



AMERICAN BENEFITS  

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COUNCIL

# What's Up in Washington: A View from the Vortex

## WEB Cleveland

James A. Klein  
November 19, 2015

**“True is it that we have  
seen better days.”**

**As You Like It  
(Act Two, Scene 7)**

# The Political Stage

# The Political Stage

## *U.S. House of Representatives*

- ◉ **Distinction between “majority” and “control”**
  - House leadership unable to control its caucus
- ◉ **Impact of Congressional re-districting: eroding the influence of moderates**

# The Political Stage

## *U.S. Senate*

- ◉ Distinction between “majority” and “control”
- ◉ Need 60 votes in the Senate to move the majority party’s agenda
- ◉ Prospects for future control of the Senate
  - Republicans must defend 24 seats
  - Democrats must only defend 10 seats

# **The Affordable Care Act Aftermath**

# 40% “Cadillac” Tax

- ◉ Non-deductible tax on health plan costs exceeding \$10,200/single and \$27,500/family, beginning in 2018
- ◉ Indexed to Consumer Price Index (CPI)+1% in 2019; CPI thereafter
- ◉ Some age, gender and occupation adjustments; but no geographic variations
- ◉ Excise tax, so it also applies to public and non-profit plans

# 40% Tax: Scope and Timing

- ◉ **Intended to affect only a few plans, but ...**
  - 48% of employers, without changes at least one plan will trigger tax in 2018; 82% in 2023  
*(Towers Watson)*
- ◉ **Not just a 2018 problem ...**
  - One third of employers are increasing employee out-of-pocket expenses this year  
*(Aon Hewitt)*



# 40% Tax: Ironies!

- ◉ Cost of preventive benefits (e.g. cancer screening) is included in determining if tax is triggered
  - **Required by ACA with no employee cost-sharing**
- ◉ Certain high cost areas (WV, GA, AK, WY) even the second-lowest cost silver level plan in small employer SHOP exchange will trigger tax in 2018 (*Ernst & Young*)
  - **ACA requires the exchanges to sell these plans**
- ◉ “Tax will most likely require a reduction in [health] benefits and elimination of other benefit programs. This will impact the lives of current enrollees and will affect the ability ... to recruit and retain a world class workforce.”
  - **Federal government Office of Personnel Management!**

# 40% Tax: Rationale

- ◉ **Why was Cadillac tax included in the ACA?**
  - Mitigate health cost increases
  - Help pay for other features of the ACA (e.g. subsidies in insurance exchanges)
- ◉ **These factors are the two biggest substantive obstacles to repealing the tax**

# 40% Tax: Cost Mitigation

## *Shifting, not Lowering*

- ◉ **64% of employers have increased employee cost-sharing** (*Kaiser Family Foundation/ Health Research & Educational Trust*)
- ◉ **42% of employers will increase employee cost-sharing; and 37% will reduce spousal subsidies or impose a surcharge** (*National Business Group on Health*)

# 40% Tax: Revenue

- ◉ **CBO estimate: \$91 billion over 10 years**
  - Approximately  $\frac{1}{4}$  from the 40% tax itself
  - Approximately  $\frac{3}{4}$  from greater income tax collection as employers shift health costs to taxable wages
- ◉ **Debunking the assumptions: Since 2010, employees' share of deductibles has increased 67%, while wages have risen only 10% (*Kaiser Family Foundation/Health Research & Educational Trust*)**
- ◉ **If CBO is correct: it's a massive tax hike**
- ◉ **If CBO is wrong: revenue won't materialize**

# Alliance to Fight the 40

- ◉ Diverse coalition of private and public sector employers, unions, non-profits, etc. Among the members -
  - Unite Here!
  - Laborer's International Union
  - International Brotherhood of Carpenters
  - National Association of Counties
  - Government Finance Officers Association
  - American Benefits Council
  - Corporate Health Care Coalition
- ◉ Coalition seeking full repeal of Cadillac tax

# 40% Tax: Repeal Legislation

- ◉ **H.R. 879 – Rep. Guinta (R-NH)**
- ◉ **H.R. 2050 – Rep Courtney (D-CT)**
  - 260+ House members are co-sponsors of one/both bills
- ◉ **S. 2045 – Sens. Heller (R-NV) and Heinrich (D-NM)**
- ◉ **S. 2075 – Senator Brown (D-OH)**
  - 30 Senators are co-sponsors of one or other bill
- ◉ **Political factors affecting repeal**

# 40% Tax: Other Possible Changes

- ◉ Actuarial safe harbor
- ◉ Modify indexing of cost thresholds
- ◉ Exclusions from the tax (HSAs, FSAs, HRAs, wellness programs, on-site clinics)
- ◉ Prospects for action?



# 40% Tax: Regulatory Guidance

- ◉ **Treasury Notice 2015-16 and Treasury Notice 2015-52**
- ◉ **Topics addressed in the notices**
  - What is applicable coverage
  - Identify taxpayers liable for paying the tax
  - Employer mandate tax vs. Cadillac tax
- ◉ **Next step: proposed regulations**



# Employer Reporting

- ◉ Used to determine compliance with employer mandate and eligibility for premium tax credits for exchange coverage
- ◉ Legislation introduced creating a voluntary prospective reporting system
  - S. 1996 – Warner (D-VA)/Portman (R-OH)
  - H.R. 2712 – Black (R-TN)/Thompson (D-CA)
- ◉ IRS may enforce with a “light touch”

# State Innovation Waivers

- ◉ In 2017 states may seek waivers from the Department of Treasury and Department of Health & Human Services
- ◉ Narrow or broad interpretation
- ◉ Could be very attractive to states
- ◉ Council: limit scope of waivers
  - Not applicable to self-insured plans
  - No new definition of “minimum essential coverage”
  - No new employer reporting requirements

# COBRA

- ◉ **Best interests of plan sponsors and participants**
  - Exchanges provide optional venue
  - Relieve burden on employers
  - Better deal for employees
- ◉ **Repeal**
- ◉ **Limit duration to current plan year**

# Retirement Policy Developments

# Defined Benefit Plans

## *Mixed Messages*

- ◉ Increase in PBGC premiums ... again
- ◉ Extension of funding relief
- ◉ Greater flexibility in use of mortality assumptions
- ◉ Continued scrutiny of de-risking strategies
  - Regulatory action: no lump sums to participants in pay status
  - Provide more information when buying annuities

# Defined Contribution Plans

## *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

# Defined Contribution Plans

## *Fiduciary Definition*

### ☉ Plan sponsor concerns

- Investment education
- Call centers and employee interactions
- Rollovers and distributions
- Routine plan agreements

### ☉ Anticipated process

- DOL issuance of final rules likely in the 1<sup>st</sup> quarter of 2016
- Congressional intervention



# Retirement Policy: The Big Picture

## *Senate Finance Committee's Goals*

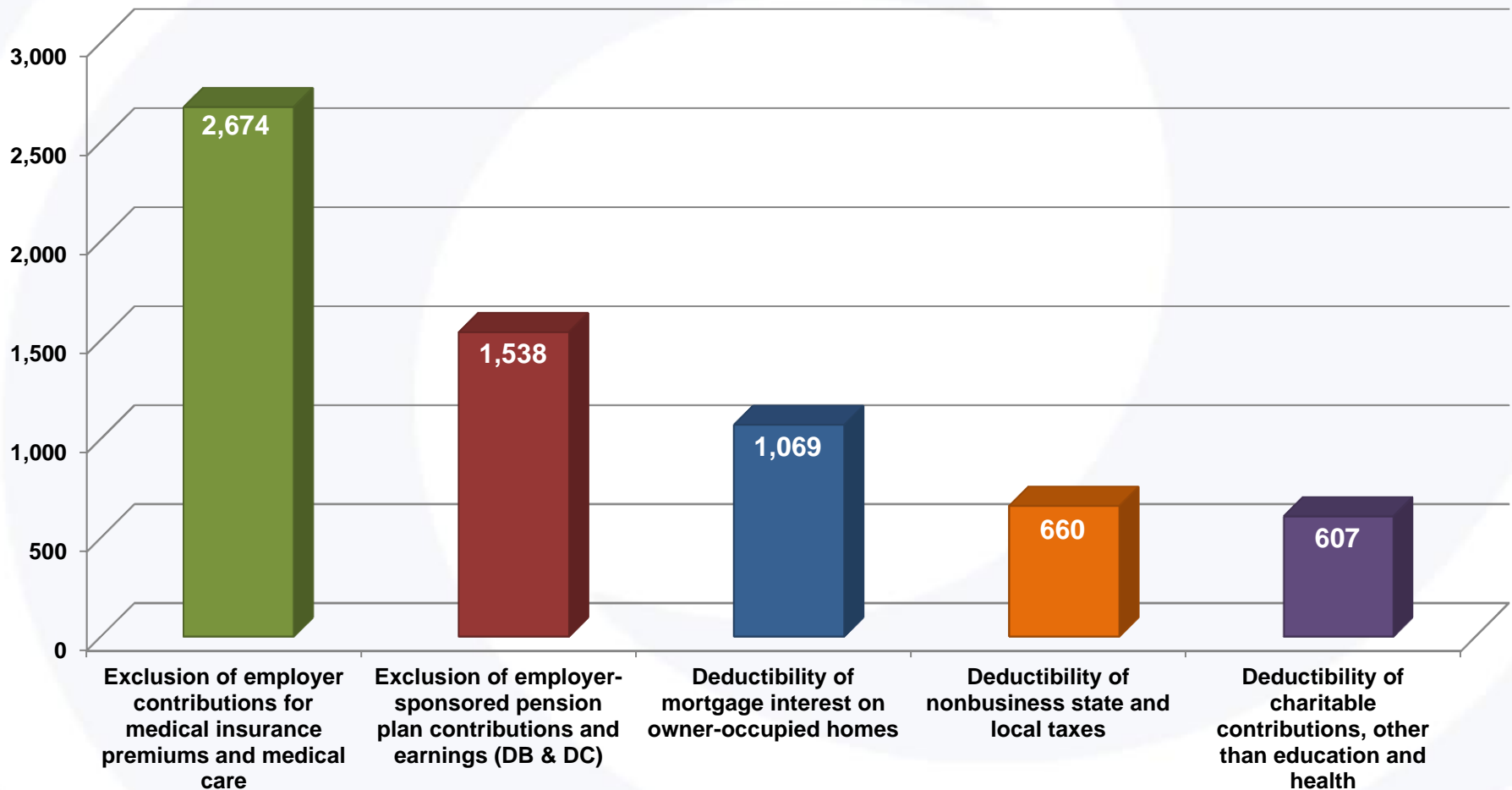
- ② Increase access to tax-deferred savings
  - Automatic enrollment and escalation
- ② Increase participation and savings
  - Eligibility of part-time workers
- ② Discourage leakage
  - More time for rollovers of loans and allow contributions following hardship withdrawals
- ② Promote lifetime income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



# Tax Policy and Benefits

# Tax Expenditures, 2015-2024

## Projected Dollars in Billions



Source: U.S. Office of Management and Budget (OMB), *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2016*

# Tax Policy and Health Benefits

- ◉ **Reduce 40% tax to 12% and limit income tax excludability**  
(Bipartisan Commission on Fiscal Responsibility and Reform)
- ◉ **Limit excludability to \$12,000/single and \$30,000/family and provide standard deduction for coverage bought in the individual market**  
(GOP “Repeal and Replace” proposal)
- ◉ **Limit excludability for high income earners**  
(Hillary Clinton in 2008 presidential race .... 2016?)

# Tax Policy and Retirement Benefits

- 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 Eliminate ESOP dividend deduction
- ② Qualified plan and IRA distributions to beneficiaries generally within five years of death

# Political Outlook

# The Candidates' Positions on Health Policy

- ◉ **Republicans focused on repeal of ACA**
- ◉ **Bush has the most detailed plan**
  - Tax credit for purchase of portable health plans
  - Increase contribution limits for HSAs
  - Cap exclusion on employer-sponsored coverage
  - Facilitate transparency on costs/outcomes
  - Financial incentives for wellness programs
  - Small business contributions to workers' portable plans
- ◉ **Democrats focused on preserving ACA**
- ◉ **Both Clinton and Sanders support repeal of 40% tax**
  - Lower co-pays and deductibles
  - Concern about insurance company consolidation

# The Candidates' Positions on Retirement Policy

## Much Ado About Nothing

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<http://www.americanbenefitscouncil.org>

ALLIANCE  
TO FIGHT THE 40

<http://www.fightthe40.com>