EBRI has compiled a summary of the most significant legislation on employee benefit issues either introduced as bills in Congress or actively being considered as proposals. Wherever possible, some comments are offered about the outlook, but these are presented with words of caution. The climate on Capitol Hill can and does change quickly and profoundly—and literally overnight. What follows is the best information available to EBRI as of publication date. This information is used by EBRI to determine its own research and education priorities.

TAX REFORM LEGISLATION

The Tax Reform Act of 1983 (H.R. 4170)--In a rare defeat, the House rejected by a vote of 214-204 an effort by Ways and Means Committee Chairman Dan Rostenkowski (D-IL) to bring this comprehensive tax bill up for a floor vote. The bill deals with many provisions in the U.S. tax code that expired at the end of 1983, and it incorporates several other bills that affect employee benefits: life insurance tax provisions (Title II); tax simplification provisions (Title IV deals with rollovers of certain partial distributions from qualified pension plans); fringe benefits provisions (Title V); technical corrections to TEFRA and to the 1983 Social Security Amendments (Title VI); miscellaneous revenue matters (Title VIII deals with applications of cash or deferred arrangement rules to pre-ERISA money purchase plans); Social Security disability benefits (Title IX); and medicare budget reconciliation amendments (Title X). Representative Rostenkowski is personally committed to moving this bill, but the precise timing and manner are up in the air. He reportedly may delay a vote in order to see whether more substantial revenue raisers can be added as result of concern over
budget deficits. The issue that blocked consideration of the bill in the fall (industrial development bonds) may still not be resolved. Rostenkowski could end up dropping some of the Medicare changes from the bill and/or adding the Retirement Equity Act (women's pension legislation) to enhance its chances of passage. He still is apparently prepared to offer as a floor amendment to H.R. 4170 his so-called freeze proposal, which includes postponing until 1987 indexing of the section 415 pension contribution limits. The bill might also pick up an amendment extending education assistance tax provisions that expired at the end of 1983.

Fair Tax Act of 1983 (S. 1421, H.R. 3271)—Introduced in June 1983 by Senator Bill Bradley (D-NJ) and by Representative Richard Gephardt (D-MO), the Fair Tax Act would reform the federal revenue tax system by reducing the current rate structure and eliminating or reducing approximately forty tax preferences. One of the major provisions of the bill would amend ERISA by reducing the tax-deductible limits for defined benefit and defined contribution plans defined in section 415 of the Internal Revenue Code. The Bradley/Gephardt proposal would reduce the section 415 limits from $90,000 to $60,000 for defined benefit plans and from $30,000 to $20,000 for defined contribution plans and freeze them at this level.

This general approach to tax reform is gaining increased support from members of Congress, primarily the Democrats, and it is likely to be one of the major tax reform proposals in 1984 and 1985.

Amendments to the Internal Revenue Code (S. 557)—Introduced by Senator Dennis DeConcini (D-AZ), the legislation would reform the federal tax system by installing a consumption tax. It provides that contributions to finance employee benefits would no longer be tax-deductible to the employer since the income used to finance these benefits was generated by the employer. Employees would not be taxed on the value of employer contributions for benefits since these contributions would already have been included in the employer's tax base.

MAJOR PENSION LEGISLATION

Retirement Equity Act of 1983—Introduced originally in the Senate by Senator Robert Dole (R-KS) as S. 1978, the bill was passed by the Senate as an amendment to H.R. 2769, an unrelated revenue measure and is pending in the House. A similar bill (H.R. 4032), introduced by Representative John Erlenborn (R-IL), is also pending in the House.

Both bills are quite similar in their focus. They would require pension plans to cover younger workers and to use some periods of employment now excluded by most plans in computing their pension benefits. Spouses of employees would be more fully covered. Both bills would exempt state domestic relations orders from ERISA's anti-assignment rule under certain conditions. Another version of the bill in the House, H.R. 4280, was approved by the Education and Labor Committee before recess and is now before the Ways and Means Committee. Retirement equity is a politically popular
issue and is unlikely to be left behind in an election year. See EBRI Issue Brief no. 19 (June 1983) and no. 20 (July 1983).

EBRI has testified on this legislative issue before the Senate Finance Committee (T-15), the House Select Committee on Aging (T-17), the House Education and Labor Committee (T-22) and the Senate Committee on Labor and Human Resources (T-23).

Single Employer Plan Termination--Legislation in the two chambers is quite different. The proposal introduced by Senator Don Nickles (R-OK) (S. 1227) would allow termination of an insufficient single employer plan only if the employer can prove that continuing the plan will force it out of business. The Pension Benefit Guaranty Corporation (PBGC) would gain reasonable assurance of receiving a portion of an employer's future profits to cover the value of unfunded guaranteed benefits. The annual termination insurance premium would be increased to $6 per participant. Although hearings were held by the Senate Committee on Labor and Human Resources, the bill has not been reported out of committee.

H.R. 3930, introduced by Representatives William Clay (D-MO) and John Erlenborn (R-IL), requires union approval of plan terminations and the establishment of a special termination trust for vested benefits in excess of PBGC guarantees and imposes contingent liability on employers for up to five years after a firm is sold to another employer. Their bill would also increase the termination insurance premium to $6.

The Administration supports the $6 premium increase but dislikes the requirement for union approval of terminations. The president's fiscal year 1985 budget (EBRI Issue Brief no. 27) proposes a $7 PBGC premium. EBRI testified on the issue before the House Education and Labor Committee in September 1983. Passage of a premium increase during the 98th Congress is more likely than passage of a comprehensible bill.

Pension Fund Investments--Several pieces of legislation are pending in this area. Bills amending ERISA to permit investments by employee benefit plans in residential mortgages have been introduced by Representatives Erlenborn (R-IL), Addabbo (D-NY), Wyden (D-OR) and Gephart (D-MO) (H.R. 1179, H.R. 1507, H.R. 1418, H.R. 4243, respectively), and by Senator Packwood (R-OR) (S. 2096). H.R. 821 by Representative Edgar Jenkins (D-GA) would amend the Internal Revenue Code to permit qualified pension funds to invest in working interests in oil and gas properties without incurring unrelated business taxable income.

The House Education and Labor Committee, Labor-Management Relations Subcommittee, has scheduled a hearing on pension fund investments for March 8, focusing, in particular, on the Wyden bill (H.R. 4243). Senator Packwood's bill was referred to the Finance Committee. No action has been taken since introduction.

For further discussion, see EBRI Issue Brief no. 14, January 1984, 'Capital Needs of Small Business: Can Pension Funds Help?', as well as 'Social Investment of Pension Plan Assets, EBRI testimony (T-16) before ERISA Advisory Council, Department of Labor, June 14, 1983.'
Reversion of assets--The House Select Committee on Aging is currently drafting a bill for Chairman Edward Roybal (D-CA) to deter employers from terminating pension plans by requiring all or part of the excess assets to be distributed among plan participants. No legislation has been formally introduced at this time. The termination of overfunded defined benefit plans and the recapture of surplus assets by the employer emerged as a major political issue in 1983, and it continues to be of prime interest to Congress in 1984. The issue has attracted a notable amount of media attention and a high level of publicity is likely to continue.

At the end of the first session of the 98th Congress, Senator Howard Metzenbaum (D-OH) was persuaded not to attempt to attach an amendment to H.R. 2769 (retirement equity bill) that would place a nine-month freeze on approving terminations of pension plans when $1 million or more of assets would revert to the employer. But Senator Metzenbaum is still very much interested in the issue and the Senate Labor Committee may hold hearings in March.

The Treasury Department, the Labor Department and the PBGC are studying the issue and are reportedly working toward a consolidated administration position. Currently the PBGC and the IRS have an administrative freeze on approving terminations in excess of $1 million dollars.

The House Rules Committee Chairman Claude Pepper (D-FL) and Aging Committee Chairman Edward Roybal have suggested that companies should not, under any circumstances, be allowed to terminate a plan to recoup excess assets, since any excess assets belong to the employees. EBRI submitted testimony related to this issue before the House Aging Committee's September 28, 1983 hearing.

According to a group of tax and pension attorneys, any policy that precludes or penalizes the reversion of assets to employers from terminated pension plans would have a seriously adverse affect on defined benefit plans. In a memorandum sent to the Treasury Department and the Internal Revenue Service, the attorneys argued that where a termination provides adequate protection to participants for past and future benefit accruals, the transaction should be valid.

ERISA SIMPLIFICATION

ERISA Simplification Act (H.R. 3071)--Introduced by Representative John Erlenborn, H.R. 3071 proposes the easing of many of ERISA's cumbersome rules and regulations, but none of the committees with ERISA jurisdiction held hearings on the legislation in 1983.

Employee Benefit Administration Act (H.R. 3339)--With so many agencies now regulating employee benefits, some business groups want to have a single agency in the hope that legislation and policies might be better coordinated. H.R. 3339, introduced by Representatives Clay and Erlenborn, would consolidate pension regulation. No hearings have been scheduled this year.
OTHER PENSION-RELATED LEGISLATION

Supplemental Pension Plan Amendments (S. 1066)--Many people believe private pensions do not provide cost-of-living-adjustments, and current law prohibits an employer and employee from buying an insured annuity that could supplement an existing pension. Introduced by Senator John Chafee (R-RI), S. 1066 is a bill to facilitate indexation of employer pension benefits on a cost-shared basis. It would allow employees to dedicate a portion of their tax-qualified defined contribution plans, when matched by employer contributions, toward the purchase of supplemental retirement benefits in the form of an insured annuity that indexes other company-provided retirement benefits. EBRI submitted testimony (T-20) for the September 19, 1983 hearing on S. 1066 before the Senate Finance Subcommittee on Savings, Pension and Investment Policy. EBRI's testimony concluded that more than two-thirds of employers now provide some form of indexation, and that S. 1066 would provide a means of regularizing such increases, improving economic security for retirees without adverse effects on federal revenues.

Representative Barbara Kennelly (D-CT), has introduced similar legislation in the House (H.R. 4530), but there has been no action since November 1983, when the bill was referred to the Ways and Means Committee.

Technical Corrections Legislation (H.R. 3805)--Introduced by House Ways and Means Chairman Dan Rostenkowski (D-IL), the bill was ordered reported by the committee on October 4, 1983 and incorporated into Title VI of H.R. 4170, discussed previously.

TEFRA Delay Amendments (S. 1760)--Introduced by Senator Lloyd Bentsen (D-TX), the bill has not fared well. The Senate Finance Committee has taken no action on the bill. The bill would delay the effective date (January 1, 1984) of "top heavy" rules of TEFRA for one year. Supporters were disappointed that Senator Bentsen declined to offer it last fall as an amendment to the retirement equity act. The Chamber of Commerce has "diminishing hopes" for passage of S. 1760 or a similar bill, H.R. 4427, introduced in the House by Representative Dan Marriott (R-UT).

Employee Stock Ownership Act of 1983 (S. 2128)--Introduced by the powerful Senator Russell Long (D-LA) and currently cosponsored by forty-seven other members, the bill has impressive support. Its provisions include:

1) A rollover mechanism under which an employer could sell a company to its employees and receive the same tax deferral that is allowed when business ownership is transferred to another firm in exchange for stock in that company;

2) The tax-deductibility to an employer of dividends passed to employees through an employee stock ownership plan;

3) An exemption of 50 percent of the interest a bank earns on a loan to a leveraged ESOP for purposes of acquiring employer securities;
4) An increase in the exclusion of net capital gain from 60 percent to 80 percent for sales of investments in majority employee-owned companies as long as a three year holding period requirement is met.

No action has been taken on the bill since Nov. 17, 1983, when it was introduced and referred to the Senate Committee on Finance.

Fair Insurance Practices Act (S. 372, H.R. 100)--Authoried by Senators Robert Packwood (R-OR) and Mark Hatfield (R-OR) and by Representative John Dingell (D-MI), Chairman of the House Commerce Committee, this legislation would require the use of unisex mortality tables for benefit determinations under annuity contracts and other insured and noninsured arrangements.

According to a GAO study, the economic impact of the unisex bills would be the creation of large unfunded pension plan liabilities and a substantial increase in administrative costs.

Extensive hearings were held in 1983 but the issue is extremely controversial (Insurance companies and pension plan administrators strongly object to the legislation; women's groups are highly supportive), and it will probably not pass in 1984.

HEALTH LEGISLATION

Health Cost Containment Tax Act of 1983 (S. 640)--Senate Finance Committee Chairman Robert Dole (R-KS) introduced this bill at the urging of the Administration. It caps the amounts of tax-deductible contributions that an employer can make to a group health insurance plan on behalf of an employee. The tax cap is set at $2,100 per year for family coverage; $840 for individual coverage.

Opposed by organized labor, business and health insurance associations, the bill did not move in 1983. But significantly, President Reagan has proposed the tax cap again in the fiscal year 1985 budget proposal, and the Advisory Council on Social Security endorsed the tax cap proposal in its summary recommendations (See EBRI Issue Brief no. 26, January 1984 and Issue Brief no. 27, February 1984). Although enactment of the bill does not seem likely in 1984, its opponents caution that the continued support of the Administration will mean that the proposal will not disappear--and may be a strong possibility for passage in 1985. (See also: H.R. 2574 by Representative Barber Conable (R-NY), Health Cost Containment Act of 1983. It was introduced April 18, 1983, and is currently in the House Committee on Ways and Means.)

Medicare Reform (S. 2163 and S. 2164)--These two bills by Senator Dave Durenburger (R-MN) would reform the Medicare system. S. 2163, the Catastrophic Expense Protection Act, would limit a Medicare beneficiary's out-of-pocket costs for deductibles and coinsurance by a combined Part A and Part B cap of $2,500 per beneficiary each year. Present Medicare policy places no limit on the amount an individual may pay out-of-pocket for
catastrophic illnesses that result in extraordinary expenditures. S. 2164, the Part B Premium Redistribution Act, would lower the Part B premium from 25 percent of program costs to 20 percent. To pay for this reduction, a 1 percent surcharge would be levied on every Part B beneficiary's adjusted gross income that exceeds the amount of the zero bracket and personal exemptions. While enactment of these bills is unlikely this year, the concept of means-testing Medicare is certainly among the options Congress will consider.

Senator Ted Kennedy (D-MA) and Representative Richard Gephardt (D-MO) announced their intent to introduce a new bill during the week of February 20. The sponsors claim that their health bill will keep Medicare solvent without either tax increases or cuts in benefits and also would reduce private hospital bills. The key element is, reportedly, direct state and federal control on hospital and doctor's bills. The proposal has been endorsed by the American Association of Retired Person's (AARP), the AFL-CIO, and the National Council of Senior Citizens.

A report recently released by the Brookings Institution declares that a measurable reduction in health care costs can be accomplished only by a cut in benefits. The study notes that better management, elimination of duplicate facilities and shifting more care to the outpatient sector "will not save much."

The Health Care for the Unemployed Act of 1983--The House passed, in 1983, a $4 billion program (H.R. 3021) of block grants to the states to provide health insurance for the unemployed. Bills to consider a similar program, but at a lower cost of $1.8 billion, were reported by the Senate Labor and Human Resources Committee (S. 242) and by the Senate Finance Committee (S. 951). S. 951, introduced by Senate Finance Committee Chairman Robert Dole (R-KS), would require employers who employ ten or more employees and who offer group health benefits to provide at least a thirty-day enrollment period for each married eligible employee whose spouse loses coverage under a group health plan due to involuntary termination (except for cause). Although the bills were reported out of committee, there was not enough support to bring a compromise version to the Senate floor. The Administration had told Congress it would support no bill that would not pay for itself.

The Senate's failure to act on a compromise version of the health care for the unemployed legislation may signal the ultimate doom of this measure. The subsequent sharp declines in the reported rate of unemployment seem to undercut its support. See EBRI Issue Brief no. 22, September 1983.

The Occupational Disease Compensation Act of 1983 (H.R. 3175)--Representative George Miller (D-CA), Chairman of the Labor Standards Subcommittee of the House Education and Labor Committee, introduced and held extensive hearings on this proposal to federalize state workers' compensation for occupational diseases. Representatives of defendants in the asbestos liability litigation said the bill is a step in the right direction—a federal, no-fault compensation plan, with predictable and limited liability, for individuals
disabled by exposure to asbestos. Unions were also supportive, but less enthusiastic. Industry and labor suggestions for changes in the bill were far apart, and despite a growing number of cosponsors (thirty-four) and promises by Miller for a 1983 mark-up, the bill was stalled in subcommittee when Congress adjourned in November. No hearings have been scheduled for 1984 at this time.

Long-Term Health Care--There are three major pieces of legislation in the 98th Congress seeking to provide programs for the long-term care of the elderly--S. 1244 by Senator Robert Packwood (R-OR), S. 1539 by Senator Orrin Hatch (R-UT) and S. 1614 by Senator John Heinz (R-PA). The Senate Committee on Labor and Human Resources held hearings in July 1983 on S. 1539. The Senate Finance Committee held two days of hearings on long-term care late in 1983, but there has been no further action since then on any of these bills.

UNEMPLOYMENT COMPENSATION

The Extended Unemployment Compensation Act of 1983 (S. 1784)--This bill, by Senate Minority Leader Robert Byrd (D-WV) and Senator John Heinz (R-PA), would provide a consolidated program of extended unemployment compensation to replace the current extended compensation and federal supplemental compensation programs.

Congress passed an eighteen-month extension of the supplemental benefits program at the end of 1983 rather than face the prospects of a major overhaul of the unemployment compensation benefits program. (See EBRI Notes, November/December 1983.)

The Chamber of Commerce reports that pressure is still on for further changes in the extended unemployment insurance system. The Chamber says the bill will add a substantial increase in cost to employers. No action on the bill appears imminent, although hearings on the subject of overhauling the unemployment compensation system will reportedly be held by Senate Finance Committee sometime in 1984.

A companion bill, H.R. 3863, has been introduced in the House by Representatives Fortney Stark (D-CA) and Donald Pease (D-OH).

AGE DISCRIMINATION


Most of the legislation would amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limit of seventy for retirement and eliminate barriers to the employment of older workers.

There has been no action on the bills, in part because of opposition in the Senate and from interest groups. The issue could become popular in this election year.
OTHER BENEFIT LEGISLATION

Fringe Benefits (H.R. 3525)--An amended version of H.R. 3525, introduced by House Ways and Means Committee Members Pete Stark (D-CA) and Barber Conable (R-NY), was included in the comprehensive tax reform package, H.R. 4170 (see prior discussion). The legislation is intended to clarify the treatment of employee fringe benefits, since the congressional moratorium on Treasury regulations expired at the end of 1983.

Education Assistance (H.R. 2568)--This bill, by Representative James Shannon (D-MA), would make permanent the tax exclusion of education assistance provided to employees by their employers. Statutory authority for favorable tax treatment expired December 31, 1983. The Treasury Department has told Congress it expects employers to begin withholding tax on education assistance effective January 1, 1984, although the IRS has issued no guidelines to employers. Shannon is an influential member of the House Ways and Means Committee. He is well-liked by its Chairman (Rostenkowski) and by the Speaker of the House (Tip O'Neill endorsed Shannon's run for the Senate to fill the seat Senator Tsongas will vacate). The bill was ordered reported, as amended, by the Select Revenue Measures Subcommittee, and there is a chance the amended bill will be incorporated in H.R. 4170.

Meanwhile, a similar bill introduced by Senator Robert Packwood (R-OR) (S. 249) has not moved in the Senate Finance Committee, although Chairman Dole agreed last fall to include a two-year extension of education assistance as part of his deficit reduction package.

Chances are reasonably good, therefore, for at least some temporary extension of the expiring education assistance provisions. But Treasury opposes any extension and has testified that, while the education assistance program was designed to encourage the self improvement of unskilled workers, high income taxpayers would receive the greatest benefit from an extension of the exclusion.

Legal Services (S. 2080)--Introduced by Senator Robert Packwood (R-OR), S. 2080 would make permanent the tax-free status of legal aid provided by a company for its employees. The program exempting this benefit began in 1976, but the law expires in December 1984.

Currently, approximately seven hundred company plans provide legal services to employees, according to the National Resources Center for Consumers of Legal Services. In 1975, there were only seventy-five such plans.

Packwood said that the goal of improving the access of Americans to the nation's legal system is being met--at relatively little cost to the federal government ($20 million in 1982)--and thus the program should be given permanent tax-free status.

INDIVIDUAL RETIREMENT ACCOUNTS (IRAs)

There have been fifty-four measures introduced in the 98th Congress related to IRA and Keogh plans (H.R. 271, H.R. 351, H.R. 1327, H.R. 2468, S. 541, S. 1051, are a few such bills). Most of them expand in some way the maximum
permmissible tax-deductible contribution to an individual retirement account. Yet, there have been no hearings held on any of the measures with the exception of S. 960 and H.R. 4170, the omnibus tax bill, which includes a section (Title II) allowing nondeductible contributions to individual retirement accounts of $1,750.

The most significant proposal to date in this area is one offered by the Administration--commonly referred to as a "spousal IRA". The president's 1985 budget includes a proposal which would increase the maximum allowable IRA contribution by a worker and a nonworking spouse to $4,000. The present maximum contribution for worker and nonworking spouse is only $2,250, combined.

Another proposal floating around for some time would allow individuals to have the option of setting up a health-care individual retirement account as a supplement or an alternative to Medicare. No legislation has been introduced. The Advisory Council on Social Security, however, recommended exploring this option (see EBRI Issue Brief no. 26, January 1984).

Copies of congressional bills are available free of charge from the House and Senate Document Rooms. Address requests to the Document Room of the appropriate chamber at these addresses:

House Document Room
U.S. Capitol
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