

# U.S. Chamber of Commerce Health and Retirement Priorities for the 113th Congress



The Year in Review and the Year Ahead



U.S. CHAMBER OF COMMERCE



Dear Reader:

The U.S. Chamber of Commerce is a well-regarded thought and advocacy leader for national and global employee benefits issues. Our unmatched grassroots clout enables us to orchestrate business involvement to win critical regulatory and legislative initiatives and advocate for our members' most pressing business issues. This brochure presents some of our recent accomplishments, as well as key priorities, in our proactive health care and retirement agenda.

The Chamber is committed to promoting high value, accessible, and quality employer-sponsored health care through market-based approaches that preserve flexibility and reward innovation. We are determined to protect the retirement security of America's workforce and preserve the ability of employers to provide flexible and comprehensive compensation and benefits to employees.

It is my pleasure to manage the Chamber's dynamic employee benefits portfolio and, if you have not already done so, I encourage you to join the Chamber and help our efforts in shaping the organization's agenda in these critical areas.

Randel K. Johnson  
Senior Vice President  
Labor, Immigration & Employee Benefits

## HEALTH CARE PRIORITIES

### Health Care Reform

Although the Chamber is committed to reforming the nation's health care system to lower costs, improve quality and access, and build a more value-driven system, the Patient Protection and Affordable Care Act (PPACA) does not accomplish these goals. The Chamber opposes forcing employers to fund, or individuals to participate in, a flawed and unaffordable system. Rather than spend years debating how to reinvent the health care system, Congress should immediately take concrete steps, building on the strengths of the current market-based and employer-sponsored system, to help more Americans get better, more affordable health care coverage. Key pieces of the PPACA should be stricken and replaced with market-driven, consumer-based reforms that bolster the health care system and the economy.

Major pieces of PPACA that should be repealed or revised include the following:

- The draconian employer mandate and associated penalties.
- The \$500 billion in new taxes on small businesses, medical industries, and more.
- New insurance rules that effectively outlaw limited benefit plans and hamper the ability of employers to significantly vary plan design.

### Medical Liability Reform

The unpredictable medical tort system burdens our health care system with excessive costs by encouraging the litigation of baseless lawsuits which, in turn, force providers to practice defensive medicine. As a result, doctors are discouraged from entering high-risk specialties and medical malpractice insurance costs are skyrocketing. Consumers and employees suffer as access becomes a challenge and the price of services increases.

The Chamber supports capping the amount of



Phyllis C. Borzi, assistant secretary for Employee Benefits Security at the Department of Labor, speaks before the Chamber's Employee Benefits Committee on the definition of a fiduciary. Lynn Franzoi, chair of the Employee Benefits Committee, looks on.



House Majority Leader Eric Cantor (R-VA) is the luncheon keynote speaker at the Chamber's Controlling Costs: The Price of Good Health event.

noneconomic damages that a jury can award in medical malpractice cases and is interested in proposals to remove medical malpractice cases from the tort system. One viable alternative would be to litigate medical cases in special administrative health courts, similar to bankruptcy courts. Other innovative approaches include reforming joint and several liability, capping trial attorney fees, prescreening cases by expert panels, and protecting providers that follow best practices.

### Health Information Technology

The Chamber supports bipartisan legislation encouraging widespread adoption of health information technology (health IT), which has the potential to lower costs, improve quality, reduce medical errors, and build consistent and continuous



Mark McClellan, M.D., co-chair of the Quality Alliance Steering Committee; director and senior fellow of the Engelberg Center for Health Care Reform; and the Leonard D. Schaeffer Chair in Health Policy Studies at the Brookings Institution, speaks at an Employee Benefits Committee meeting on the implications of the health care reform law.



Sam Kass, assistant White House chef and senior policy adviser for Healthy Food Initiatives at the White House, speaks on the importance of a healthy diet at the Chamber's Innovations in Workplace and Community Wellness event.

care. Health IT initiatives should be bolstered by allowing larger providers to help smaller providers obtain health IT products and training. Also, grant programs should take into account the needs of providers with multiple campuses that would experience increased costs.

## Employer Mandate

Employers voluntarily provide health care coverage to about 160 million Americans. However, a major provision in the PPACA known as the employer mandate imposes additional heavy regulatory burdens on the business community, deters business growth, and creates further economic uncertainty. The Chamber supports repealing the employer mandate to not only protect existing jobs, but to spur the creation of new jobs by removing much of the fear and uncertainty employers are experiencing.

Various business owners have testified on behalf of the Chamber before multiple Congressional committees to highlight the negative impacts the health care reform law has on businesses of all sizes.

- ✦ Brian Vaughn, owner and president of Nearly Famous, Inc., testified before the House Committee on Small Business Subcommittee on Healthcare & Technology

hearing on “Small Businesses and PPACA: If They Like Their Coverage, Can They Keep It?” on July 28, 2011.

- ✦ Dan Withrow, president of CSS Distribution Group, Inc., testified before the Senate Committee on Health, Education, Labor, and Pensions hearing on “Health Reform and Health Insurance Premiums: Empowering States to Serve Consumers” on August 2, 2011.
- ✦ Mary Miller, CEO of JANCOA Janitorial Services, Inc., testified before the House Committee on Oversight & Government Reform hearing “Examining the Impact of ObamaCare on Job Creators and the Economy” on July 10, 2012.

## Workplace Wellness and Disease Management

Wellness programs help control costs throughout the health care system by managing existing cases and preventing millions of new cases of chronic diseases. The Chamber supports both raising awareness of the positive effects of workplace wellness and giving tax-favored status to programs aimed at improving employees' health.

The Chamber promotes these policies through

its leadership in the U.S. Workplace Wellness Alliance by:

- Targeting tax credits for employer-sponsored workplace wellness programs for employees.
- Raising awareness through educational efforts, such as National Workplace Wellness Week.
- Increasing employee engagement through personal responsibility and premium variation.

## Comparative Effectiveness

The Chamber supports research to investigate the comparative effectiveness of various procedures, devices, and life sciences products in order to develop best practices and guidelines for providers. Financing this research should be a joint venture and should not be funded through premium taxes on American workers.

## Medicare

Medicare reform is critical to preserving the program's long-term viability and must include efforts to realign Medicare spending. Medicare's physician payments are set by a sustainable growth rate (SGR) formula that needs comprehensive reform. The program must reimburse providers based on quality, outcomes, and efficiency.

The Chamber advocates strengthening Medicare by:

- Restoring and expanding Medicare Advantage.
- Bolstering quality-focused, performance-driven benchmarks to redesign physician Medicare reimbursements.
- Reforming SGR to end the annual ritual of threatened physician pay cuts, inaccurate budget assumptions, and Medicare cost uncertainties.

## Retiree Health

Some legislators are attempting to force employers to provide or maintain expensive



Steve Larsen, deputy administrator and director at the Center for Consumer Information and Insurance Oversight, Department of Health and Human Services, presents an update on the department's activities at an Employee Benefits Committee meeting.

retiree health plans. The Chamber supports preserving employer flexibility in creating, offering, and augmenting retiree health plans. Rather than tying employers to unaffordable plans, Congress should foster the creation of new vehicles and expand options to incent more employers to offer retiree health and more workers to enroll in plans.

## ERISA Preemption

Employers depend on the Employee Retirement Income Security Act (ERISA) to ensure that they can offer plans uniformly, nationwide, providing fairness to all employees regardless of where they live, work, or receive medical care.

The Chamber will continue to work to protect the foundation of the employer-sponsored health care system by:

- Urging Congress not to dismantle the ERISA framework.
- Opposing state and local efforts to circumvent ERISA preemption and interfere with self-insured plans.
- Co-chairing advocacy efforts in the National Coalition on Benefits, a broad coalition of groups dedicated to protecting ERISA.



Nancy-Ann DeParle, assistant and deputy chief of staff for the president, speaks on the Patient Protection and Affordable Care Act. Randy Johnson, senior vice president of Labor, Immigration & Employee Benefits at the Chamber, looks on.



Mark Rienzi, assistant professor at The Catholic University of America Columbus School of Law, comments on the possible outcomes of the Supreme Court's decision on President Obama's Patient Protection and Affordable Care Act. Carrie Severino, chief counsel and policy director at the Judicial Crisis Network, participates on the panel as well.

## Consumer-Directed Health Products

Consumerism depends on placing health care spending decisions back into the hands of individuals. To do this, employers and workers need health plan options that meet their needs and give them personal ownership of their health care dollars.

The Chamber advocates strengthening these products by:

- Repealing new caps and restrictions on the use of funds from consumer-directed accounts to

- purchase over-the-counter (OTC) medicines.
- Promoting legislation that allows money in Flexible Spending Accounts (FSAs) to be rolled over, thus eliminating the use-it-or-lose-it rule. The Chamber believes that the use-it-or-lose-it rule encourages unnecessary spending and that FSAs should instead promote thoughtful spending and saving for future health care expenses.
- Supporting changes to Health Savings Accounts (HSAs) to make them more flexible and appealing to consumers and plan sponsors.
- Supporting transparency efforts that give employees more information about the quality and costs of health care so that they can be smart shoppers.

## Patient-Centered Medical Home

The Chamber supports the Patient-Centered Medical Home (PCMH), which provides patients with coordinated care through a personal and ongoing relationship with a health care provider. The health care payment and reimbursement system should follow the PCMH model of care in order to improve quality and efficiency in medical care, particularly for patients with chronic conditions. Accountable Care Organizations (ACOs) and other pilot programs envisioned in the PPACA should progress toward the same objectives as the PCMH.

## Cafeteria Plans

Section 125 cafeteria plans are an important part of the benefits landscape, and the Chamber is working on several fronts to ensure that cafeteria plans are accessible and beneficial to both employers and employees, including the following:

- Expanding on the SIMPLE cafeteria plans created under PPACA.
- Urging Congress to change the law to permit self-employed individuals to participate in cafeteria plans.

## HEALTH CARE ACCOMPLISHMENTS

### Health Care Reform: Regulatory Activity

As of January 18, 2013, the Chamber has submitted 55 comment letters in response to 7 Interim Final Regulations (IFRs), 3 Final Rules, 19 Requests for Comments (RFCs), 17 Proposed Rules, 1 Information Collection Request (ICR), 2 Amendments to IFRs, and 6 Requests for Information (RFIs). The Chamber's comments have led to many positive changes in the regulations promulgated to implement the PPACA. The Chamber's specific points, many of which have been incorporated through subregulatory guidance to modify prior regulatory materials, are discussed in this brochure.

### Summary of Benefits and Coverage (SBC)

In response to the Chamber's request for additional time to implement the Summary of Benefits and Coverage (SBC) requirement, on February 14, 2012, the Department of Labor (DOL), the Department of the Treasury (Treasury), and the Department of Health and Human Services (HHS) promulgated a final rule that delayed the compliance deadline for group health plans until the first day of the first plan year that begins on or after September 23, 2012.

Heeding the Chamber's call for increased flexibility, in March and May 2012, the agencies issued guidance under Frequently Asked Questions, which stated that group health plans and sponsors working in good faith to provide the SBC will not face penalties during the first year of applicability.

The Chamber met repeatedly with the departments and argued for simplifying the coverage example requirement and permitting alternative ways to provide consumers with coverage examples to reduce the cost of compiling this data. On June 5, 2012, DOL released coverage examples, a calculator, and related information to provide further assistance to health plans and issuers complying with the SBC requirement.



Bill Feinberg, president of Allied Kitchen and Bath, Inc.; Scott Womack, owner and president of Womack Restaurants; and Randy Johnson, senior vice president of Labor, Immigration & Employee Benefits at the Chamber, participate on a panel on how small businesses are being affected by the health reform law and what they are doing to provide health care to more of their employees at the Chamber's Controlling Costs: The Price of Good Health event.

### Availability of Medicare Data for Performance Measurement

After the Chamber submitted comments on the proposed rule, many of the Chamber's suggested improvements were included in the final rule, which took effect on January 7, 2012. For example, the Chamber suggestions for allowing "qualified entities" to use clinical data in combination with Medicare and other claims data to calculate performance measurements, minimizing the burden and cost of the qualified entity application process, and permitting the release of nationwide Medicare data for benchmarking purposes were included.

### Essential Health Benefits (EHB) Package

In response to the Essential Health Benefits Bulletin (which proposed a transitional approach where the states could select a benchmark plan from a variety of options including plans presently offered in their state), the Chamber submitted comments asking for clarification as to the benchmark selection process and the ability to place duration and visit limits on EHBs.

On February 17, 2012, the Centers for Medicare and Medicaid Services (CMS) issued a bulletin titled Frequently Asked Questions on Essential



Alice Rosenblatt, fellow of the Society of Actuaries, MAAA, CERA, speaks at the Chamber Hill briefing, Insurance 101: How Health Coverage is Priced & Why an Insured Marketplace is Critical.



Gail Hunt, president and CEO of the National Alliance for Caregivers, speaks about corporate initiatives that support employees caring for elderly family members at a luncheon held at the Chamber and sponsored by ReACT (Respect a Caregiver's Time).

Health Benefits to provide guidance on how to comply with this provision in the statute. The bulletin specifically clarified the state EHB benchmark selection process, along with the ability of plans to limit the scope of EHBs with duration and visit limits.

## Employer “Shared Responsibility” Requirement (Employer Mandate)

Following Chamber discussions with the agencies on the operational challenges for employers of tying the “affordable coverage” provision to household income, the Internal Revenue Service (IRS) published Notice 2011-73 proposing a safe harbor, which would allow an employer to measure the 9.5% “affordability test” based on the wages that the employer paid to the employee, rather than on the employee’s household income.

On February 9, 2012, DOL and IRS issued guidance titled Frequently-Asked Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods. The guidance clarified that employers are permitted to use an employee’s W-2 wages as a safe harbor in determining the affordability of employer coverage.

## CLASS Act

On October 14, 2011, HHS made official its decision to halt implementation of the unsustainable Community Living Assistance Services and Supports (CLASS) Act after determining there was insufficient financing for successful implementation of the program. Three days later, on October 17, 2011, the Congressional Budget Office (CBO) announced that repealing the CLASS Act would not carry a cost and therefore would have a “zero” budgetary impact. On January 1, 2013, Congress passed “The American Tax Relief Act of 2012” (H.R. 8) which fully repeals the CLASS Act and replaces it with a commission on long-term care. The Chamber has long opposed the CLASS Act and the unfunded program it would create.



Katie Mahoney, executive director of health policy at the Chamber, gives a policy update at an Employee Benefits Committee meeting.



Randy Johnson, senior vice president of Labor, Immigration & Employee Benefits at the Chamber, speaks about the importance of wellness initiatives in the workplace and the benefits of having healthy and happy employees at the Chamber's Innovations in Workplace and Community Wellness event.

## Health Care Reform: Legislative Activity Repealed the Free Choice Voucher

As part of the 2011 agreement to fund the federal government (H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act, 2011), the “free choice voucher” provision enacted by PPACA was repealed. The free choice voucher would have been effective January 1, 2014, for “large employers” (those with more than 50 full-time equivalent employees), and provided an avenue for an employee to “cash out” his/her health care benefits if he/she earned less than 400% of the Federal Poverty Level and if the share the employee paid towards his/her premium was between 8% - 9.8% of his/her household income. An employer would not have been subject to the free-rider penalty if any of their employees were offered a free-choice voucher.

the accrued benefits of all the workers—this is often referred to as “the last man standing.”

As the number of employer participants dwindles, employers remaining in the plan see their liabilities increase exponentially—forcing them to cover retirees who never worked for them. This system results in untenable contribution levels for the remaining employers, which can force them into insolvency as well. Without reform, many employers—including a number of small, family-owned businesses—are in danger of bankruptcy.

The Chamber intends to work with Congress and other interested parties in finding solutions to long-term funding issues in the multiemployer pension plan system.

## RETIREMENT PRIORITIES

### Multiemployer Funding Reform

Certain multiemployer plans have been particularly hard hit as the current financial crisis exacerbates long-term funding problems resulting from shifting demographic trends and financial problems in certain industries. Due to the nature of multiemployer plans, when one employer goes bankrupt, the remaining employers in the plan become responsible for paying

### Pension Benefit Guaranty Corporation Premiums and Reform

The president’s 2012 budget included an adjustment to premiums collected by the Pension Benefit Guaranty Corporation (PBGC). The administration proposed giving the PBGC board the authority to adjust premiums over time, taking into account risks that plan sponsors pose to both retirees and the PBGC. Congress has also considered this proposal in various bills. The proposals are aimed at decreasing the PBGC’s deficit and, therefore, would increase premium



Douglas W. Elmendorf, director of the Congressional Budget Office, and Paul Ginsburg, president of the Center for Studying Health System Change and research director of the National Institute for Health Care Reform, speak on the rising health care costs at the Chamber's Controlling Costs: The Price of Good Health event.

payments for most companies. The Chamber believes that raising the PBGC premiums, without making comprehensive reforms to the PBGC or the defined benefit system, amounts to a tax on employers that have voluntarily decided to maintain defined benefit plans.

Furthermore, a creditworthiness test, like the one proposed by the administration, would inevitably result in the PBGC becoming an entity that makes formal pronouncements about the financial status of American businesses. This role for a government agency would be inappropriate, especially for private companies and nonprofit entities. As such, the Chamber continues to oppose efforts to increase PBGC premiums without making additional changes—including governance and transparency—that are needed to ensure the viability of the PBGC.

## Required Notices and Disclosures

The Chamber is increasingly concerned about the large number of required notices and whether participants are becoming overwhelmed with the volume of information being provided. Consequently, we are working with Congress and the administration to consolidate and streamline certain notice requirements to ensure that information provided to workers is clear and meaningful.

## Electronic Disclosure

In addition to consolidation and elimination of notices, it is important for regulators to recognize the benefits of electronic delivery. Moreover, we believe that it is critical that the Department of Labor (DOL), the Treasury, and the PBGC create a single, uniform electronic disclosure standard. And as electronic media continues to develop, the Chamber believes that it is necessary for plan sponsors to have the flexibility to adapt to these changes to meet workforce needs.

## Definition of a Fiduciary

On October 21, 2010, the DOL issued a proposed regulation on the definition of a fiduciary under ERISA. While the Chamber acknowledges that it may be appropriate to update the definition of fiduciary at this time, we raised several concerns about the potential impact on ESOPs, broker-dealers, and Individual Retirement Accounts. Moreover, we raised concerns that the proposed rule contained an insufficient economic analysis.

On September 19, 2011, the DOL issued a press release stating that it is going to re-propose the proposed regulation on the definition of a fiduciary. The re-proposal will give the Chamber needed time to work with the DOL and other interested parties to ensure that changes to the current regulations reflect modern realities and protect plans and participants while allowing for the free flow of information and services.

## Single-Employer Funding Reform

Since the financial crisis of 2008, businesses continue to face unexpectedly large pension contributions. The drop in the value of pension plan assets, coupled with the current credit crunch, has resulted in companies facing pension contributions that are double or triple the amount of the expected contribution. The Chamber successfully lobbied Congress to enact the Worker, Retiree, and Employer Recovery Act



Chamber members traveled from across the United States to attend a recent Employee Benefits Committee meeting in Washington, D.C.

of 2008, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, and pension reform in the Moving Ahead for Progress in the 21st Century Act. Additional permanent reform measures are needed. The Chamber will urge Congress to enact permanent provisions to address the challenges presented by the current economic situation and the need for future predictability in the funding rules.

## Retirement Security

As the baby boomers move into retirement, there is greater emphasis on ensuring that people have sufficient assets. Conversations surrounding retirement security include increasing coverage and participation, clarifying and strengthening fiduciary responsibilities, and working to reduce the risk that individuals outlive their retirement assets.

We anticipate further conversation and legislation on the following issues:

- ✦ Automatic IRAs/Universal IRAs: Work with Congress and the administration to create a system that does not burden employers or impose on the private retirement system. In addition, oppose proposals that require an employer mandate, create a TSP II system, or increase ERISA fiduciary liability for employers.
- ✦ Decumulation Strategies: Work with Congress and our membership to reach consensus on legislation to promote useful decumulation strategies pertaining to annuities, long-term care insurance, and other products without overly burdening plan sponsors.

## Tax Reform

While Congress works to reduce the national deficit, it must not eliminate one of the central foundations—the tax treatment of retirement savings—upon which today’s successful system is built. Doing so would imperil the existence of



Speakers at the Chamber's Private Retirement Benefits in the 21st Century: A Path Forward event discuss the retirement white paper. Speakers include representatives from Chamber member companies, congressional committees and offices, and government agencies.

employer-sponsored plans and the future retirement security of working Americans. Therefore, the Chamber will work to ensure that tax incentives for retirement plans are not weakened.

## Phased Retirement

The Chamber is concerned about current retirement systems as well as ensuring that these systems continue to be valuable retirement tools. Encouraging the implementation of phased retirement programs is critical to this goal. Phased retirement programs could be advantageous to employers, workers, and the overall economy. It would be injudicious for statutory and regulatory burdens to restrict what could otherwise be a beneficial situation for all parties. Rather, statutes and regulations should encourage employers to implement phased retirement programs that provide attractive benefits and incentives for workers to stay with their employers by continuing to address the legal, fiscal, policy, and practical barriers to phased retirement.

## State and Local Pension Underfunding

The unfunded liabilities of state and local government pension plans are of significant alarm to Chamber members. The Chamber is concerned about the increased burden on taxpayers—both

individual and corporate. Moreover, we fear that this may give state and local governments an unfair advantage against private employers when competing for employees because the government provides greater benefits than employers can afford, and then employers pay for government-provided benefits through higher taxes. Therefore, we will continue to oppose proposals that would give state and local governments an unfair advantage over private employers when competing for employees.

## Small Business Issues

Small business employers, like other types of employers, choose to offer benefits to their employees as a way to attract and retain talent. Many small business plan sponsors want to continue offering a variety of benefits, but have their own unique issues when doing so.

The Chamber is committed to decreasing the burdens on small business plan sponsors by supporting the following:

- ✦ Tax Penalties Under Code Section 6707: Urge Congress to pass legislation allowing the Treasury secretary not to impose a penalty for failure to disclose reportable transactions when there is reasonable cause for such failure. More than a half dozen of the reportable transactions involve employee benefit plans used by small businesses.
- ✦ Interim Amendments: Work with the IRS and Treasury to decrease the burden on small plan sponsors caused by the interim amendment requirements.
- ✦ Code Section 409A: Urge Congress to amend Code Section 409A to limit the negative impact on small businesses.

## Pension Accounting

The Chamber continues to monitor and engage with the Financial Accounting Standards Board (FASB) and the Securities Exchange Commission (SEC) as these organizations evaluate and

propose changes to the accounting standards for measuring pension and other benefit costs, obligations, and assets.

## RETIREMENT ACCOMPLISHMENTS

### Single-Employer Pension Funding

Successfully lobbied Congress to include pension funding stabilization in the Moving Ahead for Progress in the 21st Century Act (MAP-21 Act). Under the law, interest rate assumptions used to determine pension liabilities must be within 10% (increasing 5% per year through 2016) of the average of such rates for the 25-year period preceding the current year.

Defeated several burdensome proposals that were suggested with the stabilization provision, including an “output” option that would have been inefficient and the imposition of benefit restrictions that would have significantly impaired the ability of certain plans to pay out lump sums.

### PBGC Premiums

Minimized the negative impact of increased PBGC premiums that were included in the MAP-21 Act. Due to its lobbying and education efforts, the Chamber was able to defeat onerous proposals that would have allowed the PBGC to set its own premiums and would have tied premiums to the credit rating of the company. Moreover, the final increase of \$10 billion included in the legislation was significantly less than the original proposal.

### PBGC Reform

Successfully lobbied for reforms to the PBGC in the MAP-21 Act. These reforms included expanding the obligations and responsibilities of the PBGC board of directors, advisory committee, director, and other PBGC officials; establishing a new Participant and Plan Sponsor Advocate; and implementing new quality control procedures for the PBGC.



Rick Kronick, deputy assistant secretary of health policy in the office of the Assistant Secretary for Planning and Evaluation at HHS, discusses regulations defining the essential health benefits package at a Chamber Employee Benefits Committee meeting.



Aliya Wong, executive director of retirement policy at the Chamber, speaks at a Chamber event where the white paper “Private Retirement Benefits in the 21st Century: A Path Forward” is released.

## Definition of a Fiduciary

Successfully lobbied Congress to include in the Consolidated Appropriations Act of 2012 a provision to block the DOL from moving forward with a proposed regulation on the definition of a fiduciary under ERISA.

Successfully lobbied the DOL to re-propose the proposed regulation on the definition of a fiduciary under ERISA.

## Investment Advice

Successfully lobbied the DOL to reverse its position on what constitutes generally accepted investment theories under the computer model for providing investment advice and banning the consideration of historical performance of individual plan investments. On October 25, 2011, the DOL issued its final rule under a provision in the Pension Protection Act of 2006 that creates a prohibited transaction exemption under ERISA whereby a plan investment manager affiliated with an advice provider may receive investment management fees as long as the adviser's compensation does not vary as a result of the advice to a participant or beneficiary (and several other requirements are met). While these issues were collateral to this specific guidance, they were important to clarify to prevent these views from impacting the DOL's views on other methods of providing advice.

## Multiemployer Plan Accounting

Successfully lobbied the Financial Accounting Standards Board (FASB) to substantially revise a proposed accounting change to the financial statements of employers that participate in multiemployer pension plans. Most importantly, the Chamber convinced FASB to remove the requirement that employers include an estimated withdrawal liability calculation on their financial statements. While the Chamber supports additional transparency, the proposed disclosures were generally overly burdensome and would have had a negative financial impact on businesses that contribute to multiemployer plans.



Sen. Orrin Hatch (R-UT), ranking member of the Senate Finance Committee, provides a legislative update at an Employee Benefits Committee meeting.



The Chamber's Employee Benefits Team (top row, left to right): Michael Billet, manager for research policy; David Tully, legislative research associate; Jeff Lungren, executive director of congressional and public affairs (middle row, left to right): Caroline Gangware, staff assistant; and Katie Mahoney, executive director of health policy (bottom row, left to right): Jennifer Pierotti, manager of health care policy; Randy Johnson, senior vice president of Labor, Immigration & Employee Benefits; Aliya Wong, executive director of retirement policy.



Jennifer Pierotti, manager of health care policy at the Chamber, provides a policy update at an Employee Benefits Committee meeting as committee members look on.

## Reporting of and Liability for Certain Substantial Cessations of Operations

Successfully lobbied the PBGC to change its enforcement efforts with respect to ERISA section 4062(e). Instead of using a one-size-fits-all approach, the PBGC will use facts and circumstances to focus on companies that pose real risk. As a result of its new approach, the PBGC estimates that 92 percent of companies sponsoring defined benefit pension plans will not face PBGC enforcement efforts.

In 2010, the PBGC published a proposed rule under ERISA Section 4062(e), which provides if an employer ceases operations at a facility in any location that causes job losses affecting more than 20 percent of participants in the employer's qualified retirement plan, the PBGC can require an employer to put a certain amount in escrow or secure a bond to ensure against financial failure of the plan. These amounts can be quite substantial. We argued that the PBGC proposed rule went beyond the intent of the statute and did not take into account the

entirety of all circumstances. In 2011, the PBGC announced that it would reconsider the proposed rule. However, the PBGC continued to enforce the proposed rule as current law.

## White Paper - "Private Retirement Benefits in the 21st Century: A Path Forward"

On April 23, 2012, the Chamber's Employee Benefits Committee issued a white paper entitled, "Private Retirement Benefits in the 21st Century: A Path Forward." The paper responds to concerns about retirement security and offers guidelines on initiatives and reforms that will bolster the voluntary employment-based retirement benefits system and retirement security for workers. The paper addresses retirement security in a 3-prong manner: Encouraging employers to maintain retirement plans, increasing individual retirement savings, and addressing distribution options. This paper supplements the Chamber's standard retirement priorities and provides a proactive agenda that the Chamber will use to promote retirement security.



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