

# The Political & Legislative Outlook Going Into 2012!

Dallas-Ft. Worth ISCEBS

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## American Benefits Council

### Overview

- Retirement policy outlook
- Health policy outlook
- The deficit, tax reform and employee benefits



# Retirement Policy Outlook



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### Retirement Policy Outlook Defined Benefit Plans

- Estimated \$23 billion deficit for PBGC
- Proposed new method to calculate premiums
  - PBGC, not Congress, would set premiums
  - Based, in part, on plan sponsor creditworthiness
- Campaign to push for methodology change



## **Retirement Policy Outlook**

### **Defined Benefit Plans**

- Funding requirements still a problem for many sponsors given:
  - Equity market
  - Low interest rates
  - Pension Protection Act funding rules
- Lawmakers have “pension funding fatigue”
- Funding relief raises federal tax revenue



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## **Retirement Policy Outlook**

### **Defined Contribution Plans**

- Relatively quiet at the legislative level; but “Supercommittee” action potentially problematic
- Lifetime Income Disclosure Act
- Savings Enhancement by Alleviating Leakage (SEAL) Act



## **Retirement Policy Outlook**

### **Defined Contribution Plans**

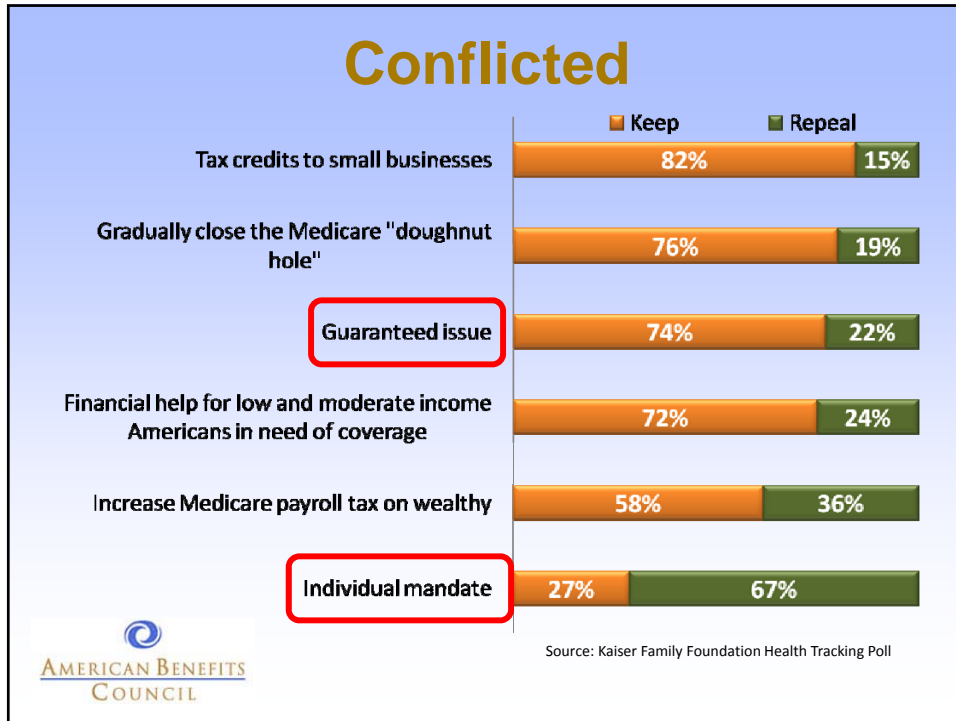
- Most activity is at regulatory level
- Definition of “fiduciary”
- Plan disclosures (e.g. fees, electronic delivery)
- Plan investments (e.g. target date funds)
- Education/advice



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## **Health Policy Outlook**





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### Health Policy Outlook

#### Broad Strategies

- Democrats
  - Resist efforts to erode PPACA
  - Move forward on implementation
- Republicans
  - More complex range of options
  - Keep issue “alive” to 2012 elections

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## Health Policy Outlook

### PPACA Legislative Developments

- House voted to repeal law; Senate effort failed
- Form 1099 reporting requirement repealed
- “Free Choice Vouchers” repealed
- CLASS Act deemed not fiscally sustainable
- Repeal specific provisions/regulations
- Withhold funding for PPACA implementation



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## Health Policy Outlook

### “Repeal and Replace”

- Cross-border sales of insurance
- Tax credits for purchase of coverage
- State risk pools
- Expansion of Health Savings Accounts
- Medical malpractice reform



## Health Policy Outlook

### Waivers

- Health and Human Services and Treasury waivers
  - HHS: Standards for exchanges and “qualified health plans”
  - Treasury: Individual/employer mandates and subsidies
  - Criteria for granting waivers
- Legislation to expedite waiver authority to 2014
- Narrow versus broad
- ERISA federal preemption



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## Health Policy Outlook

### Constitutional Challenges

- Individual mandate: Commerce Clause does not permit regulation of “inaction”
- 28 states have joined lawsuits
- Courts of Appeals are split
  - 6<sup>th</sup> Circuit – Upheld law
  - 11<sup>th</sup> Circuit – Struck down law
  - 4<sup>th</sup> Circuit – Dismissed on procedural grounds
  - Federal Circuit – ?



## **Health Policy Outlook**

### **Constitutional Challenges**

- U.S. Supreme Court
  - Likely decision June 2012
- “Severability” question if law is found unconstitutional
- Options if law is struck down



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## **The Deficit, Tax Reform and Employee Benefits**

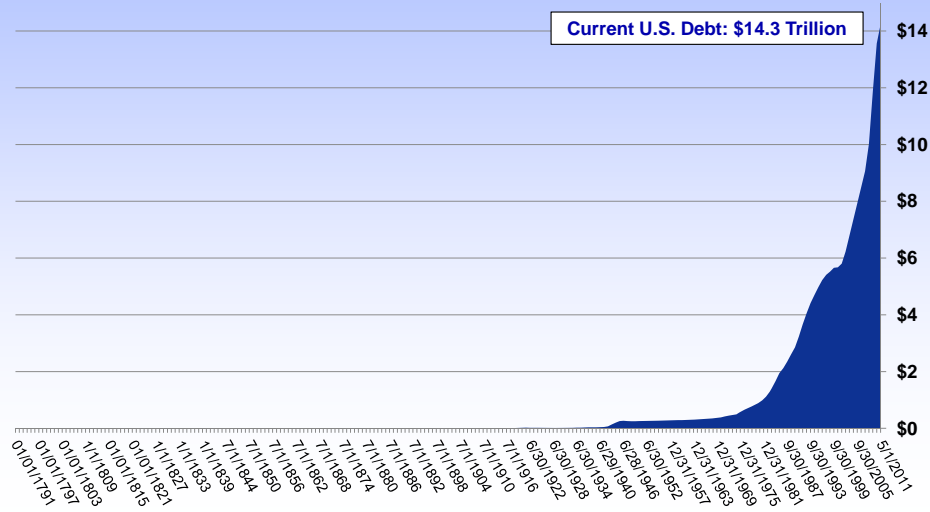


## The Deficit, Tax Reform and Employee Benefits

### Historical Debt Outstanding on an Annual Basis (1791-2011)

Source: U.S. Bureau of the Public Debt, U.S. Department of Treasury

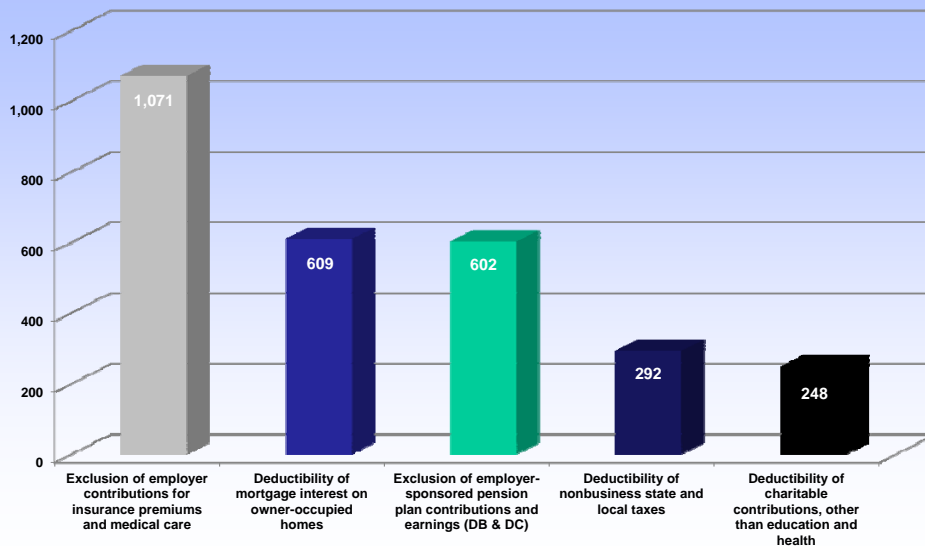
In trillions:



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### Tax Expenditures, Fiscal Years 2012-2016

Projected dollars in billions



Source: U.S. Office of Management and Budget (OMB), *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2012*

## The Deficit, Tax Reform and Employee Benefits

- Budget Control Act of 2011
- Joint Select Committee on Deficit Reduction
  - November 23: identify \$1.5 trillion savings
  - December 23: Congress votes on recommendations; no opportunity to offer amendments
- Failure to enact at least \$1.2 trillion savings
  - Automatic across-the-board cuts



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### The Deficit, Tax Reform and Employee Benefits Proposals Affecting Health Policy

- Raise Medicare eligibility age
- 15% surcharge on Medicare Part B premiums for policies with low cost-sharing requirements
- Medicare Parts B and D premium increases for higher income beneficiaries
- Freeze Medicare payments to doctors and develop a payment system that reimburses based on quality outcomes, not quantity of services



## **The Deficit, Tax Reform and Employee Benefits Proposals Affecting Health Policy**

- Cap employee exclusion for employer-paid coverage at 75<sup>th</sup> percentile of premium levels and then phase out completely
- Eliminate exclusion for high earners [35% bracket] and allows them to deduct [at 28%] employer coverage and contributions to FSAs, HSAs and HRAs
- If costs exceed national target, structural reforms (e.g. all payer system, public option) are triggered



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## **The Deficit, Tax Reform and Employee Benefits Proposals Affecting Retirement Policy**

- Limit contributions to the lower of \$20,000 or 20% of income
- Replace current employee exclusion with 18% credit for plan contributions
- Allow PBGC to set premiums
- Change formula for calculating COLAs
- Increase wages subject to OASDI payroll tax
- Gradually increase Social Security retirement age to 69 (2075)



## The Deficit, Tax Reform and Employee Benefits

- Consider these proposals now, or as part of comprehensive tax reform?
- Set a “date certain” in 2012 by which time broader tax reform would be considered?
- How will policymakers view the tax expenditures for the employer-sponsored benefits system?
  - Source of revenue to reduce deficit?
  - Source of relief for Social Security and Medicare?



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For more information  
[www.americanbenefitscouncil.org](http://www.americanbenefitscouncil.org)



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