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Notes

Preservation and Annuitization in Retirement Saving Accounts

by Paul Yakoboski, EBRI

Introduction

Many workers are accumulating significant amounts of money in individual account retirement saving vehicles such as individual retirement accounts (IRAs), 401(k) plans, and other forms of defined contribution plans. A great deal of attention is currently being focused on the decisions that workers must make regarding their participation in these plans: first, whether to participate, and then, how much to contribute[1] and how to allocate assets among the options available.[2] In addition, attention is paid to the issue of benefit preservation on job change, i.e., do workers spend their account balances or do they roll them over into an IRA or a new employer's plan or leave them in their former employer's plan.[3] Little attention has been focused to date on the decisions that workers make regarding the disposition of their account balances on reaching retirement age. Are these assets simply annuitized by most? Do the funds continue to be actively invested, say in an IRA account?

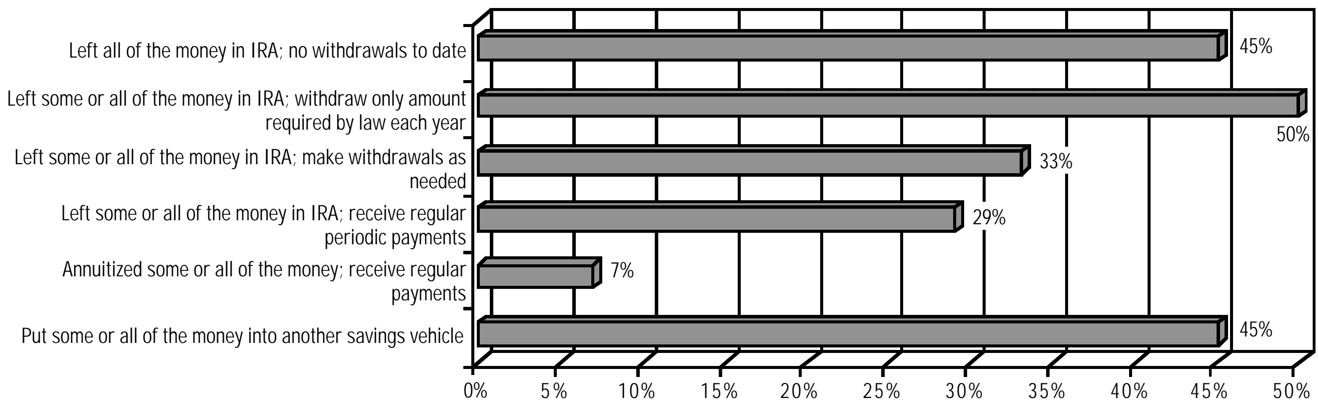
The 1997 Retirement Confidence Survey (RCS), sponsored by the Employee Benefit Research Institute (EBRI), Mathew Greenwald and Associates (MGA), and the American Savings Education Council (ASEC), addressed the issues of benefit preservation among workers receiving a lump-sum distribution and the disposition of account balances among workers reaching retirement age.[4]

Retiree Use of Retirement Savings

IRAs—Retirees were first asked how much money they had invested in IRAs at the time of their retirement. One-third reported that they had an IRA at retirement and could give an amount for the account balance. These retirees were then given six options and asked whether they had used any of their IRA money in any of those six ways.

Close to one-half (45 percent) of retired IRA owners reported leaving all of the money in the IRA without making any withdrawals to date. Thirty-three percent reported leaving some or all of the money in the IRA and making withdrawals as needed, and 29 percent reported leaving some or all of the money in the IRA and receiving regular periodic payments from the account. One-half reported leaving some or all of the money in the IRA and withdrawing only the amount required by law each year (chart 1).[5]

Only 7 percent of retired IRA owners reported putting some or all of their IRA balance into an annuity and receiving

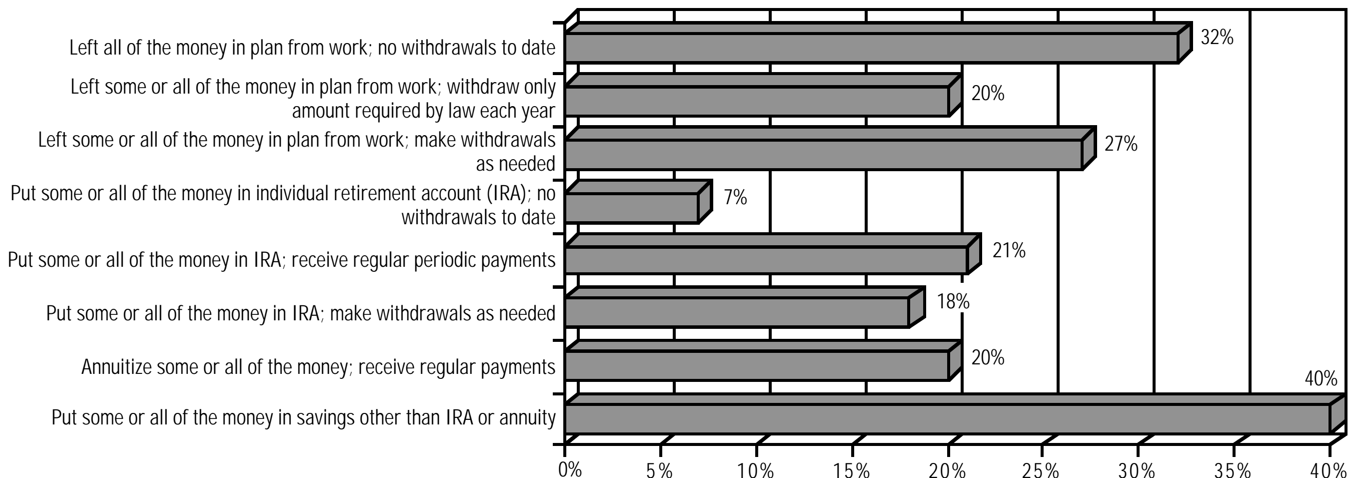


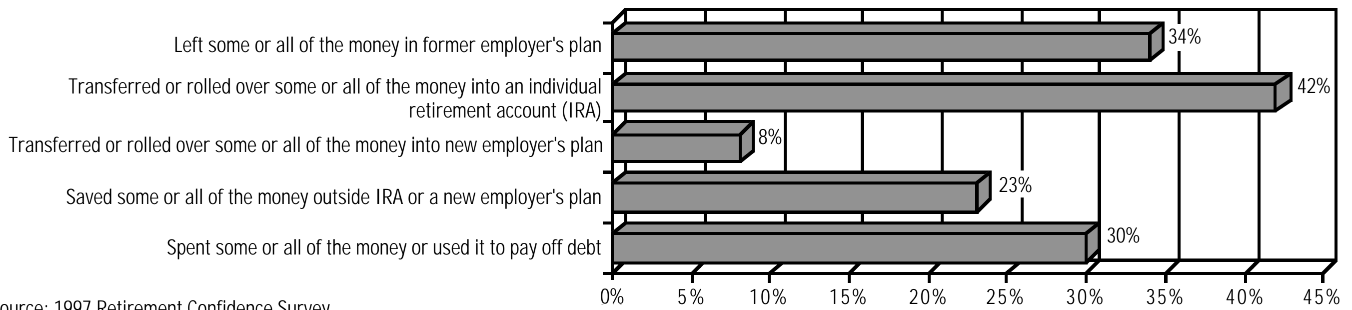
regular payments. This is drastically different from last year, when 21 percent reported annuitizing some or all of the money and receiving regular payments guaranteed for life and 13 percent reported annuitizing some or all of the money and receiving regular payments.[6] Forty-five percent reported putting some or all of the money into another savings vehicle, such as a savings account, a certificate of deposit, mutual funds, stocks, bonds, etc. (chart 1).

Younger retirees were much more likely to report having left the money in the IRA without having made any withdrawals to date. Older retirees were more likely, on the other hand, to report having left the money in the IRA and taking out only the amount required by law each year. This indicates that retirees tend not to touch this money immediately on retirement, and when they do begin to tap into the money, the amount is often dictated by the government through the tax code. In addition, the youngest retirees were also the most likely to annuitize.

401(k) Plans—One-fifth of current retirees had money in other types of retirement savings plans, such as a 401(k), thrift saving, or profit-sharing plan at the time they retired and knew the amount in their account. In the RCS, these individuals were given eight options and asked whether they had used any of their account money in any of those eight ways (chart 2).

One-third (32 percent) of retirees with a plan account balance at retirement reported leaving all of the money in a plan from work and not having withdrawn anything to





Source: 1997 Retirement Confidence Survey.

date. Twenty-seven percent left some or all of the money in a plan from work and make withdrawals when needed, and 20 percent left some or all the money in a plan from work and withdraw only the amount required by law each year.

Seven percent of current retirees reported putting some or all the money in an IRA and have made no withdrawals to date. Twenty-one percent put some or all of the money in an IRA and receive regular periodic payments, and 18 percent put some or all of it in an IRA and make withdrawals when needed.

One-fifth of current retirees put some or all of the money into an annuity and now receive regular payments. Forty percent reported putting some or all of the money into another savings vehicle, such as a savings account, a certificate of deposit, mutual funds, stocks, bonds, etc.[7]

Workers and Lump-Sum Distributions

The 1997 RCS also asked current workers if they had become eligible since January 1, 1993,[8] to receive a lump-sum distribution from a retirement plan on leaving a job before retirement. Seventeen percent of workers responded that they had the opportunity to receive a lump-sum distribution from a retirement plan over this period.

Of those with the opportunity, 34 percent reported leaving some or all of the money in their former employer's plan (chart 3). Most publicly available survey data typically miss these instances of benefit preservation. Therefore, such data sources underestimate the true degree of benefit preservation that is occurring, because they do not account for potential distributions that do not occur. As is shown here, "leaving the money behind in the plan" is a significant source of benefit preservation.

In addition, 42 percent of workers reported rolling over some or all of the money into an IRA, and 8 percent reported a rollover into a new employer's plan (chart 3). Therefore, when preservation does occur, it is most likely to occur by rollover to an IRA or leaving the money behind in the old employer's plan, not via rollover into a new employer's plan. When it comes to benefit preservation, younger workers are in general more likely to leave the money behind in a former employer's plan, while older workers are in general more likely to roll it over into an IRA.

Finally, a significant fraction of respondents report leakage of money out of the retirement system. Twenty-three percent report saving some or all of the money in a non-tax-preferred vehicle, and 30 percent report spending at least some of the money and/or using it to pay off debt (chart 3).[9] Therefore, at least 5 percent of all current workers have experienced some degree of benefit leakage from the employment-based retirement system over the past three years because they chose to spend some or all of a lump-sum distribution that they received.

Implications

These findings indicate that despite changes in place since 1993 designed to encourage preservation of retirement benefits, many workers have chosen not to roll over their lump-sum distributions when changing jobs. Such behavior can potentially result in a significant loss of retirement income. However, it should also be noted that such cashouts are less frequent than commonly believed due to the fact that many workers choose not to receive a distribution when eligible on job change, but rather leave some or all of their account balance behind in their former employer's plan.

When workers retire with money in retirement savings vehicles such as IRAs and 401(k)s, they tend to initially leave the money untouched in the IRA or employment-based plan. As workers age, they will begin to withdraw the money, but often they withdraw only the minimum amount dictated by law each year.

As the 401(k) system matures and significant numbers of workers

begin to retire with large account balances that must last for the remainder of their lives, educating workers about their options and how best to manage this money in retirement will assume the level of importance devoted to participation and asset allocation education today.

Endnotes

[1] *See Paul Yakoboski and Jack VanDerhei, "Contribution Rates and Plan Features: An Analysis of Large 401(k) Plan Data,"* EBRI Issue Brief *no. 174 (Employee Benefit Research Institute, June 1996).*
[2] *See Paul Yakoboski and Jack VanDerhei, "Worker Investment Decisions: An Analysis of Large 401(k) Plan Data,"* EBRI Issue Brief *no. 176 (Employee Benefit Research Institute, June 1996).*
[3] *See Paul Yakoboski, "Large Plan Lump-Sums: Rollovers and Cashouts,"* EBRI Issue Brief *no. 188 (Employee Benefit Research Institute, August 1997).*
[4] *These issues were explored in the 1996 RCS. See Paul Yakoboski, "Preservation and Annuitization in Retirement Saving Accounts,"* EBRI Notes *no. 3 (Employee Benefit Research Institute, March 1997): 1–3. The questions in the 1997 RCS were revised based on the answers to last year's questions.*
[5] *It is possible for a retiree to use his or her IRA balance in more than one way.*
[6] *This could be the result of restricting the sample to retirees who knew the balance of their IRA account and of rewording the question to include two more options for account balance use.*
[7] *It is possible for a retiree to use his or her account balance in more than one way.*
[8] *Changes in the law regarding lump-sum distributions became effective in 1993. These changes were designed to encourage benefit preservation by mandating the opportunity for direct transfers of account balances to an IRA or a new employer's plan and by imposing a 20 percent withholding on accounts that did not utilize the direct transfer option.*
[9] *It is possible for a worker to use his or her account balance in more than one way.*

BLS Survey Shows Change in Group Health and Retirement Plan Participation

by Kenneth McDonnell, EBRI

Introduction

Participation in the two major employee benefit programs—group health insurance and retirement income plans—declined between 1980 and 1995, according to the latest Bureau of Labor Statistics (BLS) employee benefit survey of medium and large private establishments. The 1995 survey covers 33.4 million full-time workers and 6.8 million part-time workers in nonfarm establishments employing 100 or more employees. BLS gathers the data for this survey by obtaining the plan documentation from a randomly selected sample of employers and conducting follow-up interviews for clarification.

Group Health Insurance

Full-time workers' participation in employment-based group health insurance plans declined steadily from 97 percent in 1980 to 77 percent in 1995 (table 1). Research and policy debates attempt to understand the reasons why participation in employment-based health insurance continues to decline. One conclusion being offered is that fewer employers are offering health insurance. Unfortunately, there are no survey data to support or refute this claim because the BLS survey reports data on employees' participation in benefits, not on employers' offering of benefits. Research has shown several factors that might explain the decline in participation. They include the shift from the manufacturing sector to the service sector, the decline in unionization, stagnation in family income, and the rising cost of health insurance premiums.

Employers in medium and large private establishments are moving toward managed care plans in an effort to control the costs of health insurance. The majority of full-time employees who participate in an employment-based health insurance plan are now enrolled in a managed care plan. In 1988, 26 percent of full-time employees were enrolled in a managed care plan. By 1995, that percentage increased to 62 percent (table 2).

Retirement Income

Participation in employment-based retirement income plans, while declining between 1985 (91 percent of full-time employees) and 1991 (78 percent), increased slightly to 80 percent in 1995 (table 1). The BLS survey reports data on two major types of employment-based retirement income plans—defined benefit and defined contribution

Table 1
Percentage of Full- and Part-Time Employees Participating[a] in Employee Benefit Programs: Medium and Large Private Establishments,[b] Selected Years 1980-1995

	Full-Time Employees					Part-Time Employees		
	(old scope)		(new scope)					
Employee Benefit Program[c]	1980	1985	1991	1993	1995	1991	1993	1995
Paid Leave								
Holidays	99%	98%	92%	91%	89%	47%	48%	44%
Vacations	100	99	96	97	96	55	55	50
Personal leave	20	26	21	21	22	10	14	13
Funeral leave	d	88	80	83	80	39	44	37
Jury duty leave	d	92	86	90	85	45	49	42
Military leave	d	70	54	53	44	14	14	14
Maternity leave	d	d	2	3	e	1	1	e
Paternity leave	d	d	1	1	e	f	1	e
Family leave	e	e	e	e	2	e	e	f
Unpaid Leave								
Maternity leave	d	d	37	60	e	19	36	e
Paternity leave	d	d	26	53	e	14	32	e
Family leave	e	e	e	e	84	e	e	42
Disability Benefits								
Short-term disability	93	93	86	87	e	e	e	e
paid sick leave	62	67	67	65	58	30	26	19
sickness and accident insurance	54	52	45	44	53	19	17	16
Long-term disability insurance	40	48	40	41	42	3	4	7
Survivor Benefits								
Life insurance	96	96	94	91	87	31	25	20
Accidental death and dismemberment	66	70	67	69	67	d	19	14
Survivor income	d	12	6	5	6	d	f	1
Health Care Benefits								
Health insurance	97	96	83	82	77	28	24	19
Dental insurance	54	73	60	62	57	18	17	13
Vision care	20	33	23	26	24	d	10	8
Outpatient prescription drugs	94	94	80	80	74	d	24	19
Retirement Income Benefits								
All retirement[g]	d	91	78	78	80	40	40	37
defined benefit pension	84[h]	80	59	56	52	28	26	22
defined contribution	d	41	48	49	55	20	23	24
cash or deferred arrangements								
with employer contributions	d	d	d	36	45	d	15	17
no employer contributions	d	d	d	7	9	d	4	5
Other Benefits								
Flexible benefits plans[i]	d	d	10	12	12	2	5	5
Reimbursement accounts[i]	d	d	36	52	38	11	19	13

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms,* 1980 and 1985 (Washington, DC: U.S. Government Printing Office, 1981 and 1986); *Employee Benefits in Medium and Large Private Establishments,* 1991, 1993, and 1995 (Washington, DC: U.S. Government Printing Office, 1993, 1995, and 1996).

Note: Because of rounding, sums of individual items may not equal totals.

[a]Includes workers covered but not yet participating due to minimum service requirements. Does not include workers offered but not electing contributory benefits.

[b]The Bureau of Labor Statistics' (BLS) survey scope was expanded significantly in 1988 to include private, nonfarm establishments employing 100 or more workers. The former survey coverage, which previously included full-time employees in establishments with 50, 100, or 250 workers, depending on industry, is referred to as old scope. The expanded survey coverage, which in 1988 and after includes full-time employees in private, nonfarm establishments employing 100 or more workers in the District of Columbia and all states except Alaska and Hawaii, is referred to as new scope. In order to permit comparisons of 1988 findings with those of prior years, BLS also tabulated selected 1988 survey responses for old scope establishments. In 1991 and following years, the survey includes establishments in Alaska and Hawaii.

[c]Includes only benefits that are partly or wholly employer paid.

[d]Data not available.

[e]BLS changed the classification of maternity and paternity leave to family leave in 1994.

[f]Less than 0.5 percent.

[g]Includes defined benefit pension plans and defined contribution retirement plans. The total is less than the sum of the individual items because many employees participated in both types of plans.

[h]For 1980, 2 percent of participants in the data reported for defined benefit pension plans were participating in money purchase plans and plans with formulas based on employer or employee contributions.

[i]For flexible benefits plans and reimbursement accounts, data represent percentage of eligible employees.

Table 2
Percentage of Full-Time Medical Plan Participants by Fee Arrangement: Medium and Large Private Establishments,[a] Selected Years, 1988, 1991, 1993, and 1995

Fee Arrangement	1988	1991	1993	1995
Total with Medical Care	100%	100%	100%	100%
Traditional fee-for-service	74	67	50	37
Preferred provider organization[b]	7	16	26	34
Health maintenance organization[c]	19	17	23	27
Other	d	d	1	1

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employee Benefits in Medium and Large Private Establishments*, 1991, 1993, and 1995 (Washington, DC: U.S. Government Printing Office, 1993, 1995, and 1996); *Employee Benefits in Medium and Large Firms*, 1988 and 1989 (Washington, DC: U.S. Government Printing Office, 1989 and 1990.

[a]These tabulations provide representative data for full-time employees in private nonagricultural establishments with 100 or more employees in the District of Columbia and all states except Alaska and Hawaii. In 1991 and following years, the survey includes establishments in Alaska and Hawaii.

[b]A preferred provider organization (PPO) is a group of hospitals and physicians that contracts to provide comprehensive medical services. To encourage use of organization members, the health care plan limits reimbursement rates when participants use nonmember services.

[c]Includes federally qualified (those meeting the standards of the Health Maintenance Organization (HMO) Act of 1973, as amended) and other HMOs delivering comprehensive health care on a payment rather than fee-for-service basis.

[d]Less than 0.5 percent.

plans. While participation in defined benefit plans declined from 80 percent in 1985 to 52 percent in 1995, participation in defined contribution plans increased. In 1985, 41 percent of full-time employees participated in a defined contribution plan. This percentage increased to 55 percent by 1995 (table 1). The sum of participants in defined benefit and defined contribution plans is greater than the number of participants in all retirement income plans because an individual may participate in more than one plan type. The BLS survey instrument is unable to identify these cases.

Part-Time Workers

As with full-time workers, participation in health insurance and retirement income benefits declined among part-time workers. In 1991, 28 percent of part-time workers participated in an employment-based health insurance plan. By 1995, that percentage declined to 19 percent (table 1). Participation in a retirement income plan among part-time workers was 40 percent in 1991, declining to 37 percent by 1995 (table 1). While part-time workers' participation in a defined contribution plan increased from 20 percent in 1991 to 24 percent in 1995, this was not enough to offset the decline in participation in a defined benefit plan (from 28 percent in 1991 to 22 percent in 1995).

EBRI in Focus

First Annual Health Confidence Survey (HCS)

In November, EBRI and Mathew Greenwald & Associates (MGA) representatives met at EBRI with the underwriters of the first annual Health Confidence Survey (HCS) to discuss survey objectives and begin drafting the survey instrument. Final comments on the instrument will be incorporated later this month, and the survey is slated to go into the field in early February. At this writing, 17 organizations have already signed on as underwriters, and interest continues to grow. It's not too late to become an underwriter! For more information on the HCS and a list of current underwriters, visit EBRI online at http://www.ebri.org, or contact EBRI Research Associate Paul Fronstin at (202) 775-6352, e-mail: fronstin@ebri.org.

1998 Retirement Confidence Survey (RCS)

While 1997 was a banner year for the Retirement Confidence Survey (RCS), effort is already being devoted to 1998, which presents the opportunity for the RCS to focus national attention on retirement income security issues at the National Summit on Retirement Savings called for by the recently signed SAVER Act. EBRI and ASEC will assist the Department of Labor in organizing the summit.

Summit objectives include advancing the public's understand-

ing of retirement savings and identifying the barriers that hinder workers from saving adequately and impede employers, especially small employers, from assisting their workers in accumulating retirement savings.

Given these objectives, we are accelerating the project's timing and expanding its scope. The RCS from previous years will serve as the foundation. In addition, we will produce a special analysis of issues minority groups face in saving for retirement. We will also conduct a small business survey exploring the issues these employers face in offering retirement plans. We will field the RCS in March, release the results shortly before the summit, and then highlight them throughout the summit.

Given our coordination with the White House Summit and the expanded scope of the research, we believe that the RCS project will generate tremendous interest in 1998. We are currently soliciting underwriters for the 1998 RCS project. Because of the unique nature of this year's effort, there are three levels of financial commitment. The cost of underwriting the base RCS for 1998 remains $5,000 per organization. Underwriters of the RCS constitute the survey's steering committee. The committee provides input into survey development and is briefed on the findings before public release. An additional contribution of $2,500 will help underwrite the RCS Minority Special Report and entitle an organization to serve on its steering committee. For $12,500, an organization can participate in the Small Business Retirement Survey (in addition to the RCS and the Minority Special Report) and serve on this component's steering committee.

If you are interested in funding the 1998 RCS or have any questions about the project, please call Paul Yakoboski at (202) 775-6329, e-mail: yakoboski@ebri.org.

1998 Research Priorities

The EBRI Board of Trustees met in December to set research priorities for 1998. This year, EBRI's work will focus on health insurance coverage, managed care and the changing health system, Social Security reform, analysis of defined contribution plan participants and their behavior, analysis of the implications for defined benefit plans of changes in the tax law and changes in longevity, savings and retirement planning education, the HCS, and the expanded RCS (see items above).

EBRI Educational Briefing

On Friday, Jan. 30, EBRI Public Affairs Associate Bill Pierron and Research Associate Craig Copeland will present an educational briefing on ERISA and health plans. This session will cover basic issues concerning ERISA's preemption of state law, as well as current estimates of the number of individuals with employment-based health coverage subject to ERISA preemption. The briefing is open to representatives of EBRI Member firms, congressional and federal agency staff, and the news media. The session will be held in room B-369 of the Rayburn House Office Building at 9:30 a.m. Refreshments will be provided. For further information on EBRI-ERF's ongoing series of educational briefings on benefits issues, please contact Bill Pierron at (202) 775-6353, e-mail: pierron@ebri.org.

EBRI-ERF Policy Forum

If you were unable attend the EBRI-ERF Dec. 3 policy forum, "Do Employers/Employees Still Need Employee Benefits? Getting to Yes," the February issue of *EBRI Notes* will include a summary of forum highlights by EBRI Fellow Christopher Conte. We will also publish a book based on the policy forum proceedings in the spring.

EBRI in the News

EBRI Senior Research Associate Paul Yakoboski was a guest on the radio show, "Secure Retirement," on Dec. 6. The topic of the show was IRAs and saving for retirement.

EBRI receives a continuous stream of inquiry calls from the news media each month, resulting in print and electronic coverage at the local and national levels as well as in trade publications. A Dialog search of 53 major U.S. newspapers for the period Nov. 1–Dec. 10 yielded 53 EBRI mentions and 7 ASEC mentions.

EBRI Prepares for 20th Anniversary Celebration

The countdown begins—EBRI's 20th

anniversary is less than 226 days away! Have you made plans to join EBRI in celebrating its 20th anniversary on Monday, Sept. 14, 1998, with a black-tie gala to be held in New York City? Tables are going quickly—at this writing, 7 benefactor tables, 17 patron tables, and 11 seats have already been reserved, so make your reservations soon! The 10th and 15th anniversary celebrations were huge successes, so please plan to join us for this exciting event. For more information, contact Patsy D'Amelio at (202) 775-6323, e-mail: damelio@ebri.org.

Surf EBRI Online

If you haven't already visited our sites, both EBRI and ASEC are on the World Wide Web! We can be found at ebri.org and asec.org.

EBRI Members, don't forget the last three years of *Issue Briefs* and *Notes* are available in full text on the publications page. Stay up-to-date by reading *FACTS from EBRI*, EBRI press releases, congressional testimony, and our "What's New" section highlighting recent EBRI activities and events, up-to-date information on hot topics in the benefits arena, as well as links to current legislative, administrative, and various other developments.

Washington Update

By Bill Pierron, EBRI

Congressional Schedule & Agenda

The House and Senate will reconvene Jan. 27, and their target adjournment date is Oct. 9. With a full slate of district work periods scheduled, including the month of August, legislators will have limited time to complete their work before the fall election.

Outlook: Pundits have been predicting a contentious and partisan session, but the imperative to get reelected will tend to focus policymakers on issues where bipartisan legislation is achievable. At the top of the legislative priority list is health care "quality." (See *EBRI Notes/Washington Update* Dec. 1997.) Although it is unclear whether such legislation will move—House Majority Whip Dick Armey (R-TX) has been referring to quality proposals as "ClintonCareII"—there is strong bipartisan support for it. In addition, the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry is scheduled to release its full bill of rights report in March, adding momentum to the issue.

Additionally, lawmakers are expected to pass an Internal Revenue Service (IRS) reform bill that would make the agency "kinder and gentler" in its dealings with taxpayers. Congressional leaders have been trying to link IRS reform to the concept of fundamental restructuring of the tax code, in the form of either a national sales tax or a flat tax, but such major changes are unlikely to occur in the short run. More likely, probably late in the session, is another omnibus tax reform measure that includes some pension simplification provisions, possibly an expanded education individual retirement account (IRA), a child care tax credit for businesses, and limited individual tax relief, such as a partial elimination of the "marriage penalty." To a large extent, any such legislation will be driven by economic forecasts. If the economy remains strong, bringing in greater than expected taxes, lawmakers will find it easier to make changes in the tax code that would reduce government revenues.

Unisys Case

In late November, a U.S. District Court judge for the District of Eastern Pennsylvania ruled that Unisys Corporation was not guilty of breaching its fiduciary duties under the Employee Retirement Income Security Act of 1974 (ERISA). The judge found that ERISA sec. 404(c) shielded the company from liability (*In re Unisys Savings Plan Litigation*, DC EPa, No. 91-3067, 11/24/97). In the initial trial phase of this litigation, which began in 1995, the judge granted summary judgment to Unisys. The Third Circuit Court of Appeals then remanded the case to the trial court to make findings of fact regarding the plaintiffs' claims, which resulted in this ruling. The decision is being appealed.

Keeping on Track

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

Model Agreements for Roth IRAs—The IRS has issued two model agreements for establishing "backloaded" Roth individual retirement accounts (IRAs). Form 5305-R describes the Roth IRA Trust Account, and Form 5305-RA describes the Roth IRA Custodial Account. The forms are not to be filed with the IRS, but are to be used by financial service firms for establishing the accounts and record keeping. Both forms will be available on the IRS Web site at http://www.irs.ustreas.gov.

Speakers Call for More Disclosure of Plan Fees—On Nov. 12, DOL held an informational briefing on sec. 401(k) plan fees. Participants from the Vanguard Group and the Investment Company Institute urged that ERISA be amended to make disclosure of current operating expenses or expense ratios mandatory on a regular basis. A representative of the Profit Sharing /401(k) Council said the problem was not disclosure of fees but the dissemination of useful information to plan participants. DOL has indicated that this issue will be the subject of further study in 1998.

HCFA Unveils "Medicare Compare" Database—The Health Care Financing Administration (HCFA) has unveiled a database to provide Medicare beneficiaries with detailed benefit and cost-sharing information about Medicare managed care plans. "Medicare Compare" contains information on more than 300 plans, and is intended to provide a baseline to enable Medicare beneficiaries to compare plans. The database is only available through HCFA's Web site (http://www.hcfa.gov).

DOL ERISA Advisory Council Issues Report—DOL's Advisory Council on Employee Welfare and Pension Benefit Plans, otherwise known as the ERISA Advisory Council, has issued the final report of its three working groups. One group has concentrated on defined benefit (DB) vs. defined contribution (DC) plan sponsorship, and, among other recommendations, has called for the establishment of a simplified DB plan. (See *EBRI Washington Bulletin*, 11/14/97.) Another group has been studying plan holdings in employer securities and real estate. Among this group's recommendations was a call for all DC plan participants to be given the option to diversify their account balances into assets other than employer stock once they are vested. The full report will be posted on the DOL Web site at http://www.dol.gov.

For regular updates, visit EBRI online at www.ebri.org.

Unisys was one of many plan sponsors that selected guaranteed investment contracts (GICs) offered by Executive Life for their sec. 401(k) plans. Executive Life went into receivership in 1991 and payments on its GICs were frozen. Plan participants brought a class action suit, claiming that Unisys breached its fiduciary duties by imprudently selecting Executive Life GICs, failing to appropriately diversify the investments, and failing to inform participants of the risks associated with the funds. Executive Life GICs represented about 20 percent of the fixed income fund at Unisys.

The judge found that the selection of Executive Life was prudent, based on the information available to Unisys after its investigations. Furthermore, the judge held that plan participants failed to show that any failure to disclose information led to their losses. According to the judge, the plaintiffs did not make use of information about Executive Life that was readily available to them, including information sent through the company's internal benefit communications system. The judge also found that the plaintiffs failed to show that the alleged failure to diversify led to any losses. Essentially, participants had investment options open to them that they failed to utilize.

Outlook: This decision is likely to be appealed. The Department of Labor (DOL), which filed an amicus brief at the appeals level pushing for the case to be remanded, may weigh in again.

Personal Privacy

The Personal Information Privacy Act (H.R. 1813), introduced by Rep. Gerald Kleczka (D-WI), would amend the Social Security Act to prevent the sale or use of Social Security numbers for information or commercial purposes without an individual's consent. Sen. Diane Feinstein (D-CA) has introduced a companion measure (S. 600). The bills would apply to all businesses in the United States, which would have two years from the date of enactment to comply.

Outlook: This proposal was aimed at ending the problems some people have had with inaccurate credit reports and fraudulent use of their Social Security numbers. However, for employers that use employee Social Security numbers for record-keeping purposes, this proposal could lead to significant increases in administrative costs. The bills contain exceptions for the use of Social Security numbers for certain wage and tax identification purposes, but employers would be required to come up with an alternative identification system for benefits and record-keeping purposes. In an election year, this type of proposal could gain broad-based support on both sides of the aisle.

Regulatory Report
Issues of Interest to the Employee Benefits Community

By Bill Pierron and Chris Baylyff, EBRI

Issue	Overview	Current Status
Proposed Revision of Securities and Exchange Commission (SEC) Rule on Shareholder Proposals	In September 1997, the SEC proposed to revise Rule 18a-8, which governs shareholder involvement in corporate proxy statements. Among the changes proposed was repeal of the policy articulated in the *Cracker Barrel* case, which had allowed companies to exclude certain shareholder-produced communications relating to social concerns from proxy statements. While repealing *Cracker Barrel*, SEC also proposed rule changes that would have made it easier for companies to exclude matters from proxy mailings deemed "insignificant" or dealing with personal grievances or special interests. While most shareholder groups favored repeal of *Cracker Barrel*, many organizations that wish to promote economically targeted or social investment policies believe the new proposal goes too far in protecting management.	SEC has reacted to criticism from institutional investors, unions, and various issue-oriented groups by extending the comment period to Jan. 2. SEC has also been in discussions with corporate governance experts over ways to reach a compromise position. A revised policy is expected early in 1998.
Newborns and Mothers Health Care Act of 1996	Requires health plans to provide a minimum 48 hours of postpartum hospital stay for routine deliveries and 96 hours for caesarian sections. Physicians and patients may mutually agree to earlier discharges.	Takes effect Jan. 1, 1998. As required by the statute, ERISA plans must disclose the new provisions in their summary plan descriptions (SPDs) within 60 days of the law's application to the plan. In addition, they must include "model language" in their SPDs describing what the law does. Model language is included in the statute. Because the law takes effect Jan. 1, plans will have until Mar. 1 to change their SPDs.
Mental Health Parity Act of 1996	Requires health plans that provide both physical health and mental health benefits to offer the same annual and lifetime dollar limits for both types of coverage. Plans that can show that their premiums would increase by 1 percent or more in a year are exempt from the parity requirement. Two issues concern plan sponsors and regulators: 1) Does the one percent exemption apply prospectively or retrospectively, and 2) Can mental health benefits be "carved out" into a separate ERISA plan, and thereby avoid the parity requirement? Mental health advocates fear that a prospective application of the 1 percent exemption would render the law toothless.	Takes effect Jan. 1, 1998. As of this writing, no regulations have been formally issued, but regulators are reportedly considering retrospective application of the 1 percent exemption. A six-month compliance requirement may be imposed before an employer can seek the exemption. The carve-out issue is likely to be treated separately. Regulators are reportedly leaning toward viewing carve-outs as one plan for purposes of the parity requirement.

SAVER Act Passes

President Clinton has signed the Savings Are Vital to Everyone's Retirement Act of 1997 (SAVER Act) into law (P.L. 105-92). SAVER aims to advance the public's knowledge and understanding of the importance of retirement savings. It will do this by: 1) providing a bipartisan national retirement savings summit hosted by the White House and congressional leaders; and 2) establishing an ongoing educational program coordinated by DOL. The legislation requires the summit to be held by July 15, 1998, in Washington, DC, with followup summits scheduled for 2001 and 2005.

Outlook: At this writing, final agreements regarding the agenda and delegate selection are still being worked out among the DOL, various congressional offices, and the White House. For updates on the status of the summit, visit the American Savings Education Council online at http://www.asec.org.

New Publications/ Internet Sites

New Publications

[*Note: To order publications from the U.S. Government Printing Office (GPO), call (202) 512-1800; 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 (CBO), call (202*) 226-2809].

Business Insurance. **1997/98 Directory of Buyers of Insurance, Benefit Plans & Risk Management Services**. $95. Crain Communications, 1400 Woodbridge, Detroit, MI 48207, Attn: Single copy sales, (800) 678-9595.

Cadette, Walter M. **Safeguarding Social Security: The Challenge of Financing the Baby Boom's Retirement**. Free. Jerome Levy Economics Institute, Blithewood, P.O. Box 5000, Annandale-on-Hudson, NY 12504-5000, (914) 758-7700.

Economic Policy Institute and Women's Research & Education Institute. **Managing Work and Family: Nonstandard Work Arrangements Among Managers and Professionals**. $12. EPI Publications, 1660 L Street, NW, Suite 1200, Washington, DC 20036, (800) EPI-4844, (202) 331-5510.

Gruber, Jonathan, and David A. Wise. **Social Security Programs and Retirement Around the World**. Working Paper no. 6134. $5. National Bureau of Economic Research, Publications Department, 1050 Massachusetts Avenue, Cambridge, MA 02138, (617) 868-3900.

Hurd, Michael D., and Naohiro Yashiro. **The Economic Effects of Aging in the United States and Japan**. $65. University of Chicago Distribution Center, 11030 South Langley Avenue, Chicago, IL, (800) 621-2736.

National Association of Stock Plan Professionals. **1996 Stock Plan Design Survey**. Free, members; $295, individuals; $395, corporations. NASPP, P.O. Box 21639, Concord, CA 94521-0639, (510) 685-9271.

Parasuraman, Saroj, and Jeffrey H. Greenhaus. **Integrating Work and Family: Challenges and Choices for a Changing World**. $59.95 Greenwood Publishing Group, Inc., Quorum Books, 88 Post Road West, P.O. Box 5007, Westport, CT 06881-5007, 800-225-5800.

U.S. Congress. Senate. Committee on Labor and Human Resources. (1) **The Family Friendly Workplace Act**. (2) **Health Care Quality and Consumer Protection**. (3) **Health Care Quality.** Order from GPO.

U.S. General Accounting Office. (1) **401(k) Pension Plans: Loan Provisions Enhance Participation But May Affect Income Security for Some**. (2) **Federal Pensions: Relationship Between Pensions and Final Salaries for Retired Former Members of Congress**. (3) **Federal Pensions: Relationship Between Retiree Pensions and Final Salaries**. (4) **Managed Care: Explicit Gag Clauses Not Found in HMO Contracts, But Physician Concerns Remain**. (5) **Medicaid: Three States' Experiences in Buying Employer-Based Health Insurance**. (6) **Medicare: Fewer and Lower Cost Beneficiaries With Chronic Conditions Enroll in HMOs**. (7) **Private Health Insurance: Continued Erosion of Coverage Linked to Cost Pressures**. (8) **Retiree Health Insurance: Erosion in Employer-Based Health Benefits for Early Retirees**. Order from GAO.

Wise, David A. **Facing the Age Wave**. $16.95. Hoover Institution Press, Stanford University, Stanford, CA 94305-6010, (800) 935-2882.

Documents Available on the Internet

401(k) Plans Literature Summary
http://204.127.238.153/literature/index.html

Compilation of the Social Security Laws through January 1, 1997
http://www.ssa.gov/OP_Home/ssact/comp-ssa.htm

Social Security Reform: Demographic Trends Underlie Long-Term Financing Shortage
http://www.gao.gov/new.items/he98043t.pdf

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