

**Remarks of Steven T. Miller  
Commissioner, Tax Exempt and Government Entities  
Before the Mid-Atlantic Benefits Conference  
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Thank you. I'm always happy to appear at a benefits conference because of the outstanding relationship that exists between EP practitioners and the IRS. It is a relationship that is the envy of the IRS.

I will not try to speak in detail about technical benefits matters. I think the better part of valor is to leave it to the superb EP team to talk you through the intricacies of EP law. They are extremely well qualified for that.

For my part, I'd like to focus on some broader themes. Nothing I say here will be new – sorry about that. But some things are worth repeating.

Themes I will touch on are important to our society as the population of retirees begins its steep upward ascent. That long-awaited event is actually happening – the baby boomers are retiring.

Last year, when I spoke at a Benefits Conference, I pointed out that as a society we are getting older and we are not saving enough. Nothing has changed. I said that in response, we at the IRS, in the Employee Plans Division, need to step beyond our traditional education, determination and enforcement work. We need to encourage transparency and promote sound asset management practices by both participants and employers.

Today, I'd like to enlarge upon that theme. I'll talk about two related but distinct issues. The first is how to find ways to promote wider coverage and participation – to increase the percentage and number of workers meaningfully participating in a retirement plan of one sort or another. The second is somehow to find ways to make the 401(k) environment and the IRA environment friendlier to the individual with an account.

I want to talk about these topics because of the direction we are moving when it comes to retirement coverage. When ERISA was enacted, it largely reflected the notion that retirement was an employer-based, if not entirely employer-provided, benefit. A retirement benefit was deferred compensation – something the employer would provide, or at least contribute to in a significant way.

Over the years, we have seen that concept erode. We have seen the decline in defined benefit plans and the rise of the defined contribution plan.

The employer ceased to promise a benefit and it became an employee's choice. And the risk of loss – admittedly balanced by the possibility of gain – shifted to the employee.

Employees – individuals who generally are not skilled plan managers and sophisticated investors – are being asked to assume a larger and larger responsibility for their retirement.

This is a concern because knowing to invest, where to invest, and how to do it wisely, is not a gift evenly bestowed upon all of us. How are millions of 401(k) participants, or IRA account holders, to know where to prudently and economically invest their retirement accounts?

In an environment in which retirement security is becoming an individual responsibility, is the IRS able to help us get to the point that nearly all employees are participating in a plan? And are there ways we can help individuals wisely manage their retirement accounts? The answer, I am afraid, is that we can do a little, but not a great deal. In other words, as the American economy has moved from an employer-based retirement system to an individual-based system, the IRS's role – centered as it is upon a statutory scheme that presupposes significant employer participation – is diminished.

I am not here to plead for more authority for the IRS. I am merely pointing out, for example, that while we have some tools to require full funding of a defined benefit plan, we have nothing similar for an IRA. The tax-incentives are there, but some respond to them while others do not. And to the degree that it is the relatively more affluent and the better educated who respond, the shift from an employer-based to an individual-based system may end up being regressive. Lower paid and less educated employees are at risk of being left with less economic security in retirement.

Defined contribution plans may not be enough, notwithstanding the contribution they are currently making to the nation's retirement security. GAO sounded that alarm last November in its report "Low Defined Contribution Plan Savings May Pose Challenges to Retirement Security, Especially for Many Low-Income Workers." A long but informative title.

The report noted that only 36% of all workers were participating in a DC plan with their current employers. It noted as well that for all workers with a current or former DC plan, the median account balance was \$22,800. Among such workers age 55 to 64, the median account balance was \$50,000, which if converted to an annuity at age 65 represents about \$4,400 per year for life.

When it comes to workers in the lowest income quartile, only 8% were participating, and they accumulate plan savings equivalent to an annuity of about \$1,850 per year.

These figures raise the twin concerns of inadequate participation and insignificant savings. And I have to ask, what can the IRS do to improve real participation in the post DB era? Of course we can, and will, enforce the law as it now exists. Our statutory tools that encourage coverage by prohibiting discrimination and requiring eligibility are still necessary and require vigorous enforcement.

But how to do more? I want to address four areas which I believe show promise in closing the participation gap, and I will highlight our efforts with respect to each: automatic enrollment arrangements, simplification, education, and payroll deduction IRAs. While I will discuss each of these in turn, the truth of the matter is that the IRS role as envisioned by ERISA is not so much to enlarge the number of employees covered – although this is clearly a good thing – as it is to ensure that existing plans are in compliance with the Code. And that's what our enforcement tools are designed for. Thus, while we need to be creative and flexible in our approach, we are limited in what we can do.

So let's start with the first area of promise. With respect to adopting automatic contribution arrangements, the Pension Protection Act of 2006 provides encouragement to interested employers. The lion's share of the encouragement came on the Title I side.

But the PPA also provided encouragement on the Title II side in the form of Qualified Automatic Contribution Arrangements and, especially, Eligible Automatic Contribution Arrangements. Employers can automatically enroll employees in plans without first obtaining their specific consent. Employees will have the right to opt back out, but there is some reason to believe that most will not do so.

My reason for being optimistic is that in the late 1990s, some employers asked us to allow them to try automatic enrollment. We issued revenue rulings approving these arrangements, and the results were good. In some instances, more than 90% of employees who were automatically enrolled in a plan were still in it a year later.

Several subsequent studies have shown that automatic enrollment is resulting in participation rates of 86 to 96%. This compares with rates before automatic enrollment of 26 to 57%. Automatic enrollment seems to make retirement saving less painful to most employees, and somewhat painless. It also seems to take advantage of the principles of inertia and procrastination. Whatever the explanation, if the technique of automatic enrollment can increase coverage to 90% of eligible employees, it seems worth pursuing.

But while PPA looks promising in that it should improve participation for those now eligible and the level of savings for existing plans, we have yet to see if it will

impact the number of plans. That is much less clear and that my ultimately call for more legislative discussions.

My second area of promise is simplification. Some have urged us to try to simplify our guidance in the area of coverage. That simplification is needed, in this and other areas, is a truism. Yet we all know that simplification creates winners and losers. Many – perhaps most – large plan sponsors and administrators want us to preserve every option that the human mind can invent. Who here doesn't like a good grandfather provision or an alternative test that works for them?

Moreover, I am not sure that simpler guidance will provide a great deal of help in increasing coverage, at least in many parts of the community.

The GAO suggests that a host of factors enter into a decision to offer a retirement plan. It notes that market and economic considerations may be the most important factors. Let me quote: "... we should generally expect more generous employer-sponsored pension benefits to lower cash wages, and that the split between current wages and deferred compensation is largely a reflection of labor market conditions, tax provisions, and worker and employer preference."

The regulatory burden may, however, have a real impact on small employers. The proportion of employers offering plans declines steadily as firm size decreases, and there is some anecdotal evidence to suggest that there are relatively few plans – DB or DC – with between 2 and 15 participants.

Within such small companies, coverage lags. Many of the workers here may be young people who need to be setting aside money now, so that it has time to grow.

This brings me to my third area of promise, one that the IRS must pursue aggressively, and that is education.

What should we do for this demographic of very small employers and those who work for them? We need to get the word out and we are doing so. For example, our latest idea: a Pitfalls Workshop and a set of related Fix-it Guides. This is a program aimed at helping small employers and small businesses successfully operate a plan. The workshop alerts them and their tax advisor to potential pitfalls in plan administration. The Fix-it guides explain how to get out of any trouble they get into. Mark O'Donnell explained the concept here yesterday in some detail.

We piloted the workshop last week at the AICPA meeting in Las Vegas. It was a huge success. The attendees took away every one of the 300 binders we had prepared, including even the instructor's binder. We are going to offer this workshop at each of the six Tax Forums this year, all around the country.

Finally, a quick word on the last area of promise: Payroll deduction IRAs. They seem a natural fit for very small firms. But I am told that many employers are not offering payroll deduction IRAs.

Is there something about our program that we should change to make payroll deduction IRAs more attractive to small businesses and start-up employers? Part of the solution may be just getting the word out to employers about how uncomplicated and inexpensive these can be. We try hard to do this with our publications and web-site. I know we can and will do more.

So those are my comments on participation. The second issue I said I would mention are forces that erode account balances – high risk and poorly understood and sometimes high fees. We recognize that ill-advised investment strategies or poor investment choices can rapidly put an entire account balance at risk. We also know that fees can stunt, a little at a time, but with great cumulative effect, the ultimate growth of a 401(k) or an IRA account balance. So we need to ask: Are there investments so risky they should not be allowed in a retirement account, as a matter of prudence? Are fees clear and appropriate? And how can we help to educate participants in both these areas?

I think these questions become more acute in an environment in which individuals are managing their retirement accounts on their own. In a large corporate or public plan, one can usually expect to find sophisticated managers who know what they are doing and who are operating in accordance with the highest fiduciary standards. If you move away from that, however, and toward a system consisting of individual IRAs or self-directed 401(k) accounts, you face something different, and less reassuring. It seems to me that some account owners, brokers and financial advisors are going to think of these accounts not as their own or somebody else's retirement security, but as ordinary investment accounts, where high stakes and high risk are just part of the game, and where the possibility of great gain justifies the risk of huge loss.

Although the problem of excessive risk is real, I am doubtful that there is much of a role for the Service here at least for IRAs, other than an educational role. It does appear, however, at least at some level, that a number of providers of IRAs are trying to address the problem. The appearance and promotion of life-cycle IRAs and similar instruments that recognize the need for careful management is evidence of this.

I think we have a more active role to play with respect to fees and their cumulative impact on retirement savings. Our partner, the Department of Labor, has the more significant interest in this area. The Secretary of Labor has spoken about the DOL's three-pronged initiative to improve fee disclosure, both to plan fiduciaries and to plan participants and I applaud these efforts to enhance transparency.

I am pleased that DOL is addressing this issue with respect to 401(k) plans, and I think we need to take a similar look at our fee disclosure regime for IRAs. After all, IRAs hold more assets than defined contribution plans. We have authority under section 408(i) of the Code and I think it may be time to look again at the rules. It may be time to consider a system in which fee information about IRAs is reported in a standardized format in a uniform place, including in promotional material. Such a disclosure would show the fees – all of them, and it would show the impact of the fees on a hypothetical account balance over one or several periods of years.

So we may be able to enhance transparency to the account holder about the consequence of fees on his or her own account. It would also enable someone shopping for an IRA to make well-informed comparisons.

Is there something more we should be doing with respect to risk or fees? I don't have additional proposals this morning. But I hope you do and will talk to us about them. I would also note that I have a new boss with some experience in these areas. Doug Shulman, the new Commissioner of Internal Revenue, knows a lot about financial markets and services, patterns of behavior in the industry and prevailing standards. In his former job, one of the things he did was to use transparency and sunshine to bring about fair brokerage fees. So stay tuned.

Let me wind up. I have been a bit gloomy. But I think that it is important that these facts be laid out. If the IRS could resolve all this by issuing a revenue procedure or a regulation, we would, and we will do what we can. But the solution to inadequate retirement saving – which is the heart of the issue – is not something that sound tax administration can provide.

There are things the Service can and will do. But the fundamental issue, I think, is facing up to the facts. Workers need to know realistically what it costs to buy a satisfactory retirement, and that it takes a lifetime to make the purchase. We can help by promoting transparency, promulgating simpler guidance, and educating. But the issue of how the bill will be paid, and by whom, remains a great challenge that all of us must tackle together.

Thank you for your attention.