Americans Anticipate Future Drop in Medicare Benefits

Nearly two out of three Americans (64 percent) do not think the Medicare program will provide the same level of benefits when they become eligible as it does today, according to a recent nationwide survey by the Employee Benefit Research Institute (EBRI) and The Gallup Organization, Inc.

Respondents approaching retirement age were the most confident in the system's ability to pay benefits. Thirty-six percent of those aged 55 or older said they expect the program to be able to pay them today's level of benefits when they become eligible, while 19 percent of those aged 35–54 and 26 percent of those aged 18–34 expressed this view.

Nearly one-half (48 percent) of respondents would be willing to pay an increased Social Security contribution during their working years to insure that they receive the current level of Medicare benefits when they reach eligibility age. Forty-seven percent would not be willing to do so, and 5 percent were unsure.

Willingness to pay an increased contribution declined as household income increased. While 56 percent of households with annual incomes less than $20,000 and 49 percent of those with income of $20,000–$75,000 would be willing to pay an increased contribution, a smaller percentage (34 percent) of households with income over $75,000 would be willing to do so.

Eighty-six percent of respondents thought that they would need additional health insurance coverage beyond that provided by the Medicare program (chart 1). Of these respondents, 60 percent said they expect to receive that coverage through their employers.

A majority (60 percent) of respondents were opposed to allowing physicians to bill Medicare beneficiaries for charges not reimbursed by Medicare, and 83 percent said doctors should not be allowed to avoid treating Medicare patients because of Medicare reimbursement levels.

The survey results indicated a lack of understanding about features of the Medicare program. Over one-half (59 percent) of respondents think the program covers individuals when they retire rather than when they reach the eligibility age of 65. Thirty-seven percent think that Medicare covers home health care and 26 percent believe it covers extended stays in nursing homes, neither of which is covered. Nearly one-half of respondents (49 percent) did not realize that the Medicare program covers disabled children and adults. Moreover, respondents thought that approximately 12 percent of their income is paid annually in payroll taxes (individual and employer) to finance Medicare, rather than the actual payroll deduction of 2.9 percent.

While a large proportion of respondents said the government does a fair (38 percent), good (20 percent), or excellent (3 percent) job of informing the public about the program, more than one-third (36 percent) would be willing to pay an increased contribution during their working years to ensure that they receive the current level of Medicare benefits when they reach eligibility age.

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percent) said the government does that job poorly.

The survey, conducted in January, is the eighth in a series of national public opinion polls EBRI is undertaking on public attitudes toward economic security issues such as health, retirement, savings, Social Security, child care, and long-term care. The polls are conducted monthly by The Gallup Organization, Inc., which surveys 1,000 Americans by telephone. The maximum expected error range at the 95 percent confidence level is ±3 percent.

Copies of the survey report (#8), Public Attitudes on Medicare, may be ordered from Lonnae O'Neal at (202) 775-6319, for the following prices: summary—$75; full report—$275. EBRI members: summary—$25; full report—$75.

—Laura Bos, EBRI

◆ New Findings Released on Retiree Health Care Coverage

More than 31 percent of Medicare beneficiaries over age 65 had retiree health insurance coverage in 1987, either in their own name or as a dependent, according to new findings from the 1987 National Medical Expenditure Survey (NMES).

A total of 8.4 million Medicare enrollees aged 65 or over received employer-sponsored health benefits supplemental to their Medicare coverage (table 1).

Employer-provided retiree health coverage was more common for older men (36.6 percent) than for older women (27.3 percent). These tabulations also suggest that employer-sponsored health coverage is broadly available for younger retirees who are not yet Medicare eligible.

Of respondents aged 55 or over who had retired from at least one job, 45.5 percent had health insurance coverage from a former employer, 35.4 percent had other types of private health insurance coverage (including coverage from a current employer), and 19.1 percent had no private insurance coverage.1

Preliminary EBRI tabulations of data from the August 1988 Current Population Survey suggest that substantial numbers of active workers anticipate receiving health coverage in retirement from their current employers. More than one-half (52.3 percent) of workers aged 40 or over—about 13.7 million individuals—said they are able to continue their group health insurance coverage in retirement (table 2). An additional 1.9 percent can continue their coverage until age 65 or until they are eligible for Medicare.

There is little difference among age groups in the proportion of workers able to continue group health insurance. However, a substantial proportion (28.7 percent) of workers do not know whether they are able to do so. This percentage declines as workers’ ages increase. This percentage decrease most likely occurs because individuals nearing retire-

1EBRI tabulations of data from Alan Monheit and Claudia Schur, Health Insurance Coverage of Retired Persons, National Medical Expenditure Survey Research Findings 2 (Rockville, MD: National Center for Health Services Research and Health Care Technology Assessment, September 1989).
Table 1
Private Health Insurance Coverage of Medicare Enrollees Aged 65 or over, 1987

<table>
<thead>
<tr>
<th>Enrollees</th>
<th>Total</th>
<th>Direct</th>
<th>Indirect</th>
<th>Active worker</th>
<th>Dependent of worker</th>
<th>Other Private</th>
<th>No Private Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in millions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Aged 65 or over</td>
<td>27.1</td>
<td>5.6</td>
<td>2.8</td>
<td>0.6</td>
<td>0.4</td>
<td>11.0</td>
<td>6.7</td>
</tr>
<tr>
<td>65–69</td>
<td>8.9</td>
<td>2.1</td>
<td>1.1</td>
<td>0.5</td>
<td>0.2</td>
<td>2.9</td>
<td>2.0</td>
</tr>
<tr>
<td>70–74</td>
<td>7.4</td>
<td>1.8</td>
<td>0.9</td>
<td>0.1</td>
<td>0.1</td>
<td>3.1</td>
<td>1.6</td>
</tr>
<tr>
<td>75 or over</td>
<td>10.8</td>
<td>1.8</td>
<td>0.8</td>
<td>0.1</td>
<td>0.1</td>
<td>5.0</td>
<td>3.1</td>
</tr>
<tr>
<td>Men</td>
<td>11.2</td>
<td>3.7</td>
<td>0.3</td>
<td>0.4</td>
<td>0.1</td>
<td>4.0</td>
<td>2.6</td>
</tr>
<tr>
<td>Women</td>
<td>16.0</td>
<td>1.9</td>
<td>2.5</td>
<td>0.3</td>
<td>0.2</td>
<td>7.0</td>
<td>4.1</td>
</tr>
<tr>
<td>Total Aged 65 or over</td>
<td>100.0%</td>
<td>20.6%</td>
<td>10.5%</td>
<td>2.4%</td>
<td>1.3%</td>
<td>40.6%</td>
<td>24.6%</td>
</tr>
<tr>
<td>65–69</td>
<td>100.0</td>
<td>23.2</td>
<td>12.6</td>
<td>5.8</td>
<td>2.6</td>
<td>33.0</td>
<td>22.7</td>
</tr>
<tr>
<td>70–74</td>
<td>100.0</td>
<td>23.8</td>
<td>11.9</td>
<td>1.1</td>
<td>0.8</td>
<td>41.3</td>
<td>21.1</td>
</tr>
<tr>
<td>75 or over</td>
<td>100.0</td>
<td>16.3</td>
<td>7.8</td>
<td>0.1</td>
<td>0.6</td>
<td>46.3</td>
<td>28.5</td>
</tr>
<tr>
<td>Men</td>
<td>100.0</td>
<td>33.5</td>
<td>3.1</td>
<td>3.3</td>
<td>1.3</td>
<td>35.9</td>
<td>22.9</td>
</tr>
<tr>
<td>Women</td>
<td>100.0</td>
<td>11.6</td>
<td>15.7</td>
<td>1.8</td>
<td>1.3</td>
<td>43.9</td>
<td>25.8</td>
</tr>
</tbody>
</table>


*Number too small to be statistically reliable.

As Congress considers legislation to make it easier for employers to prefund retiree health care costs and companies face future liabilities for these costs—because of the Financial Accounting Standards Board's proposal to require retiree health liabilities to be reported on corporate financial statements—better information about employer-provided retiree health insurance may positively influence public and private policy.

—Charles Betley, EBRI

◆ Seventh Circuit Tests Interplay between Retirement and Life Support System Decisions

In Lorenzen v. Sperry and Hutchinson Co., Inc. (Nos. 89-1549, 89-1585, Feb. 15, 1990), the Seventh Circuit considered certain tragic facts which had led the district court to award summary judgment in favor of a grieving widow. The substantive issue before the court was whether the widow of a plan participant was entitled to the lump-sum value of the participant's normal retirement benefit, or simply the preretirement death benefit, apparently worth only one-half as much. After a protracted procedural discussion of the court's jurisdiction to entertain an appeal in the first place, the majority reversed.
Table 2
Group Health Coverage in Retirement among Full-Time, Full-Year Workers
Aged 40 or over, 1988

<table>
<thead>
<tr>
<th>Provision for Coverage</th>
<th>Total</th>
<th>Aged 40-54</th>
<th>Aged 55-59</th>
<th>Aged 60-64</th>
<th>Aged 65 or over</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>in millions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Full-Time Workers</td>
<td>26.2</td>
<td>19.2</td>
<td>4.1</td>
<td>2.3</td>
<td>0.6</td>
</tr>
<tr>
<td>Group Health Coverage Continues throughout Period of Retirement</td>
<td>13.7</td>
<td>10.0</td>
<td>2.1</td>
<td>1.2</td>
<td>0.4</td>
</tr>
<tr>
<td>Group Health Coverage in Retirement</td>
<td>0.5</td>
<td>0.3</td>
<td>0.1</td>
<td>0.1</td>
<td>a</td>
</tr>
<tr>
<td>Cesses upon Attaining Age 65 or Medicare Eligibility</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group Health Coverage Continues during Retirement for a Fixed Period Exceeding 36 Months (not contingent on age or Medicare eligibility)</td>
<td>0.2</td>
<td>0.2</td>
<td>a</td>
<td>a</td>
<td>a</td>
</tr>
<tr>
<td>Group Health Coverage Does Not Continue</td>
<td>4.1</td>
<td>2.8</td>
<td>0.7</td>
<td>0.5</td>
<td>0.1</td>
</tr>
<tr>
<td>Do Not Know</td>
<td>7.5</td>
<td>5.8</td>
<td>1.1</td>
<td>0.5</td>
<td>0.2</td>
</tr>
<tr>
<td>percentage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Full-Time Workers</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Group Health Coverage Continues throughout Period of Retirement</td>
<td>52.3</td>
<td>52.3</td>
<td>51.8</td>
<td>52.1</td>
<td>56.2</td>
</tr>
<tr>
<td>Group Health Coverage in Retirement</td>
<td>1.9</td>
<td>1.5</td>
<td>3.2</td>
<td>3.6</td>
<td>a</td>
</tr>
<tr>
<td>Cesses upon Attaining Age 65 or Medicare Eligibility</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group Health Coverage Continues during Retirement for a Fixed Period Exceeding 36 Months (not contingent on age or Medicare eligibility)</td>
<td>0.9</td>
<td>1.0</td>
<td>a</td>
<td>a</td>
<td>a</td>
</tr>
<tr>
<td>Group Health Coverage Does Not Continue</td>
<td>15.8</td>
<td>14.8</td>
<td>18.2</td>
<td>19.8</td>
<td>17.6</td>
</tr>
<tr>
<td>Do Not Know</td>
<td>28.7</td>
<td>30.1</td>
<td>26.0</td>
<td>23.3</td>
<td>23.9</td>
</tr>
</tbody>
</table>


*Number too small to be statistically reliable.

Background

The specific facts of the case clearly troubled at least some of the judges. At the company’s request, the plan participant, a Mr. Lorenzen, had postponed retirement from his normal retirement date of Feb. 1 to the following July 1. On June 15, however, he had been hospitalized for a cardiac arrest. He suffered a second arrest on June 27 and was placed on life-support equipment. His physicians nonetheless believed that his condition was hopeless, and Mrs. Lorenzen agreed to their recommendation that the equipment be disconnected. Mr. Lorenzen...
zen died later that day, some three days before his retirement would have been effective. Mrs. Lorenzen then sought the lump-sum benefit that her husband had elected, and to which she had consented in writing, prior to his being stricken. The plan advised her that she was entitled only to a preretirement death benefit, since her husband had died prior to actually retiring.

The court majority states (and there was apparently no argument with this proposition) that Mrs. Lorenzen had no contractual entitlement to retirement benefits under the terms of the plan. The district court's rationale for awarding them to her nonetheless is only briefly addressed, and appears to have relied heavily on the inherent equities:

In holding for Mrs. Lorenzen the district judge appears to have been moved by the human appeal of her case. This is understandable. To have to decide whether to order the removal of life support from a loved one is painful enough without having to incur an enormous financial penalty into the bargain.

The majority went on to note, however, that the equities were not all on one side, in that, by postponing retirement, Mr. Lorenzen had continued to enjoy his full salary and had earned greater, albeit only marginally so, retirement benefits. In the majority's view, Mr. Lorenzen had simply taken a risk, for which he was compensated (with additional salary and benefit accrual), but which came back to haunt his beneficiary in the end. In this, it saw no unfair benefit to the plan and no unfair detriment to the beneficiary:

[A] gamble is not unfair merely because the gambler loses. Nor was the plan unjustly enriched at the Lorenzens' expense. "A pension plan is not 'unjustly enriched' where a pensioner dies early with no benefits payable to his survivor. That eventuality simply offsets cases where a pensioner lives well into old age and more benefits are paid to him than were statistically predictable."

Court Rejected Claims

The majority also rejected claims that Mr. Lorenzen was not adequately apprised of the consequences of electing lump-sum rather than annuity benefits (an apparent irrelevance since his death occurred prior to retirement), and that the plan should have advised him more clearly that postponing retirement risked a net loss of benefits (the court saw the summary plan description as perfectly adequate in this respect).

The dissenting judge stated that he would affirm on the procedural jurisdictional ground (thereby allowing the widow to prevail on the merits). His opinion made clear, however, that the facts relevant to the merits had a substantial bearing on the way he would handle the case.

The plan had proceeded reasonably in prosecuting its appeal, and denying jurisdiction would have seemed to catch the plan in a hyper-technicality. Given the facts of this case, however, there was an undeniable irony—an irony not lost on the dissenting judge—in treating the plan leniently in order to apply the rules strictly to the widow:

The majority displays an unusual leniency about jurisdiction, which is not apparent in its discussion of the merits. An errant lawyer is treated with unaccustomed consideration and indeed indulgence, with the result that a widow loses much of what a district judge—perhaps in an excess of generosity—has given her.

The dissent was also critical of some of the majority's reasoning (although it purported not necessarily to take issue with its conclusion on the merits):

There is nothing to suggest that anyone brought to [Mr. Lorenzen's] or his wife's attention the possibility
that she would suffer drastic financial penalties if he happened to die in the interim. Nor certainly is there any indication that he "gambled" six months' additional compensation against his wife's taking the risk of pension loss. The "rational bookmaker's" approach to problems is singularly out of place here.

Although the majority's decision on the merits may go down a little hard, it seems clearly correct. The interest in the case lies primarily in its ironic and tragic facts.

The Court's Decision

The majority opinion, however (written by that noted "rational bookmaker," Judge Posner), does speculate in ways that conceivably pose planning possibilities. It notes that the plan in question does not define "death," and implies that even if Mrs. Lorenzen had had the foresight (and whatever other virtues or vices might be required) to keep her husband on life support for the additional three days, it might not be appropriate to award the larger benefit:

Life-support equipment is expensive and, to a considerable degree, futile and degrading. It should not be used to secure retirement benefits. If the parties to retirement plans envis-aged such a use, they probably would define death as inability to "live" without life-support machinery—at least if permitted by state law . . . .

Judge Posner probably is correct in assuming that the circumstances of this case were not specifically envisaged by most plan drafters. This case's illumination of those questions may, however, test his more dubious second assumption—that plans will successfully embrace an issue most courts have resisted: an explicit definition of the occurrence of death.

—This column was prepared by K. Peter Schmidt of EBRI's legal counsel, Arnold & Porter.

Legislation & Litigation

Hearing Addresses Pension Fund Taxation

The Senate Finance Committee held a hearing March 21 on the effects of short-term trading on long-term investment. The hearing focused on legislation introduced by Sen. Nancy Kassebaum (R-KS) and Minority Leader Robert Dole (R-KS) that would impose an excise tax on the short-term gains realized by pension funds having more than $1 million in assets (Notes, 1/90, pp. 2–3).

Treasury Secretary Nicholas Brady told the Senate panel that although he does not support Kassebaum's proposal, the Treasury Department applauds its objectives of promoting long-term investment. Brady remarked that pension funds are the ideal candidates to provide the committed capital U.S. corporations need, but he is worried that agreeing to a tax on pension funds might lead to taxes on individuals and other entities to which [the administration] would be opposed. Furthermore, he added, "Taxation should be viewed as the last resort in achieving longer investment horizons."

Robert Shultz, testifying on behalf of the Financial Executive Institute's Committee on Investment of Employee Benefit Assets, released the results of a survey on the investment practices of pension funds. According to the survey, the average annual rate of turnover of U.S. equity portfolios was 40.8 percent over the 21 month period from Jan. 1, 1988 through Sept. 30, 1989—considerably lower than the turnover rates reported in 1986 and 1987.

In her statement, Kassebaum emphasized that the bill is not intended to be a revenue raiser, but rather it provides incentives for pension fund managers to invest with long-term strategies. Other witnesses included: Warren Buffett, Berkshire Hathaway; Andrew Sigler, Champion International Corporation; Lawrence Summers, Harvard University; Myron Scholes, Stanford University; and Michael McGrath, National Association of State Treasurers and the Council of
Institutional Investors.

Due to revenue interests and the interest of long-term investment horizons, taxation of pension funds will be actively considered by the Congress and the administration this session. EBRI will sponsor a policy forum in May 1990 on "Assessing the Implications of Pension Fund Taxation," to review the current tax treatment of pension funds and assess the possible impact that changes to pension tax policy might have on plan participants and beneficiaries, savings and financial markets, and the federal government.

DOL Offers ERISA Enforcement Proposal


- eliminate limited scope audits;
- impose a peer review requirement for individual public accountants to remain qualified to conduct audits of ERISA plans;
- require the award of expert witness and attorney fees to successful plaintiffs in private civil actions under ERISA;
- allow the Secretary of Labor to award a portion of the civil penalties assessed for a fiduciary violation of ERISA to the individ-

ual who brought information to DOL regarding the violation;
- increase the existing excise tax penalty and civil penalties for prohibited transactions from 5 percent to 10 percent;
- require de novo judicial review in benefit claims cases where conflicts of interest exist;
- require certain multiemployer trust arrangements (METs or MEWAs) to file registration statements with DOL; and
- require plan fiduciaries to disclose records regarding proxy voting of stock they hold.

DOL submitted the proposed recommendations in response to DOL Acting Inspector General (IG) Raymond Maria's warnings in his semiannual report to Congress that DOL's "inadequate" oversight of the nation's private pension plans could lead to a financial crisis similar to the savings and loans crisis (Notes, 2/90, p. 7). Several congressional committees have held hearings to address ERISA enforcement issues. Most recently, the Senate Labor and Human Resources Subcommittee on Labor held a hearing March 6.

Prospects for congressional action this session are high, as the proposals are directly responsive to the initiatives of several policymakers.

Separately, President Bush formally announced March 12 his intention to nominate Julian DeLaRosa to be DOL's IG, replacing Maria, who has been the acting IG since J. Brian Hyland retired in the fall of 1989.

House Approves Child Care Bill

The House March 29 approved a compromise child care bill supported by the Democratic leadership, estimated to cost nearly $30 billion over five years. The bill, which President Bush has threatened to veto, would expand Head Start, provide new school-based care for "latchkey" children, expand the earned income tax credit for low-income working parents with children, and provide vouchers for child care that could be used at facilities offering religious activities. The bill will now go to a House-Senate conference to work out the differences between it and the Senate version passed last year.

Asset Reversion Legislation Advances; Passage Likely

The Senate Labor and Human Resources Committee Feb. 28 approved a substitute amendment, offered by Sens. Howard Metzenbaum (D-OH) and Nancy Kassebaum (R-KS), to the Employee Pension Protection Act (S. 685) that would make reversions of excess pension assets subject to ERISA fiduciary standards. The substitute would require that, in the case of a termination, a plan would not be allowed to distribute residual assets to an employer, purchase annuities for participants and beneficiaries, or transfer excess pension assets to a 401(h) retiree health account unless the fiduciary determines that such action is in the interest of the plan participants and their beneficiaries.
To determine whether an employer may recover excess assets, the fiduciary would be required to consider whether: (1) an adequate portion of residual assets is being retained in a comparable pension plan; (2) cost-of-living adjustments are provided to the retirees; and (3) the employer's financial ability to continue providing benefits is stable.

The committee also adopted an amendment, offered by Sen. James Jeffords (R-VT), that would enhance pension portability by allowing qualified plans to transfer pension benefits to IRAs without obtaining employee consent.

Separately, Sens. Terry Sanford (D-NC) and Jim Sasser (D-TN) introduced a bill (S. 2160) Feb. 22 that would prohibit employers from using excess pension assets to finance takeovers or leveraged buyouts.

In addition, the Senate Finance Committee will hold a hearing April 5 on retirement annuities provided by insurance companies. Committee Chairman Lloyd Bentsen (D-TX) said March 7 that recent concerns over the financial status of certain insurance companies have raised questions about whether ERISA protects retirement annuities purchased from insurance companies (Notes, 3/90, pp. 10-11).

Health Care Proposals Surface

Several health care proposals have been offered by policymakers and trade groups since the release of the Pepper Commission's recommenda-

tions on access to health insurance and long-term care (Notes, 3/90, p. 7). Rep. Mary Rose Oakar (D-OH) introduced a bill (H.R. 4162) March 1 that would provide national health coverage—administered by the states—to all Americans. Rep. Pete Stark (D-CA) has introduced several separate bills aimed at expanding Medicare and Medicaid and reforming Medigap insurance policies.

The Health Insurance Association of America released a proposal March 8 that would create a small-group reinsurance market intended to prevent large fluctuations in premiums. The American Medical Association (AMA) proposed a plan on March 8 for providing all Americans with health insurance by expanding Medicaid and requiring employers to provide insurance to full-time employees. The plan would create state insurance programs to provide health care to those who cannot afford it or to those who are medically uninsurable.

Also, the AMA plan would expand Medicaid to all persons below poverty level—Medicaid now covers one-half of those below poverty level—and would require employers to provide health care to full-time employees and their families. State mandates would be eliminated. The plan would include tax breaks for employers. The proposal would cost an estimated $60 billion.

In addition, several large corporations (including the Marriott Corporation, Ford Motor Company, AT&T, DuPont, and Eastman Kodak) have joined with many large labor unions (including the American Federation of Teachers, the Communications Workers of America, the Service Employees International Union, and the United Steelworkers) to form the National Leadership Coalition for Health Care Reform—a group aimed at enacting comprehensive, "public-private" national health insurance.

Hearing Held on Pension Complexity

The Senate Finance Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service held a hearing March 23 on the complexity of rules governing pension plans and options for simplification.

EBRI President Dallas Salisbury told the Senate panel that EBRI's extensive analysis of pension trends over the past 12 years reveals three particular facts: (1) small employers are moving away from defined benefit plans; (2) they are not immediately replacing them with defined contribution plans; and (3) the cost of administering plans relative to the amount that can be contributed has been eroding.

Senate Committee Approves Age Discrimination Legislation

The Senate Labor and Human Resources Committee approved a substitute amendment to a bill (S. 1511) Feb. 28 that would overturn the Supreme Court's decision in PERS v. Betts that effectively exempts employee benefit plans
from the Age Discrimination in Employment Act (ADEA). The committee also approved an amendment to S. 1511 that would set standards for ADEA waivers to assure that employees are waiving their rights in a "knowing and voluntary" manner.

The substitute modifies the original bill by clarifying that voluntary early retirement incentive programs that meet certain requirements would be permitted under ADEA. Furthermore, employers would be prevented from denying severance payments based on pension eligibility, but the substitute does include a limited severance pay offset that would allow employers that offer retiree health benefits to offset severance payments by the value of the health benefits.

At press time, the House Education and Labor Committee was scheduled to mark up its version of the Betts legislation (H.R. 3200). Waiver language also was expected to be incorporated into the House bill.

Retiree Health/Long-Term Care Legislation Introduced

Sen. Bob Packwood (R-OR) and Rep. Rod Chandler (R-WA) introduced legislation Feb. 28 that would provide tax incentives to encourage employers to prefund retirees' long-term care and health benefits. Both measures (S. 2199, H.R. 4134) would allow employers to use pension assets in excess of 150 percent of current liability to pay retiree health costs. The legislation would also clarify in the tax code that the term "medical care" includes long-term care.

Separately, Sen. Edward Kennedy (D-MA) and Reps. Edward Roybal (D-CA) and Mary Rose O'Fallon (D-OH) introduced legislation Feb. 23 to provide long-term care protection to Americans of all ages. The legislation (S. 2163, H.R. 4093) would cover both nursing home and home- and community-based care.

Rostenkowski Unveils Budget Reduction Plan

House Ways and Means Committee Chairman Dan Rostenkowski (D-IL) outlined a "cold turkey" approach to budget deficit reduction on March 11. His plan would reduce the deficit by roughly $510 billion over five years by: (1) freezing program spending for one year, including cost-of-living adjustments in all programs except means-tested programs; (2) earmarking the "peace dividend" for deficit reduction; (3) freezing tax-indexing; (4) eliminating the "bubble" in the tax code by raising the top marginal tax rate to 33 percent; (5) increasing consumption taxes on oil, pollutants, alcohol, and tobacco; (6) rejecting all tax cut proposals; and (7) repealing the Gramm-Rudman-Hollings budget law.

Social Security Proposals Continue to Gain Attention

The Democratic National Committee (DNC) and individual Democratic party leaders, including New York Gov. Mario Cuomo, recently expressed support for Sen. Pat Moynihan's (D-NY) proposal to cut Social Security payroll taxes, but congressional leaders have been reluctant to endorse the plan (Notes, 3/90, p. 11).

The DNC adopted a resolution March 24 that urges Congress to enact Moynihan's plan. Hearings on Moynihan's proposal were held by the Senate Finance Committee Feb. 27 and the House Select Aging Committee and its Retirement Income and Employment Subcommittee Feb. 28. The House Small Business Committee held a hearing March 15 to examine the impact of the Social Security and other payroll taxes on small business.

The House Ways and Means Committee approved a motion Feb. 27 expressing its support for removal of the Social Security trust fund from deficit calculations, over the objections of Chairman Rostenkowski and several committee Republicans.

Medicare Bill Gains Momentum

Reps. Pete Stark (D-CA), Bill Gradison (R-OH), Henry Waxman (D-CA), and Edward Madigan (R-IL) have introduced legislation that would restore several health benefits for the elderly that were included in the Medicare Catastrophic Coverage Act, which was repealed in 1989 (Notes, 1/90, p. 1). The benefits include hospice care, mammography screening, in-home respite care, and home health care services. The proposal (H.R. 3880) currently has 108 cosponsors; it would be financed by an 80 cent increase in monthly Medicare premiums.
Corporate Spotlight

Retiree Health—American Airlines is requiring employees who wish to receive medical coverage after they retire to now begin contributing $10 a month to prefund the coverage; the corporation formerly paid the entire cost of retiree coverage.

Disability—Honeywell, U.S. West, and the Marriott Corp. are showing interest in a new program for the disabled called the “Windmill” program, which trains employers, managers, and supervisors to be objective in hiring and working with people with disabilities. The program is so named because it focuses on myths and fears about the disabled. "They're like the windmills Don Quixote tilted at," according to the creator, Milt Wright.

Committee Passes Disability Bill

The House Energy and Commerce Committee approved March 13 an amended version of the Americans with Disabilities Act (S. 933, H.R. 2273). The legislation, which was approved by the Senate last September and the House Education and Labor Committee in November, still awaits action by the House Judiciary and House Public Works and Transportation committees.

Legislation Promoting ESOPs Introduced

Rep. Beryl Anthony (D-AR) introduced a bill (H.R. 4226) March 8 to promote and improve employee stock ownership plans (ESOPs). One of the provisions of the bill would reduce the 50 percent threshold of ESOP holdings (currently required for ESOP lenders to deduct 50 percent of the interest earned on the loan) to 30 percent. The legislation would also permit employees of Subchapter S corporations to participate in ESOPs, restore the ESOP exception to the 10 percent early withdrawal penalty, and permit ESOP contributions to employees earning less than $30,000 per year to be double the normal 25 percent of pay.

—Nora Super, EBRI

Regulations

IRS Issues Delay on Group Legal, Cafeteria, and Education Assistance Plans

The Internal Revenue Service (IRS) announced March 9, in an advance copy of Notice 90-24, that employers maintaining section 120 group legal services plans, section 125 cafeteria plans, and section 127 education assistance plans will not be required to file information returns under expanded reporting requirements included in the Tax Reform Act of 1986 (TRA '86) until IRS issues further guidance.

User Fees Increased for Most PLRs and Determination Letters

IRS has issued a new schedule of user fees for most private letter rulings (PLRs) and determination letters. The new fees are generally effective for ruling requests made after March 31, 1990. Rev. Proc. 90-17 is published in the March 19 Internal Revenue Bulletin. Under the Revenue Act of 1987, user fees must take into account the average time for complying with ruling requests and the complexity of the issues that are involved.

Remedial Amendment Period Will Not Be Extended

The deadline for employee benefit plans to comply with TRA '86, currently Dec. 31, 1991, will not be extended, according to IRS Deputy Assistant Chief Counsel (Employee Benefits and Exempt Organizations) Mary Oppenheimer. The deadline, announced in Rev. Proc. 89-65, extends an earlier cut-off date. IRS will work with the sponsors that submit determination letter requests prior to Dec. 31, 1991, she said.

IRS approval of plan amendments will protect plans that have not complied by Dec. 31, 1991, from automatic retroactive disqualification. After the remedial amendment period ends, the IRS will not entertain requests for determination letters.

HCFA Issues Rules on Medicare as Secondary Payer

The Health Care Financing Ad-
ministration (HCFA) has proposed rules that specify when a large employer-based group health plan is the primary payer and Medicare is secondary payer for "disabled active individuals." HCFA previously released final rules for Medicare secondary payments for other Medicare beneficiaries. Notice of the proposed rules appear in the March 8 Federal Register (pp. 8491–8494).

Comments on the proposed rules will be accepted until May 7. Contact Herbert Pollock, HCFA, Department of Health and Human Services, Attn: BERC-482-P, P.O. Box 26676, Baltimore, MD 21207, (301) 966-4474.

Litigation

Former Employees Denied Pension and Severance Benefits

A district court was correct when it ruled that former employees were not entitled to pension or severance pay benefits, the Third Circuit Court of Appeals has ruled. In Stoetzer v. United States Steel Corp., the circuit court granted the former employer's request to accept a settlement agreement because it agreed that the settlement was fair, adequate, and reasonable.

USX sold one of its divisions to a cement company. At the time of the sale, the plan administrator determined that the transferred employees were not entitled to USX pension and severance pay benefits because they were similar to those of the cement company. The court ruled that this action was not arbitrary or capricious.

Mobil Oil Did Not Violate ADEA

The Tenth Circuit Court of Appeals has held that Mobil Oil did not violate the Age Discrimination in Employment Act (ADEA) by changing the qualifications for its lump-sum benefit retirement plan. This decision reversed a $1 million award to the plaintiff, Porter Mitchell, who failed to prove that Mobil's reasons for amending the plan were a pretext for age discrimination.

Mobil changed the criteria for the lump-sum payment option in 1984 by raising the net worth threshold for eligible employees from $250,000 to $400,000 and linking future increases to the consumer price index. The court reversed the jury's finding that the company is liable for a willful violation of ADEA (Mitchell v. Mobil Oil Corp.).

For Your Benefit

EBRI Reports Lower Capital Gains for Private Trusted Plans during Fourth Quarter 1989

Private trusted pension funds experienced a $3 billion capital loss during the fourth quarter of 1989, although capital gains for the year totaled $168 billion, twice as much as the $82 billion capital gains total for 1988, according to the latest issue of EBRI's Quarterly Pension Investment Report (QPIR). Net withdrawals totaled $15 billion, during the fourth quarter of 1989, compared to $36 billion during the third quarter. Dividends and interest for the last quarter were $18 billion, similar to the previous three quarters.

Capital losses also affected the rate of return the private trusted pension funds achieved during the last quarter of 1989. None of the plan types experienced a rate of return on equity higher than that of the S&P 500. Overall, the return on bonds held by these funds were only slightly lower than the Shearson Lehman Brothers Kuhn Loeb Government/Corporate Bond Index.

Asset allocation shifted slightly toward bonds during the last quarter, although the aggregate level of assets remained at the third-quarter level of $1.4 trillion. From the end of 1988 to the end of 1989, assets invested in equity increased from 37.2 percent of total assets to 40.5 percent. The percentage of total assets in bonds also increased as the percentage in bank pooled funds and cash decreased.

The addition of fourth quarter 1989 data allow for the time series in QPIR to be extended to seven years. The asset allocation of private trusted pension funds among plan types shifted during that time from 60.9 percent in single-employer defined benefit plans at the end of 1982 to 55.2 percent at the end of 1989. The percentage of these assets in funds for single-employer defined contribution plans increased from 29.9 percent to 34.0 percent during that time.
QPIR is a joint effort of EBRI, the Federal Reserve Board’s Flow of Funds section, Wilshire Associates, and SEL. For more information write to EBRI Publications/QPIR, 2121 K St., NW, Suite 600, Washington, DC 20037.

EBRI Report Finds UMWA Health Benefit Funds Face Deficit

Medical expenses per beneficiary of the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Funds were higher than those for the average U.S. employer in 1988—90 percent and 150 percent higher, respectively, according to a new EBRI Special Report.

The UMWA Benefit Funds were established to fund health care expenses for retired and disabled miners and their widows and dependents. They are financed by unionized coal companies signatory to a four-year wage agreement between the Bituminous Coal Operators Association (BCOA) and the UMWA, and were the center of attention in the recently settled Pittston/UMWA dispute.

Secretary of Labor Elizabeth Dole recently appointed a commission to recommend solutions to the financial difficulty facing the retiree coal miners’ health care funds. William J. Usery, former Secretary of Labor and director of the Federal Mediation and Conciliation Service, will serve as chairman.

Copies of the EBRI Special Report, United Mine Workers of America Benefit Trust Funds: An Evaluation, are available free to EBRI members; others may order copies at $25 plus $4.95 per order shipping and handling from Sun eda Boseman, EBRI, 2121 K St., NW, Suite 600, Washington, DC 20037, (202) 775-6315.

Allied-Signal Reports on Managed Health Care Program

Allied-Signal held a press briefing on March 14 to discuss the need for health care reform and its approach to the problem of rising health care costs. Its managed care program, called the “Health Care Connection,” has been a success in its first 18 months, according to Allied-Signal. The plan, based on CIGNA’s nationwide network, includes a three-year guaranteed rate of health care cost growth. This approach has proven that it is possible to manage medical costs in a more effective way, the company maintains.

Segment of Population Aged 35 to 44 Grows Fastest, According to Census Bureau

The proportion of Americans aged 35 to 44 grew four times faster than the total population from midyear 1980 to midyear 1988, according to a report released by the U.S. Department of Commerce, Bureau of the Census. This age group, also known as the “baby boomers,” grew by 9.5 million during the 8 year period, averaging about 3.9 percent annually, compared with the total population’s average annual growth of about 1 percent.

Publications

Employee Drug Testing: DOT’s Laboratory Quality Assurance Program Not Fully Implemented, General Accounting Office (GAO)

This report finds that the Department of Transportation (DOT) has not implemented a blind performance-testing program for assessing the accuracy and reliability of its drug testing laboratory.

Blind performance testing is required by the quality assurance and quality control provisions of the Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs. Contact GAO, P.O Box 6015, Gaithersburg, MD 20877. (202) 275-6241. First five copies free.

Pension Plan Terminations: Recapturing Tax Benefits Contained in Asset Reversions, General Accounting Office (GAO)

This report analyzes how effective the current 15 percent excise tax is in recapturing the portion of reverted pension assets that arises from preferential tax treatment.

The results of the report conclude that the tax does not fully offset the tax benefit portion of asset reversions. Contact GAO, P.O Box 6015, Gaithersburg, MD 20877. (202) 275-6241. First five copies free.

This survey of 618 hospitals reveals many changes in the design and administration of compensation programs, finding that hospitals are using a variety of compensation plans and "innovative reward systems," such as merit programs, market adjustment programs, group incentives, and cash profit sharing. Contact Catherine Schmidt, Hewitt Associates, 100 Half Day Road, Lincolnshire, IL 60069. (708) 295-5000. Cost $150.

Pension Plans Regulated by ERISA, Financial Executives Institute

This pamphlet answers questions regarding the ability of U.S. private trusted pension plans to meet their current obligations, to fund their future obligations, and to comply with regulations.

This report is a combined effort of the Financial Executives Institute, the Committee on the Investment of Employment Benefit Assets (CIEBA) of Financial Executives, and EBRI. Contact Gina Mitchell, FEI, 1100 17th St., NW, Washington, DC 20036. (202) 659-3700. Free.

A Year of Health Hints, American Institute for Preventative Medicine

This book serves as a symptom and treatment guide that offers ideas about how to prevent and treat health conditions, from headaches and sore throats to heart disease and cancer.

This book also helps to answer questions about health issues. Contact Kae Tienstra, American Institute for Preventative Medicine, 24450 Evergreen Road, Southfield, MI 48075. Cost $21.95.

Pension and Employee Benefit Law, The Foundation Press

This book serves as a course book on pension and employee benefit law. It was written by Yale Law School and University of California professors. The book is intended to allow law schools to offer courses in employee benefits with a course-book to accompany them. Contact John Langbein, Foundation Press, 615 Merrick Ave., Westbury, NY 11590. (516) 832-6950. Cost $34.95.

National Health Insurance—A Sign of the Times? Buck Consultants

In this survey of 271 Fortune 500 industrial and service companies on the quality of the present health care system, 60 percent of the respondents said they are opposed to a national health insurance program, yet all said they are concerned about how the present system is working.

Forty-seven percent believe that employer-sponsored health care coverage does not provide quality care at an affordable price. Nevertheless, 58 percent of the companies feel that a national program would be of a lesser quality than the present system; 65 percent believe the government would not manage costs more effectively. Contact Carolee Martin, Buck Consultants, Inc., 500 Plaza Drive, Secaucus, NJ 07096. Cost $50.
Public Attitudes on Child Care—This survey is fifth in a series of national public opinion polls EBRI is undertaking on public attitudes toward economic security issues. The surveys are conducted by The Gallup Organization and findings of this report include: • More Americans feel that employers (53 percent) rather than government (35 percent) should play the primary role in helping parents with child care. Nevertheless, a majority of Americans said that both employers (71 percent) and government (67 percent) should be involved to some degree. • In choosing among forms of employer assistance, survey respondents who advocate a role for employers showed a clear preference for on- or near-site child care centers (60 percent) relative to financial assistance (26 percent) and information and referral services (12 percent). • The level of employer assistance should not be income related, said 62 percent of respondents favoring employer involvement. • A majority of respondents (60 percent) supporting employer involvement would want the employer to offer child care assistance even if doing so would lead to a reduction elsewhere in the wage/benefit package for all employees.

Public Attitudes on Family Leave—This above survey on child care and the sixth in the series EBRI is undertaking. Findings of this survey include: • More than 81 percent of Americans think that employers should leave of absence to employees for the birth or adoption of a child or the illness of a family member. • A large majority (73 percent) of employers could do “a lot more” through their ployees be both good workers and good parents.

An Overview of Employee Benefits Supportive of Families—This special study provides an in-depth exploration of dependent care, family leave, flexible work schedules, and other family-related employer programs. Because employee benefit programs are intended to provide income protection for workers and their families—both before and during retirement—employee benefits are inseparable from issues relating to work and family.

Copies of the surveys Public Attitudes on Child Care and Public Attitudes on Family Leave can be ordered by calling Lonnae O’Neal at EBRI (202) 775-6319. Full report $275; summary $75. EBRI members: full report $75; summary $25.

Copies of the study An Overview of Employee Benefits Supportive of Families can be ordered by calling Sundena Boseman at (202) 775-6315.
EBRI Databook on Employee Benefits—This brand-new exhaustive statistical reference work on private- and public-sector benefit programs and work force related issues. Data from multiple sources are presented in table and chart form, supplemented with brief Appendixes provide economic and demographic information and a legislative history of employee benefits. (Expected spring 1990.) $59.95 hardcover.


Business, Work, and Benefits: Adjusting to Change—This book looks at how your corporation can cope with demographic shifts, global competition, and legislative change. This powerful expose shows you how to apply the current demographic trends, legislative proposals, and policy changes to the employee benefits area and plans your company needs to make now. $19.95 paperback.

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