EBRI NOTES

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DEFICIT REDUCTION ACT OF 1984 BECOMES LAW

On July 18, President Reagan signed into law the Deficit Reduction Act of 1984, Public Law No. 98-369. The tax provisions, known as the Tax Reform Act of 1984, made significant changes in at least sixteen areas of employee benefits. These include: employee stock ownership plans, cost-of-living adjustments in pension plan limitations; individual retirement accounts; group term life insurance purchased for employees; funded welfare benefit plans; unfunded deferred benefits; distributions in qualified pension plans; top-heavy plans; estate-tax treatment of qualified pension plan benefits; pension plan rules for affiliated service groups, employee leasing arrangements, collective bargaining agreements; cash or deferred arrangements; treatment of certain medical and other benefits under section 415; statutory treatment of certain employee benefits; pension-plan terminations; voluntary employees' beneficiary associations; and rules governing multiemployer plans.

The spending provisions, known as the Spending Reduction Act of 1984, made important changes in Medicare and in the Supplemental Security Income program, and it made some changes in the Social Security program.

The 1,000 plus pages of legislation are now being analyzed by numerous tax advisors and benefit organizations. The most detailed explanation of the bill is the Conference Report on H.R. 4170, which was printed in the Congressional Record on June 22, 1984 (pages H6369-H6763). The Conference Report is also available from the U.S. Government Printing Office, as is a lengthy summary of the bill produced by the staffs of the Joint Committee on Taxation, Committee on Ways and Means, and Committee on Finance, under the title: "Summary of Tax and Spending Reduction Provisions (Within the Jurisdiction of the Committees) on Ways and Means and Finance of H.R. 4170 as Passed by the House and the Senate," June 30, 1984. In addition, the ERISA Industry Committee recently distributed a sixty-nine page, single spaced Memorandum entitled "The Employee Benefit Provisions of the Deficit Reduction Act of 1984." With the permission of the ERISA Industry Committee, EBRI will distribute copies of the Memorandum to sponsors and subscribers who request it from EBRI's Education and Communications Division.

MAJOR TAX REFORM HEARINGS

The Senate Finance Committee completed two days of hearings (August 7, 9) on major tax reform intended to "give us a better understanding of the implications of major reforms from the standpoint of tax, social, and economic policy," said the Committee's Chairman, Robert Dole, (R-KS).

Many witnesses, including representatives from the American Bar Association and the National Association of Manufacturers, and former Internal Revenue Service Commissioner Jerome S. Kurtz, favored tax simplification, but differed on how to achieve it. Others who testified, however, expressed concern that tax reform proposals, such as the flat tax, would have a negative effect on saving, investment, and economic growth and would destroy many tax incentives that are worthwhile. Opening remarks presented by each of the Committee's members, were straightforward, "Let's don't let this [tax reform] be a giant tax increase," remarked Senator Symms (R-ID). "A radically revised and simplified tax system would not long survive," said Senator Russell B. Long (D-LA).

Charles E. Walker, Chairman of the American Council for Capital Formation, noted that the tax code seeks to achieve social and economic goals, and Scott Schlesinger, Executive Vice President of the National Apartment Association, noted that the structure of the tax code affects individual's decisions. Major changes in the tax system must be viewed with these considerations in mind.

In testimony submitted to the Committee, Dallas L. Salisbury, President of the Employee Benefit Research Institute (EBRI), said it is essential that "major tax reform debates look beyond revenue-raising considerations alone and examine the broader implications of eliminating incentives now built into the tax code." (For further discussion of the implications of major tax reform on employee benefits, see EBRI Issue Brief, March 1984.) Salisbury also said that major tax reform could have a negative impact on the economic security of American workers and retirees by causing savings to decline and discouraging the purchase of health insurance among those at lower income levels.

Senator Dole has plans for further hearings on tax reform in September. No precise date has been set at this time.

PACKWOOD HEARINGS STIR DEBATE

Senator Bob Packwood (R-OR) told a packed hearing room that he was surprised by the outpouring of employer and labor union interest in his July 26, 27, and

30 hearings on the tax treatment of employee benefits. Packwood said the Finance Committee received 110 requests to testify, with many others interested in submitting testimony for the record. Of the 110 who wanted to testify, only one witness, representing the Treasury Department, expressed negative views about the favorable tax treatment of benefits.

Packwood summarized the hearing as having established several key points. First, abuses in the private benefit system are exceptions, confined to a limited number of small personal corporations. Second, as a whole, the private benefit system works well and saves the federal government from offering benefits directly that employees would demand if there were no employer-sponsored benefits. Third, employee benefits primarily go to low- and middle-income employees -- not to the highly paid, as is commonly argued by critics of the system. Fourth, the favorable tax treatment of these programs has encouraged their development -- and it should be continued, not curtailed.

Attending the three day hearing at various times were Senators Dole (R-KA), Chairman of the Committee, and Senators Durenberger (R-MN), Symms (R-ID), Grassley (R-IA), Chafee (R-RI), and Danforth (R-MO). The final day of the hearing was marked by sharp disagreement between Senators Chafee and Dole, on the one hand, and Senator Packwood, on the other, over the extent to which the tax system should give preferential treatment to employee benefits.

EBRI President Dallas Salisbury testified on "Employee Benefits and Economic Security". Research Associates Deborah J. Chollet, Emily S. Andrews, and Sophie M. Korczyk submitted written statements for the record. (For ordering information, see OTHER EBRI ACTIVITIES -- Testimony.)

The Packwood hearings will be the subject of a special forthcoming report from EBRI that will be mailed soon under separate cover to all EBRI sponsors and subscribers.

The tax treatment of employee benefits will be explored further in the House by joint Social Security/Oversight Subcommittee (Ways and Means Committee) hearings tentatively scheduled for September 17-18.

PICKLE CALLS FOR EMPLOYER/GOVERNMENT COOPERATION

"Anyone who has tried to step back and look objectively for a moment at the growing debate between employers and government over the tax status of employee benefits is struck by one immediate observation. That is the escalating anxiety and suspicion on both sides."

With these comments, Representative J. J. Pickle (D-TX), Chairman of the Social Security Subcommittee of the House Ways and Means Committee, opened his remarks to the ERISA Industry Committee's July 17 membership meeting in Washington, DC. Pickle's Subcommittee and the Oversight Subcommittee, chaired by Representative Charles Rangel (D-NY), plan to hold two days of joint hearings in September on the relationship between employee benefits and the Social Security tax base.

"There are people in government," Pickle said, "who see pensions and other employee benefits only as a growing drain on the federal treasury. They see tax exempt fringes growing from 5 percent of all compensation in 1951 to about 16 percent in 1980. They see tax exempt or tax deferred compensation as representing a $56 billion a year revenue loss. At the same time, these government officials see $200 billion deficits looming over us for as far as the eye can see. On the other hand, there are those in the benefits community who view the federal taxing authorities as a menace to everything that we hold near and dear."

"My fear," Pickle said, "is that we appear to be moving farther apart at a time when we should be coming together to reach some common ground."

Pickle emphasized "the enormous difficulty" Congress has in dealing with the entire subject of employee benefits. "It is a matter that is so complex that the mere thought of it makes Members' [of Congress] eyes glaze over and makes staff members groan in agony." Part of the problem, he said, is that the subject is so vast that it is difficult to grasp. "The assets of private pension plans are so large that they almost equal the size of the federal debt."

Pickle stressed that employer groups need to work with Congress in exploring the various policy questions involved in changing the tax treatment of benefits. "Members of Congress need to understand that private pensions and other forms of employee benefits are not just tax avoidance schemes and they address certain socially desirable goals. At the same time, employers and plan administrators must understand that Congress is not out to destroy the system of private pensions in our country. And, you must understand that there must be some limits to tax exempt income and tax deductions. Government must have more revenue from some source or our entire republic is going to collapse.

Though he emphasized he had no plans for legislation in this area, Pickle listed four general approaches talked about on Capitol Hill as ways to cut back or curtail employee benefits to reduce federal revenue losses.

1. Limiting the kinds of benefits offered by eliminating various code sections or defining more clearly what can be a nontaxable benefit.

2. Calling everything income and placing overall caps on how much can be nontaxable.

3. Placing limits on funding for various benefits which do not reduce current outgo but reduce pre-funding for benefits.

4. Taxing the benefits to the employee.

Pickle noted the problems with each of these approaches, and said the principal problem is that Congress hasn't thoroughly examined the situation. You can't talk about solutions until you know what the problem is. That is why I want to encourage everyone in the benefits community to work with Congress to try to figure out where action needs to be taken and where we might be able to head off potential problems."

Another Ways and Means Committee speaker at the ERISA Industry Committee meeting, Representative Richard A. Gephardt (D-MO), told the group he believes Congress ought to adopt a major tax reform along the lines of the Bradley/Gephardt "Fair Tax" proposal. Under questioning from the audience, Gephardt acknowledged, however, that there were problems with his bill.

Phyllis Borzi, Pension Counsel for the House Subcommittee on Labor-Management Relations, told the group that a long-expected vesting, integration and portability (V.I.P.) bill has not yet been introduced. She explained that there would be major difficulties in reaching a consensus on these issues, but that a push for pension reform along these lines has been considered by members of the Congressional Women's Caucus as the "Phase 2 bill." The Phase 1 bill, the Retirement Equity Act, passed the House and Senate in August, and awaits the signature of President Reagan.

SENATE GOVERNMENTAL AFFAIRS COMMITTEE STAFF ASSESS POLICY FORUMS

The Senate Governmental Affairs Committee, Subcommittee on Civil Service, Post Office, and General Services, recently concluded its series of five policy forums. Modeled on EBRI's policy forums, and made possible through the extensive cooperation of EBRI staff and sponsors, the Senate forums were intended to aid in designing a new civil service retirement system for federal employees hired after January 1, 1984.

"The forums achieved a great deal," said Ed Jayne, acting legislative director for Senator Jeff Bingaman (D-NM), ranking minority member on the Subcommittee. "They achieved their purpose," he said, "which was to create a good informational base on which to operate early next year, when Congress begins serious work on devising a new retirement system."

"This was a new thing for the Committee." The written record of the forums, a series of five Committee publications, tells Congress about the prevailing benefit practice in the nation's private sector. The publications constitute a "blueprint for the relevant issues and the decisions that have to be made in designing a new system," said Jayne. He noted, "We in the public sector realized that there had been a revolution in the private sector benefit system that has passed us by. Forum participants saw the opportunities to change the federal system for the better."

BRITISH COMMISSION RECOMMENDS GREATER PENSION PORTABILITY

The British "Inquiry into Provision for Retirement," chaired by the Rt. Hon. Norman Fowler, Secretary of State for Social Services, recently issued for public comment a "Consultative Document on Improved Transferability for Early Leavers from Occupational Pension Schemes." The Secretary of State had visited the United States and met with EBRI sponsors in April of this year (see EBRI Notes, March/April 1984).

Although the Secretary of State's Inquiry is still proceeding, the consultative document is seen as an immediate, needed step toward portability. In brief, the government proposes that occupational pension schemes be required to offer transfer values for future early leavers who are entitled to preserved pension rights under the British Social Security Act of 1973.

The proposals are intended to set minimum standards. Early leavers would have a right to a transfer value from the former employer's pension plan, reflecting at least the actuarially calculated cash equivalent of the worker's preserved benefit rights. But the new employer plan would not be obligated to accept the transfer value. And the departing employee would not have personal access to the transfer value, insuring that the benefits would be used for retirement. Although the formal comment period closed July 31, copies of the proposal are available to EBRI sponsors and subscribers who request them from EBRI's Education and Communications Division.

HEALTH INSURANCE COVERAGE IN AMERICA

The latest statistics compiled by EBRI indicate that health insurance is the most common employee benefit provided to workers in the United States. In 1982, 84 million civilian nonagricultural workers reported coverage from an employer group health insurance plan. These workers represented nearly 78 percent of the nation's total civilian nonagricultural workforce (see table 1). Rates of employer group health insurance coverage are particularly high among workers who are employed full-time/full-year, the largest sector of the workforce. In 1982, more than 90 percent of full-time/full-year workers were covered by an employer group health plan.[1]

Although most workers (60 percent) are covered under their employer's plan, dependents' coverage is an important source of coverage for many, particularly for workers who are employed only part-time or during part of the year. In 1982, 29.4 million part-time or part-year workers were covered by employer group health plans. About 13 million (44 percent) of these workers were covered as dependents.

Dependents' coverage from employer health plans is also an important source of health insurance coverage among nonworkers, and particularly among children. In 1982, more than half of all nonworkers under the age of sixty-five were covered by an employer group health insurance plan (see table 2). Most of these people were children under age eighteen; the rest were nonworking adults, including a small number of retirees under age sixty-five.

High rates of worker participation in employer group health plans are encouraged by both the tax code and the way that group health insurance is priced. Employer contributions to health insurance have been statutorily exempt from individual income and Social Security taxation since 1954. These exemptions have encouraged worker demand for employer-provided health insurance

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[1] By comparison, 56 percent of all workers, and 70 percent of the ERISA workforce, participated in an employer pension plan in 1983. See Employee Benefit Research Institute, "New Survey Findings on Pension Coverage and Benefit Entitlement," EBRI Issue Brief, No. 33 (Washington, D.C.: Employee Benefit Research Institute, 1984).

Table 1

DISTRIBUTION OF WORKERS COVERED BY AN EMPLOYER GROUP HEALTH INSURANCE PLAN BY LEVEL OF WORKFORCE ACTIVITY, 1982[a]

Workforce Activity	Employer Coverage: Total	Direct Coverage[b]	Indirect Coverage[b]	No Employer Coverage
	(Persons in millions)			
All workers	83.7	65.3	18.4	24.2
Full-time workers	65.1	58.3	6.8	11.8
Full-year	49.4	46.1	3.3	5.3
Part-year	15.8	12.3	3.5	6.5
Part-time workers	13.6	4.1	9.5	8.1
Full-year	5.1	2.1	3.0	2.5
Part-year	8.5	1.9	6.5	5.6
Self-employed	5.0	2.9	2.1	4.3
	(Percents)			
All workers	77.6	60.5	17.1	22.5
Full-time workers	84.7	75.8	8.9	15.3
Full-year	90.4	84.3	6.1	9.6
Part-year	70.7	55.0	15.7	29.3
Part-time workers	62.3	18.8	43.8	37.4
Full-year	66.7	27.9	38.8	33.3
Part-year	60.3	13.8	46.5	39.7
Self-employed	53.6	30.8	22.8	46.4

SOURCE: EBRI tabulations of the March 1983 Current Population Survey (U.S. Department of Commerce, Bureau of the Census).

Note: Items may not add to totals because of rounding.

a Includes civilian nonagricultural workers, except those living in families in which the greatest earner is a member of the Armed Forces or an agricultural worker.

b Direct coverage is defined as coverage provided by the worker's own employer plan at any time during 1982; indirect coverage is coverage received as the dependent of another worker in 1982.

Table 2

DISTRIBUTION OF NONELDERLY PERSONS
COVERED BY EMPLOYER GROUP HEALTH INSURANCE PLANS,
BY WORKER STATUS, 1982[a]

Worker Status	Number of Persons with Coverage (in millions)	Percent of Persons with Coverage	Percent of All Persons with Coverage
All Persons	130.8	67.5	100.0
Workers[b]	83.7	77.6	64.0
Nonworkers	47.1	54.9	36.0
Children	40.4	64.2	27.6
Others	11.0	37.7	8.4

SOURCE: EBRI tabulations of the March 1983 Current Population Survey (U.S. Department of Commerce, Bureau of the Census).

NOTE: Items may not add to totals because of rounding.

[a] Includes all civilians except those living in families in which the greatest earner is a member of the Armed Forces or an agricultural worker.

[b] Includes civilian nonagricultural wage and salary workers and self-employed workers.

at all income levels. In addition, the Social Security tax exemption has provided a financial incentive for employers to offer health insurance benefits in lieu of wage compensation to workers who earn less than the Social Security ceiling on taxable wages. In 1983, nearly 95 percent of all workers earned less than the Social Security ceiling. The combination of these tax incentives for workers and employers has produced high rates of worker coverage at all income levels.

The pricing of employer group health insurance also encourages broad worker participation in employer plans. In general, the package of benefits that insurers are willing to underwrite for a small employee group is less generous (per premium dollar) than the benefit package available to members of a larger plan. By offering health benefits to all employees, employers who purchase insurance (either primary coverage or stop-loss coverage for a self-insured plan) may find that the incremental cost of providing health insurance is low relative to the value of improved coverage to all workers. To maximize employee participation in the plan, and to enhance the plan's cost-efficiency, employee contributions to the plan are generally kept low.

FEDERAL RULES AND REGULATIONS

New HHS Regulations Allow HMO Option for Medicare Beneficiaries

The Department of Health and Human Services (HHS) has received comments on proposed regulations allowing Medicare to pay beneficiaries health care costs under competitive medical plans such as health maintenance organizations (HMOs). Medicare demonstrations of pre-paid HMO plans have been underway since 1978 (about 775,000 people in ten states participate). The proposed regulations would offer the option to all 30 million Medicare beneficiaries. "We therefore expect a dramatic rise in HMO enrollment for Medicare beneficiaries," said HHS Secretary Margaret Heckler, "up by as many as 600,000 beneficiaries in the next three to four years, with a 50 to 100 percent increase in the number of contracts between HMOs and Medicare." Heckler stressed that participation will be completely voluntary on the part of the beneficiary. "Their incentive to join will come only if the HMO or other plan can offer them more coverage, or lower personal costs, or both."

Under the proposed new regulations, Medicare rules for the first time will provide advance payment at pre-set rates, thus obtaining full coverage at a fixed price for those beneficiaries enrolling in a competitive medical plan. Specifically, said Heckler, the regulation provides for Medicare reimbursement up to 95 percent of the Adjusted Area Per Capita Cost (AAPCC) for a specific geographic area. The AAPCC represents the average amount Medicare would have paid on behalf of a beneficiary in the fee for service sector. The AAPCC is adjusted according to variations in the Medicare population by age, sex, welfare status and institutional status. Medicare would pay the HMO a weighted average of the AAPCC based on the HMO's specific enrollment of Medicare beneficiaries. If HHS calculates that the HMO's adjusted community rate (ACR) is lower than 95 percent of the AAPCC, the HMO must either return the difference to beneficiaries in enhanced benefits -- or accept the lower payment, Heckler said.

The proposed regulations were published in volume 49, page 22198 of the May 25 Federal Register. The comment period formally closed July 9. A representative from the Health Care Financing Administration (HCFA), the HHS department with responsibility for drawing up the regulations, said that numerous comments on the proposed rule were received. HCFA is presently analyzing these and working on final rules. For more information, contact Frank Emerson, Health Care Financing Administration, (301) 597-1807.

Asset Termination and Reversion Guidelines Released

The Pension Benefit Guaranty Corporation (PBGC), the Treasury Department and the Department of Labor (DOL) have jointly adopted guidelines implementing new administration policy (see March/April EBRI Notes) on pension-plan terminations involving asset reversions to the plan sponsor. A PBGC spokesman reported that the three agencies are now developing regulations supporting the guidelines and are processing cases in accordance with these guidelines.

The guidelines cover the following:

- o requirements for full vesting and distribution of annuity contracts before terminating a defined benefit plan;

- o calculations of lump-sum payments in order to reflect fairly the value of the pension to the individual;

- o example of a successor plan in which an employer sufficient terminates a defined benefit pension plan and establishes a new defined benefit plan covering the same group of employees;

- o conditions in which a so-called "spin-off/termination" will be recognized;

- o fifteen-year limit on a termination/re-establishment or spin-off/termination transaction involving reversion of assets; and

- o processing of pending termination cases.

The complete guidelines and accompanying news release (84-23) are available from Peter A. Kirsch, Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, DC 20006, (202) 254-4827.

<u>FASB Proposes Disclosure of Postretirement Health Care and Life Insurance Benefits Information</u>

On July 3, the Financial Accounting Standards Board (FASB) issued Exposure Draft proposing standards for disclosures concerning employers' accounting for postretirement health care and life insurance benefits. Interested parties have until September 21 to comment.

The FASB proposal would require the following disclosures concerning postretirement health care and life insurance benefits: (1) a description of the benefits offered; (2) the cost of those benefits included in net income for the period; and (3) a description of the current accounting and funding policies for those benefits. For plans where the cost of postretirement health and life insurance benefits may not be readily separable from the cost of providing benefits for active employees, employers would disclose the total cost of providing benefits to both active and retired employees, as well as the number of active employees and the number of retirees covered by the plans.

If these postretirement benefits are provided through multiemployer plans where retirees are not identified with a specific employer, a separate but similar disclosure is required. The disclosure rules would be effective for financial statements issued for periods ending after December 15, 1984, for postretirement health care and life insurance benefit plans provided in the United States and foreign countries. If foreign plan information is unavailable, however, it need not be included in financial statements issued before June 15, 1985. Thereafter, current and comparative data for periods ending after December 15, 1984, shall include foreign plans.

Comments should be directed to: Director of Research and Technical Activities, File Reference No. 1087-017, Financial Accounting Standards Board, High Ridge Park, P.O. Box 3821, Stamford, CT 06905-0821.

EEOC Votes to Require Pension Contributions for Postretirement-Age Workers

On June 26, the Equal Employment Opportunity Commission (EEOC) voted to rescind existing Department of Labor (DOL) special rules which had allowed employers to discontinue pension contributions for employees over age sixty-five. The EEOC will amend certain provisions of DOL's "Interpretive Bulletin on Employee Benefit Plans" to require companies to grant pension credits for workers who remain on the job up to age seventy. The "Bulletin," issued as a result of the 1978 Amendments to the Age Discrimination in Employment Act, permitted employers to discontinue pensions and retirement contributions for employees who work beyond the normal retirement age specified in the their retirement plans (generally age sixty-five).

EEOC staff attorneys are preparing a rule for approval by EEOC Commissioners and by the Office of Management and Budget. Once the rule is formally adopted, it will be published in the Federal Register, probably in September or October.

The Labor-Management Relations subcommittee of the House Education and Labor Committee has hearings on the subject tentatively planned for September 5.

IRS Issues Guidelines on How Leased Employees Are to Be Treated for Certain Employee Benefits

The Internal Revenue Service issued guidelines on how leased employees are to be treated for certain employee benefit plan purposes. The guidelines, in question-and-answer format, were published as Notice 84-11 in Internal Revenue Bulletin No. 1984-29, dated July 16, 1984. TEFRA amended the Internal Revenue Code to provide that for purposes of certain employee benefit provisions, a "leased employee" generally shall be treated as an employee of the person for whom such leased employee performs services (the "recipient" of the services) even though such individual is a common law employee of the leasing organization. The new guidelines, says the IRS, may be relied upon until applicable regulations are published.

Labor Department Withdraws Proposed Rule for Updating Summary Plan Descriptions

On July 5 the Labor Department announced that it is withdrawing its proposed rule that would have provided alternatives by which plan administrators could comply with the statutory requirement to furnish updated Summary Plan Descriptions (SPDs) to participants, beneficiaries, and to DOL. Pension administrator Robert A.G. Monks explained: "A number of concerns have been brought to the department's attention regarding the potentially adverse impact that adoption of the proposal could have on the disclosure of plan information to participants and beneficiaries. In response to these concerns, and consistent with the department's continuing commitment to ensure the rights and protections of plan participants and beneficiaries, we determined that the proposed rule should be withdrawn at this time and other alternatives considered."

Under the law, updated SPDs must be distributed every five years if material plan changes have occurred or every ten years with no material plan changes. The proposal, now withdrawn, would have allowed employers to post a notice stating the availability of updated SPDs on request. Benefit consultants say the DOL withdrawal represents a return to a stricter interpretation of what constitutes clear, timely benefit communication, and would seem to mandate distribution of a new SPD to each plan participant and beneficiary receiving benefits. DOL has, however, acknowledged that additional time may be needed for five-year SPD updates due this year.

DOL Proposes Revision to Exemption on Short-Term Investments

DOL published in the July 3 Federal Register (vol. 49, page 27379) a proposed revision to an existing class exemption that involves employee benefit plan investments in certain short-term money market instruments. The proposal would amend the Prohibited Transaction Exemption 81-8, granted under the Employee Retirement Income Security Act (ERISA), by expanding the group of dealers with whom plans can make repurchase agreements and by removing restrictions on investments in securities issued by commercial banks that provide checking account services to the purchasing plans. Written comments on the amendments should be addressed to the the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, attention "Short-Term Investments." The deadline for comments is September 4.

LEGISLATIVE UPDATE

Retirement Equity Act Goes to Reagan

Within days of one other, the Senate and the House passed the Retirement Equity Act (H.R. 4280), legislation intended to make pension, profit sharing and stock bonus plans more equitable for women. The bill now goes to President Reagan, who is expected to sign it.

The bill changes the periods of employee service that must be taken into account under pension, profit sharing and stock bonus plans. The maximum age a qualified plan can require an employee to attain before becoming a participant is lowered from twenty-five to twenty-one. Also, a plan is not permitted to ignore service after age eighteen for purposes of vesting. The bill also reduces the maximum age conditions for employees of certain educational institutions.

The break-in-service rules have been modified to give greater service credit to employees, and the bill provides new rules relating to crediting of service for cases in which an employee is absent from work because of maternity or paternity leave.

Among various other provisions, the most important are the changes made in the area of survivor benefits. A defined benefit or money purchase pension plan will be required to provide automatic survivor benefits when a vested participant who dies before the annuity starting date and has a surviving spouse. The benefit will be in the form of a qualified preretirement survivor annuity. An election to waive a qualified joint and survivor annuity or a qualified preretirement survivor annuity will not be effective unless it is in writing and is signed by the participant and the participant's spouse.

The new provisions are generally effective for plan years beginning after December 31, 1984. Readers who are interested in a full explanation of the provisions of this bill should consult the Senate Finance Committee Report No. 98-575, available through the U.S. Government Printing Office.

Senate Waives 3-Percent CPI Trigger

By a vote of 87 to 3, the Senate agreed to waive for one year the 3-percent Consumer Price Index (CPI) threshold currently required to trigger a Social Security and Supplemental Security Income (SSI) cost-of-living-adjustment (COLA). The action came as a result of President Reagan's July 24 announcement that there was a possibility that the new CPI increase would be less than the 3 percent required for Social Security and SSI COLAs. The actual CPI figure will not be out until late October, but the rate of CPI increase has been lower than anticipated, said Reagan. The Senate's move would provide a one-time automatic cost-of-living increase regardless of the CPI level. It will not, however, permanently repeal the current statutory 3-percent trigger.

The House Ways and Means Committee will be holding hearings on the proposed COLA benefit payment on September 11 at 2:00 p.m., Room 1100 Longworth House Office Building. For more information, call the Committee at (202) 225-3627.

Social Security Disability Reform Amendments of 1984

House and Senate conferees are still working on the Social Security Disability Reform Amendments Act (H.R. 3755), which passed the Senate May 22 by a vote of 96-0. The Senate agreed to H.R. 3755 after striking the entire House-passed bill and substituting the text of S. 476 -- disability legislation introduced by Senators Levin (D-MI), Cohen (R-ME), and Heinz (R-PA) and amended by the Senate Finance Committee. The House had passed its bill on March 27 by an equally impressive 410 to 1 vote.

The controversy surrounding the so-called continuing disability reviews, mandated by Congress in 1980 and implemented by the Social Security Administration in 1981, led HHS Secretary Margaret Heckler to suspend the reviews on April 13 "until new disability legislation is enacted and can be effectively implemented."

During the debate on the House floor, Representative J.J. Pickle (D-TX), the primary sponsor of H.R. 3755 and the Chairman of the Social Security Subcommittee, told his colleagues:

> "...Our social security disability program is in a state of total chaos. Twenty states are administering this national program under Federal court order. Nine other states have dropped out on their own. In the past 3 years nearly half a million disabled beneficiaries have been notified that their benefits will end. Far too often this notice has been sent in error, and corrected only at the beneficiary's expense."

Both the House and Senate versions of H.R. 3755 would provide a medical improvement standard to determine when disability has ceased. This standard is intended to correct a situation in which individuals properly admitted to the Social Security rolls could have their benefits terminated upon review, even though their condition had not improved, and they had no vocational rehabilitation permitting their return to work. But the language on medical improvement is significantly different in both bills, with the House provision being a permanent addition to the law and the Senate version being a temporary provision through 1987.

H.R. 3755 would also make benefits payable to individuals notified of a termination until that person has had the opportunity to appeal to an administrative law judge. Again, the House provision is permanent, the Senate's temporary (covering people terminated before June 1, 1986).

The House version would eliminate the second level of appeal -- the so-called reconsideration -- in disability termination cases, and would require a face-to-face evidentiary interview before the state agency issues a final notice of termination. The Senate bill requires demonstration projects in at least five states to test the effects of providing the beneficiary with the opportunity for a personal appearance before the termination decision is issued.

Both versions require that major Social Security and Supplemental Security Income (SSI) eligibility rules be published as regulations under the Administrative Procedures Act. And both bills provide a temporary moratorium on disability reviews of individuals suffering from mental impairments until new criteria have been published for judging such cases. The House bill also creates an Advisory Council on the Medical Aspects of Disability which would examine Social Security and SSI issues. The Senate bill directs the next quadrennial advisory council on Social Security, scheduled for appointment in 1985, to study and make recommendations on various medical and vocational aspects of disability.

Both bills would make conforming changes in the SSI disability program and would extend for several years, section 1619 of the Social Security Act, which provides for continuation of SSI benefits and/or Medicaid for disabled recipients who engage in substantial gainful activity in spite of their severe impairments.

Strong controversy surrounds other provisions in the bills. The Senate bill allows the HHS Secretary to reduce cost-of-living increases and scale back the benefit formula to keep the Disability Insurance trust fund balance at 20 percent of annual spending -- the so-called "fail-safe" provision that takes effect if Congress takes no action after receiving notification from the Secretary of HHS of the financial condition of the trust fund.

The House bill contains a provision, strongly opposed by the Reagan administration, that requires the Social Security Administration to comply with Appeals Court decisions in the judicial circuit or else appeal them to the Supreme Court. The Senate bill merely requires the administration to send to the tax-writing committees and publish in the Federal Register its reasons for acquiescing or not acquiescing in U.S. Appeals Court decisions affecting the Social Security Act.

Omnibus Budget Reconciliation Act of 1983 (Public Law 98-270)

The June benefit check received by federal civilian and military retirees did not include the previously-scheduled cost-of-living increases. The Omnibus Budget Reconciliation Act of 1983, P.L. 98-270, delayed payment by seven months the federal retiree cost-of-living increase. The COLAs will be paid on January 1, 1985 to civilian retirees and on December 31, 1984, to military retirees. Under prior law, COLAs were to be paid on June 1, 1984 and May 31, 1984, for civilian and military retirees, respectively. The change is permanent. The law also delayed for one time only payment of the civilian pay raises for workers from October 1983 until January 1, 1984.

Together with other provisions, P.L. 98-270 is slated to save $8.2 billion over the four fiscal years from 1984 through 1987, of which $7.2 billion comes from the delayed payments of the COLAs for retirees and civilian pay raises.

Organ Transplant Legislation Advances in Congress

Different versions of organ transplant legislation have now passed the House and the Senate and await resolution of the differences by a House/Senate Conference Committee. The implications of increasing numbers of organ transplants were analyzed in EBRI's June Issue Brief, "Rationing High-Cost Health Care: The Case of Organ Transplants." Medicare and Medicaid are, together, the largest buyers of hospital care in the United States and potentially the most influential purchasers of organ transplantation. As a result, private health insurers view Medicare and Medicaid incentives for the efficient growth of transplant capability as critical. But in both versions of the pending legislation, Congress backed away from the controversial issue of rationing transplants for Medicare and Medicaid patients.

Instead, S. 2048, a bill introduced by Senator Hatch (R-UT), which passed the Senate on April 11, would provide mainly for the establishment of a commission to study and recommend federal action to improve access to organ transplantation. The House version of S. 2048, which passed on June 21, contains the legislative language of H.R. 5580, a bill by Rep. Albert Gore (D-TN). The House version attempts to improve access to renal (i.e., kidney) and nonrenal transplantation by improving the coordination of prospective organ donors and recipients. It would authorize $40 million over four years for grants to strengthen and expand local organ-procurement organizations and $30 million over two years to assist transplant centers in providing free immunosuppressive drugs. Only centers which perform fifteen or more transplants per year would be eligible for grant funding.

The House version omits controversial provisions in an earlier bill by Gore (H.R. 4080), which would have given the Department of Health and Human Services broad authority to restrict Medicare and Medicaid reimbursements for transplant surgery. Critics of Gore's original bill argued that the authority it granted HHS was far too broad.

As it stands, the pending legislation will probably accelerate the growth of transplant surgeries and, in turn, raise the health care costs paid by private insurers, Medicare and Medicaid.

OTHER EBRI ACTIVITIES

Presentations

During the months of July and August, EBRI President Dallas L. Salisbury and Research Associates Deborah J. Chollet and Sophie M. Korczyk made a number of presentations:

- At the Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University on July 5, Salisbury made a presentation to entering masters degree students on "The Federal Deficit, Tax Expenditures, and Retirement Income Security". Deborah Chollet made a companion presentation on "The Federal Deficit, Tax Expenditures, and Health Programs."

- On July 11, Salisbury moderated a Government Research Corporation policy roundtable on "Private Sector Retirement Security and U.S. Tax Policy"

- Salisbury presented "Tax Policy and Employee Benefits: Prospects for 1985" July 16 to senior executives of Celanese Corporation. Also on July 16, he made a presentation to senior executives of Morgan Guaranty Trust Company on "Employee Benefits Policy-Educational Opportunities."

- Sophie Korczyk spoke to the Women in Government Relations Task Force on "Primer on Fringe Benefits," July 25.

- On July 26 Salisbury presented "Washington Update: PEPPRA, Investment Issues and Tax Policy Prospects" to the Institutional Investor Public Funds Conference.

- Salisbury spoke August 6 to the National Employee Benefits Institute (NEBI) summer meeting on "Benefits, Equity, and Tax Policy." In his presentation, he stressed that there is a success story represented by employee benefits that is not being told adequately by plan sponsors or participants. While many companies are making good faith efforts in the employee benefits policy area, much education is still needed.

Testimony

EBRI staff members have testified and submitted the following:

- July 30 -- Dallas Salisbury testified on Employee Fringe Benefits before the Senate Finance Committee, Subcommittee on Taxation and Debt Management on "Employee Benefits and Economic Security," (reference #T-31, $5.00). EBRI Research Associates submitted the following written statements for the record: "The Fairness and Cyclical Costs of Employer Pension Plans, New Survey Findings," by Emily S. Andrews (reference #T-29, $4.50); "Assuring Economic Security for Workers: Health, Disability, and Life Insurance Benefits," by Deborah J. Chollet, (reference #T-32, $2.50); and "Tax Incentives for Pensions and Flexible Compensation Plans," Sophie M. Korczyk (reference #T-30, $2.50).

- On August 7 Dallas Salisbury submitted "Tax Reform, Employee Benefits, and Economic Security," to the Senate Finance Committee for hearings held on major tax reform (reference #T-33, $3.00).