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Notes

The 1994 Election and Employee Benefits Policy

Introduction

The world of public policy was turned upside down in early November as the Republican party made gains anticipated by few. In the nation's capital the first wave of change is underway as thousands of long-time Democratic staff members prepare to leave. The total number of professionals leaving the House and Senate alone is likely to exceed 2,500. Nonpartisan agencies such as the Congressional Budget Office will also see change as terms expire and as the Republicans choose successors. Within the Congress, staff changes will occur at the Joint Tax Committee and elsewhere as the new leadership seeks to fill key staff positions with professionals who share their world view. The House Republicans choice of the Heritage Foundation, instead of Harvard's Kennedy School, to conduct the orientation seminar for new members is a harbinger of shifts that lie ahead.

The Senate

The Senate will be different not only because of Republican leadership but also because of those who will not return for the 104th Congress. The Republican majority will not include such moderates as Sen. Dave Durenberger (MN) and Sen. John Danforth (MO), the Democratic minority such liberals as Sens. Howard Metzenbaum (OH) and Senate Majority Leader George Mitchell (ME). These changes will affect the positions taken on employee benefit and tax issues, particularly since Durenberger and Metzenbaum were activists on health and pension issues and advocates of federal standards such as ERISA.

The return of Sen. Bob Packwood (R-OR) as chair of the Senate Finance Committee may bring with it a greater focus on private benefits and economic security issues, in contrast to the stronger interests of Sen. Pat Moynihan (D-NY) in Social Security and welfare reform. The statement by both parties that Social Security is off the table for the 104th Congress serves to assure a near-term shift in focus. The Republican majority is also far more conservative than when it last controlled the Senate (1980–1986), making it likely that legislative initiatives will tilt toward private and individual action rather than employer action.

The Senate, in spite of the change in control, is still dominated by those who have served more than one term. This suggests that the Senate will approach legislation in a methodical way; however, the direction and tone are likely to be very different. For example, the agenda statements of incoming Labor and Human Resources Committee Chair Nancy Kassebaum (R-KS) refer to downsizing federal training programs, moving occupational safety and health regulation to the states, and amending the wage and hour laws to make a family flexible workplace more possible. A controlled pace for legislation is also encouraged by the fact that 60 votes are still needed to cut off debate to force a vote on controversial issues.

The House

Forty years is a long time to be in or out of power. The shift in the House cannot be overstated, even if control were to shift back in two years, as many senior members are gone forever and long-time staffers who leave would not likely return. The leadership of the House has also suggested a dramatic shift of focus toward individual empowerment and action. The departure speech of Minority Leader Bob Michel (R-IL), warning the new leadership to not move too far right, underlines controversies that may lie ahead.

Proposed rule changes in the House also promise to make it a very different place. First, opening the House floor for amendments and free form discussion, as opposed to the decades-long near total control of the Rules Committee, could cause floor consideration of legislation to take much longer than in the past. And, conference agreements will face the prospect of floor change in the House as well as in the Senate under the new rules. Second, the proposed limit of six years on the terms of committee chairs will increase the importance of all members and further erode the power of seniority. Third, the elimination of full committees, subcommittees, and staff will serve to increase the role of individual members and personal office staff. Fourth, the end of proxy votes in committee will likely bring a significant reduction in the number of hearings and the number of bills given active consideration. Fifth, the elimination of joint referral of legislation and granting primary jurisdiction to one committee should speed consideration of proposals. All in all, the agenda of the leadership will be more important than ever.

The States

At the state level a major shift also took place in both governors' offices and state legislatures. This will influence the actions of Congress and the administration and change the equation on such issues as health reform. In the state of Washington, for example, health reform implementation may well be slowed by the newly Republican State House of Representatives and a Senate that is much more Republican, because the party opposed the reform proposals when they were enacted. At the federal level, the loss of Rep. Tom Foley (D-WA) also represents a setback for interest in an ERISA waiver for the state of Washington.

The stated intent of the new congressional leadership to include governors in the policy process and the early vote expected on unfunded mandates promise to change relationships for decades to come. A balanced budget amendment would serve to shift even more decision making to the states.

Expected Initiatives

The agenda set forth for early action by the House of Representatives sends a number of messages for economic security and employee benefits that represent significant change. For example, the Republican party has suggested changes in the taxation of the value of health benefits in the past but now suggests that, rather than taxing part of the value, individual tax return deductions should be increased, flexible spending accounts should become medical savings accounts, and use it or lose it should become spend it or keep it. Regardless of whether or not the changes are enacted, the significance of the directional change cannot be understated.

The combined discussion of capital gains tax reductions and super individual retirement accounts (IRAs) underlines an orientation toward focusing on ways to increase individual savings. Discussion of a middle class income tax cut is described as a first step in longer term tax reform: a flat tax, a consumption tax, or some combination. These initiatives have proponents in both parties, in both the House and the Senate, and now the support of leadership. This is a significant change, as Majority Leader Mitchell and Speaker Foley had opposed all such initiatives. Such fundamental tax changes are unlikely in the 104th Congress, but were Republican control to continue into the 105th Congress, they could occur. The implications for the use of IRAs, defined contribution plans, and defined benefit plans—the tax advantages and disadvantages—are significant. For instance, would it still be advantageous to hold equities in a tax-deferred plan where benefits are taxed at regular income tax rates?

The balanced budget amendment and the line item veto would also affect employee benefits policy, as the first would require major spending reductions and the second would allow special interest provisions to be vetoed without the need to veto an entire bill. Were they to be accompanied by major tax change, we might see employee benefit program sponsorship only for the more traditional human resources reasons of recruitment, retention, and retirement, as the tax shelter value for employees would largely be eliminated relative to ordinary tax treatment.

Major strategic human resource and employee benefit (cash and noncash compensation) issues are raised by the House Republican Contract with America and the many proposals that have been outlined to follow it.

The themes of less government intrusion, extension to individuals of tax benefits that currently must flow through employers, and individual opportunity and empowerment would change the incentives dramatically and also the relative advantages of employment-based benefits, if implemented.

Health Reform Prospects

Before election outcomes were known, speculation centered on no prospect for comprehensive reform and a questionable future for incremental reform in the 104th Congress. Pundits focused on the 1996 election and the likelihood that presidential politics would make action unlikely.

The election outcome fundamentally changed the orientation of any reform process, with the process becoming one of starting at the right and compromising to the middle rather than moving from the left to the middle. The mainstream proposal of the last Congress now represents the "new left" position in the debate. The "Michel Bill" has now become a starting point of reference, having not even been viewed as on the table in 1993 and 1994. The situation in the states, with the voters of California having said no to "state health insurance," implementation of reform in Massachusetts likely to be postponed again, the mandate in Oregon likely to be reconsidered, and the Washington state reforms back on the review table, suggests a lowering of the probability of ERISA reform. Proposals will be many; debate will be active; but votes may well be deferred. On the one hand, ERISA preemption keeps the states from regulating as many as 60 percent of those with health insurance protection; on the other hand, this "limited" reform would change health regulation for 60 percent of those with health insurance. Surveys indicate that over 80 percent of these individuals are happy with the health insurance they have.

Health reform has not been described as being on the new majority's immediate agenda. Medical savings accounts, portability, and insurance reform have been mentioned frequently, but as a follow-on agenda to many other issues. Concern has heightened about the effects of stand-alone insurance reform. Business, large and small, has had time to assess the consequences of losing the federal standard of ERISA and appears less interested in federal action than in 1993 and 1994. The proposal to make Medicaid a federal government program has been cited as an additional argument for maintaining the federal ERISA standard for employee health benefits: Medicare, Medicaid, and health insurance regulation as federal responsibilities to facilitate mobility and portability. Some suggest that the answer is to amend ERISA to be a "strong" health regulatory statute that mimics the comprehensiveness of ERISA pension provisions.

The 104th Congress is most likely to provide a two-year opportunity to work on solutions to be voted on in 1997 and 1998. Any legislation enacted during the 104th Congress is likely to be of very limited scope. This provides time for position development and a careful development of standards: a time for specialists to make a contribution.

Pension Reform Prospects

The enactment of the General Agreement on Tariffs and Trade (GATT) brought with it "reform" of the Pension Benefit Guaranty Corporation (PBGC). As a result, as long as the economy remains strong, further reforms are likely to be many years in the future. Longer term Republican control may revive questions raised in the early 1980s about whether the program should exist at all.

The House enacted a technical corrections and pension simplification bill in 1994, which died in the Senate. This bill is likely to serve as a starting point in 1995, with added changes being considered that might increase the likelihood small employers would begin to sponsor plans. The desire to extend some expiring tax provisions may help to push this legislation along.

The Social Security Advisory Council is scheduled to report in late 1995. The council may make recommendations for changes in the employer pension system, and many members of the new Congress have expressed interest in the past in undertaking a more complete review of national retirement policy in general. The focus of the new House leadership on training and job change could expand this review to include assessments of how defined contribution plan balances can assist in transitions throughout life, rather than just in old age.

As with health care, the 104th Congress is likely to bring the same slow pace of pension legislation as occurred in the 103rd Congress, with activity in the form of hearings and the study of proposals. The primary focus is likely to be on how to voluntarily extend retirement program coverage to individuals and employers not now in the system as opposed to changes focused on more regulation of those employers who already have plans.

With the changes contained in GATT that hold dollar limits for plans in place, further absolute reductions in limits are unlikely, as they would not raise significant amounts of money.

Numbers from the Joint Committee on Taxation (JCT) provide an interesting picture. The $391.6 billion in tax expenditures for employer plans over the next five years is broken out as $223.21 billion attributable to federal, state, and local employee pensions; $56.78 billion for military pensions; and $111.61 billion for all private employer pensions. With just under 18 million active public plan participants, this represents a five-year tax expenditure per public pension active participant of $15,670, compared with a private plan tax expenditure of $1,958 per active participant for the 57 million active private plan participants. The reason for the high public plan tax expenditure is *not* high dollar limits, *it is* the fact that the plans have not been advance funded and represent a heavy burden on current and future taxpayers. The private plan tax expenditure is low because the plans have been advance funded and, as a result, do not represent a future cost burden.

Given the major basic tax reform changes being contemplated, the big issue of the future may become how to maintain private pensions in a tax regime that does not reward advance funding. The "excess benefit" excise taxes make this particularly important to high-income participants, who face a 39.6 percent basic income tax, plus a 15 percent excise tax, plus an average of 10 percent in state and local taxes, for a total tax of 64 percent on pension benefits. Even when compared with the present 28 percent capital gains rate, this raises incentive questions for both contributions and investments. For many public pensions, the issues are different, as the relatively large tax expenditures result from the plans as a whole being poorly funded. As a result, they create very large pay-as-you-go demands on public budgets. Tax treatment, therefore, is not primary for public pensions. Public pension policy will be more heavily influenced by the drive to reduce government direct spending than by tax law.

The Next Wave

The new Congress will develop proposals in the health and retirement areas. They will be important. On the side of health and welfare, the program changes will be as important as tax changes. However, for retirement issues the "technical" changes will be less important in the long run than the more fundamental spending and tax debates and actions. Capital gains rates, flat tax, consumption tax, and super-IRAs will all be more important in the long run, if enacted.

This does not suggest that seeking new efficiencies in health and pension laws and regulations is not time well spent, but it does suggest that "non" employee benefits legislation will have the greatest strategic implications for individuals and institutions.

Conclusion

The objective of economic security is shared by all. For many Americans it has always been a goal unreached. For most it has been a goal sought in the process of frequent job change. For a substantial minority, perhaps 25 percent of the working population, it has been pursued in an environment of job stability when stability was desired. These workers, in the public and private sector, were the influentials of society. These workers have begun to face the world of uncertainty of the other 75 percent. Cases in point: federal employees are facing an already budgeted reduction of nearly 275,000 jobs and discussion of an additional 160,000 jobs being eliminated. Democratic House committee staff are facing the street after a 40-year run of stability. Corporate staff at companies such as Kodak, Westinghouse, and Martin Marietta have seen markets—and tens of thousands of jobs—disappear after decades of seemingly unstoppable growth.

A strong economy and economic growth do not present a tonic for this basic feeling of instability. We saw that on election day. The prospect of retraining and training sabbaticals will not bring a return of stability, and in the future 95 percent of workers will likely face ongoing change. This will bring with it growing middle and upper class pressure for portability of all benefits; for unemployment and training as savings objectives as important as retirement; for access to all capital accumulation assets to use for the "financial" hardship of unemployment or career retraining and change; and for a fundamental evaluation of the types of employee benefits that fit this new world. Many have begun this evaluation; all will need to do so in the years ahead. If enacted, many individual parts of the agenda of the new House Republican majority would add new dimensions for consideration and move the review from being desirable to being essential.

—Dallas L. Salisbury, EBRI

Flexible Work Schedules Increasing Among Some Groups

Introduction

Among full-time wage and salary workers aged 16 and over, 15.1 percent had flexible work schedules in 1991, up from 12.3 percent in 1985 (table 1).[1] In absolute terms, there were 80.5 million employees aged 16 and over in May 1991, compared with 73.4 million in May 1985. The number of workers with flexible schedules increased to 12.1 million in May 1991 from 9.1 million in May 1985. The term *flexible work schedule* refers to any adjustment in hours worked that differs from a traditional fixed daily schedule of five days per week.[2] However, for the purposes of this article, only employees who choose their starting and/or stopping times, within limits established by management, are considered to be working under flexible schedules.[3]

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[1] *U.S. Department of Labor, Bureau of Labor Statistics,"Working on Flexible and Shift Schedules," USDL news release 92-491, 14 August 1992. These data are from the May 1991 and May 1985 Current Population Surveys.*

[2] *Nancy Saltford, "The Changing Environment of Work and Family,"* EBRI Issue Brief *no. 138 (Employee Benefit Research Institute, June 1993).*

[3] *U.S. Department of Labor, Bureau of Labor Statistics, "CPS Field Representative Memorandum—Instructions for the May 1991 Multiple Jobs and Work Schedules*

Table 1
Percentage of Full-Time Wage and Salary Workers Aged 16 and Over with Flexible Work Schedules, by Selected Characteristics, 1985 and 1991

	May 1985	May 1991
	(thousands)	
Total Wage and Salary Workers Aged 16 and Over	73,395	80,452
Total with Flexible Schedules	9,061	12,118
	(percentage with flexible schedules)	
Total Wage and Salary Workers Aged 16 and Over	12.3%	15.1%
Male	13.2	15.5
Female	11.1	14.5
Total, by Age		
16–19	9.3	10.6
20–24	10.8	12.0
25–34	13.1	15.7
35–44	13.9	16.5
45–54	11.6	15.3
55–64	9.9	12.2
65 and over	13.8	16.4
Men, by Age		
16–19	10.1	9.6
20–24	11.2	11.5
25–34	13.4	5.8
35–44	15.0	17.0
45–54	13.1	16.2
55–64	10.8	13.4
65 and over	16.9	17.9
Women, by Age		
16–19	8.1	2.0
20–24	10.2	12.5
25–34	12.7	15.6
35–44	12.3	15.7
45–54	9.3	14.0
55–64	8.5	10.5
65 and over	9.2	14.1
Occupation		
Managerial and professional specialty	18.2	22.1
Executive, administrative, and managerial	19.7	23.1
Professional specialty	16.9	21.0
Technical, sales, and administrative support	14.6	17.7
Technicians and related support	18.8	22.6
Sales occupations	19.9	22.3
Administrative support, including clerical	11.0	14.0
Service occupations	8.5	10.5
Private household	11.1	13.6
Protective service	8.5	8.8
Service, except private household and protective	8.4	10.9
Precision production, craft, and repair	6.8	8.1
Mechanics and repairers	7.1	7.7
Construction trades	7.1	8.5
Other precision production, craft, and repair	6.4	8.1
Operators, fabricators, and laborers	6.4	7.3
Machine operators, assemblers, and inspectors	4.0	5.2
Transportation and material moving	11.5	10.8
Handlers, equipment cleaners, helpers, and labors	5.7	7.5
Farming, forestry, and fishing	15.1	11.3

Source: U.S. Department of Labor, Bureau of Labor Statistics "Workers on Flexible and Shift Schedules" *News* USDL 92-491, 14 August 1992.
Note: Data relate to the sole or principal job of full-time wage and salary workers who were at work during the survey reference week and exclude the incorporated self-employed, who usually are classified as wage and salary workers.

The likelihood of an employee working under a flexible schedule varies based on several factors. For instance, in 1991, 15.3 percent of private-sector employees worked on a flexible schedule, while 14.2 did so in the public sector. Variation in working under a flexible schedule occurs mostly by age, gender, occupation, and industry. By breaking the data into these groups and comparing the 1991 statistics with the 1985 reference point, possible future trends can be inferred.

Age

For all age cohorts, the percentage of employees on flexible work schedules increased from 1985 to 1991 (table 1). Additionally, the 1991 data indicate that the employees most likely to have flexible schedules were aged 35–44 (16.5 percent) and those aged 65 and over (16.4 percent) (table 1). The employees least likely to work under a flexible schedule were members of the youngest age cohort, those aged 16–19 (10.6 percent). Thus the middle aged and the elderly, who are more established in the work place, tended to have more flexible schedules than employees who recently entered the labor force.

Supplement." Flexible schedules should also not be confused with split, rotating, and irregular shifts or staggered hours under which a central authority sets different beginning and ending times for different divisions.

Gender

Men were slightly more likely than women (15.5 versus 14.5 percent) to work on a schedule that allowed them to vary the time they began and ended their work day in 1991 (table 1). However, this gap was narrower than that in the 1985 results (13.2 versus 11.1 percent), indicating an increasing number of women are working under flexible schedules. Additionally, for both genders, the percentage on flexible schedules increased after 1985.

Younger women were more likely to have flexible schedules than younger men, while older women were less likely to have such schedules than older men, according to the 1991 results. Over 12 percent of female employees aged 16–24 had flexible schedules, compared with 11.5 percent of male employees in the same age cohort. On the other hand, 17.9 percent of male employees aged 65 and over worked on a flexible schedule, while 14.1 percent of female employees in the same age group adjusted their schedules.

Occupation

For most of the major occupational groups, the likelihood of having a flexible schedule was higher in 1991 than it was in 1985 (table 1). The highest incidence of employees working under flexible schedules occurred in the white collar professions. Twenty percent or more of managers, technicians, and salespersons had flexible schedules in 1991. The specific occupations with the highest proportion of workers on flextime were: natural scientists (45 percent), mathematical and computer scientists (44 percent), and college and university teachers (38 percent). Blue collar and service workers were less likely to vary their work schedule. On average, less than 10 percent of workers in these occupations had flexible schedules.

Industry

In the private sector, employees in service-producing industries (17.3 percent) were more likely to have flexible work schedules than workers in goods-producing industries (11.7 percent). Industries with the lowest incidence of flexible schedules were manufacturing and construction (11.6 percent and 10.4 percent, respectively), while finance, insurance, and real estate (22.3 percent) and entertainment/recreation (21.5 percent) had the highest proportion of workers with flexible schedules.

Although government employees as a whole were less likely to be on flexible schedules than private-sector employees (14.2 versus 15.3 percent), 27 percent of workers employed by the federal government adjusted their work schedules. State and local government workers had a lower incidence of employees on flexible schedules (18.1 percent and 7.7 percent, respectively).

Conclusion

The proportion of workers on flexible schedules varies by demographic, occupational, and industrial factors. Overall, the incidence of workers with flexible schedules increased from 1985 to 1991. While the likelihood of working on a flexible schedule varies based on demographic characteristics, greater variation occurred in industrial and occupational groups.[4] For example, the difference between the proportion of male and female employees on flexible work schedules was marginal (15.5 versus 14.5 percent), compared with the difference between managers (22.1 percent) and operators, fabricators, and laborers (7.3 percent). This may be partly due to the nature of the work performed in some industries or occupations, which necessitates a steady schedule as opposed to others that allow flexibility in work schedules.

—David Scheer, EBRI

[4] *Data for 1985 are unavailable for industry groupings.*

Investment Performance Education May Influence Americans' Investment Behavior, According to New EBRI/Gallup Survey

Americans say they would change investments in response to information. When Americans are given investment performance information for long-term holding periods they are willing to shift 13 percent of their investment from a low-risk/low-return asset to a high-risk/high-return asset, according to the most recent public opinion survey conducted by EBRI and The Gallup Organization, Inc. "For those concerned that individuals invest too conservatively in their retirement plans this may be good news," stated EBRI President Dallas Salisbury.

According to the survey results, given the choice between a risk-free asset with a known 3 percent return rate or a riskier asset with a return rate of 10 percent, but carrying with it the potential to decrease by 25 percent annually, Americans said they would invest 32 percent in the riskier asset. In comparison, when Americans were given the same choice but informed that the risky asset had never experienced a decline if held for five years, Americans were willing to invest 45 percent in the riskier asset.

"Detailed results provide an indication of the value of investment education on topics such as long-term holding periods," said Salisbury. "Our results indicate that investment education could be particularly valuable for females and individuals younger than age 35."

The survey also revealed that 55 percent of Americans said, assuming they had a pension plan, they would prefer to leave investment decisions to their employer and receive a fixed amount when they leave the job or retire.

The issues of pension preservation and portability continue to be discussed among employers, individuals, and policymakers. The EBRI/Gallup survey showed that 58 percent of Americans think about using their retirement money only at the time of retirement.

"We see that a majority of Americans regard their retirement savings in the way they were designed to be used even though previous EBRI research shows a large proportion of Americans have not rolled over lump-sum distributions into tax-qualified savings. Possibly as baby boomers continue to age and with continued emphasis on investment education even more Americans will realize the importance of preserving any preretirement distributions they receive," Salisbury commented.

When asked to rate historical return rates for five types of investment vehicles, Americans said stocks had the best rates of return historically (3.18 on a scale of 1 to 5). In a similar question, 32 percent of Americans said they believed historically stocks' return rate exceeded the inflation rate.

In addition, the survey asked Americans to indicate what situations would influence their changing the investment mix or actual dollar amounts of their retirement investments, how confident they are they will have a job for as long as they wish, and how long they wish to remain with their current employer. The survey also initially asked Americans if they have either a defined contribution type retirement plan and whether or not they and their employer contribute to the plan as well as if they have a defined benefit type pension plan. All responses to the remaining survey questions were cross tabulated with these first questions. Some results from the 1994 survey are compared with results from a similar 1993 EBRI/Gallup survey.

Copies of the survey report, *Public Attitudes on Investment Preferences, 1994*, (G-61), may be ordered from Cheri Meyer, (202) 775-6351, for the following prices: summary—$50; full report—$100; EBRI member prices: summary—$25; full report—$50.

—Carolyn P. Pemberton, EBRI

Washington Update

The 104th Congress—With the victory of Republicans over Democrats in the Nov. 8 midterm election, Republicans will hold the majority in both the House and Senate in the next Congress. The committee chairmanships will change hands as the power on Capitol Hill shifts to the right. During the campaign, House Republican candidates signed an agenda dubbed the "Contract with America," promising that each item on their agenda will be brought to the House floor in the first 100 days of the 104th Congress (see box). On the Senate side, Republicans have rallied behind a 7-point agenda that generally overlaps the House "Contract."

Outlook: The key committees with jurisdiction over employee benefits issues will be chaired as follows: House Ways and Means, Rep. Bill Archer (R-TX); House Economic and Educational Opportunity (formerly Education and Labor), Rep. Bill Goodling (R-PA); House Commerce (formerly Energy and Commerce), Rep. Tom Bliley (R-VA); Senate Finance, Sen. Bob Packwood (R-OR); and Senate Labor and Human Resources, Sen. Nancy Kassebaum (R-KS). Three committees in the House will be dissolved, while others will see changes in jurisdiction. Committee assignments will be determined between now and the start of the new Congress Jan. 4.

PBGC Reform—The House Nov. 29 and the Senate Dec. 1, in a rare lame duck session, passed implementing legislation for the General Agreement on Tariffs and Trade (GATT). The bill includes PBGC reform; extends Internal Revenue Code sec. 420 to allow excess pension assets in certain defined benefit plans to be transferred into a 401(h) retiree health benefits account; and slows cost-of-living adjustments for compensation limits, the dollar limit on benefits under a defined benefit plan, annual additions on defined contribution limits, elective deferral limits, and simplified employee pension limits (*Notes,* 10/94). In general, the PBGC reforms phase out the variable rate premium cap, require more rapid funding of pension benefits, and mandate that pension plans use certain interest rate and mortality tables to determine current liability.

Outlook: President Clinton signed the GATT agreement Dec. 8.

Health Reform—While the House Republican "Contract with America" is silent on the issue of health reform, the Senate Republican agenda does include a plan based on the Dole-Packwood bill (*Notes,* 6/94). Such a proposal would likely include insurance market reforms, medical savings accounts, and subsidies for low-income workers. The administration's scaled back health reform efforts will be spearheaded next year by Robert Rubin of the National Economic Council and Carol Rasco of the Domestic Policy Council. It is unclear whether Rubin will carry this responsibility with him if he is confirmed as the next Secretary of the Treasury to replace Secretary Lloyd Bentsen, who recently resigned. The administration will likely put forth the tenets of its upcoming health reform effort in its fiscal year 1996 budget request.

A joint hearing on the Employee Retirement Income Security Act of 1974 (ERISA) as it relates to health benefits was held Nov. 30 by the House Education and Labor Labor-Management Relations Subcommittee and the Small Business Regulation Subcommittee. The hearing was called to explore whether reforms are needed to strengthen the protection ERISA provides for individuals covered by self-insured plans and to examine the barriers ERISA imposes to state health reform efforts. Outgoing Labor-Management Relations Subcommittee Chairman Pat Williams (D-MT) stated he does not expect that states will be granted blanket relief from ERISA preemption by the next Congress. However, outgoing Regulation Subcommittee Chairman Ron Wyden (D-OR) posited that the prospects for ERISA reform in the 104th Congress are good. He outlined a framework for ERISA reform, stating that self-funded plans should be allowed to continue to operate but should be certified by the Department of Labor

Keeping on Track

The following items are listed to keep you up-to-date on issues that were not specifically addressed in Washington Update.

Educational Assistance
The tax exclusion for employer-provided educational assistance under sec. 127 of the Internal Revenue Code (IRC) expires Dec. 31, 1994. The 104th Congress is expected to reinstate the exclusion retroactively.

Individual Retirement Accounts (IRAs)
Included in the House Republican "Contract with America" is the creation of "American Dream Savings Accounts." Under this proposal, contributions to IRAs would not be deductible but earnings would not be taxed when they are withdrawn. Distributions within five years of a contribution would be taxable. Penalty-free withdrawals would be permitted for first-time home purchases, higher education expenses, and qualified medical expenses, including the purchase of long-term care insurance.

Internal Revenue Service Notices
The Internal Revenue Service (IRS) Dec. 1 released further guidance (EE-61-93) on the disallowance of deductions for executive compensation in excess of $1 million (IRC sec. 162(m)). The guidance addresses the definition of the term "outside director" and the requirement that performance-based compensation be preestablished.

Listed below are recently issued IRS notices on employee benefits:

Notice 94-103, issued Dec. 6. Provides guidance for employers on the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) health continuation coverage requirements that may arise under the Family and Medical Leave Act.

Advance Copy of Notice 94-96, issued Nov. 1. Provides a new interpretation of how nonqualified deferred compensation plans are taxable under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA). The 1993 budget bill repealed the dollar limit on wages subject to the hospital insurance tax, making it necessary for IRS to provide the new interpretation. The effective date will be no earlier than Jan. 1, 1995. IRS will not challenge an employer's determination of FICA or FUTA tax liability before the effective date if that determination is based on a reasonable effort to comply with the applicable IRC sections 3121(v)(2) and 3306(r)(2). IRS is expected to publish proposed regulations on determining FICA and FUTA liability in a forthcoming notice of proposed rulemaking.

Field Directive, issued Nov. 22. Regards the exclusion of part-time employees from employee benefit plans. The directive asserts that not only does the exclusion need to satisfy IRC sec. 410(b), but it also must satisfy sec. 410(a). The directive states that the sections impose independent requirements on plans, both of which must be satisfied for a plan to remain qualified. A plan that has received a favorable determination letter on a document containing a provision excluding part-time employees from participation may be entitled to retroactive relief.

Advance Copy of Revenue Ruling 94-75, issued Nov. 29. Clarifies the circumstances under which employers can convert a defined benefit pension plan to an insurance or annuity contract plan and not have to meet the agency's minimum funding requirements.

Advance Copy of Revenue Ruling 94-76, issued Nov. 29. Describes situations under which changes in a pension plan's provisions governing amounts transferred or directly rolled over from a qualified money purchase plan to a profit-sharing plan will cause the profit-sharing plan to fail to satisfy IRC sec. 401(a).

Long-Term Care
Included in the House Republican "Contract with America" is a provision to treat long-term care insurance or plans in the same manner as accident or health plans for purposes of the employee and employer tax exclusion. In addition, the "Contract" would allow amounts withdrawn from an IRA or a 401(k) plan for the purchase of long-term care insurance to be excluded from gross income for tax purposes.

Keeping on Track (continued)

Nonqualified Plans
A U.S. Circuit Court of Appeals decision handed down Dec. 5 rules that employers that enter into deferred compensation agreements with employees under a nonqualified plan may not deduct amounts accrued annually on deferred compensation as interest. This decision reverses the Ninth Circuit ruling on *Albertson's Inc. v. Commissioner* (*Notes,* 3/94).

Retirement Security
Sen. Bill Bradley (D-NJ), outgoing chairman of the Senate Finance subcommittee on Deficits, Debt Management, and Long-Term Economic Growth, held a hearing Dec. 7 on pension and savings issues. The hearing included a discussion of individuals' experience with the pension system, what can be done to increase private savings, and how to extend retirement savings incentives to low-wage earners and small companies.

Social Security
House and Senate Republicans have committed to a repeal of the tax increase on Social Security benefits enacted through the Omnibus Budget Reconciliation Act of 1993. Legislative language from the House "Contract" provides a phaseout of the tax increase by the year 2000. Republicans in both chambers will also seek to raise the Social Security earnings limit.

The Advisory Council on Social Security met Nov. 18–19 in Washington to discuss the consumer price index, benefit adequacy/equity options, disability insurance, and other issues. Health and Human Services Secretary Donna Shalala has extended the council's charter through January 1996. The council's next meeting is scheduled for Dec. 16–17 in Washington, DC.

Stock Options
The Republican takeover of the House and Senate may clear the way for congressional action on the Financial Accounting Standards Board (FASB) proposal on accounting for stock-based compensation (*Notes,* 11/94). Capitol Hill sources indicate that if FASB moves forward with its plan, Congress is prepared to respond legislatively to block it. FASB's task force on accounting for stock compensation met Dec. 2 to discuss issues including how best to determine the value of stock options.

FASB Vice Chairman James Leisenring has been reappointed to a 5-year term effective July 1, 1995. Leisenring has been a FASB board member since 1987.

House Republican Contract with America

(Included are only those sections that may pertain to employee benefits.)

The Fiscal Responsibility Act—A balanced budget/tax limitation amendment and a legislative line-item veto to restore fiscal responsibility to an out-of-control Congress, requiring them to live under the same budget constraints as families and businesses.

The Personal Responsibility Act—Discourage illegitimacy and teen pregnancy by prohibiting welfare to minor mothers and denying increased AFDC (Aid to Families with Dependent Children) for additional children while on welfare, cut spending for welfare programs, and enact a tough two-years-and-out provision with work requirements to promote individual responsibility.

The Family Reinforcement Act—Child support enforcement, tax incentives for adoption, strengthening rights of parents in their children's education, stronger child pornography laws, and an elderly dependent care tax credit to reinforce the central role of families in American society.

The American Dream Restoration Act—A $500 per child tax credit, begin repeal of the marriage tax penalty, and creation of American Dream Savings Accounts to provide middle class tax relief.

The Senior Citizens Fairness Act—Raise the Social Security earnings limit which currently forces seniors out of the work force, repeal the 1993 tax hikes on Social Security benefits and provide tax incentives for private long-term care insurance to let older Americans keep more of what they have earned over the years.

as meeting not-yet-developed federal standards. Ranking Republican member Marge Roukema (NJ) stated that ERISA has helped to encourage the adoption of health benefit plans and that a long look should be taken at states that have moved forward on health reform without ERISA waivers.

Outlook: Exit polls following the Nov. 8 elections show that voters still hold health care as a major concern. However, it appears that comprehensive reform efforts will not be attempted by Congress in the foreseeable future. The Republican Congress may attempt to institute smaller changes in the insurance market, such as expanding the availability of insurance, making coverage portable, reforming the small group market, limiting preexisting condition exclusions, and reforming the malpractice system. It is certain that states will appeal to Congress for ERISA waivers to clear the way for local reform strategies. If Congress does not make progress on health reform by mid-1995, it is unlikely any legislation will result by the end of the 104th Congress.

Entitlement Commission—The Bipartisan Commission on Entitlement and Tax Reform met Dec. 9 in preparation for a final vote Dec. 14 on recommendations on how to handle the rising costs of federal entitlement programs. Commission members appeared far away from reaching a consensus or recommendations.

Outlook: If the Commission can reach consensus on final recommendations, that package may be factored into the President's fiscal year 1996 budget request.

—Kathy Stokes Murray, EBRI

At EBRI

Upcoming EBRI Books

The third edition of the *EBRI Databook on Employee Benefits* will be released in early 1995. This expanded version will contain more than 350 tables and charts with added emphasis on time series. Prepublication orders are available with special discounts for pre-print and bulk orders. Contact Cheri Meyer at 202-775-6351 for more information.

EBRI is releasing this month a new book, *Retirement in the 21st Century: Ready or Not?*, which is based on the proceedings from the May 1994 EBRI-ERF Policy Forum of the same title. Copies are being mailed to all EBRI members. Additional copies are available for $29.95 by calling EBRI Publications at (410) 516-6946.

Participant-Directed Retirement Plan Project

The surveys for EBRI's participant-directed retirement plan project were mailed December 15. If you would like to participate in this survey and have not already indicated your interest, please call Deborah Milne at 202-775-6341.

EBRI Cited in Forbes Magazine

In the December 19 issue of *Forbes* magazine an article appears about Americans' saving for retirement and the use of 401(k) plans. Reporter Janet Novack cites EBRI data on participation in salary reduction plans; mentions results from the

1994 EBRI/Greenwald Retirement Confidence Survey; quotes EBRI President Dallas Salisbury; and cites EBRI sponsors Fidelity Investments, IBM Corp., Metropolitan Life Insurance Co., and State Street Bank & Trust.

Long-Term Care Issue Brief

In preparation for an update of the August 1991 *EBRI Issue Brief* about long-term care (LTC) and the long-term care insurance market, EBRI is collecting information from members regarding their own experience with long-term care. If you would like to offer input on issues such as sample insurance policies, communications to employees about LTC, related literature, or other general information, please contact Sarah Snider at 202-775-6356.

New Publications

[*Note: To order publications from the U.S. Government Printing Office (GPO), call (202) 783-3238; to order congressional publications, call (202) 512-2470. To order U.S. General Accounting Office (GAO) publications, call (202) 512-6000; to order from the Congressional Budget Office, call (202) 226-2809*].

American Association of Preferred Provider Organizations. **1993 Summary of State Managed Care Legislation**. Members, $50; nonmembers, $100. AAPPO, 1101 Connecticut Ave., NW, Suite 700, Washington, DC 20036, (202) 429-5133.

American Hospital Association. **AHA Hospital Statistics: 1993-94 Edition.** Members, $59; nonmembers, $139. American Hospital Association, 840 North Lake Shore Drive, Chicago, IL 60611, (312) 422-3000.

Blank, Rebecca M. **State Abortion Rates: The Impact of Policies, Providers, Politics, Demographics, and Economic Environment.** $5. National Bureau of Economic Research, 1050 Massachusetts Ave., Cambridge, MA 02138. (Written requests only.)

Butler, Patricia A. **Roadblock to Reform: ERISA Implications for State Health Care Initiatives.** $20. National Governors' Association, P.O. Box 421, Annapolis Junction, MD 20701, (301) 498-3738.

Faulkner & Gray, Inc. **The Health Care 1000: A Guide to the Most Influential Health Policy Makers, Academic and Industry Leaders, and Organizations in the United States: 1993–94.** $145. Faulkner & Gray, Inc., Eleven Penn Plaza, New York, NY 10117-0373, (800) 535-8403.

Glass, Richard D. **Selecting Investments for Your Retirement Account. Third Edition.** $10.95 (discount for multiple copies). Investment Horizons, Inc., 336 Fourth Ave., Pittsburgh, PA 15222, (412) 261-5510.

Group Health Association of America. **Patterns in HMO Enrollment.** $30. Group Health Association of America, Publications Dept. 0612, 1129 20th St., NW, Suite 600, Washington, DC 20036, (202) 778-3200, ext. 3279.

Hall, Mark A. **Reforming Private Health Insurance.** $19.95, cloth; $12.95, paper. The AEI Press, 1150 17th St., NW, Washington, DC 20036, (202) 862-5800.

Hewitt Associates. **Hourly Employee Benefits Provided by Major U.S. Employers in 1993.** $75. Diane Schuett, Hewitt Associates, 100 Half Day Road, Lincolnshire, IL 60069, (708) 295-5000.

Howe, Neil, and Richard Jackson. **1994 NTUF Chartbook: Entitlements and the Aging of America.** $19.95. National Taxpayer's Union Foundation, 713 Maryland Ave., NE, Washington, DC 20002, (202) 543-1303.

Marmor, Theodore R., et al. **Economic Security and Intergenerational Justice: A Look at North America.** $29.50. Urban Institute Press, 4720 Boston Way, Lanham, MD 20706, (301) 459-3356.

Myers, Donald J. **ERISA Class Exemptions: 1994 Supplement, Current Through May 2, 1994.** $50. BNA Books, 9435 Key West Ave., Rockville, MD 20850, (800) 372-1033.

Nelson Publications. **Nelson's Guide to Pension Fund Consultants, 1994**. $335. Nelson Publications, 1 Gateway Plaza, P.O. Box 591, Port Chester, NY 10573, (800) 333-6357.

Olson, Laura Katz. **The Graying of the World: Who Will Care for the Frail Elderly?** $54.95. Haworth Press, 10 Haworth Press, Inc., Binghamton, NY 13904-9981, (800) 342-9678.

Poterba, James M. **Public Policies and Household Saving.** $36. University of Chicago Press, Marketing Dept., 5801 S. Ellis Ave., Chicago, IL 60637, (312) 702-7740.

Pratt, Henry J. **Gray Agendas: Interest Groups and Public Pensions in Canada, Britain, and the United States.** $39.50. University of Michigan Press, 839 Green St., P.O. Box 1104, Ann Arbor, MI 48106-1104, (313) 764-4392.

Reynolds, Calvin. **Compensation Basics for North American Expatriates: Developing an Effective Program for Employees Working Abroad.** American Compensation Association members, $20; nonmembers, $30. American Compensation Association, 14040 N. Northsight Blvd., Scottsdale, AZ 85260, (602) 951-9191.

Schmitt, Ray, ed. **The Future of Pensions in the United States.** $39.95. University of Pennsylvania Press, 1300 Brockley Hall, 13th floor, 418 Service Drive, Philadelphia, PA 19104-6097, (800) 455-9880.

Tawil, Jack J., and Frederick Bold. **Reinventing Health Care.** $48. Research Enterprises, P.O. Box 3081, Richland, WA 99352, (509) 375-1993.

U.S. Chamber of Commerce. **Annual Supplement to the 1994 Analysis of Workers' Compensation Laws.** Members, $8; nonmembers, $11. Publications Fulfillment, U.S. Chamber of Commerce, 1615 H. St., NW, Washington, DC 20062, (301) 468-5128.

U.S. Congress. House. Committee on Small Business. **Health Care Opportunities for Minorities.** Order from GPO.

U.S. Congress. Office of Technology Assessment. (1) **Defensive Medicine and Medical Malpractice.** (2) **International Health Statistics: What the Numbers Mean for the United States.** Order from GPO.

U.S. Congress. Senate. Committee on Finance. (1) **Social Problems and Health Care Costs.** (2) **Underlying Causes of Rising Health Care Costs**. (3) **Medical Practice Patterns and Appropriateness of Care.** Order from GPO.

U.S. Department of Commerce. Bureau of the Census. **Statistical Abstract of the United States, 1994: The National Data Book.** Order from GPO.

U.S. Department of Labor. Bureau of Labor Statistics. **The American Work Force: 1992–2005.** Order from GPO.

U.S. General Accounting Office. (1) **Health Care: Federal and State Antitrust Actions Concerning the Health Care Industry.** (2) **Health Care Reform: Potential Difficulties in Determining Eligibility for Low-Income People**. (3) **Health Insurance for the Elderly: Owning Duplicate Policies Is Costly and Unnecessary.** (4) **Hospital Compensation: Nationally Representative Data on Chief Executives' Compensation**.

U.S. Office of Consumer Affairs. **Consumer's Resource Handbook: 1994.** Order from GPO.

Zorn, Paul. (1) **Survey of State and Local Government Employee Retirement Systems**. Public sector, $35; private sector, $100. (2) **PENDAT Database.** Public sector, $75; private sector, $150. Government Finance Officers Association, 180 N. Michigan Ave., Suite 800, Chicago, IL 60601, (312) 977-9700.

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Notes

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EBRI also publishes EBRI/Gallup public opinion surveys, special reports, studies, and books.

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