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I. INTRODUCTION

Retirement security exists "when a worker, especially one on the cusp of retirement, *subjectively* believes that he or she has enough resources to guarantee a standard of living similar to that before retirement—and when, in fact, *objectively*, a full complement of savings in [various forms] exists to guarantee that pre-retirement standard of living."[1] Saved income is a reflection of that readiness[2] and the mother's milk of retirement security.[3] However, many U.S. workers lack enough saved nest-egg or the wherewithal to see

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1. Philip C. Aka et al., Protection Against the Economic Fears of Old Age: Six Micro and Macro Steps for Bridging the Gap in Retirement Security Between Blacks and Whites, 40 VT. L. REV. 2, 2–3 (Fall 2015).

2. *See* SOC. SEC. ADMIN., INCOME OF THE AGED CHARTBOOK 11 (1998), https://www.socialsecurity.gov/policy/docs/chartbooks/income_aged/1998/iac98.pdf (showing that the median retirement income of those with asset income was more than twice as large as that of workers without such income); *Sources of Retirement Income: The Economics Daily*, BUREAU OF LABOR STATISTICS (May 23, 2001), http://www.bls.gov/opub/ted/2001/May/wk3/art03.htm (showing that in 1998 asset income was the third most common source of income for nearly two-thirds of all individuals in retirement).

3. The expression invokes Jesse Unruh, Speaker of the California Assembly from 1961 to 1968, who used the phrase in the context of the influence of money in politics. Unruh famously called money "the mother's milk of politics." Mark A. Unlig, *Jesse Unruh, a California Political Power, Dies*, N.Y. TIMES (Aug. 6, 1987), http://www.nytimes.com/1987/08/06/obituaries/jesse-unruh-a-california-political-power-dies.html.

them through retirement.[4] These employees include low-income workers, some of whom, pre-retirement, actually lived from paycheck to paycheck.[5]

Income level is an important determinant of the proportion of earned money that a worker will allocate to savings.[6] However, savings can be particularly onerous for low-income workers because living expenses take up a large proportion of available resources, often leaving little or no cash to save.[7] For low-income households, a focus on economic survival may compromise the ability to plan for the future to such degree that makes savings a particularly low-priority concern.[8] To complicate matters, compared to high-income earners, low-income workers have *less* access to steady employment[9] as well as to retirement plans.[10]

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4. *See generally* Nari Rhee, *The Retirement Savings Crisis: Is It Worse Than We Think?*, NAT'L INST. ON RET. (Jun. 2013), http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf. This report shows that the typical U.S. family has only a few thousand dollars saved for retirement and that 80% of working families have retirement savings equaling less than their annual income, far below what they need to maintain their standard of living in retirement. Because of this dangerously low level of savings, the U.S. retirement savings deficit is staggering, ranging between $6.8 and $14.0 trillion, depending on the household assets counted. *Id*. The study found that some thirty-eight million working-age households (representing 45% of all households) do not have any retirement account assets. *Id.*; s*ee also* Keith Miller et al., *The Reality of the Retirement Crisis*, CTR. FOR AM. PROGRESS 2 (Jan. 26, 2015), https://cdn.americanprogress.org/wp-content/uploads/2015/01/RetirementCrisis1.pdf (commenting on a survey by the Federal Reserve Systems in 2013 showing that 31% of Americans reported both having no money saved for retirement and lacking a defined benefit pension); Teresa Ghilarducci, *Our Ridiculous Approach to Retirement*, N.Y. TIMES (July 21, 2012), www.nytimes.com/2012/07/22/opinion/sunday/our-ridiculous-approach-to-retirement.html (positing that, in 2010, 75% of Americans nearing retirement age had less than $30,000 in their retirement accounts).

5. Twenty-six percent of the U.S. workforce who earns less than $10.55 an hour fall into the category of low-wage workers. *Demographics of Low-Wage Workers*, RAISE THE MINIMUM WAGE, http://www.raisetheminimumwage.com/pages/demographics (last visited Jan. 21, 2016). Seventy-five percent of these workers are twenty years of age and older. *Id*.

6. Martin Browning & Annamaria Lusardi, *Household Saving: Micro Theories and Micro Facts*, 34 J. ECON. LITERATURE 1797, 1802–04, 1815 (1996).

7. *See* U.S. CENSUS BUREAU, SURVEY OF INCOME AND PROGRAM PARTICIPATION–2008 PANEL, WAVE 10 (2008).

8. MARK SCHREINER & MICHAEL SHERRADEN, CAN THE POOR SAVE?: SAVINGS AND ASSET BUILDING IN INDIVIDUAL DEVELOPMENT ACCOUNTS 305 (2006) (marshalling concrete, evidence-based recommendations to improve policies designed to encourage the poor to save and how to enhance the inclusiveness of such policies); *see generally* Teresa Mauldin et al., *Perceived Barriers to Savings Among Low-to-Moderate-Income Households That Do Not Save Regularly*, 51 J. OF EXTENSION, NO. 5 (Oct. 2013), http://www.joe.org/joe/2013october/pdf/JOE_v51_5rb4.pdf.

9. April Y. Wu & Matthew S. Rutledge, *Lower-Income Individuals Without Pensions: Who Misses Out and Why?* 3 (Ctr. for Ret. Research, Boston College, CRR Working Paper 2014-2, 2014), http://crr.bc.edu/wp-content/uploads/2014/03/wp_2014-2.pdf (reporting that, compared to high-income workers, low-income earners are much more likely to have intermittent employment or to change employers frequently); Ruth Helman et al., *The 2014 Re-*

Some recent inauspicious developments in retirement security, such as the unreliability or insufficiency of Social Security benefits[11] as the sole source of retirement income and the shift in responsibility for retirement preparation from employers to individuals, compound the relative unreadiness that low-income workers confront. The latter is most prominently indicated by the relative eclipsing of defined benefits (DB) by defined contribution (DC) plans. With DB plans, the responsibility for retirement savings is borne by the employer, who controls all portfolio options, and the employee's benefits depend on factors such as salary history and duration of employment.[12] With DC plans, in contrast, the employee assumes all responsibility for his or her retirement.[13] Given that low-wage workers "have

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tirement Confidence Survey: Confidence Rebounds—for Those with Retirement Plans 1 (EBRI Issue Brief No. 397, Mar. 2014), http://www.ebri.org/pdf/briefspdf/EBRI_IB_397_Mar14.RCS.pdf (finding that, compared to their higher-income counterparts, low-income earners are usually susceptible to increased job insecurity that further reduces their retirement saving capabilities).

10. *See generally* April Yanyuan Wu et al., *Why Don't Lower-Income Individuals Have Retirement Savings Plans?*, COMMUNITIES & BANKING (Winter 2015), https://www.bostonfed.org/commdev/c&b/2015/winter/Wu-lower-income-individuals-and-retirement-savings-plans.htm. To make matters worse, eligibility requirements may keep some low-income workers from accessing their employer's retirement benefits. For example, pension regulations permit companies to establish eligibility criteria, such as age and years of service, which can exclude certain workers from a plan. Often, the workers excluded are those at the lower end of the pay scale. *See* Peter Brady & Michael Bogdan, *Who Gets Retirement Plans and Why: An Update*, 17 ICI RESEARCH PERSP. 19, 40 (Mar. 2011), https://www.ici.org/pdf/per17-03.pdf (reporting that among workers whose employers offered a retirement plan in 2009, only 24% of part-time, part-year workers were eligible, compared to 58% of full-time, full-year workers who were eligible; similarly, among workers twenty-one to twenty-nine years of age, 63% participated in retirement plans, compared to 86% participation rate for workers aged forty-five to fifty-four). Since low-income earners are more likely to be younger, part-time workers, they are more likely to be disproportionately represented among ineligible employees. More discussion on low participation in and contribution to retirement plans by low-income workers is saved for Sections II and III, *infra*.

11. "Social Security" is the popular and colloquial name for what is today formalistically the Old-Age and Survivors Insurance, incorporating survivor benefits (payouts to a family in the event of the premature death of a covered worker)= *and* dependent benefits (payouts to the spouse and minor children of a retired worker). The formal name speaks to the transformation of the benefit plan from a retirement program for workers into a family-based economic security program, as a result of some amendments in 1939 to the Social Security Act of 1935, Pub. L. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301–1397mm (2012)). For more discussion on Social Security, *see infra* notes 80, 106–11 and corresponding text.

12. *See* Stephen P. McCourt, *Defined Benefits and Defined Contribution Plans: A History, Market Overview, and Comparative Analysis*, 43 BENEFITS & COMPENSATION DIG. 1, 1 (2006).

13. *Id.* at 6. There is a suggestion that the gap between these two pension plans may be less dichotomous than they appear on the surface. Focusing on 401(k)s, a DC species, one study has posited that workers may "really [be] better off under DC plans" than under DB

less disposable income, after basic expenses, with which to save," low savings are especially troublesome for low-income earners.[14] In contrast, higher-income retirees have a more diverse income profile.[15]

Although income is a poor indicator of how people handle money,[16] having higher income is obviously helpful in accumulating retirement savings for various reasons. For one, compared to low-income workers, higher-income earners have more disposable money to invest in wealth-generating assets.[17] Limited access to finances means that low-income earners usually lack enough capital for investment that could yield them substantial return. This limited access to finances also tends to make them more risk averse compared to higher-income earners,[18] an issue this article will return to in

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plans. *See* Andrew A. Samwick & Jonathan Skinner, *How Will 401(k) Pension Plans Affect Retirement Income?*, 94 AM. ECON. REV. 329, 339–40 (2004). As these scholars elaborate, this is due to the fact that stock market returns for specific investments are largely uncorrelated. Over the worker's career, low rates of return tend to be balanced by higher rates of return. In contrast, DB plans are tied to the final years of an employee's earnings and therefore expose workers to considerable risk if their pay is cut or if they are dismissed. Additionally, DB benefits may be unreliable if a business files for bankruptcy or if a jurisdiction in question (whether state or city) reduces benefits because of funding difficulties. Moreover, unlike DB plans, with DC plans, there are no limits to the benefits a worker can receive; instead, the more the worker invests, the more he or she stands to gain. Those who achieve strong investment performance in their individual account will likely receive substantially higher benefit than what they would have received under a DC plan. *Id.* This said, the reader should keep in mind that the potential advantages of 401(k)s can be eroded by lower contribution rates by the employee, an issue we delve into later in Section II of the article on the role of savings in retirement security. Another reason why the distinction between these two benefit categories should not be overstretched is that many employers match their workers' contribution in DC plans. *See Retirement Plan Types–401(k), 403(b), & 457 Plans and Thrift Savings Plans*, SMART401K, http://www.smart401k.com/Content/retail/resource-center/retirement-investing-basics/retirement-plan-types (last visited Feb. 4, 2016).

14. Rhee, *supra* note 4, at 5.

15. DAN BEATRICE ET AL., FACT BOOK ON RETIREMENT INCOME 2010: A REVIEW OF THE TRENDS AND ACTIVITIES IN THE RETIREMENT INCOME MARKET 16, 18 (2010).

16. *Does Income Equal Wealth? Not Necessarily*, KAHLER FIN. GROUP (Jun. 9, 2014), http://kahlerfinancial.com/financial-awakenings/weekly-column/does-income-equal-wealth-not-necessarily (explaining that, on the one hand, "[m]any people who have high incomes but are heavily in debt might have lifestyles lower than others who make significantly less but have no debt" and on the other hand, individuals with high incomes may "choose to live a lifestyle that is far below what they could afford[,]" putting them in the best position "to build real wealth"); *see also* Stanley Riggs, *Wealthy People Make Different Choices with Their Money than the Rest of Us*, BUS. INSIDER (Jan. 7, 2015, 1:25 PM), http://www.businessinsider.com/how-cash-flows-2015-1 (arguing somewhat similarly).

17. *See* AM. BENEFITS COUNS., AM. COUNS. OF LIFE INSURERS, & THE INV. CO. INST., OUR STRONG RETIREMENT SYSTEM: AN AMERICAN SUCCESS STORY 27 (2013), https://www.ici.org/pdf/ppr_13_strong_retirement.pdf [hereinafter SUCCESS STORY].

18. *See generally Jose* R. Iglesias et al., *Correlation Between Risk Aversion and Wealth Distribution*, 342 PHYSICA A 186 (2004) (finding a correlation between wealth and risk aver-

Section II.C. Secondly, more than their low-income counterparts, higher-income earners might be more likely to possess characteristics such as higher levels of financial literacy that enable them to manage their money more effectively, a topic addressed by this article in Section III.B.[19]

Shortfalls in retirement savings spell dramatic consequences for American families, the national economy, and society, and even more so for low-income workers.[20] Many families may be forced to significantly reduce consumption in retirement and rely heavily on their families, charities, and the government to make ends meet.[21] Increased reliance on family members by retirees could further perpetuate retirement savings shortfalls[22] because the money that could go into retirement savings is used to take care of one's retired relatives. The overall reduction in consumption by a large proportion of the American population could also have negative economic consequences.[23]

Whatever the reason, every worker who retires must save for retirement,[24] and low-income earners are *no* exception. Precisely due to less stable employment and earnings, low-income workers have many good reasons to plan ahead financially for their own retirement.

This article discusses *why* low-income workers need to save money to prepare for retirement and *how* they can achieve those savings using orthodox and less-than-conventional means in the retirement security playbook. Given the importance of retirement planning on the lives of Americans and the economy as a whole, and given the recent retirement wealth shortfalls that have seen many retirees enter retirement with little or no savings, studies on retirement planning are especially crucial. What individual and collective steps must low-income workers take to promote their chances of

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sion); William B. Riley Jr. & K. Victor Chow, *Asset Allocation and Individual Risk Aversion*, 48 FIN. ANALYSTS J. 32, 32 (1992).

19. RAY BOSHARA ET AL., THE DEMOGRAPHICS OF WEALTH: HOW AGE, EDUCATION AND RACE SEPARATE THRIVERS FROM STRUGGLERS IN TODAY'S ECONOMY: ESSAY NO. 1 ON RACE, ETHNICITY, AND WEALTH 9 (2015), https://www.stlouisfed.org/~/media/Files/PDFs/HFS/essays/HFS-Essay-1-2015-Race-Ethnicity-and-Wealth.pdf.

20. Consumer spending is linked with economic growth, thus the economy suffers when spending is down. Firabi Ronnasi, *How Consumer Spending and Economic Growth Is Linked*, ELITE WEALTH MGT. (July 21, 2014), http://elitewm.com/consumer-spending-economic-growth-linked; SUCCESS STORY, *supra* note 17.

21. *See generally* Miller et al., *supra* note 4.

22. *See id.* (analyzing Figure 7 on the national retirement risk index).

23. *See* Michael D. Hurd & Susann Rohwedder, *Effects of the Financial Crisis and Great Recession on American Households* 4 (NBER Working Paper No. 16407, Sept. 2010), http://www.nber.org/papers/w16407 (commenting, inter alia, on the reductions in household spending observable in the period from November 2008 to April 2010 covered by the study).

24. *See* Rhee, *supra* note 4, at 5 (stating that "[t]he reality is that every working American needs to accumulate retirement assets throughout [his or her] entire career, no matter [his or her] wage level or whether [he or she] work[s] full- or part-time").

retiring with dignity?[25] And what role does public policy contribute to these processes?

These are some of the questions this article addresses. The article covers the "traditional" techniques, like the three legs of retirement security of Social Security, employer-sponsored benefit plans, and personal assets; however, this article also ranges beyond those steps to include "non-traditional" techniques geared to the retirement security needs of low-income workers, like financial education and literacy, as well as homeownership. This article argues that, even with the rising price tag of a comfortable retirement,[26] low-income workers can enjoy a standard of living close to their pre-retirement standard, if they plan well. Going further, the main import of this article is that, although income plays a major role in retirement savings, individual behavior changes and targeted, larger-scale policy changes in these traditional and nontraditional techniques can facilitate the accumulation of income necessary for retirement security for all workers, particularly low-income employees.

This article has two main sections in addition to this introduction and a conclusion. As a background issue, Section II explores the role of savings and investment in retirement security and the nature of the problem low-

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25. For us, the notion of dignified retirement invokes "[t]he right to adequate protection from the economic fears of old age" that President Franklin D. Roosevelt propounded in 1944 in the course of a State of the Union Message to Congress. FDR proposed a "Second Bill of Rights," complementary to the original Bill of Political Rights of 1791. The bill attempted to establish a new basis of security and prosperity for all Americans, irrespective "of station, race, or creed," that included "[t]the right to adequate protection from the economic fear of old age." President Franklin D. Roosevelt, The Economic Bill of Rights, State of the Union Message to Congress (Jan. 11, 1944), http://www.ushistory.org/documents/economic_ bill_of_rights.htm.fdrlibrary.marist.edu/archives/pdfs/state_union.pdf (transcript available in Franklin D. Roosevelt Presidential Library and Museum). FDR declared:

> We cannot be content, no matter how high that general standard of living may be, if some fraction of our people . . . is ill-fed, ill-clothed, ill-housed, and insecure . . . . In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed. Among these are . . . *The right to adequate protection from the economic fears of old age* . . . .

Id. (emphasis added).

26. *See* Dan Kadlec, *Sizing up the Big Question: How Much Money Do You Need to Retire?*, TIME (Feb. 11, 2013), http://business.time.com/2013/02/11/sizing-up-the-big-question-how-much-money-do-you-need-to-retire/. Some benefits consultants advise that by age sixty-five an average full-career worker save about 8 times his or her annual pay, while others recommend ten, eleven, twelve, or eighteen times. *Id.; See also* Ghilarducci, *supra* note 4 (estimating the amount needed for comfortable retirement as twenty times the annual income). Even at only ten times, for a worker whose final pay is say $45,000 a year, that would still be a hefty price tag of about $450,000 of saved income.

income workers face with these tools. Section III follows up by analyzing three steps—employer-sponsored benefit plans, financial education and literacy, and homeownership—that low-income workers can follow to prepare for retirement as well as the public policy implications of these steps.

II. THE ROLE OF SAVINGS AND INVESTMENTS IN RETIREMENT SECURITY AND THE SPECIAL DIFFICULTIES LOW-INCOME WORKERS FACE WITH THESE TOOLS

Accumulated wealth is a function of an individual's net worth, the difference between a person's assets, or what he or she *owns*, and liabilities, or what he or she *owes*[27]—it is, as indicated earlier in this article, the mother's milk of retirement security.[28] Savings and investments are critical tools in this process. They are asset-building means that all income earners, whether low, middle, or high, ineluctably need to promote their retirement well-being. Although interrelated, the two terms are *not* identical as shown below.

Savings create monies for easy access and use. Usually, savings involve financial institutions, such as banks and credit unions. With savings, monies are either deposited in regular savings accounts, money market accounts, or certificates of deposit where they yield interest, or they are deposited in checking accounts to facilitate safe and convenient day-to-day transactions.[29] Although savings behavior does not necessarily have to involve financial institutions, savings tied to financial institutions is precisely the type stressed in this article. Savings in a financial institution have the advantages of being a safe and convenient gateway to mainstream financial instruments that enable the saver to make the most of money at hand. Investments are means by which an investor grows his or her assets.

Investment instruments typically include real estate, stocks, bonds, and mutual funds.[30] Part of what makes investments a key source of retirement

27. *See* Riggs, *supra* note 16.

28. *See* Unlig, *supra* note 3 and accompanying text.

29. For more, see the discussion below, *infra* notes 34–36, on the distinction between general savings accounts and retirement security accounts.

30. "Real estate" means "an interest in land," specifically ownership interest in a home within the context of this article. Ian Woychuk, *Exploring Real Estate Investments: What Is Real Estate*, INVESTOPEDIA, http://www.investopedia.com/university/real_estate/real_estate1.asp (last visited Jan. 19, 2016). Returns from real estate exist in the form of income. A stock is a share in the ownership of a company. It represents a claim on a company's assets and earnings, something indicated by the fact that a stock is sometimes referred to as "equity." *Stocks Basics: What Are Stocks?*, INVESTOPEDIA, http://www.investopedia.com/university/stocks/stocks1.asp (last visited Jan. 19, 2016). Returns from stock are in the form of dividends. A bond is a debt form of investment wherein an investor loans money to an entity, whether corporate or governmental, which borrows the money for a defined period of

income is their tax advantages.[31] Long-term capital gains on sales of investment held for more than one year are subject to lower tax rate than ordinary income.[32] In other words, gross work income yields *less* net return than the same amount of gross investment income. This concept becomes particularly important as an individual gets older and regular work becomes more difficult.

This last statement leads imperceptibly to the nature of the relationship between savings and investment. Savings in a financial institution introduces the saver to other financial products that can include investment opportunities. Many families begin with savings to accumulate enough money to invest in higher-yielding assets. Investments not only allow the saver a means of increasing his or her assets, but they also often yield higher returns than the typical savings outlets. Their downside though, compared to savings, is that money is not readily accessible.[33]

This article addresses four more salient and interrelated issues needed to complete this conversation on the role of savings and investments in retirement security: (A) the distinction between general savings accounts and

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time at a variable or fixed interest rate. Bonds are used by companies, municipalities, states, and foreign governments to raise monies they need to finance a variety of projects and activities. Owners of bonds are creditors of the issuer. *Bond*, INVESTOPEDIA, http://www.investopedia.com/terms/b/bond.asp?optm=term_v1 (last visited Jan. 19, 2016). Returns from bond come in the form of interest. A mutual fund is a collection of stock and/or bonds, specifically a company that brings together a group of people and invests their money in securities, such as stocks and bonds. Under this arrangement, each investor owns shares, which represent a portion of the holdings of the fund. *Mutual Funds: What Are They?*, INVESTOPEDIA, http://www.investopedia.com/university/mutualfunds/mutualfunds.asp (last visited Jan. 19, 2016). Investors make money from a mutual fund in a variety of ways that includes payoffs in dividends from stocks and interest from bonds, and capital gains or profit from the sale of securities. Mutual funds come with certain benefits that include professional management of invested funds and diversification (which occurs when investment risk is spread out such that a loss in any particular investment is minimized by gains in others), among other benefits. *Id.*

31. *See* BERNARD H. ROSS & MYRON A. LEVINE, URBAN POLITICS: POWER IN METROPOLITAN AMERICA 49 (Thomson Wadsworth ed., 7th ed. 2006) (commenting on "[t]he Hidden Urban Policy of the Federal Tax Code"). As Professors Ross and Levine elaborate, massive tax deductions by the federal government to home owners "give great benefits to wealthy and middle-class home-owners, not to renters . . . or the poor . . . . The more expensive the house and the greater the mortgage payments and local taxes, the more these federal tax breaks mean to a home-owner." *Id.* at 50. "These tax write-offs," they added, "have enabled millions of middle-class Americans who could not otherwise afford to do so to buy a home of their own. In effect, the government helps homeowners pay the costs of the home." *Id.*

32. LEONARD E. BURMAN, THE LABYRINTH OF CAPITAL GAINS TAX POLICY: A GUIDE FOR THE PERPLEXED 15 (1999).

33. For more on the relationship between savings and investments, see the discussion below, *infra* notes 37–57 and accompanying text, on the advantages of owning and operating a bank account by low-income workers.

retirement savings accounts; (B) the advantages that accrue to low-income earners when they own a bank account; (C) the influence of risk tolerance on retirement savings; and (D) the effect of participation in a retirement savings account on retirement security.

A. Distinction Between General Savings Accounts and Retirement Savings Accounts

Whether employment-based or individually held, retirement savings accounts provide resources to an overwhelming majority of retired or near-retired households.[34] Retirement savings accounts operate similarly to general savings accounts in the sense that money is accumulated and then used to invest in assets that yield returns—which could or could not go into retirement. But that is where the similarity ends. Compared to general savings accounts, retirement savings accounts have an advantage related to tax benefits that their non-retirement counterparts lack. For those with employment-based accounts, like 401(k) or 403(b) accounts, money is withdrawn from the worker's paycheck before taxes, at a lower rate than income tax, thus lowering the individual's tax burden.[35] In contrast, contributions into a Roth IRA are *not* tax-deductible, but distributions are tax-free, as long as the employee is at age fifty-nine and one-half years old and has been in the plan for at least five years.[36] Whether tax-deductible, in the case of 401(k) or 403(b) accounts, or tax-free, in the case of distributions, with respect to Roth IRA accounts, these retirement plans represent an improvement from general savings accounts for a worker seeking to save for retirement.

B. Advantages of Owning a Bank Account

Many low-income workers are "unbanked," meaning they do not own a bank account.[37] About ten million households are either entirely unbanked

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34. *See* SUCCESS STORY, *supra* note 17, at 3.

35. *See* Kevin Mercadante, *Seven Most Popular Employer-Sponsored Retirement Plans*, INVESTOR JUNKIE (Feb. 24, 2015), http://investorjunkie.com/39001/types-employer-sponsored-retirement-plans/.

36. *Id.*; *see also* Eric M. Engen & William G. Gale, *The Effects of 401(k) Plans on Household Wealth: Differences Across Earning Groups*, BROOKINGS INST. (2000), http://www.brookings.edu/views/papers/gale/20000801.pdf; Julia Thomson, *What Does Roth Stand for in Roth IRA?*, SYNONYMS, http://classroom.synonym.com/roth-stand-roth-ira-24296.html (last visited Feb. 4, 2016). At retirement, the benefits accrued from these accounts can be received as a lump sum of money or equal payments over a specified number of years or can be used to purchase an annuity for a lifetime benefit. For more on these benefit plans, see *infra* note 70 and accompanying text.

37. NAT'L POVERTY CTR., ACCESS TO FINANCIAL SERVICES, SAVINGS, AND ASSETS AMONG THE POOR, POLICY BRIEF NO. 13 (2008).

or at least underbanked (i.e., individuals who do not sufficiently use bank services).[38] For their financial needs, individuals in these households rely on alternative financial services where available, such as payday loans, rent-to-own agreements, pawnshops, refund anticipation loans, non-bank check cashing, money orders, and money transfers—what one study appropriately dubbed "fringe banking."[39]

Several seemingly valid reasons exist why many low-income households choose to remain "unbanked." Financial institutions frequently require credit checks to open an account, set high minimum account balances, and have high overdraft fees.[40] These requirements may seem a bit daunting for individuals who live from paycheck to paycheck. Added to these requirements is the fact that some government programs unwittingly discourage savings. For example, some public benefit programs assert limits as part of eligibility criteria—requirements that can work to discourage households that depend on such benefits from saving.[41] Another reason that many low-income earners do not own bank accounts is a lack of experience and understanding that may have been compounded by a lack of financial products with easy-to-read information and a simple explanation of benefits.[42]

These are all points well taken. However, operating a savings account comes with advantages that outweigh these downsides. For one thing, sav-

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38. *Symposium on Tapping the Unbanked Market*, FED. DEPOSIT INS. CORP. (last updated Feb. 24, 2004), http://web.archive.org/web/20110104000424/http://www.fdic.gov/consumers/community/unbanked/tumagenda.html; ASSAF A. SHTAUBER, THE EFFECTS OF ACCESS TO MAINSTREAM FINANCIAL SERVICES ON THE POOR: EVIDENCE FROM DATA ON RECIPIENTS OF FINANCIAL EDUCATION 1 (2013), http://www.russellsage.org/sites/all/files/Shtauber.WorkingPaper.June2013.pdf; MATT FELLOWES & MIA MABANTA, BANKING ON WEALTH: AMERICA'S NEW RETAIL BANKING INFRASTRUCTURE AND ITS WEALTH-BUILDING POTENTIAL 3–4 (2008), http://www.brookings.edu/~/media/research/files/reports/2008/1/banking-fellowes/01_banking_fellowes.pdf. Some banks are creatively targeting this population without bank accounts. Such is the size of this market that some financial institutions now creatively target them. *See* Anita Hamilton-Norcross, *Profiting from the Unbanked*, TIME (Aug. 16, 2007).

39. *See* JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR 1 (1994).

40. NAT'L POVERTY CTR., *supra* note 37.

41. Mauldin et al., *supra* note 8.

42. ELAINE KEMPSON & ANDREA FINNEY, SAVING IN LOWER-INCOME HOUSEHOLDS: A REVIEW OF THE EVIDENCE 36 (2009), http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc0909.pdf (focusing on the United Kingdom). In addition, increased closing down by some banks of supposedly cost-inefficient local branches may create geographic and cost barriers and even psychological barriers for low-income earners that can impede use of banking services. *Id.* at 32. Low-income earners living in areas with a high number of bank closures may develop a mistrust of commercial providers for any number of reasons. *Id*. at 29, 32.

ings accounts *increase* the propensity to save by low-income earners.[43] Moreover, operating a bank account is associated with a range of assorted financial benefits that include lowered likelihood of payment delinquency and gains in credit scoring, without which low-income workers have difficulty building the history and credit score necessary to qualify for a loan from a financial institution.[44]

In contrast, low-income workers without bank accounts must rely on high-cost alternative financial services, such as payday lending, which charges interest rates at an average of twenty-five to thirty times higher than those charged by mainstream financial institutions[45]—an occurrence that leads to debt accumulation to the detriment of savings for retirement security.[46] To cite but one example, low-income workers without a checking account spend about $40 in fees per payroll check at check-cashing services[47] that can be avoided by opening a low-cost checking account at a financial institution.

To encourage savings, low-income workers can be provided with simple, loss-free, and accessible savings accounts that accommodate small deposits.[48] The availability of well-known and trusted providers with local outlets can also improve savings among low-income workers.[49] This is because low-income earners generally want to ensure that their money is going to be there when they need it, a factor that explains their preference for financial institutions that are household names.[50] Given their hypersensitivity

43. Michael Sherraden & Michael S. Barr, *Institutions and Inclusion in Saving Policy*, *in* BUILDING ASSETS, BUILDING CREDIT: CREATING WEALTH IN LOW-INCOME COMMUNITIES 286, 303 (Nicolas P. Retsinas & Eric S. Belsky eds., 2005).

44. SHTAUBER, *supra* note 38, at 4, 11–12.

45. FELLOWES & MABANTA, *supra* note 38, at 6.

46. *See* CASKEY, *supra* note 39, at 6. Also, households with little or no savings are often forced to assume additional credits and, therefore, may be unable to improve on their debt to income ratio sufficiently to gain access to mainstream financial instruments. *See id.*

47. FELLOWES & MABANTA, *supra* note 38, at 3 ("Among the households that lack a checking account, [52%] include at least one full-time worker, costing the household an average of $40 per payroll check to use a non-bank check casher.").

48. *See generally* SHARON COLLARD ET AL., PROMOTING FINANCIAL INCLUSION: AN ASSESSMENT OF INITIATIVES USING A COMMUNITY SELECT COMMITTEE APPROACH (2003); THE CONSUMER COUNCIL, THE FAREPAK COLLAPSE NORTHERN IRELAND SAVERS' STORIES (The Gen. Consumer Council for N. Ir., 2007), http://www.consumercouncil.org.uk/publications/farepak-collapse--northern-ireland-saver-s-stories (an account of how about 1200 people lost their savings collectively amounting to 480,000 pound sterling when Farepack, a credit union in the United Kingdom, went under).

49. COLLARD ET AL., *supra* note 48; *see generally* KAY DAYSON, IMPROVING FINANCIAL INCLUSION: THE HIDDEN STORY OF HOW BUILDING SOCIETIES SERVE THE FINANCIALLY EXCLUDED (2004) (focusing on the United Kingdom); ELAINE KEMPSON & CLAIRE WHYLEY, KEPT OUT OR OPTED OUT? UNDERSTANDING AND COMBATING FINANCIAL EXCLUSION (1999) (focusing on the United Kingdom).

50. KEMPSON & WHYLEY, *supra* note 49.

to exploitation by financial institutions, low-income earners also prefer to deal with organizations they feel understand their financial circumstances.[51] The availability of financial organizations with local presence can also be beneficial, given the pains and expense of doing business with bank offices located long distances away from the residences or places of work of low-income households.[52] Equally beneficial are innovations like mobile and internet banking. Last but not least governmental regulations like the Plain Writing Act (PWA) are helpful, designed to help consumers understand product features offered by financial institutions and optimize utilization of those financial products.[53] Sponsored by the Consumer Financial Protection Bureau (CFPB)[54] in an attempt to mitigate the economic and financial difficulties stemming from the Great Recession that hit the United States from 2007 to 2009,[55] the PWA mandates all federal agencies "use plain language in documents that: are necessary for obtaining information about a federal government benefit or service or filing taxes; provide information about a federal government benefit or service; or explain to the public how to comply with a requirement that the federal government administers or enforces."[56]

C. Influence of Risk Tolerance on Retirement Savings

To reap substantial returns from investments, individuals need to take a certain level of risk. Risk tolerance is often associated with higher investment yield.[57] Returns from investment in the form of interest and dividends

51. *Id*.

52. *See* BLDG. SOC'Y'S ASS'N, THE INDIVIDUAL'S SAVING DECISION (2007) https://www.bsa.org.uk/document-library/information/publications/theindividual-ssaving decision.pdf (reporting that product features like higher interest rates, flexibility, easily understood account terms, and readily accessible professional advice on financial products were important factors in encouraging saving among low-income earners).

53. Plain Writing Act of 2010, Pub. L. No. 111-274, § 3, 124 Stat. 2861, 2861 (Oct. 13, 2010); *see also* Barbara S. Mishkin, *CFPB Issues 2015 Plain Writing Act Compliance Report*, CFPB MONITOR (Aug. 3, 2015), https://www.cfpbmonitor.com/2015/08/03/cfpb-issues-2015-plain-writing-act-compliance-report.

54. The CFPB is an independent consumer financial regulatory and enforcement agency created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1383 (Jul. 21, 2010). For more on this law, see *infra* note 132 and accompanying text.

55. *See infra* note 129 and accompanying text.

56. Mishkin, *supra* note 53.

57. *See* Iglesias et al., *supra* note 18 (finding a correlation between wealth and risk aversion); Riley Jr. & Chow, *supra* note 18, at 32 (showing "that relative risk aversion decreases as one rises above the poverty level and decreases significantly for the very wealthy").

are more robust compared to yields from traditional saving methods.[58] Compared to their high-income counterparts, low-income workers have a low tolerance for risk. Wealthier retirees have more diverse portfolios of financial assets.[59] In contrast to households with low net-worth, which tend to predominantly own cash or cash-equivalent financial assets, wealthier retirees also own more stocks, mutual funds, cash value life insurance, and other financial assets.[60]

Low-income workers tending to be more risk averse in investing is understandable. Individuals who make little money are not likely to play spendthrift with what little they have. As indicated before, compared to high-income earners, low-income workers have limited access to finances that tend to make them more risk averse.[61] Plus, the risk of investment failure is real, not hypothetical. The losses in the stock market arising from the Great Recession that many seniors endured in 2008[62] are a stark reminder that no one is insulated from investment losses.[63] However, there can be no gain where there is no venture. Taken too far, risk adverse investment behavior is likely to result in meager financial gains and is a poor long-term strategy for retirement savings.

Since low-income workers are less likely to invest in assets that involve risk, these individuals need access to education about the potential long-term benefits from investment. Low-income workers often do not understand methods of protecting against risk and do not have access to finan-

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58. *See* BEATRICE ET AL., *supra* note 15, at 18 (finding that in 2010 among retiree households earning over $100,000, 90% derived part of their retirement income from interest and dividends from investment, compared to only 39% of households earning less than $25,000). Similarly, retirees earning less than $25,000, on average, received only about $386 from interest and dividends, compared to retirees earning greater than $100,000 who received an average of $20,194 from interest and dividends. *Id*. For example, stocks are one of the riskiest investments, but they also tend ultimately to yield higher returns than other investments. *See* Jesse Bricker et al., *Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances*, 100 FED. RES. BULL., no. 4, at 3 fig.2 (Sept. 2014), http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf (citing data from the Board of Governors of the Federal Reserve System Survey of Consumer Finances showing that in 2014, 90% of the highest income earners had direct or indirect holdings in stock, compared to only about 30% of low-income earners).

59. BEATRICE ET AL., *supra* note 15, at 20.

60. *Id.* at 18.

61. *See supra* note 18 and accompanying text.

62. For more on this economic and financial downtime, see *infra* note 129 and accompanying text.

63. MCKINSEY & CO., RESTORING AMERICANS' RETIREMENT SECURITY: A SHARED RESPONSIBILITY 18 (2009), http://www.retirementmadesimpler.org/Library/Retirement_Security.pdf. Due to those losses, "[t]he ten million Americans who will be entering retirement in the next five years have incurred an average retirement portfolio loss of $20,000 per household." *Id*. Small wonder that "[t]he magnitude of this loss has triggered a renewed appetite for market risk hedging products, including principal protection and guarantees." *Id*.

cial advisors to help them properly protect themselves through diversification. With proper financial advising, even those with little money to invest can minimize risk without necessarily reducing returns. Additionally, savers who are risk averse are encouraged to keep some of their retirement assets in life annuities, and if they do not have any intention to leave some part of their wealth as inheritance for their children or other relatives, they are encouraged to annuitize all of their retirement wealth.[64] Annuities are particularly attractive in that they offer retirees the opportunity to insure against the risk of outliving their other assets by exchanging these assets for a lifelong stream of guaranteed income.[65]

D. Effect of Participation in Defined Contribution Plans on Retirement Security

The focus in this subsection will be on individual retirement accounts (IRA) subsumable under DC plans.[66] Discussion on defined benefit plans, to the extent it occurs in this article, is saved for Section III, which deals with practical steps for promoting retirement security for low-income workers. The problem in this subsection is "retirement savings inertia," evidenced by low participation and low contribution in benefit plans that afflict many low-income people.[67] Low participation means that low-income workers underutilize or deny themselves enough access to these plans, while low contribution means that low-income workers do not contribute enough.[68] Low-income workers typically include the categories of workers an IRA would cover: self-employed, seasonal or contract workers, and individuals who work for small businesses or frequently change jobs for whom employment-based accounts are either unavailable or not ideal.[69] Although DC plans

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64. *See* RICHARD W. JOHNSON ET AL., ANNUITIZED WEALTH AT OLDER AGES: EVIDENCE FROM THE HEALTH AND RETIREMENT STUDY 3 (2004), http://www.urban.org/research/publication/annuitized-wealth-older-ages; *see also* Menahem Yaari, *Uncertain Lifetime, Life Insurance, and the Theory of the Consumer*, 32 REV. ECON. STUD. 137, 140 (1965). Annuities are contracts with insurance companies for a steady stream of income in retirement until the death of the beneficiary. JOHNSTON ET AL., *supra* note 64, at 3.

65. JOHNSTON ET AL., *supra* note 64, at 1.

66. The IRA was created by the Employee Retirement Income Security Act (ERISA) of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), and by 2012 accounted for more than one-quarter of the total U.S. retirement assets totaling approximately $5.7 trillion. SUCCESS STORY, *supra* note 17. Congress created the IRA as a retirement savings vehicle for people otherwise not covered by a company plan, such as those who are contract or self-employ workers, persons who work for small businesses, or frequently change jobs. *Id.*

67. MCKINSEY & CO., *supra* note 63, at 15.

68. *Id.*

69. *See supra* note 66.

come in many shapes and forms, the most popular by far these days is the 401(k).[70]

One important study released in 2009 found that more than "one-third of households with access to a qualified retirement plan," including low-income ones, "do not take advantage of it."[71] In addition to participating at lower rates, low-income workers tend to contribute a lower percentage of their income to retirement plans. For many years, up to the date of the publication of the McKinsey report in 2009, the average voluntary contributions to DC plans remained low: 7 to 8% of pre-tax income, remaining unchanged

70. *See* Engen & Gale, *supra* note 36, at 1. Under the 401(k) arrangement, workers contribute a portion of their salaries to the plan, and if they choose to put those contributions in a traditional 401(k), it is not taxed until they withdraw the money, thus allowing their investments to grow over time without being taxed. But they pay penalties if they take out the money before retirement age, as defined by the plan. As an added bonus, many employers match some of the contributions. *Id*. In the early 1980s, 401(k) plans were available at a handful of large companies, such as Johnson and Johnson (where this system was first implemented by a benefits consultant), PepsiCo, and Honeywell. Subsequently, these plans became so popular and widespread that more than 90% of private employers offered them. *See* Tom Anderson, *Your 401(k): When It Was Invented—and Why*, LEARNVEST (July 3, 2013), www.learnvest.com/knowledge-center/your-401k-when-it-was-invented-and-why/. 401(k) plans have an interesting (accidental) history. They are named after a section of the Internal Revenue Code, § 401(k) of the Revenue Act enacted by Congress in 1978, which allowed employees to avoid being taxed on a portion of income that they decided to receive as deferred compensation, rather than direct pay. Actually the idea was to limit executives at some companies from having too much access to the perks of cash-deferred plans. "The accidental birth of the 401(k) is credited to Ted Benna, a benefits consultant, who, in 1980, used his interpretation of the law to create a 401(k) plan for his own employer, Johnson Companies, that allowed full-time employees to fund accounts with pre-tax dollars and matching employer contributions. Benna then asked the Internal Revenue Service to change some proposed rules under the law, which the agency did in 1981, leading ultimately to the widespread adoption of 401(k) plans by employers in the early 1980s." *Id*. "I knew it was going to be big, but I was certainly not anticipating that it would be the primary way people would be accumulating money for retirement 30 plus years later." *Id.* Besides 401(k)s, other well-known DC plans include Roth 401(k), 403(b), and 457. *See* Mercadante, *supra* note 35. "Contributions into a Roth 401(k) are not tax-deductible," but "distributions from the plan are tax-free, as long as the employee is at least 59½ years old, and has been in the plan for at least five years." *Id*. Also, "403(b)s are virtually identical to 401(k) plans, except that they are designed for non-profits, such as public school systems, hospitals, home health service agencies, and churches." *Id*. 457s are 401(k)s for state and local government employees. *Id.*

71. MCKINSEY & CO., *supra* note 63, at 15. Specifically, only 27% of workers with incomes of less than $30,000 with access to qualified plans participated, compared to 63% of other workers. *Id.* at 16; *see also* Craig Copeland, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends* 9 (EBRI Issue Brief No. 392, Nov. 2013), https://www.ebri.org/pdf/briefspdf/EBRI_IB_011-13.No392.Particip.pdf (showing that only 48.6% of respondents worked for an employer who sponsored a plan and, of the 48.5% with access, only 39.4% participated in a plan). A larger problem here is that, compared to citizens of other industrialized countries, Americans do not save enough. For example, in Germany, the rate is 12%, compared to 5% in the United States, even as the debt burdens of Americans as a percentage of disposable income has gone up. MCKINSEY & CO., *supra* note 63, at 15.

over the remaining ten years,[72] with low-income households contributing on average "at rates 1.5 to 2 percentage points below their higher-income counterparts."[73] The study noted that often many households "view IRAs as a rollover [device] for other retirement saving plans rather than an additional opportunity to save."[74] And to compound an already bad situation is the problem of employee withdrawals from DC plans upon leaving a job, something known as leakage.[75] According to the study, "[l]eakage disproportionately impacts low-income households, who represent approximately 70% of the lump-sum distributions not reinvested in the retirement system, and is a major factor in their savings gap."[76]

One reason for lower contribution rates among low-income earners is obviously the fact that their daily needs take up a large proportion of their income. For many low-income earners, contribution to an employment-based retirement plan means reducing consumption or increasing debt.[77] But again, anyone who retires must save for retirement. As with owning a bank account and more tolerance of risk, participation and contribution is one facet where more education on financial issues, especially related to retirement security, would be helpful. This and other steps form the focus of Section III.

III. THREE STEPS TO RETIREMENT SECURITY FOR LOW-INCOME WORKERS

This section highlights the three steps designed to promote retirement security for low-income workers: employer-sponsored benefit plans, financial education and literacy, and homeownership.[78] Changing the world is as

72. MCKINSEY & CO., *supra* note 63, at 15. The report poignantly observed that while this rate could be "adequate for an individual who consistently contributes from age 30 to 65, many Americans start saving after 30 and retire at 62, an occurrence which leaves them well short of their needs." *Id*. at 15–16.

73. *Id.* at 16.

74. *Id.*

75. *Id.*

76. *Id*. at 16–17.

77. Bradley T. Heim & Shanthi S.P. Ramnath, *The Impact of Participation in Employment-Based Retirement Savings Plans on Material Hardship*, J. PENSION ECON. & FINANCE 1, 4 (2015), http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9627086.

78. The three techniques highlighted here are meant to be illustrative, rather than exhaustive. For example, the list does not include *education*, a macro tool outside the traditional tools of Social Security, employer-sponsored benefit plans, and personal assets for building incomes necessary for a comfortable retirement; that was covered in our prior article. *See* Aka et al., *supra* note 1, at 48–54 (proposals for "reducing the disparity between Blacks and Whites in Education"). Nor does it include healthcare. *See id.* at 55–61 (proposals for "reducing the disparity between Blacks and Whites in healthcare"). In short, we recommend that readers seeking our comprehensive statement on this matter of retirement savings for low-

critical as interpreting it.[79] And back to the Social Security Act of 1935,[80] government policy has played an important role in shaping retirement security in the United States.[81] Accordingly, the steps discussed are designed as measured and practical solutions to the savings crisis that low-income workers face. Diversification of portfolio is common advice that financial advisers provide to savers who hold their assets in stocks to help these savers reach their long-term financial goals while minimizing risks.[82] The same advice applies with respect to retirement savings. As United States Treasury Secretary Jacob Lew recently indicated, "[i]n order for people to have a secure, comfortable retirement, they're going to need a combination of" benefit plans.[83] Accordingly, the steps analyzed here range beyond any one "leg"

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income workers, many of whom incidentally are minority peoples, read our earlier piece and this one conjunctively.

79. Karl Marx once commented on how philosophers "only" interpret the world when "the point" should be "to change it." *Karl Marx*, Stanford Encyclopedia of Philosophy, UNIV. OF STANFORD (updated Nov. 30, 2015), http://plato.stanford.edu/entries/marx/#2.4 (quoting thesis 11 of Marx's "Theses on Feuerback").

80. Social Security Act, Pub. L. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C., §§ 301–1397mm (2012)). The bill was signed into law by President Franklin D. Roosevelt on August 14, 1935. Leading up to that moment, the House of Representatives approved the legislation on August 8 and the Senate the next day on August 9. The law comprised ten titles, including grants to states for old-age assistance, federal old-age benefits, grants to states for unemployment compensation administration, grants to states for aid to dependent children, grants to states for maternal and child welfare, grants to states for aid to the blind, and taxes with respect to employment. *Id.*

81. *See generally* WILLIAM G. GALE ET AL., PENSIONS AND PUBLIC POLICIES (2004). This may sound paradoxical or counter-intuitive for a capitalist system built on private initiative. However, it sits well with capitalism. Economist Adam Smith (1723–1790) expounded and defended a *laissez faire* capitalist system embedded in the "invisible hand" of market forces. TERENCE BALL ET AL., POLITICAL IDEOLOGIES AND THE DEMOCRATIC IDEAL 62, 63 (2014). "By pursing his own interest," he argued, the merchant or trader "frequently promotes that of the society more effectually than when he really intends to promote it." *Id.* Yet he supported regulation of certain sectors of the economy, such as banking, to prevent greed and abuses in the marketplace. *Id.* at 63–64. Not stopping there, Smith advocated for governmental provision of public works meaning, infrastructure to facilitate commerce. *Id.* at 64.

82. *The Importance of Diversification*, INVESTOPEDIA, http://www.investopedia.com/articles/02/111502.asp (last visited Jan. 27, 2016). "Diversification is a technique that reduces risk by allocating investments among various financial instruments, industries and other categories. It aims to maximize return by investing in different areas that would each react differently to the same event." *Id.*

83. Charisse Jones, *Launching Nationwide, MyRA Offers Free Way to Save for Retirement*, USA TODAY (Nov. 4, 2015, 2:15 PM), http://www.usatoday.com/storymoney/2015/11/04/launching-nationwide-myra-offers-free-way-save-retirement/75094398/. The context for this advice was the launching of myRA, the savings plan the U.S. government unveiled to enable low- and middle-income workers prepare for retirement. *Id.* He stated that, in addition to myRA, the mixture should include employer-sponsored plans and Social Security. *Id.* He elaborated that "MyRA is a critically important piece of the puzzle" in the saving regimen

or measure. Table 1 graphically encapsulates the achievement of this article.[84]

necessary for retirement security, he indicated, "but it's not a substitute for employer plans. It's not a substitute for Social Security." *Id*.

84. Table created by authors.

TABLE 1: THE THREE STEPS IN THE ROADMAP TO RETIREMENT SECURITY FOR LOW-INCOME WORKERS

Serial No.	**Step**	**Savings Mean or Device**
1.	Employer-sponsored benefit plans	Plans with auto enrollment features, such as myRA, that help workers save for retirement, contribute diligently, and avoid "leakage" (early withdrawal on hardship ground), alongside improvements in Social Security that promote savings. Ultimately Congress will have to consider design of a *mandatory* pension plan juxtaposed with the already mandatory Social Security.
2.	Financial education and literacy	Formal and informal education aimed at modifying behavior regarding savings and preparations for retirement in multiple issue-areas, including increased sensitivity to the changing nature of retirement security evident in the shift of responsibility to individuals in the preparation for their own retirements, the need for increased participation and contribution in DC plans, affordable homeownership, the need to own a bank account, and willingness to tolerate increased risk, among others.
3.	Homeownership	Comprehensive reform over and above the Obama program that promotes sustainable homeownership for low-income households able to afford those homes, renting opportunities for those unable to afford a home that include more access to programs like Section 8 that subsidize rents for low-income people, as well as properly enforced consumer protection against predatory loan practices and related discriminatory practices in housing.

A. Employer-Sponsored Benefit Plans

The first of the three steps for promoting retirement security for low-income workers is employer-sponsored benefit plans.[85] These pension tools form an important factor in generating the savings low-income workers need for a comfortable retirement.[86] However, many low-income workers do not have these benefits, or when they do, they own only defined contribution benefit plans, testimony to the shift of retirement plans toward the employee and away from employers that these plans connote. The previous section discussed DC plans extensively, noting that many low-income workers do not have access to these plans, and when they do, they fail to contribute sufficiently to prepare for their retirement for reasons that include early withdrawals from what nest-egg they accumulate because of economic hardship.[87]

To remove some of the barriers that prevent saving for retirement, on November 3, 2015, the United States government announced a starter savings account for workers called myRA.[88] MyRA is designed to help individuals without a retirement plan set money aside each week, and workers with or without a current savings plan can benefit from it.[89] MyRA is designed as a public-sector version of the Roth IRA,[90] "with all the same rules regarding

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85. The appellation, *employer-sponsored pension* plans, is a misnomer since some plans, especially defined-contribution plans, integrate little such sponsorship in an era where the responsibility for retirement readiness, unlike in the past, is almost completely the employee's problem. But, for want of a better term, we retain the appellation in this article.

86. *See* SUCCESS STORY, *supra* note 17, at 3.

87. *See supra* Section II.D. (commenting on the effect of participation in DC plans on retirement security).

88. Jones, *supra* note 83.

89. Michelle Singletary, *Starter Savings Accounts: Obama's "myRA"*, WASH. POST (Jan. 30, 2014), http://www.washingtonpost.com/business/economy/starter-savings-accounts-obamas-myra/2014/01/30/00600eco0-8930-11e3-a5bd-844629433ba3_story.html. Started as a pilot initiative with sixty employers since December of 2014, myRA is aimed at the approximately fifty-five million workers without access to 401(k)s or similar savings plan through their jobs. *Id.* The estimate of fifty-five million workers comes from the American Association for Retired Persons (AARP), a Washington D.C.-based lobby group for individuals fifty and above that sets the national agenda on issues relating to senior citizens, including Social Security and Medicare. *See* FREDERICK R. LYNCH, ONE NATION UNDER AARP: THE FIGHT OVER MEDICARE, SOCIAL SECURITY, AND AMERICA'S FUTURE 14 (2011).

90. "Named for its legislative sponsor, William V. Roth Jr., Republican senator from Delaware, the Roth IRA became available in 1998 as part of the Tax Relief Act of 1997," Pub. L. 105-34, 11 Stat. 788 (Aug. 5, 1997). Thomson, *supra* note 36. "Roth served as a senator from 1971 to 2001." *Id.* Under the traditional IRA plan, once the saver reaches retirement age and begins taking distributions, s/he pays taxes on the withdrawals as if they were regular income. By contrast, the Roth IRA account allows the saver to contribute and save after-tax money. As long as a worker owns the Roth IRA for at least five years, they can take tax-free distributions beginning at age fifty-nine and one-half. *Id.*

withdrawals, contributions, and income thresholds as its private-sector counterpart,"[91] and myRA is available to individuals earning less than $131,000 a year or $193,000 if married and filing taxes jointly.[92] Under this savings plan, employees can contribute as little as one dollar, which is invested only in a risk-free, United States Treasury security created for the program.[93] MyRA enables account holders to save "money from their paycheck, bank account[,] or even tax refund."[94] "Savers can contribute up to $5,500 a year, or $6,500 a year if they are at least 50 years old by the end of 2015."[95] Also, investors can roll over their myRA into a private-sector account whenever they want.[96]

But this program by itself is not a cure-all for the ailment of retirement savings that many low-income workers face. The plan has a $15,000 contribution limit.[97] This is probably the reason why United States Treasury Secretary Lew, in announcing the proposal, warned that myRA is "not a substitute for employer plans" nor "a substitute for Social Security,"[98] and advised that, in planning for their retirement security, savers think about a mixture of plans, not limited to any one source.[99]

An antidote to the problem of underutilization of retirement plans, evident in low participation and low contribution in DC plans, would be universal IRAs with automatic or default features that spur individuals to contribute toward their own retirement accounts.[100] Some retirement security laws, such as the Pension Protection Act (PPA) of 2006,[101] already incorporate these automatic features.[102] For example, the PPA stipulates a current default contribution rate of 3% which, however, some experts adjudge insufficient even for workers who start saving early.[103] Employers could increase

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91. Jones, *supra* note 83. For example, earnings can be withdrawn tax-free after the worker is fifty-nine and one-half years old. Singletary, *supra* note 89.

92. Jones, *supra* note 83.

93. *Id.*

94. *Id.*

95. *Id.*

96. Singletary, *supra* note 89.

97. Jones, *supra* note 83.

98. *Id.*

99. *Id.*

100. MCKINSEY & CO., *supra* note 63, at 15, 17, 22. In addition to helping combat underutilization of retirement plans, auto features have the added advantage of "ensur[ing] that participants start saving earlier." *Id.* at 24.

101. Pension Protection Act of 2006, H.R. 4, 109th Cong. (2nd Sess. 2006) ("provid[ing] economic security for all Americans").

102. Anderson, *supra* note 70; *see generally* Brigitte C. Madrian & Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 QUARTERLY J. ECON. 1149 (2001) (analyzing the impact of automatic enrollment on 401(k) saving behavior).

103. MCKINSEY & CO., *supra* note 63, at 15, 22.

this rate and match their employees' contributions.[104] For their part, the government should create incentives to save that are specifically tailored to the needs of low-income workers. For example, rather than tax deductions or credits, a better way to help low-income households prepare for retirement would be to "require direct deposits to their individual 401(k)s or IRAs."[105]

Finally, although technically not part of employer-sponsored benefit plans, for the purpose of our discussion here, we include the Social Security program. This pension plan is an ultimate social insurance program with no investment risk and "the primary edifice of retirement income security."[106] Because of these desirable features, many retirees, especially low-income households, depend on Social Security predominantly for their maintenance during retirement,[107] notwithstanding the threat of insolvency that hangs

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104. *See generally* Gary V. Engelhardt & Anil Kumar, *Understanding the Impact of Employer Matching on 401(k) Saving*, 76 TIAA-CREF INST. RESEARCH DIALOGUE (2003); John Beshears et al., *The Impact of Employer Matching on Savings Plan Participation Under Automatic Enrollment*, RET. RES. CONSORTIUM (Aug. 9, 2007), http://www.hbs.edu/faculty/Publication%20Files/impact_of_employer_matching_f7c59a49-f2bd-4713-ba12-a960b5e66008.pdf; Sheena S. Iyengar et al., *How Much Choice Is Too Much?: Contributions to 401(k) Retirement Plans* (U. of Pa., PRC Working Paper 2003-10, 2003) (finding that the presence of a match increased contribution, but attributing the increase in contribution to an increase in participation induced by a higher match; in other words, although the total contributions increased, it was driven by a higher rate of participation and not a higher rate of average contribution for individuals); Leslie Papke, *Participation in and Contributions to 401(k) Pension Plans: Evidence on Plan Data* (Nat'l Bureau of Econ. Research, NBER Working Paper No. 4199, 1992), http://www.nber.org/papers/w4199 (finding that a 5% increase in the matching rate will lead to a 1%-5% increase in employee contribution).

105. MCKINSEY & CO., *supra* note 63, at 22.

106. Rhee, *supra* note 4, at 1; *see generally* NAT'L ACAD. SOC. INS., STRENGTHENING SOCIAL SECURITY FOR VULNERABLE GROUPS 2 (2009), http://www.nasi.org/sites/default/files/research/Strengthening_Social_Security_for_Vulnerable_Groups.pdf (characterizing Social Security as "bedrock economic security for seniors"); Jo Ann Jenkins, *Financial Resilience for Our Longer Lives*, AM. ASS'N RETIRED PERS., http://member.aarp.org/politics-society/advocacy/info-2014/financial-resilience-for-our-longer-lives.html (last visited Oct. 31, 2015) (calling Social Security "the foundation of retirement income security"); Alicia H. Munnell & Matthew S. Rutledge, *The Effects of the Great Recession on the Retirement Security of Older Workers* (Nat'l Poverty Ctr., Working Paper No. 13-03, 2013), http://npc.umich.edu/publications/u/2013-03-npc-working-paper.pdf (calling Social Security "the backbone of the U.S. retirement system"). According to the National Academy of Social Insurance, in a statement it published in 2009, for strengthening the program, Social Security "gives employers what they often want (freedom from financial risk and fiduciary obligations to their workers) and gives workers and families what they need (economic security)." NAT'L ACAD. SOC. INS., *supra* note 106, at 2.

107. *See* NAT'L ACAD. SOC. INS., *supra* note 106, at 2 (observing that "[w]ithout Social Security, nearly one in two seniors would be poor; with Social Security less than one senior in ten is poor"); *see also* BEATRICE ET AL., *supra* note 15, at 30, table 10 (finding that retirees with household incomes less than $25,000 rely primarily on Social Security and are least likely to have other resources to supplement their retirement income).

over the program.[108] In an earlier work focusing on bridging the gap in retirement security between blacks and whites, we made suggestions for reforming the trust fund, drawing on a seminal report of the National Academy of Social Insurance,[109] that we restate here, to the extent that those recommendations relate to retirement savings for low-income workers.

These suggestions include "protecting Social Security benefits from garnishment, attachment, and freezes when they are deposited in a bank; . . . strengthening Social Security through a new law and stronger enforcement of existing laws; wage reporting for farm workers; reducing eligibility for retirement benefits from the 40-calendar-quarter (or ten-year) requirement; improving benefits for widowed spouses of low-earning, dual-earner couples; and increasing the Social Security special minimum benefit while updating Supplemental Security Income (SSI)."[110]

Other suggestions include increasing the minimum Social Security "benefit for low lifetime earners; creating a Social Security supplement for low-income working parents with limited earning records because of time spent caring for their children; increasing Social Security benefits for family elder caregivers; increasing Social Security benefits for single retirees with at least 30 years of covered employment and low lifetime earnings; increasing Social Security benefits at advanced ages; and easing the impact of in-

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108. This arises from the issue of sustainability associated with the nature of Social Security as a pay-as-you-go system, meaning that the benefits retired workers receive in the course of their retirement are funded by payroll taxes derived from the salaries of current workers. *What Is Social Security?*, NAT'L ACAD. SOC. INS. (updated Oct. 2015), http://www.nasi.org/book/export/html/159. A pay-as-you-go system differs from "pre-funded" company systems. In the latter, the money is accumulated in advance so that it will be available to pay out to today's workers when they retire. *Id*. The private plans need to be funded in advance to protect employees in case the company becomes bankrupt or goes out of business. *Id*. The pay-as-you-go arrangement threatens the long-term viability and solvency of the trust fund as workers live longer and fewer workers support those on retirement. Whereas in 1950, sixteen workers supported every retiree, as of 2012, that number is just three. *See* Sean Gorman, *Rep. Frank Wolf Says Fewer Workers Are Supporting More Social Security Beneficiaries*, POLITIFACT VA. (Mar. 16, 2012, 2:30 PM), http://www.politifact.com/virginia/statements/2012/mar/16/frank-wold/rep-frank-wolf-says-fewer-workers-are-supporting-m/; Veronique de Rugy, *How Many Workers Support One Social Security Retiree*, MERCATUS CTR. (May 22, 2012), mercatus.org/publication/how-many-workers-support-one-social-security-retiree.

109. *See* NAT'L ACAD. SOC. INS., *supra* note 106, at 4–8 (report containing twelve policy proposals from independent scholars aimed at improving Social Security protections for low-wage workers, elderly widows, the oldest old, disabled individuals, farm workers, and low-paid workers with careers interrupted by caring for children or aging family members).

110. Aka et al., *supra* note 1, at 31. SSI is a U.S. government program, integral to Social Security, that provides stipends to low-income people who are either aged (sixty-five or older), blind, or disabled. *See Supplemental Security Income (SSI) Benefits*, SOC. SEC. ADMIN., https://www.ssa.gov/disabilityssi/ssi.html (last visited Feb. 4, 2016).

creasing the retirement age on" grounds of occupational disability for disabled workers.[111]

In the final analysis, as some experts have astutely recommended, the United States government will need to provide a publicly supported pension plan for all workers "that relies on pooled risk and requires contributions from both employees and employers."[112] Put simply, it is time Congress explored the adoption of a mandatory pension plan juxtaposed with the already mandatory Social Security system.[113]

B. Financial Education and Literacy

The second of the three steps for promoting retirement security for low-income workers that we highlight in this article is financial education and literacy. Financial literacy denotes the ability to make optimal decisions in the management of economic resources necessary for financial wellbeing.[114] Financial education and literacy is the tool for "changing the mindsets and behaviors of Americans regarding retirement over the long term."[115] It is also an antidote to bad financial habits that work against savings, such as the failure to operate a bank account, tolerate sensible risks, and participate and contribute sufficiently in DC plans discussed above in this article.[116] This education is necessary to impress upon workers "the need to save and plan for retirement"[117] as well as the advantage of starting early,[118] whether or not

111. Aka et al., *supra* note 1, at 31–32.

112. TATJANA MESCHEDE ET AL., LIVING LONGER ON LESS: SEVERE FINANCIAL INSECURITY AMONG AFRICAN AMERICAN AND LATINO SENIORS, REPORT 3, 10 (2010), https://iasp.brandeis.edu/pdfs/2010/LLOL3.pdf.

113. *See* Ghilarducci, *supra* note 4. Professor Ghilarducci asserted that "failure is baked into the voluntary, self-directed, commercially run retirement plans system" that the United States practices. *Id*.

114. *See* Percy Austin & Elizabeth Arnott-Hill, *Financial Literacy Interventions: Evaluating the Impact and Scope of Financial Literacy Programs on Savings, Retirement, and Investment*, 39 J. SOC., POL. & ECON. STUD. 290 (Fall 2014). Tatjana Meschede and her colleagues correctly observe that although financial management "is a complex and life-long activity," much learning in this area remains informal. MESCHEDE ET AL., *supra* note 112, at 12. The challenge is to routinize the learning.

115. MCKINSEY & CO., *supra* note 63, at 23.

116. *See supra* Section II.

117. MCKINSEY & CO., *supra* note 63, at 23.

118. *See 3 Reasons Americans Don't Save Enough for Retirement*, THE MOTLEY FOOL (Jan. 26, 2015, 9:03 AM), www.fool.com/investing/general/2015/01/26/3-reasons-americans-dont-save-enough-for-retirement.aspx. One reason procrastination is bad, according to this commentary, "is that the earliest dollars you invest are the most powerful ones, as they have longest to grow." *Id*. After illustrating how over thrity-one years, a one-time $10,000 investment into the stock market can turn into $191,900, it added: "Procrastination is very costly when it comes to your financial security." *Id.*; *see also* Emily Brandon, *10 Important Ages for Retirement Planning*, U.S. NEWS & WORLD REP. (Feb. 21, 2012, 9:20 AM),

they are close to retirement. It should also be extended to persons of all ages,[119] not just individuals on the cusp of retirement, using all available avenues, such as "schools, community centers, non-profits, churches, and senior centers" as access points.[120]

For the most effect, the *domain* of such literacy needs to be broad. Education could include innovative techniques like a "'financial driver's license' or a mandatory walk-through of recommended savings rates and asset allocations by age before allowing participants to make their allocations."[121] And it should be broad enough to encompass the range of important financial decisions the typical person makes.[122]

Persons with low financial literacy have greater difficulty making good investment decisions,[123] and they have a tendency not to engage in retirement planning.[124] Not surprisingly, studies show that financial literacy is positively related to net worth, meaning that workers with low financial literacy accumulate low retirement savings.[125] Financial literacy rates tend to be low in individuals with low educational attainment.[126] Education is a fac-

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http://money.usnews.com/money/retirement/articles/2012/02/21/10-important-ages-for-retirement-planning (commenting on the logic to the requirement to start saving from twenty-one years of age in many 401(k) plans).

119. *See* MESCHEDE ET AL., *supra* note 112, at 12.

120. *Id.*

121. MCKINSEY & CO., *supra* note 63, at 25.

122. MESCHEDE ET AL., *supra* note 112, at 12 (noting that "[f]rom planning for educational loans and managing credit cards to saving for retirement, all of us make important financial decisions that will impact our future financial resources").

123. Annamaria Lusardi, *Household Saving Behavior: The Role of Literacy, Information, and Financial Education Programs* (Nat'l Bureau of Econ. Research, NBER Working Paper No. 13824, Feb. 2008), http://www.nber.org/papers/w13824.

124. *See* Douglas D. Bernheim, *Financial Illiteracy, Education and Retirement Saving*, *in* LIVING WITH DEFINED CONTRIBUTION PENSION SYSTEMS (Olivia Mitchell & Sylvester Schieber, eds., U. of Pa. Press 1998); Annamaria Lusardi & Olivia S. Mitchell, *Financial Literacy and Planning: Implications for Retirement Wellbeing* (Nat'l Bureau of Econ. Research, NBER Working Paper No. 17078, May 2011).

125. *See, e.g.*, Maarten C.J. van Rooij et al., *Financial Literacy, Retirement Planning, and Household Wealth*, 122 ECON. J. 449 (2012); Lisa Xu & Bilal Zia, *Financial Literacy Around the World: An Overview of the Evidence with Practical Suggestions for the Way Forward* (World Bank Policy Research, Working Paper No. 6107, 2012); and Lusardi & Mitchell, *supra* note 124.

126. *See* Alan Gustman & Thomas L. Steinmeier, *What People Don't Know About Their Pensions and Social Security*, *in* PRIVATE PENSIONS AND PUBLIC POLICIES 57, 57–125 (William G. Gale et al. eds., 2004) (pointing out that lack of knowledge about social security and pension is concentrated among low-income households with lower educational attainment). This lack of financial literacy tends to prevent them from not only appropriately utilizing important financial products, but also from seeking financial advice. Contrarily, higher educational attainment increases the probability of a person participating in a retirement plan and having interest-yielding assets in financial institutions. *See* Copeland, *supra* note 71 (finding

tor associated with higher-income,[127] and educational attainment in and of itself is a key determinant of financial literacy.[128] While home-ownership, discussed next after this subsection, is not uncommon among individuals with low financial literacy, these workers are less likely to invest in securities, such as stock and bonds as indicated above in Section II.

No single economic issue recently demonstrates the direness of lack of financial education and literacy for low-income workers than the steep fall in home prices that accompanied the Great Recession of 2007 to 2009.[129] The housing problem is an example of what happens when decisions involving something as life-changing as owning a home are not preceded by proper financial education.[130] Many homeowners, particularly first-time buyers, did not understand their options for financing before entering into the predatory loan agreements in the name of home purchases that ended in financial ruin.[131] It is for this and other reasons that some laws enacted in response to the Great Recession include financial literacy laws. For example, the Consumer Financial Protection Act of 2010 created an Office of Financial Education to educate consumers on financial decisions.[132] More specifically for

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that only 14.9% of workers without a high school diploma participated in a retirement plan, compared to 58.3% of workers with graduate or professional degrees).

127. *See Employment Projects*, BUREAU OF LABOR STATISTICS (2015), http://www.bls.gov/emp/ep_chart_001.htm (showing that higher levels of education correspond to higher levels of financial literacy).

128. *See* Annamaria Lusardi et al., *Financial Literacy Among the Young: Evidence and Implications for Consumer Policy* (U. of Pa., IRM Working Paper No. 2009-13, Aug. 2009).

129. Robert Rich, *The Great Recession of 2007-09*, FED. RES. HIST. (Nov. 22, 2013), http://www.federalreservehistory.org/Events/PrintView/58; s*ee also* Robert C. Shelburne, Chief Economist, United Nations Econ. Comm'n for Eur., The Great Recession of 2007–09: Analysis and Prospects, Keynote Address to the UN-WTO Tourism Resilience Committee, Astana, Kazakhstan (Oct. 8, 2009) (transcript available at http://works.bepress.com/robert_shelburne/47) (putting the recession in a global perspective). The recession lasted from December 2007 to June 2009. It was the longest such economic slow-down since World War II. *Id.* Its features were severe and included a high national unemployment figure of 9.5% as of June 2009 (compared to 5% in December of 2007), reduced increases in the remuneration of private industry employees, and a steep fall in home prices, among other effects. *Id.*; *BLS Spotlight on Statistics: The Recession of 2007–2009*, U.S. BUREAU OF LABOR STATISTICS (Feb. 2012), http://data.bls.gov/cgi-bin/print.pl/spotlight/2012/recession/audio.htm. There is also general agreement regarding the fact that, to date, in the aftermath of the recession, "many of the statistics that describe the U.S. economy have yet to return to their pre-recession values." *Id.* The effects of the economic upheaval were so deep-seated that some commentators actually likened it to a depression. *See generally* PAUL KRUGMAN, END THIS DEPRESSION NOW! (2013); RICHARD A. POSNER, A FAILURE OF CAPITALISM: THE CRISIS OF '08 AND THE DESCENT INTO DEPRESSION (2009).

130. *See* MESCHEDE ET AL., *supra* note 112, at 12 (commenting on the need for first-time homeowners to understand their financing options).

131. *Id.*

132. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 1970 (2010).

retirement security, the law created an Office of Financial Protection for Older Americans to promote financial literacy for persons over sixty-two years of age.[133] These and other policy initiatives, such as the mandate for United States government agencies to use plain language when dealing with the public, are steps in the right direction toward promoting retirement for low-income workers.

Getting financial advice is important to economic wellbeing[134] and can ultimately improve financial literacy.[135] One possible reason that individuals with low financial literacy fail to seek advice is that they may be intimidated or overwhelmed by financial jargon.[136] Another is a fear of being taken advantage of. They may also not realize the benefits of financial advice[137] and may consider such advice too expensive to outweigh any benefit. For these and other reasons, some low-income workers rely on advice from friends and relatives, who themselves might lack adequate financial literacy.[138] However, persons who shy away from seeking financial advice not only are at risk of paying higher fees, but also stand a greater risk of falling victim to the predatory schemes of unscrupulous financial professionals who seek to exploit them.[139] Also, financial advice, though potentially requiring upfront costs, has the potential to result in long-term gains.[140] Finally, although many employers offer free financial planning services or are affiliated with companies that offer such services,[141] low-income earners are less likely to work for such an employer or, if they do, are likely less motivated to use these free services.

Considering that low-income workers are less likely to be financially educated or literate, compared to their high-income counterparts, financial educational programs that target this population are needed. Programs should be easily accessible, be convenient, and meet the needs of low-

133. *Id.* at 1972–73.

134. *See generally* Cathleen D. Zick & Robert N. Mayer, *Evaluating the Impact of Financial Planners*, *in* THE MARKET FOR RETIREMENT FINANCIAL ADVICE 153, 153–81 (Olivia S. Mitchell & Kent Smetters eds., Oxford University Press 2013).

135. *See generally* Olivia S. Mitchell & Kent Smetters, *The Market for Retirement Financial Advice: An Introduction*, *in* THE MARKET FOR RETIREMENT FINANCIAL ADVICE 1–10 (Olivia S. Mitchell & Kent Smetters eds., Oxford University Press 2013) (commenting on retirement security in general).

136. DAN LANNICOLA JR. & JONAS PARKER, BARRIERS TO FINANCIAL ADVICE FOR NON-AFFLUENT CONSUMERS 12 (2010).

137. *Id.* at 14.

138. *Id.* at 22.

139. Sherrie L.W. Rhine & William H. Greene, *The Determinants of Being Unbanked for U.S. Immigrants*, 40 J. CONSUMER AFF. 21, 23 (2006).

140. *See* Zick & Mayer, *supra* note 134, at 153–81.

141. *See generally* Christopher L. Jones & Jason S. Scott, *The Evolution of Workplace Advice*, *in* THE MARKET FOR RETIREMENT FINANCIAL ADVICE 107–124 (Olivia S. Mitchell & Kent Smetters eds., Oxford University Press 2013).

income workers and their financial knowledge. Employers can play a role in improving financial literacy through the use of brochures, information sessions, and retirement seminars.[142] And government agencies can do their part through various means that should include not setting asset limits on public welfare programs that discourage savings. Some progress has been made on other fronts under the Obama Administration[143] that subsequent administrations need to maintain and improve upon.

C. Homeownership

The third and final step designed to promote savings for low-income workers that this article analyzes is homeownership. Like people in other lands, many Americans of all-income groups consider a home to be something more meaningful than just a roof over their heads.[144] For these U.S. denizens, owning a home is a piece of the American Dream and a milestone in the journey of social mobility into middle-class rank.[145] Homeownership embeds several benefits for low-income households: the ability to lease out part of their home and receive rent; the ability to sell the home and gain returns in the form of equity (profit over the purchase price for the house); or the ability of individuals who paid off the mortgage on their home to live in the home and save money on rent.[146] Yet, high income is an important factor

142. *Increasing Saving Among the Poor: The Role of Financial Literacy*, POVERTY RESEARCH NEWS (Newsletter of Nw. Univ. and Univ. of Chi.) Jan. through Feb. 2002, at 12.

143. *See generally supra* note 53–56 and accompanying text (the Plain Writing Act), *supra* notes 132–133 and accompanying text (Consumer Financial Protection Act).

144. By one typical definition, a *house* is a place of shelter where people live. In contrast, a *home* is the place of "emotional warmth and security" where one's family lives. Sri Lanka Ramabadran, *What Is the Difference Between Home and House?*, ENG. FOR STUDENTS (June 23, 2007), http://www.english-for-students.com/Home-and-House.html. "Usually people buy a home and sell a house. People who are away from their home often complain about being homesick, not housesick. What they lack is not a roof over their head, but the emotional warmth and security." *Id.*

145. U.S. DEPT. OF COMMERCE, MIDDLE CLASS IN AMERICA 4 (Jan. 2010), http://www.esa.doc.gov/sites/default/files/middleclassreport.pdf (including homeownership as a key element of "standard middle class values and aspirations"); James E. McWhinney, *6 Signs That You've Made It to Middle Class*, INVESTOPEDIA, http://www.investopedia.com/articles/pf/10/middle-class.asp (updated Oct. 27, 2015) (including homeownership among the six); Seth Freed Wessler, *American Dream Home: What's the Middle Class Without a House?*, NBC NEWS (Mar. 17, 2015, 5:19 AM), http://www.nbcnews.com/feature/in-plain-sight/american-dream-home-whats-middle-class-without-house-n296346; *see also* CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP 1–2 (William M. Rohe & Harry L. Watson eds., 2007) (commenting on a shift of emphasis in housing from affordable rental units to affordable ownership that occurred during the period of the Clinton and second Bush presidencies).

146. *See* CHRISTOPHER E. HERBERT ET AL., IS HOMEOWNERSHIP STILL AN EFFECTIVE MEANS OF BUILDING WEALTH FOR LOW-INCOME AND MINORITY HOUSEHOLDS? (WAS IT

in homeownership,[147] and, compared to high-income workers, fewer low-income workers own their own homes for a variety of reasons, including a low probability of qualifying for a mortgage, inability to afford the money for a down payment, high transaction cost of buying or selling a home, and the risk of losing their home through foreclosure arising from default on the mortgage.[148]

For low-income persons who managed to scale these obstacles to homeownership, their home is one of the largest sources of asset-holding.[149] Compared to other assets in the arsenal of retirement security, homeownership is an area where many low-income blacks made strides in wealth accumulation before the housing crisis integral to the economic downturn from 2007 to 2009 wiped off that gain. This is devastating given that, compared to whites, "the average black family has far more of its wealth wrapped up in a home."[150]

Several factors make homeownership an effective tool for wealth creation for low-income households.[151] The first is the widespread use of amor-

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EVER?) 3–5, 9–10 (2013) (listing five factors through which low-income and minority households create wealth in their homes, viz.: forced saving that results from the use of amortizing mortgage, appreciation in home value, increased returns arising from use of leverage, benefits from federal income tax, and protection from unanticipated hikes in rent).

147. William A. Testa et al., *Assessing the Midwest Economy: Looking Back for the Future: Report of Findings*, ASSESSING THE MIDWEST ECONOMY 7 (1997) (finding that homeownership rates tend to rise with real income, i.e., that an increase in average real income over time should raise the aggregate homeownership rate).

148. Donald R. Haurin et al., *Homeownership Gaps Among Low-Income and Minority Borrowers and Neighborhoods*, 9 CITYSCAPE: A J. OF POL'Y DEV. AND RESEARCH, no. 2, at vi (2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1032187.

149. Lewis M. Segal & Daniel G. Sullivan, *Trends in Home Ownership: Race, Demographics, and Income*, 22 ECON. PERSP. 53, 53–72 (1998); George McCarthy et al., *The Economic Benefits and Costs of Homeownership: A Critical Assessment of the Research* (Research Inst. for Hous. Am., Working Paper No. 01-02, 2001). *See also* Raphael W. Bostic & Kwan Ok Lee, *Assets and Credit Among Low-Income Households*, 98 AM. ECON. REV.: PAPERS & PROCEEDINGS 310, 312 (2008) (finding that homeownership tends to be a good investment strategy, depending on the initial down payment, house price appreciation rates, and the mortgage instrument used); U.S. DEPT. OF HOUSING & URBAN DEV., THE HOMEOWNERSHIP EXPERIENCE OF LOW-INCOME AND MINORITY FAMILIES: A REVIEW AND SYNTHESIS OF THE LITERATURE (Feb. 2006) [hereinafter *Homeownership Experience of Low-Income Families*] http://www.huduser.gov/Publications/PDF/hisp_homeown9.pdf (pointing out that the majority of wealth held by low-income and minority households is wrapped up in housing and that, for these households, housing wealth is often the only real asset).

150. Michael Powell, *Wealth, Race, and the Great Recession*, N.Y. TIMES: ECONOMIX (May 17, 2010, 6:53 PM), http://economix.blogs.nytimes.com/2010/05/17/wealth-race-and-the-great-recession/?_r=07; s*ee also* Natasha M. Trifun, *Residential Segregation After the Fair Housing Act*, 36 HUMAN RIGHTS 14, 17 (2009) (pointing out that, although the economic downturn of 2007 to 2009 negatively affected people of all ethnicities and races who lost their homes, blacks were "disproportionately affected").

151. HERBERT ET AL., *supra* note 146, at 3–5.

tizing mortgages to finance home purchase, which, in a way, results in forced saving each month.[152] As money is put into the home, the home investment is simultaneously accruing wealth.[153] Housing wealth can then represent a sizable nest-egg in retirement.[154] Second, homes, unlike other durable goods such as cars or appliances, tend to appreciate rather than depreciate in value over time; this means homeownership can offer a financial return similar to those of stocks or bonds.[155] Third, contrasted with securities such as stocks and bonds, investment in housing is hedged against inflation, meaning that when inflation occurs, home prices tend to increase. Also, owning a home provides a hedge against inflation in rent over time.[156] Since rent usually rises at a rate close to or above the general rate of price inflation, not only are homeowners protected from unanticipated rent increases, but the real housing costs tend to fall because mortgage payments remain constant while income tends to increase.[157] Fourth, homeowners can borrow money using their home as collateral.[158] Finally, owning a home attracts tax benefits via deduction of mortgage interest and property taxes from federal income tax that are not extended to renters.[159] Homeownership is particularly important for low-income workers because they are less likely to have other financial assets like stocks and bonds or savings invested in retirement accounts.[160]

In short, although they tend to acquire less housing wealth, compared to high-income workers,[161] for low-income workers, homeownership is an

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152. *Id.* at 3.
153. *Id.*
154. *Id.*
155. *Id.* at 3–4.
156. *Id.* at 5.
157. Bostic & Lee, *supra* note 149, at 312.
158. Eric S. Belsky et al., *The Financial Returns to Low-Income Homeownership*, JOINT CTR. FOR HOUS. STUDIES HARV. U. (Sept. 9, 2005), http://content.knowledgeplex.org/kp2/img/cache/kp/128412.pdf (finding that investing in a home is particularly attractive for low-income earners considering that the alternative investment choices do not allow low-income earners to leverage a small amount of money in order to acquire costly, but higher yielding, assets).
159. *See* ROSS & LEVINE, *supra* note 31, at 49–50 (although these writers take the position that these benefits favor high-income earners more than they do low-income workers).
160. *See* Jesse Bricker et al., *Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances*, 100 FED. RESERVE BULLETIN (Sept. 2014), http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf (finding, based on a survey of consumer finance in 2013, that whereas about 30% of families in the lowest income percentile owned either a direct or indirect publicly traded stock, 50% owned a home).
161. *See* Carolina Katz Reid, *Achieving the American Dream?: A Longitudinal Analysis of the Homeownership Experiences of Low-Income Households* 31 (Ctr. for Stud. Demography and Ecology, Univ. of Wash., Working Paper No. 04-04, 2004), https://csde.washington.edu/downloads/04-04.pdf (finding the benefits of homeownership to be unevenly dis-

important avenue for wealth accumulation. This is not to say that owning a home is a bed of roses without pitfalls for these workers, for it has its downsides too. One of those drawbacks is the risk of foreclosure, as the Great Recession of 2007 to 2009 bore out. And the risk is real because defaulting on a mortgage loan takes only a short period of financial instability. A default can result in losing the rights to the value of the home and all money paid into the home in the past, not to mention impairment of the worker's credit history. Low-income earners are at greater risk of losing their job without adequate savings to make future mortgage payments.[162] They are also less likely to have individuals in their social networks with enough money to make payments on their behalf. In addition, the prevalence of predatory lending and related abusive financial practices in low-income neighborhoods means low-income workers are more likely to receive subprime loans.[163]

Low-income workers face other problems still. They tend to make suboptimal initial home buying choices.[164] They are also more likely to purchase inadequate housing, such as older homes or those in disrepair, that may increase overall housing costs, reduce the quality of living environment, or subject them to unexpected problems.[165] And, low-income workers tend to buy lower-valued houses in poorer neighborhoods, where residential homes do not appreciate much in value.[166] Finally, compared to high-income homeowners, low-income homeowners are less likely to take advantage of the mortgage interest and property tax deductions for which they are qualified.[167] For homeownership to effectively serve as a means for building assets, the home has to be held long enough for benefits to accrue, or else

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tributed in that "[e]ven for those who remain homeowners . . . low-income households do not gain as much from owning a home as do their wealthier counterparts.").

162. AMY TRAUB ET AL., MILLIONS TO THE MIDDLE: 14 BIG IDEAS TO BUILD A STRONG AND DIVERSE MIDDLE CLASS 40–41 (2012), http://www.demos.org/sites/default/files/publications/MillionsToTheMiddle-DemosFinal_0.pdf.

163. HARVARD JOINT CTR. FOR HOUS. STUDIES, THE STATE OF THE NATION'S HOUSING 2000 (2000) (estimating that sub-prime loans are about three times as prevalent in low-income neighborhoods than high income neighborhoods). Subprime lending involves loans to people who may have difficulty repaying the loan for a variety of reasons that could include changed economic and personal circumstances, including loss of job, death of a breadwinner, or divorce and so forth. *See* NAT'L COMM'N ON THE CAUSES OF THE FIN. AND ECON. CRISIS IN THE UNITED STATES, U.S. FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES 67–82 (2011, http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf) [hereinafter *Financial Crisis Inquiry Report*] (discussing "subprime lending").

164. *Homeownership Experience of Low-Income Families*, *supra* note 149, at 21–22.

165. *Id.*

166. *Id.* at 24–25.

167. *Id.* at 72, 82.

homeownership can be an economic albatross that results in losses that militate against retirement savings because the homeowner disposed of the property too soon.[168]

In January of 2015, the Obama administration unveiled a plan to reduce the annual premiums on mortgage insurance by 0.5% in an avowed attempt "to make mortgages more affordable and accessible for creditworthy families."[169] Under the announced plan, the Federal Housing Administration (FHA), the federal agency charged with responsibility for insuring mortgages, will reduce the premiums that it charges on mortgage insurance from 1.35% to 0.85%.[170] The White House explained that for the typical first-time homebuyer this translates into a $900 reduction in annual mortgage payment and that similar reductions will also take place in the mortgages of existing homeowners who refinance into an FHA loan.[171] The key words in the proposal are *accessible* and *sustainable homeownership*. An equally notable observation of the White House is that the reduction "is part of the President's broader effort to expand responsible lending to creditworthy borrowers and increase access to sustainable rental housing for families not ready or wanting to buy a home."[172] In other words, it is a two-pronged proposal for sustainable homeownership and "sustainable rental housing," to use the language of the White House.[173] Consistent with the policy of sustainable homeownership, the Consumer Financial Protection Bureau has developed and is implementing the "Ability-to-Repay and Qualified Mortgage Rule," effective since January 10, 2014.[174] Under the rule, lenders are required to

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168. *See Financial Crisis Inquiry Report*, *supra* note 163; *Homeownership Experience of Low-Income Families*, *supra* note 149.

169. *Fact Sheet: Making Homeownership More Accessible and Sustainable*, WHITE HOUSE: OFFICE OF THE PRESS SECRETARY (Jan. 7, 2015), http://www.whitehouse.gov/the-press-office/2015/01/07/fact-sheet-making-homeownership-more-accessible-and-sustainable; *see also* Andrew Soergel, *Obama Announces Cut in Federally Issued Mortgage Premiums*, U.S. NEWS (Jan. 8, 2015, 4:49 PM), http://www.usnews.com/news/articles/2015/01/08/president-barack-obama-announces-federal-housing-administration-mortgage-insurance-premium-cut (discussing the half percentage point reduction in FHA mortgage insurance premiums). In announcing the plan, the President instructively reasoned that it is "about investing in savings and building a family and planting roots in a community." *Id.*

170. *Fact Sheet: Making Homeownership More Accessible and Sustainable*, *supra* note 169. The rate was 0.55% in 2010 before the FHA increased it ostensibly to recover from losses suffered during the housing crisis in 2007 before President Obama took office. Soergel, *supra* note 169.

171. *Fact Sheet: Making Homeownership More Accessible and Sustainable*, *supra* note 169.

172. *Id.*

173. *Id.*

174. *See Ability-to-Repay and Qualified Mortgage Rule: Small Entity Compliance Guide*, CONSUMER FIN. PROT. BUREAU (Jan. 8, 2014,), http://files.consumerfinance.gov/f/201411_cfpb_atr-qm_small-entity-compliance-guide.pdf; *Summary of the Ability-to-Repay and Qualified Mortgage Rule and the Concurrent Proposal*, CONSUMER FIN. PROT. BUREAU,

consider a prospective homeowner's ability to repay a home loan before extending credit.[175]

While these remedies are a step in the right direction, this article contends that they do not go far enough. For starters, the Obama plan involved a higher rate than the 0.55% the FHA charged on mortgage insurance in 2010.[176] Secondly, a lasting solution requires a legislative approach, involving a "comprehensive housing finance reform legislation that will secure a stable and resilient housing finance system."[177] To assist low-income people who are unable to afford a home, Congress should also streamline means that include better funding, like the Section 8 Housing Choice Vouchers program, established in 1974, which subsidizes the rents for the accommodation of low-income families, the elderly, and the disabled in the private market.[178]

Only a comprehensive approach stands any real chance of contributing the savings from homeownership (and for renters minimizing the hardship from housing) necessary to promote retirement security for low-income workers. Congress must set aside partisanship to formulate a comprehensive solution that the executive branch must faithfully implement.

IV. CONCLUSION

With the shift in responsibility for retirement preparation to individuals, "[i]mproving retirement security for Americans requires at its core individual responsibility for saving and investing."[179] However, low-income Americans face several barriers in saving for a comfortable retirement sys-

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http://files.consumerfinance.gov/f/201301_cfpb_ability-to-repay-summary.pdf [hereinafter *Summary of the Ability to Repay*]. To begin with, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010), contains a provision, Title XIV, focused on mortgage reform and anti-predatory lending.

175. *See Summary of the Ability to Repay*, *supra* note 174.

176. Soergel, *supra* note 169.

177. *Fact Sheet: Making Homeownership More Accessible and Sustainable*, *supra* note 169.

178. *Section 8 Voucher Funding and Reform*, NAT'L ALLIANCE TO END HOMELESSNESS, www.endhomelesssness.org/pages/section_8 (last visited Sept. 26, 2015); *Housing Choice Vouchers Fact Sheet*, U.S. DEPT. OF HOUS. AND URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Sept. 23, 2015); *see also* George E. Peterson, *Housing Vouchers: The U.S. Experience*, *in* VOUCHERS AND THE PROVISION OF PUBLIC SERVICES 139, 142 (2000). The program is named after Section 8 in the Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (1937), which authorized the benefit. As of 2015, the program provides support for over two million Americans. *Section 8 Voucher Funding and Reform*, *supra*. Participants in the program contribute 30% of their incomes toward housing costs, while the government makes up the balance, up to a set maximum amount. *Id.*

179. MCKINSEY & CO., *supra* note 63, at 13.

tematically examined in this article. One of the most intractable of these obstacles is the *reality* that, compared to high-income workers with more disposable income, low-income workers have less money to set aside for retirement. While some of the obstacles to savings are without question onerous, they are *not* insurmountable. Every worker who reaches the age of senior citizenship[180] must take some leave from active work through some form of retirement.[181] This article has proposed some deliberate steps that low-income workers can use to help them navigate that grey phase of life. The key is deliberateness, preparation, and behavior modification with respect to savings. All techniques analyzed in this article mirrored these concepts, including behavior modification that financial education and literacy targets. The obstacles to savings are not destiny; they merely make exigent the necessity for persons of low means to prepare for retirement as early as possible. High-income workers also need to plan their own retirements, but

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180. Although the United States does not have a mandatory retirement age, the "senior-citizen" age is sixty-five years, at which age a worker can start drawing his or her Social Security benefits without penalties for early distribution. *A Profile of Older Americans: 2013*, U.S. DEPT. OF HEALTH AND HUM. SERV. 11 (2013), http://www.aoa.acl.gov/Aging_Statistics/Profile/2013/docs/2013_Profile.pdf [hereinafter *Profile of Older Americans*] (detailing facts, such as the size of the older American population, marital status, living arrangements, racial and ethnic composition, geographic distribution, income, poverty, housing, employment, education, health and healthcare, health insurance coverage, and disability); *What Is the Social Security Retirement Age*?, NAT'L ACAD. OF SOCIAL INSURANCE, www.nasi.org/learn/socialsecurity/retirement-age. As of 2012, seniors numbered 43.1 million or 13.7% of the United States population (meaning about every one in seven Americans). *Profile of Older Americans*, *supra* note 180, at 11. That year alone, an estimated 3.6 million persons turned sixty-five. *Id.*

181. We speak in measured term because nowadays some old workers work for so long as their health permits and an increasing number of senior citizens in retirement return back to work in varying scopes, including full-time work. Such is the changing nature of retirement security that, today, "employment stability and retirement savings opportunities" have evolved among the vocabulary of the academic literature. MESCHEDE ET AL., *supra* note 112, at 3; *see also* MCKINSEY & CO., *supra* note 63, at 19 (including "working longer," even for retirees, as a viable option in retirement security); Ke Bin Wu, *African Americans Age 65 and Older: Their Sources of Retirement Income in 2005*, AARP POLICY INST. (Sept. 2007), http://assets.aarp.org/rgcemter/econ/fs137_aaincome.pdf (including "even income from work" among the sources of retirement income); Mary Beth Franklin, *Time to Replace the Three-Legged-Stool Myth*, INVESTMENTNEWS (May 26, 2013, 4:00 PM), http://www.investmentnews.com/article/20130526/REG/130529945/time-to-replace-the-three-legged-stool-myth (including "part-time employment" among her proposal for a new retirement system to replace the current one); Tom Sightings, *The New 3 Legged Retirement Stool*, U.S. NEWS: ON RETIREMENT (Mar. 13, 2012, 10:11 AM), http://money.usnews.com/money/blogs/on-retirement/2012/03/13/the-new-3-legged-retirement-stool (including a readiness "to work in early retirement" among these new legs). Indeed, consistent with this reality, the profile of older Americans in 2013 reveals that in that year, 8.1 million senior citizens, comprising 18.7% of all U.S. workers, were in the labor force, either working or actively seeking work. *Profile of Older Americans*, *supra* note 180.

much more so low-income persons because of the unique obstacles low-income earners face as an income group.

Many low-income workers do not plan for retirement because they do not see the importance of planning for retirement, some in the hope that when retirement *ultimately* arrives, they will get by with Social Security, supplemented maybe with income from any employer-sponsored pension and handouts from charities or relatives. Part of the role of financial education and literacy is to alert these workers of the changing nature of retirement security marked by the shift from defined benefit to defined contributions plans and with it the necessity for retirement planning as early as possible.[182] Helping low-income earners plan and save adequately for retirement will decrease the number of individuals who reach retirement with little or no saving and, ultimately, the pressure placed on Social Security as the sole source of retirement income for many low-income workers. Increasing the number of retirees with solid financial footing benefits individual Americans and the nation alike.

To conclude, this article suggests three steps. First, Congress should consider enacting a mandatory employer-sponsored pension plan juxtaposed with the already mandatory Social Security. To help individuals save adequately for retirement and with less hassle, Congress needs to replace the current "voluntary, self-directed, commercially-run" arrangement with a system—just like Social Security—that is mandatory and professionally managed where investors stand little risk of losing their money.[183] In the unanswerable reasoning of Teresa Ghilarducci, "[j]ust as a voluntary Social Security system would have been a disaster, a voluntary retirement account plan is a disaster."[184]

Second, financial education should be expanded, building on appropriate government measures, including the consumer protection initiatives the Obama administration has introduced in response to the economic hardships emanating from the Great Recession of 2007 to 2009.

Finally on housing, Congress should implement comprehensive reform over and above the Obama program that promotes sustainable homeownership for low-income households able to afford those homes, renting oppor-

182. We are concerned that the reader not view our glowing statements regarding this step to mean that financial education and literacy is the panacea for all the problems that impede retirement security in the United States, for it is not. Instead, as we cautioned in this study, *supra* notes 79–83 and accompanying text, no single technique that we explore in this work singularly in and of itself is a cure-all. For example, staying with financial education and literacy, Austin and Arnott-Hill found, following extensive review of the literature, only a *positive correlation* between literacy and modification of an individual's spending, saving, or investment behavior, but *not* that financial education literacy in and of itself caused that modification. Austin & Arnott-Hill, *supra* note 114, at 290–314.

183. Ghilarducci, *supra* note 4.

184. *Id.*

tunities (such as Section 8) for those unable to afford their own homes, and properly enforced consumer protection against unlawful discriminatory housing practices of all kinds.