Can Plan Sponsors Close the Retirement Savings Gap?
Successful Plan Sponsor Strategies, Solutions and Approaches
Options/Opportunities to Further Reduce Disparities in Retirement Savings

Statement of John M. (Jack) Towarnicky
Before the ERISA Advisory Council Working Group on
"Gaps in Retirement Savings Based on Race, Ethnicity and Gender"
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Members of the ERISA Advisory Council and Department of Labor staff, thank you for the opportunity to share my plan sponsor, consulting and educational experience in addressing disparities in benefits participation, retirement savings and household wealth accumulation.

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No Need to Guess – What Succeeds in Actual Practice

As confirmed in the issue statement:

> "… ERISA … left retirement plan coverage and benefit levels to private agreement. The portion of the U.S. labor force actively participating in a private retirement plan has stagnated at about 50 percent, and many Americans do not accumulate sufficient resources to support a dignified retirement. … Changes in the nature of employment, shifts in benefit offerings, disparities in access to technology, and wage inequality have created an environment that makes retirement saving difficult for many.
>
> … (401(k)) plans offer individuals opportunity to build a nest egg for retirement, and provide some incentive to do so, but they leave much of the burden of financing retirement on the individual, along with responsibility for making wise saving and investment choices. To accumulate sufficient retirement resources under defined contribution plans, including 401(k) plans, participants must contribute consistently throughout their working years. Therefore, prolonged inability to save or inaction (whether due to lack of access to a plan, pay levels, communication failures, or other factors) can have a profound adverse effect. In addition, individuals whose compensation or career opportunities have been impacted by racism, sexism, or implicit bias may face acute disadvantage in amassing adequate retirement support. …"

Yesterday, today and probably tomorrow as well, retirement plans are not a top business priority for most employers.[i] Most small businesses lack human resources/benefits professionals. In smaller and larger organizations, leadership is more likely to succeed in reducing savings disparities where retirement savings plans and Health Savings Accounts (HSAs) are strategically positioned as integral to corporate business priorities and/or total rewards strategies[ii].

Yesterday, today and probably tomorrow as well, retirement preparation is not a top financial priority for many workers. When it isn't a top priority, those in plan sponsor roles must endeavor to make the complex simple, to leverage inaction and to innovate as necessary to meet workers where they are.

The Department should "target" all who fail to save or save enough, regardless of demographics.[iii]

Internal metrics/measures and external data offer directional and intuitive confirmation that plan design features ***appear*** to succeed at reducing retirement savings and household wealth disparities, over time, including:

1. Perennially-applied automatic enrollment and other features:
   A. Retirement Savings Plans (401k, 403b, 457), Deemed Individual Retirement Accounts (IRAs), and
   B. Health Savings Accounts (HSA).
2. Onboarding effectively:
   A. Eligibility at hire,
   B. Soliciting rollovers from *predecessor* employer plans,
   C. "Rolling on" outstanding loans from *predecessor* employer plans, and
   D. Adopting "true-up", "at hire", and retroactive "equity" adjustments
3. Liquidity without leakage along the way to and throughout retirement:
   A. Add/update loan functionality to 21st Century capability, and
   B. Eliminate or substantially curtail in-service hardship withdrawals, and prospectively, post-separation, pre-retirement distributions.
4. Lifetime financial instrument:
   A. Maintaining savings habits where term vested do not have access to an employer-sponsored plan,
   B. Asset retention, aggregation, account consolidation including *successor* employer plans, and
   C. Retirement savings plan and HSA utility (e.g., multiple uses, emergencies, survivor, etc.)
5. Perennial automatic enrollment in paycheck insurance:
   1. Life insurance,
   2. Long Term Disability, and
   3. Disability accrual insurance in retirement savings plans
6. Intergenerational wealth:
   1. In-plan sidecar accounts – Deemed IRAs, 401(a) after-tax contributions, and
   2. Child Individual Retirement Accounts (IRAs).

I say ***appear*** because turnover makes longitudinal measurements all but impossible.[iv] As eligibility and vesting mandates liberalized access and ownership, a retirement savings plan's focus and financial commitments shifted – as if led around by the nose – to increase rewards provided to term vested participants. As a result, a much smaller portion of the total commitment ultimately benefits "traditional" retirees (however, one defines "retiree"). My 401k plan morphed into a new role as a lifetime financial instrument.

Most of the above design features are possible within existing code/regulations. However, with all of the litigation in today's retirement savings marketplace, almost all plan sponsors, advisors, consultants and service providers prefer "safe", "tried and true" alternatives and designs. Let the other guy go first, let her experiment. As a result, few step out, lead, and innovate - lest they become a target for litigation.[v]

And, remember, retirement savings plans and Health Savings Accounts are generally not a business priority, and retirement savings is generally not a worker priority, either. Why take risks?

Our target population of workers are those who don't save or those who don't save enough. Why isn't retirement preparation a top financial priority? It isn't that current financial needs are more important, just more urgent. Others believe they are unable to set aside monies, to earmark scarce financial resources for a distant, uncertain, improbable retirement.

So, to be successful, plan design must accommodate a very diverse population – meeting each and every worker where they are. And, for our target population, retirement savings and household wealth improvements are more likely to result from actions that are less, not more, focused on retirement preparation.

I'll review each of the above design features in detail. Some suggestions will require the Department to partner with other agencies. Others require legislation, where the Department might suggest amendments to the Employee Retirement Income Security Act of 1974 (ERISA)[vi] and/or the Internal Revenue Code (IRC).

Plan design features have reduced gender, racial and ethnic disparities in retirement savings and household wealth. Actions the Department may want to consider include:

1. Promoting a Diversity, Equity, Inclusion (DEI) template, identifying demographically-neutral designs and features that have reduced retirement savings disparities,
2. Encouraging perennially-applied automatic features, for both retirement savings plans and HSAs, including working with other agencies to create simple, self-correction processes for good faith mistakes in processing,
3. Nudging, pushing or even shoving service providers to update plan loan processing to 21st Century functionality, as a means to increase participation and contributions and to reduce leakage,
4. Identifying the advantages of using target date models as a Qualified Default Investment Alternative,
5. Encouraging plan sponsors to investigate demographic disparities in retirement savings, including working with other agencies to add a safe harbor for those who discover disparities in participation, contributions, or equity investments in protected classes, whether or not the plan sponsor subsequently takes action,
6. Invigorating Deemed IRAs to reduce leakage, to improve the equity investment allocation of "small balance" rollovers (using the QDIA default), and to increase "access", including working with other agencies to eliminate plan disqualification risk from Deemed IRA processing errors, and add simple, self-correction processes for good faith mistakes in Deemed IRA processing,
7. Clarifying, working with other agencies, that "Conduit IRAs" are still available to reduce leakage, and to minimize "stranded" Roth IRA assets that were rolled over from a Roth 401k,
8. Identify why "liquidity without leakage" via plan loans is always superior to pre-retirement distributions, including working with other agencies, to confirm that plan sponsors can amend their plans to curtail and/or eliminate in-service hardship withdrawals, and for future accruals, prospectively curtail post-separation, pre-retirement distributions,
9. Confirming that asset retention in retirement savings plans can serve as an "extended warranty", addressing potential bankruptcy exposures and cognitive decline,
10. Reconfirm the need for "paycheck insurance", specifically life and long term disability, and reconfirm how automatic features can be applied,
11. Identifying why "liquidity without leakage" via plan loans is always superior to sidecar savings options to meet emergency, as well as short, intermediate and long term financial needs and goals, and
12. Because retirement savings plans are typically not a top business priority, the Department should explore the opportunities to provide education and guidance, specifically outreach, to those serving in plan sponsor settlor roles, many of whom do not have a full grasp of all the options available within current code and regulations - such as the opportunity to "true-up" employer financial support, to "back fill" with retroactive amendments, to incorporate unique "at hire" options, etc. Much like the Internal Revenue Service has a Taxpayer Advocate, the Department may want to consider a new ombudsperson role, a Plan Sponsor Advocate.

Given that medical costs in retirement are often the largest expense, retirement savings should be inclusive of both retirement savings plans and HSAs – if only because the HSA's tax preferences are superior to those of retirement savings plans when it comes to income replacement after age 65 as well as funding Medicare and employer-sponsored retiree medical premiums as well as out-of-pocket medical expenses in retirement.[vii]

Finally, retirement savings and HSA assets offer value as legacy benefits that could provide "intergenerational wealth" transfers - a natural outcome from accumulating more than adequate retirement savings.

Finally, if the Department wants to address intergenerational wealth transfers, it will want to consider added guidance and education in terms of beneficiary designations and plan designs that address limits on post-SECURE "stretch IRAs".

The Department may want to encourage Congress to add a Child Roth IRA on the same or a similar basis as the IRA available to a spouse without wages.

From a divorced or widowed spouse or single parent perspective, the Department may want to encourage Congress to consider adjusting the incidental benefit rules to allow for a period in excess of ten years where the divorced or widowed spouse or single parent names a minor or adult child as the beneficiary of a life and period certain annuity or a contingent annuity.

Extensive discussion and detail follow. Some referenced documents are behind pay walls. Contact me if you are unable to obtain a copy without charge.

Wealth/retirement savings disparities arise from factors *external* to tax-preferred retirement savings plans.

Employer-sponsored tax-qualified retirement savings plans are subject to eligibility, vesting and non-discrimination rules that do not vary by race, ethnicity, gender or any other demographic (except highly-compensated status). Since passage of ERISA, Congress frequently mandated reductions in eligibility and vesting requirements while strengthening/tightening non-discrimination requirements.[viii]

Since 1975, contributions to IRAs have been and continue to be tax-deductible for anyone who is not eligible for an employer-sponsored plan – that's 47 consecutive years! IRA contributions have long been possible for spouses without wage income (1977 – Present). A lower contribution limit applied to those spouses (1977 – 1997) that was later increased to the same limit as wage earners (1998 – present).

In each of the past 40 years (1982 – 2021) since passage of the Economic Recovery Tax Act of 1981[ix], every wage earner (and all spouses) could contribute to an IRA. IRA contributions were tax-deductible for all workers (1982 – 1986). From 1987 to present, all wage earners are eligible to contribute but tax deductions are limited to lower wage workers where they are also eligible for an employer-sponsored plan. Congress added Roth features for those with wages below a substantially higher income limit (1998 – present).

However, perhaps due in part to the complexity involving tax deductibility, only 12% of eligible households regularly contribute to IRAs, today.[x]

The IRA is a more than adequate, tax-preferred retirement savings plan: One study shows (all data are medians) participants in 401k plans had covered compensation of $64,000, deferrals of 6% (~$3,840), total contributions of 9.7% (~$6,208), for an estimated employer contribution of 3.7% (~$2,368).[xi]

Sidebar 1:

IRA As A/The Solution

Age 25 on 1/1/82 - Contribute Maximum, 5% Earnings/Year

Contributions - Thru Age 66, 6 months (2023)*

Regular (42 years)	$	149,000
Catch-Up (17 years)		17,000
Total	$	157,000
Cumulative Earnings @ 5%	$	242,844
Account Value @ Age 66, 6 months	$	408,844
Converted to Annual Annuity Single Life, 20 Year Certain	$	25,416
Estimated Social Security**		18,000
Total Retirement Income	$	43,416
Pre-Retirement Income***	$	51,428
Pay Replacement		**84%**

* IRA Max: $2,000 (1982 - 2001), $3,000 (2002-2004), $4,000 (2005 - 2007), $5,000 (2008-2012), $5,500 (2013-2018) $6,000 (2019+).
Catchup: $500 (2002 - 2005), $1,000 (2006+) Assumed no spouse, nor spousal IRA
** SS calculator @ https://www.ssa.gov/cgi-bin/benefit6.cgi, assumed no spouse
*** Median wage income, full time workers, first quarter 2021

For comparison, the median usual weekly earnings of full time workers in the 2nd quarter 2021 was $990 ($51,480 per year).[xii] A 10% deferral to an IRA for a median wage worker would be $5,148 – well within the 2021 maximum IRA contribution of $6,000 ($7,000 if age 50 or older).[xiii] And, $6,864 would be the estimated pre-tax equivalent to a $5,148 Roth after-tax contribution by a single filer with $51,480 of taxable income.[xiv]

Consistently saving 10% of wages each year for 40+ years, coupled with modest investment returns, will generate a more than adequate level of retirement savings assets/wealth for all but the highest paid Americans. IRAs are more than adequate.

Neither the design nor the operation of individual account retirement savings plans create the observed disparities in household wealth and retirement savings by race or ethnicity or among women. Further, access isn't the issue; ability to save and prioritization are.[xv]

Prior Testimony

Documenting the challenge. My first-hand experiences are generally consistent with the observed disparities in household wealth, retirement savings and other financial indicators presented in most of the June witness statements. (Attachment I) June 2021 witnesses identified gender differences in wealth, caregiving, interruptions in employment, accumulated assets, and specifically highlighted the impact on women who are widowed or divorced.

They also confirmed racial and ethnic differences and disparities in:

- Accumulated assets,
- Non-mortgage debt impacting perceived/actual ability to save,
- Contribution rates - black Americans contribute substantially less than white Americans,
- Take-up rates to retirement savings plans – lower among certain minorities,
- Wages, hours of employment, industry/occupation, tenure, and
- Financial prioritization, certain minorities may prioritize current financial assistance to family members and paying for a child's education instead of retirement preparation and intergenerational wealth transfers.

The 2019 Survey of Consumer Finances confirms those wealth disparities, and some of the other demographic differences witnesses testified to - income, industry/occupations, hours worked, tenure and home equity.[xvi]

Recently, Rachel Ensign and Shane Shifflett reviewed Federal Reserve data and concluded that "… The median net worth of households with Black college graduates in their 30s has plunged over the past three decades (from about $50,000 to about $8,200) to less than one-tenth of their white counterparts" (where net worth increased 17% from approximately $118,000 to $138,000).[xvii]

EBRI recently published data based on its analysis of the 2019 Survey of Consumer Finances showing – 57% of white households have an individual account plan, versus 35% of blacks and 26% of Hispanics; while median account balances for white households were $80,000 versus $35,000 for black and $31,000 for Hispanic households.[xviii] Importantly, the Council should always consider disparities reflected in data by using both average and median amounts.[xix]

Management guru Peter Drucker once said: "What gets measured gets managed — even when it's pointless to measure and manage it, and even if it harms the purpose of the organization to do so." The American Benefits Council's survey of 40 jumbo plan sponsors confirmed only a minority measure participation, contributions, investments and preparation based on gender (30%); fewer identify racial and ethnic disparities (5%).[xx]

Testimony did not identify specific retirement savings plan design or operational issues which caused the observed disparities in household wealth and retirement savings by race and ethnicity or among women.

Recommended Actions. Some witnesses recommended actions that would mandate designs already available in our voluntary benefits system – actions that employers and plan sponsors may have previously considered and rejected. Others recommended actions that may be far beyond the Department's purview/authority.

For example, Jamal Rashad Watkins asserts the 401k needs to be replaced, not reformed. However, revolutionary change would disrupt tens of millions of American households, including women and racial and ethnic minorities, who are successfully preparing for retirement or who already enjoy retirement.[xxi] Mr. Watkins cites Demos studies and Professor Ghilarducci's Guaranteed Retirement Account concept.[xxii]

Context is necessary before recommending change. It is not as if America hasn't made progress.

Form 5500 data confirms an 835% increase in the number of 401k participants (1984 – 2018), with an incomprehensible 5,686,158% increase in 401k assets over the same 34 year period. 401k data are for the period 1984-2018 as 401k features were first adopted late in 1981 – added to existing profit sharing and thrift/savings plans.

The overall defined contribution data are almost as impressive – the number of participants increased 751% (half that if you adjust for growth in labor force participation), with a 7,852% increase in assets (1975 – 2018).

Note the significant increase in the percentage of participants who are term vested or retired – now 20% of all participants.

Sidebar 2.[xxiii]

Historical Form 5500 Data

Defined Contribution Plans	**1975**	**2018**
Number	207,437	669,400
Assets	$ 73,323,000,000	$ 5,835,601,000,000
Contributions	$ 12,702,000,000	$ 495,108,000,000
Benefits/Payouts	$ 6,102,000,000	$ 518,028,000,000
Participants	11,210,000	96,002,000
Active	10,950,000	75,689,000
TV/Retired	260,000	20,313,000
% TV/Retired	2.32%	21.16%

401k Plans	**1984**	**2018**
Number	17,303	588,499
Assets	$ 91,754,000	$ 5,229,194,000,000
Contributions	$ 16,291,000,000	$ 464,578,000,000
Benefits/Payouts	$ 1,067,000,000	$ 473,790,000,000
Participants		
Active	7,526,000	70,335,000
Total		87,788,000
TV/Retired		17,453,000
% TV/Retired		19.88%

	1975	**2018**
Labor Force	83,700,000	162,100,000

That likely results from the interaction of at least three separate trends:

- The increased number of employers who have adopted 401k plans,
- Consistent, significant turnover, and
- Post-ERISA legislative changes to mandate earlier eligibility and vesting.

So, for example, in the 2018 data shown above, I had five different retirement savings plan accounts (I had yet to consolidate assets from three of those plans into the plan with my lifetime of savings). So, in raw data/statistical reports, three of my five accounts were "dragging down" the median and averages for workers age 65+. America has made progress[xxiv] - despite the failure of many workers, employers, plan sponsors and service providers to take full advantage of all the opportunities offered by existing code and regulations.[xxv]

Structural or dramatic change, replacement or reformation will likely disrupt current, favorable trends. Instead, less dramatic actions, increased education and guidance, plus minor, mostly revenue-neutral adjustments to code and regulations may clarify opportunities for plan sponsors to add/deploy/facilitate greater use of innovative applications/approaches already in use in some plans – actions that have already succeeded at reducing retirement savings and household wealth disparities.

Improvements in Communication and Literacy Would Help – Maybe

Successful retirement preparation with an individual account retirement savings plan generally requires a full working career of saving. Designs that require 40+ years of consistent saving depend on individuals developing a saving habit as early as possible. So, marketing the 401k as "retirement savings" to younger workers just entering the workforce may be counterproductive – in terms of establishing a strong, durable savings habit.

Yes, I know that is *benefits heresy*. But, put yourself in a workers' shoes early in their career:

- Every 18 year old high school grad is excited about retirement savings plans – they happily set aside 10% of pay for the next 49 years for a distant, uncertain, improbable retirement, ignoring current wants, needs.
- And, every 22 year old college grad looks forward to 45 years of saving – their top financial priority is to save enough to replace 80+% of pre-retirement income upon retirement in 45+ years at age 67 or later.

As if focusing on retirement isn't discouraging enough, soon we will layer on an inaccurate retirement income projection that workers should not rely upon in any planning they undertake. Let's discourage workers with a projection that increases the focus on retirement preparation while confirming how little progress they have made. And, no need to provide information to workers who are not eligible or are not yet eligible for their employer-sponsored plan, as well as eligible workers who have elected to forego participation.[xxvi] It wouldn't be right to make it simple – let's add complexity[xxvii], effectively incorporating inflation and investment return projections, survivor benefits, etc. Finally, let's be sure that the projection ignores any pension, IRA contributions and savings from prior employer plans previously or subsequently rolled over to IRAs.[xxviii]

At best, perhaps this will be one more mandated disclosure that participants seldom read or understand.[xxix]

At worst, this retirement income projection is more likely to mislead than to inform.

Communications/Marketing - Messaging. One successful strategy included a change in messaging. In a July 1996 update, "Drive to Your Dreams", we excised the word "retirement" from all disclosures and marketing – more *benefits heresy*.

But, **voluntary** participation rose from 74% to 90+% once we reframed the 401k as the only vehicle workers needed to achieve their dreams, today & tomorrow; whatever they were dreaming about.[xxx]

Perhaps participation would have improved just as much had we used a theme focused on "retirement", perhaps not. We also dropped the word "retirement" from our enrollment presentations. See Attachment II.

Financial Literacy. When it comes to retirement savings and especially investing 401k, 403b, 457 or HSA assets, I always think of a study by Annamarie Lusardi and Olivia Mitchell.[xxxi] Their survey asked three questions:

- Suppose you had $100 in a savings account and the interest rate was 2% per year. After 5 years, how much do you think you would have in the account if you left the money to grow: more than $102, exactly $102, less than $102?
- Imagine that the interest rate on your savings account was 1% per year and inflation was 2% per year. After 1 year, would you be able to buy more than, exactly the same as, or less than today with the money in this account?
- Do you think that the following statement is true or false? "Buying a single company stock usually provides a safer return than a stock mutual fund."

The authors referred to the first two questions as the "Compound Interest" and "Inflation" items - designed to identify whether individuals have command of the key economic concepts fundamental to saving. The third, "Stock Risk" question was designed to evaluate knowledge of risk diversification – deemed crucial to informed investment decisions. The result? "… Only one-third, 34% of respondents can correctly answer all three questions. …"

Given this literacy "starting point", couple it with the complexity of investment and other retirement savings plans decision-making, then add the challenge of managing multiple plans and processes due to turnover, a plan sponsor's educational attempts to improve retirement literacy may be a Sisyphean challenge.[xxxii]

My Recommendations

Avoid "equity" adjustments based on race, ethnicity and sex. Avoid singling out racial and ethnic minorities and women with targeted communications. Instead, focus on actions that address those who did not save or did not save enough in employer-sponsored retirement savings plans, IRAs and HSAs – regardless of race, ethnicity or gender.

My recommendations are focused on the "financially fragile", the insecure[xxxiii], those:

- With less household wealth and retirement assets,
- With more accumulated debt,
- Who live paycheck to paycheck,
- Who aren't creditworthy,
- Who are unbanked[xxxiv] or unbankable, and/or
- Who are underbanked, those using alternative financial services (payday loans, etc.)

As confirmed by testimony to date, study after study shows, unfortunately, that certain racial and ethnic minorities, as well as divorced and widowed women are disproportionately represented among the "financially fragile". So, intentionally, addressing the "financially fragile" will disproportionately favor those populations.

Automatic Enrollment. Embrace, promote perennially-applied automatic features and related items[xxxv] in:

- Retirement Savings Plans (401k, 403b, 457), Deemed IRAs, and
- Health Savings Accounts (HSAs).

In my discussions with plan sponsors, many avoid automatic features due to the increased cost in employer matching contributions – especially when automatic features are applied to all eligibles, not just new hires.

In my discussions with service providers, many avoid recommending automatic features citing the challenge of corrections – particularly when plan sponsors fail to accurately identify eligible workers in a timely fashion (e.g., once they meet age/service eligibility, rehires, change from part time to full time, change employment from ineligible class to eligible class, etc.)

That is unfortunate because aggressive deployment of automatic features is all but certain to reduce disparities in savings based on age, wage, tenure, *gender, and race and ethnicity.*[xxxvi] Consider data differences between plans with voluntary and automatic enrollment – even though most plans still limit automatic enrollment to new hires. Vanguard's annual survey, How America Saves, 2021, shows:[xxxvii]

Age: Participation among workers under age 45 is 50+% higher in plans with automatic features:
- Under age 25: 20% voluntary, 84% automatic
- Age: 25 – 34, 55% voluntary, 93% automatic
- Age: 35 – 44, 67% voluntary, 93% automatic

Wage: Participation for those earning less than $50,000 is 50+% higher in plans with automatic features:
- Income: < $15,000, 22% voluntary, 74% automatic
- Income: $15,000 - $29,999, 36% voluntary, 83% automatic
- Income: $30,000 - $49,999, 57% voluntary, 90% automatic

Tenure: Participation is 50% higher among workers with less than 7 years of service:
- Tenure: 0 – 1 years, 35% voluntary, 87% automatic
- Tenure: 2 – 3 years, 52% voluntary, 94% automatic
- Tenure: 4 – 6 years, 65% voluntary, 95% automatic

Sex: Both male and female participation rates increase significantly once automatic features apply:
- Male: 61% voluntary, 92% automatic
- Female: 64% voluntary, 92% automatic

Plans with automatic features have a slightly higher average contribution (employer and employee combined):
- Automatic: 11.4%
- Voluntary: 10.5%

However, if you include eligible, non-participants, plans with automatic features have average contribution rates (employer and employee combined) that are 57% higher!
- Automatic: 10.7%
- Voluntary: 6.8%

Clearly, automatic features address the groups that tend to be "financially fragile" – those who are younger, lower paid with shorter service. And, because this same study showed that 92% of eligibles participate where automatic features are deployed, that will also sweep in most who don't have retirement savings as a priority or those who believe they cannot afford to save in a 401k – regardless of race, ethnicity, or gender.

Race and Ethnicity – Impact of Automatic Features: The impact is confirmed by the outcome in my own 401k after we added a particularly aggressive series of automatic features implemented over five years.[xxxviii]

We started in April 2007, automatically:[xxxix]
- Enrolling those who previously waived participation at a 3% pre-tax contribution rate,
- Increasing contributions to 3% of pay for anyone contributing less than 3% of pay (pre-tax or Roth), and
- Increasing contributions by 1% for anyone contributing 3% but less than 6% of pay (pre-tax or Roth).

Despite the 2008-2009 Great Recession, once our five year rollout of annual change was completed, the:
- Participation rate among eligible employees had increased from 77% to consistently exceed 95%,
- The percentage of eligible employees who were receiving the maximum employer match increased from 59% to consistently exceed 95%, and
- The non-highly compensated employee average deferral increased from 4.2% to consistently exceed 6%.

So, after five years, 95+% of eligible employees consistently had annual additions of 10% of pay or more.

What ***<u>was</u>*** surprising was the impact based on race and ethnicity. Here's are race and ethnicity comparisons between my 401k and all 57 firms that participated in the Ariel/Hewitt study reflecting year-end 2007 data:

Study Results - By Race & Ethnicity

	White		African-American		Hispanic		Asian	
	My Firm	All Firms	My Firm	All Firms	My Firm	All Firms	My Firm	All Firms
Contributing	95%	77%	92%	66%	88%	65%	97%	76%
Average Contribution Rate (excl. non-savers)	6.5%	7.9%	4.4%	6.0%	4.5%	6.3%	8.4%	9.4%
Estimated Average Deferral Percentage	6.2%	6.1%	4.0%	4.0%	4.0%	4.1%	8.1%	7.1%
Average % Invested in Equities	65%	72%	56%	66%	69%	70%	67%	73%
% with Loans Outstanding	19%	21%	32%	39%	16%	29%	12%	16%

Comparing our results and Ariel/Hewitt data was confusing[xl] until we looked back at our 2006 data, where:

- Contribution rates and equity allocations were similar to other plans in the study, but
- A much higher percentage of our 2006 participants had a loan outstanding.

The year-end 2007 differences could be directly attributed to deployment of automatic features – our decision to automatically enroll or escalate contributions for 14,000+ employees (out of a workforce of 35,000+):

- Defaulting non-participants to 3% of pay increased participation by 25% - so, instead of excluding them from the average contribution percentage calculation, they lowered the average because most were at 3%,
- Our investment default of a target date model reduced the average allocation to equity investments, and
- Few new participants had accumulated $2,000, so, few qualified for a $1,000 minimum loan[xli].

Interestingly, after a year or two, one third of individuals **rejected the perennial default**. They made their own decision. Almost all participants continued to contribute. Rejected defaults are a great success, they confirm:

- Workers revisited their initial enrollment, investment elections, and
- Participants made decisions that year (similar to welfare plan annual enrollment).

Our outcome was consistent with other studies and a second, Ariel/Hewitt/Aon study released in 2012.[xlii]

Perennial re-enrollment (or "backsweep") and escalation all but guarantees reductions in savings disparities, over time, for workers who remain with the organization – whether those disparities are based on age, wage, tenure,
gender, race or ethnicity.

My suggestions include (partnering with Treasury/Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC) and/or the Equal Employment Opportunity Commission (EEOC) as needed):

1. Create a DEI retirement savings template that demonstrates why automatic features should be considered and adopted as an integral component of any enterprise-wide, total rewards, DEI initiative; delivering this message in 2021 – 2022, before promised/committed funds are diverted to less effective alternatives,[xliii]
2. Confirm professionally-designed target date models and target risk models (lifestyle funds) are acceptable as QDIAs, to simplify investment decision-making and improve transparency,[xliv] and encourage model designs that treat plan loan principal as the allocation to fixed income that it actually is,[xlv]

3. Create guidance in the form of a "safe harbor" for those plan sponsors who track participation for workers in protected classes.[xlvi]
4. Add a simple, self-correction process for good faith mistakes in administering automatic enrollment[xlvii],
5. Update Deemed IRA regulations to: (1) Increase adoption, (2) lower leakage, and (3) address "access":
    A. Confirm Deemed IRA administrative and processing errors will not impact the "host" plan's tax qualified status, perhaps a regulatory version of the SECURE Act "bad apple" provisions,[xlviii]
    B. Clarify that a plan investment fiduciary has no fiduciary duty with respect to investments that are part of a self-directed, Deemed IRA but are not otherwise available in the tax-qualified plan,[xlix]
    C. Confirm automatic features can be applied to Deemed IRA contributions,[l]
    D. Amend IRC §§401, 72, 408 to allow plan administrators to consider Deemed IRA assets in calculating available loan amounts (not available for borrowing but held as part of the (50%) collateral) – to increase asset retention and to reduce leakage/pre-retirement distributions, and
    E. Confirm, similar to Private Letter Ruling 201833012, 5/22/18, that employer matching contributions to the "host" plan can be based on Deemed IRA (Traditional or Roth) contributions.[li]
6. Confirm, similar to managed accounts or target date fund series, that QDIA safe harbors includes plan investment fiduciaries who experiment with multiple QDIA defaults for different segments of a diverse workforce (multiple balanced funds, target date investments, managed accounts), etc. – so long as everyone may opt out and make their own investment elections on the same basis as any other employee,
7. Confirm, similar to recommendation #6, that a plan sponsor, in its settlor role and not as a fiduciary, may experiment by varying/customizing defaults – splits/allocation/use of pre-tax versus Roth, contribution percentage, and automatic escalation (percentage, timing, application) - so long as every eligible employee has an opportunity to opt out and make their own elections on the same basis as any other employee.
8. Confirm opportunity to deploy automatic features in HSAs, including HSA *trustee* selections of QDIAs.[lii]

My firm's leadership team rejected my 2001 proposal to add Deemed IRA functionality to my own 401k as permitted by EGTRRA.[liii] I envisioned Deemed IRAs as a unique solution and opportunity:

- To develop a savings habit by enrolling workers who were not (yet) eligible to participate in the "host" retirement savings plan (in 2001, voluntary enrollment was limited to those age 21 with a year of service),
- To offer a longevity solution for Roth 401(k) assets (we had already approved adding Roth 401(k) effective January 1, 2006), to avoid required minimum distributions,
- To avoid involuntary distributions where assets sometimes languish in capital preservation options,[liv]
- To *potentially* avoid adding fiduciary exposure when adding retirement income options (annuity, guaranteed minimum withdrawal, etc.) where such income options were limited to Deemed IRA assets and not available in the "host" retirement savings plan,
- To allow contributions in excess of the amounts permitted under the "host" retirement savings plan ($10,500 in 401k plans in 2001), and
- To add a coverage solution so that term vested might contribute post-separation – an valuable opportunity for workers who became part of the "gig" economy, workers whose current employer did not offer a plan, or workers who were not (yet) eligible for their employer's plan (age/service, class, etc.)

> **Note:** Some assert plan sponsors offer less match when adopting automatic features.[lv] Others believe defaults lower participant contributions – workers contribute less than they "woulda" elected had there been voluntary enrollment.[lvi] However, all plans with automatic features must provide notice of the option to opt out/elect a different deferral rate. Every plan I know of with an employer match saw increased costs (match and plan administration) upon adopting automatic features.

Onboarding. A "typical" 401k may be too complex for the "financially fragile" – especially for those "new" to a 401k. Getting enrollment at hire "right" is critical – because, for most workers, it happens over and over and over.[lvii] So, automatic features, "done right", may increase participation, equity investments and contributions in the ***current*** plan. However, effective onboarding at hire goes beyond automatic enrollment.

Department guidance and education to help plan sponsors improve onboarding at hire, might include:

9. Sharing/highlighting studies that confirm higher default percentages do not increase opt out rates,[lviii]
10. Encourage, separately and as part of the DEI template, "gap-filling":
    A. "Catch-up" contributions, that qualify for an employer matching contribution,
    B. "True up" adjustments to the employer match when participant contributions vary during a year.[lix]
11. (Re)Confirm/highlight, working with Treasury/IRS, the unique Average Deferral Percentage (ADP) and Average Contribution Percentage (ACP) testing for non-safe harbor plans for workers under age 21 or less than one year service.[lx]
12. Reinvigorate/highlight "Conduit IRAs" – targeting indirect rollovers from predecessor plans initially rolled over to Traditional or Roth IRAs, but not commingled with other plan assets. Otherwise these assets tend to remain in IRAs invested in capital preservation/money market funds for extended periods of time.[lxi]
13. Encourage plan sponsors, separately and as part of the DEI template, to:
    A. Solicit direct rollovers from predecessor plans, highlighting the extended rollover provisions.[lxii]
    B. Use plan's loan provisions to facilitate the "roll on" of any outstanding (defaulted) loans from *predecessor* plans.[lxiii] Such processes are already available today and will minimize not only the leakage from loan defaults but also potential leakage from residual amounts remaining in the *predecessor* plan.
14. Encourage plan sponsors consider adopting "retroactive" features for non-highly compensated employees which could be used to "back-fill" gaps in participation, contributions, employer financial support,[lxiv]
15. Encourage plan sponsors consider adopting an "at hire", indefinite/irrevocable deferral election, a unique "catch-up" process to "gap fill" for past, insufficient savings that is not a cash or deferred election.[lxv]

Liquidity without leakage along the way to and throughout retirement. Those who live paycheck to paycheck and believe they cannot afford to save for retirement need to have effective access to their retirement savings without triggering income and early withdrawal penalty taxes.

When it comes to retirement savings, plan loans are always superior to withdrawals.[lxvi]

Increasing the default percentage while highlighting *unambiguous access* to liquidity may prompt greater savings, including "precautionary savings"[lxvii] - more than "financially fragile" workers would willingly earmark for a distant, uncertain, improbable retirement.

And, higher savings rates prompted by liquidity may reduce "financial fragility" because, generally speaking:

- Fragility is more prevalent among those who are less advantaged (recently lost employment, had a reduction in income, have modest education) and/or those with accumulated debts, and
- Fragility declines as household assets increase.

Retirement savings plans need not be illiquid. Most 401k plans offer loans. Coupled with other features, plan loans "done right" can simplify worker financial decision making.[lxviii]

Unfortunately, too many industry professionals lump plan loans together with withdrawals as leakage, as something to avoid.[lxix] Many academics, plan advisors, service providers and policy makers remain hyper-focused on limiting the 401k to retirement savings – with recommendations to curtail plan loans but somehow permit, if not encourage in-service withdrawals. Many, such as Vanguard, assert that leveraging liquidity via plan loans, as envisioned by Nobel prize-winning economist Franco Modigliani,[lxx] is also *benefits heresy*.[lxxi]

Limiting liquidity may impede workers' retirement preparation.

Remember that plan loan principal never leaves the plan. It usually becomes a fixed income investment in the borrower/lender. Perhaps the resistance to assets being "out of the market", or specifically, out of the Core investment options, is that few, if any, plans apply asset management fees to loan principal (with the exception of plans where the loan principal is treated as part of a capital preservation option).

Plan loans can also be used to resolve accumulated debts and break the cycle of payday loans, accelerated pay, and other alternative financial services. Those financial products enable and consign workers to continued indebtedness and living payday to payday.[lxxii] Where plan loans replace high cost debt, they improve both retirement preparation and household wealth because the interest rate on today's plan loan is typically:

- Less than that of a payday loan, a credit card advance or a loan from a commercial source, ***and***
- During the past 13+ years, typically greater than the earnings on Core fixed income investments.

Plan loans "done right" requires service providers first "sharpen the saw" and update plan loan processes and provisions to 21st Century functionality[lxxiii].

The Department should update its guidance on liquidity to:

16. Reconfirm how plan sponsors can amend their plans to curtail or eliminate in-service hardship withdrawals and post-separation, pre-retirement withdrawals without running afoul of anti-cutback requirements,
17. Encourage plan sponsors to demand service providers update their plan loan processing to 21st Century functionality so as to maximize access to liquidity while minimizing leakage.
18. Create an Information guide:
    A. Comparing and contrasting withdrawals/distributions and plan loans and their relative impact on retirement preparation,
    B. Dispelling the various plan loan myths and misinformation,[lxxiv]
    C. Clarifying that plan loans are permitted with respect to defined benefit and money purchase pension plans as well as Employee Stock Ownership plans - of potential value for those "financially fragile" participants who may not have access to a 401k, 403b or 457 plan.
19. Confirm the following changes in structure and processing are possible, identifying how they may maximize the value of plan loans yet minimize leakage – so that **"… loans function as other plan investments"** and so plan loan processing minimizes occurrences where plan loans **"diminish the borrower's retirement income or cause loss to the plan"**:[lxxv]
    - *Electronic banking* – so plan loan repayments can continue after separation, and, so term vested and retired participants can initiate a plan loan after separation while retaining tax-preferred liquidity,
    - *A line-of-credit structure* – avoids loan numeric limits which may prompt borrowing more than needed, ensures participants can readily identify available liquidity and single sum payoff amounts,
    - *Iterative use* - Confirm how loan functionality can enable use of the same assets, over and over and over, to meet iterative financial needs, over a period of years, while improving household wealth without negatively impacting retirement preparation,
    - *"Hardship/emergency loans"* – Confirm that a plan loan in a small amount (e.g., up to $1,000) can be repaid in a single deduction from a near-term, future paycheck or via a single sum payment,[lxxvi] and
    - *Manage behavior* - Behavioral economics tools, concepts and processes, to maximize value, minimize leakage from plan loans - for example, upon application, ***in writing*** require:
        - Participants execute loan agreements as both borrower and lender (the future self),
        - Commitment bonds so participants acknowledge repayment continues post-separation,
        - Bank information/authorization so payments can automatically continue should payroll deduction stop,
        - Acknowledgement of the potential impact of leakage (display lost assets at retirement), and
        - Acknowledgement of reporting of loan activity to credit bureaus to build credit ratings.

Lifetime Savings Account. Previously, I confirmed that participants have multiple uses for retirement savings (as encouraged by Congress). So, limiting retirement savings plans to solely function as accumulators for post-retirement income replacement is as suboptimal as limiting HSA assets to those current year expenses which qualify for reimbursement under a health Flexible Spending Account. Both retirement savings and HSAs work best when positioned to be lifetime accounts – with multiple uses and significant utility.[lxxvii]

Lifetime = long term. Lifetime = Beyond the current employer.
Lifetime = Worker, surviving spouse and beneficiaries.

My experience is that few workers fully understand and appreciate that the 401k is a separate legal entity from their current employer. During 50+ different corporate transactions, acquisitions, mergers and divestitures, I met with thousands of affected workers. My discussions confirmed most did not realize they could maintain their 401k after the corporate transaction. Too many workers perceive and too many plan sponsors/service providers use processes that prompt lump sum distributions following separation.

One emerging trend shows plan sponsors have liberalized post-separation distribution options and deployed other strategies to encourage participants, especially "retirees" (however defined/differentiated from term vested, surviving spouses, beneficiaries, etc.) to retain assets in the plan.[lxxviii] For example, since 1986, my 401k offered ad-hoc, installment and required minimum distribution-compliant payment options.[lxxix]

Department guidance/education may help plan sponsors facilitate asset retention post separation, including:

20. Create a "safe harbor" IRC §72(t)(2)(A)(iv) pre-age 59 ½ life-expectancy, installment payout structure as a form of Defined Contribution "phased retirement" that will avoid penalty taxes.[lxxx]
21. Create a guide to market the 401k's value as an inexpensive "extended warranty" for a lifetime of savings – to minimize leakage, allow for retirement income education and assist in addressing "cognitive decline".[lxxxi]
22. Demonstrate, using Deemed IRAs, how an individual can maintain the savings habit when they have wage income but their current employer/occupation does not provide access to an employer-sponsored plan.[lxxxii]
23. Encourage plan sponsors to solicit direct rollovers from *subsequent* employer-sponsored plans, highlighting opportunities from extended rollover provisions, consolidate accounts to minimize expenses.
24. Encourage plan sponsors to use their 21st Century plan loan processing functionality to facilitate the "roll on" of any outstanding (defaulted) loans from *subsequent* employer-sponsored plans – with an eye on reducing leakage, including leakage of the residual assets in the *subsequent* employer-sponsored plan.
25. Demonstrate the multiple uses of 401k and HSA assets:
    A. 401k - For short, intermediate, long term and retirement financial needs, via "liquidity without leakage along the way to and throughout retirement", and
    B. HSA – For current and future years out of pocket medical, dental, vision, hearing, and long term care expenses, as well as certain premium payments (COBRA, LTC), to fund post-employment Medicare Part B & D premiums (including IRMAA) as well as out of pocket expenses, to provide taxable income (without penalty tax) for individuals age 65+, to cover surviving spouse/tax dependent's medical premiums and out of pocket expenses, and once there is no longer a surviving spouse or tax dependent, to provide a taxable, legacy benefit to the named beneficiary.

Perennial automatic enrollment in paycheck insurance. A worker's most valuable asset is their ability to earn a wage – so protection is essential. Disability rates vary by race and ethnicity.[lxxxiii] Life expectancy is less for black Americans compared to white Americans, which have shorter life expectancies than Hispanic Americans.

Department guidance and education may help prompt enrollment in long term disability (LTD), life and retirement savings plan disability accrual insurance:

26. Encourage employers to offer life, LTD and disability accrual insurance coverage, even worker-pay-all, and
27. (Re) confirm a plan sponsor may use automatic features with respect to each of these features.[lxxxiv]

Intergenerational wealth. "The greatest wealth transfer in modern history has begun. … older Americans have spent decades accumulating an enormous stockpile of money (much of it in retirement savings plans and IRAs). At the end of this year's first quarter, Americans age 70 and above had a net worth of nearly $35 trillion, according to Federal Reserve data. That amounts to 27% of all U.S. wealth, up from 20% three decades ago. Their wealth is equal to 157% of U.S. gross domestic product, more than double the proportion 30 years ago … Older generations will hand down some $70 trillion between 2018 and 2042, according to research and consulting firm Cerulli Associates."[lxxxv] According to the Wall Street Journal, "Roughly $61 trillion will go to heirs … At no time in modern history has so much wealth been in the hands of older people. …"[lxxxvi]

Department guidance and education may help plan sponsors and workers consider:

28. Designating beneficiaries, from a plan design perspective (defaults, etc.) and worker protection[lxxxvii],
29. Encouraging employers to consider retirement planning education and services (including specific education for surviving spouses, etc.), perhaps by using preferences provided under IRC §132(m), and
30. Establishing Individual Retirement Accounts (IRAs) for children, grandchildren, or designating a child or grandchild as beneficiary of a portion of retirement savings.[lxxxviii]

Remember, whether we are talking about retirement income or intergenerational wealth transfers, it isn't what you get that counts, it's what you get to keep, after taxes.

Tax-favored, intergenerational wealth transfers took a hit with the elimination of the "Stretch IRA" as part of the SECURE Act. Nonetheless, given the coming "silver tsunami of wealth transfers", savvy estate and tax planning, as well as designation of beneficiaries, will be a much larger issue among older Americans who wish to leave a legacy to heirs – regardless of race, ethnicity or gender.

Most plan sponsors have yet to take aggressive action, as currently permitted by today's code and regulations, to affirmatively address retirement savings and household wealth disparities. However, many, perhaps most are not aware of or not focused on these disparities. Further, many may not be aware of how adjustments to existing retirement savings plan design might fit within enterprise business and/or total rewards strategies, or might offer an excellent diversity, equity and inclusion initiative.

One-off Recommendations/Ideas

Attachment IV includes some random, "blue sky", one-off suggestions to consider. They are "take or leave" – actions I believe will help to reduce disparities. Most require legislative action. Included are:

- Child Savings Accounts,
- Student Debt,
- Worker Death,
- PEP vs SECURE §202,
- After-tax §401(a) Contributions,
- Roth,
- Pre-retirement Distributions,
- Indexation,
- §401(h) for §401(k) - Sidecar Retiree Medical Accounts,
- Other Sidecar Accounts,
- FASB – GASB and Retiree Medical, and
- Cafeteria Plan Opt Out Incentives.

Summary of June 2021 Testimony

According to studies by the Employee Benefits Research Institute (EBRI), racial and ethnic disparities exist even among those with equivalent incomes.[1] Those studies also confirmed that Black and Hispanic Americans were more likely to consider debt, especially non-mortgage debt, to be problematic, an impediment to saving for retirement. EBRI found that: "… Problematic debt levels were consistent across Black and Hispanic American cohorts regardless of gender, marital status, and whether they were U.S. born."[2]

Complementary testimony by John Rogers confirmed that Black Americans' when compared to white Americans, contributed, on average 26% less to their 401k, were more than twice as likely to borrow from their retirement accounts, and almost twice as many have dipped into emergency funds.[3]

EBRI also found accumulated assets for women varies significantly based on marital status. "… Divorced and never-married women workers were considerably more likely to have less than $1,000 in assets: 38% for divorced … 42% for never-married … 14% for married. … divorced women workers … have smaller levels of assets, … 72% had less than $25,000 in assets … 54% for never-married … 31% for married …"[4]

Normal Stein testified that: "… ERISA was not a statute designed to assist people with the type of work histories and compensation levels that many woman, in and out of the workforce and often in part-time positions, experienced … (and) … according to the Census bureau, (women only have) … 55% of the retirement income of men and are almost twice as likely as men to face poverty in old age.[5]

Monique Morrissee confirmed that: "… Most households of color have little or no savings in retirement accounts, including 401(k)-style defined contribution (DC) plans and Individual Retirement Accounts (IRAs) … evidence from the U.S. Census Current Population Survey (CPS) confirms that workers of color, especially Hispanic workers, are much less likely to participate in employer plans than white workers, in most cases because their employers do not offer a plan. …"[6]

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[1] L. Lucas, EBRI, ERISA Advisory Council Written Statement, 6/24/21. "A … wealth …gap …persists between White Americans' …and that of Black and Hispanic Americans regardless of income level. …58% of lower-income Black Americans reported savings of less than $1,000 vs. 38% of White Americans … 32% of middle-income Black Americans had savings less than $1,000 vs. 13% of White Americans. …26% of White Americans with middle incomes had $250,000+ in assets, (versus) 8% of Hispanic Americans and 4% of Black Americans. … 56% of White Americans with upper incomes had $250,000+ in assets, while 39% of both Black and Hispanic Americans with these incomes had this level of assets.

[2] Ibid

[3] J. Rogers, Ariel Investments, ERISA Advisory Council written statement, 6/24/21. "… Ray Boshara of the St. Louis Fed reports that between 1992 and 2016, college-educated white Americans saw their wealth soar 96 percent while college-educated Black Americans saw theirs fall 10 percent. The wealth gap is large – and it's growing. …"

[4] L. Lucas, Note 7, supra.

[5] N. Stein, ERISA Advisory Council Written Statement, Drexel University, testifying on behalf of the Pension Rights Center, 6/24/21.

[6] M. Morrisee, ERISA Advisory Council Written Statement, Urban Institute, 6/25/21. "… Among prime working-age households ages 32-61, only 32% of Hispanic and 44% of Black households had retirement account savings in 2019, as compared with 65% of white households…. Between 1989 and 2019, Hispanic households' participation in any type of employer retirement plan declined from 40% to 34%. (while) … the participation rate for Black households edged up from 45% to 48%, while that of white households edged down from 63% to 60%, shrinking the Black-white participation gap. …"

Nari Rhee highlighted the employer-sponsored plan coverage issue, asserting it disproportionately impacts Blacks and Latinos, particularly when considering trends in occupation, industry, wage level, and part-time/full-time status. She also confirms a history of inequality with regards to employment opportunity and generational wealth.[7]

She asserted a number of factors constitute obstacles to saving for retirement via a 401k plan – confirming:

- Workplace retirement plan coverage varies sharply by occupation, wage level, and part-time/full-time status,
- The gap in take-up – the share of workers with access who actually participate in the retirement plan – is even greater than the gap in reported access.
- Black and Latino workers:
    - Consistently face higher rates of unemployment,
    - Significantly disadvantaged in generational wealth, and
    - Have significantly less liquid savings where limited liquid savings is an indicator of economic fragility and vulnerability to financial shocks.
- Women workers have traditionally also shouldered most of the added burden of unpaid caregiving – citing a MetLife study from 2011 which estimated a loss of $120,000 in wages and $64,000 in Social Security benefits for women who reduced paid work hours due to caregiving.

Nari Rhee also confirmed that ownership of retirement assets is highly uneven by race among households ages 25 – 64:

- 64% of White households have a pension, 401(k), or IRA,
- 49% of Black households,
- 39% of Latino households.

She also noted that Black and Latino households have roughly a quarter of the average (mean) retirement wealth of White households ($43,000, $38,000, and $153,000, respectively).

Jamal Rashad Watkins identified many disparities asserting they are the result of racism and historic disinvestment. He noted that "existing policy is insufficient" and used the following data to illustrate:

- The typical white family with $188,200 has 8 times the wealth of the typical Black family with $24,100.
- There are extreme disparities in employment and wages, home ownership, and housing affordability in the Black community.

He notes that: "The lack of racial equity in how the American economy functions severely impacts Black people, who are systematically restricted from being fully realized participants. Economic equity is a crucial part of establishing holistic racial equity for Black people. It's not just important that Black people be able to contribute to the economy as workers and consumers, but also as owners with the same access to resources and chance at success as anyone."

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[7] N. Rhee, ERISA Advisory Council Written Statement, University of California, Berkeley, 6/24/21 Citing MetLife, "The MetLife Study of Caregiving Costs to Caregivers," https://www.caregiving.org/wpcontent/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf

Other disparities noted in the written statement included:

- 50% of all U.S. households were at risk of falling short in retirement while 54% percent of Black Americans, and 61% of Latinos, shared that risk—compared to only 48% of whites
- Black workers made 14.9% less than their white counterparts, 10.2% less seven years earlier in 2012
- Black Americans constitute 13 percent of the nation's population but only possess about 2 percent of the nation's wealth
- Only 54% of Black and Asian employees and 38% percent of Latino employees age 25-64 work for an employer that sponsors a retirement plan, compared to 62 percent of white employees
- While 24 percent of white households have a DB pension through a current job, only 16 percent of households of color do
- A large majority of Black working age households—62 percent—do not own assets in a retirement account, compared with 37 percent of white households
- Three out of four Black households age 25-64 have less than $10,000 in retirement savings, compared to one out of two white households
- Among near-retirees, the per-household average retirement savings balance among households of color ($30,000) is one-fourth that of white households ($120,000)
- Black Americans had a median home net value of just $49,000 in 2016, while for white Americans it was $86,000.
- Less than half of Black and Hispanic families own their homes
- Only 21% of Black households have a FICO score above 700, compared to more than 50% of white households
- About 38 percent of minority beneficiaries rely on Social Security for 90 percent or more of their income, compared with 28 percent of white people.

Communications/Marketing
A Successful Voluntary Enrollment of New Hires

In the early 2000's, I enjoyed presenting our 401k to eligible new hires on their very first day. Never mentioned "retirement". Always focused solely on potential – always positive, never negative.[8] Behavioral economics experimentation shows most effective "negative" messaging is limited to situations where a plan sponsor is adding both positive and negative changes – eliminating the status quo.

What new hire wants to discuss "retirement" on their first day on the job, anyway? Many new hires were shocked, shocked, when, on their first day on the job, I confirmed, in a whispering voice: "Don't tell the bosses, but, someday you won't work here, anymore." That's some *Human Resources heresy*.

We didn't add automatic features until 2007, so our voluntary enrollment pitch (for "Drive to Your Dreams") was simplicity. Our medium was a 401k "magic show", complete with audience participation. We didn't saw anyone in half, but we did use a "magic" top hat and magician's wand to demonstrate plan mechanics.

The audience would be asked to pull out their wallets and purses to share some currency. After some coaxing, I would end up with at least two volunteers willing to risk 70 cents and $2.00 (I had change handy).

The first volunteer put $.70 in the top hat (plan). Walking away, I confirmed their "contribution" was part of the net amount from their take home pay - contributed pre-tax. I then placed the top hat in front of another worker as far away across the room as possible. I then encouraged all in the room to keep a watchful eye, that they would be among the 40,000+ other plan participants, so they could identify how the "trick" was done.

While they watched, with a wave of the "magic wand", I added money to represent federal and state deferred withholding taxes, then calculated and "deposited" employer match, and then, based on the volunteer's "election", calculated/added a year's worth of investment earnings. We demonstrated how, after one year, the account was nominally 100+% higher than the initial reduction in take home pay.

Our goal was to ensure everyone understood how to perform this same "trick" every payday and to confirm this benevolent treatment was only available in our 401k because "you work here". We demonstrated this twice, first with $.70 then $2.00. At the end of the magic show, I also made a big deal out of letting each volunteer keep all the money in the top hat – typically, about $2.00 and $4.50, more than twice what they risked, confirming: those who participate get the money, those that don't, don't. And, those that save more, get more. Only a handful failed to enroll at 6% of pay to get the maximum employer matching contribution.[9]

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[8] I C. Anast, D. Blanchett, W. Cormier, N. Fink, J. Savage, Engaging Participants: Communication Strategies for Defined Contribution Plan Sponsors, DCIIA, July 2021. "… both encouraging and fear-type messaging works to increase intended engagement in the plan and to prompt action from participants, but cautionary messages were more effective than encouraging ones. …" However, the survey didn't actually confirm any actions actually taken by participants. Accessed 8/21/21 at: https://cdn.ymaws.com/dciia.org/resource/resmgr/resource_library/DCIIA-RRC-EngagingParticipan.pdf

[9] However, see: J. Choi, D. Laibson, B. Madrian, $100 Bills on the Sidewalk: Suboptimal Investment in 401(k) Plans, August 2005. "… We identify employees at seven companies who are eligible to receive employer matching contributions in their 401(k) and can make penalty-free withdrawals for any reason. For these employees, contributing less than the match threshold is a dominated action that violates the no-arbitrage condition. Nevertheless, between 20% and 60% contribute below the threshold, losing as much as 6% of their annual pay. Providing employees with information about the free lunch they are foregoing fails to raise contribution rates. …" Accessed 8/21/21 at: https://www.nber.org/papers/w11554

We ended by demonstrating how the 401k might be the only tool a worker needs to fashion their financial/ wealth destiny. I would ask them to raise their hands if they thought a million dollars was a lot of money. I then confirmed that none of them were millionaires today – else they wouldn't be working here. I then asked them to raise their hands if they wanted to be a millionaire … someday.

The illustration that followed confirmed that almost all middle-class Americans won't become millionaires unless they consistently save throughout their working careers. I would rhetorically ask: "… when you reach age 70 ½, when the government requires you start taking money out of the plan, which group did you want to be in?" Not once did I mention "retirement".

More than once, I had to assuage concerns about ability to save, and financial prioritization, by confirming access. See Attachment III

Retirement savings/wealth accumulation requires development of a savings habit as early as possible – to ensure consistent/persistent savings while employed. Actions that develop, strengthen, and reinforce the savings habit are essential, because, sooner or later, all have their progress interrupted and disrupted.

A 401k May Be ***The*** Best Option To Address "Financial Fragility" – Emergency Needs

A plan loan may offer liquidity sooner and in greater amounts when compared to a sidecar account. And, while a plan loan must be repaid, a bank sidecar and/or a hardship withdrawals must also be replenished:

- For the next potential emergency need or use, and/or
- To prepare for retirement income and medical needs.

Saving the maximum possible will moderate spending.[10] Workers can keep their eye on a single ball, the 401k. After satisfying a financial shock with plan loan proceeds, a worker need not "refocus" on multiple priorities, need not "revive" savings as contributions never stopped, and there is no need to "reset" strategy.

Optimal Liquidity For Emergencies

"Done right", plan loans offer greater liquidity - starting with the very first contribution.

	External Bank Sidecar	Typical 401k Plan* Hardship Withdrawal	Plan Loan
Employee Contribution			
Per Payday	$ 90.00	$ 120.00	$ 120.00
Per Year	2,340.00	3,120.00	3,120.00
Reduction in Take Home Pay	2,340.00	2,340.00	2,340.00
Employer Contribution	-	1,560.00	1,560.00
Invested Assets	2,340.00	4,680.00	4,680.00
One Year's Earnings			
Money Market (.5%)	5.85		
Target Date (6%)		140.40	140.40
Gross Amount Available @ 1 year	2,345.85	4,820.40	4,820.40
Withdrawal - Net of Taxes	$2,344.39	$ 3,133.26	-
Loan			$4,820.40

* Author's Calculations: Assumes $52,000 annual salary, paid biweekly, pre-tax contributions, 25% federal/state marginal income tax rates, age 30, employer match of 50% on 1st 6% of pay immediately vested

Our target population are often "financially fragile" with other financial priorities. Some are not creditworthy, others are unbankable. Asking these workers to prioritize savings for multiple goals would be very challenging – how much to set aside in each product, adjusting over time, etc. Aggregating/consolidating savings in a 401k will achieve a superior outcome[11] - compared to multiple accounts, including an emergency account.[12]

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[10] J. Towarnicky, Note lvii, supra

[11] J. Towarnicky, A Bucket List for Retirement? 2/27/19. "A bucket approach or envelope savings system … is an ultra-complex process: First, you have to identify all of your savings goals … identify target amounts adjusted for inflation, project the date of use, select the appropriate savings vehicle, decide on an investment strategy, re-evaluate progress, adjust as necessary. But, what if your goals change, they move the "goal posts", or when you change employers or your employer changes the retirement savings plan provisions." Accessed 8/21/21 at: https://www.psca.org/news/blog/bucket-list-retirement

[12] C. Copeland, Emergency Savings: What Do Workers Have Available in Liquid Savings? How Long Can They Afford a Loss of Income? Employee Benefits Research Institute, 8/12/21. "… Of all families with working family heads under age 65, less than one-quarter had liquid savings of more than three months of their family income in 2019. …" Accessed 8/21/21 at: https://www.ebri.org/publications/research-publications/issue-briefs/content/emergency-savings-what-do-workers-have-available-in-liquid-savings-how-long-can-they-afford-a-loss-of-income

One-off Recommendations/Ideas

What follows are some random thoughts, "blue sky". They are "take or leave" – actions I believe will help to reduce disparities. Most require legislative action.

PEP vs SECURE §202. "Groups of plans" offer a unique value, potentially of much greater value than PEPs/MEPs as they are more likely to achieve economies of scale. Plan sponsors should be able to consider this alternative prior to joining a PEP.

The Department should issue guidance relative to SECURE §202 as soon as practical. While the effective date is for plan years commencing after December 31, 2021, the Department should issue this guidance so employers (and service providers) would be able to compare and contrast this solution with PEPs/MEPs.

Child Savings Accounts (CSA). CSAs have been a failure most everywhere they've been tried[13]. Taxpayer funded Baby Bonds are likely to suffer the same fate. The GAO report summary confirms the modest results from government and non-governmental organization (NGO) initiatives. As the report summary confirms:

- "Savings may be modest, …
- One study found that families who were enrolled for 7 years saved over four times more of their own money, on average, than families who were not enrolled—$261 compared to $59. …
- When including financial contributions from the CSA program, enrolled families had about six times more total savings ($1,851) compared to other families ($323). …"

Regardless of the child's age, those are dismal accumulations. I confirmed to the GAO my disagreement with their suggestion that "… such programs help lower-income families prepare for college by increasing financial knowledge…" The report offers no data that clearly shows causality … either that CSA participating family members are more "financially-savvy" than others who do not participate in CSAs, or that, if they are more "financially-savvy", that anyone has clearly linked it to CSAs, versus other initiatives, education, programs, etc.

The study also suggests that CSAs significantly raise expectations about attending post-secondary education - that "… enrollment and participation in CSA programs may also increase families' educational expectations for their children. For example, a study found that parents with children enrolled in one CSA program were nearly twice as likely to expect their children to attend college. …" It is one thing to raise expectations and take necessary actions to prepare for a child's college education. It is something else to raise expectations without confirming the outsized role parents must assume to make that a reality.

The Department may want to consider a recommendation to Congress regarding the Child IRA. As mentioned earlier, when it comes to building intergenerational wealth, why not consider a Child Roth IRA. And, why not allow contributions on the same basis as apply to a spouse who does not have wage income. This is particularly appropriate for divorced and widowed spouses, of any gender, with minor children, as well as a single parent with minor children, or households with only one wage earner.

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https://www.ebri.org/publications/research-publications/issue-briefs/content/emergency-savings-what-do-workers-have-available-in-liquid-savings-how-long-can-they-afford-a-loss-of-income

[13] GAO, Higher Education: Children's Savings Account Programs Can Help Families Build Savings and Envision College GAO-21-10, 12/10/20, Accessed 8/19/21 at: https://www.gao.gov/products/gao-21-10

Student Debt: Proposals to facilitate diversion of retirement savings monies to pay student debts are counterproductive. During this period of widespread deferral for repayment of federal student loans, the better option would be to have the individual redirect those payments as contributions to the retirement savings plan. A better alternative would leverage the tax preferences and employer match by using plan loans to pay student debts. As noted earlier, college education may have a disparate impact.[14]

The Department may want to encourage employers who wish to assist students with debt consider additional, tax-favored benefits via IRC §127 Educational Assistance Plans (until 12/31/2025).[15]

Worker Death. The death of a spouse provides an opportunity to deliver valuable guidance. Employers may want to consider adding an employee-pay-all legal assistance plan as a non-ERISA voluntary benefit plan.

The Department may want to encourage employers to consider adopting specific education and counseling regarding retirement assets as permitted by IRC §132(m)[16].

After-tax 401(a) Contributions. In safe harbor 401k plans, allow Non-Highly Compensated Employee (NHCE) after tax contributions up to the IRC§415(c) limit without triggering Average Contribution Percentage testing.

The Department may want to consider a recommendation to Congress extending the 401k safe harbor on ACP testing for after-tax 401(a) contributions limited to NHCEs.

Roth: Roth offers unique value to low wage, short service workers who are more likely to change employers

The Department may want to consider guidance and/or recommendations to Congress, regarding Roth:

- **Allow for Roth only 401k plans,**
- **Allow NHCE Roth contributions up to IRC §415(c) limits without ACP tests in Roth-only safe harbor plans,**
- **Confirm that a plan sponsor need not establish payroll deduction functionality and may accept Roth 401k contributions via electronic banking, personal check or splitting of a net paycheck,**
- **Roth In-Plan Conversions – 10 Year Forward Averaging – To give workers with pre-2006 assets in a retirement savings plan an option to increase the effective amount of retirement savings, and facilitate in-plan conversion of taxable assets to a Roth basis by providing a one-time "window" opportunity (in one specific year) to apply a ten year average concept (a sort of retroactive or reconsider Roth decision).**
- **"Cashless" Roth In-Plan Conversions – Amend IRC §72(p) to allow for a separate loan (without regard to the §72(p) loan dollar maximum/limits) solely to pay federal/state withholding taxes on an in-plan Roth conversion - minimizing leakage of plan assets and facilitating "one-click", in plan Roth conversions.**

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[14] R. Ensign, S. Shifflett, Note xiii, supra.

[15] Further Consolidated Appropriations Act of 2020, Pub. L. 116-260, 12/27/20.

[16] Qualified retirement planning services. The term "qualified retirement planning services" means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan." (Non-discrimination rules apply.) …the term "qualified employer plan" means a plan, contract, pension, or account described in section 219(g)(5)." See also IRS Publication 15 – B. "… You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or his or her spouse if you maintain a qualified retirement plan. A qualified retirement plan includes a plan, contract, pension, or account described in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion doesn't apply to services for tax preparation, accounting, legal, or brokerage services." Accessed 8/19/21 at: https://www.irs.gov/pub/irs-pdf/p15b.pdf

Pre-retirement Distributions: There are too many opportunities for leakage, already.

The Department may want to identify for Congress that penalty-tax-free in-service and post-separation, pre-retirement distributions from employer-sponsored plans/IRAs encourage leakage. The Department may want to offer insight to Congress by measuring the CARES Act distributions that are repaid to plans, IRAs – and reporting the results. Most plan sponsors expect the majority of those distributions will not be repaid.

Indexation: Update / index code provisions that have been eroded by inflation or changes in utilization and have effectively been emasculated in terms of fostering employment, personal development, and retirement savings/financial wellness:

- IRC §129 - Dependent Day Care - $5,000, unchanged since addition to the code in 1981,
- IRC §127 - Educational Assistance - $5,250, unchanged for almost 30 years, originally set at $5,000 (1978), increased to $5,250 (1986), made indefinite (nothing is ever permanent in the tax code) in 2013,
- Qualified plan loan maximum. The $50,000 plan loan maximum has remained unchanged since 1975 when the average DC account had ~$7,000. That is, the $50,000 maximum was seven times the average account balance at the time ERISA became law. An update to an equivalent amount (relative to current 401k average account balances) would increase the maximum in excess of $250,000 (which is ~2 times the average account balance). Such a change, coupled with other "liquidity without leakage" provisions would help participants save more with an eye on funding larger purchases, and, at the same time, avoid using taxable distributions for larger expenses – especially in situations where Congress created penalty-tax-free IRA preferences (e.g., first time home buyer, educational expenses, medical expenses, etc.).

The Department may want to consider a recommendation to Congress to update, then index these dollar limits.

§401(h) for §401(k) - **Sidecar Retiree Medical Accounts:** Few plan sponsors fund retiree medical using IRC §401(h) accounts. 401h was added to the code in 1962 with respect to pension plans and was not updated with the addition of 401k to the code in 1978. An employer-funded sidecar would enable employers to incent additional savings in 401k plans using "stretch match" designs. For example, the most prevalent employer match is still 50% on the 1st 6% of pay, 3% of pay. Adding a 401h sidecar would allow the plan sponsor to amend their plan and, where the participant defers 8% of pay, add an employer match of 4% of pay, where 1% is allocated to the 401h account. All other 401h provisions and regulatory guidance would remain in effect.

The Department may want to consider a recommendation to Congress that future legislation amend IRC §401(h) to include the words "profit sharing".

Other Sidecar Accounts: Diverting worker attention to sidecar savings accounts (MyRA[17], emergency savings accounts, etc.) is suboptimal. The "financially fragile" likely include the 38% of eligible employees who are not participating in plans that have voluntary enrollment, or the one third of participating employees who failed to contribute enough to receive the maximum employer match.[18] As noted previously, the 401k, "done right" is a tax-efficient instrument that is more than capable of meeting most needs. See Attachment II.

The Department may want to consider a recommendation to Congress that future legislation avoid creating new options that could potentially divert savings away from employer-sponsored plans and IRAs.

FASB – GASB and Retiree Medical: In fact, Health Savings Account assets are more tax efficient and more valuable than 401k assets when financing post-retirement medical costs – which typically represent the largest expense in retirement.[19] Premiums for employer-sponsored, fully insured, retiree-pay-all Medicare Supplement/Medicare Advantage coverage are HSA-Eligible Medical Expenses – as are Medicare Part A, B & D, IRMAA and tax-qualified Long Term Care (LTC) premiums as well as for medical, Rx, vision, dental and LTC out-of-pocket expenses. However, few employers offer such retiree medical coverage.

The Department may want to encourage the Financial Accounting Standards Board (FASB 106, 158) and the Governmental Accounting Standards Board (GASB 75) to clarify and confirm that an offer of employer-sponsored, fully-insured, retiree-pay-all Medicare Supplement/Medicare Advantage coverage incurs no financial liability and need not be reported on the balance sheet.

Cafeteria Plan Opt Out Incentives: Consistent with code requirements that access to benefits should not vary based on age, agency confirmation that age neutral IRC §125 cafeteria plan "opt out" incentives and age neutral spousal surcharges do not violate Medicare Secondary Payer rules nor trigger financial penalties where offered/applied regardless of age.[20]

The Department may want to encourage the EEOC and HHS/CMS, along with Treasury/IRS to confirm that cafeteria plan incentives, such as opt outs and spousal surcharges, must apply without regard to age in order to comply with the Age Discrimination in Employment Act.

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[17] J. Towarnicky, Betamax, Edsel, New Coke and...now MyRA Joins An Elite Class of Marketing Failures, 7/30/17, Accessed 8/19/21 at: https://www.psca.org/news/blog/betamax-edsel-new-coke-andnow-myra-joins-elite-class-marketing-failures

[18] Vanguard, Note xiii, supra.

[19] J. Towarnicky, Note lxiv, supra

[20] 42 CFR §411.103 - Prohibition against financial and other incentives

[i] U.S. Small Business Administration, "... There are 31.7 million small businesses in the U.S., 81%, or 25.7MM, have no employees (termed "non-employers") and 19%, or 6 million, have paid employees. There are 20,139 large businesses. The e number of non-employers has gradually increased, from 15.4MM in 1997 to 25.7MM in 2017. Small businesses comprise: 99.9% of all firms, 99.7% of firms with paid employees, 47.1% of private sector employees (61MM), and 40.3% of private sector payroll. ..." Data are from 2017 – 2019, October 2020, Accessed 8/27/21 at: https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf

[ii] Employee Benefit Security Administration, Department of Labor, Private Pension Plan Bulletin Historical Tables and Graphs 1975-2018, January 2021. Note that there are 669,400 single employer defined contribution plans where 588,000 (84%) have less than 100 participants. For comparison, out of 282,285 single employer defined contribution plans in 1975, 199,087 (70%) were plans with less than 100 participants. 8/27/21 at: https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf

[iii] Author's calculation: There are approximately 28MM white, about 10MM black and another 10MM Hispanic households who have not accumulated any retirement savings.

[iv] Author's Note: Experience showed that, historically, less than 1 in 20 new hires, regardless of age at hire, retired upon leaving our firm (stop all employment, commence benefits, separate after age 62). We were typical. Median tenure of American workers ages 25-64, has consistently been less than five years for the past five decades. And, I believe these measures of median tenure likely understate turnover — because the churn is highest among younger, short-service workers. Data show workers have an average of 12 employers by age 52 – and most of that turnover occurred prior to age 35. See: Bureau of Labor Statistics, "Employee Tenure in 2020," 9/22/20, Accessed 8/19/21 at: www.bls.gov/news.release/pdf/tenure.pdf See also: J. Clark, J. Young, Automatic enrollment: The power of the default, Vanguard, February 2021. "... (In a study of participation rates for new hires during the period January 1, 2017 and December 31, 2019) ... it is important to remember that we are reporting only on eligible employees who remain with the employer. Among new hires, employee turnover was quite high. Over our sample period, 4 in 10 eligible employees left the sample because of job change. ..." In plans with voluntary enrollment, turnover rates were 56% after three years. In plans with automatic enrollment, turnover rates were 52% after three years. Accessed 8/19/21 at: https://institutional.vanguard.com/iam/pdf/ISGAE_022020.pdf See also: Craig Copeland, "Employee Tenure Trends, 1983–2018," Employee Benefit Research Institute, Accessed 8/19/21 at: www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_474_tenure-28feb19.pdf?sfvrsn=70053f2f_13 See also: H. Hyatt, J. Spietzer, "The Shifting Job Tenure Distribution," February 2016, Accessed 8/19/21 at: http://ftp.iza.org/dp9776.pdf See also: Bureau of Labor Statistics, "Number of Jobs, Labor Market Experience and Earnings Growth from a National Longitudinal Survey," 8/22/19, Accessed 8/19/21 at: www.bls.gov/news.release/pdf/nlsoy.pdf

[v] PGIM, Josh Cohen Moderator, The Accidental Plan Sponsor, podcast, 2021. Episode 3: Lori Lucas, Employee Benefit Research Institute, on Innovation, "... It's unfortunate because I think there had been a lot of innovation going on prior to this proliferation of fee litigation, that's happened, and employers are always asking the question 'is this going to get me sued' ..." Lew Minsky, Defined Contribution Institutional Investment Association, on Innovation, "... Sticking your neck out is challenging in an environment where there are plaintiff's firms out there waiting to chop it off, and to sue you for innovating, knowing that their strategy is not to litigate the merits of what you're doing, but instead to force settlements because of the unbelievable costs in trying to defend these cases... I'd put adoption as probably my lowest grade of the day – a D. ..."

[vi] ERISA, Pub. L. 93-406, 9/2/74

[vii] J. Towarnicky, HSA 'Chicken' or 401(k) 'Nest Egg' - Which Comes First? 1/18/18, Accessed 8/22/21 at: https://www.psca.org/news/blog/hsa-chicken-or-401k-nest-egg-which-comes-first

[viii] J. Towarnicky, Narrowing Retirement Savings Gaps, 5/15/19, Accessed 8/19/21 at: https://www.psca.org/news/blog/narrowing-retirement-savings-gaps Non-discrimination changes include the average deferral and average contribution percentage tests, maximum covered compensation, and maximum annual addition limits.

[ix] ERTA, Pub. L. 97-34, 8/13/81

[x] Investment Company Institute (ICI), The Role of IRAs in US Households' Saving for Retirement, December 2019, Accessed 8/19/21 at: https://www.ici.org/system/files/attachments/pdf/per25-10.pdf See also: S. Holden, K. Ireland, V. Leonard-Chambers, M. Bogdan, The Individual Retirement Account at Age 30: A Retrospective, ICI, Accessed 8/21/21 at: https://www.ici.org/system/files/attachments/pdf/per11-01.pdf

[xi] Vanguard, How America Saves, 2021. Estimated as: Median wage from survey - $64,000, median deferral rate from survey 6.0%, median total contribution from survey less the employee deferral rate = estimated employer median rate (9.7% – 6.0% = 3.7%), Accessed 8/19/21 at: https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/21_CIR_HAS21_HAS_FSreport.pdf See also: Congressional Research Service, Data on Retirement Contributions to Defined Contribution (DC) Plans, 8/12/21. IRS 2018 data: "… About 60 million taxpayers contributed to DC plans, corresponding to 41.7% of all taxpayers with wage income. In addition, the average contribution to DC plans was $5,510; … and about half of taxpayers with wage income age 35-65 made elective deferrals." Accessed 8/21/21 at: https://crsreports.congress.gov/product/pdf/IN/IN11721

[xii] Department of Labor, Bureau of Labor Statistics, Usual Weekly Earnings of Wage and Salary Workers, Second Quarter 2021, 7/16/21, Accessed 8/19/21 at: https://www.bls.gov/news.release/pdf/wkyeng.pdf

[xiii] Treasury Department, Internal Revenue Service, Traditional and Roth IRAs, Accessed 8/19/21 at: https://www.irs.gov/retirement-plans/traditional-and-roth-iras

[xiv] Treasury Department, Internal Revenue Service, IRS provides tax inflation adjustments for tax year 2021. Accessed 8/19/21 at: https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2021 Assumptions: Federal marginal income tax rate of 22%, state of 3%, 25% total.

[xv] J. Towarnicky, Retirement Savings Crisis: Access Isn't the Issue, Prioritization is: Proposed and implemented state mandated IRA programs offer suboptimal, and in some cases, substandard products and processes. 2/26/21, Accessed 8/19/21 at: https://401kspecialistmag.com/retirement-savings-crisis-access-isnt-the-issue-prioritization-is /

Author's note: If the EERISA Advisory Council wants to recommend Congress consider a **federal auto-IRA** program, I ask that they first review a proposal I crafted over 15 years ago that **does not add any new burdens to employers or employees**. This design includes a structure that, like my 401k automatic designs, **features perennial, mandatory decision-making but not mandatory savings.** It also includes expansion of the savers credit, new liquidity features and a prize-linked contribution process.

[xvi] N. Bhutta, A. Chang, L. Dettling, J. Hsu, J. Hewitt, Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances, Federal Reserve, 9/28/20, Accessed 8/19/21 at: https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm

[xvii] R. Ensign, S. Shifflett, For Black Americans, College Hasn't Closed the Wealth Gap, Wall Street Journal, 8/9/21.

[xviii] EBRI, Differences in Individual Account Retirement Plans by Race and Ethnicity: At a Glance, 7/15/21, Accessed 8/27/21 at: https://www.ebri.org/docs/default-source/infographics/72_ig-scf-15jul21.pdf?sfvrsn=d30a3b2f_4

[xix] Author, note iii, supra. Averages can be deceiving. See: J. Towarnicky, Rock, Paper, Scissors – Average, Median, Mode – Deceiving Data, 10/6/19, Accessed 8/28/21 at: https://www.psca.org/news/blog/rock-paper-scissors-%E2%80%93-average-median-mode-%E2%80%93-deceiving-data

[xx] J. Jacobson, American Benefits Council, ERISA Advisory Council Written Statement, 6/25/21.

[xxi] J. Towarnicky, Is it Time Yet? 11/17/19. Ten years earlier, an October 2009 issue of Time Magazine had a cover story that announced: "Why it's Time to Retire the 401(k)" "… The author asserted that America would be better off if we "retired" the 401k. … (however, many) could see how the 401k marketplace and 401(k) plan designs had started to change. The Pension Protection Act of 2006 and accompanying regulations announced the rebirth of the 401k, not its retirement!" Accessed 8/19/21 at: https://www.psca.org/news/blog/it-time-yet

[xxii] R. Hiltonsmith, The Retirement Savings Drain: The Hidden and Excessive Costs of 401(k)s, Demos, 5/29/12, Accessed 8/19/21 at: https://www.demos.org/sites/default/files/publications/TheRetirementSavingsDrain-Final.pdf; citing: T. Ghilarducci, "Guaranteed Retirement Accounts: Toward Retirement Income Security." Washington, DC: Economic Policy Institute (2007). http://www.gpn.org/bp204.html He states: "… an "ordinary" American household will pay, on average … $155,000 over the course of their lifetime in effective total fees." My 42 years of industry experience confirms the average "ordinary" household doesn't contribute $155,000 to savings over a working career, let alone the amount necessary to trigger fees of $155,000. See also: J. Sullivan, Moderator, Episode 32: Why the 401k Fails and What A 'Better' System Looks Like, According to Teresa Ghilarducci: And why 401k pioneer Ted Benna agrees with her view, 8/21/21. "(the 401k is) an immature, underdeveloped child … that will never grow up… It's immature in coverage. It's immature in how it is invested. It never developed where people could accumulate in a smart way. … " Accessed 8/24/21 at: https://401kspecialistmag.com/episode-32-why-the-401k-fails-and-what-a-better-retirement-system-needs-according-to-teresa-ghilarducci/?utm_source=email&utm_medium=link&utm_campaign=08232021_podcast&utm_term=Podcast&utm_content=jacktowarnicky@gmail.com

[xxiii] Employee Benefit Security Administration, Department of Labor, Note ii, supra

[xxiv] Greenwald & Associates, 2019 Risks and Process of Retirement Survey, Financial Expectations of Pre-Retirees Versus Realities of Retirees, Society of Actuaries, 2020. "… a majority of retirees …are doing the same or better than expected. But retirees who have experienced major health issues, periods of unemployment and loss of spouses are generally not as well off, and more are faring worse than expected. … More than three-quarters of retirees are doing the same or better in retirement than they thought they would when they were working. Only about one-quarter do worse …" Accessed 8/19/21 at: https://www.soa.org/globalassets/assets/files/resources/research-report/2020/financial-expectations-realities.pdf See also: United States Census, Historical Poverty Tables: People and Families - 1959 to 2019. In 1959: Children under age 18: 27.3%, Adults ages 18 – 64: 17%, Seniors age 65+: 35.2%. In 2019: Children under age 18: 14.4%, Adults ages 18 – 64: 9.4%, Seniors age 65+ 8.9%. Accessed 8/21/21 at: https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html

[xxv] A. Biggs, The Real Retirement Crisis: It's Not Where You Think, Statement before the Committee on Ways and Means, United States House of Representatives, 2/6/19. "There simply is no retirement crisis. … Retirement savings have risen seven-fold since … 1975 and retirement plan participation has increased. … Americans' contributions … have increased, from 5.8% of total wages and salaries … in 1975 to 8.7% … in 2015. … In 1975 … total retirement savings were equal to 48% of total employee wages. By 1995 retirement assets rose to 202% of employee wages. In 2017 …337% of employee wages … in 2017 70% of U.S. workers were offered a retirement plan by their employer, with 54% choosing to participate. … most couples could save adequately even if only one spouse was offered a retirement plan at work. … Americans are good retirement savers. … the U.S. has total public and private sector pension funds equal to 150% of GDP. The average among other developed countries is only 53%… U.S. retirees have incomes equal to 94% of the population-wide average income, above the OECD average of 84%. Other countries might have more generous Social Security-type programs, but their citizens don't save as much as Americans do. The median disposal income of Americans over age 65 is second only to Norway and Luxembourg." Accessed 8/19/21 at: https://www.congress.gov/116/meeting/house/108921/witnesses/HHRG-116-WM00-Wstate-BiggsA-20190206.pdf

[xxvi] Author's Note: In our annual benefit statement, we always remembered to confirm what amount was "left on the table" to every employee who was not a participant or those who did not save enough to receive the full employer matching contribution. Similarly, our annual benefit statement also confirmed to every worker who was not yet 100% vested the dollar amount of unvested employer benefits that would be forfeited had the worker left the employer on the effective date of the statement.

[xxvii] R. Toth, QPDAC, DIA, QLAC, QPDA, GLWB, FIA, VA, RILA and Others: Welcome to the World of DC Lifetime Income, 8/23/21, Accessed 8/23/21 at: https://www.businessofbenefits.com/2021/08/articles/401k-guaranteed-lifetime-income/qpdac-dia-qlac-qpda-glwb-fia-va-rila-and-others-welcome-to-the-world-of-dc-lifetime-income/

[xxviii] J. Towarnicky, Discordant Disclosures, 9/8/19, Accessed 8/19/21 at: https://www.psca.org/news/blog/discordant-disclosures

[xxix] J. Towarnicky, Written Statement, ERISA Advisory Council, 8/23/17, Accessed 8/21/21 at: https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2017-reducing-the-burden-and-increasing-the-effectiveness-of-mandated-disclosures-towarnicky-written-statement-08-23.pdf See also: P. Wiedenbeck, Unbelievable: ERISA's Broken Promise, 8/11/21. "… Simple dissemination of plan terms and financial data (full disclosure) cannot achieve that objective because few workers are equipped with the skills needed to evaluate the costs and benefits of complex retirement saving … The length and complexity of most employee benefit plans creates tension between understandability and completeness, calling for tradeoffs to achieve optimal disclosure. … " Accessed 8/21/21 at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900735 See also: C. Schneider, O. Ben-Shahar, The Failure of Mandated Disclosure, 2010, Accessed 8/24/21 at: https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1519&context=law_and_economics

[xxx] J. Towarnicky, "My Financial Wellness Solution: The 401k As a Lifetime Financial Wellness Instrument," Society of Actuaries, 2017. Accessed 8/19/21 at: www.soa.org/globalassets/assets/files/resources/essays-monographs/financial-wellness/2017-financial-wellness-essay-towarnicky.pdf.

[xxxi] A. Lusardi, O. Mitchell, Financial Literacy and Planning: Implications for Retirement Wellbeing, 2011. "… only two thirds of the respondents understand compound interest. … More of the respondents, three-quarters, can answer the inflation question correctly and understand they would be able to buy less after a year if the interest rate was 1% and inflation 2%. Yet only half of the respondents know that holding a single company stock implies a riskier return than a stock mutual fund. It is also of interest to distinguish between those who can give a correct answer, versus those giving either an incorrect answer or saying they "don't know" (DK). … only 9% did not know about interest compounding, but more than one fifth (22%) gave an incorrect answer. On the inflation question, 10% did not know, while 13% gave a wrong answer. The question about stock risk elicited the most DKs: one-third (34%) of the sample did not know, while a smaller

fraction (13%) gave a wrong answer. …" Accessed 8/19/21 at:
https://www.nber.org/system/files/working_papers/w17078/w17078.pdf

[xxxii] Greek mythology. Sisyphus cheated death twice. His punishment? He was forced to roll an immense boulder up a hill only for it to roll down every time it neared the top, repeating this action for eternity. Through the classical influence on modern culture, tasks that are both laborious and futile are therefore described as Sisyphean.

[xxxiii] J. Towarnicky, Sidecar = Suboptimal, Adding a sidecar savings account for emergency savings? Better solutions exist. Benefits Quarterly, 1st Quarter 2022 (Pending).

[xxxiv] ZL. Guzman, R. Ryberg, The majority of low-income Hispanic and Black households have little-to-no bank access, complicating access to COVID relief funds, National Research Center on Hispanic Children and Families, 6/11/20, Accessed 8/21/21 at: https://www.hispanicresearchcenter.org/research-resources/the-majority-of-low-income-hispanic-and-black-households-have-little-to-no-bank-access-complicating-access-to-covid-relief-funds/?print=print

[xxxv] J. Towarnicky, Is it Time For Full Auto? Benefits Quarterly, 1st Quarter 2020. "Backsweep" enrollment is possible for those individuals who previously failed to enroll when first eligible, or those who opted out as part of the automatic enrollment process. As confirmed in final Treasury regulations, "… Other commentators asked whether plans are permitted to limit the duration of an affirmative election or to require employees to make new elections. Under the final regulations, automatic enrollment applies for periods during which the affirmative election is not in effect. Accordingly, a plan could specifically provide that an affirmative election expires and, thus, require an employee to make a new affirmative election if he or she wants the prior rate of elective contribution to continue. In the absence of a second affirmative election, the employee will be automatically enrolled at the plan's default percentage (which must meet the minimum percentage requirement described in the preceding paragraph). …", 2/24/09, Accessed 8/27/21 at:
https://www.federalregister.gov/documents/2009/02/24/E9-3716/automatic-contribution-arrangements

[xxxvi] J. Towarnicky, Financial Independence is the Greatest Civil Liberty! 4/9/19. Accessed 8/19/21 at:
https://www.psca.org/news/blog/financial-independence-greatest-civil-liberty

[xxxvii] Vanguard, Note viii, supra. Generally, most plan sponsors who have adopted automatic features limit them to new hires (automatic enrollment and adoption of a Qualified Default Investment Alternative (QDIA)). A substantial portion of those plan sponsors also adopt automatic escalation features – a 1% or 2% per year annual increase (69% of plans in the Vanguard study). The survey data do not confirm the percentage of plans, if any, that leverage inertia more aggressively by employing a sweep of employees who are not new hires but are not currently contributing, those not contributing the default percentage of pay, or those deferring less than the annual increase "cap". Other "sweep" opportunities include reapplying the QDIA after a period of investment inactivity.

[xxxviii] M. Swanson, B. Farnen, Nationwide Savings Plan Automatic Enrollment, Getting Associates PREPared For Retirement, Benefits Quarterly, 3rd Qtr 2008, See also: GAO, Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges, GAO 10-31, October 2009, Accessed 8/26/21 at:
https://www.gao.gov/assets/gao-10-31.pdf

[xxxix] April 2007 was the start of a five year implementation strategy. In April 2008, we repeated all of the same actions including defaulting into participation those who had opted out in 2007. In April 2009 through April 2013 (the last year for which I have data), we repeated the process with the following changes: In 2009, the default was raised from 3% to 4% of pay, and the 1% increase applied up to 12% of pay, In 2010, the default was raised from 4% to 5% of pay, and the 1% increase remained unchanged, up to 12% of pay, and in 2011 and subsequent years, the default was raised from 5% to 6% of pay (where the employer financial support was maximized), and the 1% increase remained unchanged up to 12% of pay.

[xl] Ariel/Hewitt Associates, The 401k In Living Color, 2008. Accessed 8/19/21 at:
https://www.arielinvestments.com/images/stories/PDF/arielhewittstudy_finalweb_7.3.pdf See also: A. Munnell, C. Sullivan, 401k Plans and Race, Boston College Center for Retirement Research, November 2009. "... Blacks and Hispanics were less likely than Whites to participate …and, if they did, they were likely to save less. … The good news is that 401(k) participation and contribution decisions do not appear to vary by race/ethnicity. … for comparably situated individuals, Blacks, Whites, and Hispanics respond in a similar fashion in terms of joining a 401(k) plan and deciding how much to contribute. The bad news is that Blacks, Whites, and Hispanics are not similarly situated. …" Accessed 8/19/21 at:
https://crr.bc.edu/wp-content/uploads/2009/11/IB_9-24.pdf

[xli] Vanguard confirmed auto-enrolled participants are more likely to use a plan loan compared to those voluntarily enrolled. "… after three years, 24% of auto-enrolled participants have loans versus 20% of voluntarily enrolled participants (17%)." J. Clark, J. Young, Automatic enrollment: The power of the default, Vanguard, February 2021, Accessed 8/19/21 at: https://institutional.vanguard.com/iam/pdf/ISGAE_022020.pdf Author's note: Where automatic features are deployed, participation rates are 50+% higher among younger, lower paid, shorter service eligible employees. Because that segment is much more likely to be "financially fragile", the slightly higher rate of loan usage is not at all

surprising. Just as important, loans need not be counterproductive - not to accumulate retirement savings nor to increase household wealth.

[xlii] The 401k In Living Color, 2012: "... We have, however, seen a positive trend that has offset some of the challenges of the last several years: the widespread implementation of automatic enrollment. ... plan participation rates (enrollment rates) are significantly higher across the board among those who began employment at a company after its implementation of auto-enrollment. The most dramatic increases in enrollment rates are among younger, lower-paid employees, and the racial gap in participation rates is nearly eliminated among employees subject to auto-enrollment. ..." Accessed 8/19/21 at: https://www.arielinvestments.com/images/stories/PDF/ariel-aonhewitt-2012.pdf See also: S. Bernartzi, Plan design during challenging times: 7 Actionable Insights from Behavioral Finance, Voya, March 2020. "... What's more, research suggests that auto-enrollment seems to be even more beneficial for women and minorities, equalizing participation across demographic groups and dramatically reducing longstanding racial and gender gaps in enrollment. " Accessed 8/19/21 at: https://www.voya.com/sites/voya.com/files/2021-02/Plan-design-during-challenging-times.pdf See also: T. Rowe Price, New Retirement Savings and Spending Study, Financial wellness is critical—regardless of age, race, or ethnicity. August 2021. "… employers could also incorporate plan designs that prioritize participation, such as automatic enrollment, auto increase, or using incentives, such as matching employer contributions to increase contribution rates. …" Accessed 8/21/21 at: https://www.troweprice.com/retirement-plan-services/en/insights/research-findings/financial-wellness-is-critical.html

[xliii] M. Quiroz-Gutierrez, American companies pledged $50 billion to Black communities. Most of it hasn't materialized, Fortune, 5/6/21, Accessed 8/19/21 at: https://fortune.com/2021/05/06/us-companies-black-communities-money-50-billion/

[xliv] A Target Date Model (TDM) is a no cost, electronic asset allocation across core investments, structured to mimic target date funds' glide path and landing points. TDMs offer: (1) Lower expenses, no added layer of fees, assets are concentrated in Core investments, (2) Potential reduction in fiduciary risk using Core investments, (3) Open architecture, not proprietary investments of a single firm, (4) Allocations apply to all account assets, (5) Transparency, easier to understand as percentage and dollar allocations to Core investments, (5) Transparency in rebalancing - advance notice and subsequent confirmation of the transfer across Core investments. More opportunity to customize (e.g., allocations can be based on a specific year of birth and vary by sex (life expectancy), instead of using five year cohorts and unisex). See: J. Towarnicky, Is Your TDF Off Target!? A cruise missile will invariably hit its target after traveling at subsonic or supersonic speeds covering 500 to more than 1,000 miles, despite the fact that it weighs up to 1,000 pounds1! As a plan fiduciary, what's the accuracy of the target date investment you selected for your participants? 4/24/19, Accessed 8/19/21 at: https://www.psca.org/news/blog/your-tdf-target Author's note: Following SECURE, some plan sponsors have started to consider investment options that are more complex and more opaque than a target date series. Those alternative are likely of some value to workers who have accumulated significant sums and who are focused on retirement. Such investments are likely to have little value to those who are "financially fragile". Hence, the plan investment fiduciary will need to have some discretion with regard to selecting a QDIA that may vary for different segments of a diverse population.

[xlv] Update 29 CFR § 2550.408b-1, 54 FR 30520 because most 401k participants do not accord/treat plan assets as a "pension". The Department concluded: "… there is no basis (to depart) from the position that participant loans should function as plan investments … Moreover … the primary purpose of a pension plan is … retirement income not … participant loans. … the express intent of Congress (is) that … loans be governed by the … rules of fiduciary responsibility, ***which require that … loans function as other plan investments***. … the Department does not … encourage borrowing … but …permit it in circumstances that are not likely to … diminish the borrower's retirement income or cause loss to the plan." Accessed 8/19/21 at: https://www.govinfo.gov/content/pkg/FR-1989-07-20/pdf/FR-1989-07-20.pdf However, ***Congress clearly disagrees. Congress expressly rejects limiting retirement savings plan assets to generating "pension income".*** Four times in the last four years, they authorized more "leakage": (1) The Bipartisan Budget Act of 2018 liberalized hardship withdrawals, (2) The SECURE Act (2019) offered new penalty tax-free withdrawals for childbirth or adoption, (3) The CARES Act (2020) eliminated any hardship requirement, avoids penalty tax, receives three-year income tax averaging and repayment options. (4) the Consolidated Appropriations Act (2021) added withdrawal provision if a participant's principal residence is within a federal-declared disaster area (economic losses between 12/28/19 – 2/25/21). Similarly, long before COVID-19, Congress created exceptions allowing savers to waive the 10% penalty taxes on premature withdrawals from IRAs—for higher education, first-time home purchases, unreimbursed medical expenses, etc. See also: J. Towarnicky, Hardship Withdrawals - An Attractive Nuisance Becomes More Attractive, 2/8/18, Accessed 8/27/21 at: https://www.psca.org/news/blog/hardship-withdrawals-attractive-nuisance-becomes-more-attractive

[xlvi] The EEO-1 Component 1 report is a mandatory annual data collection that requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit demographic workforce data, including data by race/ethnicity, sex and job categories. Measuring retirement savings plan participation, contribution rates, equity investments, etc. using those categories should not add liability – whether or not the plan sponsor takes action to amend the plan.
[xlvii] IRS, Rev. Proc. 2021-30, 7/16/21, Pages 87 – 93, Accessed 8/21/21 at: https://www.irs.gov/pub/irs-drop/rp-21-30.pdf
[xlviii] Section 101, Division O, Setting Every Community Up for Retirement Enhancements, Further Consolidated Appropriations Act of 2020, Pub. L. 116-94, 12/20/19. The new "bad apple" rule allows a PEP to segregate a non-compliant employer to maintain the 401k plan's tax-qualified status. Here, the IRA already requires separate processing. Accessed 8/19/21 at: https://www.congress.gov/bill/116th-congress/house-bill/1865/text
[xlix] Such guidance will minimize any impediments to adopting a Deemed IRA by applying the same fiduciary standards as would otherwise apply to an IRA that is not a Deemed IRA.
[l] 69 FR 43735 - Deemed IRAs in Qualified Retirement Plans. "… automatic enrollment principles … may also be applied to deemed IRAs." Accessed 8/19/21 at: https://www.govinfo.gov/app/details/FR-2004-07-22/04-16594
[li] PLR 201833012, 5/22/18, Accessed 8/19/21 at: https://www.irs.gov/pub/irs-wd/201833012.pdf
[lii] Plan Sponsor Council of America, 2021 HSA Survey. "With respect to investment options other than capital preservations, 84% of HSAs offered other investment choices, 19% of HSA account owners invested in those options, and that group allocated less than 30% of their HSAs assets to those options. 87% of HSA programs require a minimum balance be held in capital preservation prior to qualifying for investing in other options. Accessed 8/21/21 at: https://www.psca.org/research/HSA/2021report
[liii] The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16, 6/7/01.
[liv] Employee Benefits Research Institute, Losing Ground Safely: Small IRAs' Large Stake in Money (capital preservation), 10/1/20. "… A significant percentage of small IRAs are found to be invested 100 percent in money … even though many had 100% allocations to balanced or target-date funds in their 401(k) … over one-fifth (22.7%) of Traditional Rollover IRAs had balances of less than $5,000 (and) … 55.6% of the owners of Traditional Rollover IRAs with balances of $1,000 up to $5,000 were ages 44 or younger, and 27.2% of these accounts were at least seven years old … Therefore, a majority of these accounts belong to younger individuals with many years until retirement, and many have been around for a significant number of years. … three-fourths or more of accounts of those ages 25 to 29 that were established 7–11 years prior to the analysis year were 100 percent allocated to money. (and) … More than 85% of those established in the same year as the analysis year were fully invested in money. Accessed 8/19/21 at: https://www.ebri.org/docs/default-source/fast-facts/ff.364.ira2017.1oct20.pdf?sfvrsn=637a3a2f_8
[lv] B. Butrica, M. Soto, The Impact of Automatic Enrollment on 401(k) Match Rates: A Methodological Note, January 2010, Accessed 8/19/21 at: https://www.urban.org/research/publication/impact-automatic-enrollment-401k-match-rates-methodological-note
[lvi] J. Towarnicky, Innovator Towarnicky Points Out Flaws in WSJ Article, 7/21/11, Accessed 8/19/21 at: https://prosperitynow.org/blog/innovator-towarnicky-points-out-flaws-wsj-article
[lvii] See: Census Bureau, C. Copeland, BLS, G. Sanzenbacher, et. al., Note i, supra.
[lviii] J. Clark, J. Young, Automatic Enrollment, The Power of Defaults, Vanguard, February 2021. "Our results suggest that employee quit rates do not appear to vary in response to a plan sponsor's choice of the initial deferral rate …The participation rate among employees earning $15,000–$29,999 is around 85%—regardless of whether the initial deferral rate is 2% or 6%." Accessed 8/19/21 at: https://institutional.vanguard.com/iam/pdf/ISGAE_022020.pdf
[lix] J. Towarnicky, True-up, Catch-up, What's up? 10/9/18, Accessed 8/17/21at: https://www.psca.org/news/blog/true-catch-whats
[lx] Treas. Reg. Section 1.401(k)-2(a)(1)(iii) Special rule for early participation. "… If a (401k) provides that employees are eligible to participate before they have completed the minimum age and service requirements of section 410(a)(1)(A), and if the plan applies section 410(b)(4)(B) in determining whether the (401k) meets the requirements of section 410(b)(1), then … either— (A) … the ADP test is performed under the plan … using the ADP for all eligible HCEs for the plan year and the ADP of eligible NHCEs … disregarding all NHCEs who have not met the minimum age and service requirements of section 410(a)(1)(A); or (B) Pursuant to §1.401(k)-1(b)(4), the plan is disaggregated into separate plans and the ADP test is performed separately for all eligible employees who have completed the minimum age and service requirements of section 410(a)(1)(A) and for all … who have not completed the minimum age and service requirements of section 410(a)(1)(A). …"
[lxi] Treasury/IRS summary confirms rollovers from Roth IRAs to Roth 401k, 403b and 457 plans are not permitted under any circumstance, while, such rollovers are permitted from Traditional IRAs. Initiatives to minimize leakage, such as the Retirement Clearinghouse's Auto Portability Program, are challenged when Roth 401(k) deferrals and earnings are moved

to an IRA – making them ineligible to move to the subsequent employer's Roth 401(k). IRAs are unable to facilitate defaulted loan "roll-ons". A "Conduit IRA" has long been used to "store" assets until they can be rolled over into a new employer's plan. There was no specific Code or regulatory provision for creating a Conduit IRA. Rather, simply meeting certain rules, such as not commingling assets from another source and ensuring that the money originated from a qualifying qualified plan or 403(b), were the only requirements. See IRC §408(d)(3)(A)(ii) for commingling rules. Senators Portman and Cardin have proposed legislation, however, the Department and Treasury/IRS could provide regulatory guidance on how the Conduit IRA could be used for Roth 401k assets as well as pre-tax and after-tax assets. See IRS Notice 2014-54, 9/18/14. Accessed 8/19/21 at: https://www.irs.gov/pub/irs-drop/n-14-54.pdf See also, EBRI, Note xliii, supra.

[lxii] Tax Cuts and Jobs Act of 2017, Pub. L. 115–97, 12/22/17. Qualified Plan Loan Offset (QPLO) amounts can be rolled over into an eligible plan on or before the taxpayer's tax filing due date (including extensions) for the tax year of the offset.

[lxiii] J. Towarnicky, Stop Leaks: Plan Loans: Participants can avoid not only the leakage from the loan outstanding at separation, but also, potentially, leakage of residual balances, 11/29/20. Accessed 8/19/21 at: https://401kspecialistmag.com/how-to-stop-401k-leakage-from-plan-loans/

[lxiv] Clarify/confirm retroactive plan amendments facts-and-circumstances test in Treasury Regulation §1.401(a)(4)-1(c)(2), §§ 1.401(a)(4)-1, -13 to create an "equity" adjustment process. For example, a plan sponsor might amend the plan for current, active, non-highly compensated employees who failed to enroll or failed to contribute enough in the past, perhaps up to five years, and, as a result, did not receive the maximum available employer financial support. This might be in the form of additional employer matching or employer non-elective contributions.

[lxv] Treasury Regulation §1.401(k)-1(e)(7)(v) Certain one-time elections not treated as cash or deferred elections. "… A cash or deferred election does not include a one-time irrevocable election made no later than the employee's first becoming eligible under the plan or any other plan or arrangement of the employer that is described in section 219(g)(5)(A) (whether or not such other plan or arrangement has terminated), to have contributions equal to a specified amount or percentage of the employee's compensation (including no amount of compensation) made by the employer on the employee's behalf to the plan and a specified amount or percentage of the employee's compensation (including no amount of compensation) divided among all other plans or arrangements of the employer (including plans or arrangements not yet established) for the duration of the employee's employment with the employer, or in the case of a defined benefit plan to receive accruals or other benefits (including no benefits) under such plans. Thus, for example, employer contributions made pursuant to a one-time irrevocable election described in this paragraph are not treated as having been made pursuant to a cash or deferred election and are not includible in an employee's gross income by reason of §1.402(a)-1(d)." Accessed 8/19/21 at: https://www.ecfr.gov/cgi-bin/text-idx?SID=aaa79ea2073f91efe503e5f5b5befc79&mc=true&node=se26.6.1_1401_2k_3_61&rgn=div8

[lxvi] J. M. Iwry, D. C. John, Protecting and Strengthening Retirement Savings, Strategies to Reduce Leakage in 401(k)s and Expand Saving Through Automatic IRAs, Testimony Before the Special Committee on Aging United States Senate, 7/16/08. "… In fact, we have a reasonably restrictive policy regarding withdrawals (including loans) during employment by the plan sponsor, but a much looser policy regarding withdrawals after termination of employment. It won't matter how tightly we lock the front door of the barn if the horses are free to run out the back. Moreover, it is not at all clear that plans such as 401(k)s, which seek to induce voluntary employee contributions, should be discouraged from offering loans and hardship withdrawals. (Loans generally are preferable to withdrawals because plan loans commonly are repaid, whereas there is no general provision for repayment of actual withdrawals, hardship or otherwise.) To encourage voluntary employee contributions in the first place, the liquidity these features provide may be needed to make many employees feel sufficiently comfortable that they could access their retirement savings if they really needed to. …" Accessed 8/27/21 at: https://www.aging.senate.gov/imo/media/doc/hr198dj.pdf

[lxvii] J. Towarnicky, Staying Liquid via A Sidecar Account = Suboptimal Retirement Preparation? 9/2/19, Accessed 8/21/21 at: https://www.psca.org/news/blog/staying-liquid-sidecar-account-suboptimal-retirement-preparation

[lxviii] J. Towarnicky, It is Not Borrow to Save, But Save to Borrow! 10/9/18, Accessed 8/19/21 at: https://www.psca.org/news/blog/it-not-borrow-save-save-borrow

[lxix] See, for example, Transamerica, Retirement Security: A Compendium of Findings About U.S. Worker / 20th Annual Transamerica Retirement Survey of Workers. 12/18/20. On page 17, the study states: "Leakage from Retirement Accounts. "Leakage" from retirement accounts in the form of loans and withdrawals can severely inhibit the growth of participants' long-term retirement savings. As of late 2019, almost one in three workers (32%) have taken a loan, early withdrawal, and/or hardship withdrawal from a 401(k) or similar plan or IRA. Full-time workers (33%) are significantly more likely to have taken a loan and/or withdrawal, compared with part-time workers (25%)." Accessed 8/19/21 at: https://www.transamericacenter.org/retirement-research/20th-annual-retirement-survey However, loans have been demonstrated to increase participation rates, improve investment returns and facilitate debt management. Loan features increase flexibility, offering a vehicle for precautionary as well as retirement saving – making savings more attractive and

contributing at a higher rate more attractive. See: J. Beshears, J. Choi, D. Laibson, B. Madrian, The Impact of 401(k) Loans on Saving, 9/29/10, Accessed 8/17/21 at: https://www.nber.org/sites/default/files/2020-08/orrc09-05.pdf For the past 13+ years, the plan loan interest rate has been LESS than the rate they would have paid on a loan from a commercial source AND MORE than the rate they would have achieved had they invested the money in the plan's fixed income alternatives. So, assuming the participant maintains the pre-loan asset allocation (treating the plan loan principal as a fixed income investment), a worker can concurrently improve both retirement preparation AND here household wealth. And, plan loans offer a tax-favored, savvy solution to emerge from indebtedness. See: G. Li, P. Smith, Borrowing From Yourself: 401(k) Loans and Household Balance Sheets, 2008-42, Federal Reserve Board of Governors. "… We examine 401(k) borrowing since 1992 and identify a puzzle: despite potential gains from borrowing against 401(k) assets instead of from other sources, most eligible households eschew 401(k) loans, including many who carry relatively expensive balances on credit cards and auto loans. We estimate that households with access to 401(k) loans could have saved about $3.3 billion in 2004--about $200 per household--by shifting debt to 401(k) loans. … liquidity constrained households are most likely to borrow against their accounts…" Accessed 8/19/21 at: https://www.federalreserve.gov/pubs/feds/2008/200842/200842pap.pdf

[lxx] J. Towarnicky, Another Nobel Laureate in Economics Who Was Focused on 401(k) Plans - Part 2 of 3, 12/4/17, Accessed 8/21/21 at: https://www.psca.org/news/blog/another-nobel-laureate-economics-who-was-focused-401k-plans-part-2-3

[lxxi] Vanguard, How America Saves 2021: Insights to Action, Data-based recommendations that can improve participant outcomes, 2021. Vanguard recommends significant limits on liquidity using plan loans: limit loans to one at a time, and deploy a 30 day – 6 month "cooling off" period between loan payoffs and new loans. Accessed 8/21/21 at: https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/21_TL_HAS_InsightsToAction_2021.pdfY See also: Frias, Increasing Financial Security with Workplace Emergency Savings, 2020. "Limiting the ability of plan participants to take loans from their retirement accounts makes it easier for them to benefit from the long-term advantages of compound growth." Accessed 8/19/21 at: https://www.prudential.com/wps/wcm/connect/b1474cb2-7fcf-40f0-b09d-0b7aef9ceed0/Building_Employer-Aided_Emergency_Savings.pdf?MOD=AJPERES&CVID=mqxCTvL Author's note: Those may be appropriate recommendations for some participants, however, for our target population, those living paycheck to paycheck, those in debt, those who are not creditworthy, those who are unbanked or unbankable or underbanked, etc., such limits would likely deter individuals from saving, they may trigger greater levels of opt out in plans with automatic features, and they may result in increased leakage from in-service and post-separation, pre-retirement withdrawals. See also: J. Towarnicky, Top 10 401k Plan Loan Myths, Misdirections and Misrepresentations: A plan can incorporate enough flexibility to enable participants to continue payments and avoid defaults, 401kSpecialist.com, 2/17/21. See myth #7. Accessed 8/19/21 at: https://401kspecialistmag.com/top-10-401k-plan-loan-myths-misdirections-and-misrepresentations/

[lxxii] J. Towarnicky, It's My Money and I Need it Now! 11/3/19, Accessed 8/27/21 at: https://www.psca.org/news/blog/it%E2%80%99s-my-money-and-i-need-it-now

[lxxiii] Abraham Lincoln may or may not have said "Give me six hours to chop down a tree and I will spend the first four sharpening the axe." Perhaps he heard a sermon back in 1856 by a Presbyterian minister titled "The Dull Axe", based on Ecclesiastes 10:10: "… If the ax is dull and its edge unsharpened, more strength is needed, but skill will bring success. …"

[lxxiv] J. Towarnicky, Note lix, supra

[lxxv] J. Towarnicky, Debt or Deferrals … College or Contributions? A 401k Can Do Double Duty, Benefits Quarterly 3rd Quarter 2019, See also: Qualified Plan Loans, Evil or Essential? Benefits Quarterly, 2nd Quarter 2017.

[lxxvi] Treasury Regulation 26 CFR § 1.72(p)-1 - Loans treated as distributions. Q&A-3, Q&A-10. Plan loans could be repaid as a single sum within the "cure period" – the end of the calendar quarter after the calendar quarter the loan was initiated.

[lxxvii] J. Towarnicky, Funding Retiree Medical & Long-Term Care for the 2nd Half of the 21st Century. Solution: Make available and leverage all tax preferred savings options then save all you can! SOA, Retirement Section News, August 2020. Accessed 8/19/21 at: https://www.soa.org/globalassets/assets/library/newsletters/retirement-section-news/2020/august/rsn-2020-08-towarnicky.pdf See also: My Financial Wellness Solution, The 401k As a Lifetime Financial Wellness Instrument, Society of Actuaries (SOA), May 2017, Accessed 8/19/21 at: https://www.soa.org/globalassets/assets/files/resources/essays-monographs/financial-wellness/2017-financial-wellness-essay-towarnicky.pdf See also: Maximum Utility: Your HSA Can Do Quadruple Duty, Benefits Quarterly, 2nd Qtr 2021.

[lxxviii] For example, see: PIMCO, PIMCO Defined Contribution Consulting Study, April 2021. "… 36% … actively sought to retain retired participants' assets and 38% said they preferred to retain these assets but didn't actively encourage it. … in 2014, the respective percentages were 14% and 32%. … 54% … said a majority … provide distribution flexibility (such as partial or installment payments) while 29% plan to do so. … 46% said a majority … offer personalized advice, and another 21% …plan to do so. The least popular choices were the offering out-of-plan annuity/insurance choices and the offering

of in-plan insurance/annuity choices. In each category, 4% … had implemented …while 11% were planning to do so…." Accessed 8/19/21 at: https://www.pimco.com/en-us/dc-survey/?formsubmit=1

[lxxix] Author's Note: As of 2013, my 401k plan design had so radically shifted to avoid leakage that the amount of plan assets held by former workers had grown to $1.4B, representing over 25% of plan participants and nearly 30% of plan assets.

[lxxx] IRS, Substantially equal periodic payments, Accessed 8/21/21 at: https://www.irs.gov/retirement-plans/substantially-equal-periodic-payments

[lxxxi] J. Towarnicky, An "Extended Warranty" for Retirement Savings, DC Insights Magazine, PSCA, Fall 2018, Accessed 8/17/21 at: https://www.psca.org/industry-intel/defined-contribution-insights/extended-warranty-retirement-savings

[lxxxii] Deemed IRAs may be superior alternatives to state-mandated, payroll-deducted IRAs. See: J. Towarnicky, Retirement Savings Crisis: Access Isn't the Issue, Prioritization is: Proposed and implemented state mandated IRA programs offer suboptimal, and in some cases, substandard products and processes. 2/26/21, Accessed 8/19/21 at: https://401kspecialistmag.com/retirement-savings-crisis-access-isnt-the-issue-prioritization-is/ See also: Oregon Retirement Savings Board. Announced a change in service providers. One other change was to change fees from 101 basis points to $1.50/month, plus 25 basis points. So, an individual with $1,000 account would pay $20.50 in fees, or 205 basis points. The average account balance as of July 31, 2021 was ~$1,081. 32% of eligible opt out of participation. Approximately 25% of contributions to OregonSaves have already been withdrawn. Accessed 8/26/21 at: https://www.oregon.gov/treasury/financial-empowerment/Pages/Oregon-Retirement-Savings-Board.aspx See also: OregonSaves. Generally, given how retirement savings accumulate over time, because the average account is $1,081, approximately 75% and 85% of participants in OregonSaves have less than $1,000 in assets. Because the first $1,000 is invested in capital preservation, and because the return on the OregonSaves capital preservation investment has been 0% year to date through 8/26/21 and 0% during the past 12 months, most participants have an account balance that is less than the amount they contributed. Accessed 8/26/21 at: https://saver.oregonsaves.com/home/savers/investments.html

[lxxxiii] M. Ross, N. Bateman, Disability rates among working-age adults are shaped by race, place, and education, Brookings, 5/15/18. "… Native Americans have the highest disability rate …(16%), … blacks (11%), whites (9%), Hispanics (7%) and Asians (4%). … Blacks and Hispanics both exhibit wider ranges, from the low single digits to about 20%. In most places, … blacks have higher disability rates than whites, up to 2.5 times greater. …" Accessed 8/17/21 at: https://www.brookings.edu/blog/the-avenue/2018/05/15/disability-rates-among-working-age-adults-are-shaped-by-race-place-and-education/#:~:text=At%20the%20national%20level%2C%20Native,and%20Asians%20(4%20percent). See also: N. Goodman, M. Morris, K. Boston, Financial Inequality: Disability, Race and Poverty in America, National Disability Institute, February 2019. "… 14% working-age African Americans have a disability compared with 11% of Non-Hispanic Whites and 8% of Latinos. … Poverty causes disability: Children living in poverty are more likely to have asthma, chronic illness, environmental trauma such as lead poisoning, learning problems and low birth weight that lead to disabilities. People in more physically demanding jobs are also more likely to suffer workplace illnesses and injuries. … Disability causes poverty: Disability adversely affects employment possibilities and earnings. It also can impose additional costs on families, such as medical bills, transportation, modifications to their home and personal assistants. … Two-thirds (67%t) of African American families with a disability were unbanked or underbanked, compared with 40% of Non-Hispanic White households, 54% of Latinos and 40% of Asians. …" Accessed 8/17/21 at: https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf

[lxxxiv] Department of Labor, Information Letter, 12/4/18, Accessed 8/19/21 at: https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/information-letters/12-04-2018 See also: Treasury Regulation § 1.402(a)–1(e)(1)(iii) "… Exception for disability insurance that replaces retirement contributions. The rules … do not apply to the payment made from a qualified trust that is a premium paid to an insurance company for a contract providing for payment of benefits to be made to the trust in the event of an employee's inability to continue employment with the employer due to disability, provided that the payment of benefits with respect to the employee's account for each year does not exceed the reasonable expectation of the annual contributions that would have been made to the plan on the employee's behalf for the period of disability within that year … The payment of premiums described in the preceding sentence is not treated as a distribution under section 402(a), but instead constitutes incidental accident or health insurance as provided in § 1.401–1(b)(1)(ii).

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