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Thank you for this opportunity to share with you my thoughts on defined contribution 401k plans.

We are on the precipice of the greatest retirement crisis in the history of the world. In the decade to come, we will witness tens of millions of elderly Americans slipping into poverty.

Too frail to work, too poor to retire will become the "new normal" for elderly Americans. "Too frail to work, too poor to retire."

Over 77 million aging Baby Boomers are rapidly approaching retirement.

Over the past thirty years 401k defined contribution plans have come to replace traditional defined benefit pensions. Think of Baby Boomers as "the 401k generation" – the first generation to rely upon these plans for their retirement security.

Notice that I have not called 401ks "retirement plans." That's intentional. 401ks were not meant to be retirement plans. They were initially envisioned as a way for management-level people to put aside extra retirement money -- money in addition to their pensions -- like 457 plans for government employees that rely primarily upon pensions for their retirement security. Soon the 401(k) was embraced by big corporations in the 1980s as a replacement for costly pension funds. Suddenly, large companies were able to transfer the burden of funding employees' retirement to the employees themselves.

401ks cannot and will not provide meaningful retirement security for the overwhelming number of workers and certainly not the public employees of the City of Atlanta.

As I recently wrote in an article for Forbes.com, in my expert opinion, 401ks are the biggest investment fraud ever perpetrated upon America's workers. I believe it ought to be a crime to call these plans "retirement" plans. Call them savings plans or rainy day accounts but don't call them retirement plans and mislead workers into believing that 401ks will provide for their retirement security. They won't.

Indeed, according to a 2010 survey, 84% of Americans say it's time for new, improved workplace retirement plans.[1] 84% -- that's a staggering dissatisfaction rate.

Three years ago, on September 10, 2008 my firm issued a satirical voluntary recall of most of the nation's 401k plans. It was simple enough to draft the recall. We used a U.S. Consumer Product Safety Commission recall press release as our model and we asked consumers to immediately take the recalled 401k plan products to their employers or the manufacturers of these products for full refund.

As we stated in the recall, "This recall involves a financial product marketed to America's workers (of all ages) which claimed to provide for their "retirement security." While the product may have some value as a savings vehicle, it will almost certainly not provide for financial security in retirement. Statements that the product will provide retirement security are gross misrepresentations which consumers should disregard."

Why did we issue the recall? Because by 2008, it was apparent to even their most die-hard supporters that the great 401k experiment commencing in the early 1980s, had catastrophically failed. Remember when 401ks were sarcastically referred to as 201ks? While the market has recovered significantly since then, it is still apparent that absent some kind of financial magic, 401ks will not provide for anyone's retirement security.

There's actually a billboard along the interstate near my home in Florida that a gambling casino put up that advertises, "Think of us as your new retirement plan." Winning at a casino or the lottery is about as likely to fund a worker's retirement as a 401k.

Over the past decade, my firm had issued a series of increasingly stern warnings regarding the nation's failed 401k system. As a former attorney with the SEC

[1] 2010 Greenwald Survey ACLI.

regulating mutual funds and later in-house counsel to one of the largest mutual fund complexes, it had long been clear to me (and frankly many other industry insiders) that 401k investors were doomed.

Why were they doomed? Because financial regulators and employers were unconcerned about pervasive conflicts of interest; excessive, hidden fees and wrongdoing that resulted in billions being skimmed from 401k accounts. Lack of adequate employer contributions further ensured that there was simply no way there would be enough in 401ks to fund participants' retirement goals.

But that didn't stop regulators, employers and the mutual fund industry from touting 401ks as "retirement plans" to unsuspecting workers. Fraud of this magnitude, involving trillions, makes the Ponzi scheme of Bernie Madoff look like chicken feed.

The failure of 401ks was foreseeable decades ago and well-known to both employers and investment industry insiders.

For example, a 2008 Annual Survey of 401k Plan Sponsors by Deloitte Consulting (conducted before the market meltdown) found that 80% of employers believed that 401ks were effective in recruiting employees but only 13% believed that the 401k plans they offered would provide retirement security for their workers.

In other words, employers understood that offering a plan that purported to provide for workers' retirement security, without obligating the employer to pay retirement benefits, was helpful in building their businesses. Employers knew that 401ks were an effective recruiting tool. However, employers privately acknowledged that these 401k plans were not sufficient to provide for workers' retirement.

For 30 years employers chose not to share this little secret with the workers.

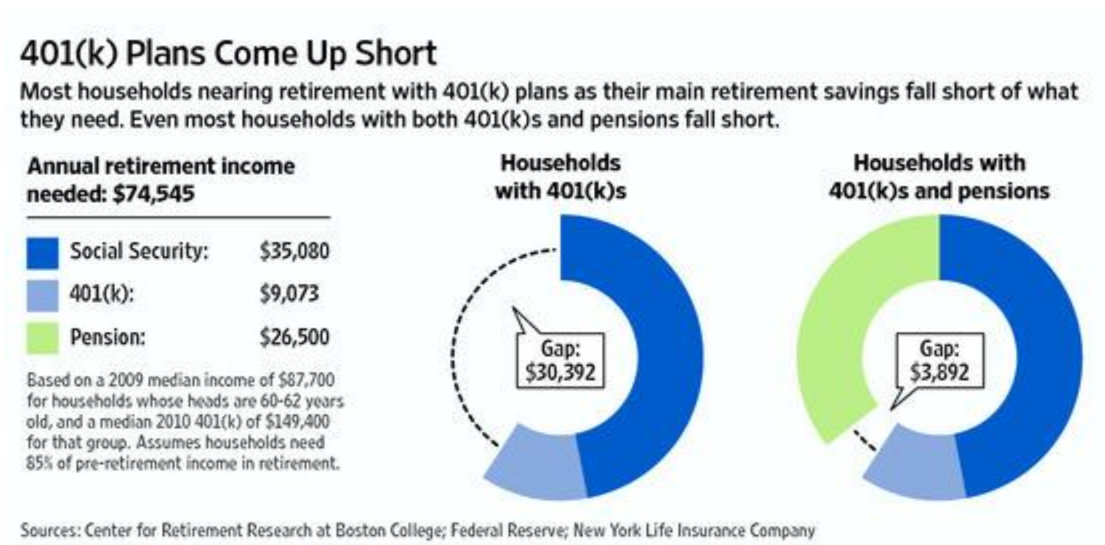
There are countless examples of how the Department of Labor and other regulators failed to protect participants in the nation's 401k plans. In early 2009 my firm issued a definitive research report, Secrets of the 401k Industry: How Employers and Mutual Fund Advisers Prospered as Workers' Dreams of Retirement Security Evaporated which documented industry practices that have played a significant role in creating the defined contribution retirement plan crisis the nation faces today. Recently Lockheed; Boeing; Northup Grumman; General Dynamics; Deere;

Edison International; Bechtel; ABB and Walmart, the largest employers in the world, have been sued regarding their 401ks.

But I am not alone in criticizing 401ks. According to a recent Wall Street Journal article, "401k's are a failure. The 401(k) generation is beginning to retire, and it isn't a pretty sight. The retirement savings plans that many baby boomers thought would see them through old age are falling short in many cases."[2]

Let's talk about some numbers now.

According to the WSJ, "The median household headed by a person aged 60 to 62 with a 401(k) account has $149,000 which is less than one-quarter of what is needed in that account to maintain its standard of living in retirement. Even counting Social Security and any pensions or other savings, most 401(k) participants appear to have insufficient savings. Data from other sources also show big gaps between savings and what people need, and the financial crisis has made things worse."



Some say fixed annuities are the solution to the 401k crisis. Are they? How much of a fixed monthly retirement benefit can a 62 year old lock in with that $149,000 that he has saved over the 30 plus years of his career? Well, if he buys a single premium immediate annuity direct from Berkshire Hathaway,[3] without paying any commissions, that $149,000 will yield 3.99% based upon Berkshire's mortality

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[2] Retiring Boomers Find 401(k) Plans Fall Short, February 19, 2011.

[3] Brkdirect.com

assumptions and the U.S. Treasury yield curve as of April 20, 2011. This investment will provide him with $820.00 every month for as long as he lives beginning June 1, 2011.

$820.00!

That may be better than a stick in the eye but don't count on eating filet mignon very often.

Of course, the fewer years workers have to fund their 401ks, the less likely they are to have accumulated significant balances upon retirement.

If the average worker accumulates $149,000 over thirty years, then workers over 10 years may accumulate only $50,000 or $275.00 per month; over 20 years, $100,000 or $549.00 per month. Do we, as a nation, truly believe that this is the level of retirement security Americans deserve?

Let me conclude my remarks by restating my opening dire warning:

We are on the precipice of the greatest retirement crisis in the history of the world. In the decade to come, we will witness tens of millions of elderly Americans slipping into poverty.

Too frail to work, too poor to retire will become the "new normal" for elderly Americans. If you don't believe me, watch to see who's bagging your groceries. It used to be high school kids. Now it's men and women in their 70s.

401k defined contribution plans are largely to blame for this foreseeable tragedy and forcing public employees into 401ks will only ensure greater misery.

So if you do vote to force your city's public employees into a 401k-type system, at least be honest about it and admit from the get-go that this is no retirement plan.