



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

EMPLOYEE BENEFITS STRATEGIC VISION

Recommendations on Retirement and Health Issues

U.S. Chamber of Commerce Employee Benefits Committee



The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96% of the Chamber's members are small businesses with 100 or fewer employees, 71% of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 101 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

The conclusions in the U.S. Chamber of Commerce Employee Benefits Strategic Vision are determined by the Employee Benefits Committee of the U.S. Chamber of Commerce. The Vision document was drafted by employees of the U.S. Chamber of Commerce. For further information on the Vision policies or document, please contact the Executive Staff of the U.S. Chamber Employee Benefits Committee:

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Executive Summary

The U.S. Chamber has spent the past year considering various employee benefits issues relating to retirement and health care. The topics covered in this document are proactive agenda items that supplement the Chamber's core employee benefits policies. The Chamber is committed to supporting businesses on retirement and health issues and these recommendations provide guidance on the Chamber's positions on new and emerging issues.

- **Phased retirement** — The Chamber recognizes the value of phased retirement programs and supports tweaks to the current retirement system to make it easier for employers to implement discretionary phased retirement programs.
- **Retirement savings** — The Chamber supports increasing retirement savings but opposes implementation of a universal pension scheme (i.e., mandatory automatic IRA) to achieve this goal. Additionally, the Chamber supports the proposition that states should encourage participation in the private retirement system as long as participation is not mandatory.
- **Decumulation strategies** — The Chamber believes that decumulation strategies are an increasingly important part of retirement security. Therefore, it encourages greater education for participants, innovation among products, and flexibility for employers to try new products and programs.
- **Long-term care insurance** — The Chamber encourages employers to offer long-term care insurance for their employees but is opposed to mandatory automatic enrollment.
- **Cafeteria plans** — The Chamber supports changes to cafeteria plans that would make it easier for small business owners to sponsor them, and it opposes proposals that would apply FICA and FUTA taxes to benefits provided under cafeteria plans.
- **Small businesses** — The Chamber would like to increase small business participation in the larger employer-provided system.
- **State and local pension programs** — The Chamber supports all efforts to increase retirement coverage but is concerned about any measure that would give state and local governments an unfair advantage over private employers when competing for employees.
- **Retiree health care** — The Chamber believes that health care for retirees is a valuable benefit for employers to offer and that any proposal involving retiree health should be small business friendly and should not create additional liabilities for employers who choose to offer it.
- **Reinsurance** — The Chamber believes that reinsurance should be fair, include cost-control standards and coverage limits, and should not involve mandatory participation or contributions.
- **Health insurance access and affordability** — The Chamber supports incremental, achievable reforms that would increase health insurance affordability before attempting to deal with the concerns surrounding access to health care.
- **Restructuring the health care system** — The Chamber recognizes that our current health care payment system, which is based on fee-for-service in a sick care environment, contributes to a number of problems including increasing health care costs. The Chamber supports programs, such as the Patient Centered Medical Home, that incentivize doctors to be efficient and provide the best care.

Legislative Positions and Recommendations

Phased Retirement

- Allow in-service distributions at the early retirement age as defined in the plan.
- Encourage employers to offer long-term care insurance, but guard against encouraging it through tax incentives that could tax participants on the benefit at a time when they are least likely to be able to afford it.
- Allow for access to assets in a 401(k) plan to purchase long-term care insurance under plan distribution rules.
- Make in-service distributions under the terms of the plan as if the person were retiring at that time.
- Encourage the IRS to remove restrictions against rehiring people who have recently retired.
- Encourage the IRS to clarify that phased retirement is not a protected benefit under Code Section 411(d)(6).
- Ensure that distributions under a phased retirement program do not have a negative impact on Social Security benefits.
- Oppose mandates on health care benefits for employees in phased retirement.
- Ensure that health care benefits are subject to the employer's practices as established for all workers generally.

Increasing Retirement Savings

Universal Pension Coverage and Auto IRAs:

- Oppose the automatic IRA proposal because it includes an employer mandate and creates a TSP II system.

Enhancements to Qualified Plans:

- Tax distributions from qualified retirement plans at capital gains rate, instead of the income tax rate.
- Allow for unlimited prefunding up to the amount of projected future benefits in the plan in defined benefit plans.
- Eliminate the tax penalty for the reversion of assets in a pension plan after all promised benefits have been paid out to participants.
- Eliminate the top-heavy rules.

State Law Governing Private Retirement Plans:

- Oppose any state retirement plan mandates as ERISA violations.

Investment Advice:

- Clarify Internal Revenue Code Section 404(c) to lay out exactly what needs to be done for an employer to comply with the law.

Decumulation Strategies in Retirement

Annuities:

- Reform the Social Security rules for non-highly paid employees, so that taking an annuity does not lead to a decrease in Social Security benefits.
- Offer a tax incentive for participants receiving benefits from a Roth IRA to take a stream of payments over a lump sum.

- Modify the minimum required distribution (MRD) rules to encourage using annuities and avoiding negative tax consequences.

Longevity Insurance:

- Money used to purchase longevity insurance should be excluded from MRD rules.

Long-Term Care Insurance

- Avoid automatic enrollment for long-term care insurance because the administrative burden of using automatic enrollment (e.g., un-enrolling participants, returning money) would far outweigh the benefits.

Cafeteria Plans

- Continue to support cafeteria plan legislation that would benefit both small and large employer sponsors.
- Oppose any proposal to apply FICA and FUTA taxes to benefits provided under a cafeteria plan.

Small Business Concerns

- Work to have a small business representative included on the ERISA Advisory Council.

State and Local Retirement Program Funding

- Oppose proposals that would give state and local governments an unfair advantage against private employers when competing for employees.

Retiree Health Care

- Simplify saving for retiree health care expenses.
- Allow the plans to be able to pay for long-term care and provide employees with an incentive to purchase long-term care insurance through Code Section 125 Cafeteria Plans.
- Allow employees earlier access to 401(k) money without penalty in order to start saving for long-term care.

Reinsurance

- Avoid mandatory participation or contributions.
- Initially target reinsurance at specific illnesses.
- Ensure that reinsurance is fair by requiring all participants in a reinsurance program to meet cost-control standards, including wellness programs, quality improvement initiatives, and coverage limits.
- Provide employers who participate in reinsurance programs with reduced rates from their primary insurers.
- Ensure sufficient privacy protection for medical information shared with reinsurers.

Health Insurance Access and Affordability

Access:

- Encourage the debate on access to reach greater specifics and define access as catastrophic coverage, certain levels of benefits, or even the ability to obtain needed medical services in a stretched marketplace.
- Implement cost controls or other methods to improve affordability with an expansion of access.

Affordability:

- Consider health insurance access together with affordability.

Restructuring the Health Care Payment System

Tax Changes:

- Prevent discrimination against older, less healthy workers in any change to the tax system.
- Avoid using the tax structure to remove employers from the health care system.

Patient Centered Medical Home:

- Expand and encourage medical home pilots and experiments.
- Encourage public sector programs to follow the medical home model.

Introduction

Americans today are living longer, and this has a significant impact on health care and retirement policies. In 1970, life expectancy in the United States averaged 70.8 years, with men expected to live to 67.1 and women expected to live to 74.7.¹ Average life expectancy increased to 77.8 in 2004, and it is projected to be 79.2 by 2015.² Not only are people living longer, but they are also working longer. Even though there are fewer younger workers to replace older workers who are leaving, older workers are also increasingly willing to work longer.³ In 2006, nearly 17% of the workforce was 55 or older.⁴ By 2012, approximately 20% of the United States workforce will be 55 or older.⁵

At the same time that the U.S. workforce is aging and baby boomers are reaching retirement age, health care costs are skyrocketing. The United States spends the most per capita on health care of any country.⁶ In 2007, health care spending represented 16% of gross domestic product.⁷ It is predicted to be 20% of gross domestic product by 2016.⁸ In just the past year, the average premium for health care coverage rose 5%.⁹ In 2008, the average annual premium for single coverage was \$4,704, and the average annual premium for family coverage was \$12,680.¹⁰ However, employers who provide health coverage paid a large part of this premium in 2008; workers, on average, contributed \$60 per month for single coverage and \$280 per month for family coverage.¹¹

The increasing cost of health care is a significant concern for employers because 63% of them offer health benefits to their employees.¹² Employer-provided health insurance benefits 158 million nonelderly people in the United States.¹³ For employers with fewer than 200 employees who do not offer health benefits, 48% cite high premiums as the most important reason they do not offer these benefits.¹⁴

Many employers continue to offer some form of coverage after workers retire. In 2008, 31% of employers with 200 or more workers who offer health benefits to their employees also offer coverage to their retirees.¹⁵ Among firms with 200 or more workers that offer retiree health benefits, 93% offer benefits to early retirees under the age of 65.¹⁶ Moreover, 75% of these firms offer retiree health benefits to Medicare-age retirees.¹⁷

Given the future demography, it is important to consider both retirement and health benefits together. One reason that older workers give for continuing to work is financial need due to insufficient retirement savings.¹⁸ And although 68% of workers expect to work into retirement, 4 in 10 retirees end up being unable to do so because they have to leave the workforce earlier than expected for reasons that include health problems and disabilities.¹⁹

Current trends in retirement and health care require the Chamber to have a proactive agenda for employee benefits issues. The U.S. workforce is aging, many workers will be retiring in the next few years, and many workers will face significant retirement and health care challenges. The Chamber needs to help shape policies to encourage workers to save for retirement and to provide programs that work for today's retirees. Additionally, rising health care costs require a policy solution to control costs before employers providing health care coverage are unable to continue to do so.

The plan discussed in the following document is in addition to the Chamber's core policies. For health care, the Chamber's core polices cover health care reform, health information technology, small business health plans, workplace wellness and disease management programs, comparative effectiveness research, follow-on biologics, Medicare reform, retiree health programs, mental health parity, liability reform, ERISA preemption, consumer-directed health accounts, the patient centered medical home, direct consumer advertising and marketing, drug reimportation, the State Children's Health Insurance Program, and cafeteria plans. For retirement, the Chamber's core polices cover plan fee disclosure, comprehensive pension funding reform, nonqualified deferred compensation, phased retirement, pension accounting, and retirement security. Together, these polices create a comprehensive pro-business agenda for the Chamber in retirement and health care.

Phased Retirement

Although there is not an official definition of phased retirement, it generally refers to any arrangement whereby a worker at or near regular retirement age continues to work, but at a reduced schedule or with a reduced salary, or with reduced responsibility or a combination of all three. Sometimes the phased retiree will continue receiving health benefits or will begin receiving a pension during phased retirement. Many phased retirement arrangements are informal, but some employers -- particularly universities -- have formal phased retirement programs.

Workers enter phased retirement for a wide variety of reason including a desire to continue working and a need to retain employment benefits such as healthcare insurance. Employers benefit from phased retirement arrangements by being able to retain their experienced, knowledgeable workers for a longer period of time. Various legal, fiscal, and policy constraints limit the ability of employers to implement phased retirement programs on a large scale.

The Chamber believes only tweaks to the current retirement system are necessary and does not favor a comprehensive legislative scheme implementing a phased retirement regimen. Most importantly, the Chamber believes that phased retirement programs and practices should remain a discretionary arrangement that is mutually agreed upon by both the employer and the employee.

One result of increased life expectancy is that people are able to work longer even as they age.²⁰ By 2012, nearly 20% of the total U.S. workforce will be age 55 or older, up from just under 13% in 2000.²¹ Moreover, with 77 million baby boomers reaching retirement age, businesses could be faced with a shortage of highly skilled workers because there may not be enough adequately skilled young workers to replace retiring ones. Fortunately, it seems that older workers are willing to continue to participate in the workforce. A 2004 study by Watson Wyatt found that 63% of workers between the ages of 50 and 70 would like to work part-time before full retirement.²² A 2005 AARP study found that nearly two in five workers aged 50 and over are interested in participating in some type of phased retirement program.²³ In addition, a 2005 survey by Merrill Lynch of more than 3,000 boomers revealed that 83% of them intended to keep working in retirement.²⁴

There has been an increased interest in phased retirement on the part of both employers and workers. Phased retirement is becoming more attractive with the changing nature of the workforce and the changing nature of retirement. Employers looking at an impending labor shortage and possible brain drain want to keep their experienced and skilled workers in order to remain competitive. At the same time, workers are looking to stay employed beyond traditional retirement ages for reasons such as financial obligations or for psychological benefits. The confluence of these events can be advantageous to both workers and employers.

Employers will face a labor shortage — particularly for highly skilled and experienced workers. In many companies, half of managers and key professionals will be eligible for retirement in the near future, and by 2015 that percentage will jump to 70%.²⁵ In addition, a 2006 AARP survey found that 74% of companies were having a difficult time finding and retaining qualified

workers.²⁶ To maintain a competitive advantage, employers will want to ensure that they are able to retain their most skilled and experienced workers — primarily their older workers. With a phased retirement program, companies can maintain important relationships and retain valuable skills and experience.

There are several reasons why workers are interested in phased retirement. Some will be “planned phasers” who do so out of choice and voluntarily enter into a phased retirement arrangement. Others will opt for phased retirement out of need. This need usually relates to financial requirements or employment benefits, particularly health insurance or the need to provide long-term care to a family member.

The barriers to phased retirement are many and include legal, fiscal, policy, and practical issues. There are legal restrictions on when benefits can be paid out. There are fiscal concerns surrounding the costs associated with employing older workers, such as increased pension payments and higher health care coverage. Finally, there are policy and practical concerns about how accruals should be calculated during phased retirement or how to apportion the payout. These barriers have prevented many employers from implementing phased retirement programs.²⁷

In general, the Chamber believes that phased retirement programs should be narrowly tailored to meet certain needs and that any rules, legislation, or proposals be viewed with particular goals in mind. As such, the Chamber proposes the following goals as central to phased retirement programs:

- Keep experienced workers in place to ensure a transfer of knowledge to younger generations.
- Combat labor shortages in specific industries and job categories.
- Remain competitive.

To reach these goals, the Chamber believes that only tweaks to the current retirement system are necessary and does not favor a legislative scheme implementing a phased retirement regimen. Moreover, the Chamber does not believe that phased retirement should be allowed at ages earlier than the early retirement age under a company’s retirement plan.

Chamber members have concerns about the current debate surrounding phased retirement and the proposals and rules that might be put into place.

First, current proposals and discussions around phased retirement tend to be protectionist. Thus, there is concern that phased retirement not be established as a “right” but, instead, as an option that is mutually agreed upon by both employer and employee. Moreover, there is concern that Internal Revenue Code Section 411(d)(6) might apply to phased retirement programs making them a protected benefit. This could force employers into a static policy that would increase employer costs and not allow for the dynamic nature of phased retirement.

Second, Chamber members are concerned that legislative and regulatory requirements for phased retirement could negatively impact current programs and practices. Additional legislative and

regulatory protections are not needed for phased retirees as there are already laws protecting employees from forced retirement and discrimination, and phased retirement practices can operate within those bounds. A few small legislative and regulatory modifications are, however, needed. Chamber members would like the law to be clarified to state that phased retirement benefits are not protected under Section 411(d)(6). In addition, restrictions against rehiring people who have recently retired should be eliminated.

Third, in-service distribution rules should be modified to better accommodate phased retirees. In-service distributions should be allowed at early retirement age as defined in the plan, but not earlier. Additionally, in-service distribution rules should allow for access to assets in a 401(k) plan to purchase long-term care insurance.

Fourth, Chamber members are concerned about the impact of phased retirement on Social Security benefits. To encourage employees to remain in the workforce, disincentives such as Social Security benefit reductions should be eliminated.

Fifth, Chamber members are concerned that phased retirees might be held to a different standard aside from other employees. For example, there is concern that statutory or regulatory requirements would give phased retirees a greater right to benefits (e.g., additional accruals or form of benefit) or that it would be harder to fire a phased retiree (even for cause) for fear of discrimination claims.

Finally, some employers allow employees in phased retirement programs to maintain their health benefits. This can be especially valuable to phased retirees because many of them are not yet old enough to qualify for Medicare but are unable to afford or qualify for insurance on the individual market. Chamber members believe that as long as it is not mandated for phased retirement, allowing employers to offer health benefits to phased retirees creates a valuable incentive for employers desiring to retain experienced employees in a phased retirement program.

Further, Chamber members believe that providing health care benefits to phased retirees should be subject to the employer's practices as established for all workers generally. For example, if the employer provides health care benefits to part-time employees who work more than 20 hours per week, then a phased retiree who works 25 hours per week would be eligible for benefits, but a phased retiree who works 15 hours per week would not be eligible.

Increasing Retirement Savings

There has been an ongoing concern that Americans are not saving enough for retirement. Particularly, as people are living longer and health care expenses are growing, there is concern that current workers are underestimating their retirement needs.²⁸ Even if workers are aware of their retirement needs, they may not be saving enough. The number of Americans who report that they or their spouse have saved money for retirement has dwindled. A survey by the Employee Benefit Research Institute (EBRI) showed that 72% of respondents said they had saved for retirement, down from 78% in 2000.²⁹ A number of proposals have been put forth to increase both the number of people saving and the amount being saved for retirement, including universal pension coverage, Automatic Individual Retirement Accounts (Auto IRAs), enhancements to qualified plans, passage of state regulations that expand participation, and provisions to allow employers to offer financial education and investment advice to employees. The Chamber supports proposals that could increase retirement savings but opposes proposals that would mandate participation by either employers or employees.

Universal Pension Coverage and Automatic IRAs

The essential characteristic of universal pension coverage (UPC) would be the involvement of Americans of various income levels in a pension scheme. Currently, the law permits employers to exclude from their retirement plans workers who are under 21 years old, who work fewer than 1,000 hours per year, or who have worked for the employer for less than one year.³⁰ In addition to covering individuals who are currently excluded or excludable, UPC would also make enrollment mandatory, not voluntary, and some proposals would include mandatory employer contributions.

Automatic Individual Retirement Accounts (auto IRAs) are one way to achieve universal coverage. An auto IRA would require employers to make payroll deduction IRAs available to their employees who are not eligible to participate in the employer's retirement plan. Employees would be deemed to be part of this arrangement unless they opt out. The concept of auto IRAs is the brainchild of David C. John, senior research fellow, the Heritage Foundation, and J. Mark Iwry, nonresident senior fellow, the Brookings Institution.³¹

Several legislative proposals have been put forth based on the concept of an auto IRA.³² These bills would require all employers with more than 10 employees and who have been in existence for more than two years to establish a payroll deposit arrangement. The bills also include varying provisions, including creating a TSP II Board in the executive branch to establish policies and procedures relating to payroll deposit IRA arrangements, and requiring employers to offer an auto IRA to any employee who is not eligible to participate in a qualified plan.³³

The Chamber opposes the auto IRA proposals for the following reasons. First, the requirement that all employers provide an opportunity for payroll deduction is a mandate. In general, the Chamber opposes mandates and, in this instance, believes that it would set an inappropriate precedent within the voluntary nature of the ERISA framework. Second, the Chamber is apprehensive about the TSP II system because it is not a gateway to investment in the private sector. Participation by workers in the private retirement system should be seen as an investment opportunity and, therefore, should be left to the open market.

The Chamber supports increasing retirement savings and believes that this should be done by implementing policies that encourage employers to establish and maintain retirement plans and also encourage workers to participate in them. The Chamber does not support any type of savings mandate or government-run investment program, even if the goal is to increase retirement savings.

Enhancements to Qualified Plans

Qualified plans provide significant benefits to employers and employees by encouraging retirement savings through favorable tax treatment. Qualified plans allow employers to obtain a tax deduction for plan contributions and allow employees to delay paying taxes on this benefit until funds are distributed. Although qualified plans are good for both employers and employees, they could be even better.

Rather than mandating participation by either employers or employees, the Chamber recommends pursuing enhancements to the qualified plan system. First, distributions from qualified retirement plans should be taxed at the lower capital gains rate, instead of the income tax rate. Second, defined benefit plans should allow for unlimited prefunding up to the amount of projected future benefits in the plan. Additionally, the IRS should eliminate the tax penalty for the reversion of assets in a pension plan after all promised benefits have been paid out to participants. Finally, the Chamber believes that the top-heavy rules should be eliminated.

State Law Governing Private Retirement Plans

As with health care, a number of states are trying to increase private retirement savings on the state level. In particular, some states have sought to enable small businesses to provide a 401(k) or other retirement savings plan for their employees. Connecticut,³⁴ Maryland,³⁵ Vermont,³⁶ and California³⁷ have considered bills aimed at increasing employee participation in some form of pension savings program.

Thus far, there is no ERISA issue with the state proposals because they have not mandated employers to participate in state systems. However, the Chamber believes that it is important to establish as a principle that states should encourage participation in the private retirement system by everyone, including owners and self-employed individuals. Moreover, the Chamber believes that the private sector should not have to compete with the government to provide retirement benefits.

Financial Education and Investment Advice

A major concern for employers is the ability to provide investment advice to their employees without incurring liability. The Pension Protection Act of 2006 (PPA) created an exemption for investment advice provided to participants in 401(k) and other participant-directed pension plans pursuant to an Eligible Investment Advice Arrangement. Under the PPA, employers may arrange for investment advice to be provided to their plan participants, while shielding the employers from liability for the investment advice that is actually provided. The details of this provision are still being worked out in the regulatory process.

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. The Chamber would like to see legislation enacted to encourage employers to provide financial advice, even if employees pay a nominal fee.

The Chamber's biggest concerns about investment advice revolve around clarifying the rules. The Chamber recommends clarifying Internal Revenue Code Section 404(c) by laying out exactly what needs to be done for an employer to comply with the law. In addition, the Chamber is concerned that small businesses might not provide investment advice because they fear accruing liabilities or they would not have the resources, either financial or administrative, to provide it.

Decumulation of Assets in Retirement

Decumulation of assets in retirement refers to the way retirement assets are distributed to retirees after retirement. Retirees are, obviously, interested in having assets to live out their lives, and with retirees living longer, they need specific strategies to ensure that their assets last long enough. The Chamber believes that decumulation strategies are an increasingly important part of retirement security. Therefore, the Chamber encourages greater education for participants, innovation among products, and flexibility for employers to try new products and programs.

Until recently, retirement planning has focused on wealth accumulation. However, as more people are living longer in retirement, there is increased attention on deciding how such wealth should be managed to provide a steady stream of income in the postretirement period. Because of concern about people outliving their retirement savings, there has been more attention given to decumulation — ways to encourage installment payment forms and ways to make annuities more accessible both within qualified plans and for individuals.

In general, Chamber members feel that there needs to be greater education on stream of payment options because participants do not always do what is in their best economic interests. There seems to be an “all or nothing” mind-set when it comes to plan distributions that need to change — retirement savings should not be thought of as a lump-sum benefit payment but, rather, as a means to get a stream of income in retirement. Nonetheless, most members believe that while the employer should be able to assist employees in learning about decumulation options, they do not believe that this should be a primary responsibility of the employer. For practical reasons, the employer may not be in the best position to offer advice or options if most employees are separating from service for reasons other than retirement. There is concern, moreover, that becoming too involved in this area may increase an employer's fiduciary liabilities without providing an equal benefit in workforce productivity.

The Chamber recommends that Congress approach decumulation issues in a product-neutral manner. Recognizing the need to ensure that participants are not overwhelmed with choices and receive sound information must be balanced with allowing for continued innovation and growth of financial products.

Annuities

Participants need greater education to participants and greater product innovation, including costs efficiencies. For reasons mentioned above, Chamber members do not think that all employers are in the best position to offer annuities in their retirement plans and, therefore, oppose annuity mandates. Members would appreciate flexibility in providing annuity options or encouraging participants to opt for annuities.

Plan sponsors can encourage use of annuities in two major ways: either adding them as a formal distribution option in a defined contribution plan or accommodating their use by participants outside the plan via a rollover.³⁸ On a practical level, employers do not offer annuities because the take-up rate is so low. Moreover, most people who are withdrawing money from the plan are

not at retirement age, so they are not concerned about payment options. Therefore, many employers view annuities as an issue for rollovers more than a qualified plan issue.

In addition, the safest available annuity rule is a deterrent to providing annuities within a qualified plan. It is particularly difficult for small businesses to compare different annuity options because the market is designed for business owners to work through brokers and not directly with annuity providers. Small business owners, therefore, tend to rely on brokers and the products that they recommend. As such, the safest available annuity rule creates a liability for the plan sponsor. In general, it would be helpful if for all product choices, employers were held to a “suitability” standard rather than a “best product” standard.

For these reasons, the Chamber opposes the Automatic Trial Income proposal issued by the Hamilton Project. The proposal would require 401(k) plans (or similar accounts) to offer an automatic two-year trial of monthly payments to give retirees the opportunity to experience the benefits of monthly income. Assets accumulated may be fully or partially automatically enrolled, and retirees would have the option to opt out of the trial both before and after the two-year trial period.³⁹

Chamber members feel that the burdens associated with this proposal would far outweigh the benefits. However, the Chamber supports incentives for individuals. Americans for Secure Retirement have a proposal that would create a tax exemption for individuals for one-half of the income payments from annuities up to \$20,000.⁴⁰ This proposal has been introduced into legislation through S. 1010 and H.R. 2205.⁴¹ The Chamber is a member of Americans for Secure Retirement and supports the proposal and legislation.

There are also existing barriers in the retirement rules and regulations that discourage the use of annuities and the innovation of new products. These barriers include the following:

- For non-highly paid employees, taking an annuity might lead to a decrease in Social Security benefits because of the way that the Social Security rules interact with annuity payments.
- For participants receiving benefits from a Roth IRA, there is no tax benefit to taking a stream of payments over a lump sum. Therefore, offering a tax credit might encourage more people to use stream of payment options.
- The minimum required distribution rules.

Income Replacement Funds

Income replacement funds (IRFs) are investment products structured like mutual funds that offer retirement income and provide a way to diversify retirement income streams.⁴² Unlike annuities and longevity insurance, payments from IRFs are not fixed and vary depending on the performance of the stocks acquired. IRFs offered by mutual fund companies also make payments based on a set period (10, 20, or 30 years).⁴³

Chamber members believe that these products are currently targeted for the rollover market and are not qualified plans. The sentiment was also made that many employers — particularly small employers — see their duties toward participants ending once retirement begins and are interested in a paternalistic role that would involve overseeing the decumulation of assets.

Longevity Insurance

Longevity insurance is a form of deferred annuity with a payment start date beginning later in retirement, e.g. age 80 or 85. With the general increase in life expectancy, current retirees are expected to live longer than any previous generation, living up to age 80 or even to 100. The problem, however, is that accumulated wealth may not last until old age, and a retiree could well lack a guaranteed stream of income several years after retirement. Longevity insurance offers a way for such individuals to protect themselves against the financial risk of outliving their retirement savings.

Typically, a retiree would buy future income at current prices using a portion of his or her retirement savings,⁴⁴ with the projected guaranteed income being calculated at the time of investment and payments starting at a designated point in the future.⁴⁵

Some major insurance companies offer longevity insurance vehicles, but they are new, the market is small, and there is not much information available for an in-depth comparison of the various vehicles. Chamber members are also concerned about the cost of the product and issues surrounding fee transparency.

The Chamber supports provisions that address longevity insurance by excluding money used to purchase longevity insurance from the MRD rules.⁴⁶ Chamber members are concerned, however, about offering longevity insurance within the plan because liability might attach to the plan sponsor similar to what is required under the safest available annuity rule.

Long-Term Care Insurance

Long-term care becomes necessary when someone develops disabilities that limit his or her autonomy and ability to live independently. Resulting services may take various forms, including home care, assisted living facilities, and nursing homes. Long-term care insurance (LTC insurance) can cover these costs. LTC insurance also allows the policyholder to make choices about what services to receive and where to receive them.

Premiums for long-term care insurance can be expensive and increase with age. According to AARP, the expected cost of long-term care insurance for a 65-year-old is between \$2500 and \$3000 a year.⁴⁷ As of the end of 2007, over 9000 employer groups pay for or offer LTC insurance. These plans cover more than 2.1 million people (LIMRA, 2008).

An important issue with long-term care insurance is that it is hard to get younger workers interested because they do not appreciate the relevance of the benefit, and for older workers who are interested, the benefit can be expensive. Nonetheless, the Chamber believes that long-term care insurance is a good benefit for employers to offer. However, it is concerned about efforts to increase workers covered by LTC insurance through automatic enrollment and tax incentives because they may not be appropriate.

The increase in life expectancy is expected to spur a need for long-term care in our society. At present, about 10 million Americans receive some form of long-term care.⁴⁸ About two-thirds of those who turned 65 in 2005 will need long-term care in their lives and will require assistance for an average of three years.⁴⁹

More than half of all long-term care is informal unpaid assistance provided by family members; in contrast, paid long-term care can be very expensive. A private room in a nursing home costs an average of \$75,000 per year, and home health aides cost an average of \$18 per hour.⁵⁰ Approximately half of paid long-term care is funded by Medicaid, about 20% is financed by Medicare, and most of the remainder is paid out-of-pocket or through private insurance.⁵¹ Informal care does have hidden costs, such as lost productivity of the caregiver.

To motivate employers, the Internal Revenue Code provides an income tax deduction for employer-subsidized long-term care insurance policies.⁵² Employers can deduct the costs of employer-sponsored long-term care insurance policies from taxable income. Thus, the code treats the employer's contributions in the same manner that it treats any other deductible business expense.⁵³ In addition, the benefits are typically not considered taxable income to the insured.

The Chamber supports informing employees about long-term care insurance and its benefits, but it is concerned about requiring automatic enrollment to convince more employees to purchase it. Chamber members fear that the administrative burden of using automatic enrollment (e.g., un-enrolling participants, returning money) would far outweigh the benefits. The Chamber believes that there could be some benefit for offering tax incentives for long-term care insurance; however, there is concern that participants might be taxed on the benefit at a time when they would be least likely to afford it. Therefore, the Chamber urges caution in implementing tax incentives for long-term care insurance.

Cafeteria Plans

Cafeteria plans are a type of employee benefit plan that allows an employee to receive benefits, frequently paid for with the employee's pretax income. They often provide the employer with savings as well because employers typically do not have to pay FICA and FUTA taxes on the amount of pretax income used to purchase the benefits. The Chamber supports cafeteria plan legislation that would benefit both small and large employer sponsors. Also, the Chamber supports legislation that would allow for long-term care insurance to be purchased through a cafeteria plan. However, the Chamber opposes applying FICA or FUTA taxes to benefits provided under a cafeteria plan.

The IRS defines a cafeteria plan as a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of Section 125 of the Internal Revenue Code.⁵⁴ A cafeteria plan allows participants to receive certain benefits on a pretax basis and participants are allowed to choose among at least one taxable benefit (such as cash) and one qualified benefit.⁵⁵ A qualified benefit is a benefit that, among other things, does not defer compensation. Qualified benefits include:

- Accident and health benefits (but not Archer medical savings accounts or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage.⁵⁶

Cafeteria plans generally come in one of three ways — employee pay-all, employer "dollars" only, or a combination of the two.⁵⁷

The SIMPLE Cafeteria Plan Act of 2009, S. 988,⁵⁸ seeks to provide an incentive for small business owners to sponsor cafeteria plans and, thereby, make it easier for small business employees to be covered by health insurance. The major provisions in the bill are as follows:

- Set up a SIMPLE cafeteria plan that is very similar in concept to the SIMPLE pension plan. The SIMPLE cafeteria plan provides a safe harbor contribution of 2% that would enable the plan to automatically satisfy the nondiscrimination cafeteria plan rules.
- Change the definition of "employee" to include self-employed individuals. This would allow sole proprietors, partners in general and limited partnerships, shareholders in S-corporations, and members of limited liability corporations to participate in cafeteria plans.
- Include long-term care insurance as a qualified cafeteria plan benefit.
- Eliminate the "use it or lose it" rule.

The Chamber supports the SIMPLE Cafeteria Plan and will continue supporting cafeteria plan legislation, noting that the changes would benefit both small and large employer sponsors. The Chamber will oppose any proposal to apply FICA and FUTA taxes to benefits provided under a cafeteria plan.

Small Business Concerns

Small employers, like larger employers, offer benefits to their employees such as pension plans and health insurance. However, rising health care costs hit small businesses particularly hard. Many small businesses want to continue offering a variety of benefits but have their own unique issues with choosing to do so. The Chamber believes that small businesses play an important role in the debate over the effectiveness of the voluntary employer-provided system, and that it is important to increase small business representation in the debate. One way to do this is to have a small business member on the ERISA Advisory Council.

Employers, including small businesses, voluntarily offer certain benefits to employees, including health insurance, private pension plans, paid vacation, and sick leave. Health insurance is one benefit deserving of special attention, largely because of increasing costs. During the economic boom of the 1990s, the availability of health insurance benefits among small firms expanded. However, due to the increasing costs associated with benefits in recent years, companies of all sizes have reduced the availability of health insurance to their employees.⁵⁹

A 2002 survey reported that almost one-quarter of small employers offering health benefits think that their firms would change coverage and 3% think that they would drop coverage if costs were to increase an additional 5%.⁶⁰ Additionally, a 2008 survey found that small firms with fewer than 200 employees were more likely than larger firms to consider dropping health coverage entirely.⁶¹ However, it is unlikely that small employers are simply unwilling to offer health benefits, given that in 2003, 11% of them were either extremely or very likely to start offering health benefits in the next two years, and 22% were somewhat likely to start offering health benefits.⁶² Rising costs have been identified as the key reason for a decline in coverage, and EBRI research reveals that the percentage of employers with fewer than 200 employees that offer benefits dropped from 68% in 2000 to 59% in 2007.⁶³

The Chamber believes that it is important to increase small business representation in all areas. Specifically, the Chamber will work to have a small business representative on the ERISA Advisory Council. In addition, the Chamber plans to seek out other opportunities for small business representation and to coordinate with other associations to work on increasing small business coverage.

The Chamber also believes that concerns over small business participation are part of the larger debate over the effectiveness of the voluntary employer-provided system. As such, the Chamber will engage in research to counter some of the arguments used against the employer-provided system, including as not enough workers being covered or that benefits accrue to the primary benefit of highly compensated individuals. Potential research topics include the following:

- The number of full-time versus part-time employees covered by private plans.
- Coverage in small businesses in existence for more than five years versus new (i.e., startup) small businesses.
- Coverage in small business with fewer than 25 employees versus those with more than 25 employees (or using 10 employees as the comparison number instead of 25).

State and Local Retirement Program Funding

State and local governments provide benefit plans to their employees that include pension, health care, and retiree health care. Most of the retirement plans are defined benefit plans that are funded primarily by the government. The increase in health costs is causing an increase in the costs of benefit plans for state and local governments, and these plans need to do something to remain adequately funded and cover promised benefits. The Chamber generally does not involve itself in state and local funding issues, but it is concerned about the increased burden on taxpayers and proposals that would give state and local governments an unfair advantage against private employers when competing for employees.

As of 2007, most states still had traditional defined benefit plans as the primary retirement plans for their employees.⁶⁴ State and local government employee benefits costs were 72.8% higher than those of private sector employers.⁶⁵ Experts consider a funded ratio of about 80% or better to be sound for government pensions; yet in 2006, 58% of 65 large pension plans were funded to that level, down from 2000 when about 90% of plans were so funded.⁶⁶

The Government Accountability Office (GAO) has reported that state and local governments will likely face serious fiscal challenges, driven mainly by increasing health-related costs, such as Medicaid and health insurance for state and local employees.⁶⁷ The GAO has concluded that given the initial estimates of the cost of future retiree health benefits, state and local governments will likely have to find new strategies for dealing with their unfunded liabilities.⁶⁸ While state and local governments generally have strategies to manage future pension costs, they have not yet developed strategies to fund future health care costs for public sector retirees.⁶⁹ Options to deal with unfunded liabilities include reducing pension benefits, raising contribution rates, increasing individual and business taxes, and cutting other services in order to keep providing benefits to state retirees.

The Chamber is concerned about the increased burden on taxpayers — both individual and corporate. Moreover, the Chamber is concerned that this may give state and local governments an unfair advantage against private employers when competing for employees because employers are hit with a doubly whammy. First, the government provides higher benefits than the employer can afford. Second, the employer pays for the state-provided benefits through higher taxes.

Retiree Health Care

There are employers that voluntarily offer health benefits to both current employees and retirees. One method of providing this coverage for retirees is to fund a 401(h) retiree health benefits account by transferring excess assets from a qualified defined benefit plan under Section 420. One issue employers have with voluntarily offering coverage is that once they offer health coverage, they are limited in their ability to discontinue or change their coverage under the requirements of ERISA. This is particularly problematic in a time of rising health care costs. The Chamber believes that the process of saving for retiree health expenses needs to be simplified. As such, the Chamber supports reforming cafeteria plans so that employees can obtain long-term care insurance as a benefit and allowing employees earlier access to 401(k) money to start saving for long-term care expenses.

A significant number of employers provide some form of health benefits to their retirees. A survey by the Kaiser Family Foundation and the Health Research and Educational Trust found that 31% of large firms provide retiree health benefits. Among these firms, 93% offer benefits to early retirees, and 75% offer benefits to Medicare age retirees.⁷⁰

Current law prohibits employers from reducing or terminating promised benefits unless: (1) an employer expressly reserves that right in a plan document, and (2) the employer fully discloses — in accordance with the requirements of ERISA — its right to reduce or terminate retiree health coverage. Due to rising costs in health care generally, many employers have found it necessary to change the type of retiree coverage they provide. Nonetheless, many employers remain committed to offering retiree health care coverage and continue to look for new and innovative ways to provide this benefit.

Section 420 of the Internal Revenue Code provides a way for employers to transfer excess pension assets from a qualified defined benefit plan to a retiree health benefits account set up under Internal Revenue Code Section 401(h). To be qualified, a 401(h) account must meet several requirements:

- The health benefits account needs to be subordinate to the plan's retirement benefits.
- The employer must maintain the health benefits account as a separate account.
- The employer's contributions to the account must be reasonable and ascertainable.
- The funds cannot be used for anything other than medical liabilities until all medical liabilities are satisfied.
- The funds go back to the employer once medical liabilities are satisfied.
- If key employees are covered, they must be under a separate account.⁷¹

A transfer under Section 420 also has to meet several requirements: It must come from excess pension assets; it cannot contravene any provision of law; and it must meet use, vesting, and minimum cost requirements.⁷²

The Pension Protection Act of 2006 expanded Section 420 transfers to allow qualified future transfers and collectively bargained transfers, which allow transferring more excess pension assets than allowed under qualified current retiree health liabilities. Commentators point out several problems with Section 420 transfers, including that they are too narrow in scope to be

useful, that they do not provide employers with sufficient discretion, and that the provision is too confusing to actually be useful. Chamber members also considered Section 420 transfers of excess pension assets to Section 401(h) accounts, and are concerned that these provisions are not that helpful to small businesses and request that any revisions be small business friendly.

In general, the Chamber wants to simplify saving for retiree health care expenses. There are too many different kinds of accounts that can be used to save for retiree health. Instead of the current system composed of multiple, different types of accounts, there needs to be a simpler way to save. Additionally, the Chamber supports special treatment for plan distributions for health-related expenses in retirement.

Moreover, 401(k) plans provide a vehicle for employees to save for retirement expenses, but money cannot currently be withdrawn without penalty to pay for long-term care insurance premiums when they are still affordable. The Chamber recommends that employees be allowed earlier access to 401(k) money without penalty to start saving for long-term care.

Chamber members are also concerned with the cost of health care for retirees who are not yet covered by Medicare and are not covered by employer insurance. The Chamber recommends providing all retirees access to a group rate outside of the employment context so that all retirees can obtain affordable insurance. This could include new pooling arrangements for retirees.

Reinsurance

Reinsurance provides protection to private insurers against unforeseen or extraordinary losses that the insurer would otherwise be responsible for covering. Catastrophic reinsurance refers to a form of loss reinsurance which, subject to a specific limit, indemnifies the insured company in excess of a specified loss resulting from a single event or from the aggregation of many small claims arising from a single event.⁷³ Reinsurance is complicated by various issues such as whether all insurance companies should participate, how to contain costs, what information participants need to disclose to obtain coverage, who would administer the reinsurance program, how would the reinsurance program be funded, and what the reinsurance would cover. The Chamber believes that reinsurance should be initially targeted at specific illnesses, should not have mandatory participation or contribution, and should be available only to participants who qualify for it by demonstrating cost-control measures.

Reinsurance protects private insurers in much the same way that insurers provide coverage to their policyholders. Reinsurance is also a safety net for other institutions that face risk, such as employers who self-insure their employees' health care plans.⁷⁴ Reinsurance companies charge a premium to indemnify an insurance company against unforeseen or extraordinary losses that the insurer would otherwise be responsible for covering. For example, reinsurers paid about 50% of the insured losses from Hurricane Katrina.⁷⁵ Consequently, the amount of coverage an insurer can provide in a certain area is also contingent upon what portion of its exposure it can transfer to reinsurers. Insurers obtain reinsurance for four main reasons: (1) to limit liability on specific risks, (2) to stabilize loss experience, (3) to protect against catastrophes, and (4) to increase capacity.⁷⁶

By definition, mandating that more entities participate in an insurance system lowers costs; it forces those with lower costs to help subsidize those with higher costs. If participation was mandatory, it could extend to all health plans, all self- or fully insured plans, plans below (or above) a certain size, etc. If participation was not mandatory, Congress would need to be decided what participation would have to entail — would an insurer need to include all their plans, or could it opt in or out on a plan-by-plan basis? Or would we just allow insurers or plan-sponsors to reinsure certain high-risk individuals on a case-by-case basis or structure it like a national high-risk pool? Mandatory participation is further complicated by the great variation in plans and covered procedures.

The costs of a reinsurance program could quickly spiral out of control without limits — but limits cannot be static, as the value of money is never static. The limit a reinsurer could pay out to a participating insurance plan would need to be indexed either to the Medical Consumer Price Index or to some other calculation that takes into account the rate of increase of health care costs. But this raises another problem — when you take away risk from an insurer, just as with an individual beneficiary, you lower that insurer's motivation to mitigate risk and control spending (i.e., "moral hazard"). This moral hazard could artificially raise costs, thus defeating the purpose of a reinsurance body. Addressing this issue is problematic because it could potentially infringe on insurer and employer autonomy, necessitating mandated cost controls or pressuring insurers to cover certain procedures or formularies. This could also be addressed through the program's

financing, either with coinsurance (the reinsurer requires the underlying plan to pay a percentage of costs incurred) or a predefined (or prepaid) reimbursement per procedure or year.

A reinsurance body would not be able to just take participants on their word — plan sponsors and insurers would need to give more detailed information to the reinsurer. This could trigger privacy and autonomy concerns — employees might not enjoy having their medical claims information passed on to a government or quasi-governmental agency, and employers might not enjoy being forced to disclose claims and cost data. However, it is very likely that a reinsurance body would need detailed information from participants in order to develop cost projections, determine reimbursement arrangements, and develop premium structures.

Perhaps the most controversial issues are who would administer a reinsurance program and how such a program would be funded. The current fractured reinsurance system is run by a few private companies and a few state governments. It would be optimal to have a system that operated on the federal level — either through a single private entity, a government agency, or a public-private partnership.

Every insurance plan designates what will and will not be covered; some have annual or lifetime limits, some cover mental health and acupuncture, and others provide generous prevention and wellness coverage but less coverage for smoking-related disorders. A reinsurance plan would need to define whether it had a uniform policy of what procedures would be reimbursed, or whether reinsurance purchased would include all benefits covered by the underlying plan. If the latter, the plan's premium would have to be varied to reflect their varying burdens on the reinsurance body. It is important to note whether the reinsurance plan would reimburse for claims paid or claims incurred — and how claims could be denied by the reinsurer.

Given that many different risks exist, with varying degrees of probability of occurrence, it may be necessary to consider whether there should be any differentiation in the nature or extent of coverage depending on the associated risk. For instance, should a flood catastrophe (which may lend itself to greater predictability) be placed on par with health or life catastrophes? Should catastrophic reinsurance coverage — assuming it is publicly funded — make exceptions or place conditions on which types to include?

There have been several recent proposals involving reinsurance. Former Sen. Bill Frist (R-TN) proposed “Healthy Mae,” in the style of federally chartered (but privately run) mortgage companies Freddie Mac and Fannie Mae.⁷⁷ On April 5, 2006, in response to the Frist proposal and another proposal by conservative Republicans, Democrats in the House and Senate (led by Sen. Ted Kennedy (D-MA)) introduced the Small Employers Health Benefits Program Act. This bill would have created a program for small employers that proponents claimed would be modeled after the Federal Employees Health Benefits Program — and included reinsurance provisions.⁷⁸

Rep. Ron Klein (D-FL) introduced H.R. 3355, the Homeowners' Defense Act of 2007, on August 3, 2007. The bill passed the House on November 8, 2007.⁷⁹ The act sought to, among other things, create a program to make catastrophic loans to qualified reinsurance programs and

establish the National Catastrophe Risk Consortium to work with states to create an inventory of catastrophic risk obligations held by state reinsurance funds.⁸⁰

President Obama introduced a reinsurance plan that includes reimbursing employer health plans for a portion of the catastrophic costs they incur above a threshold, with the caveat that any savings achieved through this reinsurance must be used to lower employees' premiums.⁸¹

The Chamber recognizes that reinsurance could potentially be valuable to employers and insurers if implemented correctly. The Chamber is more comfortable with reinsurance that focuses on single events or individuals, not aggregates. At this time, though, the Chamber does not have an opinion on what entity would be best to run reinsurance on a nationwide scale.

This Chamber is primarily concerned that irresponsible companies that do not go out of their way to control costs and offer Cadillac insurance plans could use reinsurance as a way to cost-shift to other companies. Therefore, companies should be required to qualify for participation, rather than have such participation mandated. A company should demonstrate that it is seeking to control costs and limit high-cost scenarios (e.g., through the use of wellness programs, health screenings, disease management) and that its plan is within a specified normal range of limits, exclusions, and coverage options.

The Chamber is also concerned that sharing insurance plan medical information with reinsurers could be problematic due to privacy rules. The creation of an entity to conduct reinsurance would need to address these concerns.

Health Insurance Access and Affordability

A significant number of Americans do not have health insurance, and even more Americans are faced with the pressure of increasing health care costs. Various stakeholders have presented proposals to increase health care access and affordability. The Chamber favors covering the uninsured, but this does not seem feasible in the current cost environment until we address issues of health care affordability. In the affordability area, the Chamber believes in implementing incremental, achievable reform in order to increase health care affordability.

Health Insurance Access

According to the Census Bureau, 46 million Americans lack health insurance.⁸² The issue of the uninsured is one that garners a huge debate and has a large impact on employers and plan sponsors.

Private health insurance coverage among persons under 65 years of age in 2006 was 66.3% of the total population, down from 70.7% in 1997 and 76.8% in 1984.⁸³ More than 230 million Americans currently have health care coverage through their employers or through government programs, with the private individual insurance market currently providing coverage to approximately 18 million people.⁸⁴ As of 2006, employers provided 62% of health insurance for non-elderly Americans (under 65), the government covering 15%, and individuals accounting for 5%.⁸⁵

While the Chamber is in favor of covering the uninsured, it appears infeasible to do so in the current cost environment. Expanding access would be ineffective unless it includes efforts to make health care affordable — otherwise, many of the suggested proposals would simply spread unaffordable costs into the parts of the system that are working now. In the same vein, the Chamber questions what “access” really means; some consider a high-deductible health plan to be coverage, while others call it “underinsurance.” Still, others say that even with a Cadillac plan, an employee would be unable to receive necessary care in some areas due to provider shortages and, thus, would still lack access. A definition and clear set of goals would have to be made before any legislation to fix the problem can be considered.

Health Insurance Affordability

The United States spends more on health per capita than any other developed country, and health spending continues to increase.⁸⁶ In 2005, national health care expenditures in the United States totaled \$2 trillion, a 7% increase from 2004.⁸⁷ Overall, in 2005, private health insurance paid 36% of total personal health care expenditures, the federal government paid 34%, state and local governments paid 11%, and out-of-pocket payments accounted for 15%.⁸⁸

The Chamber has been focusing on incremental, achievable reform. Generally, the Chamber has advocated for the following:

- Medical liability reform
- Health information technology
- Value-based purchasing
- Consumer-driven health care
- Small business health plans (e.g., pooling, self-insuring)

- Wellness and prevention
- Transparency
- Comparative effectiveness
- Long-term care reform
- Tax parity
- End of life care
- Elimination of waste and administrative simplification
- Avoidance of blatant rationing of care

As the comprehensive health reform debate continues, the Chamber will prioritize affordability issues. However, many issues are so intertwined that it would be impossible to fully address one without the other. Prioritizing based on “what Congress wants to work on” is one method, but it is also possible for us to drive the agenda at times. Also, not all of these issues require a federal focus; much can be accomplished by working through business-to-business education, partnerships, and other means. The Chamber’s conclusion, therefore, is that health insurance affordability and access must be approached simultaneously.

Restructuring the Health Care Payment System

The current U.S. health care system centers on a third-party payer sponsoring prepaid health care for individuals in a fee-for-service “sick care” environment. Problems attributed to this setup are myriad: it encourages wasteful spending and overuse, is irritated further by our litigious society, disconnects consumers from the costs of care, disincentivizes excellence in physicians and hospitals, and does nothing to prevent the onset of expensive, serious conditions.

Because consumers are unfamiliar with the costs of medicine, procedures, and health services, they have an unrealistic demand for numerous tests, the most expensive providers, and the most expensive and new products and procedures. A number of proposals are currently being debated that would, arguably, change this dynamic.

The Chamber is concerned that using tax changes could lead to greater disparities in health care coverage and quality. The Chamber supports the Patient Centered Medical Home model of care delivery as a good measure to combine with other Chamber-proposed reforms, including health information technology and wellness and prevention in restructuring the health care payment system.

Using Tax Changes to Empower Individuals

Several years ago in a State of the Union address, President George W. Bush suggested changing the tax treatment of health benefits. He proposed a large tax deduction for individuals (\$7,500) or families (\$15,000) who purchase health insurance.⁸⁹ While the administration continued to talk about this idea, it never gained any traction in Congress and has been considered dead on arrival since inception.

The administration sought business support for the plan but had trouble finding champions and surrogates. Although many agreed that it would be beneficial to make consumers more aware of the costs of health insurance policies (since many are insulated against the actual costs due to large employer contributions), there were concerns about downplaying the roles of employers. Further, there were serious concerns about the integrity of risk pools and adverse selection.

The Chamber has not taken a stance on the tax credit proposals, in part because they have not seemed likely to be enacted. The Chamber will continue on this course unless a proposal appears to have legs, at which point it will reconsider strategy. Generally, the Chamber is concerned that employers would have a number of problems with such tax credit proposals, and that they could lead to even worse disparities in health care coverage and quality.

The Patient Centered Medical Home

Half a century of fee-for-service health care in the United States has built a system with innumerable perverse incentives. Doctors are not incentivized to provide the best care and advice but, rather, to provide the most care. Moreover, many patients lack a primary care physician who will go the extra mile to help break down silos in care, coordinating care between facilities, specialists, and primary care providers.

However, a diverse group of provider groups, businesses and trade associations, and other organizations have come together to promote a new payment model called the Patient Centered Medical Home (PCMH). The PCMH blends fee-for-service with a bundled payment and new incentives to improve quality and accessibility; it includes transparency and incentives for adoption of health information technology, but it hinges on creating incentives for physicians to be efficient and making a primary care provider responsible for a patient's entire care.

The PCMH proposal breaks provider payment into three categories. First, it includes a monthly care coordination payment for the work that falls outside traditional fee-for-service practices, and also supports the implementation of health information technology. These payments would be risk adjusted to prevent physicians from wanting to cherry-pick only healthy patients.⁹⁰ Second, there is a visit-based fee that keeps providers incentivized to see the patient when appropriate.⁹¹ Third, there is a performance-based component that rewards excellence and necessitates the reporting and publication of quality and efficiency data.⁹²

Currently, there are pilot programs experimenting with the PCMH in at least 16 states — some convened by government payers, others by businesses that have partnered with local health care organizations like insurers, provider groups, and quality-driving groups.⁹³ To date, pilot projects have shown vast cost savings, despite the implementation of new bundled payments. The Chamber has signed on as a supporter of the PCMH principles. Going forward, the Chamber will receive more information on these projects and their results.

Many of the Chamber's current focuses, such as on wellness and prevention, on transparency and value-based purchasing, and on health information technology implementation, might all be furthered by the increased success of the PCMH.

The Chamber will emphasize the PCMH as a priority in comprehensive health reform. In part, this is because the model has shown success, and, in part, because the PCMH also entails a number of other Chamber health care priorities, including advancing health information technology, transparency, quality and value-based purchasing.

Going Forward

Current trends in retirement and health care require a proactive agenda for employee benefits issues. Future retirement and health policies need to acknowledge changes in workforce demographics and preferences as well as the ever-increasing cost of health care. Policymakers in these areas should consider the Chamber's recommendations on phased retirement, increasing retirement savings, decumulation strategies in retirement, long-term care insurance, cafeteria plans, small business concerns, funding of state and local retirement plans, retiree health care, reinsurance, health care access and affordability, and restructuring the health care payment system. The Chamber believes that successful retirement and health policies will include these issues as well as the Chamber's core policies on health and retirement issues. The Chamber looks forward to working with policymakers on these constantly evolving and important issues.

ENDNOTES

¹ U.S. Census Bureau, Expectation of Life at Birth, 1970 to 2004, and Projections, 2010 and 2015, *available at* <http://www.census.gov/compendia/statab/tables/08s0098.pdf>.

² *Id.*

³ *See, e.g.*, Press Release, Watson Wyatt, Older Workers Would Delay Retirement if Employers Offered Phasing, Watson Wyatt Survey Finds (March 22, 2004) *available at* <http://www.watsonwyatt.com/asia-pacific/news/press.asp?ID=12965>.

⁴ U.S. Bureau of Labor Statistics, Civilian Labor Force by Sex, Age, Race, and Ethnicity, *available at* <http://www.bls.gov/emp/emplab06.htm>.

⁵ Mitra Toossi, *Labor Force Projections to 2012: The Graying of the U.S. Workforce*, MONTHLY LAB. REV., Feb. 2004, at 37, 37.

⁶ U.S. Department of Health and Human Services, Health, United States, 2007, at 4, *available at* <http://www.cdc.gov/nchs/data/abus/abus07.pdf> [hereinafter Health, United States, 2007].

⁷ National Coalition on Health Care, Facts About Health Care – Health Insurance Costs, <http://www.nchc.org/facts/cost.shtml> (last visited Oct. 9, 2008).

⁸ *Id.*

⁹ The Kaiser Family Foundation & Health Research and Educational Trust, Employer Health Benefits Annual Survey 2008, at 14, *available at* <http://ehbs.kff.org/pdf/7790.pdf> [hereinafter Employer Health Benefits Annual Survey 2008]. This survey obtained responses from public and private employers with three or more employees.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 72.

¹² *Id.* at 30. In 2008, 99% of firms with 200 or more workers offer health benefits, while only 62% of firms with 3-199 workers offer health benefits. *Id.*

¹³ *Id.* at 46.

¹⁴ *Id.* at 32.

¹⁵ *Id.* at 190. This is similar to the % of firms offering retiree benefits in 2007, but this number has been decreasing over time. In 1988, 66% of firms offered retiree health benefits. *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See* Boston College Center on Aging and Work Workplace Flexibility, Phased Retirement Fact Sheet (2007), *available at* http://agingandwork.bc.edu/documents/FS08_PhasedRetirement_001.pdf.

¹⁹ Did You Know? Retirement Planning Statistics, *available at* <http://www.tomorrowmoney.org/youngpeople/section.cfm/facts/1926>

²⁰ Life expectancy has increased from 70.8 in 1970 to 77.8 in 2004 and is projected to be 79.2 by 2015. U.S. Census Bureau, Expectation of Life at Birth, 1970 to 2004, *supra* note 1.

²¹ Toossi, *supra* note 5, at 37.

²² Older Workers Would Delay Retirement if Employers Offered Phasing, *supra* note 3.

²³ AARP, Attitudes of Individuals 50 and Older Toward Phased Retirement 3 (2005), *available at* http://assets.aarp.org/rgcenter/post-import/phased_ret.pdf.

²⁴ *Still Working And Loving It*, BUS. WK., Oct. 16, 2006, *available at* http://www.businessweek.com/magazine/content/06_42/b4005101.htm.

²⁵ William C. Byham, 70: *The New 50; Retirement Management: Retaining the Energy and Expertise of Experienced Workers*.

²⁶ “Business Executives’ Attitudes Toward the Aging Workforce: Aware But Not Prepared?” AARP, October 2006.

²⁷ Nonetheless, Monsanto, a multinational agricultural biotechnology corporation headquartered in St. Louis, Missouri, has been successful with its phased retirement program. Monsanto established its Resource Reentry Center (RRC) in 1991. As of September 2006, the RRC had more than 300 active individuals, 175 of whom were on assignment in various departments, including Engineering, Finance, Law, IT, and Research and Development. Joanne Sammer, *Is Phased Retirement A Win-Win?*, BUS. FIN., September 2006, at 31, *available at* <http://businessfinancemag.com/article/phased-retirement-win-win-0901>. To be eligible, one must be a former Monsanto employee and must not have been terminated for poor performance. Monsanto Careers Resource Reentry Center Questions and Answers, <http://www.monsanto.com/careers/opportunities/reentry/qa.asp> (last visited Dec. 17, 2008). The RRC offers managers and former workers a bridge to workforce changes and it allows retirees to continue an active and productive relationship with Monsanto. *Id.*

²⁸ An EBRI survey reports that 41% of workers think they need to accumulate at least \$500,000 by the time they retire to live comfortably in retirement while 16% feel they need between \$250,000 and \$499,999, and 26% think they need to save less than \$250,000 for a comfortable retirement. EBRI, Fast Facts from EBRI, *available at* <http://www.ebri.org/pdf/publications/facts/fastfacts/fastfact07092008.pdf> (discussing the EBRI 2008 Retirement Confidence Survey).

²⁹ EBRI, 2008 Retirement Confidence Survey Fact Sheet

Saving for Retirement in America, at 2, *available at* http://www.ebri.org/files/RCS08_FS2_Saving.pdf.

³⁰ ERISA, 29 U.S.C. §1052 (1974).

³¹ See J. Mark Iwry & David C. John, *Pursuing Universal Retirement Security Through Automatic IRAs* (The Retirement Security Project) (2007) *available at*

<http://retirementsecurityproject.org/pubs/File/RSPAutoIRALongpaperFINAL7.10.2007.pdf>.

³² Automatic IRA Act of 2007, S.1141, was introduced by Senators Bingaman and Smith on April 18, 2007.

S.1141, 110th Cong. (2007). A companion bill, H.R. 2167, was introduced by Representatives Neal and English on May 3, 2007. The Automatic IRA Act of 2007, H.R. 2167, 110th Cong. (2007). Automatic IRA provisions were also included in The Women's Retirement Security Act of 2007, S. 1288, and The Women's Retirement Security Act of 2008, H.R. 5543. S. 1288, 110th Cong (2007); H.R. 5543, 110th Cong. (2008).

³³ However, there are a number of exceptions including employees who have not yet met the plan's minimum age and service requirements and employees who have not completed at least three months of service.

³⁴ Connecticut recently determined that 75 % of small businesses in the state did not offer a retirement savings plan for their employees. A bill was introduced earlier this year mandating the state comptroller to establish a tax-qualified defined contribution retirement program to provide retirement investment plans, including 401(k) plans, to (1) self-employed individuals, (2) businesses with 100 or fewer employees, and (3) certain nonprofit organizations. An Act Concerning Small Business Retirement Plans, S.B. No. 652, 2008 Sess. (Conn. 2008), *available at* <http://www.cga.ct.gov/2008/JFR/S/2008SB-00652-R00CE-JFR.htm> .

³⁵ In Maryland, two bills, H.B. 1228 and S.B 728, were introduced on February 8, 2008, and February 1, 2008, respectively. Both bills sought to establish a Voluntary Employee Accounts Program within the Maryland Supplemental Retirement Plans that would allow non-state employers to enroll in the program to offer tax-deferred defined contribution retirement plans to their employees. Both bills died in the House and Senate respectively. An Act Concerning Maryland Voluntary Accounts Program, H.B. 1228, 425th Sess. (Md. 2008), *available at* <http://mlis.state.md.us/2008rs/bills/hb/hb1228f.pdf>; An Act Concerning Maryland Voluntary Accounts Program, S.B. 728, 425th Sess. (Md. 2008), *available at* <http://mlis.state.md.us/2008rs/bills/sb/sb0728f.pdf>.

³⁶ In Vermont, H. 710 was introduced on January 25, 2008. The bill sought to provide deferred compensation programs for state employees, and for the employees of other eligible entities that elect to participate in the state plan. The bill set up a state board to establish and administer a plan in which assets and income are held in trust in any funding vehicles permitted by the Internal Revenue Code. The Senate version of the bill, S.354, was passed, signed by the governor, and became law on May 20, 2008. An Act Relating to Public Agency Deferred Compensation Plans, H. 710, 2007-08 Sess. (Vt. 2008), *available at* <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-710.HTM>; An Act Relating to Public Agency Deferred Compensation Plans. S.354, 2007-08 Sess. (Vt. 2008) *available at* <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT162.HTM>; VT. STAT .ANN. tit. 3, §§ 650-53 (2008).

³⁷ In California, AB 2940 was introduced on February 22, 2008. The bill sought to establish a system of voluntary, universal, portable retirement accounts for California private employees administered by a state board. The board was expected to design programs that encourage the use of automatic features, including, but not limited to, automatic enrollment and appropriate selection of default investments. AB 2940 amended on July 10, 2008, 2008 Sess. (Cal. 2008), *available at* http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2901-2950/ab_2940_bill_20080710_amended_sen_v94.pdf.

³⁸ Vanguard Center for Retirement Research, *Immediate Income Annuities and Defined Contribution Plans* (May 2008), at 2, *available at* <https://institutional.vanguard.com/iam/pdf/CRRADC.pdf>.

³⁹ William G. Gale and J. Mark Iwry (Brookings Institution), David C. John (The Heritage Foundation), & Lina Walker (the Retirement Security Project), *Increasing Annuitization in 401(k) Plans with Automatic Trial Income*, (The Hamilton Project Paper) (2008) *available at* http://www.brookings.edu/papers/2008/~media/Files/rc/papers/2008/06_annuities_gale/06_annuities_gale_pb.pdf.

⁴⁰ Americans for Secure Retirement Proposal, <http://paycheckforlife.org/ourproposal> (last visited Dec. 12, 2008).

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- ⁴² IRFs are very new, and currently Fidelity and Vanguard offer them, with Charles Schwab, John Hancock Funds, Russell Investment Co., and DWS Scudder expected to join. Margaret Price, *A New Way to Invest After you Retire*, C.S. MONITOR, Dec. 31, 2007, available at <http://www.csmonitor.com/2007/1231/p14s01-wmgn.html?page=1>.
- ⁴³ John Waggoner, *Saving to Retire is Easy as 1-2-3, or a Combo*, USA TODAY, Jan. 18, 2008, available at http://www.usatoday.com/money/perfi/columnist/waggon/2008-01-17-early-retiree-strategies_N.htm.
- ⁴⁴ Business Wire, *Longevity Insurance Pays People for Living a Long Life*, http://findarticles.com/p/articles/mi_m0EIN/is_2008_May_29/ai_n25467633/ (last visited June 11, 2009).
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- ⁴⁷ AARP, *Long-term Care Insurance*, http://www.aarp.org/money/financial_planning/sessionfive/longterm_care_insurance.html (last visited Dec. 18, 2008).
- ⁴⁸ Howard Gleckman, *How Can We Improve Long Term Care Financing* (Center for Retirement Research at Boston College, Boston, Mass.) June 2008, available at http://crr.bc.edu/images/stories/Briefs/ib_8-8.pdf.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
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- ⁵³ I.R.C. §162 (2004) (permitting deductions for all "ordinary and necessary" expenses incurred in the operation of a taxpayer's business).
- ⁵⁴ IRS, *FAQ for Government Entities Regarding Cafeteria Plans*, <http://www.irs.gov/govt/fslg/article/0,,id=112720,00.html#1> (last visited Dec. 18, 2008).
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ SBCA, *Small Business and the Cafeteria Plans* (2002), <http://www.sbca.net/caftplan15.htm>.
- ⁵⁸ Sen. Olympia Snowe (R-ME) introduced S. 988: SIMPLE Cafeteria Plan Act of 2009 on May 6, 2009.
- ⁵⁹ SBA OFFICE OF ADVOCACY, *COST OF EMPLOYEE BENEFITS IN SMALL AND LARGE BUSINESSES* (2005), available at <http://www.sba.gov/advo/research/rs262tot.pdf>.
- ⁶⁰ Paul Fronstin, *Small Employers and Health Benefits: Findings from the 2002 Small Employer Health Benefits Survey*, EBRI ISSUE BRIEF #253, Jan. 2003, available at <http://www.ebri.org/pdf/briefspdf/0103ib.pdf>.
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- ⁶² Fronstin, *supra* note 8, at 187.
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- ⁶⁹ *State and Local Government Pension Plans: Current Structure and Funded Status*, *supra* note, at 3, available at <http://www.gao.gov/new.items/d08983t.pdf>.
- ⁷⁰ Employer Health Benefits Annual Survey 2008, *supra* note 9, at 6.

⁷¹ I.R.C. §401(h)(1)-(6).

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⁷³ Re-insurance Association of America, RAA Fundamentals of Property Casualty Reinsurance, <http://www.reinsurance.org/i4a/pages/index.cfm?pageid=3310> (last visited Dec. 4, 2008).

⁷⁴ Katherine Swartz, *Reinsurance: How States Can Make Health Coverage More Affordable For Employers And Workers*, THE COMMONWEALTH FUND, July 2005, at vi, available at http://www.commonwealthfund.org/usr_doc/820_swartz_reinsurance.pdf?section=4039.

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⁷⁷ Ceci Connolly, *Frist Proposes Health Insurance Reform*, WASH. POST, July 13, 2004, at A4.

⁷⁸ S. 2510, Small Employers Health Benefits Program Act of 2006, 109th Cong. (2006); Ted Kennedy: The Democratic Plan: The Small Employers Health Benefits Program Act, <http://www.tedkennedy.com/content/757/the-democratic-plan-the-small-employers-health-benefits-program-act> (last visited Dec. 4, 2008).

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⁸³ Health, United States, 2007, *supra* note 6, at 115, 398.

⁸⁴ AHIP, GUARANTEEING ACCESS TO COVERAGE FOR ALL AMERICANS, at 2, available at <http://www.ahipbelieves.com/media/AHIP%20Guarantee%20Access%20Plan.pdf>.

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⁸⁶ Health, United States, 2007, *supra* note 6, at 45.

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* at 45.

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