AMERICAN BENEFITS COUNCIL

A 2020 VISION

Flexibility and the Future Of Employee Benefits

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Foreword & Acknowledgements

In 2004, the American Benefits Council (the Council) adopted a public policy strategic plan titled *Safe and Sound: A Ten-Year Plan for Promoting Personal Financial Security*. It set forth nine specific national goals to help Americans achieve "personal financial security" for their health and retirement income needs and offered numerous policy proposals to help achieve those goals.

In the spring of 2013, as we entered the final year of that ten-year plan, the Council's Policy Board of Directors assessed *Safe and Sound* and the degree of progress on its objectives. Not surprisingly, some had been achieved and others had not. The Policy Board acknowledged not only the landmark health and retirement policy legislation that had been enacted since *Safe and Sound* was issued, but also the extraordinary changes in the way companies are operating in a global marketplace and the corresponding implications for employee benefits. In light of the rapid pace of change and the vital opportunities and challenges that lie ahead, the Policy Board approved the establishment of a task force to develop a new strategic plan for the coming years.

Wilma Schopp (Sigma Aldrich Corporation), who chaired the Council's Policy Board of Directors from 2013 to early 2014, led the task force and was instrumental both in helping its members envision the type of report that would meet the task at hand and in keeping the project on schedule. Janet Boyd (The Dow Chemical Company), who succeeded Wilma as Policy Board chair, shepherded the project to completion with great skill and insight to forge consensus out of sometimes very different perspectives. Evidence of their leadership is the unanimous adoption by our Policy Board of the new strategic plan, *A 2020 Vision: Flexibility and the Future of Employee Benefits.*

The task force members devoted countless hours of time and effort, for which we are deeply grateful to them and to the companies that made their participation possible. They are: Beth Ewing (FedEx Corporation), Tresia Franklin (Hallmark Cards, Inc.), Jim Gemus (Prudential Financial, Inc.), Alan Glickstein (Towers Watson), Lois Lourie (AbbVie Inc.), Randy Moon (Lowe's Companies, Inc.), Bob Seng (Target Corporation), Belinda Sharp (Ruby Tuesday), Jesse Stephan (Phillips 66) and Julie Wirt (Intel Corporation). They have each contributed in significant ways to a strategic plan strong enough to elevate and encourage dialogue about the future of the employer-sponsored benefits system.

The Council also expresses its appreciation to Towers Watson, which generously made available to us a talented team of professionals to facilitate task force meetings and to provide crucial guidance along the way. John Egner led this effort and was ably assisted by his colleagues Sue Fazo, Frank Giampietro and Cindy King.

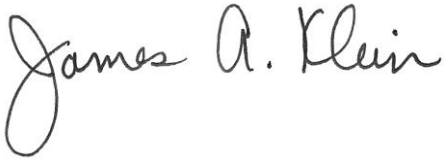
As they always do, my Council staff colleagues brought considerable substantive knowledge and logistical support to the process. The entire policy staff provided valuable input and Lynn Dudley, Kathryn Wilber and Katy Spangler devoted extensive time and insight to the process. Jason Hammersla, senior director, communications, assumed a leading role in organizing and drafting the final product and Jessica Chirico, communications assistant, helped with the document's layout and design.

Others outside the Council's membership contributed thoughtful input at various times. We would like to acknowledge, in particular, Dallas Salisbury, president and CEO of the Employee Benefit Research Institute.

Of course, the utmost thanks are due to the Council's full Policy Board of Directors for challenging the organization to undertake this effort, and for lending its support and expertise to the task force and staff throughout the process.

Finally, I would like to convey my personal gratitude to our Policy Board and entire membership who give my staff colleagues and me the privilege of representing them on matters of vital importance to their companies, to the millions of people whose personal health and financial well-being are served by the benefit plans they sponsor, and to our nation.

Sincerely,



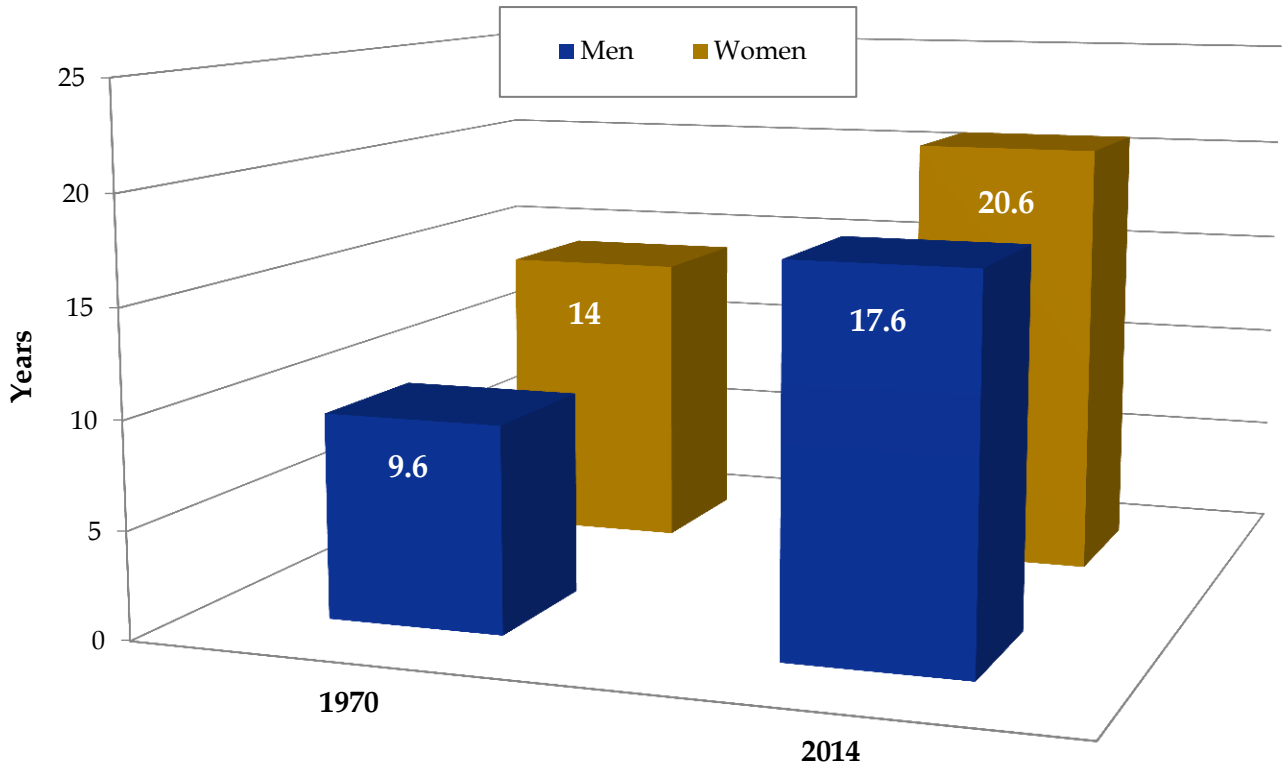
James A. Klein
President
American Benefits Council
Washington, D.C.

Introduction

A New Paradigm

This year marks the 40th anniversary of the passage of the Employee Retirement Income Security Act of 1974 (ERISA), which provides the framework for employer-sponsored health and retirement plans. Most of the central elements of the law remain relevant – indeed, essential – to the continuation of the employer-sponsored benefits system. However, the nature of the employer/employee relationship has evolved in significant ways. Many workers pursue a mobile career or define their work status consistent with changing life cycles. Many expect to work well into what traditionally were their retirement years, emphasizing the need for continual retraining to ensure that people have the requisite skills to perform their jobs. The average time spent in retirement has also lengthened from 9.6 years in 1970 to 17.6 years today for men and from 14 years to 20.6 years for women over that same period.[1] This reality underscores the imperative for policies that meet the health coverage, retirement income and other income-protection needs brought about by longer life expectancies.

Average Time Spent in Retirement, 1970-2014[1]



[1] Life expectancy data from the U.S. Centers for Disease Control, average retirement age from the Organisation for Economic Cooperation and Development, *Live Longer, Work Longer*?

In developing a new strategic plan, the Council concluded that two key elements of our 2004 strategic plan, *Safe and Sound: A Ten-Year Plan for Promoting Personal Financial Security*, remain. First, in the future, the three main stakeholders in the benefits system will continue to be individuals, employers and the government – although the roles of each one will evolve. Second, the principal objective of employee benefits policy will continue to be to help individuals achieve "personal financial security" – although that concept is perhaps more accurately now described as "personal health and financial well-being."

The Council also determined that in three significant respects, a dynamic strategic plan today differs from the one enunciated ten years ago. First, *Safe and Sound* considered financial security almost exclusively in the context of just health coverage and retirement benefits – and they were in decidedly separate silos. In the future, personal health and financial well-being will embrace a broader view of income protection that includes not only health coverage and retirement savings, but also incorporates life insurance, disability and long-term care coverage in a much more integrated way. Second, *Safe and Sound* made scant reference to the global competitiveness that will, in the future, dictate much of the design of employee benefit programs. Third, technological advances now make possible what could not even be imagined just 10 years ago when *Safe and Sound* was issued. Consequently, a strategic plan must accommodate a continual and exciting evolution in technology rather than simply allowing for what is possible today.

A dynamic strategic plan today differs from the one enunciated 10 years ago.

Greater emphasis on global competitiveness, increasing health care costs and implementation of the Patient Protection and Affordable Care Act (PPACA) has the potential to fundamentally change the value proposition of sponsoring benefits. PPACA creates a different marketplace for individual health coverage and may affect the employer role in sponsoring a group benefit plan. Escalation of health care costs will accelerate efforts to find creative ways to meet health coverage needs that are affordable for both employers and employees.

In the retirement sphere, the ongoing shift from a primarily defined benefit to a primarily defined contribution plan environment has focused greater attention on whether employees have what they need in terms of assets and financial education. Employers pursuing innovative strategies to help employees meet these needs are beset by complex compliance responsibilities and risks of increased fiduciary liability.

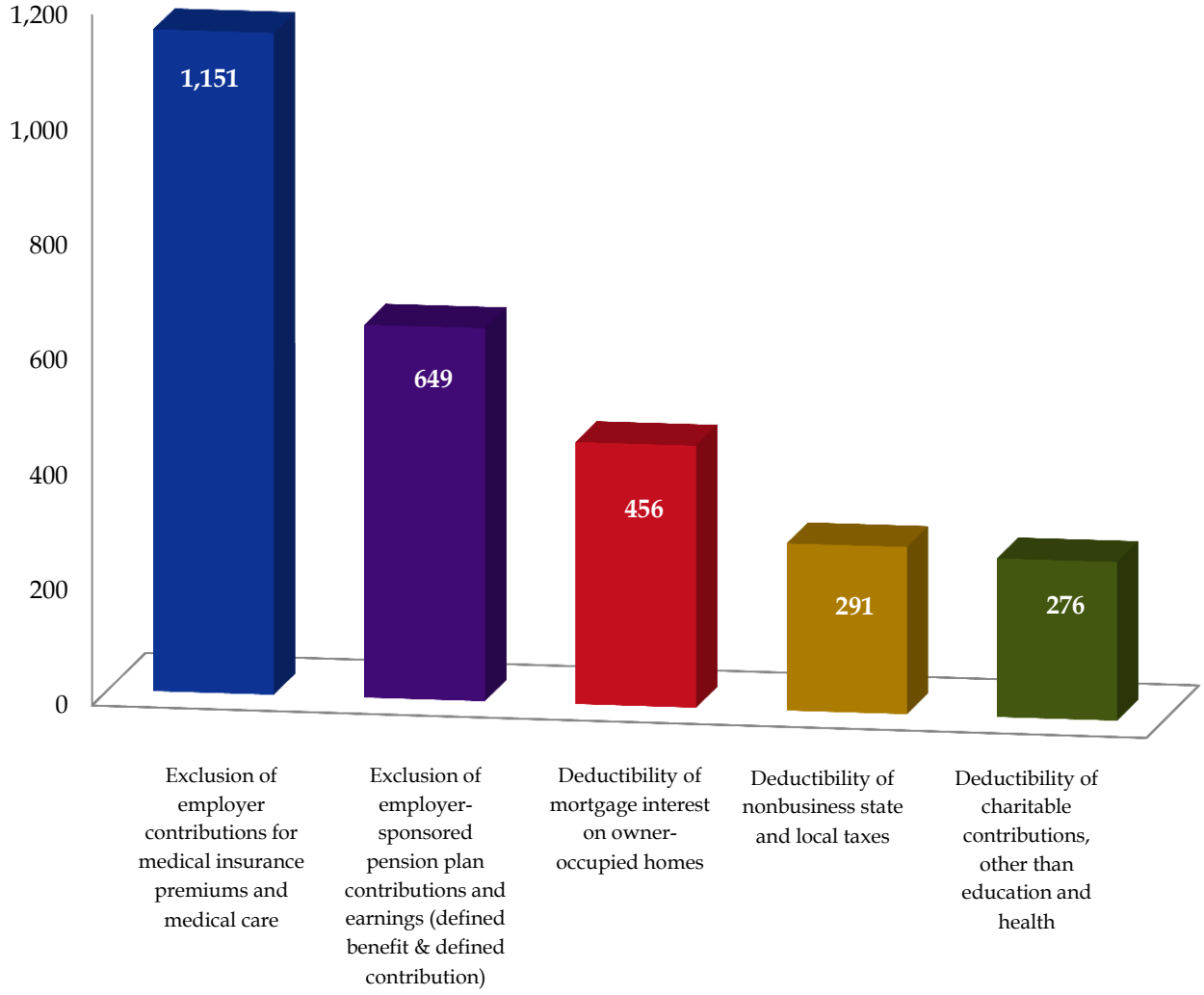
PPACA, the Pension Protection Act and other laws increased administrative burdens and caused employers to confront difficult decisions about their future role as sponsors of benefits. Keeping employers in the system – and helping workers meet current and future needs – will require more flexibility, choice, transparency, simplicity, portability and predictability than presently exists.

Tax Policy: A Strong Foundation

It is critically important for policymakers to acknowledge that enlightened, bipartisan tax policy has been indispensable to the success of the employer-sponsored benefits system. It has enabled employers to make the commitment to design and fund benefit plans and encouraged individuals to seek personal and financial well-being for themselves and their family members through participation in those plans.

Tax Expenditures, Fiscal Years 2015-2019 (billions of dollars)

(U.S. Office of Management and Budget, *Fiscal Year 2015 Analytical Perspectives*, Table 14-3, Page 216)



Most of the specific policy recommendations made in this strategic plan will require modifications to the Internal Revenue Code. The tax incentives that support employer-sponsored benefits are often viewed primarily as large "tax expenditures" resulting in foregone revenue to the U.S. Treasury. Taken together, the exclusion from an individual's income tax of contributions to employer-sponsored health and retirement plans – the two largest tax expenditures in the federal budget – theoretically represent more than $1.8 trillion in lost revenue over the next five years.[2] But this perspective exposes the peril of short-term thinking.

Enlightened, bipartisan tax policy is indispensable to the success of the employer-sponsored benefits system.

Less credit is given to the long-term gains that result from the federal government's investment in employer plans. Tax revenue is eventually collected on retirement plan contributions (and any earnings) upon distribution or withdrawal. So the "loss" is largely a matter of timing. Moreover, employer-sponsored retirement plans ultimately mitigate the cost burden on public programs such as Social Security. Similarly, incentivizing employers to maintain health coverage reduces the financial consequences to the government of providing direct subsidies to many individuals who would otherwise obtain coverage through the health insurance exchanges/marketplaces established by PPACA. Although the tax expenditure for employer-sponsored health coverage is often viewed as regressive because the "tax benefit" favors higher-income individuals, in fact, the expenditure is quite progressive because the value of the "health benefit" it provides is more significant for lower-income individuals – for whom it would be a greater financial burden to purchase coverage absent an employer-sponsored plan.

Employer-sponsored benefit programs are vitally important for assuring personal health and financial well-being. As a result, public policy must avoid the temptation to view the tax expenditure scores associated with benefit plans as a convenient source of revenue for unrelated tax policy changes or other government spending. If the employer-sponsored system is to endure, it must continue to be supported by stable tax policy that upholds a long-term view beyond temporary budget windows. To ensure all individuals can obtain needed security for health, retirement and other income protection needs, favorable tax treatment should be provided for individuals outside the employer system as well.

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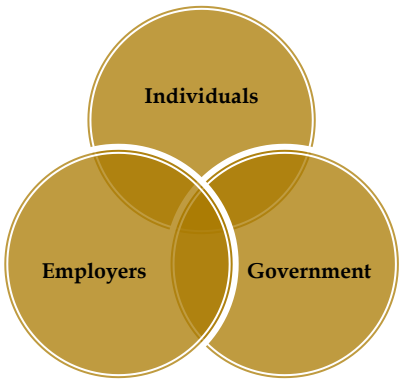
[2] U.S. Office of Management and Budget, *Fiscal Year 2015 Analytical Perspectives*, Table 14-3, Page 216

Individuals, Employers and Government



Each of the recommendations proposed in this strategic plan requires a change or refocus of public policy – either legislative, regulatory or simply common-sense application or enforcement by the government. Individuals and employers also have many responsibilities and must avail themselves more fully of the opportunities available now and in the future.

Individuals gain the most from effective and efficient benefit programs designed to help ensure their health and financial well-being. Regardless of the particular benefit plan structure available to employees, they must assume certain responsibilities and have access to the necessary tools. In *A 2020 Vision*, each reference to "employees" refers to individuals during and after employment. Closely aligned with the individual is the role of families, since decisions affecting personal health and financial well-being are frequently and highly influenced by an employee's family members.

Employer engagement may vary in the future as some companies continue a more traditional plan sponsor role, while others choose to facilitate workers' ability to take more direct ownership of their benefits. Any changes must permit an employer to maintain its responsibilities in the most effective way as determined by that employer. Under either scenario, employers must communicate effectively about their benefit programs to align employer and employee expectations. Those entities that provide services to employer-sponsored plans must help employers fulfill their responsibilities. A functioning benefits system relies upon robust competition among those who provide services to plan sponsors.

Government must ensure stability in Social Security, Medicare and other public programs such as health insurance exchanges. This is critical to minimize volatility and cost-shifting to either individuals or employers. Government also must adopt policies that support traditional plan sponsorship but also give employers and employees the flexibility to meet their respective obligations in innovative and cost-effective ways. Furthermore, the judicial system should be sufficiently informed so its decisions reflect the value of employer-sponsored plans.

The government must provide a regulatory framework that supports health and financial well-being under a range of benefit structures that involve varying degrees of employer and individual responsibility and opportunity. This dimension of government action is the focus of this strategic plan.

Our "2020" Vision, Goals and Recommendations

The American Benefits Council represents sponsors, facilitators and administrators of benefit plans covering hundreds of millions of people across the globe. The vision* we set forth below is intended to describe the desired environment for employer-sponsored benefit programs in 2020 and beyond. This environment will be characterized by:

- Integration of personal health and financial well-being
- An emphasis on global competitiveness
- Flexibility for employers and employees
- Greater predictability and simplicity for all stakeholders

The Council has identified five goals* to bring that vision into clearer view. These involve sustainability, empowerment, value, innovation and use of continuously evolving technology. We have developed 46 specific public policy recommendations* to achieve these goals.

The Council's vision, goals and recommendations reflect awareness of significantly changing workforce demographics, as well as the heightened importance of innovation both in terms of employer and employee practices and in government policies to support those practices.

It is critical that policymakers continue to recognize the unique value proposition of employer-sponsored plans, which significantly reduce burdens and costs on public programs and on individuals, in helping to ensure personal health and financial well-being.

* The vision statements, goals and recommendations are not set forth in a priority order.

Our "2020" Vision

Personal Health and Financial Well-Being Will Be Benefit Plans' Primary Objective.
Health and retirement benefits no longer will be considered in separate silos. One manifestation will be a transition from "wellness," which focuses specifically on physical/mental health, to "well-being," which includes a health component, as well as financial security, both when actively employed and in retirement. It also includes other types of benefits, such as life, disability and long-term care that are needed to ensure personal financial security. Employer-sponsored plans will continue to be positioned to provide an effective and efficient path to personal health and financial well-being – which also maximizes employee productivity.

Global Competitiveness Will Dictate Benefit Design.
Increasingly, employers will need to consider global competiveness and a mobile workforce in providing or facilitating employees' personal health and financial well-being. To maintain global competitiveness – and fidelity to their core business goals – employers will need to (1) accommodate the varying needs and values of employee populations around the world, (2) navigate the myriad laws that govern benefits and human resources and (3) make the funding and administration of benefit plans more cost-effective. To do so requires employers to develop strategies that manage cost and risk. It also requires that governments pursue flexible public policies that accommodate global operations.

Employers Will Have the Flexibility to Pursue a Range of Employee Benefit Approaches.
The employer-sponsored benefits system will continue to be predicated on the principle that employers are best equipped to design, fund and implement benefit and reward strategies best suited to their workforce. Some strategies will involve a traditional approach in which employers closely manage plan funding and administration. Other firms may find it more appropriate to serve as a "facilitator" by empowering individuals to take more direct ownership of their benefits. Both approaches will require an increased emphasis on education, communication and behavioral economics. Mandates that enforce a one-size-fits-all approach should be avoided. Laws and regulations should permit flexibility to accommodate approaches along the continuum of traditional sponsor to facilitator.

Benefits Administration and Participation Will Be Simple and Predictable.
Employee benefits are significant, long-term investments, making a stable environment essential for efficient plan administration. Every effort should be made to promote predictable tax and regulatory policy, simplify administrative compliance, provide reasonable protection from liability and enhance economic stability. Multi-state employers will continue to rely on the federal framework provided by ERISA to manage conflicting laws at the state and local level. Likewise, since many individuals will need to plan for their personal health and financial well-being, public policy needs to foster transparent, understandable plan designs that leverage available technology, while appropriately protecting privacy.

Goals

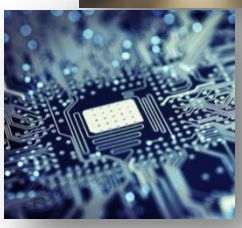
In 2020, employee benefits public policy should promote …

1. **Sustainability**: Promote sustainable personal health and financial well-being.

2. **Empowerment**: Empower individuals to make informed decisions regarding health needs and the financial implications of longer life expectancies.

3. **Value**: Optimize the value and cost effectiveness of employee benefit plan sponsorship by reducing liability risk and financial and administrative burdens.

4. **Innovation**: Foster innovation in plan design, funding and administration to effectively support workforces that are global, mobile, independent and unique.



5. **Technology**: Permit the use of common-sense approaches to deliver information among stakeholders while leveraging continually evolving technology and appropriately protecting privacy.

Recommendations for Public Policy Action and Advocacy

1. **Sustainability: Promote sustainable personal health and financial well-being.**

   a) **Permit tax-favored approaches to finance retiree health care, disability coverage and long-term care.** Approaches would include allowing employers and individuals to advance-fund accounts on a tax-favored basis. Distributions from retirement savings accounts, used for the purchase of retiree health, disability or long-term care coverage, should be accorded favorable tax treatment.

   b) **Support workplace health wellness programs.** Federal agencies promulgating regulations should proceed in a consistent, collaborative manner that supports participatory and outcomes-based wellness initiatives. Additionally, PPACA should be implemented so the cost of wellness programs and on-site health clinics – which, by their design, are intended to improve health and mitigate costs – should not be included in determining whether a plan triggers the excise tax on high-cost plans.

   c) **Increase the compensation and contribution thresholds for retirement plans and index the limits to ensure they keep pace with inflation.** Increased limits and more appropriate indexing will allow individuals to save more effectively.

   d) **Re-define "highly compensated" employee.** Re-defining "highly compensated" will help account for the increasing number of middle-income employees being swept into this category, which severely limits their ability to save.

   e) **Establish an alternative automatic escalation safe harbor for retirement plans with higher default rates and allow employers to escalate employee contributions beyond the current 10 percent cap.** Default mechanisms such as automatic enrollment and escalation, lifestyle funds and retirement target date funds may help individuals, who decline to enroll in a retirement plan, to become savers and to invest assets appropriately for their age and risk level. The 10 percent cap on default contributions under the current safe harbor should be eliminated. Also, a new safe harbor should be adopted with higher minimum default contribution rates that start at 6 percent.

f) **Support voluntary, simple, portable model plans for retirement income or retiree health coverage.** The model plan could accept differing levels of employee and voluntary employer contributions via payroll deduction and could accommodate a range of investment vehicles. These savings could be either pre- or post-tax and fiduciary liability for the employer would be appropriately limited. Such a plan could be offered to workers who lack access to an employer-based plan or those who want to supplement one.

g) **Change the multiple employer plan rules to facilitate groupings of unrelated employers and limit collective liability for retirement plans.** Helping small businesses join multiple employer plans (MEPs) so they can share administrative costs will expand employer-sponsored retirement coverage. Two changes would help make this possible: first, waiving the requirement for a "nexus" among unrelated businesses in order to join a MEP. Second, eliminating the rule that one employer's failure to meet the criteria necessary to maintain a tax-preferred retirement plan can result in potential disqualification of the plan and loss of tax benefits for the participants.

h) **Exclude current retirement plan assets and future retirement plan benefits from eligibility calculations for state or federal housing and food subsidies.** Effective retirement saving can facilitate income mobility and improve overall health and financial well-being. Individuals and their families should not be penalized for preparing for retirement. Accounting of income eligibility for subsidized food or housing should exclude retirement assets.

2. **Empowerment: Empower individuals to make informed decisions regarding health needs and the financial implications of longer life expectancies.**

   a) **Enable employers to better provide financial education and investment advice**. This could be accomplished by permitting advisers affiliated with plan investment offerings to provide education/advice, with appropriate employee protections from conflicted education/advice and employer protection from fiduciary liability.

   b) **Increase catch-up contribution limits and lower eligibility to age 45.** Considering greater longevity and the need to start saving for retirement as early as possible and to as great an extent as possible, the establishment of higher limits and a younger start date for "catch-up" contributions will help individuals achieve personal financial security.

   c) **Reduce or combine the number of retirement plan information disclosure requirements.** The volume and redundancy of disclosures adversely affect transparency for participants to the point where excessive amounts of information means they tend to read none of it. Transparency would be better served by the delivery of more concise, well-organized information. Notices could be shortened and consolidated to maximize effectiveness and eliminate repetitiveness and redundancy. For example, all notices provided at enrollment and annually could be combined into a single "Quick Start" notice. This would require harmonization and streamlining of timing requirements. Certain duplicative and irrelevant notices, such as the summary annual report, the deferred vested pension statement and the notice of determination letter application, should be eliminated.

   d) **Support progress in advancing national goals and benchmarks for health care quality improvement including through outcomes-based research and evidence-based measures.** Building upon Medicare quality improvement initiatives implemented under PPACA, the government is well positioned to facilitate collection and reporting of provider data that is reliable and standardized across communities. In so doing, consumers and purchasers will be better equipped to make informed decisions regarding the quality and cost of health care providers, services and treatments on the basis of standardized measures of cost, quality, safety, patient satisfaction and efficiency. At the same time, employers should be protected from liability associated with reliance on such standardized measures.

e) **Support greater quality and price transparency in the health care system.** Meaningful information on price and quality is often hard to capture and adjusting for the clinical complexity of individual cases is difficult. Despite these challenges, greater transparency of quality and price information is important and urgently needed. Employees should have quality and cost calculators and other tools that provide enrollees with specific data about the quality and total out-of-pocket costs of certain services. Public policy should not impede employers' access to information needed to design and operate their plans and to help employees use these tools.

f) **Establish financial education as a secondary school graduation requirement.** Curricula should include saving, investment and income management principles, as well as concepts such as "longevity risk" (the financial implications of longer lifespans) and the value of ensuring adequate income throughout one's life.

g) **Regulatory agencies should adopt a "good faith" standard for purposes of enforcement of worker classification.** Specifically, the Internal Revenue Service (IRS) should eliminate retroactive adverse tax and ERISA consequences when the IRS or a court determines that an employer's classification of a worker as "contingent" is incorrect.

h) **Provide access to information on Social Security and Medicare on an integrated basis.** This would help ensure individuals have a more coordinated and holistic view of their health and financial needs in retirement.

i) **Increase public awareness of the financial risks associated with increased longevity.** The federal government should undertake efforts to increase employees' understanding of the value of delaying Social Security benefits and the importance of planning for longer life expectancies.

3. **Value: Optimize the value and cost effectiveness of employee benefit plan sponsorship by reducing liability implications and financial and administrative burdens.**

   a) **Preserve ERISA preemption.** Uniform plan administration is essential for multi-state employers to sponsor employee benefits, since variations in state laws create substantial administrative burdens and costs. State mandates and other state-run initiatives should be evaluated in the context of the overriding need for national uniformity. This would include state laws that seek to limit the ability of employers to self-fund their plans or use stop-loss reinsurance to assist with that funding determination.

   b) **Eliminate duplicative, contradictory or excessive regulations that impose administrative burdens with respect to plan sponsorship.** Ways to improve the regulatory system would include an emphasis on exception-based regulations that target sponsors with poor performance (rather than imposing burdens on all sponsors). It would also include "large business" exceptions to certain rules, rather than "small business" exceptions, since many regulations are aimed at addressing real or perceived concerns related to small plan sponsors. Simplifying and standardizing data requests from states will also help ease administrative burdens, including those related to PPACA premium tax credit eligibility.

   c) **Repeal or modify the excise tax on high-cost health plans.** The 40 percent excise tax should be repealed. If this tax cannot be repealed, modifications could include more realistic indexing of the thresholds, only applying the cost of major medical coverage in determining whether the thresholds are exceeded and establishing a safe harbor that excludes from the tax any plan that is below a certain actuarial level.

   d) **Limit the applicability and scope of State Innovation Waivers under PPACA.** Waivers should not allow states to regulate the design and administration of self-funded ERISA plans. Waivers should only apply to specific PPACA provisions, such as insurance coverage, and not allow states to impose new definitions of "minimum essential coverage" or new reporting requirements.

   e) **Repeal or modify COBRA.** The continuation of health coverage requirement, so-called "COBRA" coverage, is burdensome for employers and can be a costly option for individuals electing such coverage. PPACA fundamentally changed the operation of the individual health insurance market, providing a source of coverage for many people who might have been denied coverage previously or found it unaffordable. COBRA therefore should be repealed. If COBRA cannot be repealed, modification could include shortening the duration of eligibility to the end of the current plan year in which a person becomes eligible for COBRA.

f) **Allow flexibility in the application of the rules determining "full-time employee" for purposes of PPACA's employer mandate.** Modifications to PPACA are needed to minimize administrative burden and compliance risk related to determining whether a worker is a "full-time employee," particularly with respect to employees who work a variable schedule. These could include expanded compliance safe harbors, the availability of a corrections program and simplified measurement methods.

g) **Repeal PPACA's automatic enrollment mandate.** Mandatory automatic enrollment in benefit plans does not adequately take into account the challenges and cost burdens such requirements may pose. Unlike in the retirement plan context, where voluntary auto-enrollment is a valuable tool to increase coverage, virtually all citizens are required to obtain health coverage under PPACA. This makes mandatory auto-enrollment unnecessary and an inefficient use of resources to reach a comparatively small portion of the population.

h) **Protect an employer health plan sponsor's ability, at the federal and state level, to determine how to reduce risk and finance its plan obligations.** Employers must have the flexibility to manage health care spending in a manner that best suits their financial needs. This includes fully insured plans, self-funded plans, self-funded plans with stop-loss reinsurance and any other product variation that assists employers in efficiently managing risk and financial expenditures. This will be instrumental in keeping employers engaged with their employees' health care needs and enabling them to continue sponsoring group health plans. Additionally, as decisions are made allowing large employers to participate in state and federally-facilitated exchanges, it should be done in a way that provides maximum coordination among states to ease administrative burdens for large employers that decide to participate.

i) **Enact medical liability reform at the federal and state levels.** Reasonable limits on damages and other tort reforms will protect individuals who are harmed by medical malpractice while helping curb excessive liability and unsustainable cost increases caused by "defensive medicine."

j) **Improve coordination of rules between Congress and administrative agencies – and across those agencies.** Employer-sponsored benefit plans are complex enterprises that fall under the jurisdiction of different congressional committees and regulatory agencies. After important legislation is enacted, employers must comply with the statutory requirements until regulations are issued. These rules frequently require employers to make numerous, substantial and costly changes to plans and systems used to administer them. Future legislation should provide clear instructions to the executive branch about prospective compliance requirements for affected parties and enforceable timing for issuance of enabling regulations. Likewise, when multiple agencies share rulemaking authority on an issue, employers must accommodate differing (and sometimes contradictory) obligations. Executive branch agencies should coordinate rulemaking.

k) **The U.S. Department of Labor should consider including fiduciary safe harbors when issuing regulatory guidance affecting retirement savings plans, without stifling innovation.** Rules (such as those addressing plan fee disclosure or the provision of lifetime income illustrations) should provide clarity that employers can rely upon to avoid breaching fiduciary responsibilities. At the same time, such rules should avoid limitations on the development of new and more effective tools.

l) **Improve existing correction procedures.** Inadvertent administrative errors should not give rise to overly complex procedures or severe penalties if the employer can and does self-correct the error in a reasonable manner that makes participants whole. For example, there should be far greater ability to self-correct plan loan errors without unneeded government involvement. And too many correction requirements result in excessive penalties, such as those applicable to violations of the automatic enrollment rules. Compliance and coverage would be enhanced by eliminating the punitive nature of correction rules.

m) **Improve the regulatory environment for defined benefit pension plan sponsors**. This would include simplified and administrable hybrid plan rules, continuation of defined benefit funding stabilization measures, resolution of the conflict between funding and accounting rules and protection of employers from inadvertent nondiscrimination violations. Pension Benefit Guaranty Corporation (PBGC) premiums should be limited (without giving PBGC the authority to set premium levels) and plan sponsors should be permitted to conduct typical business transactions without penalty.

n) **Protect a pension plan sponsor's ability, at the federal and state level, to determine how to reduce risk or transition out of the system.** Employers' flexibility to reduce the financial risk associated with sponsoring a defined benefit pension plan, and/or transitioning away from sponsorship of such plans, must be protected. This is essential not only to preserve the voluntary nature of such plan sponsorship but also to ensure exiting the system occurs in a manner least disruptive to individuals, employers and the government.

o) **Modernize the pension insurance system and make it more transparent.** Policymakers continue to recommend increases in PBGC insurance premiums, based on a reported operating deficit not subject to a full public review. The PBGC's deficit calculation, including its assumptions and methodology, should be made more transparent.

p) **Increase the $5,000 threshold for employers to cash-out retirement plan accounts.** This will reduce administrative expenses associated with small accounts.

4. **Innovation: Foster innovation in plan design, funding and administration to effectively support workforces that are global, mobile, independent and unique.**

   a) **Assess current, and avoid future, legislative or regulatory employee benefit mandates.** Mandates on the provision of benefits impede innovation and flexibility in plan design. Existing federal, state and local mandates should be evaluated to see if they can be improved, consolidated or eliminated. Any and all proposed mandates should be considered thoroughly before they are enacted.

   b) **Permit employers' voluntary participation in use of a safe-harbor retirement plan maintained by an entity other than the plan sponsor.** Under such an arrangement, multiple participating plan sponsors – particularly small- and mid-sized employers – would set individual levels of contributions for the employers and employees, but the entity maintaining the plan would provide common administration, professional investment and operational compliance on behalf of the participating employers. These plans could facilitate a range of distribution choices such as those that combine lifetime income options with other forms of distribution such as lump sums and installments. This will allow participants to more effectively address longevity risk and resolve concerns about fiduciary liability.

   c) **Specify that high-deductible health plans used with Health Savings Accounts (HSAs) meet the minimum essential coverage requirement and satisfy the employer shared responsibility requirements for "minimum value" created in PPACA.** Individuals and employers should have the option to buy or provide these types of plans that may have lower premiums and lower actuarial values than bronze plans.

   d) **Clarify that certain prescription drugs are preventive care that will not be subject to a HSA-eligible plan deductible.** Current law includes a safe harbor allowing HSA-eligible high deductible plans to cover certain preventive services before the deductible is met. The IRS has too narrowly defined "prevention" to consist of primary preventive services, including some prescription drugs when used in certain instances. This definition should be updated to give employers greater flexibility regarding prescription drugs that may be covered before the deductible.

e) **Permit employers to establish stand-alone Health Reimbursement Arrangements, or similar accounts, that can be used to purchase individual coverage.** Employers and employees could share financial responsibility for the account, providing another means by which they could meet their respective obligations under PPACA. Amounts credited to these accounts could only be used to purchase qualifying coverage and to pay for qualified health expenses. In order for employers to avoid paying the PPACA shared responsibility penalty, they would need to make a contribution meeting the "affordability" test. The law must prohibit "double dipping," in which employees receive employer money *and* a government subsidy, if coverage is purchased through a public exchange. To ensure a viable, individual insurance market, there must also be adequate protections against adverse selection or risk segmentation.

f) **Allow employers to develop benefit plan designs that facilitate succession planning or help employees transition to retirement or a new career.** Flexible arrangements can ensure continuity, promote the transfer of institutional knowledge and strengthen mentoring of younger workers. One such approach could follow models available in other countries, whereby workers collect partial pay for a few years as a transition to retirement. In addition, the safe harbor for in-service distributions at normal retirement age should be expanded.

g) **Expand and improve the Saver's Credit.** Encourage savings by younger employees by increasing the Saver's Credit by 50 percent for workers under age 35. This would create a targeted incentive for primarily young, low- and moderate-income workers to contribute at a time when they can maximize the tax deferral and thereby significantly increase their ultimate retirement savings. The Saver's Credit could also be directly deposited into an existing retirement account to enhance the retirement security of eligible temporary, part-time or seasonal workers and low- and moderate-income individuals.

h) **Maintain the availability of company stock to employees as an investment alternative in a retirement plan.** Along with employer contributions and employee education about the special risks of such investments, this will help employees benefit from the growth in the value of their company.

i) **Support the flexibility to use stock-based compensation as part of an employee benefit package designed to recruit and retain talent.** Such measures could include clarifying the tax withholding treatment of statutory stock options, exempting incentive stock options from the Alternative Minimum Tax and encouraging Employee Stock Ownership Plan (ESOP) dividend reinvestment.

5. **Technology: Permit the use of common-sense approaches to deliver information among stakeholders while leveraging continually evolving technology and appropriately protecting privacy.**

   a) **Establish clear guidance for privacy of individualized information**. To protect employees and employers, clear guidance must be developed that sets forth the circumstances and methodology by which personal information about benefit plan participants may be shared electronically in a confidential manner that protects privacy.

   b) **Adopt a "presumption of good faith" standard allowing employers to use technology as it becomes available, rather than waiting for regulatory approval.** Technology is constantly evolving to improve productivity and administrative efficiency. A "presumption of good faith" standard will allow employers to leverage evolving technology immediately. Because technology advances faster than the regulatory process, even relatively permissive policies are destined to be obsolete before they can be effectively used by employers.

      The executive branch agencies that regulate benefit plans have not developed a broadly applicable approach for employers to use email for participant communications. For example, the U.S. Treasury and Labor departments have no fewer than four different policies for electronic notices in various circumstances and they are not consistent. The rising prevalence of smart phones, tablets and other portable devices (as well as the Internet and intranets) presents valuable opportunities for plan sponsors to communicate with participants, but plan sponsors are currently unable to capitalize on these opportunities because no new rules for these devices have yet been contemplated. Without a "presumption of good faith" standard, employers will be confined to the least efficient shared standard permitted by all agencies – the lowest common denominator – which will only increase costs and barriers for plan sponsors and participants.

c) **Adopt a "least burdensome compliance" standard that fully incorporates technological capabilities in conjunction with all benefit plan regulations.** The federal government already is required to comply with the Paperwork Reduction Act when promulgating new regulations. The reference to "paperwork" demonstrates that even this laudable requirement is not sufficient to minimize regulatory burdens. Before imposing any new benefit plan administration or reporting requirements, federal agencies should be required to verify they are unable to achieve the objective in a manner less burdensome on the regulated parties – fully taking into account technology available to the federal agencies, the regulated parties, or both. For example, often employers are required to report the same or very similar information about employee benefit plans to multiple agencies. Technology could make it much easier for an agency to obtain information from another agency, rather than requiring employers to report it separately.

d) **Investigate and evaluate sharing of benefit plan information between and among stakeholders through effective use of central databases.** Compliance with PPACA will result in employers having to respond to several different state and federal requirements – each to be provided in a different format – about employees' full-time status, whether they were offered minimum essential health coverage and at what cost. Likewise, in the retirement plan context, often the federal government is in possession of information employers need to locate "lost beneficiaries" so they can receive benefits to which they are entitled. Leveraging information technology – perhaps by licensing or authorizing third-party providers – would allow data to be shared in a way that serves plan sponsors, participants and beneficiaries. The federal government should study the economic and administrative value of such information sharing. Rules should be coordinated among agencies and should also apply appropriate safeguards for individuals' privacy and confidentiality.

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