Private Retirement Benefits in the 21st Century:

ACHIEVING RETIREMENT SECURITY

U.S. CHAMBER OF COMMERCE
Labor, Immigration & Employee Benefits

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.

In response to concerns about retirement security, the Chamber has prepared this white paper to offer guidelines on initiatives that will bolster the voluntary employment-based retirement benefits system and retirement security for workers. These guidelines include ways to strengthen the current private retirement structure and to address the demographic changes and retirement needs of an evolving workforce. The paper also identifies ways to encourage innovation and flexibility in the private retirement system.

The Chamber is determined to protect the retirement security of America's workforce and preserve the ability of employers to provide flexible and comprehensive compensation 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 U.S. Chamber and help shape the organization's agenda in these critical areas.

Sincerely,

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

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INTRODUCTION

The U.S. Chamber of Commerce believes in the importance and vitality of the private employer-provided retirement system. For over a century,[1] the private retirement system has contributed to the financial security of American workers, ensuring their economic well-being and a healthy retirement. Today, the employer-provided retirement system is a bedrock of our retirement structure, and we need to make sure the system continues to be successful for workers and their families.

In April 2012, the Chamber published a white paper titled *Private Retirement Benefits in the 21st Century: A Path Forward.* The paper recommended proposals aimed at bolstering the voluntary employment-based retirement benefits system and retirement security for workers. More specifically, it outlined initiatives focused on ways for employers to create and maintain retirement plans, incentives for workers to increase their savings, and ways to make retirement assets last for future retirees.

Since the publication of the 2012 paper, several issues were successfully resolved—particularly issues related to defined benefit plans. In 2012, permanent changes were made to the single-employer funding rules to account for low interest rates owing to the financial crisis.[2] Over several years and concluding in 2015, the Treasury Department finalized the hybrid plan regulations. Most recently, Congress passed the Multiemployer Pension Reform Act (MPRA), which included significant reforms to the multiemployer system and also redefined the cessation of operations rules under Section 4062(e) of the Employee Retirement Income Security Act (ERISA).[3]

The Chamber played an important role in enacting these provisions, which have assisted in strengthening the employer-provided retirement system and increasing retirement plan coverage for workers.

This white paper developed by the U.S. Chamber of Commerce Employee Benefits Committee builds on these successes and the earlier proposals and also focuses on the evolving needs of workers and employers as demographics change in the years to come. As the retirement landscape brings new challenges, it is important for policymakers and regulators to modernize the legal framework of our retirement system in order to ensure its future success.

Continue the Success of the Private Retirement System

The legislative and regulatory successes outlined above have been positive steps for our employer-provided retirement system. According to recent data from the Bureau of Labor Statistics (BLS), there has been an upward trend in the percentage of private employers offering retirement plans to their workers, including the percentage of workers having access to retirement plans.[4] In 2015, 66% of workers in the private sector were offered a retirement plan by their employer, according to the BLS.[5] However, additional steps are necessary to continue the success of this system. It is imperative for policymakers and regulators to continue to develop additional initiatives that maintain this positive trajectory and build on the success of the private retirement system.

To advance the public discussion of achieving retirement security, the Chamber offers proposals in three key areas:

Strengthening the Current Retirement Structure. A successful private retirement system is dependent upon a sound legal framework that encourages employers to offer retirement plans and workers to participate in the plans. Some of the current laws, however, are becoming obsolete and need to be updated. Among the key issues addressed in this section are comprehensive tax reform, particularly the need to provide the proper tax incentives for workers and employers; updating laws for plan sponsors that want to retain defined benefit plans; simplifying and streamlining notice requirements under ERISA; preserving retirement assets; and growing plan sponsorship among small businesses.

Addressing the Demographic Changes and Retirement Needs of an Evolving Workforce. The retirement landscape and workforce demographics are evolving rapidly, and it is imperative that our laws be responsive to those changes. Among the topics discussed in this section are longevity issues and educating workers on how to maximize their savings to achieve retirement security.

Encouraging Innovation and Flexibility. As workforce demographics evolve in the coming years, employers are committed to offering retirement plans that meet workers' changing needs. However, the industry's ability to design innovative retirement products and services depends on whether the legal framework of our retirement system also evolves. Policymakers and regulators must create an

environment that facilitates stakeholder input as new laws are developed and that increases industry representation on agency advisory committees and boards. This section focuses on these issues as well as proposes ways to encourage new plan designs and initiatives aimed at meeting the future needs of workers and retirees.

The Chamber welcomes the opportunity to advance this debate and to hold a public discussion on the retirement security proposals outlined in this paper.

OVERVIEW OF RECOMMENDATIONS

I. Strengthening the Current Retirement Structure

a. Support retirement security through tax policy.

   i. Maintain existing tax incentives for retirement savings.
   ii. Encourage Congress to look beyond the 10-year budget window to determine the costs of tax incentives for retirement savings.
   iii. Use revenue from retirement provisions only in the context of comprehensive retirement reform.

b. Enact reforms to Multiple Employer Plans (MEPs) to expand their use.

   i. Implement safe harbors for MEP sponsors and adopting employers to immunize them from noncompliant adopting employers.
   ii. Simplify reporting and disclosure obligations under ERISA.
   iii. Issue guidance that states "employer commonality" is not required to establish a MEP.

c. Streamline notice requirements and encourage the use of electronic disclosures.

   i. Recommend congressional review of all notice requirements.
   ii. Create a uniform standard that allows electronic delivery to be the default delivery option.

d. Develop incentives for plan sponsors that want to maintain defined benefit plans.

   i. Increase Pension Benefit Guaranty Corporation (PBGC) premiums only in the context of comprehensive retirement reform.
   ii. Promote further reforms for multiemployer defined benefit plan funding.
   iii. Develop a permanent solution for nondiscrimination testing for frozen plans.
   iv. Ensure that mortality tables are accurate and consistent.

e. Address the required minimum distribution rules.

   i. Eliminate the required minimum distribution rules.
   ii. Alternatively, enact modifications to the required minimum distribution rules to reflect today's workforce.

f. Increase the involuntary cash-out limit.

g. Facilitate the preservation of retirement assets.

   i. Allow 401(k) plan participants to continue to make elective contributions following a hardship distribution.
   ii. Extend the rollover period for plan loan amounts.

h. Encourage the increase of plan sponsorship among small businesses.

   i. Enhance the small business tax credit for 401(k) startup costs by expanding it and making it refundable.
   ii. Create a new optional nondiscrimination test for average deferral percentage testing.
   iii. Eliminate top-heavy rules; or, alternatively, relax the rules to encourage greater implementation and maintenance of plans.
   iv. Add a small business representative to advisory councils at regulatory agencies with jurisdiction over retirement plans.
   v. Facilitate the expansion and use of MEP designs.

II. Addressing the Demographic Changes and Retirement Needs of an Evolving Workforce

a. Encourage employers to offer voluntary products that address longevity issues.

   i. Allow employees, within reasonable limits, to access 401(k) plan assets in order to purchase long-term care insurance; and encourage employers to offer long-term care insurance through cafeteria plans.
   ii. Encourage employers to offer longevity insurance through cafeteria plans.
   iii. Permit employers to offer retiree health savings accounts through cafeteria plans.

b. Eliminate barriers to phased retirement.

   i. Continue to treat phased retirement programs and practices as discretionary arrangements.
   ii. Ensure that any rules or legislation regarding phased retirement programs retain experienced workers with critical skills, combat labor shortages, and allow businesses to remain competitive.
      1. Clarify that phased retirement benefits are not protected under Code Section 411(d)(6).
      2. Eliminate restrictions against rehiring people who have recently retired.
      3. Allow in-service distributions at an early retirement age as defined in the plan.
      4. Exclude plan beneficiaries that participate in a company's phased retirement program from the general discrimination testing for the plan.
      5. Allow, but do not require, employers to continue to offer health benefits to phased retirees.
      6. Clarify that phased retirees are not held to a different standard under labor laws.

c. Encourage additional distribution options to facilitate lifetime income.

   i. Educate participants about decumulation options.
   ii. Encourage and incentivize employers to offer retirement plans with lifetime income options.

d. Encourage and expand retirement education and literacy, whether provided by employers or others, with appropriate protections that do not expand liability under ERISA.

e. Ensure that state-sponsored retirement programs do not undermine ERISA or create unfair competition in the marketplace.

   i. Maintain ERISA preemption.
   ii. Develop targeted solutions to increase retirement coverage.
   iii. Avoid unnecessary complexity and unfair competition.

f. Encourage the voluntary use of private disability insurance and further the education of its benefits.

III. Encouraging Innovation and Flexibility

a. Provide small businesses a dedicated voice on federal advisory councils.

b. Assess the future role and mission of the PBGC.

   i. Consider new roles for the PBGC and examine its strategic objectives.
   ii. Enhance PBGC governance procedures.
   iii. Encourage collaboration with the Participant and Plan Sponsor Advocate to create a PBGC correction program and missing participants program.

c. Enhance the retirement system by encouraging new plan designs.

d. Encourage the use of automatic plan features.

   i. Increase safe harbor adoption by removing the upper auto deferral limit and relaxing the matching formula.
   ii. Encourage plan sponsors to adjust language about automatic escalation by informing participants they can "opt out," "opt down," or "opt up" so that participants can recognize it is not an all-or-nothing decision.
   iii. Encourage plan sponsors to increase the automatic enrollment default referral rate.

e. Promote the benefits of Employee Stock Ownership Plans (ESOPs).

   i. Educate Congress and the administration about the benefits of ESOPs.
   ii. Support legislation that promotes the formation and maintenance of ESOPs.

I. Strengthening the Current Retirement Structure

Private-sector retirement plans are playing a larger role in ensuring the economic well-being of Americans during retirement. Over the past four decades, more retirees have received income from private retirement plans, and the amount of income generated from those plans has also increased. In 2013, 33% of retirees received income from a private retirement plan, compared to 21% in 1975.[6] Among retirees receiving income from a private retirement plan, the median income received per person in 2013 was $6,640, compared with $4,862 in 1975 (in 2013 dollars).[7] Moreover, the total value of private retirement plan assets, both in defined benefit and defined contribution plans, has increased significantly since 1975.[8]

While private-sector retirement plans play a key role in enabling the retirement security of American workers, a number of current issues must be addressed as we think about the future of the private retirement system. The Chamber believes that strengthening this base is critical to maintaining the success of the private retirement system for generations to come.

A. Support Retirement Security Through Tax Policy

Maintain Existing Tax Incentives for Retirement Savings. Preserving current tax incentives for retirement saving is critical. Today, about 80 million households have a combined $24.8 trillion earmarked for retirement within defined benefit plans, defined contribution plans, IRAs, and annuities.[9] As Congress considers comprehensive tax reform, the Chamber urges careful consideration of the impact of changes to tax incentives for retirement plans.

Employer-sponsored retirement plans have introduced tens of millions of American workers to retirement saving. Eliminating or diminishing the current tax treatment of employer-provided retirement plans would jeopardize the retirement security of these workers, affect the role of retirement assets in the capital markets, and create challenges in maintaining the quality of life for future generations of retirees.[10]

Qualified plans provide significant benefits to employers and employees by encouraging retirement saving through favorable tax treatment. They allow employers to obtain a tax deduction for plan contributions and allow employees to delay paying taxes on this benefit until funds are distributed. Recent research finds that the single best predictor of retirement readiness is participation in a work-based savings plan, and employees save more when an employer plan is available than they would save on their own.[11] Payroll deduction and

employer matching contributions encourage a savings culture, which is enhanced by tax incentives like the Savers' Tax Credit.

A number of proposals have been put forth as alternatives to the current tax treatment for retirement plans. However, substantial evidence shows that changing the tax treatment or lowering contribution levels will reduce retirement savings and result in fewer employers offering retirement plans to their employees. The lowest-paid employees stand to be the most negatively affected.[12] Moreover, a large majority of households with defined contribution plans say that immediate tax savings from their plans are a big reason to contribute, and 79% of U.S. households think that continuing to provide tax incentives to promote retirement saving should be a national priority.[13] Therefore, the ramifications of eliminating tax incentives for retirement plans are far too great to dismiss lightly. It is critical to future retirees to ensure that we not only keep the private retirement system but also enhance and strengthen the system to ensure further retirement security for millions of Americans.

The following example highlights the importance of the current tax incentive for investing in an employer-provided retirement plan—particularly how such an investment lowers an employee's current taxable income. Assume an employee's salary is $40,000 and her tax bracket is 25%. When the employee contributes 6% of salary ($2,400) to a tax-deferred 401(k), her taxable income is lowered to $37,600. The income tax on $37,600 is $600 less than the tax on the full $40,000 salary. Thus, the employee pays less in current taxes and, for a contribution of $2,400, the employee will notice only a $1,800 difference in take-home pay. Furthermore, the investment earnings in the employee's 401(k) will also grow tax free until withdrawal. Therefore, the tax savings is a powerful incentive for employees to save for retirement.

While we work to enhance the current private retirement system and reduce the deficit, we must not eliminate one of the central foundations—the tax treatment of retirement savings—upon which today's successful system is built.[14] Doing so would imperil the existence of employer-sponsored plans and the future retirement security of working Americans.

Encourage Congress to Look Beyond the 10-Year Budget Window to Determine the Costs of Tax Incentives for Retirement Savings. Much of the discussion about comprehensive tax reform has focused on base broadening, which eliminates or reduces tax expenditures. Unfortunately, the tax incentives for retirement plans are treated as tax "expenditures" for the purposes of budget scoring. However, the tax incentives for retirement plans are not a complete revenue loss; rather, they are a deferral of taxable

income. At the time of retirement, deferred amounts are withdrawn and taxed at normal income tax rates. Therefore, retirement incentives are not truly tax expenditures but are often recouped outside of the congressional 10-year budget window.[15] Since the costs of retirement tax incentives are often overestimated, the Chamber urges Congress to keep this inconsistency in mind during tax reform. Any changes to tax incentives for retirement plans would not create the "savings" that is reflected in the scoring process and would have a detrimental impact on the retirement security of millions of American workers, not to mention the possible reduction in tax revenues in the future.

Use Revenue from Retirement Provisions Only in the Context of Comprehensive Retirement Reform. The Chamber is very concerned about the use of retirement provisions as revenue raisers.[16] Changes in retirement provisions should be considered only in the context of comprehensive retirement reform and after there has been ample opportunity for discussion, careful consideration of the potential impact, and buy-in from all interested parties. The use of retirement provisions solely as revenue raisers is shortsighted and does not achieve the goal of enhancing retirement security for workers.

As Congress works through tax reform—whether as a comprehensive package or in stages—the Chamber recommends that policymakers move forward with proposals that encourage and increase retirement savings.[17] The Chamber looks forward to being a constructive participant in the tax reform debate and advancing proposals that continue the success of our employer-provided retirement system.

B. Enact Reforms to Multiple Employer Plans to Expand Their Use

The Chamber views Multiple Employer Plans (MEPs) as a possible tool to encourage small businesses to implement retirement plans. A MEP is a single plan that is maintained by a MEP sponsor and one or more unrelated employers ("adopting employers"). With the spread of state-sponsored retirement plans,[18] there is increased pressure to encourage private-sector solutions to address the coverage gap. MEPs offer an attractive and cost-efficient alternative for small businesses for which a stand-alone 401(k) plan is not feasible.

Moreover, MEPs allow for the pooling of resources to give small businesses the opportunity to tailor plan provisions in a way that would not be possible in a prototype plan. The Chamber believes that MEPs can reach a potentially different audience than other plan designs because organizations (such as state chambers) would be able to offer them to

members. Thus, the use of MEPs could be expanded through trade associations and other organizations that work closely with small businesses.

MEPs can promote better retirement savings behavior for employees by providing them a menu of investment options, better ensuring that plan participants will be able to tailor their portfolios to their needs and retirement goals. MEPs can also provide small businesses with enhanced opportunities for cost-effective retirement planning education programs for employees through the pooling of resources with other small businesses. Enhancing small businesses' ability to offer retirement plans will allow them to be better equipped to compete for talent.

Another key advantage of a MEP is the centralized functions that the MEP sponsor can provide. Costs are shared among the adopting employers, regardless of the number. For example, one plan administrator, trustee, and named fiduciary can act for the entire MEP. The MEP can provide centralized payroll, one investment lineup, and one annual report and audit for the entire plan. This translates to substantial economies of scale and cost efficiencies over stand-alone plans for small businesses.

However, there are also significant disadvantages to participating in a MEP, the biggest being that every employer is jointly liable for the qualification failures of every other employer in the MEP. This liability can be a daunting hurdle for many employers. In addition, some employers may be discouraged by the inability to find a MEP sponsor or by the notice and disclosure requirements that are not assumed by the plan administrator.

Amending several of the rules regarding MEPs could significantly expand their use. Accordingly, the Chamber recommends the following changes:

- Implement safe harbors for MEP sponsors and adopting employers to immunize them from noncompliant adopting employers.
- Simplify MEP reporting and disclosure obligations under ERISA. Particularly, reconsider the annual audit requirements and consolidate Form 5500 filings and Summary Plan Description (SPD) notices.
- Issue Internal Revenue Service (IRS) and Department of Labor (DOL) guidance that states "employer commonality" is not required to establish a MEP. While the Chamber believes that there is no basis to apply this requirement to MEPs, there is sufficient ambiguity to create reluctance on the part of employers who may otherwise consider participation in a MEP.[19]

The Chamber believes that enacting these changes will help unlock the potential for MEPs and expand employee participation, thus reducing the coverage gap.

C. Streamline Notice Requirements and Encourage the Use of Electronic Disclosures

Recommend Congressional Review of All Notice Requirements. Consolidating and streamlining certain notice requirements would make retirement plan administration less burdensome for all businesses and small businesses in particular. Currently, plan sponsors and participants are overwhelmed by the disclosure requirements. This burden is especially acute for small businesses that may not have a human resources department to focus on notice requirements.[20] Furthermore, the notice requirements do not occur in a vacuum. Most employers that offer a retirement plan also offer other benefit plans such as a health care plan; therefore, employers are also subject to those notice requirements. Additionally, employers are required to provide many other notices outside of the ERISA context.[21]

In general, the Chamber recommends a congressional review of all retirement plan notices under ERISA and the tax code to determine where overlap and duplication occur. Specific recommendations include the following:

- Eliminating the notice for the 3% nonelective safe harbor. While the notice may have intended to serve a policy purpose at one time, it appears to serve no purpose today.
- Including the 401(k) safe harbor match information in the Summary Plan Description rather than remaining as a stand-alone notice.
- Replacing quarterly investment statements with annual notices for participants who have Internet access to their investment account information.

Many more notices can be consolidated or eliminated. A thorough congressional review could identify many ways of relieving unnecessary administrative burdens of little or no marginal utility while ensuring that participants receive information that is meaningful and relevant.

Create a Uniform Standard That Allows Electronic Delivery to Be the Default Delivery Option. In addition to consolidation and elimination, it is important for regulators to recognize the benefit of electronic delivery. We believe that it is critical that the DOL, the Treasury Department, and the PBGC create a single, uniform electronic disclosure standard.

The Chamber recommends that the DOL's safe harbor for the use of electronic delivery of required disclosures be changed in accordance with the guidance provided under Field Assistance Bulletin 2006-3.[22] The bulletin provides that with respect to the furnishing of pension benefit statements, good faith compliance is met if the disclosure is provided in accordance with Treasury regulations.[23] The Treasury regulations provide that information may be given electronically without consumer consent provided that the "electronic medium used to provide an applicable notice must be a medium that the recipient has the effective ability to access." The Treasury standard differs from the DOL standard in that the ability to effectively access the electronic medium is not required to be in a location where the participant performs his job duties and use of the medium does not have to be an integral part of those duties.

Beyond this initial step, we recommend that the DOL change its standard for electronic delivery to encourage the use of electronic delivery and to allow—for those plan sponsors that so choose—that electronic delivery be the default delivery option for benefit notices. The Chamber believes that modernizing the restrictive rules on electronic delivery in this manner is a critical element in the larger task of reforming employee benefit plan notice and disclosure requirements. These changes can allow for the provision of important information without it being submerged in an avalanche of rarely used information.

In addition, as electronic media continue to develop, we believe that it is necessary for plan sponsors to have the flexibility to adapt to these changes to meet workforce needs.

D. Develop Incentives for Plan Sponsors That Want to Maintain Defined Benefit Plans

Defined benefit plans are an integral part of the national economy. Their $3 trillion in assets represent a significant share of the nation's long-term capital.[24] In 2013, defined benefit plans paid out over $229 billion in retirement benefits.[25] Despite the decreasing numbers of defined benefit plans, many sponsoring employers remain committed to providing these benefits as an integral part of their employees' compensation packages. However, several statutory and regulatory hurdles make it difficult for these employers to maintain defined benefit plans. This section addresses issues aimed at assisting employers that continue to offer defined benefit plans.

Increase PBGC Premiums Only in the Context of Comprehensive Reform. The Chamber remains concerned about continued increases to PBGC premiums, most recently in the Bipartisan Budget Act of 2015.[26] Such premium increases restrict the employers' ability to fund and maintain their defined benefit plans, creating a disincentive to maintain these plans. PBGC premiums should be affordable, administrable, fair, consistent, and predictable. Moreover, premiums should not be increased except as part a long-term plan to address the future of private-sector defined benefit plans and the PBGC.

Since its establishment in 1974, the PBGC has regularly operated at a deficit.[27] This ongoing deficit has led to many concerns about whether the PBGC can continue as a viable entity on its own or if a federal bailout will be necessary in the future. While issues within the single-employer and multiemployer pension systems differ, the Chamber believes that premium increases in either program must be part of a comprehensive review of the PBGC and the private retirement system.

Unfortunately, however, increases to PBGC premiums have occurred more and more frequently—three times in the past four years—as significant revenue raisers.[28] Every additional dollar that employers must pay to the PBGC is one less dollar that can be used to fund participant benefits, expand businesses, create jobs, and grow the economy. Instead, premium increases foster economic uncertainty, hamper investment, endanger jobs, and constrain economic growth. According to a recent study, adding more premium increases to the previous premium hikes in 2006, 2012, and 2013 equates to a potential loss of 42,000 jobs per year on average, peaking at 67,000 lost jobs in 2017 and a $51.4 billion hit to the U.S. economy.[29] Congress could save an average of 24,500 jobs per year by rejecting any additional premium increases. PBGC premium increases also create an unfair playing field among employers, since only the employers that voluntarily provide defined benefit pension plan benefits face this tax burden.

Promote Further Reforms for Multiemployer Defined Benefit Plan Funding. The Multiemployer Pension Reform Act (MPRA) was passed at the end of 2014 and is a significant first step in comprehensive reform.[30] The enactment of the MPRA was welcomed by the Chamber and its employer members that contribute to multiemployer plans. The precarious state of underfunding by many multiemployer plans threatens insolvency for such plans and for the PBGC and is a serious threat to participating employers. A bold approach was necessary to permit the survival of plans in critical and declining status, and the solutions offered by the MPRA (e.g., partition by the PBGC and benefit suspensions by the underfunded plans) should be recognized as essential components of an overall approach to

restoring financial stability to troubled plans. Nonetheless, while MPRA is a strong first step in multiemployer pension reform, the Chamber believes that further attention to the problem is necessary. Specifically, Congress needs to address the withdrawal liability issue.[31]

Withdrawal liability is a great burden that could force employers to stay in multiemployer plans even when it is not economically feasible.[3] The Chamber feels that a comprehensive solution must be sought to allow for a more robust multiemployer plan system and to maintain equity between contributing employers. Many Chamber members have gotten estimates of withdrawal liability that exceed the net worth of the company. Clearly, this outcome was never contemplated when withdrawal liability was implemented and should be rectified. As such, the Chamber believes that additional reforms are needed to address these employer concerns.[33]

Develop a Permanent Solution for Nondiscrimination Testing for Frozen Plans. Many companies designed their transition from a defined benefit structure to a defined contribution structure in a way that allowed older, long-service employees who were close to retirement to maintain their then-current defined benefit pension plan. However, as these grandfathered employees continue to work, they are becoming highly compensated employees. Since no additional employees are entering the plan, the number of non-highly compensated employees is becoming smaller. This phenomenon is making it difficult for companies to pass the discrimination testing. The Chamber believes that companies that passed nondiscrimination testing at the time of the plan freeze should be deemed as continuing to pass as long as no significant amendments are made to the plan.

Ensure That Mortality Tables Are Accurate and Consistent. Defined benefit plans use a number of assumptions to calculate funding levels and future liabilities. A key factor in setting these assumptions is the mortality tables issued by the Treasury Department and the IRS.[34] Employers have raised concerns in the past regarding the accuracy of these tables and the underlying projections.[35] The Treasury and the IRS are contemplating possible revisions to current mortality tables through future regulations.[36] Since the new tables can have a significant impact on liability calculations, including increased PBGC premiums and higher lump-sum payments, the Chamber is committed to working with all interested parties to ensure the accuracy of the mortality tables.

E. Address the Required Minimum Distribution Rules

Eliminate the Required Minimum Distribution Rules. The required minimum distribution (RMD) rules generally require that retirement plan participants receive annual distributions from their 401(k) or IRA accounts beginning at age 70½.[37] Participants can delay distributions if they are still working. However, if the account owner is a 5% owner of the business sponsoring the retirement plan, she must begin receiving distributions at age 70½ regardless of whether she is working or retired.[38]

In 1962, Congress enacted the original RMD rules for Keogh plans (retirement plans for self-employed individuals) requiring plan owners to begin taking distributions by age 70½.[39] The legislative intent was to ensure that the tax benefits provided by the retirement account were used to fund retirement and not be an indefinite tax shelter.[40] Since then, RMD rules have been imposed on all types of retirement plans, although the 70½ requirement age established in 1962 has remained in place.

The Chamber recommends that the RMD rules be eliminated altogether because the rules are complicated and their application provides limited value. The RMD rules and the age requirement have not kept pace with today's labor market, which has evolved significantly as people live longer, enjoy healthier lives, and, hence, remain in the workplace longer. Life expectancy in 1962, the year the RMD rule was established, for someone who reached age 65 was 13.3 years for males and 17.7 years for females.[41] As of 2012, the life expectancy at age 65 is 18.9 years for males and 20.9 years for females.[42] Because Americans are living and working longer, it is imperative to reconsider the original purpose of the RMD rules in order to ensure the retirement security of workers.

Alternatively, Enact Modifications to the Required Minimum Distribution Rules to Reflect Today's Workforce. If the RMD rules are not eliminated, the Chamber makes the following recommendations:

- Move the starting age to 75 to match longevity increases.
- Treat 5% owners as all other account holders and permit them to continue working and not begin required distributions.

F. Increase the Involuntary Cash-Out Limit

Plan sponsors are allowed to automatically cash out, without participant consent, accounts for separated participants that are less than $5,000. Plan sponsors find this to be a valuable rule because it streamlines administrative costs associated with participants who are no longer affiliated with the employer. Congress last increased the cash-out limit from $3,500 to $5,000 in 1997, and before that the limit was increased in 1984.[43]

The Chamber believes that increasing the cash-out limit is long overdue. Congress increased the limit only twice in 32 years, and it has been 19 years since the last increase. Moreover, this limit is not subject to indexing as are many other limits in the retirement system.[44] Absent congressional action, employers will have to assume rising financial costs and fiduciary liabilities for former employees' assets, which is particularly burdensome for small businesses. Therefore, the Chamber recommends that Congress increase the involuntary cash-out limit and include automatic indexing so that the cash-out does not become outdated.

G. Facilitate the Preservation of Retirement Assets

An important component of retirement security is ensuring that retirees have sufficient assets to fund their retirement. Congressional action in key areas could help ensure that participants are able to continue to make retirement contributions during financially difficult times.

Allow 401(k) Plan Participants to Continue to Make Elective Contributions Following a Hardship Distribution. The Chamber urges Congress to allow 401(k) plan participants to continue making elective contributions following a hardship withdrawal. Due to the extended financial crisis, many workers have had to take hardship distributions from their retirement plans. The loss of retirement savings should not be exacerbated by prohibiting these workers from making ongoing contributions to their retirement plans.

Extend the Rollover Period for Plan Loan Amounts. The Chamber supports an extended rollover period for plan loan amounts after termination of employment. A participant who defaults on a loan is treated as receiving a deemed distribution of the outstanding loan at the time of the default. The participant is taxed on the amount of the default unless he makes a rollover contribution to an IRA within a 60-day period. Since relatively few participants make a rollover contribution in connection with a plan loan default due to termination of employment,

extending the rollover period could decrease the number participants who default on their outstanding loans and incur tax penalties in addition to the loss of retirement savings.

H. Encourage the Increase of Plan Sponsorship Among Small Businesses

Many small businesses, like larger employers, offer retirement benefits to their employees. These small businesses want to continue to offer benefits but have their own unique challenges. Other small businesses would like to start retirement benefits but face significant burdens.[45]

Policymakers can take several steps to increase plan sponsorship and participation among small businesses. Although the recommendations below would also be helpful to larger businesses, we have highlighted them under this section because we think they would particularly incentivize small plan sponsors.

Enhance the Small Business Tax Credit for 401(k) Startup Costs by Expanding It and Making It Refundable. Enhancing the current small business tax credit for 401(k) startup costs would encourage greater plan formation. The credit is allowed for the first three years of startup costs for a new small business retirement plan (with fewer than 100 participants) of up to 50% of the first $1,000 (i.e., $500) in startup administrative and retirement education expenses.[46]

The current credit is too small and short-lived to change behavior. The Chamber recommends expanding the credit and making it refundable to increase the incentive for small businesses to set up 401(k) plans.

Create a New Optional Nondiscrimination Test for Average Deferral Percentage Testing. Another step policymakers could take to assist small businesses is to simplify the average deferral percentage (ADP) test for nondiscrimination. For example, today a plan would not pass the ADP test if (1) non-highly compensated employees' contribution percentage is less than 6%, and (2) the contribution percentage of highly compensated employees is 200% or more of that amount. If non-highly compensated employee contributions exceed 6%, then the plan would pass the ADP test.[47] The current test is overly complex and should be simplified.

Eliminate Top-Heavy Rules; or, Alternatively, Relax the Top-Heavy Rules to Encourage Greater Implementation and Maintenance of Plans. The top-heavy rules are an unnecessary burden on employers that want to offer a 401(k) plan but are not inclined or are unable to provide a matching contribution.[48] Under current requirements, if a key employee makes a deferral and the plan is top heavy, it triggers a 3% required contribution for non-key employees.[49] In addition, the deferrals made on behalf of family members of key employees are attributed to the key employee, thereby increasing the likelihood of triggering the top-heavy contribution. Because these rules directly affect the decision makers and owners in the company, they may effectively deter the implementation of the plan, which would have benefited all employees.[50]

The Chamber believes that the top-heavy rules are unnecessary since the contributions are already subject to ADP testing to ensure equanimity between highly paid and non-highly paid employees. Therefore, we believe the top-heavy rules should be eliminated. If they are not eliminated, we recommend that the rule be modified to encourage greater implementation and maintenance of retirement plans. For example, eliminating the requirement that deferrals made by family members be attributed to the key employee would be extremely useful.[51]

Add a Small Business Representative to Advisory Councils at Regulatory Agencies With Jurisdiction Over Retirement Plans. Small businesses play an important role in the debate over the effectiveness of the voluntary employer-provided system; therefore, it is important to increase small business representation in the debate.[52] The advisory councils to the DOL, the IRS, and the PBGC are key sources of input to those agencies. However, none of them have a seat devoted to small business.[53] A meaningful way to increase small businesses' voice in the discussion of the employer-provided system is to have a small business representative on advisory committees and councils at regulatory agencies with jurisdiction over retirement plans.

Facilitate the Expansion of Multiple Employer Plan Designs. As highlighted earlier in the white paper, MEPs can be an important vehicle to encourage small businesses to implement retirement plans. MEPs allow small businesses to pool their resources, enabling them to offer their employees retirement plans and compete in the marketplace for top talent. The Chamber recommends that policymakers and regulators facilitate the expansion of MEPs.[54]

II. Addressing the Demographic Changes and Retirement Needs of an Evolving Workforce

Americans are living longer owing to improvements in health care and nutrition and an emphasis on better lifestyle choices.[55] Accordingly, as life expectancy increases, the amount of time spent in retirement is also rising. This demographic change underscores the importance to save more in order to ensure economic security during a lengthier retirement.

There are many ways of addressing this issue—including encouraging people to continue working longer. For example, changes are being made to the Social Security retirement age. However, there should also be consideration for those who cannot continue to work due to a disability or the need to care for a spouse or family member. The recommendations below address our rapidly changing demographics and evolving workforce.

A. Encourage Employers to Offer Voluntary Products That Address Longevity Issues

Participants may find a number of voluntary products helpful in managing retirement assets. Not every product nevertheless, will be appropriate or necessary for every participant. Therefore, we recommend that employers be able to make these products available to their workers in the most efficient and flexible way possible, such as through a cafeteria plan or with 401(k) plan savings.

Allow Employees, Within Reasonable Limits, to Access 401(k) Plan Assets in Order to Purchase Long-Term Care Insurance; and Encourage Employers to Offer Long-Term Care Insurance Through Cafeteria Plans. The increase in life expectancy is spurring a need for long-term care in our society.[56] The number of Americans in need of long-term care services, either at home or in institutions, is projected to increase from 12 million today to 27 million by 2050, and 70% of people who reach age 65 will require long-term care services at one point in their lives.[57] Moreover, 45% of Americans aged 40 and older have provided long-term care for a family member or close friend at some point.[58]

Paying for long-term care can be prohibitively expensive. Long-term care costs after age 65 is estimated to be about $138,000.[59] These rising costs are particularly troubling because families will pay about half of the total share of long-term care costs through out-of-pocket spending, which can be a drain on personal savings, retirement accounts, and other assets.[60] About the other half (44.8%) of these long-term costs will be borne by government programs,

particularly Medicaid and Medicare.[61] Therefore, encouraging the purchase of long-term care policies could have far-reaching benefits. It could reduce the extreme financial burden of long-term care costs to individuals and their families and to government support systems.

Long-term care insurance policies are more affordable and accessible when the applicant is below retirement age. The cost of a basic policy with average benefits is $1,725 a year for a 45-year-old; however, the same policy for a 65-year-old is double that amount, at $3,451 a year.[62] To help pay for these premiums while they are affordable, the Chamber recommends that employees be allowed to access 401(k) plan assets during their working years to purchase long-term care insurance.

Another alternative is to encourage employers to offer long-term care insurance through a cafeteria plan. Currently, the Internal Revenue Code provides an income tax deduction to motivate employers to offer long-term care insurance policies.[63] In addition, the benefits are typically not considered taxable income to the insured. However, a more effective way to increase access and affordability of long-term care insurance is to make these policies available through cafeteria plans on a pretax basis.

Encourage Employers to Offer Longevity Insurance Through Cafeteria Plans. Increase in life expectancy also increases the chances that retirees will outlive their retirement income. To avoid this situation, a retiree could purchase longevity insurance, a form of deferred annuity with a payment start date that begins at a later age in retirement. Thus, individuals can protect themselves against the financial risk of outliving their retirement savings.

The purchase of longevity insurance could reduce retirees' risk of running out of income. In 2014, the Treasury Department issued regulations allowing for the purchase of a Qualified Longevity Annuity Contract with 401(k) plan savings that could also be deemed to satisfy the RMD rules even though payments do not begin until several years after the RMD date.[64] Another effective way to encourage the purchase of longevity insurance is to allow employees to purchase it through a cafeteria plan.

Permit Employers to Offer Retiree Health Savings Accounts Through Cafeteria Plans. Health care costs in retirement can jeopardize a retiree's financial security. According to 2015 modeling by the Employee Benefit Research Institute, it is estimated that a retiring couple with median drug expenses will need to set aside $259,000 just for health care costs in retirement excluding the savings needed to pay for long-term care expenses.[65]
As Americans live longer and health care costs mount during retirement, saving for health

care is imperative to ensure an economically secure retirement. Otherwise, retirees risk that health care costs will deplete their retirement savings. To encourage retirement security, the Chamber believes it is necessary to create and encourage incentives for health care savings.

Instead of requiring employers to implement retiree health plans, the Chamber recommends that plan sponsors be allowed to offer retiree health savings accounts through cafeteria plans.[66] This step would provide important tools for employees to manage future costs in retirement. It could also reduce retiree reliance on state and federal government support systems.

In addition, the Chamber encourages a thorough discussion of plan designs that increase savings for medical expenses in retirement. In the past, Congress has considered legislation for Retiree Medical Benefit Accounts (RMBAs), which create a tax-favored vehicle in which to accumulate assets for the specific purpose of meeting health care expenses in retirement.[67] RMBAs would make Americans better aware of their individual need to save for retiree health and give them a tax incentive to do so. We believe that policymakers must consider various types of options, such as RMBAs, as a way to encourage retirees to better save for health care costs in retirement, thus enabling them to prepare for a financially secure future.

It is important to note that the Chamber differentiates between using retirement assets to purchase products that may be used in retirement (such as long-term care insurance or health care costs) and using retirement assets for preretirement consumption (such as buying a car). To reach the goal of sufficient retirement assets, it is important to ensure that retirement assets are used for retirement purposes. While it may not always be possible to avoid using retirement savings before retirement, the Chamber believes that making the changes mentioned in this paper could help preserve or replenish some retirement assets that may otherwise be spent before retirement.

B. Eliminate Barriers to Phased Retirement

Given the current unemployment figures, it is difficult to imagine an employment shortage. Nonetheless, because of the demographics of our population, we can expect that employment strains will occur in certain areas.

It is projected that by 2020 the United States will experience a labor shortage of 5 million workers with postsecondary education.[68] This labor shortage will increase the pressure on

employers to retain workers who are close to retirement eligibility, particularly in those industries requiring a postsecondary education that are expected to grow the fastest in the coming years, such as private education services, health care services, professional and business services, and financial services.[69] There are signs that employers are already beginning to feel the pains of a pending labor shortage. A 2015 survey by the National Association of Business Economics found that 35% of businesses surveyed experienced shortages of skilled labor, an increase from 25% of businesses in past surveys.[70]

Our population is also aging very rapidly. In 2050, the population aged 65 and older is projected to be 83.7 million, which is almost double the estimated population of 43.1 million in 2012.[71] Businesses risk facing a knowledge shortage as baby boomers retire. Today, baby boomers account for 31% of all jobs, of which 56% are leadership positions integral to their employer.[72] In addition, 4 million companies are owned by baby boomers.[73] Employers looking at a possible brain drain want to keep their experienced and skilled workers in order to remain competitive. Fortunately, it seems that older workers are willing to continue to participate in the workforce. A recent AARP survey of workers between ages 50 and 64 found that 73% of older workers are hoping to work part time into their retirement.[74]

Although there is no 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, a reduced salary, reduced responsibility, or a combination of all three. Sometimes the phased retiree will continue to receive health benefits or will begin to receive a pension. Many phased retirement arrangements are informal, but some employers—particularly universities—have formal phased retirement programs.

Some workers interested in phased retirement 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, typically related to financial necessity.[75]

However, several barriers exist to phased retirement. Legal barriers restrict when benefits can be paid out.[76] Fiscal barriers include the costs associated with employing older workers, such as increased pension payments and higher health care coverage costs. Policy and practical barriers exist with respect to 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.[77] Minor modifications could address barriers to enabling phased retirement programs and practices.

Continue to Treat Phased Retirement Programs and Practices as Discretionary Arrangements. It is paramount for phased retirement programs to remain a discretionary arrangement that is mutually agreed upon by both the employer and the employee. As mentioned, employment shortages are occurring in specific areas and phased retirement will not be appropriate for all job positions. Current laws and regulations protect employees from forced retirement and discrimination. Phased retirement practices can operate within these bounds, so new requirements are not needed. However, a few targeted legislative and regulatory modifications are required, as outlined here.

Ensure That Any Rules or Legislation Regarding Phased Retirement Programs Retain Experienced Workers With Critical Skills, Combat Labor Shortages, and Allow Businesses to Remain Competitive. Phased retirement programs should be narrowly tailored to meet certain needs. Any rules, legislation, or proposals should be viewed with the following goals in mind:

- Keep experienced workers with critical skills in place to ensure a transfer of knowledge to younger generations.
- Combat labor shortages in specific industries and job categories.
- Allow the business to remain competitive.

Clarify That Phased Retirement Benefits Are Not Protected Under I.R.C. Section 411(d)(6). The law should be clarified to state that phased retirement benefits are not protected under Section 411(d)(6) of the tax code. Deeming phased retirement a protected benefit would increase employer costs and not allow for the dynamic nature of phased retirement.

Eliminate Restrictions Against Rehiring People Who Have Recently Retired. Restrictions against rehiring people who have recently retired should be eliminated. This rule prevents employers from rehiring critical employees into phased retirement programs.

Allow In-Service Distributions at Early Retirement Age as Defined in the Plan. In-service distribution rules should be modified to better accommodate phased retirees.[78] In-service distributions should be allowed at early retirement age as defined in the plan but not earlier. Moreover, the Chamber recommends that employees who continue to work past early retirement age be permitted to commence receiving retirement benefits without regard to whether an employee reduces his or her work schedule.[79] This proposal is appropriate because many employees who would like to continue working full time feel compelled to terminate employment due to their inability, while still employed, to receive valuable benefits such as a lump-sum benefit based on a low interest rate or an early retirement substantial subsidy.[80]

Exclude Plan Beneficiaries Who Participate in a Company's Phased Retirement Program From the General Discrimination Testing for the Plan. Generally, workers who participate in a phased retirement program will have longer service and therefore higher salaries. Consequently, including these employees in the general discrimination testing could discourage employers from using a phased retirement option.

Allow, But Do Not Require, Employers to Continue to Offer Health Benefits to Phased Retirees. Some employers allow employees in phased retirement programs to maintain their health benefits, which is a valuable benefit to these participants. 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.[81] Provided that there is no mandate, allowing employers to continue to offer health benefits to phased retirees (e.g., by eliminating any antidiscrimination issues provided that similarly situated phased retirees are treated similarly) would create a valuable incentive for employers desiring to retain experienced employees in a phased retirement program. Providing health care benefits to phased retirees should be subject to the employer's practices as established for all workers generally.[82]

Clarify That Phased Retirees Are Not Held to a Different Standard Under Labor Laws. Employers are also concerned that phased retirees might be held to a different standard than other employees. For instance, statutory or regulatory requirements could give phased retirees a greater right to benefits (e.g., additional accruals or form of benefit). Such requirements could make it harder to fire a phased retiree (even for cause) for fear of discrimination claims.

C. Encourage Additional Distribution Options to Facilitate Lifetime Income

Educate Participants About Decumulation Options. To encourage continued innovation and the growth of financial products to meet retirees' needs, it is important that lawmakers approach decumulation issues in a product-neutral manner. Public policy in this arena should encourage education as to the various distribution options and product innovation in order to meet the varied objectives of savers and retirees, particularly as people live longer.

An obstacle to encouraging a stream of retirement income payments is that plan participants often have an "all or nothing" mind-set when it comes to plan distributions. This outlook needs

to change. Retirement savings should not be thought of as a single lump-sum benefit payment but as a means to get a stream of income in retirement—however it may be generated.

Encourage and Incentivize Employers to Offer Retirement Plans With Lifetime Income Options. Employers should not be mandated to offer prescribed distribution options in their retirement plans. On a practical level, there are many reasons why employers may choose to include one distribution option over another in a plan. Lawmakers should encourage and incentivize employers to offer workers payout alternatives beyond the lump-sum option.

Another way to encourage the provision of lifetime income is to remove deterrents that currently exist. Even with DOL guidance issued with respect to annuity selection from a defined contribution plan, the provider selection requirements are a barrier, particularly for small businesses. In general, it would be helpful if, for all products, employers were held to a single fiduciary standard regarding the providers and products to be offered through a retirement savings plan.

D. Encourage and Expand Retirement Education and Financial Literacy

There is general agreement that one important tool for retirement security is financial education for retirement savings. The workforce is the primary source of retirement savings options and education for most workers. As such, the Chamber recommends for policymakers and regulators to encourage and expand retirement education and literacy, whether provided by employers or others, with appropriate protections that do not expand liability under ERISA.

Education is critical to employees' understanding of their retirement savings options and the need to plan for retirement. Employers understand their role in providing education to their workers and rely heavily on current statutory and regulatory guidance in defining the "educational information" that can be provided by employers without fear of liability.[83] Many employers have years of experience providing financial education to their workers. They have broad experience with financial education alternatives, including face-to-face counseling, workshops, online sites and tools, paper-based information, webinars, and podcasts. Employers often tailor financial education to the audiences they are addressing because they know—and research has confirmed—that the most effective education initiatives recognize demographic differences.[84] Enabling employers to provide this education will not only help

workers make important decisions at the time of retirement, but it will also help encourage workers to save more before they reach retirement. Providing education to workers early in their careers provides more opportunity for them to properly prepare.

While many employers want to provide retirement education to their workers with regard to accumulation and decumulation strategies, a major concern is the ability to do so without incurring fiduciary liability. While employers recognize that offering financial advice is a fiduciary action, they believe providing general retirement education should not be held to the same standard. As one example, employers would like to provide workers with education workshops that focus on the pros and cons of seeking a distribution and managing retirement assets outside the plan. Moreover, the Chamber is concerned that restricting retirement education in the private sector counters the efforts made by federal agencies to increase workers' access to financial information.

We encourage regulatory agencies to maximize their ability to engage the public on retirement planning and financial education. The DOL recently spent several years implementing regulations on disclosure of plan fee information.[85] While this information is significant, it loses its value if it is only provided in an educational vacuum. Policymakers and regulators should take a comprehensive approach when addressing retirement planning and financial education issues. The Chamber believes that more education for workers and retirees will lead to better retirement outcomes and asset accumulation.[86]

E. Ensure That State-Sponsored Retirement Plans Do Not Undermine ERISA or Create Unfair Competition in the Marketplace

While the Chamber supports efforts aimed at increasing retirement coverage, we are concerned that unintended negative consequences could stem from states establishing state-sponsored retirement plans for private-sector employees. The Chamber believes that states should encourage continued private-sector innovation aimed at increasing retirement coverage and avoid placing unnecessary burdens on employers.

A number of states are attempting to expand retirement coverage by implementing retirement plans for small businesses. These retirement plans range from mandatory programs to open exchanges.[87] The DOL is currently developing rules that would provide a framework for states to establish these plans.[88]

Maintain ERISA Preemption. The Employee Retirement Income Security Act has been a key component of our retirement system's legal framework for over 40 years, regulating important aspects of employer-provided plans at the federal level. Employers have depended on ERISA to ensure that they can offer plans on a nationwide basis, providing fairness to all employees regardless of where they live or work.

The Chamber is concerned that state actions establishing and regulating private employer-provided plans will create complexity in the system. Layering a state-imposed retirement regime on top of ERISA will cause unnecessary burdens, particularly for small businesses, and it could have the effect of stifling the very purpose of ERISA. It could also create unfair competition between the government and the private sector. Therefore, the Chamber supports ERISA preempting all state laws that "relate to" employee benefit plans covered by ERISA.[89]

Furthermore, the Chamber is concerned that creating different retirement plans in different states will create significant compliance challenges for employers. Even a small business can have operations, employees, or facilities in more than one state and therefore could have difficulty complying with differing state requirements. The purpose of ERISA's preemption provision was to avoid this situation.[90] As such, the Chamber is very concerned that allowing states to implement varying retirement plan structures and requirements will run counter to ERISA's statutory intent.

Develop Targeted Solutions to Increase Retirement Coverage. Policymakers often cite the retirement coverage gap as a reason to support state-sponsored retirement plans. However, in order to craft solutions directed at this issue, policymakers and regulators must understand the intended target population. The coverage gap must be estimated accurately and alternate solutions must be developed to help populations less likely to save for retirement.[91] Only then can there be an honest and fair debate on how to shrink the coverage gap.

Younger workers, low earners, and part-time workers tend to save less for retirement.[92] If a new program or requirement is to succeed, it must address the specific issues of those populations. For example, low-income workers and workers outside of the traditional workforce are less likely to save for retirement or to have a structured plan for saving for retirement. Government programs such as the *my*RA program are best able to reach these workers, and states should actively promote this and other voluntary programs. The Chamber believes that the best way to achieve the goal of higher retirement coverage is through increasing incentives for employers to offer retirement plans. The low-cost retirement plans being offered by the industry have already provided greater incentives for small businesses.

Moreover, Congress is working to expand small business coverage by removing barriers around MEPs. The Chamber encourages this effort.[93]

Even with the recent gains in the coverage of small business employees, the Chamber encourages states and the federal government to implement additional incentives. One recommendation is to innovate around incentive structures such as creating and expanding reward-based savings to increase the demand pool. Likewise, the Chamber encourages states to expand financial education particularly about retirement savings. For example, states could invest in retirement public service announcements similar to the "Smokey the Bear" campaigns.[94]

Avoid Unnecessary Complexity and Unfair Competition. While the Chamber has not taken a position on any particular state plan, our membership has expressed general concerns. There is concern about unfair competition between private providers and the state, resulting in the inability of private businesses to offer plans at a competitive price and lower retirement plan coverage of workers. The Chamber welcomes state initiatives that promote a savings culture and retirement education, but it does not want states to provide or administer savings products. Similarly, while the Chamber welcomes state consideration of exchanges in which businesses and individuals may efficiently access privately offered retirement savings solutions, it is concerned that the conditions to participate on an exchange may eliminate many private providers that are offering plans in a cost-efficient manner. In both cases, care should be taken not to harm or disincentivize employers that may already have retirement savings plans in place for their workers.

The Chamber believes that the private sector should not be put in the position of having to compete with state governments to provide retirement benefits. State actions could have the unintended consequence of reducing economies of scale for national providers, which would make it more difficult to offer plans to small businesses. Moreover, such state programs could also discourage innovation in the private sector. The Chamber also has significant concerns about mandates, including increased liability.

The Chamber will be actively involved in this debate to ensure that we work to reduce the coverage gap with targeted solutions that do not negatively impact the marketplace and stifle innovation.

F. Encourage the Voluntary Use of Private Disability Insurance and Further the Education of Its Benefits

Workplace disability insurance is one of a number of benefits that employers provide. Families with disability insurance have the financial security to better cope with an inability to work due to illness or injury. Additionally, private disability insurers intervene early and focus on working with employers, employees, and treating physicians to maximize the chance of individuals staying at work with an accommodation, or returning to work as soon as they are able to do so. Unfortunately, a significant number of people still do not have insurance protection to provide for themselves or their families should a life changing event occur. According to the Social Security Administration, 69% of private sector workers do not have long-term disability insurance.[95] This figure is particularly troubling since it is projected that about 1 in 4 of today's 20-year-olds will become disabled before they reach age 67.[96]

The consequences of not being able to work can be economically devastating, and they are exacerbated if a worker does not have disability insurance. According to a recent survey, 77% of workers said that missing work for three months due to injury or illness would create a moderate or great financial hardship.[97] For workers who became disabled and unable to work, 44% said they would not have been able to afford to stay in their home without disability insurance, and 33% would have had to apply for government food programs.[98]

Moreover, there are public policy benefits to workers being covered by private disability insurance. Because of the continued income stream, workers are less likely to require government poverty assistance through programs such as the Temporary Assistance for Needy Families and Supplemental Nutritional Assistance programs. Return-to-work assistance offered through private disability insurance results in fewer workers entering the Social Security Disability Insurance program.[99]

Consequently, having access to disability insurance can be the difference between having economic stability or not, often ensuring basic necessities such as food and shelter. One specific way to expand private disability insurance coverage would be to clarify that it is permissible for employees to be offered this benefit on an opt-out basis.

III. Encouraging Innovation and Flexibility

Private employers have long led the way in developing innovative retirement plans for the benefit of their workers.[100] Innovation in plan design is imperative for employers to stay competitive in the marketplace and attract talent. However, policymakers and regulators must foster a regulatory environment that removes legal barriers and instead encourages innovation and flexibility. Such an environment will allow employers to offer retirement plans to workers that meet their financial needs and asset-building objectives. The recommendations below focus on what regulatory agencies can do to promote innovation and further retirement security.

A. Provide Small Businesses a Dedicated Voice on Federal Advisory Councils

Advisory committees and councils at federal agencies provide government officials and industry representatives with a valuable opportunity to engage and discuss pending regulatory action. It is a formal way for industry to share its perspective, which agencies take into consideration when drafting regulations and developing policy. The goal is to have open and collaborative communication between industry and government.

As discussed in Section I(H), the Chamber recommends that small businesses have a dedicated seat on advisory committees and councils at regulatory agencies with jurisdiction over retirement plans, particularly the DOL, the IRS, and the PBGC. For example, the DOL's ERISA Advisory Council has 15 members from a broad array of industries.[101] Not one, however, is a representative from the small business community. It is imperative to add dedicated small business voices to federal advisory councils, which will only enhance the objectives of those groups.

B. Assess the Future Role and Mission of the PBGC

The PBGC is an central part of the private defined benefit pension system. Chamber members are committed to the ongoing viability of the private pension system and the PBGC. The PBGC has recently taken positive steps, and we look forward to continuing to work with the agency to ensure the continued success of the entire private defined benefit

system.[102] The following recommendations are aimed at enhancing the mission of the PBGC and maintaining its viability for decades to come.

Consider New Roles for the PBGC and Examine Its Strategic Objectives. Given the PBGC's role and the greater emphasis being placed on retirement security generally, this is an opportune time to examine the role of the PBGC and its policy objectives. In its strategic goals, the PBGC lists the No.1 goal as preserving plans and protecting pensioners. In addition, ERISA Section 4002 states that the purpose of the organization is "to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants."

Although the single-employer program is viable into the foreseeable future, there is significant concern about the multiemployer system. The current state of the multiemployer system has raised concerns about the long-term financial viability of the PBGC. One major issue facing the agency is how to contend with anticipated multiemployer plan losses, which could put the agency in the situation of not being able to pay guaranteed benefits as well as potentially put the single-employer program at greater financial risk. As a first step, the Chamber supports comprehensive reforms to the multiemployer plan system and the work the PBGC has done to implement the partitioning program as required by the MPRA. The Chamber stands ready to work with the PBGC and others to move forward with protecting the multiemployer plan system.

Moreover, the Chamber encourages the PBGC to develop two new programs discussed later in this paper. In addition to these programs, there may be other areas and programs for the PBGC to consider. The Chamber encourages the PBGC to work with all interested parties to determine if it can fulfill new or additional roles in the private retirement system.

Enhance PBGC Governance Procedures. Changes in PBGC governance are needed to ensure its ongoing viability.[103] The PBGC's board of directors does not have any formal, written governance procedures. Until recently, the board was not required to meet any certain number of times annually, and it met infrequently over the past three decades. During the period between 1980 and 2010, the board met only 23 times—less than annually.[104] In 2003, the board agreed to meet twice a year, although a review of meeting minutes indicates that the meetings usually last only about an hour, with no significant time being spent on operational and strategic issues.[105]

In 2012, Congress passed several PBGC reforms in the Moving Ahead for Progress in the 21st Century Act (MAP-21); however, one substantive proposal that was not passed into law was the increase in the number of PBGC board members.[106] The Chamber urges the PBGC to increase the number of board members and to include representatives of small and large businesses and sponsors of multiemployer plans. Furthermore, the terms of the board members should overlap to encourage smooth transition periods.

Encourage Collaboration With the Participant and Plan Sponsor Advocate to Create a PBGC Correction Program and Missing Participant Program. MAP-21 created the position of the Participant and Plan Sponsor Advocate, who was announced by the PBGC board of directors in October 2013.[107] Since Congress did not specify the exact duties of the advocate, the PBGC has reached out to interested parties for input. The Chamber believes that the advocate is uniquely positioned to be a liaison between plan sponsors and the PBGC.[108]

The advocate is well placed to advance several critical issues within the PBGC and the Administration. First, the Chamber recommends the advocate promote a correction program at the PBGC that is similar to correction programs at other agencies of jurisdiction. Both the IRS and the DOL have established successful correction programs aimed at helping plan sponsors voluntarily correct errors.[109]

The IRS created its correction programs in 1991 to help plan sponsors correct tax qualification errors. The program has since grown and evolved in large part because of a robust and open dialogue with private industry.[110] About 7,000 correction applications were submitted in fiscal year 2011.[111] Similarly, the DOL's correction programs have been equally successful. In fiscal year 2015, the Voluntary Fiduciary Correction Program received 1,478 applications and the Delinquent Filer Voluntary Compliance Program received approximately 22,800 annual reports.[112] The Chamber believes that a correction program at the PBGC addressing filing and related errors would be extremely beneficial to both the PBGC and plan sponsors.

Second, the Chamber recommends that the advocate assist with implementing a missing participant program for terminated individual account plans. In 2013, the PBGC issued a request for information seeking comments on implementing a new program to help plan sponsors find and provide earned retirement benefits to missing participants in terminating individual account plans. In a joint response with other trade associations, the Chamber encouraged the PBGC to move forward with the program.[113]

The Chamber believes that enacting correction and missing participants programs would be valuable to plan sponsors and further the mission of the PBGC.

C. Enhance the Retirement System by Encouraging New Plan Designs

During the recent congressional deliberations aimed at reforming the multiemployer system, the Chamber supported the development of new plan designs. In February 2013, the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans issued a report titled *Solutions Not Bailouts.* Members of the Chamber participated in the commission and contributed to the findings of the report. Several parts of the report were included in the MPRA, such as much-needed technical corrections and the benefit suspensions program. However, a vital piece of the commission's report, the new plan design option, was omitted from the legislation that passed. The Chamber understands that the MPRA was a first step.[114] As such, we urge Congress to continue the progress it has made and continue to reform the multiemployer pension system by implementing the new plan design option.

In addition to supporting new designs for multiemployer plans, the Chamber believes that this innovation needs to be encouraged throughout the retirement system.

D. Encourage the Use of Automatic Plan Features

The advent of automatic features in defined contribution plans has greatly reduced the incidence of nonparticipation because of inertia. According to a recent study, Vanguard found that 36% of its retirement plans had automatic enrollment, a 50% increase since 2009.[115] In a SunAmerica survey, 85% of workers reported that automatic enrollment helped them start saving earlier than they would have started on their own.[116]

Automatic enrollment and escalation are especially successful in targeting the most likely under-savers. A 2015 report studying a variety of demographic groups found that automatic enrollment had a particular effect on significantly increasing the participation levels of lower-income, less educated, and minority individuals.[117] Policymakers, employers, unions, and the benefits industry should work to increase awareness of the benefits of automatic plan design and urge its adoption. The Chamber supports the following recommendations to enhance

the use of automatic plan features.

Increase Safe Harbor Adoption by Removing the Upper Auto Deferral Limit and Relaxing the Matching Formula. To promote greater implementation of automatic enrollment features, the Chamber encourages Congress to modify the safe harbor rules. The safe harbor requires either (1) a minimum employer matching contribution of 100% of the first 1% deferred and 50% of the next 5% deferred for a total contribution of 3.5% for participants who defer at least 6%; or (2) a nonelective employer contribution of 3% of compensation.[118] Specifically, the Chamber recommends removing the upper limit to increase the level of employee contributions and relaxing the matching formula to make the safe harbor more attractive to plan sponsors. For example, a matching formula that allowed for a 50% matching contribution of up to 6% of compensation deferred may be more attractive to employers.

Encourage Plan Sponsors to Adjust Language About Automatic Escalation by Informing Participants They Can "Opt Out," "Opt Down," or "Opt Up" so Participants Can Recognize It Is Not an All-or-Nothing Decision. The Chamber recommends certain best practices. Plan sponsors should be encouraged to adjust language about automatic escalation. In addition to informing participants that they can "opt out" of automatic escalation, sponsors could inform them they can "opt down" or "opt up." This sends a signal to participants that it is not an all-or-nothing decision and that they can choose a lower or higher deferral increase rather than no deferral at all.

Encourage Plan Sponsors to Increase the Automatic Enrollment Default Referral Rate. Plan sponsors should be encouraged to default participants at a rate higher than 3% of salary. According to Vanguard, participants defaulted to a deferral rate of 3% or below in 67% of all of their plans with automatic enrollment.[119] This is of particular concern since it is recommended that participants contribute at least 10%.[120] If participants are automatically enrolled at a rate higher than 3%, the average deferral rate should rise.

E. Promote the Benefits of Employee Stock Ownership Plans

Employee Stock Ownership Plans (ESOPs) are an important piece of the retirement landscape and should be encouraged and supported by Congress. Internal Revenue Code Section 4975(e)(7) defines an ESOP as a defined contribution plan that is designed to invest primarily in qualifying employer securities. A number of requirements must be met, for

example, that participants must have nonforfeitable rights to the securities and employer securities must stay in the plan.[121] Not all retirement plans that provide company stock to employees are technically ESOPs or subject to these requirements, but we will refer to all such arrangements as ESOPs.[122]

ESOPs offer several significant advantages. First and foremost, ESOPs provide employees with a stake in the company, which can motivate employees to work harder and more efficiently.

Furthermore, ESOPs—similar to other retirement plans—provide employees with meaningful incentives aimed at increasing retirement savings. As of 2015, it is estimated that about 7,000 ESOPs cover 13.5 million employees,[123] holding more than $1 trillion in total assets.[124] ESOP companies, on average, contributed 75% more to their ESOPs than other companies contributed to their defined contribution plans.[125] Moreover, ESOP plans had an average rate of return of 9.1% between 1991 and 2010, outperforming 401(k) plans, which had a 7.8% rate of return during that same time period.[126] In addition, ESOPs are capable of reducing the cost of financing debt for the company since both the principal and interest payments on an ESOP acquisition loan are tax-deductible to the employer. This is because the employer makes a fully tax-deductible contribution to the ESOP and the ESOP uses the contribution to make the loan payments on the ESOP acquisition loan.

Despite the advantages of ESOPs, certain negative connotations remain about these plans.[127] Therefore, the Chamber believes it is critical to educate Congress and the administration about the benefits of ESOPs, and it supports legislation that promotes their formation and maintenance.[128]

CONCLUSION

For more than a century, the private employer-provided retirement system has benefited millions of American workers and allowed them to obtain the financial security they deserve. Private employer-provided plans are a pillar of our retirement system. Nonetheless, while the private retirement system has been successful, we must confront the demographic realities on the horizon. People are living longer and retirement patterns are changing dramatically, creating different economic and health needs for Americans both pre- and postretirement. Policymakers and regulators need to be ready to address these challenges.

The U.S. Chamber of Commerce presents this white paper to offer recommendations aimed at achieving retirement security for workers and creating a legal framework for employers to continue to be innovative and expand plan coverage. The Chamber looks forward to advancing the public discussion and welcomes the opportunity to engage policymakers and regulators on these key retirement issues.

ENDNOTES

1. The American Express Company created the first employer-provided retirement plan in 1875.

2. The Moving Ahead for Progress in the 21st Century Act.

3. Consolidated and Further Continuing Appropriations Act, 2015.

4. U.S. Department of Labor, Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in the United States, "Retirement Benefits: Access, Participation, and Take-Up Rates, Private Industry Workers," Tables 1 and 2 (March 2015), see http://www.bls.gov/ncs/ebs/benefits/2015/ownership/private/table02a.pdf. For past years and the recent historical trends relating to Table 2, see http://www.bls.gov/ncs/ncspubs.htm.

5. Id.

6. Peter Brady and Michael Bogdan, "A Look at Private-Sector Retirement Plan Income after ERISA, 2013," *ICI Research Perspective* 2, no. 7, Figure 7 (October 2014), see https://www.ici.org/pdf/per20-07.pdf.

7. Id.

8. U.S. Department of Labor, "Private Pension Plan Bulletin Historical Tables and Graphs, 1975–2013," Table E11 and Graph E11g: Pension Plan Assets September 2015, see https://www.dol.gov/ebsa/pdf/historicaltables.pdf.

9. Figure 1 in Sarah Holden and Daniel Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2014," *ICI Research Perspective* 21, no. 1 (January 2015), see www.ici.org/pdf/per21-01.pdf; Investment Company Institute, "Quarterly Retirement Market Data, Second Quarter 2015" (September 24, 2015), see www.ici.org/research/stats/retirement.

10. Testimony of Jack VanDerhei, Research Director, Employee Benefits Research Institute, before the House Committee on Ways and Means Hearing "Tax Reform and Tax-Favored Retirement Accounts" (April 17, 2012), see https://www.ebri.org/pdf/publications/testimony/T-172.pdf.

11. Jack VanDerhei, "What Causes EBRI Retirement Readiness Ratings to Vary: Results from the 2014 Retirement Security Model," EBRI Issue Brief No. 396, (February 2014), see https://www.ebri.org/pdf/briefspdf/EBRI_IB_396_Feb14.RRRs2.pdf. This research finds that eligibility for participation in an employer-sponsored defined contribution plan, particularly for Gen Xers, is one of the most important factors for determining sufficient retirement income. See also Investment News, *A Survey of Retirement Readiness* (October 2, 2011), see http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20111002/REG/310029977.

12. A case in point is the proposal authored by William Gale of the Brookings Institution to substitute a tax credit for the present tax deferral. In testimony before the House Committee on Ways and Means, Jack VanDerhei, Research Director at the Employee Benefit Research Institute (EBRI), stated that under the Gale proposal the average reductions in 401(k) accounts at the normal retirement age under Social Security would range from a low of 11.2% for workers currently aged 26–35 in the highest-income groups, to a high of 24.2% for workers in that age range in the lowest-income group. Another analysis by the EBRI reveals that the recommendation by the National Commission on Fiscal Responsibility to limit contributions to defined contribution retirement plans to the lesser of $20,000 or 20% of compensation will reduce retirement security for workers at all income levels, not just high-income workers. According to the study, those in the lowest-income quartile will have the second-highest average percentage reductions. Also, small business owners may be less likely to offer a plan to their employees if contribution limits are lowered. See Testimony of Jack VanDerhei, Research Director, Employee Benefit Research Institute before the House Committee on Ways and Means Hearing, "Tax Reform and Tax Favored Retirement Accounts" (April 17, 2012), http://www.ebri.org/pdf/publications/testimony/T-172.pdf.

13. Sarah Holden and Steven Bass, Investment Company Institute, *America's Commitment to Retirement Security: Investor Attitudes and Actions, 2013* (February 2013), pp. 2–3.

14. As a large part of the Employee Retirement Income Security Act of 1974 (ERISA) encompasses the Internal Revenue Code (Code), the discussions on tax reform have understandably led to larger conversations about possible reform to the retirement system beyond tax incentives. Various parts of this paper offer guidelines on initiatives and reforms within the tax code that will bolster the voluntary employment-based retirement benefits system and retirement security for workers. To the extent tax reform includes comprehensive retirement reform, the Chamber encourages consideration of these other recommendations.

15. While the retirement tax incentives currently in the federal tax code have a budgetary cost, the cost reflected in the tax expenditure estimates by the Joint Committee on Taxation (JCT) and the Treasury Department are inflated. Those estimates (inside their budget windows) do not take into account the present value of future taxes paid on those retirement plan distributions. A 2012 study by former staff of the JCT found that when one accounts for the future taxes paid on plan distributions, the tax expenditure estimates provided by the JCT and the Treasury are reduced by as much as 54%. Judy Xanthopoulos and Mary M. Schmitt, American Society of Pension Professionals & Actuaries, "Retirement Savings and Tax Expenditures Estimates" (April 2012), see https://www.asppa.org/Portals/2/ASPPAWhitePaper-TaxExpenditures2012-d4.pdf.

16. For example, Congress has used Pension Benefit Guaranty Corporation (PBGC) premiums to raise revenue in several instances. See Section I(D) of this paper for further discussion of PBGC premiums.

17. The Chamber believes that there are additional tax incentives that would encourage retirement savings. For example, the federal government should tax distributions from qualified retirement plans at the lower capital gains rate instead of at the income tax rate. However, given the current fiscal environment, we have chosen not to highlight these changes at this time.

18. See the discussion of state-sponsored retirement plans in Section II(E) of this paper.

19. Under ERISA's definition of an "employer" that can sponsor a retirement plan, the independent provider of a MEP can be construed as a person "acting indirectly" in the interest of an employer in relation to an employee benefit plan, and a group of participating employers can be reasonably construed as a group of employers acting in such capacity (ERISA Section 3(5)). By way of contrast, in a 2012 ERISA Advisory Opinion, the DOL found that the purported plan sponsor was not a bona fide group or association of employers because there was no genuine organization relationship between the employers. See, ERISA Adv. Op. 2012-04A, (May 25, 2012). However, more recently, the DOL issued guidance (Interpretive Bulletin 2015-02) that provides that a state-sponsored MEP meets this "commonality" requirement even though the only nexus between employers is residing in the same state. The Chamber believes that this differentiation in standards is unfair to private employers and puts them at a competitive disadvantage. For a further discussion of state-sponsored retirement plans, see Section II(E) of this paper.

20. More than 85% of small businesses have 20 or fewer employees. U.S. Bureau of Labor Statistics, Table G: Distribution of Private-Sector Firms by Size Class: 1993/Q1 through 2015/Q1, see http://www.bls.gov/web/cewbd/table_g.txt. In addition, many do not have a human resources department or a chief financial officer. Consequently, small businesses may not have management personnel who can effectively deal with the volume of notice and disclosure requirements.

21. For example, see U.S. Department of Labor, "U.S. Department of Labor Workplace Poster Requirements for Small Businesses and Other Employers," see http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm, which summarizes 12 different notice requirements for small businesses. These notice requirements originate from laws as wide-ranging as the Fair Labor Standards Act, the Davis-Bacon Act, the Service Contract Act, and the Employee Polygraph Protection Act.

22. The safe harbor rule is found under ERISA Section 2520.104b-1(b).

23. Field Assistance Bulletin 2006-03 requires compliance with the Treasury regulation section 1.401(a)-21.

24. Investment Company Institute, "Retirement Assets Total $24.8 Trillion in Second Quarter 2015," (September 2015), see https://www.ici.org/research/stats/retirement/ret_15_q2.

25. U.S. Department of Labor, Employee Benefits Security Administration, Private Pension Plan Bulletin Historical Tables and Graphs, 1975–2013, "Table E17: Pension Plan Benefits Disbursed," (September 2015), see http://www.dol.gov/ebsa/pdf/historicaltables.pdf.

26. P.L. 114-74.

27. The PBGC single-employer program has operated primarily in a deficit, with the exception of 1996–2001 when the program reached a surplus of almost $10 billion. See PBGC, Pension Insurance Data Tables 2013, "Table S-1, Net Financial Position (1980–2014), Single-Employer Program," see http://www.pbgc.gov/documents/2013-DATA-BOOK-FINAL.pdf. On the other hand, the PBGC multiemployer program operated primarily with a surplus until 2003, and in 2014 it jumped to a $42 billion deficit from $8 billion in 2013. See PBGC, Pension Insurance Data Tables 2013, "Table M-1, Net Financial Position (1980–2014), Multiemployer Program," see http://www.pbgc.gov/documents/2013-DATA-BOOK-FINAL.pdf.

28. Before the most recent increases to PBGC premiums in the Bipartisan Act of 2015, premiums were also increased in the Bipartisan Budget Act of 2013 (P.L. 113-67) and in the Moving Ahead for Progress (MAP-21) highway law (P.L. 112-141).

29. The Pension Coalition, "Increasing Pension Premiums: The Impact on Jobs and Economic Growth," (2014), see http://www.nam.org/pensionpremiums2014. Before the $9 billion increase in PBGC premiums in 2013, employers were already paying over $2.23 billion in premiums annually for the pension benefits they provide to 33 million participants.

30. P.L. 113-235. The MPRA makes permanent the multiemployer provisions under the Pension Protection Act; gives the PBGC authority to promote and facilitate plan mergers, allows plan sponsors to apply to the PBGC to partition a plan, increases the PBGC premium for multiemployer plans to $26/person and bases future increases on the wage index, and allows for benefit suspensions in certain plans in critical status.

31. The Chamber also encourages Congress to consider new plan options for multiemployer pension plans. This recommendation is discussed in Section III(C) of this paper.

32. Because of the nature of multiemployer plans, when one employer goes bankrupt, the remaining employers in the plan become responsible for paying the vested 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 pay for benefits for retirees that never worked for them (often referred to as the "orphan participant problem"). Consequently, an employer can be forced into bankruptcy by the higher contributions it must make to fund the plan or by the withdrawal liability incurred if it drops out of the plan.

33. The Chamber is open to all ideas that address employer concerns about withdrawal liability including, but not limited to, placing limitations on the amount of withdrawal liability that an employer can assume or allowing withdrawal liabilities to be amortized over time.

34. The Treasury-IRS mortality tables are generally adopted based on tables issued by the Society of Actuaries (SOA). The mortality tables set forth in Section 1.430(h)(3)-1 of the IRS regulations take into consideration the tables contained in SOA's RP-2000 Mortality Tables Report.

35. On October 10, 2014, the Chamber sent a joint industry letter to the SOA expressing concern with its new 2014 mortality tables outlined in RP-2014, which has been subject to criticism. The Chamber has in the past also sent a comment letter to the IRS on this issue.

36. The Treasury and the IRS are currently considering public comments on SOA's new mortality tables issued last year in RP-2014 and are expected to issue new regulations in the future revising the tables. See Notice 2015-53.

37. ERISA Section 401(a)(9).

38. ERISA Section 401(a)(9)(C).

39. Self-Employed Individuals Tax Retirement Act of 1962, P.L. 87-792.

40. Staff of Joint Committee on Taxation, "Summary of the Provisions of the Self-Employed Individuals Tax Retirement Act of 1962," (October 1962), JCS-14-62, see https://www.jct.gov/publications.html?func=startdown&id=3853. For additional history on the origination and legislative intent of the RMD rules, see Mark Warshawsky, "Optimal Design of Minimum Distribution Requirements for Retirement Plans," TIAA-CREF Institute, *Benefits Quarterly*, no. 4, (1998).

41. Social Security Actuarial Publications, Table V.A4-Cohort Life Expectancy, see https://www.ssa.gov/oact/tr/2011/lr5a4.html.

42. Lifetime Income Risk Joint Task Force of the American Academy of Actuaries, "Risky Business: Living Longer without Income for Life," (June 2013), see https://www.actuary.org/files/Risky-Business_Discussion-Paper_June_2013.pdf. For additional information on the significant increase in life expectancy over the past century (broken down by race and gender and also by total U.S. population), see Elizabeth Arias, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Vital Statistics Reports, "United States Life Tables, 2010, Table 19, Estimated Life Expectancy at Birth in Years, by Race, Hispanic Origin and Sex: Death-Registration States, 1900–28, and United States, 1929–2010," vol. 63, no. 7, (November 2014), see http://www.cdc.gov/nchs/data/nvsr/nvsr63/nvsr63_07.pdf.

43. The cash-out limit was increased from $3,500 to $5,000 in the Taxpayer Relief Act of 1997 (P.L. 105-34). Before 1997, the limit was increased from $1,750 to $3,500 in the Retirement Equity Act of 1984 (P.L. 98-397).

44. Many dollar limits relating to retirement benefits and contributions are adjusted annually for cost-of-living increases without congressional action. For a list of indexed tax provisions, see Internal Revenue Service, "COLA Increases for Dollar Limitations on Benefits and Contributions," see https://www.irs.gov/Retirement-Plans/COLA-Increases-for-Dollar-Limitations-on-Benefits-and-Contributions. The PBGC premiums are also subject to indexing. See the PBGC Premium Rates, "Scheduled Increases Years after 2016," see http://www.pbgc.gov/prac/prem/premium-rates.html#scheduled.

45. It is important to note that plan sponsorship among small employers is significant. Forty-five percent of small businesses with fewer than 50 employees offer retirement benefits. This percentage increases dramatically as the company size increases. See Bureau of Labor Statistics, "Table 1. Establishments Offering Retirement and Health Care Benefits: Private Industry Workers," supra note 4. The recommendations in this section are made to increase these numbers even further.

46. Code Section 38(b)(14).

47. Another alternative is to use the nondiscrimination rules under Code Section 403(b)(12), which are based on eligibility rather than utilization.

48. A qualified retirement plan that primarily benefits key employees—a top-heavy plan—can qualify for tax-favored status only if, in addition to the regular qualification requirements, it meets several special requirements. A retirement plan is top heavy if more than 60% of the plan's assets are attributable to key employees.

49. I.R.C. § 416(g); Treas. Reg. § 1.416-1, Q M-7.

50. I.R.C. § 416(i)(1).

51. Another recommendation is to revise the rule so that if a plan were top heavy the participants eligible to receive the benefit would be only those who meet the age and service requirements under Code Section 401(a)(4) and 410(b), rather than all eligible individuals who remain employed on the last day of the plan year regardless of the amount of hours worked in the plan year.

52. The importance of the voice of small business is underscored by the president's recent decision to elevate the Head of the Small Business Administration to a Cabinet-level post. See http://www.whitehouse.gov/blog/2012/01/31/cabinet-meeting-focused-small-business.

53. ERISA Section 512; ERISA Section 4002(h)(1); Federal Advisory Committee Act, P.L. 92-463.

54. For additional information on the value of MEPs, refer to Section I(B) of the paper.

55. Lifetime Income Risk Joint Task Force of the American Academy of Actuaries, supra note 41. See also Laura L. Carstensen, Mary E. Rosenberger, Ken Smith, and Sepideh Modrek, "Optimizing Health in Aging Societies," *Public Policy & Aging Report*, vol. 25, no. 2, (May 2015), see http://ppar.oxfordjournals.org/content/25/2/38.full.pdf+html?sid=3db01878-5b82-4520-abaa-56cd03b3dd01.

56. While recognizing the importance of long-term care insurance, Chamber members believe that it is also important to ensure that these insurance products are viable options. Recent articles about significant premium increases have highlighted concerns about affordability and the future availability of these products. See Leslie Scism, "Long-Term Insurance: Is It Worth It?" *Wall Street Journal* (May 1, 2015), see http://www.wsj.com/articles/long-term-care-insurance-is-it-worth-it-1430488733. Consequently, the Chamber encourages further discussion and study of these products.

57. Bipartisan Policy Center, Long-Term Care Initiative, "America's Long-Term Care Crisis: Challenges in Financing and Delivery," (April 2014), see http://bipartisanpolicy.org/library/americas-long-term-care-crisis/.

58. Associated Press-NORC Center for Public Affairs Research, "Long-Term Care in America: Americans' Outlook and Planning for Future Care," (July 2015), see http://www.longtermcarepoll.org/Pages/Polls/long-term-care-in-america-americans-outlook-and-planning-for-future.aspx. Among those with experience providing care for a family member or friend, 19% are currently providing assistance and 65% have household incomes less than $75,000 a year.

59. Melissa Favreault and Judith Dey, U.S. Department of Health and Human Services, Office of Disability, Aging, and Long-Term Care Policy, "Long-Term Services and Supports for Older Americans: Risks and Financing," ASPE Issue Brief, (July 2015), see http://aspe.hhs.gov/sites/default/files/pdf/106211/ElderLTCrb_0.pdf.

60. Id.

61. Id.

62. Long-Term Care Insurance Premium Sample, see http://www.guidetolongtermcare.com/premiumsample.html.

63. Sections 213(d)(10) and 7702B of the Internal Revenue Code outline the general rules by which employers can deduct long-term care insurance provided to their employees. For additional background on the tax rules and the eligible qualified long-term care insurance contracts, see Internal Revenue Service, "Medical and Dental Expenses," Publication 502, (December 2014), see https://www.irs.gov/pub/irs-pdf/p502.pdf.

64. Treasury Regulations under 1.401(a)(9)-6. For a further description of the rules, see U.S. Department of Treasury, "Treasury Issues Final Rules regarding Longevity Annuities," Press Release, (July 1, 2014), see https://www.treasury.gov/press-center/press-releases/Pages/jl2448.aspx.

65. Paul Frostin, Dallas Salisbury, and Jack VanDerhei, "Amount of Savings Needed for Health Expenses for People Eligible for Medicare: Unlike the Last Few Years, the News Is Not Good," *EBRI Notes*, vol. 36 no. 10, (October 2015), see https://www.ebri.org/pdf/notespdf/EBRI_Notes_10_Oct15_HlthSvgs_DB-DC.pdf.

66. In addition, the Chamber encourages expanding the cafeteria plan rules to include all small businesses.

67. H.R. 6288 (The Retiree Health Account Act of 2008) was introduced in the 110th Congress establishing RMBAs. The Chamber's letter supporting H.R. 6288 can be viewed at https://www.uschamber.com/letter/letter-hr-6288-retiree-health-accounts-act.

68. Anthony P. Carnevale, Nicole Smith, and Jeff Strohl, Georgetown University, Center on Education and the Workforce, "Recovery: Job Growth and Education Requirements through 2020" (June 2013), see https://cew.georgetown.edu/report/recovery-job-growth-and-education-requirements-through-2020/. See also Richard Dobbs, Anu Madgavkar, Dominic Barton, Eric Labaye, James Manyika, Charles Roxburgh, Susan Lund, and Siddarth Madhav, McKinsey Global Institute, "The World at Work: Jobs, Pay, and Skills for 3.5 Billion People" (June 2012), see http://www.mckinsey.com/insights/employment_and_growth/the_world_at_work.

69. Carnevale, "Recovery: Job Growth and Education Requirements through 2020," supra note 67.

70. National Association of Business Economics, "Business Conditions Survey," (July 2015), see http://www.nabe.com/NABE_Business_Conditions_July_2015_Summary.

71. Jennifer M. Ortman, Victoria A. Velkoff, and Howard Hogan, U.S. Census Bureau, "An Aging Nation: The Older Population in the United States," (May 2014), see https://www.census.gov/prod/2014pubs/p25-1140.pdf.

72. Rebecca Lindegren, UNC Kenan-Flagler Business School, "Baby Boomer Brain Drain [Infographic]," MBA@UNC, (April 2015), see https://onlinemba.unc.edu/blog/baby-boomer-brain-drain-infographic/.

73. Id.

74. Gretchen Anderson, AARP, "Work & Jobs Study," AARP Research, (September 2015), see http://www.aarp.org/research/topics/economics/info-2015/aarp-post-retirement-career-study.html.

75. CareerBuilder's 2015 retirement survey found that 53% of workers aged 60 and older are currently

delaying retirement, with 75% of those workers delaying retirement citing the Great Recession as the reason. CareerBuilder, "Annual Retirement Survey," (February 2015), see http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?sd=2%2f19%2f2015&siteid=cbpr&sc_cmp1=cb_pr869_&id=pr869&ed=12%2f31%2f2015.

76. For example, there is concern about the impact of Code Section 409A—employers are concerned that this provision could inadvertently prevent employers from providing phased retirement benefits.

77. 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. 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. Joanne Sammer, "Is Phased Retirement a Win-Win?" *Business Finance Magazine*., (September 2006), at 31, see 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 Re-entry Center Questions and Answers, see http://www.monsanto.com/careers/opportunities/reentry/qa.asp (last visited Dec. 17, 2008).

78. For example, the employer should generally have flexibility regarding how benefit accruals would be earned for future service. For instance, future service could be aggregated with prior service in determining a total benefit against which the value of the prior distribution would be offset. Or future service could be credited as though the employee was newly eligible. In some cases, the former approach will create a larger benefit; in other cases, the latter approach is more favorable for a participant. As with all issues relating to the size of the benefit offered under a plan, the decision as to which approach to use—including variations not described here—lies with the sponsoring employer. Of course, the choice made must be clearly disclosed to the participants.

79. Any rule that conditions plan payments to a current employee on a prescribed reduction in the employee's work schedule would fail to be effective with respect to employees who would like to continue to work full time but terminate to obtain a current payment.

80. In July 2000, Sen. Charles Grassley and Rep. Earl Pomeroy introduced the Phased Retirement Liberalization Act (S. 2853/H.R. 4837), which would permit pension plans to make distributions on an employee's attainment of the earliest of (1) normal retirement age, (2) age 59½, or (3) 30 years of service. The Chamber views this as a good example of legislation that could facilitate a healthy policy discussion of the critical phased retirement issues.

81. We note that changes made by the Affordable Care Act may change this in the future.

82. Additional changes may be needed in the Social Security system to further encourage phased retirement. However, changes to the Social Security system are beyond the scope of this paper so the Chamber has not made specific recommendations here.

83. Employers have relied heavily on Department of Labor Interpretative Bulletin 96-1 (IB 96-1). In our previous white paper, the Chamber encouraged the DOL to affirm IB 96-1 and expanded to allow employers more flexibility in determining the types and manner of education that is most useful to its workers. Consequently, the Chamber considers that IB 96-1 currently does not provide sufficient educational pathways. The Chamber is concerned that these pathways may be further reduced under pending DOL proposals.

84. For example, Ariel Education Initiative and Aon Hewitt released a study on the savings and financial disparities among minority groups. It found that African-Americans and Hispanics have significantly lower participation and savings rates, and they are more likely to take a hardship withdrawal. The study also found that automatic enrollment closes the participation-level gap considerably across racial groups. This groundbreaking study underscores the importance of tailoring financial education programs to different demographic groups. See Ariel/Aon Hewitt Study 2012, "401(k) Plans in Living Color: A Study of 401(k) Savings Disparities across Racial and Ethnic Groups," (April 2012), see https://www.arielinvestments.com/401k-Study-2012/.

85. For example, the DOL has been working since 2007 to increase participant education about plan fees through regulations, community outreach and partnerships with the private sector. http://www.dol.gov/ebsa/publications/understandingretirementfees.html.

86. A recent case study demonstrated how financial education for workers can lead to increased retirement savings and better investment outcomes. See Robert Clark, Annamaria Lusardi, and Olivia S. Mitchell, "Financial Knowledge and 401(k) Investment Performance: A Case Study," Pension Research Council, The Wharton School, University of Pennsylvania, (June 2015), see http://www.pensionresearchcouncil.org/publications/document.php?file=1277. See also Annamaria Lusardi, "Planning for Retirement: The Importance of Financial Literacy," *Public Policy & Aging Report*, vol. 19, no. 3, (Summer 2009), see http://www.dartmouth.edu/~alusardi/Papers/PPAR09.pdf.

87. While no state has a functional state-run plan at this time, several states have passed legislation that can or will lead to the formation of state-run plans. The California Secure Choice Retirement Savings Trust Act (S.B. 1234)—signed into law on September 28, 2012—requires employers with five or more employees that do not already offer a qualified retirement plan to enroll their employees in a new type of savings plan based on IRAs at a contribution rate of 3%, with a guaranteed benefit. The Illinois Secure Choice Savings Program Act (S.B. 2758)—signed into law on January 4, 2015—requires employers with 25 or more employees that do not already offer a qualified retirement plan to enroll their employees in a state-run automatic enrollment payroll deduction Roth IRA with a 3% payroll deduction, but employees are able to change their deduction amount and can affirmatively opt out if they wish. A match or employer contribution is not required. The Washington Small Business Retirement Marketplace (SB 5826)—passed in both the Washington Senate and House—provides for a small business retirement marketplace that allows employers with fewer than 100 employees to voluntarily choose from a range of investment options provided through the marketplace.

88. On November 16, 2015, the DOL issued a proposed rule (RIN 1210-AB71) and interpretive bulletin (RIN 1210-AB74) on state-sponsored retirement plans for private-sector employees. See http://www.dol.gov/ebsa/newsroom/fsstatesavingsprogramsfornongovernmentemployees.html. In the proposed rule, the DOL outlines the potential legal hurdles that state plans could face pursuant to ERISA preemption and provides a framework for how to overcome those potential preemption obstacles.

89. ERISA Section 514(a).

90. The issue of ERISA preemption has been debated frequently in the context of health care. See William Pierron and Paul Fronstin, "ERISA Pre-emption: Implications for Health Reform and Coverage," EBRI Issue Brief No. 314, (February 2008), see http://www.ebri.org/pdf/briefspdf/EBRI_IB_02a-20082.pdf.

91. See Brady and Bogdan, "Who Gets Retirement Plans and Why, 2013," *ICI Research Perspective*, vol. 20, no. 6, (October 2014), see www.ici.org/pdf/per20-06.pdf.

92. Id.

93. See the Chamber's recommendations on Multiple Employer Plans in Section I(B) of this paper.

94. See also the Chamber's recommendations on retirement education provided in Section II(D) of this paper.

95. Social Security Administration, "Social Security Basic Facts," (October 2015), see https://www.ssa.gov/news/press/basicfact.html.

96. Id.

97. Consumer Federation of America and Unum, "Employer-Sponsored Disability Insurance: The Beneficiary's Perspective," (September 2013), see http://forms.unum.com/StreamPDF.aspx?strURL=/FMS_122302-2.pdf&strAudience=StreamByNumber.

98. Id.

99. In its July 2015 annual report, the Social Security and Medicare trustees projected that the Social Security Disability Insurance program was going to be exhausted in 2016, at which point beneficiaries would experience an immediate across-the-board reduction in benefits of about 20%. See Social Security Administration, "2015 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds," (July 2015), see https://www.ssa.gov/oact/tr/2015/tr2015.pdf. However, in November 2015, legislation was signed into law ensuring the payment of full Social Security disability benefits into

2022. See Bipartisan Budget Act of 2015, P.L. 114-74. See also Social Security Administration, Legislative Bulletin 114-8, (November 2015), see https://www.ssa.gov/legislation/legis_bulletin_110315.html. While Congress was able to avert the imminent depletion of the Social Security disability insurance program, the Chamber believes educating workers about the benefits of private disability insurance can reduce future budget strains on the federal program.

100. For a discussion on the origins of 401(k) plans after the enactment of the Revenue Act of 1978 and how large employers led the way in its development, see FACTS from EBRI, "History of 401(k) Plans: An Update," (February 2005), see http://www.ebri.org/pdf/publications/facts/0205fact.a.pdf.

101. The DOL ERISA Advisory Council has 15 members—employee organizations, employers, and the general public each get 3 representatives. In addition, there must be one representative from each of the following fields: insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting. See http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.

102. In 2013, the PBGC reissued a previously proposed rule on reportable events under Section 4043 of ERISA. See 78 FR 20039, (April 3, 2013). The reproposed rule is substantially revised from the original proposal and removed many of the burdens that we had identified as unduly burdensome on plan sponsors without providing a corresponding benefit to the PBGC. Also in 2013, the PBGC issued a rule that simplified premium payments by requiring a single filing deadline for all plans. See 78 FR 44056, (July 23, 2013). The Chamber supported these efforts and encourages further actions in this vein.

103. The PBGC's corporate governance structure has come under scrutiny by the Inspector General for the PBGC and the GAO, citing several perceived flaws in its system of governance. Office of Inspector General (OIG), *Semiannual Report for the Pension Benefit Guaranty Corporation (PBGC), April 1, 2011 through September 30, 2011, and October 1, 2011 through March 31, 2012*, (SARC-45), see http://oig.pbgc.gov/pdfs/SARC45.pdf. Government Accountability Office, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, 3, GAO-07-808, (2007), see http://www.gao.gov/assets/270/263367.pdf.

104. Government Accountability Office, *Pension Benefit Guaranty Corporation: Improvement Needed to Strengthen Governance Structure and Strategic Management*, 9, GAO-11-182T, (2010), see http://gao.gov/assets/130/125403.pdf.

105. Id.

106. Generally, the provisions in MAP-21 address board meetings, voting requirements, the PBGC general counsel responsibilities, board employee compensation, and director and board member conflicts of interest. In addition, the law establishes the position of Participant and Plan Sponsor Advocate, whose duties include acting as a liaison between the PBGC, plan sponsors, and participants; advocating for the rights of participants in PBGC-trusteed plans; and helping plan sponsors and participants resolve disputes with the PBGC. The law also requires the PBGC to contract with an agency or organization to conduct an annual peer review of agency pension insurance modeling systems; develop review policies and procedures for all modeling and actuarial work performed by the PBGC's Policy, Research, and Analysis Department; and submit to Congress a timetable for addressing recommendations by the Office of the Inspector General.

107. The PBGC press release "PBGC Announces Constance Donovan as Participant and Plan Sponsor Advocate," October 22, 2013, http://www.pbgc.gov/news/press/releases/pr13-12.html.

108. For example, the Participant and Plan Sponsor Advocate was very helpful in the resolution of plan sponsor concerns with ERISA Section 4062(e). In December 2012, the PBGC announced that it would change its enforcement efforts with respect to ERISA Section 4062(e) to alleviate enforcement burdens for 92% of companies sponsoring defined benefit pension plans. Nonetheless, for those plan sponsors that must deal with the ERISA Section 4062(e), it remained a significant burden. The advocate worked to bring both plan sponsors and the PBGC together. Eventually, this issue was resolved through congressional intervention.

109. The IRS Employee Plans Compliance Resolution System (EPCRS) provides retirement plan sponsors with correction programs designed to voluntarily correct plan failures in order to maintain the tax-qualified status of their retirement plans. the EPCRS has three components: the Self-Correction Program, the Voluntary Correction Program, and the Audit

Closing Agreement Program. See https://www.irs.gov/Retirement-Plans/EPCRS-Overview. The DOL has two voluntary self-correction programs for plan administrators who need help satisfying ERISA requirements: the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program. See http://www.dol.gov/ebsa/publications/correctionprograms.html.

110. IRS Advisory Committee on Tax Exempt and Government Entities, "2013 Report on Recommendations," see https://www.irs.gov/pub/irs-tege/tege_act_rpt_12.pdf.

111. More than 33,000 correction applications have been submitted to EPCRS since it was created in 1991. See Id.

112. Employee Benefits Security Administration, "EBSA Restores over $696.3 Million to Employee Benefit Plans, Participants and Beneficiaries," Fiscal Year 2015 Fact Sheet, see http://www.dol.gov/ebsa/newsroom/fsFYagencyresults.html.

113. Specific recommendations included the following: The program must ensure the fiduciaries of terminating plans that participate in the program that (1) the funds will be handled appropriately; (2) the account will be charged no more than reasonable fees; (3) the participant (once found) will be able to obtain an accounting of the manner in which their funds have been handled by the PBGC; and (4) the fiduciaries will not face significant administrative burdens.

    As provided in the Pension Protection Act of 2006, participating in the program should be optional and should be in addition to any private-sector arrangements that provide similar services. See https://www.uschamber.com/sites/default/files/documents/files/PBGC%2520Missing%2520Participants%2520RFI%2520-%2520ERIC%252C%2520PSCA%2520and%2520Chamber.pdf.

114. The enactment of the MPRA was welcomed by the Chamber and its employer members that contribute to multiemployer plans. The precarious state of underfunding by many multiemployer plans threatens insolvency for such plans and for the PBGC and is a serious threat to participating employers. A bold approach was necessary to permit the survival of plans in critical and declining status and the solutions offered by the MPRA (partition by the PBGC and benefit suspensions by the underfunded plans) should be recognized as essential components of an overall approach to restoring financial stability to troubled plans. Nonetheless, while the MPRA is a strong first step in multiemployer pension reform, the Chamber believes that further attention to the problem will be necessary.

115. Vanguard, "How America Saves 2015," (June 2015), see https://pressroom.vanguard.com/content/press_release/Vanguard_Releases_2015_Edition_of_How_America_Saves_060915.html.

116. SunAmerica Financial Group, *The SunAmerica Retirement Re-Set Study. Redefining Retirement Post-Recession,* (2011), see http://retirementreset.com/.

117. Jeremy Burke, Angela A. Hung, and Jill E. Luoto, RAND Labor & Population, "Automatic Enrollment in Retirement Savings: Evidence from the Health and Retirement Study," Working Paper, (September 2015), see http://www.rand.org/content/dam/rand/pubs/working_papers/WR1100/WR1117/RAND_WR1117.pdf.

118. I.R.C. Section 401(k)(13)(d).

119. Jeffrey W. Clark, Stephen P. Utkus, Jean A. Young, Vanguard Research, "Automatic Enrollment: The Power of the Default," (January 2015), see https://pressroom.vanguard.com/content/nonindexed/Automatic_enrollment_power_of_default_1.15.2015.pdf.

120. Id.

121. Code Section 409.

122. For example, a company may have a 401(k) plan that has an ESOP component in addition to other contribution options. Also, there are a growing number of ESOPs in S corporations, referred to as S-ESOPs. This paper focuses on the statutory definition of ESOPs, but the Chamber urges the continued support of all different types of ESOPs.

123. National Center on Employee Ownership, ESOP Facts, 2015, see http://www.esop.org.

124. National Center on Employee Ownership, "A Statistical Profile of Employee Ownership," (March 2015), see https://www.nceo.org/articles/statistical-profile-employee-ownership.

125. Corey Rosen, "Do ESOPs Need Reform? A Look

at What the Data Tell Us," *Tax Notes*, vol. 124, no. 12, (June 2015), see https://www.nceo.org/assets/pdf/articles/Do-ESOPs-Need-Reform-Rosen.pdf. Furthermore, an analysis of ESOP filings using data from Form 5500 reports found that, on average, an ESOP company contributed $4,443 per active participant to its ESOP. By comparison, the average non-ESOP company with a defined contribution plan contributed $2,533 per active participant to its primary plan in that year.

126. Id.

127. Unfortunately, several high-profile cases have damaged the view of ESOPs. Lawsuit accusations include improper valuations, misuse of assets (such as moving profit-sharing funds into an ESOP), broken promises (such as changing the schedule for distributing benefits), or excessive management enrichment to the detriment of plan participants. Some lawsuits have resulted in substantial settlements. Due to these lawsuits and settlements, many members of Congress and the administration view ESOPs negatively. For example, in a *Wall Street Journal* article, DOL Deputy Assistant Secretary Timothy Hauser is quoted as saying, "Valuation is the first, second, third and fourth problem" in ESOP compliance. Ruth Simon and Sarah E. Needleman, "U.S. Increases Scrutiny of Employee-Stock-Ownership-Plans," *Wall Street Journal*, (June 22, 2014).

128. Certain bills have been introduced in Congress that would support the maintenance of ESOPs. See H.R. 2096/S. 1212, Promotion and Expansion of Private Employee Ownership Act of 2015 (expanding the availability of employee stock ownership plans in S corporations, and for other purposes); H.R. 1675/S. 576, Encouraging Employee Ownership Act (to direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans). At the same time, the Chamber is concerned about proposals that would discourage the use and formation of ESOPs. See "Budget of the United States Government, Fiscal Year 2016," Table S-9, Mandatory and Receipt Proposals, see https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/budget.pdf (repealing the deduction for dividends paid with respect to employer stock held by an ESOP that is sponsored by a publicly traded corporation).

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