

**Membership  
Legislative/Regulatory  
Update**

**December 8, 2011**



**AMERICAN BENEFITS**  

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**COUNCIL**

# Agenda

(times are approximate)

- 3:00 p.m. Review of deficit reduction/  
tax reform issues
- 3:15 p.m. Health Care Update
- 3:45 p.m. Retirement Update
- 4:15 p.m. General questions
- 4:30 p.m. Call concludes

**NOTE:** These slides are also available on the front page of the Council website: <http://www.americanbenefitscouncil.org/>

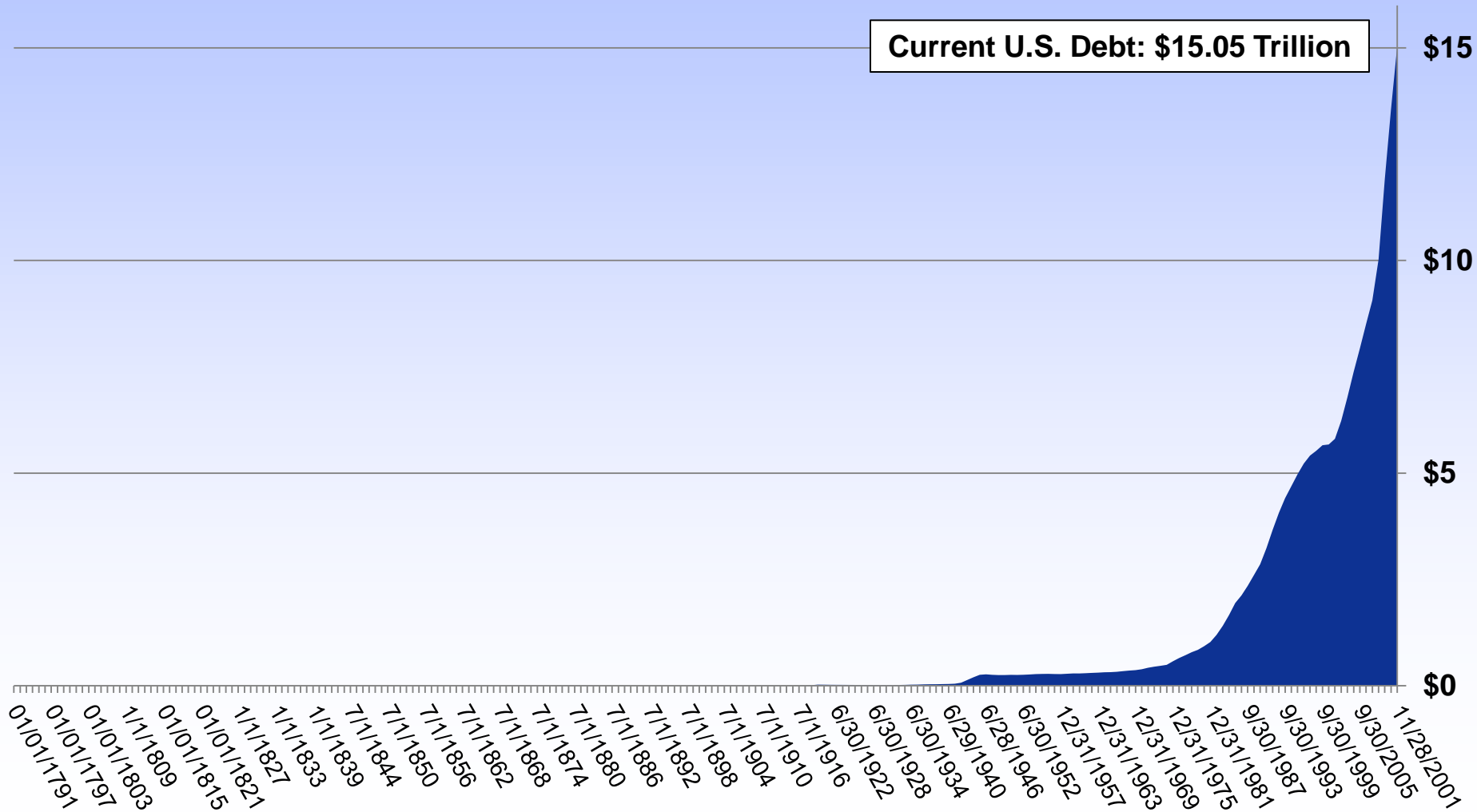
# **The Deficit, Tax Reform and Employee Benefits**

# The Deficit, Tax Reform and Employee Benefits

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

Source: U.S. Bureau of the Public Debt, U.S. Department of Treasury, as of November 28, 2011

In trillions:



# The Deficit, Tax Reform and Employee Benefits

- August 2011: Congress passes Budget Control Act to raise debt ceiling
  - Establishes “Supercommittee”
  - Low expectations: \$1.2 trillion in savings over ten years
- November 2011: Supercommittee fails to reach a deal
  - Automatic budget cuts in domestic and defense spending
  - Cuts do not start until January 2013
- Lesson from failure?

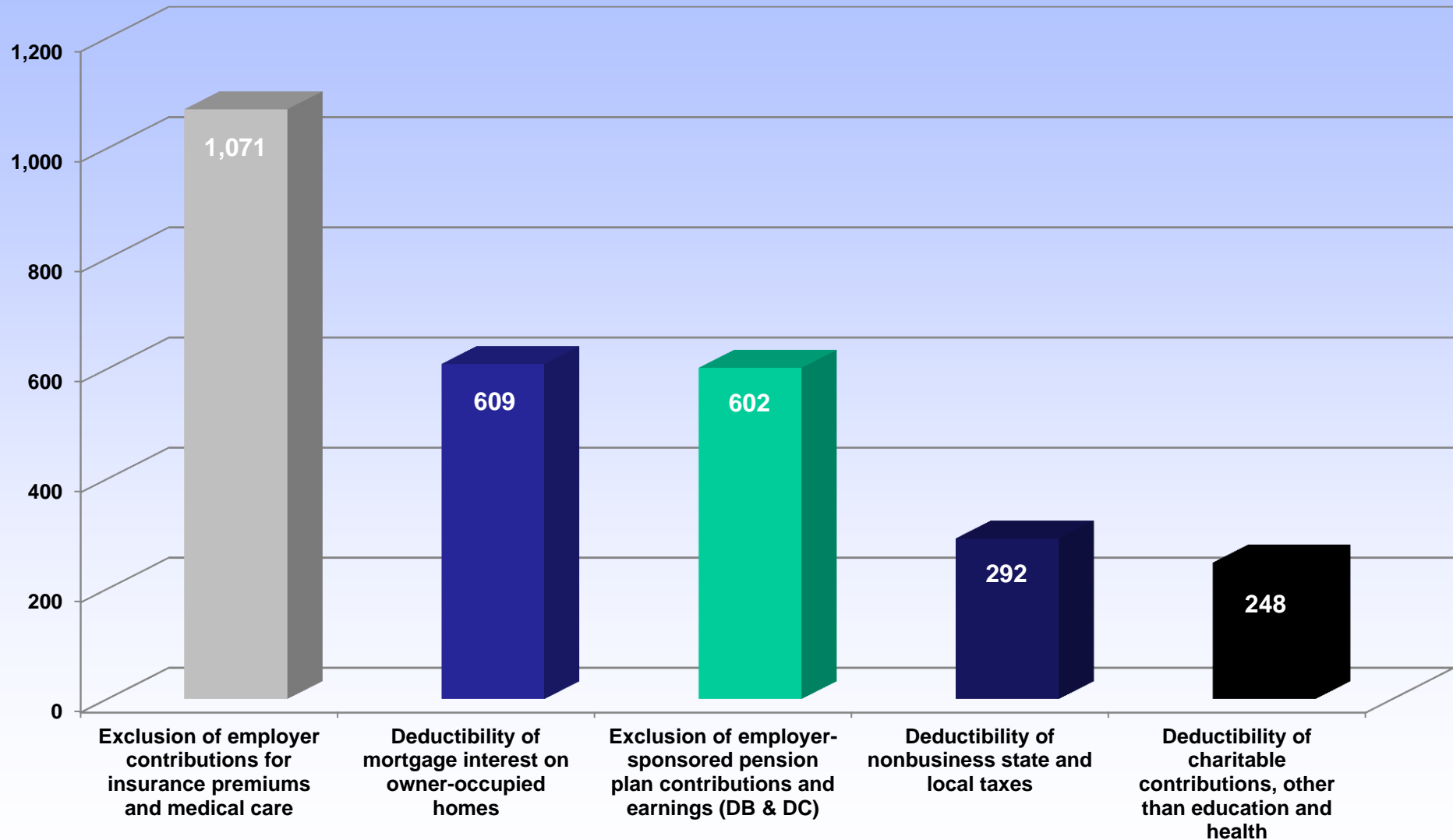
# The Deficit, Tax Reform and Employee Benefits

## Proposals Affecting Medicare & Social Security

- Raise Medicare eligibility age
- 15% surcharge on Medicare Part B premiums for policies with low cost-sharing requirements
- Medicare Parts B and D premium increases for higher income beneficiaries
- Increase wages subject to OASDI payroll tax
- Gradually raise Social Security retirement age to 69
- Change formula for calculating COLAs

# Tax Expenditures, Fiscal Years 2012-2016

Projected dollars in billions



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

- Cap employee exclusion for employer-paid coverage at 75th percentile of premium levels and then phase out completely
- Tax value of employer-paid coverage for high earners
- Eliminate exclusion for high earners [35% bracket] and allow them to deduct [at 28%] employer coverage and contributions to FSAs, HSAs and HRAs
- If costs exceed national target implement automatic structural reforms (e.g. all payer system)



# The Deficit, Tax Reform and Employee Benefits

## Proposals Affecting Retirement Plans

- Limit contributions to lower of \$20,000 or 20% of income
- Replace current employee exclusion with 18% credit for plan contributions
- Change formulas for calculating private plan COLAs
- Raise PBGC premiums and allow agency to set future premium rates

# The Deficit, Tax Reform and Employee Benefits

## What Next After Supercommittee Failure?

- Continuing Resolution to fund government operations
- Extend payroll tax cut
- Extend unemployment insurance benefits
- Medicare “doctor reimbursement fix”
- Alternative Minimum Tax fix
- End of the year “wrap up” measure; PBGC premiums and funding stabilization

# The Deficit, Tax Reform and Employee Benefits

- Action in 2012 (expiring tax provisions) or 2013?
- Use revenue from benefit provisions to pay for “comprehensive tax reform” rather than “deficit reduction”
- How do policymakers view tax expenditures for employer-sponsored benefits system?
  - Source of revenue to reduce deficit?
  - Source of relief for Social Security and Medicare?

# Health Policy Update

# Legislative Outlook

- Year ending much as it began, with gridlock in Congress making legislative action on health policy very difficult
- End of year watch list:
  - Medicare “Doc fix” and possible offsets, such as increases in income-related Medicare Part B and D premiums or surcharge Part B premium for enrollees in certain Medigap coverage
  - Possible directives to tax writing committees to initiate tax reform consideration in 2012

# Looking Ahead to 2012

## Possible Action Drivers

- Possible repercussions from Supreme Court decision on health reform
- Renewed effort to achieve deficit reduction to avoid \$1.2 trillion in spending cuts
- Performance of the economy
- Additional “must pass” legislation

# Recent Regulatory Developments

- Uniform Summary of Benefits and Coverage
- Proposed safe harbor for determining “affordable” coverage
- Women’s Preventive Health Services
- Release of Medicare claims information on price/performance of health care providers
- Medical loss ratios and special adjustments for “mini-med” plans and expatriate plans

# In the Regulatory Pipeline

- Employer responsibility rules
- Essential health benefits
- Outcomes research fee determination
- Auto enrollment provisions
- W2 reporting
- Wellness plans and wellness incentives



# Supreme Court Consideration

- **Central issue:** Constitutionality of the individual mandate and whether the Commerce Clause allows Congress to regulate inaction (e.g., the failure to purchase coverage)
- Split in Courts of Appeal
  - 6<sup>th</sup> Cir and D.C. Cir upheld; 11<sup>th</sup> Cir struck down mandate; 4<sup>th</sup> Cir dismissed on procedural grounds
  - U.S. Supreme Court grants review on several issues
- Look for oral arguments in March 2012, decision in June
- “Severability” question critical if individual mandate found unconstitutional (i.e., does the entire law also fall, or just the individual mandate itself, or the mandate plus closely related provisions?)

# **Retirement Policy Update**

# Legislative Outlook

- New Developments affecting employer-sponsored retirement plans
  - House
  - Senate
- Council activities

# Current Defined Benefit Challenges

- Funding stability for defined benefit pension plans
- Implementation of Dodd-Frank – swaps
- Hybrid plan guidance

# Regulatory Outlook

- Fiduciary Definition
- Plan Fee Disclosure
- SEC pay ratio
- PBGC 4062(e) Event Notice