent age at 84.

The value of deferring retirement age on retirement income adequacy for the second and third preretirement income quartiles falls between these two extremes. In both cases, though, a significant percentage of the households that do not meet the 50 percent success threshold by age 65 will meet it if they defer retirement age until 69. For example, 39.4 percent of the households in the second preretirement income quartile do not meet the 50 percent success threshold at age 65, but that number decreases to 24.4 percent at age 69. In other words, 38 percent of the households not able to satisfy the threshold at age 65 will be able to satisfy it by age 69. The results are even more dramatic for the third preretirement income quartile, with 44 percent of these households that were not able to satisfy the threshold at age 65 being able to satisfy it by age 69.[13]

Figure 5 provides a similar analysis, although in this case the threshold for success increases to having adequate retirement income for at least 70 percent of the simulated life paths in retirement. As expected, each of the four lines from the Figure 4 will fall, given that fewer households will be able to meet the more stringent threshold at any specific retirement age. Only 6.0 percent of the households in the lowest preretirement income quartile will meet this new threshold of success (compared to 29.6 percent under the 50 percent threshold). By deferring retirement to age 69, 14.9 percent of these households would meet the 70 percent threshold (or an additional 9 percent of these households that had not met the threshold at age 65 would meet it by age 69). A total of 39.2 percent of the households in the lowest preretirement income quartile would meet the 70 percent threshold by age 84. A total of 23.5 percent of the households in the second preretirement income quartile would be able to satisfy the 70 percent threshold if they retired at age 65. This value increases to 36.5 percent at age 69 (or an additional 17 percent of these households that had not met the threshold at age 65 would meet it by age 69). A total of 49.1 percent of the households in the third preretirement income quartile would be able to satisfy the 70 percent threshold if they retired at age 65. This value increases to 60.5 percent at age 69 (or an additional 22 percent of these households that had not met the threshold at age 65 would meet it by age 69). A total of 75.9 percent of the households in the highest preretirement income quartile would be able to satisfy the 70 percent threshold if they retired at age 65. This value increases to 81.1 percent at age 69 (or an additional 30 percent of these households that had not met the threshold at age 65 would meet it by age 69).

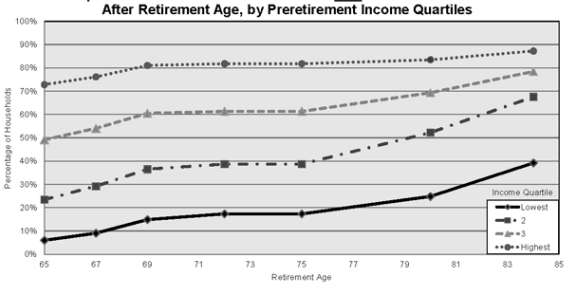
Figure 6 provides a similar analysis, although in this case the threshold for success increases to having adequate retirement income for at least 80 percent of the simulated life paths in retirement. Less than 1 percent of the households in the lowest preretirement income quartile will meet this threshold. By deferring retirement to age 69, 1.3 percent of these households would meet the 80 percent threshold (or less than 1 percent of these households that had not met the threshold at age 65 would meet it by age 69). A total of 10.3 percent of the households in the second preretirement income quartile would be able to satisfy the 80 percent threshold if they retired at age 65. This value increases to 15.3 percent at age 69 (or an additional 6 percent of these households that had not met the threshold at age 65 would meet it by age 69). A total of 33.2 percent of the households in the third preretirement income quartile would be able to satisfy the 80 percent threshold if they retired at age 65. This value increases to 40.6 percent at age 69 (or an additional 11 percent of these households that had not met the threshold at age 65 would meet it by age 69). A total of 61.2 percent of the households in the highest preretirement income quartile would be able to satisfy the 80 percent threshold if they retired at age 65. This value increases to 68.7 percent at age 69 (or an additional 19 percent of these households that had not met the threshold at age 65 would meet it by age 69).

Figure 4
Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 50% of Simulated Life Paths After Retirement Age, by Preretirement Income Quartiles



Source: EBRI Retirement Security Projection Model® version 110410i.
* An individual or family is considered have"adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Figure 5
Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 70% of Simulated Life Paths After Retirement Age, by Preretirement Income Quartiles



Source: EBRI Retirement Security Projection Model® version 110410i.
* An individual or family is considered have"adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

The Value of Participating in a Defined Contribution Plan After Age 64

Given the current baseline assumptions of no job change after age 64, the importance of participating in a defined contribution plan after age 64 could be substantial. This is investigated in Figures 7, 8, and 9 by bifurcating several combinations of retirement age and preretirement income quartiles into those participating in a defined contribution plan after age 64 and those that are not and computing the differences in the percentages. Figure 7 provides the analysis for the 50 percent probability of success threshold. In this case, the numbers are largest for age 65 and decline to differences of 6 percentage points or less for age 84. However, two points must be considered when interpreting these results. First, the differences at age 65 are not due to additional accumulations after age 65, but to the fact that to have participated in a defined contribution plan at 65 means that the household must have been a participant at age 64 (and likely for several years prior to that time, depending on the simulated tenure for the last job). Second, the absolute differences for values at age 84 would be expected to be quite small given that the aggregated results at that age in Figure 4 are all over 90 percent.

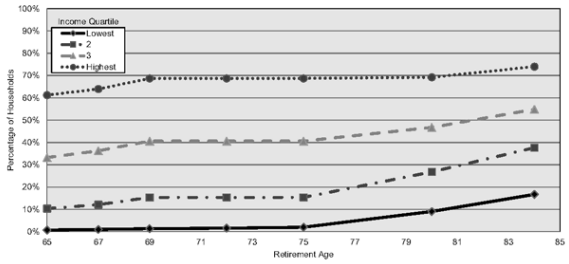
Figures 10, 11 and 12 are used to deal with the second point above. Instead of taking the simple difference (for each combination of retirement age and preretirement income quartile) of percentage of households satisfying the threshold success probability assuming a defined contribution plan minus the percentage of households satisfying the threshold success probability assuming no defined contribution plan, a ratio was computed where this difference is the numerator and the denominator is the value (1-percentage of households satisfying the threshold success probability assuming no defined contribution plan). In essence, this value can be conceptualized as the ratio of those households NOT satisfying the threshold probability of success without a defined contribution plan that are able to satisfy it with a defined contribution plan.

For example, when the 29.6 percent aggregate value for the lowest preretirement income quartile at retirement age 65 is bifurcated for a 50 percent success rate, the corresponding values are 35.2 percent for those participating in a defined contribution plan and 21.4 percent for those not participating in a defined contribution plan. This difference of 13.8 percent is the value of the first bar in Figure 7. When the 13.8 percent is divided by the percentage of these households without a defined contribution plan who have NOT satisfied the 50 percent success threshold (100 percent – 21.4 percent = 78.6 percent) the resulting ratio is 13.8 percent/78.6 percent, or 17.6 percent (the first bar in Figure 10). This relative value for the lowest preretirement income quartile increases for each retirement age modeled in Figure 10 (22.6 percent at age 69, 27.6 percent age 75, and 44.3 percent at age 84). Given that larger percentages of higher preretirement income quartile households satisfy the 50 percent threshold, the same absolute increase in percentage of households satisfying the threshold as a result of defined contribution participation after age 64 will result in a larger relative increase. This is exactly what is found in Figures 10 through 12 as the relative values for each retirement age are monotonically increasing with an increase in preretirement income quartile.

Figure 11 provides results from a similar analysis to Figure 10; however, the threshold in this case is set at 70 percent. The relative increase in each case is smaller than it was for the 50 percent threshold but the overall trends are similar. Figure 12 repeats this analysis with an 80 percent threshold. Again, the relative increases are smaller than in the previous analyses but with similar overall trends.

Figure 6

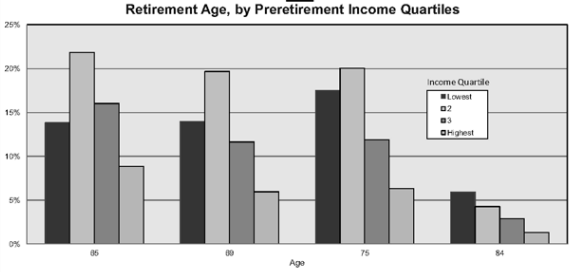
Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 80% of Simulated Life Paths After Retirement Age, by Preretirement Income Quartiles



Source: EBRI Retirement Security Projection Model® version 110410.
* An individual or family is considered have"adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Figure 7

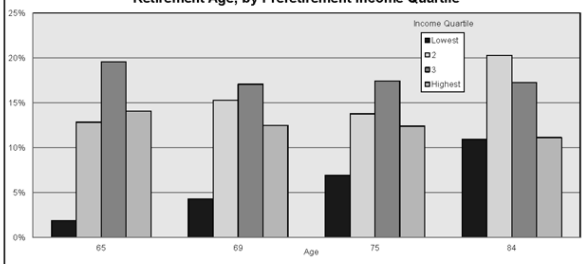
Value of DC Participation After Age 64: Increase in the Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 50% of Simulated Life Paths After Retirement Age, by Preretirement Income Quartiles



Source: EBRI Retirement Security Projection Model® version110410.
* An individual or family is considered have "adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Figure 8

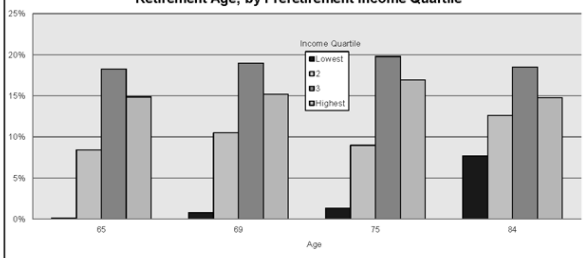
Value of DC Participation After Age 64: Increase in the Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 70% of Simulated Life Paths After Retirement Age, by Preretirement Income Quartile



Source: EBRI Retirement Security Projection Model® version110410i.
* An individual or family is considered have "adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Figure 9

Value of DC Participation After Age 64: Increase in the Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 80% of Simulated Life Paths After Retirement Age, by Preretirement Income Quartile



Source: EBRI Retirement Security Projection Model® version110410i.
* An individual or family is considered have "adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Summary and Conclusion

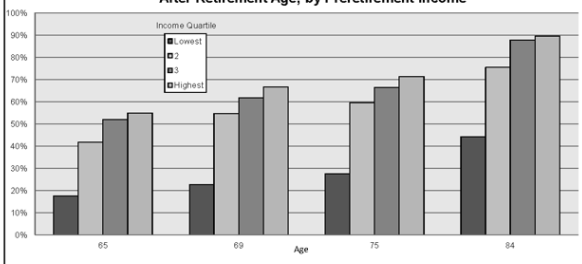
The EBRI Retirement Security Projection Model® (RSPM) was developed in 2003 to provide an assessment of national retirement income prospects. The model was updated in 2010 using more recent data and incorporating retirement plan changes (e.g., auto-enrollment, auto-escalation of contributions, and diversified default investments resulting from the Pension Protection Act of 2006) as well as updates for financial market performance and employee behavior (based on a database of 20 million 401(k) participants). The model produced Retirement Readiness Ratings for age and income cohorts to determine what percentage of households would likely be "at risk" of having inadequate retirement income. Since the genesis of this project in the late 1990s, the model had always assumed a retirement age of 65. While there was abundant evidence of many individuals retiring earlier (e.g., as soon as they became eligible for Social Security retirement benefits at age 62), the model was constructed to measure the household's probability of retirement income adequacy if this temptation were avoided and retirement deferred to age 65. However, even with this admittedly optimistic assumption, the results in both 2003 and 2010 showed that the median additional percentage of compensation that would be required for retirement income adequacy at more than a 50 percent probability would exceed 25 percent of compensation annually (until age 65) for many age/income combinations.

As a result, the 2011 version of RSPM added a new feature that would allow households to defer retirement age past age 65[14] in an attempt to determine whether retirement age deferral is indeed sufficiently valuable to mitigate retirement income adequacy problems for most households (assuming the worker is physically able to continue working and that there continues to be a suitable demand for his or her skills). The answer, unfortunately, is not always "yes," even if retirement age is deferred into the 80s. Using the threshold of retirement income adequacy described above (essentially sufficient retirement income to pay for basic retirement expenses and uninsured medical costs for the entire retirement period), RSPM baseline results indicate that the lowest preretirement income quartile would need to defer retirement age to 84 before 90 percent of the households would have a 50 percent probability of success. Although a significant portion of the improvement takes place in the first four years after age 65, the improvement tends to level off in the early 70s before picking up in the late 70s and early 80s. Households in higher preretirement income quartiles start at a much higher level, and therefore have less improvement in terms of additional households reaching a 50 percent success rate as retirement age is deferred for these households.

The problem with using a 50 percent probability of success, of course, is that the household is in a position where they will "run short of money" in retirement one chance out of two. While most households (at least those that are cognizant of these risks) are likely to have a risk aversion level that would make this untenable, switching to a higher probability of success will significantly reduce the percentage of households capable of satisfying the threshold at any given retirement age. For example, if the success rate is moved to a threshold of 70 percent, only 2 out of 5 households in the lowest-income quartile will attain retirement income adequacy even if they defer retirement age to 84. Increasing the threshold to 80 percent reduces the number of lowest preretirement income quartile households that can satisfy this standard at a retirement age of 84 to approximately 1 out of 7.

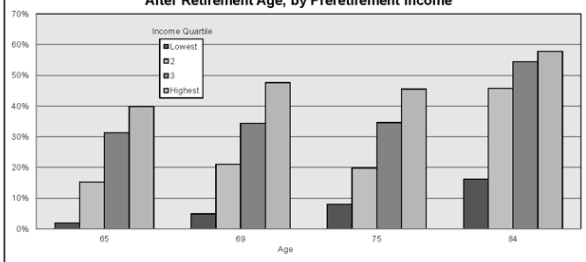
One of the factors that makes a major difference in the percentage of households satisfying the retirement income adequacy thresholds at any retirement age is whether the worker is still participating in a defined contribution plan after age 65. The increase in the percentage of households that are predicted to have adequate retirement income as a result of defined contribution participation varies by retirement age, preretirement income quartile and probability of retirement income adequacy, but this factor results in at least a 10 percentage point difference in the majority of the retirement age/income combinations investigated. The results are even more striking when the value of defined contribution participation after age 64 is viewed as the relative increase in the percentage of households simulated to have adequate retirement income (see Figures 10–12).

Figure 10
Value of DC Participation After Age 64: Relative Increase in the Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 50% of Simulated Life Paths After Retirement Age, by Preretirement Income



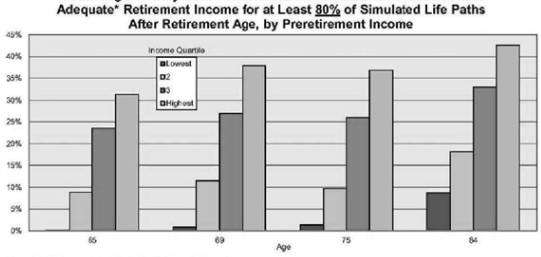
Source: EBRI Retirement Security Projection Model® version 110410i.
* An individual or family is considered have "adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Figure 11
Value of DC Participation After Age 64: Relative Increase in the Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 70% of Simulated Life Paths After Retirement Age, by Preretirement Income



Source: EBRI Retirement Security Projection Model® version 110410i.
* An individual or family is considered have "adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lump-sum distribution scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lump-sum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other ad hoc thresholds.

Figure 12
Value of DC Participation After Age 64: Relative Increase in the Percentage of Baby Boom and Gen X Households Simulated to Have Adequate* Retirement Income for at Least 80% of Simulated Life Paths After Retirement Age, by Preretirement Income



Source: EBRI Retirement Security Projection Model® version110410.
* An individual or family is considered have "adequate" retirement income in this version of the model if their aggregate resources in retirement are sufficient to meet aggregate minimum retirement expenditures defined as a combination of deterministic expenses from the Consumer Expenditure Survey (as a function of income) and some health insurance and out-of-pocket health-related expenses, plus stochastic expenses from nursing home and home health care expenses (at least until the point they are picked up by Medicaid). The resources in retirement will consist of Social Security (either status quo or one of the specified reform alternatives), account balances from defined contribution plans, IRAs and/or cash balance plans, annuities from defined benefit plans (unless the lumpsum distributions scenario is chosen), and (in some cases) net housing equity (either in the form of an annuity or as a lumpsum distribution). This version of the model is constructed to simulate "basic" retirement income adequacy; however, alternative versions of the model allow similar analysis for replacement rates, standard-of-living and other adhoc thresholds.

In conclusion, this *Issue Brief* used the RSPM to provide an initial estimate of just how valuable deferring retirement age might be in terms of retirement income adequacy for Baby Boomers and Gen Xers. Given the paucity of data with respect to many wage and benefit conditions for workers beyond age 65, several assumptions with little empirical verification were needed to produce the initial results. In most cases,[15] the assumptions made were optimistic in terms of their impact on the value of deferring retirement age. Therefore, the percentages of households with adequate retirement income in Figures 4–6 should be seen as a best-case estimate, especially at the more advanced retirement ages.

References

Helman, Ruth, Craig Copeland, and Jack VanDerhei. "The 2011 Retirement Confidence Survey: Confidence Drops to Record Lows, Reflecting 'The New Normal,'" *EBRI Issue Brief,* no. 355 (Employee Benefit Research Institute, March 2011).

VanDerhei, Jack. "Measuring Retirement Income Adequacy, Part One: Traditional Replacement Ratios and Results for Workers at Large Companies." *EBRI Notes*, no. 9 (Employee Benefit Research Institute, September 2004): 2–12.

_____. "The Impact of Automatic Enrollment in 401(k) Plans on Future Retirement Accumulations: A Simulation Study Based on Plan Design Modifications of Large Plan Sponsors." *EBRI Issue Brief,* no. 341 (Employee Benefit Research Institute, April 2010).

VanDerhei, Jack, and Craig Copeland. "Can America Afford Tomorrow's Retirees: Results From the EBRI-ERF Retirement Security Projection Model." *EBRI Issue Brief,* no. 263 (Employee Benefit Research Institute, November 2003).

_____. "The Impact of PPA on Retirement Income for 401(k) Participants." *EBRI Issue Brief,* no. 318 (Employee Benefit Research Institute, June 2008).

_____. "The EBRI Retirement Readiness Rating:™ Retirement Income Preparation and Future Prospects." *EBRI Issue Brief,* no. 344 (Employee Benefit Research Institute, July 2010).

_____. "The Impact of Deferring Retirement Age on Retirement Income Adequacy." *EBRI Issue Brief,* no. 358 (Employee Benefit Research Institute, June 2011).

Endnotes

[1] The nominal cost of these expenditures increases with component-specific inflation assumptions. See the appendix to VanDerhei and Copeland (June 2011) for more details.

[2] Net housing equity is introduced into the model in three different mechanisms (explained below).

[3] IRS tax tables from 2010 are used to compute the tax owed on the amounts received from defined benefit plans and Social Security (with the percentage of Social Security benefits subject to federal income tax proxied as a function of the various retirement income components) as well as the individual account withdrawals.

[4] Roth IRA and 401(k) accounts are not used in this version of the model but will be incorporated into a forthcoming EBRI publication.

[5] Capital gains treatment is not used in this version of the model.

[6] See VanDerhei (September 2004) for a description of the various approaches to benchmarking retirement income needs.

[7] For a description of the EBRI/ICI Participant-Directed Retirement Plan Data Collection Project, see the November 2010 EBRI Issue Brief and ICI Perspective, at www.ebri.org/publications/ib and www.ici.org/research/perspective

[8] This allows simulations for those ages 36–62 in 2010. In previous work with this model (VanDerhei and Copeland, 2003), workers between the ages of 38 and 67 in 2003 were simulated.

[9] Preretirement income in RSPM is determined in a manner similar to the average indexed monthly earnings computation for Social Security with the following modifications:

- All earned income is included up to the age of retirement (i.e., there is no maximum taxable wage base constraint and the calculation terminates at retirement age).
- Instead of indexing for changes in average national wages, the model indexes based on assumed after-tax rate of return based on asset allocations that are a function of the individual's age in each year.
- Percentile distributions are then established based on population statistics for each five-year age cohort.

[10] Helman, Copeland, and VanDerhei (2011)

[11] Many of these assumptions will be relaxed in future work.

[12] Social Security benefits are increased by a certain percentage (depending on date of birth) if retirement is deferred beyond Social Security Normal Retirement Age. The benefit increase no longer applies after the worker reaches age 70.

[13] Similar calculations for the other two preretirement income quartiles are: 24 percent for the lowest quartile and 50 percent for the highest quartile.

[14] A future version of the model will include the ability to model retirement ages prior to Medicare eligibility.

[15] The obvious exception is that housing equity was not included in the baseline runs for this analysis. A future EBRI publication will focus on the importance of this component of potential retirement income.

Prepared Statement of the U.S. Chamber of Commerce

The U.S. Chamber of Commerce would like to thank Chairman Roe, Ranking Member Andrews, and members of the Subcommittee for the opportunity to provide a statement for the record. The topic of today's hearing—challenges confronting plan sponsors, workers, and retirees—is of significant concern to our membership.

Despite the challenges facing plan sponsors, the voluntary employer-provided retirement system has been overwhelmingly successful in providing retirement income. Private employers spent over $200 billion on retirement income benefits in 2008[1] and paid out over $449 billion in retirement benefits.[2] According to the Bu-

[1] EBRI Databook, 2009, Chapter 2.
[2] EBSA Private Pension Plan Bulletin Historical Tables and Graphs, 2009.

reau of Labor Statistics, in March of 2009, 67% of all private sector workers had access to a retirement plan at work, and 51% participated. For full time workers, the numbers are 76% and 61%, respectively. Nonetheless, the success of this system is being threatened and we urge Congress to work to remove these threats.

The greatest challenge facing the employer-provided system today is the need for predictability of the rules and flexibility to adapt to changing situations. Our statement today focuses on two areas where this need is overwhelming—PBGC premiums and regulatory requirements.

PBGC Premium Payments Must Be Predictable

A matter of recent concern involves premium payments to the Pension Benefit Guaranty Corporation (PBGC). Congress is considering a proposal to increase PBGC premiums as part of the current budget discussions. Changes of the type and magnitude being discussed would undermine the private sector defined benefit pension system, hinder the economic recovery and could create an ill-advised precedent of government intrusion into normal business activities.

Raising the PBGC premiums, without making contextual reforms to the agency or the defined benefit system, amounts to a tax on employers that have voluntarily decided to maintain defined benefit plans. Proposals, like those included in the President's budget, that purport to raise $16 billion in additional PBGC premiums are flawed and, even if they were feasible, would result in an increase in PBGC premiums of almost 100 percent. Even less draconian PBGC premium increases, when added to the multi-billion dollar increases enacted in 2006, would divert critical resources from job creation and business investment.

Furthermore, a creditworthiness test, like the one proposed by the Administration, would inevitably result in the PBGC becoming an entity that makes formal pronouncements about the financial status of American businesses. This role for a government agency would be inappropriate, especially for private companies and non-profit entities. Leaving aside the question of whether the PBGC can establish accurate mechanisms for measuring and adjusting an employer's credit risk across industries and across the country, even modest year-to-year changes in those government credit ratings could have implications well beyond PBGC premiums, potentially affecting stock prices or the company's access to other credit sources. We understand the pressures to address the budget deficits, but massive increases in PBGC premiums are not the solution.

Regulatory Requirements are Overly Burdensome

In general, greater regulation often leads to greater administrative complexities and burdens. Such regulatory burdens can often discourage plan sponsors from establishing and maintaining retirement plans. The following are just a few examples of where the regulatory burden is overwhelming.

Notice and Disclosure: Plan sponsors are faced with two increasingly conflicting goals—providing information required under ERISA and providing clear and streamlined information. In addition to required notices, plan sponsors want to provide information that is pertinent to the individual plan and provides greater transparency. However, this is difficult with the amount of required disclosures that currently exist. Although there is a reason, even a good reason, for every notice or disclosure requirement, excessive notice requirements are counterproductive in that they overwhelm participants with information, which many of them ignore because they find it difficult to distinguish the routine, e.g., summary annual reports, from the important. Excessive notice requirements also drive up plan administrative costs without providing any material benefit. It is critical that Congress coordinate with the agencies and the plan sponsor community to determine the best way to streamline the notice and disclosure requirements.

Accounting Rules: In 2006, the Financial Accounting Standards Board ("FASB") undertook a project to reconsider the method by which pensions and other benefits are reported in financial statements.[3] They completed Phase I of the project but left Phase II, which would have removed smoothing periods from the measure of liabilities, until a later date. After significant negative feedback from the plan sponsor community, FASB indefinitely postponed the implementation of Phase II.

In 2010, FASB issued two proposals concerning accounting requirements for businesses that participate in multiemployer plans. Each proposal would have required

[3] Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans" (FAS 158). This statement requires companies to report the net financial status of pension and other benefits on the company's balance sheet rather than in the footnotes. In addition, plan assets and benefit obligations must be measured as of the date of the employer's fiscal year end and employers must use the projected benefit obligation measure of liabilities.

the participating employer to include estimated withdrawal liabilities on their statement regardless of the likelihood of withdrawal. As you are aware, the information included on financial statements is used to determine the credit-worthiness of a company. Therefore, disclosing an estimated withdrawal liability could be misleading and negatively impact an employer's ability to get appropriate financing either from banks or bonding agencies. In addition, even if an individual employer is not directly impacted, that employer may be indirectly impacted if other employers who participate in the plan suffer financial trouble due to the disclosure of this information. FASB recently revised this proposal at the urging of the business community.

The threat of accounting changes from FASB is a constant worry of plan sponsors. These changes can have significant ramifications for their businesses—impacting credit determinations and loan agreements—without having any impact on the actual funding of the plans. This persistent threat discourages participation in the employer-provided retirement system.

PBGC Rule on Cessation of Operations: In August of 2010, the PBGC published a proposed rule under ERISA section 4062(e) which provides for reporting the liabilities for certain substantial cessations of operations from employers that maintain single-employer plans. If an employer ceases operations at a facility in any location that causes job losses affecting more than 20% of participants in the employer's qualified retirement plan, the PBGC can require an employer to put a certain amount in escrow or secure a bond to ensure against financial failure of the plan. These amounts can be quite substantial.

We believe that the PBGC proposed rule goes beyond the intent of the statute and would create greater financial instability for plan sponsors. Furthermore, we are concerned that the proposed rules do not take into account the entirety of all circumstances but, rather, focus on particular incidents in isolation. As such, the proposed rule would have the effect of creating greater financial instability for plan sponsors.

The PBGC recently announced that it is reconsidering the proposed rule. However, we continue to hear from members that the proposed rule continues to be enforced. This type of uncertainty is an unnecessary burden on plan sponsors and discourages continued participation in the defined benefit plan system.

Alternative Premium Funding Target Election: The PBGC's regulations allow a plan to calculate its variable-rate premium (VRP) for plan years beginning after 2007, using a method that is simpler and less burdensome than the "standard" method currently prescribed by statute. Use of this alternative premium funding target (APFT) was particularly advantageous in 2009 because related pension funding relief provided by the Internal Revenue Service served for many plans to eliminate or significantly reduce VRP liability under the APFT method. However, in both 2008 and 2009 PBGC determined that hundreds of plan administrators failed to correctly and timely elect the AFPT in their comprehensive premium filing to the PBGC, with the failures due primarily to clerical errors in filling out the form or administrative delays in meeting the deadline.

In June of 2010, the PBGC responded to the concerns of plan sponsors by issuing Technical Update 10-2 which provides relief to certain plan sponsors who incorrectly filed. We appreciate the PBGC's attention to this matter and its flexibility in responding to this situation. However, we are concerned that the relief provided does not capture all clerical errors or administrative errors that may have occurred and, therefore, some plan sponsors remain unfairly subject to what are substantial and entirely inappropriate penalties. As such, we believe that the rules established under the current regulation and the Technical Update should be considered a safe harbor. The regulation should be revised to state that if the safe harbor is not met, the PBGC will still allow use of the APFT if the filer can demonstrate, through appropriate documentation to the satisfaction of the PBGC, that a decision to use the APFT had been made on or before the VRP filing deadline. Proof of such a decision could be established, for example, by correspondence between the filer and the plan's enrolled actuary making it clear that, on or before the VRP filing deadline, the filer had opted for the APFT. It is important that this regulatory change be made on a retroactive basis, so as to provide needed relief to filers for all post-PPA plan years.

Rulemaking under Section 6707A of the Internal Revenue Code: Section 6707A of the Internal Revenue Code imposes a penalty of $100,000 per individual and $200,000 per entity for each failure to make special disclosures with respect to a transaction that the Treasury Department characterizes as a "listed transaction" or "substantially similar" to a listed transaction. The Treasury Department announces on an ad hoc basis what is a listed transaction. There is no regulatory process or public comment period involved in determining what should be a listed transaction.

The penalty applies even if the small business and/or the small business owners derived no tax benefit from the transaction. The penalty also applies even if on audit the IRS accepts the derived tax benefit. The penalty is final and must be imposed by the IRS and cannot be rescinded under any circumstances. There is no judicial review allowed. In the case of a small business, the penalties can easily exceed the total earnings of the business and cause bankruptcy—totally out of proportion to any tax advantage that may or may not have been realized. If a transaction is not "listed" at the time the taxpayer files a return but it becomes listed years later, the taxpayer becomes responsible for filing a disclosure statement and will be liable for this penalty for failing to do so. This is true even if the taxpayer has no knowledge that the transaction has been listed. Consequently, we recommend an immediate moratorium on the assessment and collection of the IRC Section 6707A penalty until the "listed transactions" can be thoroughly reviewed and recommendations can be made to carry out the intention of Congress without the disproportionate and probable unconstitutional impact of current law on small businesses and their owners.

Cash Balance Plan Regulations: On October 18, 2010, the Internal Revenue Service issued long-awaited regulations affecting cash balance benefit plans under the Pension Protection Act of 2006. In addition to the delay in receiving this regulatory guidance, plan sponsors were disappointed that the regulations deviated from clear Congressional intent. The Chamber is engaged in on-going conversations with the Treasury Department and is asking Treasury and the IRS to set forth a clear and rational approach to PPA compliance for Pension Equity Plans. Moreover, because of the complexity of hybrid plans and their regulation, we are requesting additional guidance to ensure that plan sponsors have sufficient clarity and flexibility to adopt and maintain hybrid pension plans with legal certainty.

Top-Heavy Rules: The top-heavy rules under ERISA are an example of extremely complex and burdensome regulations that do not offer a corresponding benefit.[4] We recommend that this statute be eliminated altogether.

Conclusion

The best way to encourage plan sponsors to maintain retirement plans is to create a predictable and flexible benefit system. This statement highlights two areas where Congress could work to significantly improve predictability and flexibility. We look forward to working with this Subcommittee and Congress to enact legislation that will encourage further participation in the employer-provided system rather than driving employers out of it. Thank you for your consideration of this statement.

[Whereupon, at 12:54 p.m. the subcommittee was adjourned.]

[4] IRC section 416.