AMERICAN BENEFITS COUNCIL

December 11, 2014

SUMMARY OF LEADING PROPOSALS TO EXPAND RETIREMENT PLAN COVERAGE

PREPARED FOR THE AMERICAN BENEFITS COUNCIL BY DAVIS & HARMAN LLP

PROPOSAL	MANDATORY OR VOLUNTARY	DESCRIPTION	EMPLOYERS AFFECTED	CONTRIBUTION STRUCTURE	INVESTMENT OF CONTRIBUTIONS	TAX TREATMENT
Starter 401(k) Plan ***(S. 1270 Sen. Orrin Hatch (D-UT)) Rep. Ron Kind (D-WI) has also indicated interest in a similar concept.***	Voluntary	Establishes a new plan type of safe harbor 401(k) allowing a maximum annual deferral of $8,000, no employer contributions, auto enrollment, simplified reporting, and ability to step-up to a regular safe harbor 401(k). Nondiscrimination testing would be avoided. Rep. Ron Kind's version in development would increase contribution limit to $10,000.	Any employer that does not offer a qualified plan may offer the Starter 401(k). Employers with a SIMPLE IRA plan could step up to a Starter 401(k) during a year.	The plan would have automatic enrollment of at least 3% (but not more than 15%). The maximum contribution would be $8,000 (indexed), plus the catch-up contributions for employees age 50 and older.	Contributions would be invested like other 401(k) plans.	Tax treatment is identical to pre-tax 401(k) plans. It is not clear whether the plan could offer Roth contributions, but it appears that it could.

1501 M Street NW Suite 600 Washington, DC 20005 202-289-6700 Facsimile 202-289-4582 www.americanbenefitscouncil.org

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New Automatic Enrollment Safe Harbor ***(S. 1270 Sen. Orrin Hatch (D-UT); H.R. 2117 Rep. Richard Neal (D-MA); S. 1970 Sen. Susan Collins (R-ME)) Rep. Ron Kind (D-WI) has also indicated interest in a similar concept.***	Voluntary	Establishes a new 401(k) safe harbor called a "Secure Deferral Arrangement" (SDA). The idea is to "stretch" the match and increase the default contribution rate. As under the existing QACA safe harbor, employers that adopt a SDA will be exempt from nondiscrimination and top-heavy testing.	Any employer eligible to adopt a 401(k) plan.	Automatic salary deferrals beginning at no less than 6% of salary in the first year of enrollment, increasing to 8% in the second year, and to 10% in the third and all subsequent years. Employers that choose to sponsor plans subject to this safe harbor will be required to make matching contributions equal to 50 cents on the dollar for the first 2% of pay and 30 cents on the dollar for the next 8% of pay. The version in the Collins' bill is very similar. The employer would match 100 cents on the dollar for the first 1% of pay, 50 cents on the dollar for the next 5% of pay, and 25 cents on the dollar on the next 4% of pay. Matching contributions apply to after-tax contributions under the Collins' bill.	Contributions would be invested like other 401(k) plans.	Employers with 100 or fewer employees that adopt the safe harbor will be eligible for a tax credit equal to 10% of contributions by or on behalf of employees (other than highly compensated employees) for the first three years that the safe harbor is in effect, up to $10,000.

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Eliminate the Cap on Automatic Escalation ***(S. 1270 Sen. Orrin Hatch (D-UT)) H.R. 2117 Rep. Richard Neal (D-MA))***	Voluntary	The current automatic enrollment safe harbor provides that the automatic elective deferral rate may not exceed 10%. The bill would eliminate this cap.	Any employer that already offers an automatic enrollment safe harbor plan, or that may offer one. This change may also encourage employers with non-safe harbor automatic enrollment plans to remove the cap.	The current safe harbor requires that the elective contribution must constitute a "qualified percentage," defined to be met if the percentage is applied uniformly and is at least 3% for the first plan year beginning when the automatic contribution arrangement is established; at least 4% the subsequent year; at least 5% the year after that; and at least 6% for any subsequent year. While these percentages are minimums, the Code provides that a percentage exceeding 10% will not qualify as a QACA. The bill would eliminate the cap.	Contributions would be invested like other 401(k) plans.	N/A

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Open Multiple Employer Plans ***(S. 1270, Senator Hatch (R-UT); S. 1979, Senator Harkin (D-IA); S.1970, Senators Collins (R-ME) and Nelson (D-FL); H.R. 2117, Representative Neal (D-MA); H.R. 4376 (Rep. Braley (D-IA); and H.R. 1534 (112th Congress), Representatives Kind (D-WI) and Reichert (R-WA)***	Voluntary	All of the bills would allow for "open" multiple employer plans (MEPs) which are multiple employer plans in which the participating employers are not required to have a relationship other than participation in the plan. Another MEP reform under consideration is to eliminate the so-called "one bad apple rule" which disqualifies an entire MEP if any participating employer's portion of the plan does not meet the tax qualification rules.	Generally, any employer could participate in an open-MEP. Under the Harkin bill, the Open MEP changes would apply only to plans established after 2013. Under the Collins/Nelson bill, no participating employer may have more than 500 employees (subject to a five-year grace period for employers that grow to exceed the 500-employee limit).	All relevant bills would permit open-MEPs for defined contribution plans. There would be no special contribution rules.	Except in the case of the Collins/Nelson bill, a designated plan provider must be identified. Under the Hatch bill, this "plan provider" is the entity responsible for all administrative duties needed to maintain the MEP's qualification. The plan provider must register with the DOL, and be subject to DOL audits. Each employer maintains fiduciary responsibility to prudently select and monitor the plan provider (except in the case of the Collins/Nelson Bill) and the named fiduciary (if not the same person). Each employer has fiduciary responsibility for its share of plan investments, except to the extent delegated to another fiduciary.	The tax treatment would be identical to other defined contribution plans.

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USA Retirement Funds ***(S. 1979, Sen. Tom Harkin D-IA)***	Mandatory	USA Retirement Funds would be privately run retirement funds administered by a board with representatives of employees, retirees, and employers. In general, employers with more than 10 employees that do not offer a workplace retirement plan with automatic enrollment at 6% of pay and an annuity distribution option would be required to make a Fund available to their employees, with default employee contributions of 6% of pay. Employees could opt out of participation in the Fund.	Any employer with more than 10 employees that does not offer a qualifying plan. To be a qualifying DC plan, the plan must automatically enroll employees at or above the proposal's contribution levels and offer a lifetime income option. In addition, frozen DB plans and plans for which the only contributions are nonelective employer contributions at a level lower than the default contribution rates required by proposal are not qualifying plans. The mandate would apply to employer that does not offer a qualifying plan to all employees (certain groups like those under 21 and those with less than 3 months service are excluded). Most employers' 401(k) plans would not qualify and would need to be amended to be qualifying plans. Employers could participate in a Fund in addition to maintaining their own plan.	All eligible employees would contribute the default amount unless they make a specific election not to contribute or to contribute a different amount. The default level of contribution must be at least 6% of pay, subject to a four year phase-in. If an employee elects not to contribute or elects a different contribution amount, that election would expire after two years, at which point the default amount would apply unless the employee makes a new contrary election. Employee contributions would be limited to $10,000 annually. No employer contributions would be required, but employers would be permitted to contribute up to $5,000 per employee. Any employer contributions must be made in a uniform manner, as the same percentage of pay or the same dollar amount for each eligible employee, and must not be intended to benefit solely highly	Contributions would be held in a kind of multiple employer "Fund." The Funds generally resemble defined contribution plans with accounts based on actual earnings. Funds would be privately run retirement plans overseen by a board of trustees that has all ultimate fiduciary responsibilities, though the board may, of course, hire others, such as investment managers, to perform certain fiduciary duties under the board's supervision. Funds would have professional asset management (rather than participant direction), and would be invested in a manner similar to target date funds or managed accounts. Employers would not have any fiduciary responsibilities with respect to choosing a Fund or the operations of the Fund. The board of trustees would be specifically directed to "manage the Fund with the intention of providing each participant with a cost-effective stream	Senator Harkin's office had indicated a desire to introduce a companion bill addressing the tax treatment, but none was introduced. Presumably, Funds will in general be treated in the same manner as qualified defined contribution plans, so that, for example, contributions are deductible by the employer, the Fund is not taxed, and employees are only taxed on distributions.

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				compensated employees.	of income in retirement and reducing benefit level volatility (particularly for those approaching retirement).” Fund benefits would be portable, so that participants could transfer assets from one Fund to another.	

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Open Thrift Savings Plan to Private Individuals ***(proposed by Senator Marco Rubio (R-FL), no bill)***	Voluntary	Senator Rubio has proposed to open the Federal government's DC plan for public employees (the Thrift Savings Plan) to Americans whose workplaces do not currently offer plans.	It appears that only individuals who do not have a plan at work would be able to participate.	Unclear, although no employer contributions would be allowed.	The TSP has five investment options: The G Fund (Treasury securities); the S Fund (small cap stocks); the C Fund (large and medium cap stocks); the I Fund (international stocks); and the F Fund (Government, corporate, and mortgage-backed bonds). The TSP offers a series of target date funds called the L Funds, which are simply a mix of the other five funds. All of the Funds other than the G Fund are index funds. TSP is also developing a mutual fund window; it is not clear if this would be available to non-Federal employees.	Presumably the tax treatment would be identical to other defined contribution plans.

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American Retirement Accounts ***(proposed during Hillary Clinton's presidential campaign)***	Voluntary	During her presidential campaign, Hillary Clinton proposed a new tax-preferred retirement account – an American Retirement Account ("ARA") – that would largely parallel existing IRA rules and be available to low- and middle-income taxpayers. Employers would be encouraged to offer access to ARAs on an automatic enrollment basis. Would also institute a new system of governmental matching contributions for contributions to ARAs or plans made by income-eligible individuals.	Employers would be "encouraged" to adopt ARAs. How they would be encouraged to do so is not clear. It appears that employers with existing plans would not be affected.	Individuals would be permitted to defer up to $5,000 per year to their ARAs. Employer contributions to ARAs would not be required. No default contribution rate is established.	Would allow a choice between (1) private providers that offer diversified investment options with a default option of a passively-managed, low-cost lifecycle-type fund, or (2) a publicly-managed clearinghouse system similar to the TSP, with assets managed by private providers.	Would provide joint filers earning less than $60,000 with a dollar-for-dollar refundable credit for the first $1,000 of savings. Would provide married couples earning $60,000-$100,000 with a 50% refundable credit for the first $1,000 of savings. Would provide small employers with $1,000 tax credit for the first year that it offers a qualified retirement plan and a $500 tax credit for each of the first three years that it provides an ARA direct deposit option.

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MyRA ***(Obama Administration)***	Voluntary	A Roth IRA administered by the U.S. Treasury, aimed at workers that do not have a retirement plan at work. MyRA will invest exclusively in Treasury securities. The program is intended to be a "starter" IRA that will incubate until the account is large enough to justify transfer to a financial institution.	In 2015, only a select group of employers will participate. We understand that eventually the program will be opened more broadly to all employers. Reports suggest that employers that have a retirement plan will be allowed to participate.	Contributions are made by payroll deduction and forwarded directly to Treasury. The minimum starting contribution will be $25, and the accountholder can make contributions by payroll deduction in increments of at least $5. The accountholder would have the option of maintaining the account upon changing job. Only individuals eligible to contribute to a Roth IRA are eligible to contribute to a MyRA account. No employer contributions are allowed.	Contributions to a MyRA would be held in the form of Treasury debt securities with principal protection. The account will earn interest at the same variable interest rate as the federal employees' Thrift Savings Plan ("TSP") Government Securities Investment Fund – which invests exclusively in a nonmarketable short-term U.S. Treasury security that is specially issued to the TSP An individual's account will be held for 30 years or until the account balance reaches $15,000. At that time, the individual will be forced to the roll the balance over to a Roth IRA account hosted by a private provider. (It is possible that there will be restrictions on IRAs that can receive rollovers, at least as a default.)	The account is a Roth IRA, so contributions are made on an after-tax basis. Earnings are distributed tax free once the individual reaches age 59 ½ and has had a Roth IRA for at least five years.

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Eliminate Top-Heavy Testing or Reduce Burden ***(S. 1270 Sen. Orrin Hatch (D-UT); H.R. 2117 Rep. Richard Neal (D-MA))***	Voluntary	The Hatch bill would eliminate top-heavy testing. Under the Neal bill, if an employer chooses to cover employees who do not meet the statutory age or service requirements, the bill permits the employer to test such employees separately for determining required top-heavy contribution requirements.	Any employer whose plan is or may be top-heavy. For small businesses, the top-heavy rules often are the most burdensome of the various nondiscrimination tests. The mandated employer contribution – or forcing the employer into a safe harbor – is thought to be a barrier to coverage for small employers.	N/A. Plans that are top-heavy must provide a minimum accrual (DB plans) or a minimum contribution (DC plans). In the case of a DC plan, very generally there must be a contribution to each non-key employee's account who is a plan participant equal to at least 3% of the participant's compensation. The plan must also use a special vesting schedule.	N/A	N/A

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Auto IRA ***(President Obama's Budget; H.R. 2035, Rep. Richard Neal (D-MA) (latest version and only one introduced in 113th Congress))***	Mandatory	Would require all but small employers to offer either a workplace plan or a payroll IRA with automatic enrollment.	Under the Neal bill, any employer that does not offer a qualifying plan or arrangement described in Code section 219(g)(5) that has made employer contributions in the last two years. In addition, an employer is excluded if the employer (a) did not employ more than 10 employees who received at least $5,000 of compensation from the employer for the preceding calendar year; (b) did not normally employ more than 10 employees on a typical business day of the preceding calendar year, or (c) was not in existence at all times during the calendar year and the preceding calendar year. Government and churches are also exempt. In addition, an employer that does not cover all employees in its qualifying plan will be affected; the bill provides for certain exceptions including those under age 18 or less than 3 months of service.	The bill would require automatic enrollment. The default contribution percentage would be 3% or another percentage specified by Treasury (not less than 2% or greater than 6%). Treasury could provide for auto escalation.	Various iterations of the Auto IRA bills have designated different investments. Neal's bill would use any target date investment that would qualify as a QDIA as a default, but the employer could also designate a principal protection fund, a balanced fund, or a lifetime income option. If the employer did not designate an IRA provider, contributions could be made to an R-Bond, which is intended to be inflation protected.	The tax treatment would be similar to an IRA. An employee could elect to treat the account as a Roth IRA. The bill would also allow employers who do not have more than 100 employees a tax credit for costs associated with establishing an automatic IRA arrangement; and increase the dollar limitation on the tax credit for small employer pension plan startup costs.

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State Run Mandatory Plans ***(California SB 1234; Illinois SB 2758). Note: Many states are considering similar proposals, which have different features. California and Illinois are the only states to have enacted legislation (other than studies).***	Mandatory	Would require employers with employees in the state to automatically enroll any employees not covered by a retirement plan into an automatic enrollment arrangement, with contributions being made to a state-run arrangement.	California: Private employers with 5 or more employees must participate unless they already offer a retirement plan. Illinois: Private employers with 25 or more employees throughout the previous calendar year that have been in business more than two years and have not offered a qualified plan in the preceding two years would be required to participate.	Employees would be automatically enrolled at a default contribution level of 3% unless they opt out or select a different contribution level. Individuals or employees of nonparticipating employers may participate. Investment levels would be set in accordance with the Code's contribution limits for IRAs.	California: The investment appears to be best described as a guaranteed investment contract. Participant accounts would be credited by an interest rate that is set annually. A Gain and Loss Reserve Account may be used to receive excess earnings and to allocate interest at the stated interest rate for years in which investment earnings are too low. Illinois: Private investment managers may be hired. The default investment would be a target date fund, but the board may also establish a conservative principal protection fund, a growth fund, a secure return (stable value) fund, or an annuity fund. The secure return fund could be used as the default in lieu of a target date fund.	California: The tax implications would be the same as a traditional IRA. Illinois: The tax implications would be the same as a Roth IRA.

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State Run Voluntary Plans ***(Massachusetts H.B. 3754)***	Voluntary	In contrast to the mandatory plans in California and Illinois (and proposed elsewhere), the Massachusetts plan is voluntary. Massachusetts would offer a 401(k) plan for certain employers, essentially acting as an additional 401(k) provider. The plan would be subject to ERISA and would obtain approval from the IRS.	Non-profit employers with up to 20 employees may participate. The law does not restrict participation to employers located in the state.	Contributions can be made by employees and/or employers.	The employee may choose the investment option for his or her account among those made available by the state.	It would appear that the plan would be taxed like other tax-qualified defined contribution plans.
Increase Start-Up Credit ***(S. 1270 Sen. Orrin Hatch (D-UT)) H.R. 2117 Rep. Richard Neal (D-MA)) Rep. Ron Kind (D-WI) has also indicated interest in a similar concept.***	Voluntary	Increase the employer pension plan start-up credit from $500 to $5000. Kind's bill in development would increase maximum credit from $500 to $2,000 and increase percentage of expenses eligible for credit from 50% to 75%.	Under current law, an employer with 100 or fewer employees can claim a credit for costs incurred in establishing and administering a qualified retirement plan, SEP or SIMPLE. The credit equals 50% of qualified costs incurred in each of the three years upon plan establishment, up to $500 per year (which would be increased by the bill). It is available only to an employer that (a) has 100 or fewer employees and (b) has not in the past five years established or maintained a qualified plan.	N/A	N/A	Employers would receive an increased tax credit.

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Enhance Savers' Credit ***(H.R. 2117 Rep. Richard Neal (D-MA))***	Voluntary	The bill would expand the Saver's Credit's reach by making the credit refundable and increasing income limits for the *full* credit. Simultaneously, the bill creates an incentive for taxpayers to pay the credit into a retirement account, by doubling the credit amount for doing so. This contribution will not count against contribution limits and will be treated as basis. The bill fixes the maximum amount of an employee's IRA contributions or elective deferrals eligible for the Saver's Credit at $500 ($1000 for couples), increasingly by $100 ($200) annually to $1,500 ($3,000), then increasing with inflation.	The Savers' Credit is not dependent on the employer.	Under current law, low- and moderate-income taxpayers who contribute to an IRA or a plan can receive a tax credit of up to $1,000 (up to $2,000 if filing jointly). In 2015, the credit is available for filers with AGI of up to $30,500 (single) and $61,000 (married). The credit is applied at the 10%, 20%, or 50% rate (with higher rates tied to lower incomes). The credit is not refundable and does not have to be deposited into a plan.	N/A	Senator Collins (S.1970) also proposed to direct IRS to modify the 1040EZ Form to allow individuals filing that form to claim the Saver's Credit.

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Treat Part-Time Employees as Full-Time ***(H.R. 675, Janice Schakowsky (D-IL))***	Voluntary, but if employer has a plan, it must comply with new rules for part-time employees.	Would require a plan sponsor to treat a part-time employee as having worked 1,000 hours during a year for purposes of the pension plan participation, vesting, and accrual rules if the employee completes 500 hours and (a) has customarily completed 500 or more hours of service per year but less than 1,000 hours of service per year, or (b) is employed in a type of position in which employment customarily constitutes 500 or more hours of service per year but less than 1,000 hours of service per year.	Employers that employ part-time employees that customarily work between 500 and 1,000 hours in a year would be affected; these employees, like full-time, could not be excluded from the plan on the basis of service.	N/A	N/A	N/A