



AMERICAN BENEFITS

COUNCIL

The Future of Employer-Sponsored Health and Retirement Benefits

*Metropolitan Washington D.C.
WEB Chapter*

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**Jim Klein, President
American Benefits Council**

Overview

- ② **Retirement Policy**
- ② **Health Policy**
- ② **2020 Vision**

Retirement Policy

Retirement Policy

Bipartisan Proposals

- ☉ **Alternative 401(k) “safe harbor” starting at 6% and removing the 10% cap on auto-escalate deferrals**
- ☉ **Showing account balance as a monthly annuity**
- ☉ **Electronic delivery of plan notices and information**

Retirement Policy

Senate Finance Committee's Goals

- ② **Increase access to tax-deferred savings**
 - Automatic enrollment and escalation
- ② **Increase participation and savings**
 - Eligibility of part-time workers
- ② **Discourage leakage**
 - More time for rollovers of loans and allow contributions following hardship withdrawals
- ② **Promote lifetime income**
 - Tax favored annuity purchase and increased retirement savings portability

Retirement Policy

Tax Reform and Deficit Reduction

- ② **Limit pre-tax 401(k) deferrals to one-half statutory maximum, with the rest as Roth (e.g. \$9,000 pre-tax)**
- ② **Suspend indexation of limits for 10 years**
- ② **Qualified plan and IRA distributions to beneficiaries generally within five years of death**

Retirement Policy

Tax Reform and Deficit Reduction

- ② **Increase Pension Benefit Guaranty Corporation premiums**
- ② **Eliminate deduction for ESOP dividends**
- ② **Apply 10% surtax on high earners for pre-retirement contributions to retirement plans**

Retirement Policy

Chances for legislative action?

- ☉ **Slow and partisan legislative process, but**
...
- ☉ **International corporate tax reform**
- ☉ **Other legislation as vehicles**

Retirement Policy

Fiduciary Definition

- ② **Principally relates to information provided to 401(k) plan participants**
- ② **DOL proposed rule in 2010, but withdrawn in light of bipartisan Congressional opposition**
- ② **Council of Economic Advisors: \$17 billion lost due to “conflicted advice”**
- ② **President Obama’s personal involvement**
- ② **New rule proposed, DOL hearings**

Retirement Policy

Fiduciary Definition

- ② **Investment education**
- ② **Call centers and employee interactions**
- ② **Rollovers and distributions**
- ② **Routine plan agreements**
- ② **Clarification of non-applicability to health and welfare plans**
- ② **Possible Congressional intervention**

Retirement Policy

Other Regulatory Matters

- ② **Pension risk transfer**
- ② **Updated mortality tables**
- ② **Hybrid plan final guidance**
- ② **Elimination of Determination Letters**

Health Policy

Health Policy

- ② **Continued partisan confrontation on Affordable Care Act**
- ② **Use “must do” legislation to force action on ACA repeal/changes**
 - Debt ceiling limit
 - Appropriations process
 - Highway trust fund reauthorization
 - Export-Import Bank reauthorization

Health Policy

40% “Cadillac” Tax

- ② **40% non-deductible tax on health plan costs exceeding \$10,200/single and \$27,500/family, beginning 2018**
- ② **Impact now, 2018 and beyond**
 - One third of employers increasing employee out-of-pocket expenses now, in 2015*
 - 48% employers, at least one plan affected in 2018; 82% in 2023**

**Aon Hewitt; **Towers Watson*

Health Policy

40% “Cadillac” Tax

- ② **Treasury Notice 2015-52: supplements earlier notice 2015-16**
- ② **Comments due tomorrow**
- ② **Topics addressed in the notice**
 - Identify taxpayers liable for paying the tax
 - Allocation and payment of the tax among applicable taxpayers
 - Employer mandate vs. 40% tax on health benefits
- ② **Next step: proposed regulations**

Health Policy

40% “Cadillac” Tax

- ⦿ **Alliance to Fight the 40 – diverse coalition**
- ⦿ **House repeal bills**
 - H.R. 2050 – Rep. Courtney (D-CT)
 - H.R. 879 – Rep. Guinta (R-NH)
- ⦿ **Senate repeal bills**
 - S 2045 Sens. Heller (R-NV) and Heinrich (D-NM)
 - S 2075 Sen. Brown (D-OH)
- ⦿ **Other possible legislative “fixes”**
 - Actuarial value safe harbor (90%)
 - Changes to indexing for cost thresholds (CPI+1 or 2)
 - Exclusions from tax (HSAs, FSAs, HRAs)

Health Policy

40% “Cadillac” Tax

- ◎ **Congressional Budget Office estimates**
 - Approximately \$22 billion from imposing the 40% tax
 - Approximately \$65 billion from greater income tax collection as employers shift health costs to taxable wages
- ◎ **If CBO is correct, it will be a massive tax hike. If CBO is wrong, the revenue will never materialize**
- ◎ **Likelihood of repeal/reform?**

Health Policy

Employer Reporting

- ② **Used to determine compliance with “employer shared responsibility” requirements and eligibility for premium tax credits for exchange coverage**
- ② **Form 1095-C used by employers to report certain information to IRS and employees**
- ② **Required for tax year 2015**
- ② **Reporting regime poses significant challenges to employers/service providers**

Health Policy

Employer Reporting

- ⦿ **Regulatory Activity**
 - Draft 2015 forms and instructions issued
- ⦿ **Legislative Activity**
 - Recently introduced
 - S. 1996 – Warner (D-VA)/Portman (R-OH)
 - H.R. 2712 – Black (R-TN)/Thompson (D-CA)
 - Voluntary prospective reporting system
- ⦿ **Likelihood of further delay?**

Health Policy

Wellness Programs

- ⦿ **Concern regarding EEOC litigation**
- ⦿ **Council testified at House and Senate hearings on employer wellness plans and EEOC**
- ⦿ **Preserving Employee Wellness Programs Act (S.620/H.R.1189)**
 - Plans complying with HIPAA/ACA do not violate the ADA
 - Protection extends to participatory plans that offer incentives consistent with HIPAA/ACA



2020 Vision

Selected Recommendations

2020 Vision

- ② **COBRA repeal or reform**
- ② **HRAs for purchase of coverage in Exchanges**
- ② **State Innovation Waivers – repeal or limit scope**
- ② **Tax-favored distributions from retirement savings accounts for retiree-health, long-term care or disability insurance**

2020 Vision

- ② **Catch-up contributions starting at age 45**
- ② **Increase \$5,000 threshold for employers to cash-out retirement plan accounts**
- ② **Reduce and combine retirement plan disclosures (e.g., Summary Annual Report, deferred vested pension statement, notice of determination letter application)**

2020 Vision

- ② **Large business exemptions**
- ② **“Presumption of good faith” for use of evolving technology**
- ② **“Least burdensome compliance” standard**

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