

# U.S. Legislative Update

33rd Annual ISCEBS Employee Benefits

## Symposium

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## Current State of Play

- **Legislation at a standstill until after the election**
- **Not much motivation for post-election “lame duck” action either**
- **Most “must-do” legislation happens next spring**
- **Various defined benefit matters under consideration (e.g., multiemployer plan guarantee program, PBGC premiums, changes to cessation of operations provisions) but these are not congressional priorities**

# 40th Anniversary of ERISA



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# **40th Anniversary of ERISA**

## ***2020 VISION***

- **Environment for employer-sponsored benefits system in 2020 and beyond**
- **Four overarching vision statements**
- **Five thematic goals**
- **46 legislative and regulatory policy recommendations**

# **40th Anniversary of ERISA**

## *Themes to Consider for ERISA's Future*

- **Acknowledging application of ERISA to health benefits**
- **Accommodating changing roles of individuals and employers**
- **Adopting a new paradigm for benefit plan regulation**
- **Embracing and leveraging new technology**
- **Balancing “revenue” and “health and financial well being” aspects of benefits policy**
- **Cultivating congressional ERISA champions**



# **Acknowledging Application of ERISA to Health Benefits**

# **Application of ERISA to Health Benefits**

- **It's not called "EHRISA"**
- **Interchangeability of "Self-Insured Plans" and "ERISA Plans"**
- **Impact of Patient Protection and Affordable Care Act (PPACA)**
- **Risk to ERISA's "crown jewel"—erosion of federal preemption**



# Application of ERISA to Health Benefits

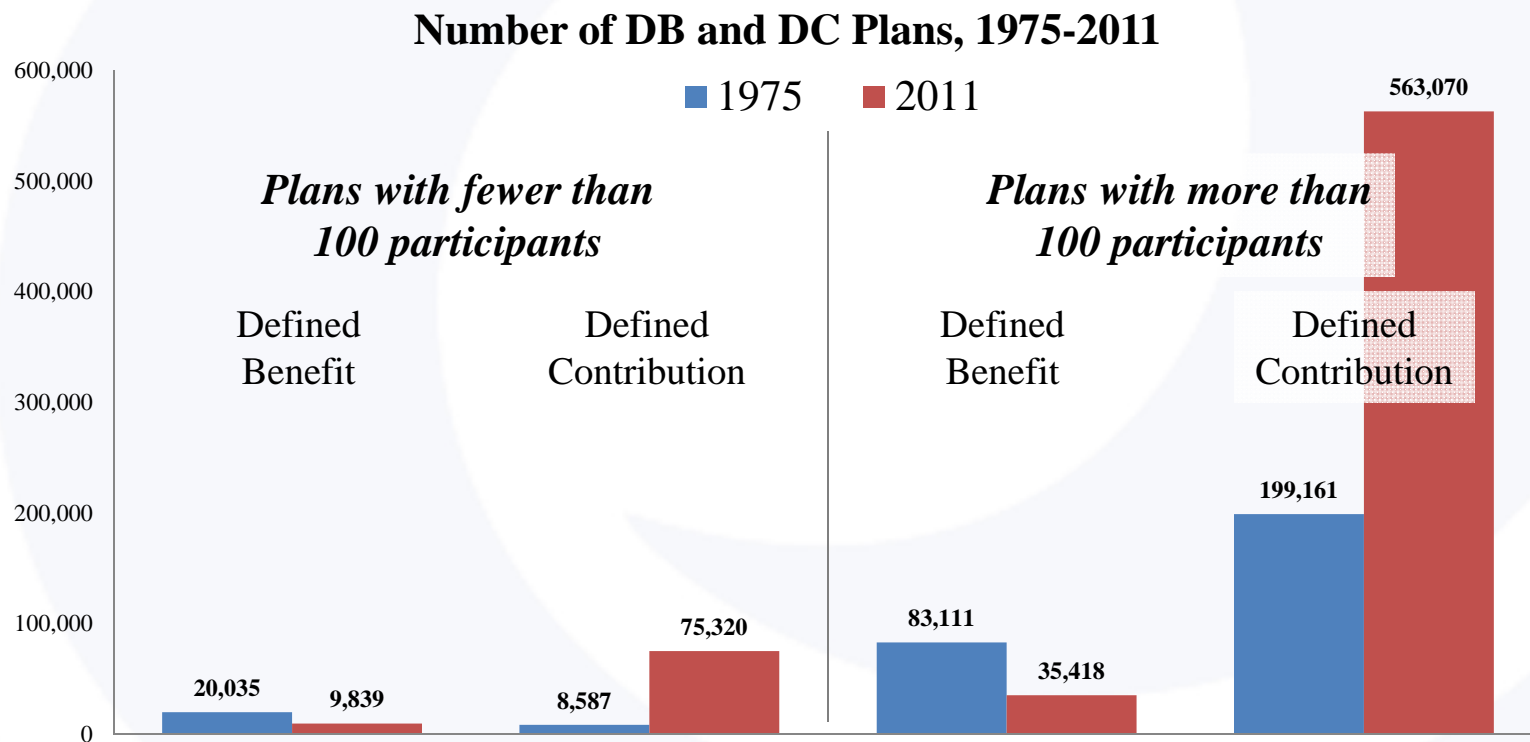
- **Self-insurance relieves sponsors of some requirements**
- **States considering restrictions on availability of stop-loss coverage**
- **PPACA State Innovation Waiver Program**
- ***Quid pro quo* for states assuming more responsibilities**



# **Accommodating the Changing Roles of Individuals and Employers**

# Changing Roles for Individuals and Employers

## *Defined Benefit to Defined Contribution Shift*



Source: U.S. Department of Labor, "Private Pension Plan Bulletin Historical Tables and Graphs (2013)"

# Changing Roles for Individuals and Employers

*Trend Toward Defined Contribution  
Health Plans*

**Growth of  
HSAs/HDHPs:**

*Source: America's Health Insurance Plans,  
Center for Policy and Research (Using  
2014 Census Data)*

**17.4  
million**

2014



# **Adopting a New Paradigm for Benefit Plan Regulation**

# **A New Paradigm for Benefit Plan Regulation**

- **Fundamental importance of “trust”**
- **Trust between regulators and regulated**
  - Pension nondiscrimination rule change reflected loss of trust
  - Regulators: “Sponsors/service providers are unfairly designing/operating plans”
  - Plan sponsors/service providers: “Regulators’ enforcement is arbitrary and inconsistent”

# **A New Paradigm for Benefit Plan Regulation**

- **A solution for some of the system's complexity is based upon more trust between regulators/regulated**
- **Regulators: Give sponsors and service providers more flexibility within policy framework**
- **Plan sponsors and service providers: Accept greater penalties for clear violations (i.e., abuse cases)**

# A New Paradigm for Benefit Plan Regulation



- Eliminate complexity? No.
- Better regulations? Maybe.
- Improve acceptance of results? Yes.





# **Embracing and Leveraging New Technology**

# Embracing Technology





**Balancing “Revenue” and  
“Health and Financial  
Well Being” Aspects of  
Benefits Policy**

# Balancing Revenue and Benefits Policy

- **Jurisdiction shared mainly by congressional tax-writing and labor committees**
- **Regulatory authority shared mainly by Treasury and Labor Departments**
- **Benefits policy is a combination of tax law and labor law**
- **Tax policy to protect benefits (e.g., stricter funding) vs. tax policy to raise revenue (e.g., limit plan contributions)**

# Balancing Revenue and Benefits Policy

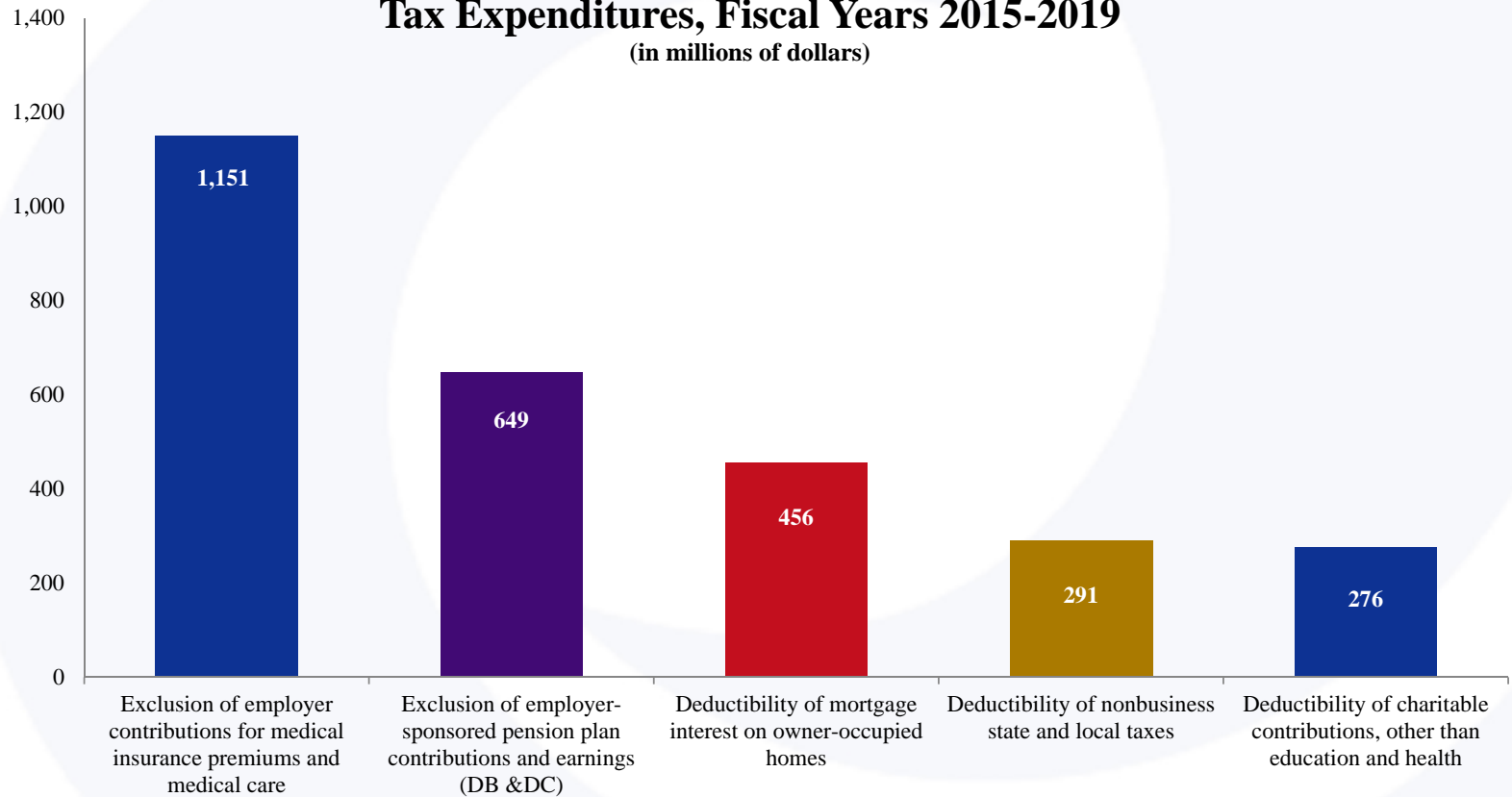
## *Corporate Model of Benefits Decisionmaking*



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# Balancing Revenue and Benefits Policy

**Tax Expenditures, Fiscal Years 2015-2019**  
(in millions of dollars)



Source: U.S. Office of Management and Budget, Fiscal Year 2015 Analytical Perspectives, Table 14-3

## Balancing Revenue and Benefits Policy

- Imperative for major deficit reduction and entitlement reform
- Piecemeal revenue-raising (e.g., \$43.6 billion from PBGC premiums and pension smoothing)
- Bipartisan interest in comprehensive tax reform
- Where do the tax expenditures for health and retirement benefits rank in *your* organization's priorities?



# **Cultivating Congressional ERISA Champions**



# Cultivating ERISA Champions

- **ERISA's bipartisan authors**
- **Why so few champions in recent years?**
  - ERISA is more complex than ever
  - Revenue priorities outweigh benefits policy priorities
  - We have not successfully recruited them
- **Situation is different for health policy and retirement policy**

# Cultivating ERISA Champions

## ◦ Health policy

- Bad news: it's very partisan
- Good news: at least we are debating a national health care policy

## ◦ Retirement policy:

- Bad news: no national retirement policy against which to measure legislation
- Good news: it's much less partisan

# Cultivating ERISA Champions

- **How do we recruit ERISA champions?**
- **Convince policymakers that it is worthwhile to learn the law**
- **Share your knowledge**
- **Strengthen the employer-employee alliance**

# ERISA's 50<sup>th</sup> Anniversary and Beyond





**Thank you!**

**Questions?**