

**Membership
Legislative/Regulatory
Update
November 19, 2012**



AMERICAN BENEFITS

COUNCIL

Agenda

(times are approximate)

- 2:00 p.m. Opening Remarks & Overview
- 2:10 p.m. Health Policy Update
- 2:40 p.m. Retirement Policy Update
- 3:10 p.m. Final Remarks & Questions
- 3:15 p.m. Call Concludes

Political Overview

Political Overview: Forget About “Conventional Wisdom”

- Presidential election
 - Unemployment rate over 7%
 - Presidents are re-elected with higher percentage of votes than their first election

- Senate
 - 23 Democratic seats and 10 Republican seats were at stake
 - No one predicted the Democrats would gain seats
 - GOP only won one seat previously held by a Democrat

Political Overview: Forget About “Conventional Wisdom”

- House of Representatives
 - GOP kept control, but lost 8 seats
 - More votes for Democrats than Republicans
 - Impact of Congressional re-districting

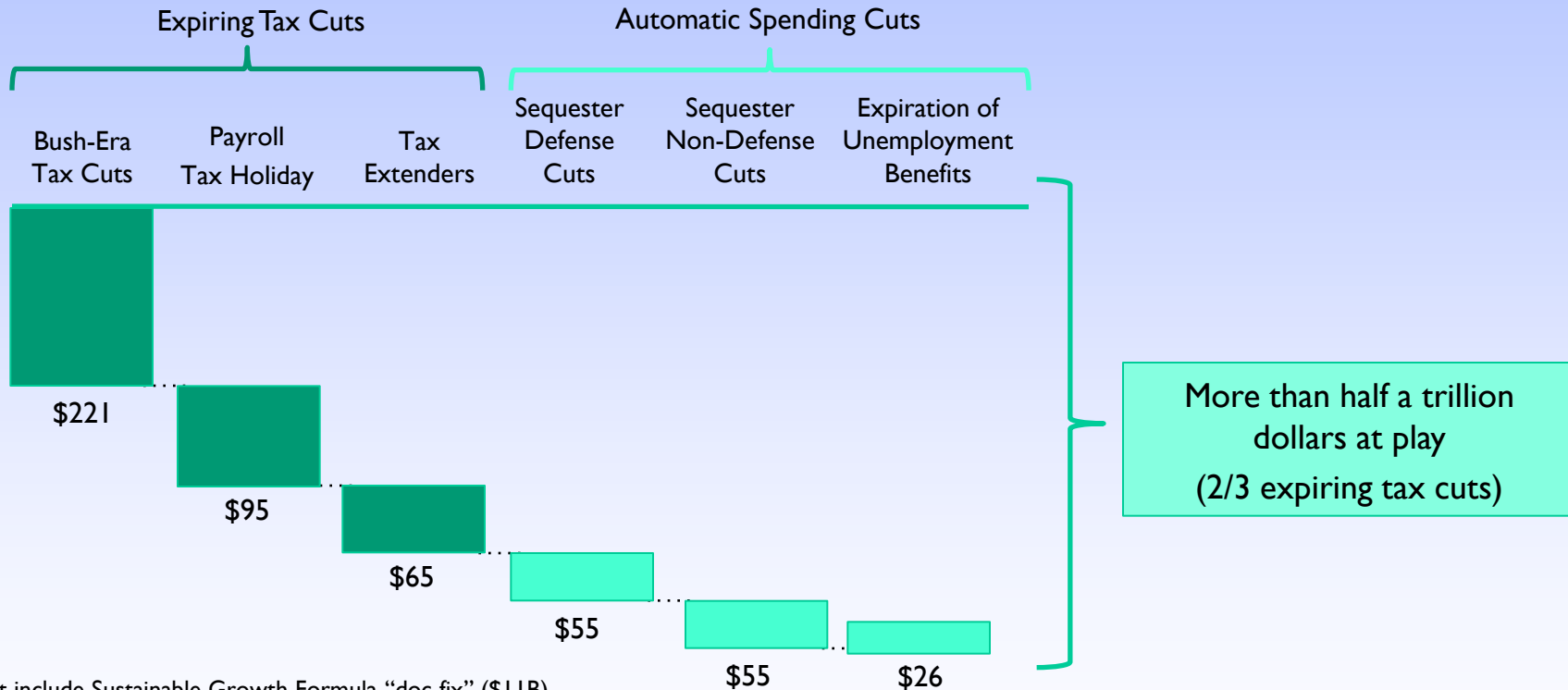
- Partisanship
 - 335 “safe” seats
 - Secure House members need to worry about primary challenges, not general election
 - “Is there a moderate in the House?”

The “Fiscal Cliff” and the “Grand Bargain”

Fiscal Cliff

Dollar Value of Expiring Tax Provisions and Mandatory Spending Cuts for FY2013*

(In Billions)



*Does not include Sustainable Growth Formula "doc fix" (\$11B)

Source: Congressional Budget Office; Bipartisan Policy Center; Eurasia Group.

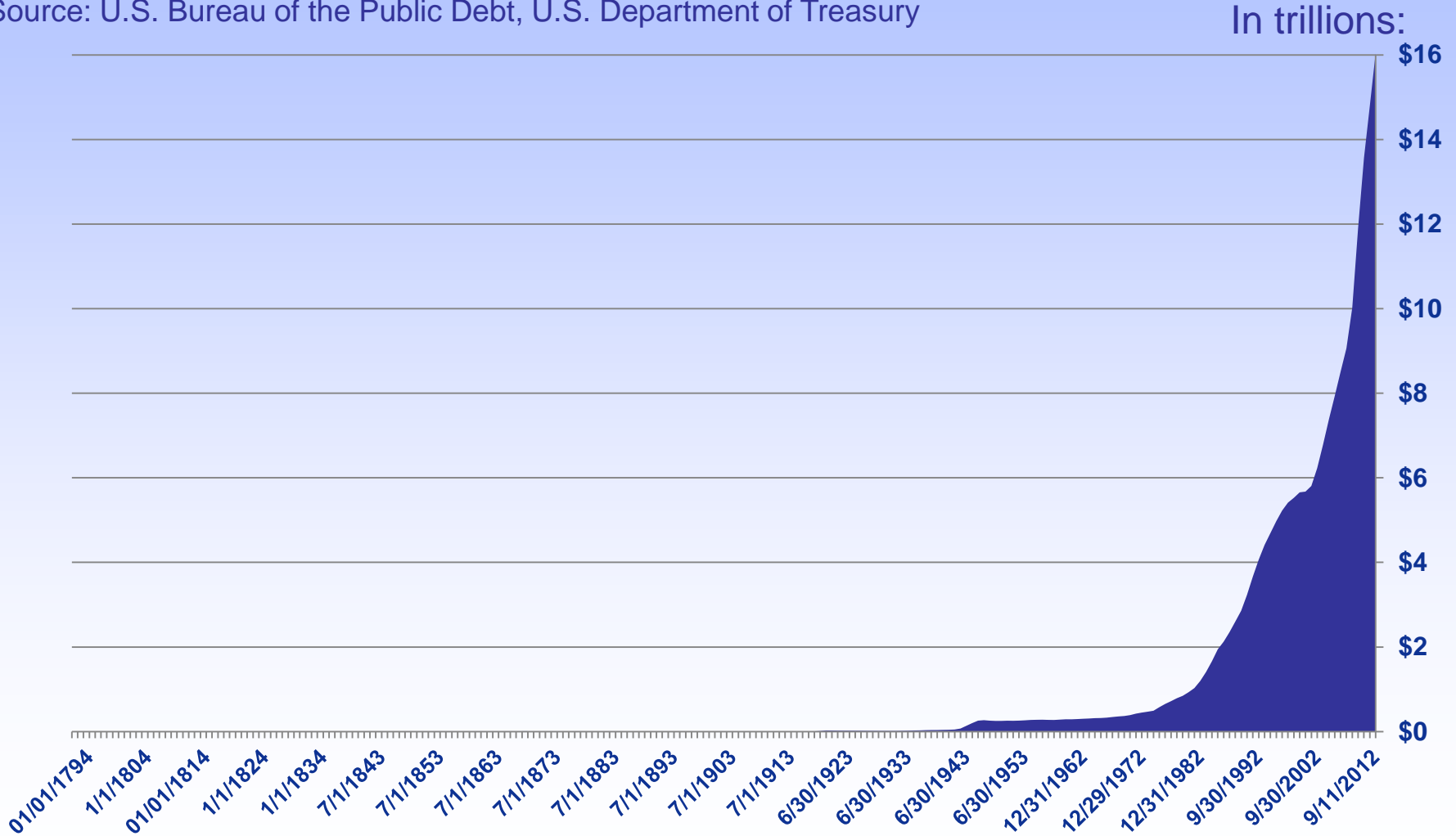
Fiscal Cliff

- Also need to raise the debt ceiling
- When is a tax increase a tax cut?
- Fiscal cliff debate is merely a preview

Grand Bargain

Historical Debt Outstanding on an Annual Basis (1794-present)

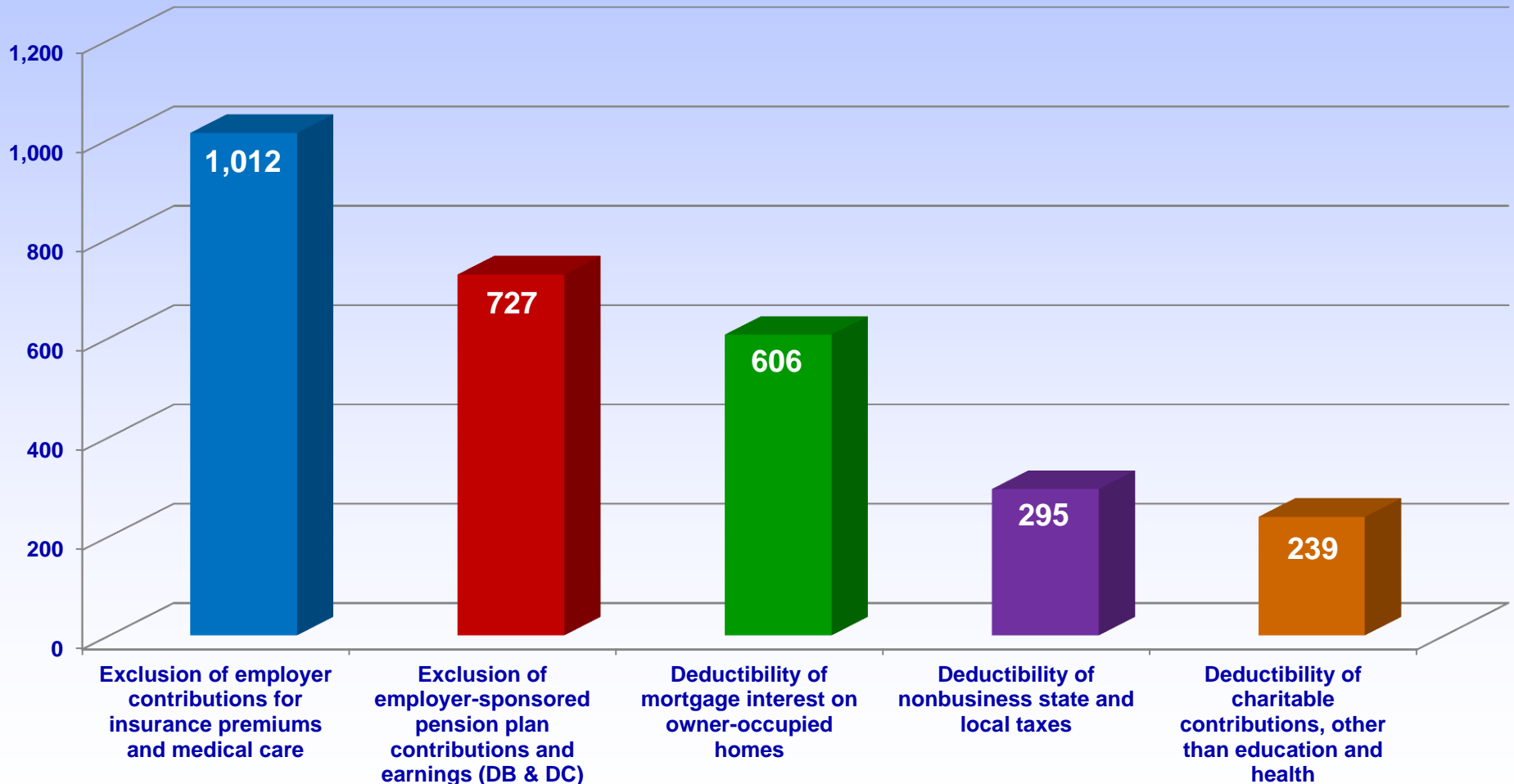
Source: U.S. Bureau of the Public Debt, U.S. Department of Treasury



Grand Bargain

Tax “Expenditures,” Fiscal Years 2013-2017

Projected dollars in billions



Grand Bargain

- Deficit reduction will be combined with comprehensive tax reform
 - Both parties want to overhaul tax code
 - Politically essential
- Deficit reduction/tax reform is the vehicle for PPACA changes
- Reasons for optimism

Health Policy Update

Health Policy Legislative Outlook

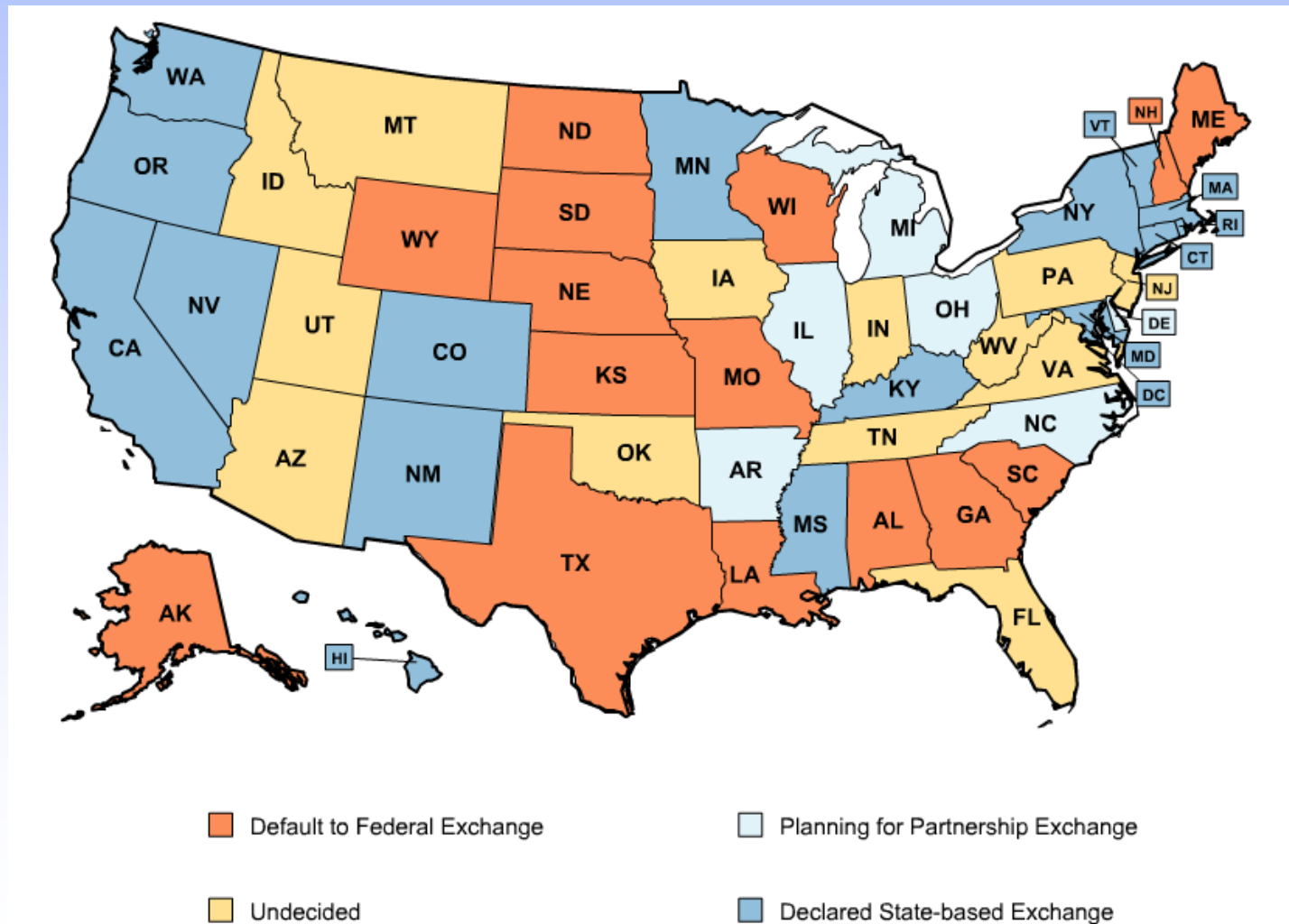
- “Obamacare is the law of the land...”
 - House Speaker John Boehner (R-OH)
- Repeal is off the table
- But much still remains on the table:
 - Independent Payment Advisory Board
 - Industry taxes; e.g., medical device tax
 - Exchange subsidies
 - Over-the-counter drugs for FSAs and HSAs

State Exchanges

- Majority of the states are not prepared
 - 17 State-based
 - 21 Federal or Federal-State Partnership
 - 13 Undecided
- HHS extends deadline for States to decide
- January 1, 2013 – Secretary must certify
- March 2013 – Employers must notify employees

State Decisions on Exchanges for 2014, as of November 16, 2012

(Source: Kaiser Family Foundation)



Tax Reform

- Form W2 reporting already underway
- Employee tax exclusions for health coverage likely to be in play, e.g.
 - Cap and/or phase-out amount excludable from taxes
 - Dollar limit on deductions/exclusions
 - Limit deductions for high earners
- Open Question: What about payroll taxes?

Health Policy

Regulatory Outlook

- Provisions effective 2014
 - Employer shared responsibility (4980H)
 - Definition of “full-time” employee
 - Determination of “minimum value”
 - Responsibility to offer coverage to dependents
 - Employer contributions to CDHPs
 - Affordability safe harbor

Health Policy

Regulatory Outlook

- Exchange Notice – March 1, 2013
- Wellness plan incentive increase to 30% (at OMB)
- 90 day waiting period limit
- Automatic enrollment
- High cost plan excise tax

Retirement Policy Update

Retirement Policy Legislative Outlook

- **Lame Duck**
 - Fiscal Cliff
- **Tax Reform**
- **Retirement Policy viewed through larger lens in both cases**
 - Retirement-related provisions have traditionally not advanced on a stand-alone basis; often bipartisan

Retirement Policy Legislative Outlook

- Key Players in 113th Congress - Some changes ahead in the Senate
- Senate
 - Finance Committee, HELP Committee, Aging Committee (Senator Enzi term-limited, Senators Kohl and Bingaman retiring)
- House of Representatives
 - Ways and Means Committee

Defined Contribution Retirement Savings Plans

➤ Proposals

- Direct reduction contribution limits (20/20 proposal)
- Tax credit in lieu of exclusion/deduction (potential double taxation)
- Overall limitation on tax expenditures (28% or other cap)

Defined Contribution Retirement Savings Plans

➤ Other ideas

- Cap on certain deductions/exclusions (dollar limit)
- Roth 401(k)s
- Indirect taxes (similar to the 3.8% surtax on investment income for individuals with income over \$200,000/\$250,000)
- Shrinking the Stretch IRA (reduce period over which a beneficiary must withdraw IRA amounts)

Defined Benefit Pension Plans

- PBGC Premiums
- Funding Stabilization
- De-risking Solutions
- Testing Issues for Frozen Plans
- ERISA 4062(e) – enforcement of shutdown requirements
- Retirement USA Funds

Retirement Policy Regulatory Outlook

- Fiduciary definition
 - Distributions and rollovers
- Plan Fee Disclosure Additional Guidance
- Benefit Statements
- Target Date Funds
- Stable Value Funds
- Hybrid Plans