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TRANSFORMING THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION

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TRANSFORMING THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION

Colleen E. Medill†

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INTRODUCTION

Americans depend on their Social Security benefits because they do not save.[1] Individuals who have discretionary income, and therefore could save for retirement,[2] do not save because they do not plan. Financial planning for retirement requires both motivation and knowledge. However, workers under age thirty appear to lack these qualities; many procrastinate in saving and are often not knowledgeable investors.

Motivation to save and the related problem of retirement financial literacy have moved to the forefront of the national policy landscape due to the projected future financial insolvency of the Social Security system.[3] Under the current Social Security benefit structure, experts estimate that workers retiring in 2030 must accumulate retirement assets sufficient to replace 40% to 55% of their pre-retirement earnings to maintain their standards of living in retirement.[4] With the future level of guaranteed monthly Social Security income uncertain due to proposed reforms,[5] it has become even more important for

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1 According to Commerce Department statistics, the national personal savings rate for 2005 was negative 0.5%, the first time the savings rate has been negative since the Great Depression in 1933. *See* Joi Preciphs, *Consumers Spent More in December as Savings Fell*, WALL ST. J., Jan. 31, 2006, at A2. Demographic trends make the challenge of preparing for a financially secure retirement a daunting one. Due to longer life expectancies, the average sixty-five-year-old retiree of the future will spend approximately twenty years in retirement. *See* ALICIA H. MUNNELL & ANNIKA SUNDÉN, COMING UP SHORT: THE CHALLENGE OF 401(K) PLANS 1 (2004); *see also* DAN M. MCGILL ET AL., FUNDAMENTALS OF PRIVATE PENSIONS 10–15 (8th ed. 2005) (discussing trends in birthrates, life expectancy, and growth of the elderly population).

2 Admittedly, not everyone has discretionary income to save for retirement. Moreover, motivating and educating workers to save and invest for retirement is not *the* solution to the problem of elderly poverty and dependence on Social Security benefits for retirement income. Elderly poverty is a multifaceted public policy issue that will require a variety of public policy responses to resolve. This Article focuses narrowly on one aspect of overall national retirement policy, namely educating workers to save and invest for retirement, and suggests how current policy on this particular point can be made more effective. My proposal is not intended as a substitute for reform legislation aimed at changing the "default settings" for 401(k) plans in favor of an automatic enrollment in a life-cycle fund and an automatic increase in contributions as wages rise. *See infra* text accompanying notes 63–65. Rather, I view my proposal as enhancing and complementing such efforts at legislative reform.

3 Current projections are that Social Security outlays will begin to exceed Social Security tax revenues in 2017, and that by 2040, tax revenues will suffice to finance only 74% of annual benefit payments. *See* TRUSTEES OF THE SOC. SEC. & MEDICARE TRUST FUNDS, A SUMMARY OF THE 2006 ANNUAL SOCIAL SECURITY AND MEDICARE TRUST FUND REPORTS 1 (2006), http://www.ssa.gov/OACT/TRSUM/tr06summary.pdf [hereinafter 2006 ANNUAL REPORTS].

4 *See* MUNNELL & SUNDÉN, *supra* note 1, at 54.

5 Proposals for reform include increasing tax revenues by removing the limit for wages subject to Social Security taxes or by reducing the level of guaranteed monthly Social Security benefits through a variety of mechanisms, such as changing the price index used for determining cost of living increases, increasing the qualifying age for full benefits, or implementing a personal account feature that would offset future guaranteed monthly

young workers to save and plan—using their own resources—for a financially secure retirement.

Part I of this Article examines the mechanisms by which workers currently save for retirement and compares these mechanisms with national policy on motivating and educating workers to save and invest for retirement. Part I concludes that current national policy is fundamentally flawed for two major reasons. First, an employer-centered education delivery model, which depends heavily on voluntary efforts by employers to provide retirement education to their workers in conjunction with the employers' 401(k) plans,[6] ignores the growing importance of individual account savings mechanisms that operate independently of employers.[7] For individual account savings mechanisms, the task of investment education has fallen, by default, to the financial services industry through retail-level marketing.[8] The result appears to be a troubling gap in access to high-quality, unbiased information concerning how to save and invest for retirement, with young workers and low-income workers most likely to suffer from this information divide.[9]

Second, national policy is flawed because the United States Department of Labor cannot effectively educate the public on retirement investing while simultaneously serving as the primary regulator of employer-sponsored 401(k) plans. Prior to being appointed to its current public-educator role by Congress in 1997,[10] the Department of Labor took several key regulatory positions concerning the fiduciary responsibilities of employers who sponsored participant-directed 401(k) plans under the Employee Retirement Income Security Act of 1974 (ERISA).[11] These key regulatory positions, adopted in 1992 pursuant to Section 404(c) of ERISA,[12] create an inherent conflict of interest that makes the Department of Labor unable to serve as a vigorous and effective public advocate for sound retirement investing through 401(k) plans.[13]

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benefits. *See* Virginia P. Reno & Joni Lavery, *Options to Balance Social Security Funds over the Next 75 Years*, NAT'L ACAD. SOC. INS. SOC. SECURITY BRIEF NO. 18 (Feb. 2005) (summarizing various reform proposals); *see also* Colleen E. Medill, *Challenging the Four "Truths" of Personal Social Security Accounts: Evidence from the World of 401(k) Plans*, 81 N.C. L. REV. 901, 910–16 (2003) (describing the recommendations of the President's Commission to Strengthen Social Security to reform Social Security through the creation of personal accounts).

6 *See infra* text accompanying notes 118–128.

7 *See infra* text accompanying notes 27–36.

8 *See infra* text accompanying notes 79–81.

9 *See infra* text accompanying notes 104–108.

10 *See infra* text accompanying notes 109–113.

11 Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of U.S.C.).

12 29 U.S.C. § 1104(c) (2000).

13 *See infra* Part I.C.2.

Part II of the Article presents the twin claims of my argument. First, workers need a national-level public education campaign to motivate them to save and invest for retirement, and the Social Security Administration is the federal regulatory agency best suited for leading this campaign.[14] My proposal would build upon the Social Security Administration's "Save For Your Future" campaign[15] by targeting workers ages thirty and under.[16] I propose that a youth-oriented motivational campaign should employ a "best practices" marketing approach that is based upon insights from the psychological and behavioral economics literature concerning individuals' failure to save for retirement.[17]

Once motivated to save, workers need a neutral source of high-quality, unbiased educational information concerning *how* to save and invest for retirement. My second claim is that the Social Security Administration should transform its role to become the preeminent government educational source for workers who want to learn how to plan, save, and invest for retirement.[18]

I
The Evolving Challenge of Retirement Income Security Today

A. Changing Mechanisms for Accumulating Retirement Savings

The era of modern national retirement policy began when Congress passed the Employee Retirement Income Security Act of 1974 (ERISA).[19] At that time, the employer-sponsored pension plan system consisted primarily of defined benefit plans, in which employers assumed responsibility for funding their plans and investing their plans' assets. In contrast, the mechanisms workers use today to accumulate retirement savings to supplement their guaranteed monthly Social Se-

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14 *See infra* Part II.A.

15 *See id.*

16 Although a Social Security Administration–led public education campaign would focus on younger workers, it could also benefit the growing number of retirees who are receiving a lump sum payment as their retirement benefit from an employer pension plan. These retirees face the significant challenge of managing and investing their lump sum retirement wealth in the face of substantial stock market volatility and risks concerning inflation, longevity, and health. *See* Olivia S. Mitchell & Stephen P. Utkus, *Lessons from Behavioral Finance for Retirement Plan Design*, *in* Pension Design and Structure 3, 26–30 (Olivia S. Mitchell & Stephen P. Utkus eds., 2004). Transforming the role of the Social Security Administration into an active public advocate and educator for retirement financial planning would assist retirees in meeting these difficult financial challenges.

17 *See infra* Part II.B.

18 *See id.*

19 Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of U.S.C.).

curity income require substantially more individual effort and financial knowledge on the part of workers.

When Congress enacted ERISA, the paradigm employer-sponsored retirement plan was the defined benefit plan.[20] These plans did not allow workers to decide how to save and invest for retirement; the employer funded the plan, established the benefit levels, determined eligibility for and vesting of benefits, invested the plan's assets, and generally paid retirement benefits in the form of an annuity for life.[21] Because pension plans were strongly rooted in the employer-employee relationship, Congress made the Department of Labor the primary regulatory agency for the enforcement of ERISA's provisions regulating government reporting and disclosures to plan participants, fiduciary responsibility, plan administration, and civil enforcement actions.[22]

Since the enactment of ERISA in 1974, two significant trends have transformed the mechanisms individuals use to accumulate retirement savings. The first significant trend occurred in the early 1990s in the context of employer-sponsored pension plans, with employers increasingly shifting from the defined benefit plan to the 401(k) plan.[23] Today, fully 58% of households with employer-sponsored pension plan coverage rely entirely on a 401(k) or similar plan to supplement their Social Security income.[24] Much has been written about how the 401(k) plan shifts responsibility for retirement income security from employers to employees.[25] Unlike a defined benefit plan, a 401(k) plan makes the individual worker primarily responsible for funding his or her own retirement benefits and investing his or her retirement plan assets.[26]

The second trend is much more recent and is just beginning to draw the attention of policy analysts. Over time, Congress has changed the Internal Revenue Code and created many types of indi-

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20 *See* H.R. REP. NO. 93-533, at 1–8 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4639–46; S. REP. NO. 93-127, at 1–11 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838, 4838–47; Sylvester J. Schieber, *The Evolution and Implications of Federal Pension Regulation*, *in* THE EVOLVING PENSION SYSTEM 11, 22–25 (William G. Gale et al. eds., 2005).

21 *See* William G. Gale et al., *The Shifting Structure of Private Pensions*, *in* THE EVOLVING PENSION SYSTEM, *supra* note 20, at 51, 52.

22 *See* AM. BAR ASS'N, EMPLOYEE BENEFITS LAW 38–40 (2d ed. 2000). *See generally* Michael S. Gordon, *Introduction: The Social Policy Origins of ERISA*, *in id.* at lxxix–cii (describing the history of and forces behind the development of ERISA).

23 *See* Gale et al., *supra* note 21, at 55–57 (comparing the number of defined benefit plans with the number of defined contribution plans in 1975, 1985, and 1998).

24 MUNNELL & SUNDÉN, *supra* note 1, at 1.

25 *See, e.g.*, *id.*; Colleen E. Medill, *The Individual Responsibility Model of Retirement Plans Today: Conforming ERISA Policy to Reality*, 49 EMORY L.J. 1, 9–13 (2000); Edward A. Zelinsky, *The Defined Contribution Paradigm*, 114 YALE L.J. 451, 455–69 (2004).

26 *See* Medill, *supra* note 25, at 9–11; Zelinsky, *supra* note 25, at 455–58.

vidual account mechanisms to encourage personal savings.[27] In addition to the traditional individual retirement account (IRA),[28] individual savings account mechanisms now include the Roth IRA,[29] two types of accounts to save for educational expenses—the Coverdell education savings account[30] and the § 529 college savings plan account[31]—and the health savings account (HSA).[32] Although health care costs often become a significant expense in retirement,[33] individuals can use savings accumulated through an HSA to defray at least part of these retirement health care expenses.[34]

The proliferation of individual account mechanisms for personal savings is also significant because worker coverage under employer-sponsored pension plans is far from universal. At any given time, employer-sponsored retirement plans cover only roughly half the workforce ages twenty-five to sixty-four.[35] Individual account mechanisms provide a tax incentive for individuals to save that does not de-

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27 *See* Zelinsky, *supra* note 25, at 485–509.

28 I.R.C. § 408 (West Supp. 2006); *accord* Zelinsky, *supra* note 25, at 472–75, 485–89.

29 I.R.C. § 408A (West Supp. 2006); *accord* Zelinsky, *supra* note 25, at 499.

30 I.R.C. § 530 (West Supp. 2006); *accord* Zelinsky, *supra* note 25, at 498.

31 I.R.C. § 529 (West Supp. 2006); *accord* Zelinsky, *supra* note 25, at 494–98.

32 I.R.C. § 223 (West Supp. 2006); *accord* Zelinsky, *supra* note 25, at 508–09.

33 *See* Paul Fronstin & Dallas Salisbury, *Health Care Expenses in Retirement and the Use of Health Savings Accounts*, EBRI ISSUE BRIEF NO. 271, 15 (July 2004). Fronstin and Salisbury estimate that the out-of-pocket cost of health care during retirement for a person who retires at age sixty-five in 2004 will range from $72,000 to $580,000 for coverage under an employer-sponsored retiree health care plan and from $73,000 to $332,000 for coverage through traditional Medicare supplemented with Medigap Plan F coverage and Medicare Part D coverage for prescription drugs. *See id.*

34 Retirees can pay health care expenses using tax-free contributions and accumulated investment earnings from a health savings account. *See* I.R.C. § 223 (West Supp. 2006). Although under current contribution limits it is unlikely that an individual could save sufficient amounts through a health savings account to pay for projected future retiree health care expenses, *see* Fronstin & Salisbury, *supra* note 33, at 15, the Bush Administration has proposed increasing the maximum contributions limits from $2,700 for individual coverage and $5,450 for family coverage to $5,250 for individual coverage and $10,500 for family coverage. *See* ECONOMIC REPORT OF THE PRESIDENT 101, 103 (2006), *available at* http://www.whitehouse.gov/cea/erp06.pdf.

35 *See* MUNNELL & SUNDÉN, *supra* note 1, at 179; U.S. DEP'T OF LABOR, NATIONAL COMPENSATION SURVEY: EMPLOYEE BENEFITS IN PRIVATE INDUSTRY IN THE UNITED STATES 6 tbl.1 (2005). The percentage of workers participating in an employer retirement plan is significantly lower for workers in service occupations (22%), part-time workers (19%), and workers earning an average wage of less than $15 per hour (35%). *See id.* The reasons for these statistics are complex and involve changes in the demographics of the labor force and the structure of the economy. *See, e.g.*, Susan N. Houseman, *The Benefits Implications of Recent Trends in Flexible Staffing Arrangements*, *in* BENEFITS FOR THE WORKPLACE OF THE FUTURE 89 (Olivia S. Mitchell et al. eds., 2003) (describing the growth of temporary and contract workers); Martha Farnsworth Riche, *The Demographics of Tomorrow's Workplace*, *in* BENEFITS FOR THE WORKPLACE OF THE FUTURE, *supra*, at 21 (describing the underlying labor force trends that affect benefits, such as delaying full-time employment to complete one's education and greater workforce mobility and migration).

pend on their employers.[36] To take full advantage of these individual account mechanisms, however, workers must assume even more individual responsibility. They must decide what type of account to establish, where to establish the account, how to save to fund the account, and how to invest the funds in the account. These tasks require both the motivation and the knowledge necessary to save and invest.

B. The Need for Retirement Financial Education

Numerous research studies have assessed the financial illiteracy of the American public,[37] with uniformly grim results. The most re-

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[36] The types of tax incentives for various individual account savings mechanisms differ. In the case of traditional IRAs, taxpayers who meet income eligibility and other criteria may make a tax-deductible contribution to the account. *See generally* AM. BAR ASS'N, *supra* note 22, at 339–41; *id.* at 205–07 (Supp. 2005). Tax-deductible amounts that a worker contributes to a traditional IRA are included in his or her gross income, and thus subject to income taxation, in the year the IRA distributes the funds. *See* I.R.C. § 408(d) (West Supp. 2006). Taxpayers who meet income eligibility and other criteria may instead make a nondeductible contribution to a Roth IRA. *See* AM. BAR ASS'N, *supra* note 22, at 207 (Supp. 2005). Investment earnings on Roth IRA funds are not subject to income taxation while the funds remain in the account, and accumulated investment earnings are tax-free upon distribution from the Roth IRA if the account holder satisfies certain statutory criteria. *See id.* at 210. An individual taxpayer or an employer on behalf of an employee may contribute to a health savings account (HSA). *See id.* at 254–55. HSA contributions are tax-deductible, and HSA withdrawals used to pay for qualified medical expenses are tax-free for taxpayers who satisfy the statutory eligibility criteria. *See id.* at 254–56.

Taxpayers who meet income eligibility criteria may make nondeductible contributions to § 529 college savings plan accounts and Coverdell education savings accounts. *See* I.R.C. §§ 529–30 (West Supp. 2006). Investment earnings on funds held within the account are tax-deferred until the account holder withdraws the funds, and if the withdrawn sums are used to pay for qualifying educational expenses, then any withdrawn accumulated investment earnings are tax-free. *Id.*

The annual contribution amounts permitted for each type of individual account savings mechanism also vary. For 2007, an individual taxpayer's total contribution to traditional and Roth IRAs cannot exceed $4,000. *Id.* § 219(b)(5)(A) (West. Supp. 2006). This annual contribution limit increases to $5,000 starting in 2008. *Id.* In addition, the statute permits annual catch-up contributions of $1,000 for individuals age fifty and over. *Id.* § 219(b)(5)(B). For health savings accounts, the maximum contribution amount is $2,250 for a taxpayer with individual coverage and $4,500 for a taxpayer with family coverage. *Id.* § 223(b)(2). Moreover, individuals over fifty-five are permitted additional contributions of $800 in 2007, $900 in 2008, and $1,000 in 2009. *Id.* § 223(b)(3). For Coverdell education savings accounts, the annual maximum contribution amount per individual account owner is $2,000. *Id.* § 530(b)(1)(A)(iii). For § 529 plans, the Internal Revenue Code does not establish a maximum annual contribution limit, but a taxpayer who contributes amounts over the annual exclusion amount may be subject to federal and state gift tax. *Id.* § 529(c)(2). Moreover, the state that sponsors the taxpayer's § 529 plan may voluntarily establish a maximum contribution limit. *Id.* § 529(b).

[37] For a survey of the research literature on financial literacy, see Annamaria Lusardi, *Planning Costs, Financial Education, and Household Saving Behavior*, *in* RECENT DEVELOPMENTS IN MACROECONOMICS (P.G. Berglund & L. Ussher eds.) (forthcoming 2006), *available at* http://www.dartmouth.edu/~alusardi/Papers/Planning_costs.pdf; Annamaria Lusardi & Olivia S. Mitchell, *Financial Literacy and Planning: Implications for Retirement Wellbeing* 7–8, 10–11 (Pension Research Council, Working Paper No. 2006-1, 2006), *available at* http://rider.wharton.upenn.edu/~prc/PRC/WP/PRC%20WP%202006-1.pdf.

cent empirical research documenting financial illiteracy is from a special survey module on financial literacy and retirement planning that researchers administered as part of the national Health and Retirement Study (HRS) in 2004.[38] According to the researchers who designed the special survey module:

> Our module for the 2004 HRS . . . asks about people's basic financial literacy, that is, whether they understand compound interest rates and the effects of inflation, along with the more nuanced concept of risk diversification. We find that only half of the respondents correctly answer two simple questions regarding interest compounding and inflation, and only one-third understands these and also stock market risk. In other words, financial illiteracy is widespread among . . . Americans [over age 50].[39]

In theory, actuarial simulations show that financially knowledgeable workers could accumulate sufficient assets for retirement using 401(k) plans.[40] In reality, numerous studies show that many individuals are not saving nearly enough for retirement.[41] Research by social

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38 The Health and Retirement Study (HRS) is a nationally representative longitudinal dataset of Americans over age fifty. The HRS administers a questionnaire every two years to age-eligible respondents and their spouses. During each survey period, the HRS also subjects a random sample of respondents to special survey modules. In 2004, the special module, which involved 1,269 respondents, concerned financial literacy and retirement planning; the report's findings represent unweighted data. *See* Lusardi & Mitchell, *supra* note 37, at 3, 6.

39 *Id.* at 3, 15–16.

40 *See* MUNNELL & SUNDÉN, *supra* note 1, at 28–34. Munnell and Sundén show that under certain key assumptions, an individual continuously enrolled in a 401(k) plan may accumulate even more retirement wealth than he or she would have received from a traditional defined benefit plan. These assumptions include the following: that the individual maintains a constant contribution rate and that the employer provides matching contributions of 9% (which the authors admit may be "somewhat optimistic"); that the individual begins contributing to the 401(k) plan before age forty and does so continuously until retirement age; that the assets in the 401(k) plan earn a constant nominal annual rate of investment return of at least 7.6%; and that the individual does not make any withdrawals from the 401(k) plan until retirement. *See id.* However, Munnell and Sundén note numerous research studies suggesting that, for a variety of reasons, many individuals will fail to satisfy these key simulation assumptions. *See id.*

41 For example, a study using data from the HRS shows that for workers ages fifty to sixty-one who are approaching retirement, 25% have a total net worth of less than $30,000, and 50% have a total net worth of less than $100,000. *See* Annamaria Lusardi, *Saving and the Effectiveness of Financial Education*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 157, 161 tbl.9-1. A second study, using data from the 2001 Survey of Consumer Finances, found that for household heads in their late forties and early fifties today, the median combined balance of their 401(k) plans and their IRA assets was only $37,000. *See* MUNNELL & SUNDÉN, *supra* note 1, at 34–35, 36 tbl.2-5. These results are consistent with the findings of numerous other studies. *See* CTR. FOR RET. RESEARCH, RETIREMENT AT RISK: A NEW NATIONAL RETIREMENT RISK INDEX (2006), http://www.bc.edu/centers/crr/nrri.shtml ("Over 40% of households are 'at risk' of not having enough to maintain their living standard in retirement."); Zvi Bodie et al., *Analyzing and Managing Retirement Risks*, *in* INNOVATIONS IN RETIREMENT FINANCING 3, 4–5 (Olivia S. Mitchell et al. eds., 2002) ("[P]rivate undersaving is a major problem: U.S. data indicate that older workers' wealth accumula-

scientists in the fields of psychology and economics explains why many individuals who could otherwise afford to save for retirement often fail to do so.[42]

Saving through a 401(k) plan or an individual account involves a complex, multistep decision-making process.[43] Decision-making theory posits that to make a "good" decision, a decision maker must first establish a goal.[44] Next, the decision maker must gather information concerning the various options for attaining that goal.[45] Finally, the decision maker must evaluate those options and select the one best suited for attaining the goal.[46]

A perfectly rational actor would flawlessly execute each of these steps.[47] Not surprisingly, however, research by psychologists and behavioral economists demonstrates that psychological biases and high information costs are likely to adversely affect each of these decision-making steps.

1. *How Psychological Biases Affect Retirement Financial Planning*

Researchers have identified several psychological biases that impede retirement financial planning. First, people naturally tend to overly discount the future by placing a greater value on the present than a rational economic actor would.[48] As a result, individuals have shorter-than-optimal planning horizons, resulting in a tendency to overconsume today and undersave for tomorrow.[49]

In forecasting the future, individuals also tend to be overly confident and excessively optimistic.[50] These psychological biases are par-

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tions are substantially below retirement saving targets, and many retirees will be unable to maintain consumption levels in old age." (citation omitted)); Lusardi, *supra*, at 157–59 (describing the results of previous studies of retirement saving).

42 *See* Mitchell & Utkus, *supra* note 16, at 5–6 (citing various behavioral and economic studies).

43 *See id.*

44 *See* BARRY SCHWARTZ, THE PARADOX OF CHOICE 47–48 (2004).

45 *See id.* at 47.

46 *See id.*

47 *See* Mitchell & Utkus, *supra* note 16, at 3 (describing the behavioral assumptions underlying the rational-actor model); Daniel J. Benjamin & Jesse M. Shapiro, Does Cognitive Ability Reduce Psychological Bias? 2–4 (Feb. 14, 2005) (unpublished manuscript), *available at* http://elsa.berkeley.edu/users/webfac/dellavigna/e218_sp05/benjamin.pdf (same). Rational choice theory, which underlies the concept of a hypothetical "rational" actor, varies with respect to the vocabulary theorists use to describe the behavioral assumptions that drive the actor. However, the common theme is that a perfectly rational actor will seek to maximize or optimize his or her "ends," "expected utility," or "wealth." Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051, 1060–66 (2000).

48 Psychologists describe these individuals as "hyperbolic discounters." Mitchell & Utkus, *supra* note 16, at 6–7.

49 *See id.*

50 *See id.* at 23.

ticularly evident when the task involves saving and investing for retirement.[51] Both of these biases explain what researchers have long known: that the majority of Americans do not plan financially for retirement. According to the results of the 2006 Retirement Confidence Survey, only 42% of workers report that either they or their spouses have attempted to calculate a retirement "goal" of how much money they will need to save to "live comfortably" in retirement.[52] Nevertheless, the survey also found that 68% of workers are either somewhat confident or very confident that they will save enough for a comfortable retirement.[53]

When asked to self-report the total value of their savings and investments excluding the value of their primary homes and defined benefit plans, 53% of those responding reported assets of less than $25,000, and 12% reported assets between $25,000 and $99,000.[54] These findings are problematic because, given the trend toward 401(k) plans, fewer individuals will have a monthly annuity income from an employer-sponsored defined benefit plan to supplement their monthly income from Social Security.[55] Thus, as retirees, these individuals will rely much more heavily on their savings and investments to supplement their monthly income from Social Security.

A further psychological bias that adversely affects retirement financial planning is the tendency to procrastinate, particularly when making a decision that involves difficult choices.[56] The psychological bias toward procrastination is especially pernicious in the context of 401(k) plans. One of the most significant reasons individuals fail to achieve retirement income security is that they do not consistently save for retirement beginning early in their working careers.[57] Economic simulations show that a worker who postpones saving for retirement through a 401(k) plan until age fifty will have only 26% of the retirement wealth of a similarly situated worker who has participated in a 401(k) plan since age thirty.[58] The tendency to procrastinate is particularly acute among workers under the age of thirty, who are significantly less likely to participate in their employers' 401(k) plans

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51 *See id.* at 23–24.

52 Ruth Helman et al., *Will More of Us Be Working Forever? The 2006 Retirement Confidence Survey*, EBRI ISSUE BRIEF NO. 292, 7 (Apr. 2006).

53 *Id.* at 15–16. The 2006 Retirement Survey found that 24% of the respondents were very confident and 44% were somewhat confident that they would have enough money to live comfortably throughout retirement. *Id.*

54 *See id.* at 6. These self-reported amounts are consistent with the results of national empirical research studies. *See supra* note 41.

55 *See supra* notes 23–24 and accompanying text.

56 *See* Mitchell & Utkus, *supra* note 16, at 11; MUNNELL & SUNDÉN, *supra* note 1, at 53.

57 *See* MUNNELL & SUNDÉN, *supra* note 1, at 31, 35–40, 57.

58 *Id.* at 57.

than older workers, either because they are not eligible to participate in the plans or because they choose not to participate.[59]

The tendency to procrastinate is closely related to inertia, also known as the problem of "sticky" defaults.[60] In the 401(k) plan context, the problem of sticky defaults explains why participation rates in 401(k) plans can be improved dramatically by changing the "default" option from nonparticipation to participation in the plan through an automatic enrollment feature.[61] It also explains why workers who are automatically enrolled in 401(k) plans tend to "stick" at the contribution levels assigned by their employers rather than increasing their contribution levels over time as their wages increase, and tend to remain in the default investment option assigned by their employers, such as "safe" but low-earning money market funds.[62] Changing these defaults to a "save more tomorrow" feature that automatically increases contributions when earnings increase,[63] or to a life-cycle fund,[64] can help overcome these inertia effects. But until all employers who sponsor 401(k) plans voluntarily adopt these features, there will remain many workers who need to make their own decisions concerning participation, contribution levels, and investment options.

2. *How High Information Costs Affect Retirement Financial Planning*

Retirement financial planning involves high information costs in determining and assessing available options, and then using those options to manage various types of financial risks.[65] Gathering and eval-

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59 *Id.* at 56–57 & tbl.3-1–3-2. Using data from the 2001 Survey of Consumer Finances, Munnell and Sundén estimate that for workers ages twenty to twenty-nine, only 43.9% are eligible to participate in a 401(k) plan, and of this group who are eligible to participate, only 65.7% actually do make contributions to their 401(k) plans.

60 *See* Brigitte C. Madrian & Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q.J. ECON. 1149, 1149–50 (2001); James J. Choi et al., *Passive Decisions and Potent Defaults* (Nat'l Bureau of Econ. Research, Working Paper No. 9917, 2003), *available at* http://www.nber.org/papers/w9917; James J. Choi et al., *For Better or for Worse: Default Effect and 401(k) Savings Behavior* (Nat'l Bureau of Econ. Research, Working Paper No. 8651, 2001), *available at* http://www.jcpr.org/wpfiles/choi_laibson_madrian_metrick.pdf.

61 *See* Madrian & Shea, *supra* note 60, at 1158–60 tbl.IV (discussing the increase of enrollment rates for new workers from 50% to 86%).

62 *See id.* at 1170–71 (noting that three-quarters of automatically enrolled employees remained in the default money market investment option).

63 *See* Shlomo Benartzi & Richard Thaler, *Save More Tomorrow™: Using Behavioral Economics to Increase Employee Saving*, 112 J. POL. ECON. 164, 164–66 (2004).

64 Mitchell & Utkus, *supra* note 16, at 33.

65 Such risks include various types of financial risk (stock market volatility, inflation, and longevity risks) and the risk of poor health, which can lead to extensive, unanticipated expenses for medical and long-term care. *See* SOCIETY OF ACTUARIES, RISKS OF RETIREMENT (2004), http://www.soa.org/ccm/cms-service/stream/asset?asset_id=1302091; Bodie et al., *supra* note 41, at 3–9.

uating the necessary information can be overwhelming.[66] Choice overload—when individuals face an excessive number of choices—is one problem associated with high information costs.[67] This problem lessens an individual's motivation to choose and reduces his or her ability to commit to making a choice.[68] Thus, choice overload reinforces the psychological biases in favor of procrastination and inertia.

Individuals cope with high information costs by employing a number of mental shortcuts, known as heuristics, to simplify their decision-making process.[69] Heuristics are examples of bounded rationality in which the real-world decisions of individuals differ from the rational actor due to an inability to gather and process all of the relevant information.[70] Studies of 401(k) plan participants' investment behavior indicate that several types of heuristics may negatively influence investment decisions:

- The endorsement effect[71] leads some participants to invest heavily in company stock.[72]
- Risk or loss aversion[73] explains why some participants tend to overinvest in lower-earning fixed-income investments and under-

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66 *See* Bodie et al., *supra* note 41, at 5 ("Another possible explanation for why people are poorly prepared for retirement is the sheer difficulty of obtaining and processing information about the underlying risks that they face."); *see also* SCHWARTZ, *supra* note 44, at 48 ("Even with a limited number of options, going through [a rational decision-making] process can be hard work. As the number of options increases, the effort required to make a good decision escalates as well, which is one of the reasons that choice can be transformed from a blessing into a burden. It is also one of the reasons that we don't always manage the decision-making task effectively.").

67 *See* Sheena Sethi-Iyengar et al., *How Much Choice Is Too Much? Contributions to 401(k) Retirement Plans*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 83, 83–87.

68 *See id.*

69 *See* Mitchell & Utkus, *supra* note 16, at 9–10; SCHWARTZ, *supra* note 44, at 57. *See generally* Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124 (1974).

70 The economist Herbert A. Simon is generally recognized as the first to identify the phenomenon of bounded rationality. *See generally* Herbert A. Simon, *Rationality as Process and as Product of Thought*, 68 AM. ECON. REV. 1 (1978); Herbert A. Simon, *Theories of Decision-Making in Economics and Behavioral Science*, 49 AM. ECON. REV. 253 (1959); Herbert A. Simon, *A Behavioral Model of Rational Choice*, 69 Q.J. ECON. 99 (1955).

71 *See* Mitchell & Utkus, *supra* note 16, at 19–20; MUNNELL & SUNDÉN, *supra* note 1, at 102 ("The most likely explanations for employee investment in company stock are that most people are not sophisticated investors, that employees have irrational hopes of striking it rich, and that employers encourage such investments."). *See generally* Shlomo Benartzi, *Excessive Extrapolation and the Allocation of 401(k) Accounts to Company Stock*, 56 J. FIN. 1747, 1747–49 (2001); Gur Huberman, *Familiarity Breeds Investment*, 14 REV. FIN. STUD. 659, 659–61 (2001).

72 *See* Sarah Holden & Jack VanDerhei, *401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2004*, EBRI ISSUE BRIEF NO. 285, 10 (Sept. 2005); Olivia S. Mitchell & Stephen P. Utkus, *The Role of Company Stock in Defined Contribution Plans*, *in* THE PENSION CHALLENGE 33, 33–34 (Olivia S. Mitchell & Kent Smetters eds., 2003).

73 *See* Mitchell & Utkus, *supra* note 16, at 21–23, 25–26; SCHWARTZ, *supra* note 44, at 67–73. *See generally* Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263, 263–65 (1979).

invest in higher-earning diversified portfolios of equity investments.[74]

- Framing effects[75] lead some individuals to allocate their 401(k) plan account assets proportionately among their plans' investment options (a $1/n$ allocation scheme in which n is the number of investment options), even though such a proportionate allocation may result in investment portfolios that are either disproportionately susceptible to investment losses, low investment earnings, or both.[76]

In the context of investment behavior, the above heuristics are harmful. Research studies of investment behavior by participants in 401(k) plans show that heuristics lead them to invest in ways that are contrary to modern portfolio theory, which seeks to maximize investment earnings over time while minimizing the risk of disproportionate investment losses.[77]

Individual accounts, unlike the typical 401(k) plan, provide an unlimited range of investment choices.[78] Consequently, the information costs associated with investment decisions in the individual account setting are exponentially increased. Recent research concerning investor behavior in § 529 college savings plans has found that individual investors are reducing their information costs by relying on brokers to assist them in selecting their investments.[79] This research also found that § 529 plan investors are more influenced by retail marketing information than by tax considerations or investment management fees in making their investment decisions.[80] In short, § 529 plan investors are reducing their information costs by selecting heavily marketed, broker-sold investment funds, even though those

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74 *See* Holden & VanDerhei, *supra* note 72, at 10.

75 *See* Mitchell & Utkus, *supra* note 16, at 16–17. *See generally* Shlomo Benartzi & Richard Thaler, *Naïve Diversification Strategies in Retirement Savings Plans*, 91 AM. ECON. REV. 79 (2001).

76 *See* Mitchell & Utkus, *supra* note 16, at 16–17; MUNNELL & SUNDÉN, *supra* note 1, at 82.

77 *See* Mitchell & Utkus, *supra* note 16, at 13–14; MUNNELL & SUNDÉN, *supra* note 1, at 79 (describing the principles of modern portfolio theory).

78 The employer who sponsors a participant-directed 401(k) plan bears substantial fiduciary responsibilities in prudently selecting and monitoring the ongoing suitability of the plan's investment options. *See* Colleen E. Medill, *Stock Market Volatility and 401(k) Plans*, 34 MICH. J.L. REFORM 469, 489–96 (2001). For this reason, most 401(k) plans offer a limited range of mutual funds as investment options to protect against unsuitable investments. *See* MUNNELL & SUNDÉN, *supra* note 1, at 71.

79 *See* Raquel Meyer Alexander & LeAnn Luna, State-Sponsored College § 529 Plans: An Analysis of Factors That Influence Investors' Choice 1 (May 15, 2005) (unpublished manuscript, on file with author) (noting that 68% of § 529 plans sold in 2002 were sold through brokers, and that with this figure projected to rise eventually to 85%).

80 *See id.* at 3 ("Many Section 529 plan investors are not tax-savvy consumers and are responding to what may be detrimental marketing information.").

funds have higher fees, and thus will result in substantially lower accumulated savings over time than investment funds with lower fees.[81]

Although accounting for investment fees and related costs is crucial to successful saving, a financially unsophisticated investor with a short-term planning horizon will tend to disregard these factors. Such an investor fails to understand the time value of money and the effect of compounding investment earnings. This lack of investor understanding is not limited to the context of § 529 plans. Since 2000, the General Accounting Office has conducted numerous studies documenting the upward trend of investment management fees.[82] These studies stress the need for regulatory reforms to enhance competition by increasing transparency of mutual fund fees, as mutual funds are generally the investment of choice for individual account savings mechanisms.[83]

Even a small difference in investment management fees, when compounded over time in a tax-deferred account, will erode the savings accumulated. The Department of Labor furnishes the following example of the corrosive effect of investment management fees and expenses:

> Assume that you are an employee with 35 years until retirement and a current 401(k) account balance of $25,000. If returns on investments in your account over the next 35 years average 7 percent and fees and expenses reduce your average returns by 0.5 percent, your account balance will grow to $227,000 at retirement, even if there are no further contributions to your account. If fees and expenses are 1.5 percent, however, your account balance will grow to only $163,000. The 1 percent difference in fees and expenses would reduce your account balance at retirement by 28 percent.[84]

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81 *See id.* at 23; *cf.* Medill, *supra* note 78, at 492–95, 502–03 (describing the corrosive effect of investment management fees on tax-deferred retirement savings in 401(k) plans); Zelinsky, *supra* note 25, at 495–96 (describing § 529 plans as "a boon to the financial services industry, providing that industry with another tax-favored account to promote").

82 *See* U.S. GEN. ACCOUNTING OFFICE, MUTUAL FUNDS: ASSESSMENT OF REGULATORY REFORMS TO IMPROVE THE MANAGEMENT AND SALE OF MUTUAL FUNDS (2004), http://www.gao.gov/new.items/d04533t.pdf; U.S. GEN. ACCOUNTING OFFICE, MUTUAL FUNDS: ADDITIONAL DISCLOSURES COULD INCREASE TRANSPARENCY OF FEES AND OTHER PRACTICES (2004), http://www.gao.gov/new.items/d04317t.pdf; U.S. GEN. ACCOUNTING OFFICE, MUTUAL FUNDS: GREATER TRANSPARENCY NEEDED IN DISCLOSURES TO INVESTORS (2003), http://www.gao.gov/new.items/d03763.pdf; U.S. GEN. ACCOUNTING OFFICE, MUTUAL FUNDS: INFORMATION ON TRENDS IN FEES AND THEIR RELATED DISCLOSURE (2003), http://www.gao.gov/new.items/d03551t.pdf; U.S. GEN. ACCOUNTING OFFICE, MUTUAL FUND FEES: ADDITIONAL DISCLOSURE COULD ENCOURAGE PRICE COMPETITION (2000), http://www.gao.gov/archive/2000/gg00126.pdf. *See generally* Medill, *supra* note 5, at 937–46 (describing early studies of mutual fund fees by the Department of Labor, the General Accounting Office, and the Securities and Exchange Commission).

83 *See id.*

84 EMP. BENEFIT SEC. ADMIN., U.S. DEP'T OF LABOR, A LOOK AT 401(K) PLAN FEES 2 (1998) [hereinafter A LOOK AT 401(K) PLAN FEES].

This example further illustrates why investment behavior inconsistent with modern portfolio investment theory, such as investing heavily in company stock or failing to invest in equities, results in less accumulated savings in 401(k) plan accounts and individual account savings mechanisms at retirement. Fundamentally, the investment principles of modern portfolio theory permit investors to maximize their investment rate of return over time, while at the same time minimizing the risk of disproportionate investment losses.[85] Assume for the sake of illustration that an investor follows an investment strategy that results in an average annual rate of return that is, to use the above example, 1% less than the rate of return that the investor could have achieved by investing in a diversified portfolio of equities consistent with the principles of modern portfolio theory. The long-term financial impact on accumulated investment earnings in the tax-deferred account will be the same as the impact of a 1% difference in investment management fees and expenses. In either case, the result will be a substantial reduction (28%) in the investor's accumulated wealth at retirement.[86]

3. *The Role of Financial Education in Improving Retirement Saving*

Numerous research studies have found that even when controlling for disparities in income levels, there is a strong positive correlation between the level of financial literacy and the amount of personal retirement savings.[87] The causal link between the two centers on the planning process.[88] Researchers hypothesize that greater financial literacy improves retirement savings because it counters psychological biases and improves the cognitive ability of individuals to collect and evaluate information concerning their options.[89] Significantly, re-

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85 *See* Mitchell & Utkus, *supra* note 16, at 13–14; MUNNELL & SUNDÉN, *supra* note 1, at 79.

86 *See* A LOOK AT 401(K) PLAN FEES, *supra* note 84.

87 *See* Robert L. Clark et al., *Sex Differences, Financial Education, and Retirement Goals*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 185, 185–91; Annamaria Lusardi, *Saving and the Effectiveness of Financial Education*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 157, 157–68; MUNNELL & SUNDÉN, *supra* note 1, at 57–58; Benjamin & Shapiro, *supra* note 47, at 1–4.

88 *See* Lusardi & Mitchell, *supra* note 37, at 14–15. However, the direction of causality between financial literacy and financial planning has yet to be definitively determined. *See id.* at 33 n.10.

89 *See* Bodie et al., *supra* note 41, at 9 ("[F]inancial literacy is a separate element that can improve the chances for success of any approach to risk management. Knowing which approach to take in what circumstances and, even more importantly, knowing when to ask for additional information, analysis, and other forms of assistance, is often key to retirement security."); Benjamin & Shapiro, *supra* note 47, at 26–27 (describing findings from their research studies and concluding that individuals with greater cognitive ability behave more closely in accordance with the rational actor posited by decision-making theory); Lusardi & Mitchell, *supra* note 37, at 15 (finding that financial literacy affects the level of retirement planning beyond the effects of education).

searchers have shown that improved financial literacy correlates with higher levels of retirement savings by all workers, not just those with high incomes.[90]

> Much of the explanation for low participation rates [in 401(k) plans] among young and low-income workers rests on factors such as short planning horizons and lack of financial knowledge. These characteristics make participation and contribution decisions overwhelming, and young and low-income workers often simply put off making a decision. All these factors can be affected by financial education.[91]

How do workers today acquire the knowledge they need to save and invest for retirement? The most likely source of financial education is from an employer who sponsors a 401(k) plan.[92] Employers are not required to provide investment educational materials to 401(k) plan participants, and many employers do not.[93] When employers do provide such educational materials, the quality is uneven.[94] Recent research also suggests that employer-provided educational materials are geared toward individuals who are natural "planners"

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90 *See The State of Financial Literacy and Education in America: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 55 (2002) (statement of Alan Greenspan, Former Chairman, Board of Governors of the Federal Reserve) ("[E]ducation can play a critical role by equipping consumers with the knowledge required to make wise decisions when choosing among the myriad of financial products and providers. This is especially the case for populations that have traditionally been underserved by our financial system."); Lusardi, *supra* note 41, at 157 (finding that financial education seminars increase wealth, particularly for workers with low education); Donna M. MacFarland et al., *"Money Attitudes" and Retirement Plan Design: One Size Does Not Fit All*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 97, 99 ("[Financial e]ducation has its greatest impact among low and middle-income households . . . ."); Benjamin & Shapiro, *supra* note 47, at 1 ("[E]ven after controlling carefully for labor income, more cognitively skilled individuals are more likely to participate in financial markets, are more knowledgeable about their pension plans, accumulate more assets, and are more likely to have tax-deferred savings.").

91 MUNNELL & SUNDÉN, *supra* note 1, at 65.

92 *See* Helman et al., *supra* note 52, at 20 (noting that among workers who had saved for retirement, 72% had received materials at work).

93 Estimates vary as to what percentage of employers provide retirement planning education materials or seminars to their workers, but studies concur that less than half of employers provide such information, and less than half of employees receive such information. *See* William J. Arnone, *Educating Pension Plan Participants*, *in* REINVENTING THE RETIREMENT PARADIGM 163, 166 (Robert L. Clark & Olivia S. Mitchell eds., 2005) (estimating that fewer than one-fifth of large employers provide a year-round, high-quality financial education program for their employees); Helman et al., *supra* note 52, at 21 (noting that 48% of survey respondents reported receiving employer-sponsored educational materials or seminars in the past twelve months).

94 *See* Arnone, *supra* note 93, at 164–66. A study of retirement planning information available on the Internet found that often the quality was so poor as to be "dangerously misleading." Zvi Bodie, *An Analysis of Investment Advice to Retirement Plan Participants*, *in* THE PENSION CHALLENGE, *supra* note 72, at 30.

and that these materials do not appeal to the approximately 50% of the working population that is not planning-oriented.[95]

The 2006 Retirement Confidence Survey found that among those workers who had saved for retirement, only 15% indicated that employer-provided materials were the most helpful sources of information in making their retirement saving and investing decisions.[96] Many workers who had saved for retirement found informal sources of information, such as advice from family and friends (13%), input from a spouse (10%), information from newspapers or magazines (8%), or information from the Internet (5%) to be the most helpful in making retirement financial decisions.[97] The survey also found that among those workers who had saved for retirement, 63% had used the advice of a financial professional, and 40% found such advice to be more helpful than any other source of retirement information.[98] The survey found that employer-provided access to professional advice ranked higher among workers with household incomes of at least $35,000 than for workers with lower incomes.[99] Workers with less than $25,000 in assets and workers under the age of forty-five were more likely than others to report finding advice from family and friends to be the most helpful source of information in making retirement decisions.[100]

The results of the 2006 Retirement Confidence Survey are corroborated by the results from the special survey module on financial literacy and retirement planning administered as part of the national HRS in 2004. The 2004 HRS survey module showed that survey respondents who were classified as "successful" retirement planners were more likely to have used "formal" means of planning, such as retirement calculators, retirement seminars, or financial experts, rather than informal means such as talking with family members, coworkers, or friends.[101] The report defined "successful" planners as respondents who reported developing plans for saving for retirement, and further reported being "always" or "mostly" able to "stick to their

95 *See* MacFarland et al., *supra* note 90, at 117–18; *see also* Lusardi & Mitchell, *supra* note 37, at 10 (noting that fewer than one-third of the 1,269 respondents age fifty and older to the 2004 Health and Retirement Study module on retirement planning indicated that they had attempted to calculate their retirement savings).

96 Helman et al., *supra* note 52, at 20.

97 *Id.*

98 *Id.*

99 *Id.* at 21.

100 *See id.* at 20.

101 *See* Lusardi & Mitchell, *supra* note 37, at 12–13.

plans."[102] The report classified only 19% of the 1,269 respondents as "successful" planners.[103]

From the perspective of national retirement policy, these findings are troubling. Relying solely on private sector employers voluntarily to provide investment education to the working population appears to be producing an information gap that primarily affects young and low-income workers—the very individuals who could arguably benefit the most from retirement financial education. This information gap is particularly problematic in the individual savings account context, in which the substantial protections of ERISA's fiduciary responsibility provisions do not apply to the range of possible investment options.[104] An unsophisticated investor may not fully realize that a professional investment advisor or broker has a conflict of interest due to serving the "neutral" role as counselor while receiving commissions or fees from the investment products "sold" to the investor.[105] The sale of proprietary investment products is reinforced by the use of retirement financial planning models. These models are capable of yielding very different saving and investment recommendations depending on their structures and the assumptions on which they rely.[106] As financial advisors refine these models to increase their accuracy, they become so complex that financially unsophisticated individuals find them increasingly difficult to use.[107] At best, the result is potential confusion over the appropriate course of action. At worst, unsophisticated investors may be manipulated into investment products that will generate greater commissions and fees for the advisor or the mutual fund company, but will result in less accumulation of retirement savings for the investor.[108]

Clearly, we need a strong *public* education effort to promote financial literacy for retirement planning. Unfortunately, current na-

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102 *Id.* at 11.

103 *Id.* at 6 (providing the total number of survey respondents); *id.* at 11 (classifying only 19% of the respondents as "successful" planners).

104 *See* 29 U.S.C. § 1003 (2000 & West Supp. 2006). *See generally* Medill, *supra* note 78, at 479–535 (describing an employer's fiduciary responsibilities in selecting investment options for participant-directed 401(k) plans).

105 Under ERISA, such conflicts are prohibited transactions unless the commission arrangement is carefully structured to qualify for an exemption. *See* 29 U.S.C. § 1108(b)(14), (g) (2000); Medill, *supra* note 25, at 43–46.

106 *See* Bodie et al., *supra* note 41, at 10.

107 *See id.* at 11.

108 *See* Medill, *supra* note 78, at 492–95, 502–03 (describing the corrosive effect of investment management fees on retirement savings); Medill, *supra* note 25, at 51–56 (describing Department of Labor Interpretive Bulletin 96-1's guidelines for approving investment education models and the related public policy problem of using educational materials to "steer" 401(k) plan participants into investment options that generate higher investment management fees).

tional policy designed to promote retirement savings and investment by the working population is inadequate to meet this challenge.

C. National Policy to Promote Retirement Saving and Investment

Congress designated the Department of Labor as the "lead" federal regulatory agency[109] to promote retirement financial education as part of the Savings Are Vital to Everyone's Retirement Act of 1997 (SAVER Act).[110] In enacting the SAVER Act, Congress found that "far too many Americans—particularly the young—are either unaware of, or without the knowledge and resources necessary to take advantage of, the extensive benefits offered by our retirement savings system."[111] The purpose of the SAVER Act was to promote public education and awareness of the need for personal retirement savings.[112] To accomplish this goal, Congress directed the Department of Labor to "maintain an ongoing program of outreach to the public designed to effectively promote retirement income savings by the public."[113]

In 2000, I criticized the SAVER Act as merely "a symbolic gesture"[114] and predicted that the Act would be "unlikely to effect meaningful change in the retirement savings habits of many Americans."[115] Given the dismal statistics on the national savings rate,[116] this criticism remains valid.[117] Subsequent events further revealed major flaws in the SAVER Act as a matter of national retirement policy.

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109 The Department of the Treasury and the Securities and Exchange Commission also have programs designed to promote retirement financial saving, but these programs, unlike the Department of Labor's, are not congressionally mandated. *See* Arnone, *supra* note 93, at 166 (describing the Department of the Treasury's initiative to promote financial education); U.S. Sec. & Exch. Comm'n, Beginners' Guide to Asset Allocation, Diversification, and Rebalancing, http://www.sec.gov/investor/pubs/assetallocation.htm (last visited Oct. 22, 2006).

110 29 U.S.C. §§ 1146–47 (2000).

111 Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997, Pub. L. No. 105-92, § 2(a)(3), 111 Stat. 2139, 2139.

112 *See* H.R. REP. NO. 105–104, at 1 (1997), *reprinted in* 1997 U.S.C.C.A.N. 2768, 2770.

113 SAVER Act § 3(a). Congress expanded the Department of Labor's education and public outreach role as part of the Pension Protection Act (PPA) of 2006. Pension Protection Act (PPA) of 2006, Pub. L. No. 109-280, 120 Stat. 780 (codified as amended in scattered sections of 26 U.S.C. & 29 U.S.C.). Under the PPA, the plan administrator of an individual account plan is required to provide participants in the plan with a notice that directs them to the Department of Labor's Web site for sources of information on individual investing and the importance of diversification of retirement assets. *See id.* 508(a)(1).

114 Medill, *supra* note 25, at 50.

115 *Id.*

116 *See supra* note 1.

117 The U.S. General Accounting Office (GAO) has criticized the Department of Labor's public education campaign under the SAVER Act. *See* U.S. GEN. ACCOUNTING OFFICE, RETIREMENT SAVING: OPPORTUNITIES TO IMPROVE DOL'S SAVER ACT CAMPAIGN (2001), http://www.gao.gov/new.items/d01634.pdf. One of the GAO's criticisms is that the Department of Labor has not attempted to assess the extent to which its efforts have increased

1. *Misplaced Reliance on an Employer-Based Education Delivery Model*

Designating the Department of Labor as the federal agency in charge of promoting retirement saving and investing is a flawed public policy because it is based on an employer-based model of education delivery. According to the Department of Labor's interpretation, ERISA does not require employers who sponsor participant-directed 401(k) plans to provide educational materials to plan participants.[118] Rather, the Department of Labor has determined that the statute largely leaves it to employers' discretion whether[119]—and in what form[120]—to provide such educational materials. Not surprisingly, if an employer does provide educational materials, the quality and usefulness of the materials vary substantially.[121] If an employer's 401(k) plan offers company stock as an investment option, the current regulatory scheme requires the employer to provide the participants with a series of warning notices describing the importance of diversifying retirement plan assets and the risks associated with concentrated investments in employer securities, but does not require the employer to provide educational materials teaching participants how to diversify amounts invested in company stock.[122]

An employer-centered education model also fails to adequately address the growing role of individual account savings mechanisms in the accumulation of wealth. The most prominent example is the

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the public's knowledge and understanding of retirement saving. *See id.* at 3, 14. This failure to solicit feedback from the target audience contrasts sharply with the "best practices" approach for a public service campaign in which focus-group testing is used to assess the effectiveness of the campaign's message. *See infra* note 193 and accompanying text.

118 *See* 29 C.F.R. § 2509.96-1 (2006).

119 *See id.* § 2550.404c-1(b)(2)(i)(B)(1)–(2) (listing the mandatory and upon-request disclosure information that employers must divulge to plan participants).

120 If an employer does provide educational materials, the Department of Labor has issued interpretive guidance that such materials do not constitute investment "advice" to the plan's participants. *See id.* § 2509.96-1; Medill, *supra* note 25, at 51–54. For a discussion of why the complexities of ERISA's prohibited transaction rules make it difficult, as a practical matter, for employers to provide investment advice to 401(k) plan participants, see Medill, *supra* note 25, at 38–49.

121 *See supra* note 94 and accompanying text.

122 *See* 29 U.S.C.A. §§ 1021(m), 1025(a)(2)(B)(ii)(II) (West 2006). The risks associated with company stock as an investment option are substantial, both as a matter of investment risk and human capital. *See* John H. Langbein, *The Enron Pension Investment Catastrophe: Why It Happened and How Congress Should Fix It*, *in* ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS 487, 490–91 (Nancy B. Rapoport & Bala G. Dharan eds., 2004) (explaining that eliminating firm risk can amount to eliminating 20% of the investment risk in an investor's portfolio); Susan J. Stabile, *Pension Plan Investments in Employer Securities: More Is Not Always Better*, 15 YALE J. ON REG. 61, 79 (1998) (describing investment in company stock as a form of double jeopardy for plan participants due to the risk that they could lose both their current employment and retirement incomes if their companies became insolvent).

IRA.[123] In 2004, assets held in IRAs were valued at $3.48 trillion.[124] By comparison, assets held in all employer-sponsored defined contribution plans (primarily 401(k) plans) were valued at $2.68 trillion in 2004.[125] These numbers suggest that IRAs, not employer-sponsored plans, will be the most significant source of non–Social Security income for future retirees. Yet national policy on retirement financial education to date has focused on employees and employer-sponsored plans, and ignored the need for a broader-based public education effort that would address the larger pool of potential retirement assets transferred to and accumulated in IRAs.[126] Even when an employer does provide investment education materials in connection with the employer's defined contribution plan, those materials are unlikely to prove very useful to individuals seeking to save and invest for retirement through IRAs. Employers will tailor such materials to the rules and mechanics of their specific defined contribution plans and the particular menu of investment options they have chosen.[127] In contrast, the rules governing IRAs are distinct, with an almost unlimited universe of investment choices.[128]

In the future, other more recent types of individual account savings mechanisms, such as educational and health savings accounts, are likely to grow in significance.[129] With an unlimited array of investment choices and other financial products to choose from,[130] experts in national retirement policy are beginning to question how well workers will be able to manage these individual account–based assets during retirement.[131]

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123 I.R.C. § 408 (West Supp. 2006). Pursuant to Title I of ERISA, the Department of Labor has no regulatory authority over individual retirement accounts established by individuals rather than through employers. *See* 29 U.S.C. § 1003(a) (2000) (defining the scope of coverage of Title I of ERISA).

124 *See* EBRI, *IRA and Keogh Assets and Contributions*, 27 EBRI NOTES 1, 2 (2006).

125 *Id.* at 3.

126 An individual can contribute directly to an IRA and can roll over vested benefits accumulated through an employer-sponsored retirement plan to an IRA without triggering income taxation, provided the individual satisfies certain Internal Revenue Code criteria. *See* I.R.C. § 402(c) (West Supp. 2006).

127 *See generally* 29 C.F.R. § 2509.96-1 (2006).

128 *Compare* I.R.C. § 401(k) (West Supp. 2006), *with* I.R.C. §§ 408–08A (West Supp. 2006).

129 For example, the Financial Research Corporation has projected that assets held in § 529 plan accounts will grow to $400 billion by 2010. *See* Alexander & Luna, *supra* note 79, at 1. Assets held in health savings accounts would substantially increase if Congress adopted the Bush Administration's proposal to increase the maximum annual contribution amount. *See supra* note 34.

130 Such financial products would include, for example, annuities to insure against the risk of longevity and long-term care insurance to help defray the costs of nursing home care. *See* Mitchell & Utkus, *supra* note 16, at 27–28.

131 *See, e.g.*, *id.* at 26–30.

2. *The Department of Labor's Conflicting Dual Roles as Regulator and Public Educator*

Designating the Department of Labor as the federal agency in charge of public education for retirement saving and investing is further flawed as a national policy because the agency's regulatory role conflicts with its public education role. This conflict of interest results from several key regulatory positions, which the agency adopted prior to Congress's enactment of the SAVER Act as part of final regulations it issued under Section 404(c)(1) of ERISA.[132]

That section creates an exception to the statutory norm of fiduciary liability for plan investment losses resulting from a participant's exercise of independent control over the assets held in his or her 401(k) plan account.[133] Congress delegated the task of fleshing out the details of this statutory exemption to the Secretary of Labor.[134] The Department of Labor completed this task in 1992 with the issuance of final regulations under § 404(c)(1).[135] It was the issuance of the 404(c) Regulations that sparked the subsequent rapid growth of 401(k) plans.[136]

In designing the 404(c) Regulations, the Department of Labor was forced to strike a balance among ERISA's three competing policy objectives. Congress's primary goal in enacting ERISA was to protect the rights and benefits of plan participants (the "benefit protection" policy).[137] Congress also had two secondary policy objectives in enact-

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132 29 U.S.C. § 1104(c)(1) (2000). That provision states:

> In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)–
> (A) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and
> (B) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

Id.

133 *See* H.R. CONF. REP. NO. 93-1280, at 305 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5038, 5085–86; 29 C.F.R. § 2550.404c-1(a), (d)(2) (2006); Participant Directed Individual Account Plans, 57 Fed. Reg. 46,906, 46,924–25 (Oct. 13, 1992) (codified at 29 C.F.R. pt. 2550); Medill, *supra* note 25, at 33–35.

134 *See* 29 U.S.C. § 1104(c)(1) (2000).

135 *See* Participant Directed Individual Account Plans, 57 Fed. Reg. at 46,906.

136 *See* Pamela Perun & C. Eugene Steuerle, *From Fiduciary to Facilitator: Employers and Defined Contribution Plans*, *in* THE EVOLVING PENSION SYSTEM, *supra* note 20, at 194–99.

137 *See* Varity Corp. v. Howe, 516 U.S. 488, 497 (1996); H.R. REP. NO. 93-533, at 1–10 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4639–47; S. REP. NO. 93-127, at 1–15 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838, 4838–51; Colleen E. Medill, *Resolving the Judicial Paradox of "Equitable" Relief Under ERISA Section 502(a)(3)*, 39 J. MARSHALL L. REV. 827, 919 (2006) (describing ERISA's three competing policy goals as forming a triangular relationship, with the "benefit protection" policy assuming the primary position at the top of the triangle).

ing ERISA. One such objective was to avoid imposing undue administrative burdens on employers that would discourage them from voluntarily sponsoring benefit plans for their workers (the "cost minimization" policy).[138] The other secondary policy objective was to preserve the right of each employer, as the sponsor of its plan, to customize the design of the plan (within the limits that Title I of ERISA established)[139] to suit the needs of the employer's business, particularly with respect to the employer's workforce and budget (the "settlor function" policy).[140] Where these policies conflicted, Congress attempted, in crafting ERISA's statutory scheme, to strike an appropriate balance between the competing policy objectives.[141]

Similarly, to effectuate congressional intent in crafting the 404(c) Regulations, the Department of Labor attempted to reconcile the sometimes competing objectives of the benefit protection policy, the cost minimization policy, and the settlor function policy. The result was a series of compromises on three key issues concerning the ERISA fiduciary obligations of employers who sponsor participant-directed 401(k) plans:

1) Employers are not required to provide investment advice[142] or investment education[143] to workers in connection with a participant-directed 401(k) plan.
2) Employers are not absolutely required to provide participants in their 401(k) plans with a comparative description of the investment management fees and other charges that may reduce the rate of return for each investment option available under the plans.[144] Rather, an employer must provide this information

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138 *See Howe*, 516 U.S. at 497; Mertens v. Hewitt Assocs., 508 U.S. 248, 261–63 (1993); H.R. REP. NO. 93-533, at 1–10, *reprinted in* 1974 U.S.C.C.A.N. at 4639–47; S. REP. NO. 93-127, at 1–15, *reprinted in* 1974 U.S.C.C.A.N. at 4838–51; Medill, *supra* note 137, at 919 (describing the cost minimization policy as half of the supporting base of the ERISA policy triangle).

139 Employee Retirement Income Security Act (ERISA) of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of 26 & 29 U.S.C.).

140 *See* Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 443 (1999); Lockheed Corp. v. Spink, 517 U.S. 882, 889–91 (1996); Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 78 (1995); Medill, *supra* note 137, at 919 (describing the settlor function policy as the other half of the supporting base of the ERISA policy triangle).

141 *See* Aetna Health, Inc., v. Davila, 542 U.S. 200, 214–16 (2004); *Mertens*, 508 U.S. at 262–63; Medill, *supra* note 137, at 920–21 (explaining why the cost minimization and settlor function policies that form the base of the ERISA policy triangle are necessary to support the primary policy goal of benefit protection, due to the voluntary nature of plan sponsorship by employers).

142 See 29 C.F.R. § 2550.404c-1(c)(4) (2006); Participant Directed Individual Account Plans, 57 Fed. Reg. 49,906, 46,922 (Oct. 13, 1992) (codified at 29 C.F.R. pt. 2550).

143 *See id.* § 2550.404c-1(b)(2)(i)(B)(1)–(2) (listing the mandatory and upon-request disclosure information that employers must divulge to plan participants).

144 *See id.* § 2550.404c-1(b)(2)(i)(B)(1) (listing mandatory disclosure information that employers must divulge to plan participants). Investment management fees, which lower the rate of return for the investment option, account for 75% to 90% of the total expenses

only if a participant affirmatively requests the information.[145] Furthermore, employers are not required to explain to participants how even a slightly higher investment management fee, compounded over time, can significantly reduce their account balances at retirement.[146]

3) Publicly traded companies may offer company stock as an investment option in their 401(k) plans.[147]

The resolution of each of these regulatory issues is justifiable as a compromise necessary to encourage employers to sponsor participant-directed 401(k) plans. The first two regulatory positions reduce the administrative costs for an employer who sponsors a plan. The third position is consistent with the settlor function policy and, in particular, the publicly traded companies' desire—for a variety of business reasons[148]—to offer their workers the option of investing in company stock through the employers' 401(k) plans.

These three key regulatory positions cannot, however, be reconciled with the need to provide workers with a vigorous and effective public educator. For example, effectively educating workers to demand more and better information would ultimately lead to greater administrative burdens on their employers as the sponsors of the plans. Additionally, educating workers to understand the impact of even a small difference in investment management fees, while beneficial to workers in increasing their ability to understand and control their financial options,[149] could very well lead more workers to challenge their employers' fiduciary decisions to select investment options with relatively high investment management fees.[150] This type of scru-

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participants pay in connection with their 401(k) plan accounts. *See* MUNNELL & SUNDÉN, *supra* note 1, at 76; *see also* A LOOK AT 401(K) PLAN FEES, *supra* note 84 (describing investment management fees as "[b]y far the largest component of 401(k) plan fees").

145 *See* 29 C.F.R. § 2550.404c-1(b)(2)(i)(B)(2)(i)–(ii) (2006).

146 *See id.* § 2550.404c-1(b)(2)(i)(B)(1)–(2). For an illustration of the impact of investment management fees over time, see *supra* note 84 and accompanying text.

147 *See id.* § 2550.404c-1(d)(2)(ii)(E)(4); Participant Directed Individual Account Plans, 57 Fed. Reg. at 46,919; Medill, *supra* note 78, at 524–25 (noting that employers can offer company stock as part of 401(k) plans and that certain procedural safeguards protect the participants' confidentiality with respect to the purchase, sale, and holding of company stock).

148 *See* Mitchell & Utkus, *supra* note 72, 46–50 (describing reasons employers give for offering company stock as a 401(k) plan investment option); MUNNELL & SUNDÉN, *supra* note 1, at 106–11 (describing reasons employers give for offering company stock as a 401(k) plan investment option).

149 *See* ADVISORY COUNCIL ON EMPLOYEE WELFARE & PENSION BENEFIT PLANS, REPORT OF THE WORKING GROUP ON FEE AND RELATED DISCLOSURES TO PARTICIPANTS 5 (2004), *available at* http://www.dol.gov/ebsa/pdf/ac_111704_report.pdf (concluding that the Department of Labor should make the requirements of 404(c) Regulations concerning the disclosure of investment management fees more "user friendly").

150 *See* Medill, *supra* note 78, at 481–95 (describing an employer's fiduciary duty of prudence under ERISA in selecting 401(k) plan investment options and discussing the standards federal courts use to judge employer conduct in 401(k) fiduciary litigation).

tiny might make some employers reluctant to continue sponsoring 401(k) plans. This outcome seems particularly likely if an employer opts for funds with higher investment management fees in exchange—directly or indirectly—for lower employer-paid direct administrative costs.[151] Educating workers about the risks associated with company stock as a retirement investment option would discourage them from accepting this stock as an investment option and undermine the incentives for some large publicly traded employers to sponsor 401(k) plans.[152] In short, a vigorous and effective public education program would undo the key policy compromises that the Department of Labor made in the 404(c) Regulations.

When viewed in light of recent research, these three regulatory positions are striking because they reinforce the psychological biases against saving and investing for retirement. Without improved financial literacy, many workers will simply be unwilling to cope with the high information costs associated with selecting investments and will likely turn to heuristics instead.[153] Procrastination and inertia will lead many workers never to affirmatively ask for comparative information concerning investment management fees or other expenses associated with the 401(k) plans investment options.[154] If workers do request such information, the financially unsophisticated will tend to discount the future and, as a result, substantially underestimate the impact that even a small difference in investment management fees will have on their 401(k) plan account balances at retirement.[155] Finally, when financially unsophisticated workers are faced with high information costs and overloaded with a choice of investment options, some of these workers may rely on their employers' tacit endorsements of company stock as a sound retirement investment rather than making informed choices.[156]

In fairness to the Department of Labor, these regulatory policy decisions were made in 1992 when the agency's only role was its regulatory role under ERISA. It was only later, through the SAVER Act of 1997,[157] that Congress directed the Department of Labor to assume a

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151 *See* Mitchell & Utkus, *supra* note 72, at 46–50; MUNNELL & SUNDÉN, *supra* note 1, at 106–11; Medill, *supra* note 78, at 503 (describing a 1998 Department of Labor study of fees and expenses in 401(k) plans demonstrating that employers make this kind of "high fees for lower costs" decision).

152 *See* Mitchell & Utkus, *supra* note 72, at 36–40 (listing well-known U.S. companies with very high concentrations of company stock held in 401(k) and other defined contribution plans).

153 *See* Mitchell & Utkus, *supra* note 16, at 9–10.

154 *See supra* notes 56–62 and accompanying text.

155 *See supra* notes 48 and accompanying text.

156 *See supra* notes 71–72 and accompanying text.

157 Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997, 29 U.S.C. § 1146–47 (2000).

dual role as both the regulator of 401(k) plans and public educator.[158] Although the conflict between these two concurrent roles may not have been readily apparent in 1997, subsequent research studies of investment behavior[159] have illuminated the magnitude of the conflict. These studies demonstrate that although the employer-sponsored retirement plan system has increasingly shifted responsibility for achieving retirement income security to individual workers, many workers are ill-prepared to assume this responsibility.[160] Under the status quo, "planning for retirement is difficult, few do it, and fewer still think they get it right."[161]

In summary, policymakers today face a dilemma: either continue with the status quo, or respond proactively to the fundamental trends that now characterize how workers accumulate wealth to generate income during their retirement years. To maintain the status quo and ignore the empirical evidence of widespread financial illiteracy and lack of retirement financial planning among American workers is to ignore the logical future consequence of these trends: widespread elderly poverty as the result of dependence on Social Security benefits as the sole source of retirement income. To prevent this unacceptable outcome, we must develop new ideas and a new policy approach.

II
Transforming the Role of the Social Security Administration

A. Motivating Workers to Save: Building on the "Save for Your Future" Campaign

Changing the status quo will require the federal government to assume a much more proactive role in promoting financial literacy among workers. Currently, there are four federal regulatory agencies involved in educating the public to save and invest for retirement. In addition to the Department of Labor, the Securities and Exchange Commission (SEC) and the Department of the Treasury also have public education initiatives,[162] as does the Social Security Administration.[163]

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158 *See supra* notes 109–113 and accompanying text. Congress subsequently expanded the Department of Labor's dual educational role in the Pension Protection Act of 2006. *See* discussion *supra* note 113.

159 *See* discussion *supra* Part I.B.1–2.

160 *See* discussion *supra* Part I.B.

161 Lusardi & Mitchell, *supra* note 37, at 11.

162 *See* MacFarland et al., *supra* note 90, at 98 & n.1.

163 *See* Press Release, Soc. Sec. Admin., The Social Security Administration and the American Savings Education Council Announce National "Save for Your Future" Campaign (May 17, 2002) (on file with author).

The Department of Labor, the Department of the Treasury,[164] and the SEC[165] have primarily regulatory roles with respect to employer-sponsored retirement plans, the mutual fund industry, and the tax-paying public, respectively. Of the "Big Four" federal regulatory agencies, only the Social Security Administration does not also have a direct regulatory role (and thus, some potential for conflicts of interest or industry capture) with respect to some aspect of the private sector components of the national retirement system.[166]

Because it is not subject to conflicts of interest or capture, the Social Security Administration is the federal regulatory agency best suited to lead a national campaign to motivate and educate the working population to save and invest for retirement. I propose to target this public education campaign, at least initially, at workers ages thirty and under. This target demographic group is both the most likely to benefit from improved financial literacy and the most likely to need to rely heavily on personal financial assets for retirement income security. It is young workers who, given the motivation and sufficient knowledge, have the greatest ability to restore the Social Security system to what it was intended to be: a portion, not the sole source, of one's retirement income.

Implementing this proposal would require transforming the Social Security Administration from a passive payer of retirement benefits to retirees into a proactive educator and advocate for personal retirement financial planning by young workers. This transformation appears to have already begun with the Social Security Administration's "Save for Your Future Campaign," launched in 2001.[167] Part of this campaign involves a partnership with the American Savings Education Council[168] to better educate consumers to prepare financially for retirement.[169] The "Save for Your Future Campaign" is built around the following four decision-making steps:

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164 *See generally* I.R.C. (2000); Employee Retirement Income Security Act (ERISA) of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of U.S.C.); 1978 Reorganization Plan No. 4, 43 Fed. Reg. 47,713 (Oct. 17, 1978) (codified as amended at 29 U.S.C. § 1001).

165 *See generally* Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 to -52 (2000); Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 to -21 (2000).

166 *See generally* Social Security Act of 1935, ch. 531, 49 Stat. 620 (codified as amended in scattered sections of 42 U.S.C.).

167 Fact Sheet, Soc. Sec. Admin., "National Save for Your Future" Campaign (Oct. 2001) (on file with author).

168 The American Savings Education Council (ASEC) is "a national coalition of public- and private sector institutions" funded by the EBRI Education and Research Fund, a nonprofit organization. AM. SAV. EDUC. COUNCIL, AMERICAN SAVINGS EDUCATION COUNCIL (ASEC) FACT SHEET (2005), http://www.choosetosave.org/asec/factsheet.pdf.

169 *See* Press Release, Soc. Sec. Admin, *supra* note 163.

1. Calculate the financial amount you need for your retirement goal.
2. Plan how to accumulate money to reach your goal.
3. Act to implement your financial plan.
4. Reassess your financial needs and your plan annually when you receive your personal Social Security statement.[170]

The personal Social Security statement described in the fourth step is sent automatically each year to every worker age twenty-five and older.[171] This statement estimates the worker's projected Social Security benefit amount at retirement based on current earnings, accompanied by a prominent disclaimer highlighted by bold print and an asterisk that states:

> Your estimated benefits are based on current law. Congress has made changes to the law in the past and can do so at any time. The law governing benefit amounts may change because, by 2040, the payroll taxes collected will be enough to pay only about 74 percent of scheduled benefits.[172]

As a motivational tool for workers, the annual personal Social Security statement in its current form is probably not worth the costs of paper and postage. Yet, this is the only piece of information about planning for retirement that every worker over age twenty-five receives each year.[173] To make this statement part of an effective public education campaign targeting young workers, the Social Security Administration can learn from the truth℠ smoking prevention campaign—an award-winning, highly successful marketing strategy employed in an analogous public education effort designed to change behavior in young people.

B. A "Best Practices" Motivational Approach: Lessons from the Truth℠ Campaign

At least one researcher has noted the psychological similarities between encouraging individuals to save for retirement and encouraging individuals not to engage in high-risk health behaviors, such as smoking.[174] Persuading youths not to smoke, just like persuading young workers to save, is difficult due to the following tendencies:

1. to procrastinate (I'll start saving or stop smoking tomorrow),

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170 EBRI, SAVE FOR YOUR FUTURE BOOKLET 3, http://www.saveforyourfuture.org/brochures/pdf/sfyfbooklet.pdf (last visited Oct. 20, 2006).

171 *See* 20 C.F.R. § 404.812 (2006).

172 SOC. SEC. ADMIN., YOUR SOCIAL SECURITY STATEMENT 2 (2006), http://www.ssa.gov/mystatement/07currentstatement.pdf.

173 *See* 20 C.F.R. § 404.812 (2006).

174 *See* Gary W. Selnow, *Motivating Retirement Planning: Problems and Solutions*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 48.

2. to be overly optimistic (I'll be rich by the time I retire or I will never die of lung cancer), and
3. to overvalue the present and discount the future (I want to spend or smoke now, and will deal with the future consequences later).

Granted, there are obvious differences between saving and smoking. Smoking can result in an addiction to nicotine; saving does not cause addiction. Saving requires an affirmative decision and resulting action; to prevent someone from ever taking up smoking requires a decision on his or her part not to begin. But the psychological biases at work in both situations are similar enough that it is worthwhile to consider the marketing elements that made the American Legacy Foundation's truth℠ campaign effective in addressing these biases.

The American Legacy Foundation was established in 1999 as part of the landmark Master Settlement Agreement ("Settlement") that settled forty-six states' lawsuits against the tobacco industry.[175] As part of the Settlement, the tobacco industry agreed to provide $1.45 billion from 1999 to 2003 to fund the establishment of the American Legacy Foundation.[176] The foundation is a charitable organization devoted to educating the public about the dangers of tobacco use.[177] Because funding would likely have ended in 2004 due to the terms of the Settlement, most of the awarded funds were endowed,[178] but $100 million was used to finance the truth℠ campaign.[179]

Before the formation of the American Legacy Foundation, several factors hampered public education efforts aimed at reducing the number of smokers. The problems plaguing the earlier antismoking efforts bear striking similarities to those affecting the current state of public financial education directed at promoting saving. First, the tobacco-control community consisted of multiple organizations with a myriad of perspectives and messages.[180] As a result, the organizations produced a fragmented and uncoordinated public message, and wasted energy and money in the process.[181] Second, the marketing expenditures of the tobacco industry in promoting its product dwarfed the amount of funding available to the organizations in the

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175 *See* Youngme Moon, *American Legacy: Beyond the Truth™ Campaign*, Harv. Bus. Sch. Case Study 4 (2005).

176 *See id.* at 5.

177 *See id.* at 1, 4.

178 *See id.* at 5, 14.

179 *See id.* at 9.

180 *See id.* at 3.

181 The failures of the tobacco control community parallel the public education efforts concerning retirement saving by the Department of Labor, the Securities and Exchange Commission, the Department of the Treasury, the Social Security Administration, and numerous private organizations.

tobacco-control community.[182] Third, the tobacco-control community relied on public service announcements that were ineffective because the announcements told the public what it already knew: that smoking is a health hazard.[183]

The American Legacy Foundation's truth[SM] campaign was based on the success of an earlier truth-oriented campaign by the Florida Department of Health.[184] The American Legacy Foundation took the basic premise of the Florida campaign, which used hard-hitting messages that deglamorized smoking and portrayed teenagers confronting the tobacco industry, and developed the concept into a highly sophisticated public education campaign.[185] The result set a new standard for "best practices" in developing an effective public education campaign. These best practices are as follows:

Develop a specific target audience. The American Legacy Foundation decided to target youths ages twelve to seventeen and to focus its public education effort on the prevention of smoking among this group, rather than diluting its message by trying to appeal to a broader audience.[186] The foundation selected this demographic group based on scientific evidence showing that teenagers had the highest incidence of starting smoking.[187] Furthermore, the foundation perceived that this group was particularly vulnerable to cigarette marketing.[188]

Review the psychological research concerning the behavior of the target audience. The American Legacy Foundation determined that teenagers with "sensation-seeking" personalities were the most likely to become addicted to tobacco, and used this research in designing the marketing message for its campaign.[189]

Hire professionals to develop the creative side of the campaign. The American Legacy Foundation hired two well-respected advertising agencies, Arnold Worldwide and Crispin Porter + Bogusky, to develop

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182 *See* Moon, *supra* note 175, at 3. The tobacco industry's marketing efforts are analogous to those of the financial services industry, but directed toward attracting smokers rather than investors.

183 *See id.* Given that research shows that workers know they *should* save for retirement, the tobacco control community's experience with public service announcements telling the public what they already knew should inform the primary reliance on similar types of public service announcements to promote retirement saving. *See* Helman et al., *supra* note 52, at 5 (noting that although "[a] majority of Americans appear to be persuaded about the need to set aside money to prepare for retirement . . . [l]ess than two-thirds of workers report that they and/or their spouse are currently saving for retirement").

184 *See* Press Release, Am. Pub. Health Ass'n, New Study in the American Journal of Public Health Shows Philip Morris's Anti-Smoking Ads Make Kids More Likely to Smoke (May 30, 2002), *available at* http://www.apha.org/news/press/2002/truth.htm.

185 *See id.*

186 *See* Moon, *supra* note 175, at 5.

187 *See id.* More than 80% of smokers start before the age of eighteen. *See id.*

188 *See id.*

189 *See id.* at 6.

the creative side of the campaign.[190] Hiring professional marketing agencies was unique for a public service campaign. Traditionally, public service campaigns depend on pro bono marketing services due to the financial constraints inherent in such campaigns.

Develop a brand with which the target audience can identify. Based on the advice of its professional advertising agencies, the American Legacy Foundation decided to discard the standard formula for public service announcements, which typically focused on a public health and safety message.[191] Instead, the foundation decided to build a symbolic brand, the truth,[SM] with which its target audience could identify.[192]

Use peer focus groups to test and refine the marketing message, and use the appropriate media for dissemination. The American Legacy Foundation extensively used peer focus groups to test the target audience's reaction to various marketing messages and to determine the most effective messages.[193] Rather than using public service announcement time slots, the campaign purchased advertising time during national television shows and placed advertisements in national magazines that its target audience watched and read.[194] A national-media purchase approach for advertising, rather than a market-to-market purchase approach, saved the campaign approximately 40% in advertising dollars.[195]

Inform (don't preach). Based on the psychological research of the target audience, the American Legacy Foundation decided that blatantly telling teenagers not to smoke would be counterproductive.[196] Instead, the message communicated was purely informational but used straightforward language and stark, graphic images about death and disease caused by tobacco usage.[197] The other key theme of the campaign was an exposé of "Big Tobacco's" manipulative marketing practices.[198] The purpose of this exposé was to raise awareness among the teenage audience so that they would not be "duped" by tobacco industry advertising.[199]

Subsequent scientific research studies, published in a peer-reviewed medical journal, later proved that the truth[SM] campaign ac-

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190 *See id.*

191 *See id.*

192 *See id.*

193 *See id.* at 7.

194 *See id.* at 9.

195 Matthew C. Farrelly et al., *Evidence of a Dose-Response Relationship Between "Truth" Antismoking Ads and Youth Smoking Prevalence*, 95 AM. J. PUB. HEALTH 425, 425 (2005).

196 *See* Moon, *supra* note 175, at 4.

197 *See id.* at 9.

198 *See id.*

199 *See id.*

counted for a significant decline in youth smoking.[200] The truth℠ campaign also won a number of advertising industry awards, including the prestigious Grand EFFIE for Most Effective Advertising Campaign of 2002, Campaign of the Year for 2000 from *Adweek,* Grand Prize at the London International Awards for Public Service TV in 2000, and an Emmy award in 2005 for public service advertising.[201]

The truth℠ campaign illustrates a powerful, new, sophisticated, scientific marketing approach to public education aimed at changing the behavior of young people. Although the audience and the message are different, the methodology used in developing and implementing the truth℠ campaign is transferable to the retirement saving dilemma.

The Social Security Administration should carefully study this methodology to develop an effective campaign to motivate workers under the age of thirty to save and invest for retirement. In developing such a campaign, the Social Security Administration would have one valuable resource that the American Legacy Foundation did not have: access to direct public communication. The administration already communicates, via an annual personal Social Security statement, with every worker over the age of twenty-five.[202] To avoid wasting this opportunity, the Administration should redesign the personal Social Security statements sent to these workers to create a more effective motivational tool for retirement saving. A further, more ambitious step would be to coordinate a retooled personal Social Security statement with the development of the Social Security Administration as the preeminent government source for public information and education on retirement financial planning. Such a coordinated initiative would represent a bold change for national retirement policy.

C. The Social Security Administration as the Preeminent Source for Public Information and Education on Retirement Financial Planning

A national policy based solely on motivating workers to plan financially for retirement is inadequate. Once motivated to save, workers need a neutral source of high-quality, unbiased educational information on how to save and invest for retirement. The Social Security Administration should be transformed to serve this role.

Given that Congress previously assigned this public education task to the Department of Labor in the SAVER Act[203] and further expanded the Department's public education role in the Pension Pro-

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200 *See* Farrelly et al., *supra* note 195, at 429.
201 *See* Moon, *supra* note 175, at 12.
202 *See* 20 C.F.R. § 404.812 (2006).
203 *See supra* notes 109–113 and accompanying text.

tection Act of 2006,[204] one may argue that change is unnecessary. However, there are several reasons for changing the role of the Social Security Administration. First, the last of the three national retirement summits authorized by the SAVER Act[205] has been completed.[206] Therefore, Congress should reevaluate whether the Department of Labor should continue educating the public on retirement saving, or whether another federal agency may be better suited to this role. Second, since the enactment of the SAVER Act in 1997, the mechanisms by which individuals accumulate wealth during their working years, in order to generate income during their retirement years, have changed. Although employer-sponsored retirement plans will still provide an important source of retirement income in the future, assets held in individual savings accounts will likely be the largest source of non–Social Security retirement income.[207] Consequently, the underlying justification for designating the Department of Labor as the primary source for worker retirement financial education—the Department's regulation of the employer-employee relationship in the workplace—is less compelling. Finally, the conflict of interest between the Department of Labor's primary regulatory role under ERISA and its role as a public educator calls into question the Department's ability to function as a vigorous and effective advocate for personal savings and investment.[208]

Although critics may contend that the nature of the Department of Labor's current conflict of interest is not significant enough to warrant a change, or that Congress should not designate any federal agency to serve in a public education role, such criticism concerns the larger issue of the federal government's role and function. Without attempting to resolve that much larger debate, this Article has attempted to show that financial illiteracy and a lack of retirement financial planning is a significant social policy problem in an environment where one's retirement financial security is increasingly dependent on individual saving and investment efforts. Given the scope and magnitude of the problem, it is doubtful that it will be resolved either by the voluntary efforts of employers or by the marketing efforts of the financial services industry. This is a problem of national magnitude and thus requires a federal solution.

Some critics may counter that the Social Security Administration does not currently have the internal expertise to become the preemi-

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204 *See supra* text accompanying note 113.

205 *See* 29 U.S.C. § 1147(a) (2000).

206 For background and a report on the last of the three summits, which was held in 2006, see 2006 National Saver Summit, http://www.saversummit.dol.gov/2006summit.html (last visited Oct. 20, 2006).

207 *See supra* text accompanying note 125.

208 *See* discussion *supra* Part I.C.2.

nent government source for retirement planning information, educational materials, and financial planning tools. Yet an abundance of specialized expertise exists in academia,[209] the private sector,[210] and nonprofit public service organizations.[211] This expertise could be injected into the Social Security Administration to further its role as a public educator on retirement saving. Consequently, the real barrier to transforming the role of the Social Security Administration is not a lack of available expertise, but rather attitudinal, political, and fiscal obstacles.

D. Potential Objections to the Proposal and Responses

Interjecting any new idea into the national policy debate regarding the future of Social Security is likely to prove controversial, as the issue of reforming Social Security generates strong opinions.[212] This last subpart of the Article anticipates objections to my proposal and provides some initial responses.

Critics of the proposal may assert that retirement financial education, like youth, is wasted on the young. According to the life-cycle hypothesis of retirement saving, young workers have less income and tend to allocate their earnings toward housing and child-care costs.[213] A mounting body of empirical research, however, contradicts the notion that young workers cannot afford to save for retirement.[214] At least two recent empirical studies have shown that when young workers do participate in employer 401(k) plans, they save at contribution levels (measured as a percentage of compensation) that are similar to the contribution levels of older workers.[215] In other words, although

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209 For example, numerous scholars from various academic fields are affiliated with such research entities as the Pension Research Council at the University of Pennsylvania's Wharton School, the Center for Retirement Research at Boston College, and the National Health and Retirement Study at the University of Michigan.

210 For example, TIAA-CREF, Vanguard, and Fidelity all have active internal research programs.

211 Examples of expertise in the nonprofit sector include EBRI, which sponsors the American Savings Education Council, the American Association of Retired Persons (AARP), and the Pension Rights Center.

212 Political observers refer to Social Security as the "third rail" of American politics—an issue with which politicians should not tamper. *See, e.g.*, Martha Derthick & Steven M. Teles, *Riding the Third Rail: Social Security Reform*, *in* THE REAGAN PRESIDENCY: PRAGMATIC CONSERVATISM AND ITS LEGACIES 182 (W. Elliot Brownlee & Hugh Davis Graham eds., 2003).

213 *See* MUNNELL & SUNDÉN, *supra* note 1, at 34 (describing the life-cycle hypothesis).

214 *See, e.g.*, Marjorie Honig & Irena Dushi, *How Demographic Change Will Drive Benefits Design*, *in* BENEFITS FOR THE WORKPLACE OF THE FUTURE, *supra* note 35, at 58, 62; MUNNELL & SUNDÉN, *supra* note 1, at 34–35.

215 *See* Honig & Dushi, *supra* note 214, at 62; MUNNELL & SUNDÉN, *supra* note 1, at 34–35. Based on their analysis of data from the 2001 Survey of Consumer Finances, Munnell and Sundén question the validity of the life-cycle hypothesis of retirement financial planning. *See* MUNNELL & SUNDÉN, *supra* note 1, at 34–35. Munnell and Sundén argue that

these young workers may not save as much in absolute dollar terms as older workers, their relative retirement savings rates are similar once the young workers decide to participate. The key difference is that young workers tend to cash out their 401(k) plan savings when they change employers, whereas older workers tend to roll over their 401(k) plan savings to an IRA or their new employers' retirement plans.[216] Cashing out a small amount is consistent with the psychological bias that discounts the future and suggests that young workers may not fully appreciate the income tax and long-term investment consequences of failing to elect a rollover.[217]

Critics may also question whether education will change behavior. There are several research experiments suggesting reasons for skepticism.[218] In these experiments, the study participants attended a one-time financial education seminar,[219] or completed a survey that informed them about the benefits of their employers' retirement savings plans.[220] The researchers then examined the investment decisions of the participants in the experiment and found that attending the seminar or reading about retirement plans had little influence on subsequent investment behavior.[221]

Other scholars who have examined the problem of financial illiteracy posit that the design and content of the financial education programs used in these experimental seminars may not be adequate to address the underlying problem of acute financial illiteracy. These researchers suggest that such seminars might have had only a minimal effect on saving behavior due to the lack of "well-targeted content," or because "if financial illiteracy is widespread among particular employees, a one-time financial education lesson is likely to be insufficient to influence planning and saving decisions."[222]

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the life-cycle hypothesis is contrary to data showing that eligible workers contribute at a relatively consistent rate to their 401(k) plans after age thirty. *See id.* at 35. Honig and Dushi's study reaches a similar conclusion. *See* Honig & Dushi, *supra* note 214, at 62; *see also* McGill et al., *supra* note 1, at 402 (describing the life-cycle theory as "a reasonable description of how the business and professional classes funded their retirement during the late eighteenth century").

216 *See* Munnell & Sundén, *supra* note 1, at 133.

217 *See id.* at 131–36 (illustrating the impact on accumulated retirement wealth from taxable distributions).

218 *See* James J. Choi et al., *$100 Bills on the Sidewalk: Suboptimal Saving in 401(k) Plans* 13-18 (Nat'l Bureau of Econ. Research, Working Paper No. 11554, 2005) [hereinafter *Bills on the Sidewalk*]; James J. Choi et al., *Defined Contribution Pensions: Plan Rules, Participant Decisions, and the Path of Least Resistance* 30–31 (Nat'l Bureau of Econ. Research, Working Paper No. 8655, 2001) [hereinafter *Defined Contribution Pensions*].

219 *See Defined Contribution Pensions, supra* note 218, at 30.

220 *See Bills on the Sidewalk, supra* note 218, at 13–14.

221 *See id.* at 18; *Defined Contribution Pensions, supra* note 218, at 31.

222 Lusardi & Mitchell, *supra* note 37, at 16–17. In a separate article, Lusardi elaborates on why the studies casting doubt on the effectiveness of financial education should be viewed cautiously:

These research experiments contrast with the results of other experiments, which found that peer pressure, that bane of parents of teenagers, actually may be a blessing in terms of persuading young workers to save.[223] In these experiments, researchers found that social interactions among co-workers in the workplace who had received financial education might have improved retirement saving among their co-workers who had not received the financial education.[224] These research experiments suggest that peer pressure among young workers could enhance the impact of a youth-oriented public financial education campaign.[225] Of course, peer pressure can also have a negative influence on behavior. But the potential for negative peer influence lends even more support to the idea of a widespread public education campaign targeting young workers through the Social Security Administration's existing "Save for Your Future" correspondence with workers.

Another potential criticism of the proposal is that a public education campaign led by the Social Security Administration may undermine public confidence in the Social Security system. For workers today, however, confidence in the future receipt of Social Security benefits has already eroded due to the program's well-publicized fiscal

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> How can we interpret this mixed evidence? If the findings [of the research experiments] are correct, one has to be very cautious in interpreting the effects of financial education on savings. First, if financial illiteracy is widespread and individuals do not know how interest rates and inflation work, attending a benefit fair is unlikely to affect behavior. Similarly a one-time exposure to financial education may do little to affect savings. This is not because financial education is ineffective but because the "cure is not adequate for the disease." Moreover, the fact that individuals have difficulties following through their actions is perhaps an argument for changing the design of financial education programs rather than dismissing their importance. One of the lessons we have learned from the literature on saving is that there is large heterogeneity in saving behavior. Individuals seem to differ widely in their degree of financial literacy as well. A "one-size-fits-all" education program may do little to stimulate saving and may itself be one of the major disincentives to attend a financial education program. Most importantly, very little information is usually provided about the content of retirement seminars. For example, the HRS data does not provide information on what was covered in seminars or even when they were attended. To best evaluate the effects of seminars, we need to have a good understanding of the obstacles people face when planning for retirement. Designing financial programs and evaluating those programs is thus intimately intertwined with understanding the determinants of saving and planning and the presence or absence of financial literacy.

Lusardi, *supra* note 37 (manuscript at 13–14) (citations omitted).

223 *See* Esther Duflo & Emmanuel Saez, *Implications of Pension Plan Features, Information, and Social Interactions for Retirement Saving Decisions*, *in* PENSION DESIGN AND STRUCTURE, *supra* note 16, at 139–46.

224 *See id.* at 145–46.

225 *See id.*

problems.[226] Transforming the role of the Social Security Administration as proposed would not be an admission that the Social Security system is failing; rather, it would be a candid admission of the reality of future retirement income security—a reality that has shifted sharply toward greater individual responsibility.

Ultimately, criticisms of the proposal may come down to the question of how to finance a public motivational and educational campaign aimed at encouraging young workers to save and invest for retirement. Closely related to concerns over funding is a cost-benefit analysis argument: how can policy makers know that an investment in public retirement financial education today will lead to a more secure retirement for workers in the future?

In terms of a funding source, in 2005, payroll tax revenues for the Old-Age and Survivors Insurance Fund component of the Social Security program were estimated at $604.3 billion.[227] Allocating one–one thousandth of a single year's payroll tax revenues to funding the proposal would provide over $600 million, or six times the amount that was available to the American Legacy Foundation.[228]

The remaining question for policymakers is whether investing Social Security payroll tax revenues in a public motivational and educational campaign is sound policy with respect to a cost-benefit analysis. Providing a definitive cost-benefit analysis with existing empirical data is impossible because the current national data sets do not provide sufficient information concerning the type, content, and quality of the retirement financial planning seminars the survey respondents attended.[229] But one study of the complete national HRS data set suggests both reason for optimism and a need for further research.[230] This study, which used macro-level data and multiple-regression analysis, found that attendance at a retirement financial planning seminar increased financial wealth significantly, particularly among lower-income and less educated workers.[231]

> Overall, attending seminars appears to increase financial wealth by approximately 18 percent . . . . This effect derives mainly from the bottom of the distribution, where wealth increased by more than 70 percent. The effect is also large for those with least education with increases in financial wealth close to 100 percent. . . .

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226 *See* Helman et al., *supra* note 52, at 18–19 ("Fewer than 1 in 10 workers say they are *very* confident that the Social Security system will continue to provide benefits of at least equal value to the benefits received by retirees today . . . .").

227 2006 ANNUAL REPORTS, *supra* note 3, at 1.

228 *See* discussion *supra* Part II.B (noting that out of the $1.45 billion settlement, the foundation used $100 million as part of the truth℠ campaign).

229 *See* Lusardi, *supra* note 37 (manuscript at 13–14).

230 Lusardi, *supra* note 41, at 167–68.

231 *See id.*

> Results for net worth show a similar pattern. Attending a retirement seminar increases net worth in the sample by approximately 6 percent. Again, the effect is mostly coming from those at the bottom of the net worth distribution. . . .
>
> . . . [T]hese estimates may be a lower bound of the effectiveness of retirement seminars . . . .[232]

The author of this study concluded:

> While the provision of information and the reduction of planning costs could play an important role in improving the financial security of many US households, it should be recalled that only a small number of workers currently attends retirement seminars. Consequently, many remain untouched by employers' efforts to provide financial education. This fact represents an important topic for future research and a challenge for policymakers.[233]

There is much more to be gleaned from further research in this area.[234] But the empirical research indicates that the potential benefits of a public financial literacy and retirement financial planning campaign are likely to far outweigh its costs.[235]

Finally, critics may assert that transforming the role of the Social Security Administration would divert scarce political capital away from other, more ambitious proposals, such as restoring the Social Security system to financial solvency, increasing benefit levels to strengthen the social safety net, and reforming the private employer-sponsored retirement plan system to increase the scope of coverage and boost the level of plan benefits. Yet advocating for a transformation in the role of the Social Security Administration is not "giving up" on other needed changes in national retirement policy. Certainly, some individuals do not have discretionary income, and for them the guaranteed monthly income provided by Social Security is a crucial social safety net. Certainly, other structural and market regulatory changes are needed to strengthen the private employer pension system and to increase the transparency of the financial services industry to unsophisticated investors. In the current political environment, however, the perfect is the enemy of the good. Time is passing, and with it passes the opportunity for young workers to improve their future prospects for a sufficient retirement income through saving and sound financial planning.

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232 *Id.* at 168.
233 *Id.* at 171.
234 *See id.* at 171–72.
235 *See id.*

Conclusion

Social Security benefits were never designed to be one's sole source of retirement income. Due to fiscal constraints, it is likely that Social Security benefits in the future will be less generous when the young workers of today retire. In the future, retirement income security will depend heavily on wealth accumulated during one's working years. The role of the Social Security Administration must be transformed to one of motivating, informing, and educating the young workers of today about retirement financial planning so that they can adequately plan and prepare for a financially secure retirement tomorrow.