AMERICAN BENEFITS COUNCIL

WRITTEN STATEMENT

OF THE

AMERICAN BENEFITS COUNCIL

FOR THE RECORD OF THE HEARING OF THE
SENATE COMMITTEE ON FINANCE

ENTITLED

HELPING AMERICANS PREPARE FOR RETIREMENT: INCREASING ACCESS, PARTICIPATION AND COVERAGE IN RETIREMENT SAVINGS PLANS

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The American Benefits Council (the "Council") thanks Chairman Hatch, Ranking Member Wyden, and all Members of the Finance Committee for holding this hearing and for the opportunity to provide a written statement for the record. Retirement security is a critical issue for this country. Hard-working Americans deserve a system that will help them achieve a secure retirement. Although the current system has served us extremely well, this system can be improved upon, so that more can be done to provide the help Americans deserve. We applaud the leadership role that this Committee has played in furthering this goal.

Today, we would like to provide our perspective on the success of the current system and to provide suggestions for further refinements of the system drawn from both last year's excellent report of the Finance Committee's Savings and Investment Working Group ("Working Group Report") and from our own long-term public policy strategic plan, "A 2020 Vision: Flexibility and the Future of Employee Benefits."

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

THE CURRENT VOLUNTARY EMPLOYER-BASED SYSTEM IS WORKING

Voluntary, employer-sponsored defined contribution and defined benefit retirement plans are the foundation of our nation's retirement system. Workplace retirement plans, like those sponsored and administered by the Council's members, successfully assist tens of millions of families in accumulating retirement savings, allowing for a more financially secure retirement and providing sustainable health and financial well-being. Data from the U.S. Department of Labor indicates that more than 130 million active and retired workers (and their spouses) are now covered by nearly 900,000 employer-sponsored retirement plans nationwide.[1] In addition, almost 42 million households now own some kind of Individual Retirement Account (IRA),[2] many comprised of assets that have been "rolled over" from employer plans.[3] The role of employers in ensuring workers' retirement security, therefore, must not be underestimated.

[1] U.S. Department of Labor and Employee Benefits Security Administration, *Private Pension Plan Bulletin: Abstract of 2012 Form 5500 Annual Reports*, January 2015.

[2] Investment Company Institute, *2015 Investment Company Fact Book*, Figure 7.18, May, 2015.

[3] According to the 2014 Investment Company Fact Book, Figure 17.7, May, 2014 "of U.S. households owning traditional IRAs in May 2013, 49 percent (or nearly 18 million) had traditional IRAs that included rollover assets."

Employer-sponsored plans provide tangible economic value to American workers saving for retirement. Employers lower administrative costs by achieving economies of scale and simplify participation by offering workers a carefully vetted selection of investment choices, while fiduciary requirements offer security and peace of mind. Simply put, employer retirement plans lower the cost of savings by reducing numerous burdens for individuals.

Payroll deduction has proven to be an effective means of enhancing savings behavior. By pooling resources and offering a collective vehicle for the investment of savings, employers are also able to foster a culture of saving throughout the workplace.

The voluntary, employer-sponsored system is important because it gives companies the flexibility to tailor their plans to diverse and evolving employee populations. Employers have a unique understanding of the retirement needs of their employee population and provide innovative solutions to help employees. For example, companies are increasingly providing their employees with access to education that enhances their understanding of savings principles and helps address the financial stresses that impair overall financial well-being. In the future, successful employee benefits systems will reject "one-size-fits-all" mandates in favor of a flexible approach that allows employees to adjust their goals and behavior according to their own changing needs.

To meet this challenge, employers are continually innovating to improve participation rates and outcomes. Bipartisan legislation has brought many of these innovations into the mainstream. For example, the Pension Protection Act of 2006 (PPA) includes several landmark clarifications to the defined contribution plan rules that encourage voluntary automatic enrollment and automatic contribution escalation, which are improving retirement savings by moderate- and lower-income workers beyond what could otherwise be expected. According to a report by Vanguard, more than 60 percent of new plan entrants in 2014 were enrolled via automatic enrollment and more than half of all contributing participants in 2014 were in plans with automatic enrollment.[4]

It is a testament to the effectiveness of these programs that these innovations have been emulated around the world in both public and private pension systems. In the next section of this document, we suggest some new ways to build on the employer-sponsored system, but such measures will only be effective if the system remains viable.

Employers have an interest in the continued success of the system because they also enjoy certain advantages of plan sponsorship. Having a strong retirement plan benefits

[4] Vanguard, How America Saves 2015, June, 2015.

employers by helping them attract and retain talent and by providing their employees with financial security and confidence as they prepare for retirement.

WE HAVE GREAT OPPORTUNITIES TO FURTHER IMPROVE ON THE CURRENT SYSTEM, BUILDING ON DECADES OF SUCCESS

Promoting retirement savings must remain one of our nation's top policy priorities. Any changes made should preserve and build upon our existing and successful tax incentive structure so it works even more effectively to facilitate retirement plan coverage and savings for American families.

Harnessing behavioral economics, through features like automatic enrollment and automatic escalation, has proven to be an effective approach for improving outcomes for many employee populations. In many cases, however, additional action from lawmakers will be required.

Proposals from A 2020 Vision

As noted, the Council recently issued a long-term public policy strategic plan, *A 2020 Vision: Flexibility and the Future of Employee Benefits*, in which we made specific policy recommendations, many of which would empower individuals to save for a secure financial future in retirement. The recommendations include the following:

1) ***Increase the compensation and contribution thresholds for retirement plans and index the limits to ensure they keep pace with inflation.***

Increased limits and more appropriate indexing will allow individuals to save more effectively. While some may advocate reducing the tax incentives on retirement plans in an attempt to increase revenue, doing so would reduce the flexibility that employees need to save effectively over their working lives when there will be large variations in their ability to set aside money for retirement.

2) ***Increase catch-up contribution limits and lower eligibility to age 45.***

Considering current longevity trends and the need to start saving for retirement as early and to as great an extent as possible, the establishment of higher limits and a younger start date for "catch-up" contributions will help individuals who begin saving later in their career, as well as those with inconsistent participation in the workforce or in retirement programs over the course of their lives, achieve greater personal financial security.

3) ***Reduce or combine the number of retirement plan information disclosure requirements.***

The volume and redundancy of disclosures not only dissuade retirement plan sponsorship, they adversely affect transparency for participants, as the excessive amount of information often leads to employees reading none of it. Transparency would be better served by the delivery of more concise, well-organized information. Notices could be shortened and consolidated to maximize effectiveness and eliminate repetitiveness and redundancy. For example, all notices provided at enrollment and annually could be combined into a single "Quick Start" notice. This would require harmonization and streamlining of timing requirements. Certain duplicative and irrelevant notices, such as the summary annual report and the deferred vested pension statement, should be eliminated.

4) ***Establish an alternative automatic escalation safe harbor for retirement plans.***

As introduced in the Secure Annuities for Employee (SAFE) Retirement Act (S. 1270), sponsored by Senate Finance Committee Chairman Orrin Hatch (the "SAFE Act"), an alternative automatic escalation safe harbor should be established with higher default rates and employers should be allowed to escalate employee contributions beyond the current 10 percent cap. Default mechanisms such as automatic enrollment and escalation, lifestyle funds and retirement target date funds may help individuals who decline to enroll in a retirement plan to become savers and invest assets appropriately for their age and risk level. The 10 percent cap on default contributions under the current safe harbor should be eliminated and a new safe harbor should be adopted with higher minimum default contribution rates that start at 6 percent. This structure was also discussed in the Working Group Report and has been proposed in other prominent bills in the House and Senate.

5) ***Support voluntary, simple, portable model plans for retirement income or retiree health coverage.***

A model plan could accept differing levels of employee and voluntary employer contributions via payroll deduction and could accommodate a range of investment vehicles. These savings could be either pre- or post-tax and fiduciary liability for the employer would be appropriately limited. Such a plan could be offered to workers who lack access to an employer-based plan or those who want to supplement one – ideal for workers who may not expect to stay with a single employer.

6) ***Improve opportunities for small business to maintain retirement plans.***

As noted above, it is important to acknowledge that employee access to employer-sponsored retirement plans remains a challenge in some segments, including small businesses. We strongly support proposals such as helping small businesses join multiple employer plans ("MEPs") and other initiatives that would help expand private sector employer-sponsored retirement coverage. The SAFE Act contains many such

proposals, including the following, all of which are discussed favorably in the Working Group Report and are included in other prominent bills:

- *Open MEPs:* Today, a MEP must consist of employers that share a nexus other than maintaining the same plan. The SAFE Act includes a proposal that, under certain circumstances, would eliminate the nexus requirement so that completely unrelated employer could participate in the same MEP. This could allow small employers to band together more easily to achieve some of the economies of scale that larger employers enjoy. This proposal is even more appropriate now after the Department of Labor ("DOL") has allowed states to establish open MEPs. This guidance clarifies DOL's recognition of the value of open-MEPs in addressing access needs and the need for supportive policy. However, DOL's actions have created an un-level playing field, and unless corrected gives states an unfair and unnecessary competitive advantage in offering retirement plans to private sector employers.
    - We should further explore means to reduce or eliminate fiduciary burdens on small employers that participate in such MEPs, since such burdens can prevent broader coverage among small employers.
- *One bad apple rule:* Under a MEP, the failure of one participating employer to satisfy the qualification rules can cause the entire plan to be disqualified, often referred to as the "one bad apple rule." The SAFE Act would modify that rule, so that only the noncompliant portion of the MEP is subject to disqualification, and may be spun off from the MEP.
- *Start-up credit for small employers:* The SAFE Act would increase the small employer tax credit for establishing a plan. The credit is currently capped at $500 per year; the SAFE Act would increase the cap to $5,000.

7) *Increase public awareness of the financial risks associated with increased longevity.*

The average time spent in retirement has lengthened from 9.6 years in 1970 to 17.6 years for men and from 14 years to 20.6 years for women over that same period.[5] This reality underscores the imperative for policies that meet the retirement income needs brought about by longer life expectancies. The federal government should undertake efforts to increase employees' understanding of the value of delaying Social Security benefits and the importance of planning for longer life expectancies.

[5] U.S. Centers for Disease Control, *Health: United States, 2013*, 2013; the Organization for Economic Cooperation and Development, *Statistics on average effective age and official age of retirement in OECD countries*, 2012.

8) ***Enable employers to better provide financial education and investment advice.***

Employees' knowledge and understanding of financial and retirement savings principles could be improved by providing incentives and removing barriers that deter employers from arranging for workers to receive financial education or advice.

9) ***Exclude current retirement plan assets and future retirement plan benefits from eligibility calculations for state or federal housing and food subsidies.***

Effective retirement saving can facilitate income mobility and improve overall health and financial well-being, but this can sometimes jeopardize qualification for other kinds of federal assistance. Even the fear of losing assistance can prevent participation. Individuals and their families should not be penalized for preparing for retirement. Accounting of income eligibility for subsidized food or housing should exclude retirement assets. Clear protection against losing assistance for participation would directly increase participation in retirement programs.

These recommendations and others incorporated in *A 2020 Vision* are intended to empower individuals to achieve health and financial well-being in retirement. Our member companies sponsor retirement plans with strong participation levels and we want to ensure that American workers tap into the full value of their retirement plans.

ADDITIONAL ISSUES MERITING CONSIDERATION

There is much in the SAFE Act and the Working Group Report that would expand access, participation, and coverage in retirement savings plans, and we support the pursuit of legislation based on both. We would also like to highlight certain other key issues.

1) Ensure that the State plan proposals do not undermine the employer-based plans.

If employers are subject to 50 different state mandates regarding retirement coverage, it will create such significant burdens on the employer-based system that many employer plans will be terminated, leaving employees without employer contributions and thus with far less retirement security. In this context, we need certain fundamental rules to protect the employer-based system:

- Any employer with any plan, including a payroll deduction IRA, needs to be fully exempted from any state mandates.

- The states should not be permitted to set minimum standards for plans in order for the plan sponsor to be exempted from the mandate; this would lead to a

patchwork of different state rules that would sharply decrease employer-based coverage.

- The states should be prohibited from maintaining conflicting and overlapping rules with respect to the same employees; the current DOL proposal would not do that.

- The states should not be given competitive advantages over the private sector in terms of how to structure their plan offerings; the current DOL proposals would explicitly provide states with such advantages.

ERISA preemption is a cornerstone of our private pension system. It needs to be protected against the very serious threat posed by the states. The private pension system cannot survive under a patchwork system of 50 uncoordinated rules.

2) *Establish fiduciary safe harbors and outsourcing rules for plan sponsors.*

We are increasingly hearing concerns from large employers about the spiraling costs and potential liabilities associated with employer-based plans. Some large employers have even indicated that if there were a viable way to exit the system completely, they would do so. If large employers start leaving the system, it will cause a rapid movement out of the system, just as has happened with respect to defined benefit plans. Accordingly, we need to reverse the trend toward ever greater incentives to leave the system. We need a best practices set of fiduciary safe harbors for employers to follow, so as to avoid potential liabilities.

We also need to explore means for employers to outsource their fiduciary liabilities. Such outsourcing could produce a tremendous incentive for employers to retain and maintain plans.

3) *Prevent acceleration in the decline in the defined benefit system.*

There are many issues that could accelerate the decline in the defined benefit system, but which can be easily fixed. For example:

- *Closed plan nondiscrimination testing:* Many companies have closed their defined benefit plans to new hires, but have preserved ongoing benefits for employees employed at the time of the closing. Unfortunately, this favorable treatment of existing employees will in most cases eventually result in a violation of the nondiscrimination rules, triggering a need to completely freeze the plan. The Council has been working on this set of issues for over a decade with both Treasury and Congress. A number of bills have been introduced based on the very appropriate solution of deeming a closed plan to meet the

nondiscrimination rules indefinitely if the plan meets those rules on or after the date of closing.

- *PBGC premiums:* The recent increases in PBGC premiums (1) have been unnecessary, being driven by revenue needs, not policy concerns, (2) exacerbate the volatility of the funding rules by increasing premium volatility, (3) divert assets away from benefits to PBGC, which has more than enough assets to cover expected liabilities despite not having invested its assets well, and (4) are driving plan sponsors out of the defined benefit system, which will severely threaten PBGC's financial viability. Premiums need to be reduced and the budget scoring system that double counts PBGC premiums should be repealed. Since the federal government does not stand behind the PBGC single employer program, it is inappropriate to score premiums as helping the federal budget.

- *Mortality assumptions:* Treasury is working on new mortality assumptions that are expected to apply starting in 2017 for purposes of determining a company's pension funding obligations, the applicability of benefit restrictions (such as on the payment of lump sums), the amount of lump sum distributions payable, and the level of PBGC variable rate premiums. These new assumptions, which will likely be based to a large extent on the new assumptions published by the Society of Actuaries, are expected to increase pension liabilities materially for many plans.

  SOA's assumptions overstate life expectancy (and correspondingly would overstate pension liabilities) and thus should not be followed in whole. It is critical that either Congress or Treasury address this problem, so that the new Treasury tables are not based on SOA's incorrect assumptions.

- *Stretch IRA legislation:* There have been numerous "Stretch IRA legislative proposals" that would raise revenue by limiting the ability of post-death beneficiaries to "stretch out" distributions from a plan or IRA. The concerns underlying these proposals have been focused on IRAs, but the proposals apply to all plans, including defined benefit plans.

  These proposals would inadvertently create serious problems for defined benefit plans by effectively prohibiting many common distribution forms, such as life annuities with a term certain longer than five years. Defined benefit plans should be exempted from such proposals since none of the concerns giving rise to the legislation relate to defined benefit plans.

- *PBGC interference in business transactions and operations:* PBGC has had a long history of interfering in business transactions and operations to negotiate for, for example, larger funding contributions, above the levels specified by Congress. Formerly, the PBGC used ERISA section 4062(e) in unintended ways to do this.

However, Congress enacted very effective legislative reforms of section 4062(e) in 2014.

Now the PBGC is increasing its use of the Early Warning Program, apparently to make up for the Congressional restrictions on its use of section 4062(e). Under the Early Warning Program, PBGC intervenes in business transactions to force employers to take certain actions, such as contributing much more to the pension plan than has been required by Congress. PBGC achieves its objectives by threatening involuntary termination of the plan, which would be extremely harmful to the plan sponsor, if the plan sponsor does not concede to PBGC's demands. PBGC has been using the Early Warning Program inappropriately, just as it used section 4062(e) inappropriately. Congress may need to take action here, just as it did so well with respect to section 4062(e).

We thank the Committee for holding this hearing and for a long history of dedicated work on protecting and enhancing the private retirement system. We look forward to continuing to work with this Committee on this critical endeavor.

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