The Bush Presidency: Implications for Employee Benefits

If President-elect George Bush adheres to his campaign vow of "no new taxes," the future may be somewhat less than "kind and gentle" for tax-favored employee benefits—particularly in light of recent warnings by persons involved in the federal budget process that additional revenues must be generated.

Faced with limited revenue options for meeting the Gramm-Rudman-Hollings deficit-reduction targets, Congress and the administration may seek to curtail the tax preferences afforded sponsors of, and persons covered by, employee benefit plans—preferences that the Congressional Budget Office says represent nearly $100 billion a year in forgone income tax revenues.

During his presidential campaign, Bush produced the following proposals for addressing benefit-related issues, including access to health coverage, retirement income, and dependent care.

Health Care
A major issue confronting the new president will be how to improve access to health care for the 37 million nonelderly civilian Americans who lack health insurance coverage (table 1). A staunch opponent of mandating that employers provide health coverage to employees, Bush proposes to increase access by permitting the near-poor to buy coverage through the Medicaid program. He would limit federal spending for this purpose to $200 million during the first year, adding an additional $400 million in both the second and third years.

To date, Bush has not released many details about how such a plan would work. In general, however, a Medicaid buy-in plan could operate in a variety of ways. If the plan limits eligibility to persons currently categorically eligible for Medicaid (principally families with children) whose income is at or below 200 percent of poverty, EBRI estimates that 15 million individuals would be eligible to buy coverage (chart 1). Because potential participants would be low-to-middle-income families—those least likely to afford Medicaid premiums—sizeable federal and state subsidies would probably be required.

Most of the uninsured (22 million) have family income over 200 percent of the poverty level or are not categorically eligible for Medicaid. These persons would probably not qualify for coverage under a Medicaid buy-in plan.

Bush campaign representatives have also suggested that the new president may seek a tax cap on tax-exempt health insurance as a way to raise revenue to pay for extension of health coverage to the uninsured. Such a plan would include in employees' taxable income the value of employer-provided health care benefits over a certain amount, and might affect the use of salary reduction for health coverage in flexible benefit programs.

Bush also is likely to advocate curbs on Medicare reimbursement, particularly for physicians—for whom he has suggested payment similar to the prospective payment system Medicare uses to reimburse hospitals. He also has called for incentives in the tax code for the purchase of long-term care insurance and conversion of individual retirement accounts, savings accounts, and life insurance to pay for long-term care.

Finally, representatives of the Bush campaign have expressed concern regarding the absence of tax-favored funding vehicles for employer-based

The Bush Presidency: Implications for Employee Benefits (p.1) IRA, Keogh Asset Growth Slows (p.5) Timeliness of Withdrawal Liability Demands (p.6) Legislation & Litigation (p.7) Senate Democrats Name Leadership, Committee Chairmen (p.9) For Your Benefit (p.12) Survey Highlights (p.13)
Table 1
Nonelderly Population with Selected Sources of Health Insurance by Own Work Status, 1986

<table>
<thead>
<tr>
<th>Own Work Status</th>
<th>Total (in millions)</th>
<th>Total Private</th>
<th>Employer-Provided</th>
<th>Other Private</th>
<th>Public</th>
<th>No Coverage</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>Direct</td>
<td>Indirect</td>
<td></td>
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<tr>
<td>Total</td>
<td>208.0</td>
<td>152.9</td>
<td>136.1</td>
<td>70.2</td>
<td>65.9</td>
<td>23.8</td>
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<tr>
<td>Family-Head Workers</td>
<td>73.1</td>
<td>59.9</td>
<td>54.9</td>
<td>52.8</td>
<td>2.1</td>
<td>8.2</td>
</tr>
<tr>
<td>Other Family Workers</td>
<td>44.2</td>
<td>36.2</td>
<td>33.0</td>
<td>17.3</td>
<td>15.7</td>
<td>4.9</td>
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<tr>
<td>Nonworkers</td>
<td>28.5</td>
<td>15.0</td>
<td>9.7</td>
<td>a</td>
<td>9.7</td>
<td>6.0</td>
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<td>Children</td>
<td>62.1</td>
<td>41.8</td>
<td>38.5</td>
<td>0.1</td>
<td>38.4</td>
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(percentage within worker categories)

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<td></td>
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<td>Total</td>
<td>Direct</td>
<td>Indirect</td>
<td>11.5%</td>
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<td>a</td>
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<td>7.7%</td>
<td>15.8%</td>
<td>13.6%</td>
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(percentage within source-of-coverage categories)

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<th></th>
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<td>100.0%</td>
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<tr>
<td>Total</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
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<tr>
<td>Family-Head Workers</td>
<td>35.2%</td>
<td>39.2%</td>
<td>40.3%</td>
<td>75.2%</td>
<td>3.2%</td>
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<td>18.3%</td>
<td>13.6%</td>
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<td>23.7%</td>
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<td>7.9%</td>
<td>4.1%</td>
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<tr>
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</table>


*Number is too small to be statistically reliable.

Note: Figures for private, public, and no coverage sum to a number exceeding the total population because some persons reported coverage from more than one source.

retiree medical benefits. They have suggested that a Bush administration would make proposals in this area.

Retirement Income

The president-elect states that he will not reduce Social Security benefits during his term in office. He also has advocated the expansion of private pension coverage and improved accumulation and portability, although he has not released specific proposals for how this should be accomplished.

Dependent Care, Parental Leave

Bush has proposed providing a refundable $1,000-per-child tax credit to low-income families in which at least one, but not necessarily both, parents are employed (Notes, 9/88, p. 2). He also is likely to support the expansion of child-care options through means other than mandates. Bush has suggested expanding employer-sponsored day care through establishment of an
Impact of Health Insurance Proposals on the Uninsured Population

Medicaid Buy-In Plan
(Bush Proposal)

- Would be eligible to receive coverage under a Medicaid buy-in plan
- Children: family income is 100% of poverty or less (5.0 million)
- Adults: family income is 100% of poverty or less (6.8 million)
- Families and individuals with income above 100% of poverty (25.2 million)

- Would NOT be eligible to receive coverage under a Medicaid buy-in plan

Mandated Employer-Based Health Insurance Covering Employees Who Work at Least 17 Hours Per Week

- Would NOT be eligible to receive coverage under an employer-based plan
- Families of nonworkers (4.6 million)
- Families of other workers** (6.1 million)
- Families of self-employed workers (3.2 million)

- Would be eligible to receive coverage under an employer-based plan
- Families of qualified workers* (23.2 million)

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*Wage or salary workers working 17 hours per week or more.
**Wage or salary workers working less than 17 hours per week.


*In this example, employers would be required to insure employees working at least 17 hours per week. Actual proposals may define covered workers differently.

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Insurance pool, broadening the Head Start program, and providing federal funds for innovative dependent-care programs.

He also has indicated that he favors

courage the private sector to "grant varying degrees of parental leave" to employees.

Minimum Wage

During his campaign for the presidency, Bush endorsed an unspecified "modest" increase in the minimum wage on the condition that it be accompanied by expansion of the subminimum "training wage" for new workers. Thus, it is likely
that the Bush administration would be agreeable to raising the minimum, albeit conditionally.

Drug Testing
Bush has said that he supports employment-related drug testing, provided individuals' rights are not violated.

Conclusions
Many policymakers, including incoming House Budget Committee Chairman Leon Panetta (D-CA), state that the Gramm-Rudman-Hollings deficit reduction targets cannot be met without raising taxes in addition to cutting government spending.

President-elect Bush may stand firmly against any "new taxes," but the history of the Reagan years indicates that the government is adept at raising revenue by extending existing taxes to presently excluded areas. Past tax "adjustments" have included section 415 limits, funding limits, excise taxes, and dollar caps on educational assistance and group legal plan exclusions. Opportunities for revenue "enhancement" exist in these areas, as well as through the taxation of health benefits, section 125 plans, and pension trust income.

The 101st Congress promises to be an active one with many challenges for those concerned with employee benefit programs.

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Table 2

<table>
<thead>
<tr>
<th>Financial Institution</th>
<th>6/30/86</th>
<th>12/31/87</th>
<th>6/30/87</th>
<th>12/31/86</th>
<th>6/30/86</th>
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<td></td>
<td>Total Assets</td>
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<td>$350.9</td>
<td>$304.9</td>
<td>$282.0</td>
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<td>79.5</td>
<td>72.7</td>
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<tr>
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<td>88.7</td>
<td>63.4</td>
<td>57.8</td>
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<tr>
<td>Life Insurance</td>
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<td>Stock Brokerage SDAs⁴</td>
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<td>26.1</td>
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<tr>
<td></td>
<td>58.9d</td>
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<td>44.9</td>
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<td></td>
<td>22.9%</td>
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<td>22.7%</td>
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<td>20.8</td>
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<td>4.9</td>
<td>4.8</td>
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<td>7.4</td>
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<td>7.2</td>
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<tr>
<td>Life Insurance</td>
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<tr>
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</table>

Source: Employee Benefit Research Institute tabulations of data collected from the Federal Reserve Board Weekly Statistical Release, the Federal Home Loan Bank Board, the National Council of Savings Institutions, the Investment Company Institute, the Credit Union National Association, the American Council of Life Insurance, and The IRA Reporter.

¹Self-directed accounts; figures represent IRA assets only.
²Preliminary.
³All June data as of the preceding Dec. 31.
IRA, Keogh Asset Growth Slows

Assets held in individual retirement accounts (IRAs) and Keogh plans (retirement plans for the self-employed) grew to $390.5 billion as of June 30, 1988, up from $362.2 billion six months earlier (table 2). Asset growth slowed to 6.6 percent during the first half of 1988, compared to 15.0 percent during the same period of 1987. From June 30, 1987, through June 30, 1988, IRA and Keogh assets grew 11.3 percent, compared to 24.4 percent during the 12-month period prior to June 30, 1987.

Reasons for the slower growth are difficult to determine. One possibility is the effect of the changes to IRA deductibility in the Tax Reform Act of 1986 (TRA). TRA restricted the deductibility of IRA contributions for taxpayers at certain income levels who also are covered under an employer pension plan.

Although no data are available yet on TRA's actual impact on IRA usage, the slower rate of increase in IRA and Keogh assets suggests that the law may have had some negative effect on participation. EBRI analysis reveals, however, that most of the IRA market theoretically remains intact. The majority of taxpayers who could have made tax-deductible IRA contributions before TRA still could have done so in 1987.

EBRI estimates that 93 percent of single taxpayers, 94 percent of one-earner couples, and 77 percent of two-earner couples were eligible to make fully deductible IRA contributions in 1987. The complexity of the new rules and some misleading press accounts may have led some taxpayers to incorrectly believe they were ineligible.

Another possibility is that most taxpayers who want to invest in an IRA may already have started one; slower asset growth, therefore, may be due to a slowdown in the establishment of new accounts.

Among financial institutions, asset growth was the highest in mutual funds (11.7 percent), which held $92 billion in IRA and Keogh assets as of June 30, 1988. Mutual funds' share of the overall IRA and Keogh market rose 1 percent during the first six months of 1988, from 22.5 percent at year-end 1987 to 23.5 percent as of

Banking institutions (commercial banks, savings and loans, and mutual savings banks) held 47 percent of the IRA and Keogh market as of June 30, 1988, rising only marginally from year-end 1987 and falling from a peak of 61 percent in June 1984.

There has been speculation that investors, in reaction to the stock market drop on Oct. 19, 1987, are moving toward less risky investments. IRA and Keogh asset distribution data cannot be used to either support or disprove this supposition, however, since the financial institutions holding IRA and Keogh investments may have a variety of investment strategies for the accounts they hold.

It is interesting to examine the growth of IRA and Keogh assets as a percentage of total investments made by households for retirement and insurance purposes. Insurance is included since it can be used to provide a retirement annuity or death benefit. In chart 2, IRA and Keogh assets are added to Federal Reserve Board Flow of Funds data to illustrate their ratio to overall retirement and insurance investments. IRA and Keogh assets grew from 4.6 percent of retirement and insurance investments as of Dec. 31, 1982, to 12.6 percent as of June 30, 1988.

**Timeliness of Withdrawal Liability Demands**

(Editor’s note: This column, a regular feature of Employee Benefit Notes, was prepared by EBRI’s legal counsel, Arnold & Porter, under the supervision of K. Peter Schmidt.)

Since enactment of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), an employer who “withdraws” from a multiemployer pension plan has generally become liable for a portion of any unfunded vested benefits such plan may have. The process of collecting this liability begins under a procedure explicitly set forth in section 4219 of the Employee Retirement Income Security Act (ERISA):

As soon as practicable after an employer’s complete or partial withdrawal, the plan sponsor shall (A) notify the employer of—(i) the amount of the liability, and (ii) the schedule for liability payments, and (B) demand payment in accordance with the schedule.

Also, under ERISA section 4301, an action to collect withdrawal liability must generally be brought within six years after “the date on which the cause of action arose.”

In recent months, there have been several decisions involving the interplay between these provisions and particular fact situations. In the simplest terms, the issue has been whether the six-year limitations period begins to run when the employer withdraws, or only after the plan has made a demand for withdrawal liability and the employer has failed to make a payment when due.

**Arbitration Decision Frames Issue**

The issue is starkly framed by a 1988 arbitration decision, Ludington News Company, Inc. and Mich. United Food and Comm. Workers, Etc. The employer there had withdrawn from a multiemployer pension plan on Sept. 30, 1980. The plan, however, had not served a withdrawal liability notice and demand until Nov. 7, 1986, more than six years later. On these facts, the employer asserted that the plan was barred by the appropriate ERISA statute of limitations from asserting or collecting liability.

The arbitrator, however, held for the plan. He reasoned that, without issuance of the notice and demand, there can be no withdrawal liability payment coming due. Furthermore, in the absence of a payment coming due (and remaining unsatisfied), no cause of action for collection can arise. Since the six-year statute could not begin to run until “after the cause of action arose,” the plan could not be barred by the statute of limitations.

The employer had argued that such a result would run contrary to the policy and effect of any “normal” statute of limitations:

A well-defined, isolated event transpires, namely, withdrawal from a multiemployer pension plan occurs. Six years elapse, and the plan sponsor does nothing. Under almost any other circumstances, the statute of limitations would have run.

The arbitrator reasoned, however, that ERISA’s withdrawal liability collection scheme was “unique,” and provided its own internal disincentive for delay. Citing several other arbitration decisions, the arbitrator...
noted that a plan is not entitled to interest for the period between withdrawal and demand, a fact which produced the following consequences for the parties before him:

Thus, Ludington, even at this late date, is being asked to pay no more that [sic] it would have had to pay with a more timely demand. In the interim, Ludington has had the use of its money, free of additional charge.

The arbitrator thus agreed with the fund that the statute of limitations came into play only after the demand had been made, and that section 4301 imposes no requirements with respect to the timeliness of such demand. He noted that the "as soon as practicable" language of section 4219 "might suggest the availability of a laches-type defense," but indicated that the employer had failed to make any such argument. He went on, however, to speculate that such an argument could not prevail in any event:

Even if Ludington should attempt to avail itself of such a defense, there are no facts in the record which demonstrate the requisite detrimental reliance. Indeed, Ludington has suffered no damage because delay has not been accompanied by any kind of interest penalty.

**Court Similarly Rules**

The U.S. District Court of Massachusetts recently reached a similar conclusion in Debrenci v. Westfair Transport Corporation (slip op., C.A. No. 87-0689-Z [Aug. 8, 1988]). The employer there had withdrawn in December 1980. Although the plan had attempted to serve notice and demand in 1981 and 1982, its letters had been returned marked "Moved—Not Forwardable" or "refused." A letter mailed in January 1987, however, apparently was delivered. When the plan commenced a collection action in March 1987, the employer asserted the statute of limitations.

The court indicated that the application of the statute of limitations was the only issue and that it turned on a determination of when a cause of action "arises." Concluding that no such cause of action can arise before the debt is payable, the court held for the plan. The court also dismissed the employer's contention that defining the six-year period as running from the date of demand would "permit plaintiffs to retain complete control over the limitations period, and encourage them to delay making a demand." In the court's view, that contention "ignores the statutory requirement that demand be made 'as soon as practicable.'"

Although these decisions appear to have been of first impression, there is no reason to believe that they necessarily represent isolated or rare fact situations. MPPAA was enacted and effective in 1980, and it is thus only withdrawals that occurred in the early days of the law that would now be appearing in decisions concerning a six-year statute of limitations. Whether the view described above becomes settled law (and perhaps forces additional judicial development regarding the meaning and effect of the "as soon as practicable" standard) remains to be seen.

**Legislation & Litigation**

**Technical Corrections Update**

Following publication of the November 1988 issue of Employee Benefit Notes, EBRI staff obtained additional information on the Technical and Miscellaneous Revenue Act of 1988 (H.R. 4333, which was signed by President Reagan on Nov. 11 and became P.L. 100-647). Consequently, two items included in EBRI's discussion of the act (Notes, 11/88, pp. 1-2) warrant clarification.

**Spin-Off Plans**—The act provides that excess plan assets in the event of a plan spin-off within a controlled group must be allocated proportionately among the involved plans, according to a formula based on the relationship between each plan's termination liabilities and funding liabilities.

The rule generally applies to transactions that occur after July 26, 1988; plans that are terminated after spin-off are not affected.

**Section 457**—The act repeals a provision of the Tax Reform Act of 1986 that extended section 457 to church organizations; other tax-exempt organizations still are subject to the rules. The act also codifies the Internal Revenue Service (IRS) position that the rules do not apply to vacation pay, sick leave, compensatory time, severance pay, disability pay, and death benefit plans.

The act also stipulates that the rules are not applicable to a nonelective deferred compensation plan provided to nonemployees, providing
all similarly situated independent contractors are covered by the plan. The act also provides that the rules do not apply to certain nonelective deferrals made under governmental plans by employees covered under such plans on July 14, 1988.

Section 89—The act also required IRS to issue guidance on section 89 compliance by Nov. 15—a deadline which was not met. On Nov. 30, a Treasury Department spokesman said that a three-part regulation would be released "by Christmas" that will include (1) guidance on qualification, (2) a broad “walk-through” of the nondiscrimination rules, and (3) guidance for section 125 cafeteria plans. More detailed, yet still incomplete, regulations are to be issued next year.

Maintenance-of-Effort Guidance Imminent

At press time, guidance on the employer maintenance-of-effort provision of the Medicare Catastrophic Coverage Act of 1988 (Notes, 6/88, pp. 10-11) was about to appear as a notice in the Federal Register, but met with a last-minute publication delay.

Senate Staffer Discusses Legislative Agenda

If President-elect George Bush stands by his vow of "no new taxes," employee benefits may again be viewed as attractive sources of revenue by policymakers faced with meeting the Gramm-Rudman-Hollings deficit reduction targets, a Senate Finance Committee staff member told members of A Network of Professionals Working in Employee Benefits (WEB) Nov. 15.

Committee tax counsel Randy Hardock said he anticipates few spending cuts during the 101st Congress and that tax revenues will have to be increased, although they may be called by other names, such as "user fees."

In the area of health legislation, Hardock said that Congress will begin addressing the retiree health liability issue, but will not act “until it has to,” probably when the retiree health accounting proposal to be issued by the Financial Accounting Standards Board is phased in beginning in 1992. He said that mandated health benefits is an issue that “is far from dead”; in particular, Congress may enact incentives for improving coverage among small employers.

The Senate Finance Committee will continue to work to make the section 89 welfare benefit nondiscrimination rules “more administrable,” Hardock said. He also said that Congress must find a way to deal with the coverage gap for preexisting conditions that results after a person is forced to drop a former employer’s health plan upon gaining coverage under another group plan.

Hardock said that the asset reversion issue “could stick around forever,” but did not predict what action, if any, Congress might pursue.

Pension-related technical corrections, which did not make it through the 100th Congress, probably will not be freed up until the House Ways and Means and Education and Labor committees resolve their differences over the legislation, Hardock said, adding that he does not foresee pension portability as a major issue during the next two years.

Possible benefit-related revenue sources, Hardock said, include reductions in the 415 limits, the compensation cap, and the full funding limits; caps on tax-free health benefits; and repeal of the top-heavy rules. The cap on the tax-deferred amount permitted in cafeteria plans probably will not be proposed unless it were "disguised" in some way, he said, or more targeted, perhaps to the highly compensated.

Legislative vehicles for revenue increases are likely to be scarce, as there probably will be no budget reconciliation bill to which to attach them, Hardock said. Possible vehicles would be legislation to provide additional funding for the new drug law and a bill to renew the debt limit, which expires in March.

Pickle Calls for Hearings on Buyouts' Impact on Pension Funds

Rep. J.J. Pickle (D-TX) recently announced that he will seek hearings next year on the involvement of pension funds and nonprofit organizations in highly leveraged buyouts, including the recent R.J. Reynolds/Nabisco buyout.

Pickle, chairman of the House Ways and Means Oversight Subcommittee, said he is alarmed about the possible threat highly leveraged buyouts may pose to the security of pension funds, particularly in the event of an economic recession.

Within the context of investigating mergers and acquisitions, it has been reported that Pickle may consider a
Senate Democrats Name Leadership, Committee Chairmen

When the 101st Congress convenes on Jan. 3, the leadership will include a number of new faces. Democratic senators recently elected leaders and made recommendations for committee chairmanships, while Senate Republicans made leadership selections but deferred committee recommendations. House Democrats and Republicans were to begin their leadership selection process on Dec. 5.

George Mitchell of Maine was elected Senate majority leader on Nov. 29. As chairman of the Senate Finance Committee Health Subcommittee during the last Congress, Mitchell introduced a comprehensive long-term care bill that is expected to provide the basis of legislation during the 101st Congress.

Democratic senators made the following additional selections: Alan Cranston of California, majority whip; David Pryor of Arkansas, secretary of the Democratic Conference; Daniel Inouye of Hawaii, chairman of the Democratic Steering Committee; and John Breaux of Louisiana, chairman of the Democratic Senate Campaign Committee. Mitchell named Tom Daschle of South Dakota cochairman of the Democratic Policy Committee.

Senate Republicans named Robert Dole of Kansas minority leader, Alan Simpson of Wyoming assistant minority leader, and William Armstrong of Colorado chairman of the Republican Policy Committee.

On Dec. 1, the Senate Democratic Steering Committee made its recommendations for committee chairmanships and committee assignments. Incoming chairmen of selected Senate committees, subject to ratification by the Democratic Conference and the full Senate, are listed below.

Agriculture, Nutrition, and Forestry
Patrick Leahy, Vermont

Appropriations
Robert Byrd, West Virginia

Banking, Housing, and Urban Affairs
Donald Riegle Jr., Michigan

Budget
Jim Sasser, Tennessee

Commerce, Science, and Transportation
Ernest F. Hollings, South Carolina

Energy and Natural Resources
J. Bennett Johnston, Louisiana

Finance
Lloyd Bentsen, Texas

Governmental Affairs
John Glenn, Ohio

Labor and Human Resources
Edward M. Kennedy, Massachusetts

Rules
Wendell H. Ford, Kentucky

Small Business
Dale Bumpers, Arkansas

Veterans' Affairs
Alan Cranston, California

Special Committee on Aging
David H. Pryor, Arkansas

tax on pension trust earnings. The Joint Committee on Taxation and Congressional Budget Office are developing estimates of the revenue that would be achieved through such a tax.

In a related action, New York Governor Mario Cuomo announced Nov. 28 that a task force is examining the investment of public pension funds in corporate takeovers. The task force will recommend whether the state comptroller should remain sole trustee of New York's $36 billion Common Retirement Fund.

Cuomo's economic development director has requested a moratorium on further investment of the fund in corporate takeovers until the 20-member task force issues its report.
Regulations

Integration Regulations Proposed

IRS is seeking comment on proposed regulations for integrating qualified pension plans with Social Security. The proposals relate to changes included in the Tax Reform Act of 1986, and would restrict the "safe harbor" for integrating private plans, which many plans use to comply with the general nondiscrimination rules under Internal Revenue Code section 401(a)(4).

The proposed rules would: (1) prohibit a defined benefit offset plan from using an offset based on an actual or estimated Social Security benefit; (2) abolish integrated career pay plans; (3) restrict an employer's ability to integrate plans that subsidize early retirement benefits; and (4) make the Social Security wage base ($48,000 in 1989) the only permitted integration level for defined contribution plans.

The proposals generally apply to plan years beginning after Dec. 31, 1988. Plans that do not meet the new tests still may demonstrate nondiscrimination if they take Social Security benefits into account under another set of regulations IRS expects to issue under section 401(a)(4).

Comments and requests for a public hearing should be delivered by Jan. 17, 1989, to Commissioner of Internal Revenue, Attention: CC:CORP:T:R (EE-159-86), Washington, DC 20224. For further information, contact Michael Garvey, (202) 377-9372. (See the Nov. 15, 1988, Federal Register, pp. 45917-45942.)

Delay Seen for 401(k) Hardship Rule Compliance

The Treasury Department has indicated that it will issue a notice before the end of the year stating that 401(k) plans need not comply with the new hardship withdrawal rules during 1988 plan years. The duration of the delay was not finalized as of this writing.

IRS Issues Annuity Distribution Safe Harbor

On Nov. 15, IRS announced a simplified safe-harbor method of calculating the taxable and tax-free portions of annuity distributions from qualified plans.

IRS reported that the method may be used in lieu of the more complex calculations included in regulations, and that it may be used (1) by payers to report the taxable portion on Form W-2P and (2) by recipients to compute the portion includable in income.

Most recipients will be able to exclude from income a larger portion of each annuity payment under the safe-harbor method, according to IRS. The simplified method also will save many retirees and beneficiaries from having to ask IRS for a ruling to calculate the taxable amounts of their annuity payments, for which a $50 user fee is charged. The notice (88-118) was included in Internal Revenue Bulletin 1988-47, published on Nov. 21.

OPM Reduces Federal Retirees' FEHBP Premiums

The Office of Personnel Management (OPM) announced that the premiums for Medicare-eligible federal retirees insured under the Federal Employees Health Benefits Program (FEHBP) will be reduced $3.10 per month during calendar year 1989. The reduction means those retirees will avoid paying for new benefits under the Medicare Catastrophic Coverage Act of 1988 that duplicate FEHBP coverage. (See the Oct. 26, 1988, Federal Register, p. 43308; also Notes, 11/88, p. 13.)

HCFA Sets Medicare Part A Premium for Uninsured

The hospital insurance premium under Part A of Medicare will be $156 per month in 1989 for uninsured persons aged 65 and over, the Health Care Financing Administration (HCFA) recently announced. The premium is charged individuals who are not covered under the Social Security or Railroad Retirement acts or who do not meet the requirements for Part A entitlement. (See the Nov. 8, 1988, Federal Register, pp. 45161-45162.)

Litigation

International Harvester Liable

A U.S. District Court judge in Chicago ruled on Nov. 16 in favor of the Pension Benefit Guaranty Corporation (PBGC), finding that Navistar International (formerly known as International Harvester) had sold its Wisconsin Steel division to avoid paying pension benefits. Consequently, Navistar is liable for the unfunded pension obligations. (See Notes, 12/86, pp. 13-14).

In its suit against Navistar, PBGC claimed that the company was responsible for about $146 million in
underfunded pension plan obligations plus interest. The actual amount of the damages will be determined in a supplemental court proceeding.

When Wisconsin Steel incurred heavy operating losses in the early 1970s, International Harvester was unwilling to finance its rehabilitation. After an unsuccessful worldwide search for a buyer, International Harvester finally sold Wisconsin Steel in 1977 to a small, undercapitalized firm with no experience in the steel industry.

PBGC contended that the sale was an abuse of the Title IV termination insurance program of the Employee Retirement Income Security Act of 1974 (ERISA) "because the buyer lacked a reasonable chance of successfully operating the business and paying for its pension obligations," according to PBGC. A principal purpose of the sale, PBGC alleged, was to enable International Harvester to unload some $86 million in underfunded pension obligations. In 1980, Wisconsin Steel went into bankruptcy and the pension plans terminated, shifting millions of dollars of unfunded pension liabilities to PBGC.

International Harvester maintained that the sale insulated it from all liability for the Wisconsin Steel plans. PBGC argued that International Harvester's sale of the division "sounded the death-knell for the business and its pension plans" and that the company was, therefore, liable.

Retirees Sue Buyout Firm after Health Benefits Stop

Three retired workers of American Forests Products filed suit on Nov. 3 against Kohlberg Kravis Roberts & Co., a leading leveraged buyout firm, for what they claim was an investment strategy that led to termination of the employer's health plan for retired management workers.

The health plan was canceled when the last of the company's operations was sold earlier this year and the buyer, Georgia-Pacific, declined to assume the health plan obligations. When no new insurance carrier could be found, participants were offered $25,000 each in place of the coverage. All except the three retirees and their wives accepted.

PBGC Sues Bank for Breach of Fiduciary Duty

PBGC filed suit on Nov. 16 in U.S. District Court in Milwaukee against M&I Marshall & Ilsley Bank, alleging that the bank breached its duty as a fiduciary in 1982 when it agreed to become trustee for Wheeling-Pittsburgh Steel Corp. pension plans and to accept shares of a new series of Wheeling-Pittsburgh preferred stock for the plans, reported PBGC in a news release.

Wheeling-Pittsburgh issued the stock to M&I Bank as trustee instead of paying $26.4 million due the plans under the Internal Revenue Code and ERISA, PBGC said. The stock was among the assets acquired by the agency when it took over the plans shortly after Wheeling-Pittsburgh filed for bankruptcy.

The complaint alleges, among other things, that the stock was not properly valued when M&I agreed to accept it. It also alleges that the Series B stock "was a risky invest-

LTV Charges $2.26 Billion in Retiree Benefit Costs

The LTV Corporation announced Nov. 21 that it has charged against its net worth $2.26 billion in the estimated accumulated costs of health and life insurance benefits promised to retirees as of Jan. 1, 1988.

LTV is undergoing Chapter 11 bankruptcy reorganization. "The Financial Accounting Standards Board is expected to issue an accounting standard which will mandate accrual-basis recognition of such postemployment benefits within the next few years," said LTV Chairman and Chief Executive Officer Raymond A. Hay in announcing the action. "Because LTV is in Chapter 11, we believe it is appropriate for the company to record all its liabilities, including the liability for these postemployment benefits, so that they may be appropriately dealt with in the reorganization process."

Hay said that the accounting method adopted by LTV recognizes postem-
ployment medical and life insurance benefits earned by all of the company’s retirees and active employees, costs which previously were recognized on a pay-as-you-go basis.

LTV has been embroiled in a legal battle with PBGC. The agency recently submitted a brief to the U.S. Court of Appeals for the Second Circuit in New York appealing a federal judge’s ruling prohibiting PBGC from restoring three underfunded pension plans to LTV (Notes, 11/88, p. 13; 7/88, p. 13; 6/88, p. 13). LTV’s brief is due by Dec. 21, said a spokeswoman for PBGC, and the agency’s reply by Jan. 4, 1989. Oral arguments may take place as early as January, she said.

PBGC is seeking a court order enforcing restoration of LTV’s full responsibility for the restored plans, including payment of full pension benefits.

In a prepared statement, United Steelworkers of America said that $1.3 million of the LTV charges “might adversely impact” the union’s profit-sharing payments for 1988:

“The union has directed its lawyers and financial consultants to investigate this issue and to recommend whatever action may be necessary to protect the interests of our LTV membership. Payment of profit sharing is due April 15, 1989. The union will take every action necessary and appropriate to obtain the payment that is due our members under the plan.”

**State Court Strikes AIDS Testing Regulations**

The Massachusetts Supreme Judicial Court ruled on Nov. 16 that under current law the state’s insurance department cannot prohibit insurers from testing coverage applicants for exposure to the AIDS (acquired immune deficiency syndrome) virus.

Adopted in September 1987 but never implemented because of insurance industry court challenges, the regulations would have prevented insurance carriers from requiring applicants to undergo AIDS testing. Applicants for life and total disability policies with a face amount of more than $100,000, however, would have been exempted.

**For Your Benefit**

**Establish National Retirement Panel, Council Urges**

On Nov. 3, the ERISA Advisory Council unanimously recommended that the president and Congress jointly appoint a commission to develop a national retirement income policy. Such a panel could determine appropriate retirement income levels and composition, and might address such other issues as indexation, whether employer-provided retirement income programs should be mandatory, and how employer plans ought to be structured.

**PBGC Announces New Premium Interest Rate**

The interest rate for determining the variable rate premium for plan years beginning in November 1988 is 7.11 percent, the Pension Benefit Guaranty Corporation (PBGC) announced on Nov. 15. Interest rates for plan years beginning prior to November are as follows.

<table>
<thead>
<tr>
<th>Month</th>
<th>Rate</th>
</tr>
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<tbody>
<tr>
<td>January 1988</td>
<td>7.30%</td>
</tr>
<tr>
<td>February 1988</td>
<td>7.06%</td>
</tr>
<tr>
<td>March 1988</td>
<td>6.74%</td>
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<tr>
<td>April 1988</td>
<td>6.90%</td>
</tr>
<tr>
<td>May 1988</td>
<td>7.16%</td>
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<tr>
<td>June 1988</td>
<td>7.38%</td>
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<tr>
<td>July 1988</td>
<td>7.20%</td>
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<tr>
<td>August 1988</td>
<td>7.31%</td>
</tr>
<tr>
<td>September 1988</td>
<td>7.46%</td>
</tr>
<tr>
<td>October 1988</td>
<td>7.25%</td>
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</tbody>
</table>

**Social Security Announces 1989 Benefit Changes**

Social Security recipients will receive a cost-of-living increase of 4.0 percent in 1989, while the annual earnings limit for retirees aged 65-69 will rise from $8,400 to $8,880. (See Notes, 11/88, pp. 13-14, for additional changes.)

**Health Expenditures Rose 9.8% in 1987**

Private and public spending for health care rose 9.8 percent in 1987 to $500.3 billion, according to a report released by the U.S. Health Care Financing Administration (HCFA) on Nov. 20. The increase was the largest since 1983 and more than double the 1987 general inflation rate.

Health spending consumed 11.1 percent of gross national product in 1987, the highest level in history, HCFA reported. Physician reimbursement under Medicare rose at a compound annual rate of 15 percent per beneficiary from 1975 to 1987.
Free copies of the report are available from HCFA, Room 428H, 200 Independence Ave., SW, Washington, DC 20201, (202) 245-6145.

EBRI Sponsors, Staff Named to Social Insurance Group

Representatives of nine EBRI sponsor firms and two EBRI staff are among the 120 founding members named to the National Academy of Social Insurance, a nonpartisan organization for research and education about Social Security and related programs.

Appointed EBRI sponsors are: William J. Arnone of Buck Consultants and Dwight K. Bartlett III of Mutual of America Life Insurance, both of whom will serve on the academy’s board; Robert A. Beck, Prudential Insurance Co.; Dale R. Detlefs, Mercer-Meidinger-Hansen; Patricia E. Dilley, Arnold & Porter; John A. Fibiger, New England Life Insurance; Stanford G. Ross, Arnold & Porter; Sylvester J. Schieber, The Wyatt Co.; and Bruce D. Schobel, Mercer-Meidinger-Hansen. EBRI President Dallas L. Salisbury and Emily S. Andrews, director of research, also were appointed.

"The 120 founding members were selected because they are the leading authorities in the country on the Old-Age, Survivors, and Disability Insurance program, commonly known as Social Security,” said Pamela J. Larson, the academy’s executive director, in a Nov. 10 announcement. The academy’s membership will be expanded in the future, she said, to include other branches of social insurance, such as unemployment insurance, workers’ compensation, and health insurance.

Survey Highlights

<table>
<thead>
<tr>
<th>Labor Force Status of Persons 25 to 64 Years Old by Years of School Completed and by Sex, March 1978 and March 1988</th>
</tr>
</thead>
<tbody>
<tr>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Civilian Labor Force Distribution</td>
</tr>
<tr>
<td>Less than 4 years of high school</td>
</tr>
<tr>
<td>4 years of high school</td>
</tr>
<tr>
<td>1–3 years of college</td>
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<tr>
<td>4 years of college or more</td>
</tr>
<tr>
<td>Labor Force Participation Rate</td>
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<tr>
<td>Less than 4 years of high school</td>
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<td>4 years of high school</td>
</tr>
<tr>
<td>1–3 years of college</td>
</tr>
<tr>
<td>4 years of college or more</td>
</tr>
</tbody>
</table>

The educational attainment of the United States labor force increased significantly over the past decade, according to data released by the U.S. Department of Labor (DOL). Among adult workers 25 to 64 years of age, 26 percent are college graduates, up from 21 percent in 1978. Request release number USDL 88–423 from DOL, Bureau of Labor Statistics, Washington, DC 20212. (202) 523–1913. Free.

Andrews New Treasurer of Group on Aging

EBRI Research Director Emily S. Andrews has been elected treasurer of the Economics of Aging Interest Group of the Gerontological Society of America, a position she will hold through 1990.

Government Publications

Your Pension: Things You Should Know about Your Pension Plan, Pension Benefit Guaranty Corporation (PBGC)

Produced by PBGC in cooperation with the U.S. Department of Labor and the Internal Revenue Service, this booklet provides basic information about pension plans: types of plans, provisions, vesting, calculation and payment of benefits, survivor benefits, participant rights and protections, funding and...

Your Rights as a Taxpayer, Internal Revenue Service (IRS)

This four-page overview outlines taxpayers’ rights in dealing with IRS and incorporates comments solicited from Congress, IRS executives, tax professionals, and the public. Contact IRS regional forms distribution centers or call (800) 424-3676. Free. Aetna Life Insurance Co.

Small Business in the American Economy, U.S. Small Business Administration

"Changing demographics, declining rate of population growth, expanding technologies, and the internationalization of American markets will put pressure on small firms to increase their productivity—by increasing capital per worker, improving human capital through training, and improving management techniques," according to this new government report. The study features a special look at the manufacturing industry, worker training in small business, and business ownership by women and minorities. Request publication no. 045-0000-00252-7 from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 275-2091. Cost $6.50.

Nongovernment Publications

Uninsured in the United States: The Nonelderly Population without Health Insurance, 1986, EBRI

This study by senior research associate Deborah Chollet provides the most recent detailed information on the complex composition and size of the uninsured population by their employment, income, and family status. The study also examines noncoverage by state, geographic region, and industry type and includes details on rural workers and their families. Contact EBRI, Books Division, P.O. Box 4866, Hampden Station, Baltimore, MD 21211. (301) 338-6946. Cost $18.95 prepaid.


This second annual report examines the status of women in the United States economy and political process and the arts, military, media, sports, and science. It also provides statistics on women’s employment, education, income, health, fertility, age distribution, and marital status, and includes a chapter on pension coverage among women written by Bonnie Newton, EBRI’s director of education. Contact WREI, 1700 18th St., NW, Suite 400, Washington, DC 20009. (202) 328-0579. Cost $9.95.

The Work & Family Sourcebook, Fairlee E. Winfield, ed.

This work examines the impact of changing workplace demographics, such as an increase in the number of working women and dual-earner families, and related management and legislative issues. Contributors include representatives of the private sector, academia, and Congress. Contact Gerry Centrowitz, Panel Publishers, 14 Plaza Road, Greenvale, NY 11548. (516) 484-0006. Cost $89 plus postage and handling.

Health Care Fraud Survey: Results of a Nationwide Survey of Consumers, Aetna Life Insurance Company

This survey examines consumers’ attitudes toward, and their personal experiences with, health insurance fraud. Nearly 40 percent of respondents reported that during the past three years they had visited a health care practitioner who committed at least one billing practice indicative of fraud. For a summary of survey findings, contact Judy Hyfield-Starr, Aetna Life Insurance Co., MA64, 151 Farmington Ave., Hartford, CT 06156. (203) 636-2259. Free.

Child Care in the 100th Congress: Legislation and Policy Issues, Bureau of National Affairs (BNA)

This report consists of edited excerpts of two Congressional Research Service documents. The first part focuses on federal policy issues and presents the arguments for and against a federal role in providing child day care; it also discusses the quantity, quality, and affordability of services currently available. The second part contains summaries of 13 major bills with child care provisions that were introduced in the 100th Congress through July 21, 1988. Contact BNA’s Customer Service Center, 9435 Key West Ave., Rockville, MD 20850. (800) 372-1033. Cost $35.

Work, Earnings, and Retirement: The Changing Labor Market for Older Workers, Andrew Sum, Christopher Ruhm, and Peter Doeringer

This report examines employment trends among workers aged 55 and over and their families during the last two decades and discusses the
policy implications of these trends. Approximately 6 percent of individuals in this age group experience unemployment, involuntary part-time work, discouragement from lack of work, or low-wage employment. The report also found that about one-third of all career jobs end early: well before their final retirement, many people move to “bridge” employment that may continue for five to ten years before they cease working. Contact Boston University, Center for Applied Social Science—Institute for Employment Policy, 270 Bay State Road, Boston, MA 02215. (617) 353-4447. Cost $10.

The American Job Machine, Richard B. McKenzie

The future of the U.S. economy rests on the nation’s willingness to endure job destruction as well as to find ways of facilitating job creation, states McKenzie. The author believes that economic progress has two parts: (1) eliminating jobs through new technologies and (2) finding new tasks for workers and maximizing the opportunity for them to create their own jobs. The book examines the nature and scope of the displaced worker problem, the proliferation of low-wage jobs, the magnitude of the U.S. trade deficit, and the “disappointing” record of government training programs and mandated poverty relief. Contact the CATO Institute, 224 2nd St., SE, Washington, DC 20003. (202) 546-0200. Cost $24.95 hardcover; $12.95 paperback.

Surveys


Chamber of Commerce

This annual survey provides data on benefit costs and availability during 1987 for nearly 1,000 firms representing a broad cross-section of U.S. industry. Included are medical benefits, retiree medical care, pension and profit-sharing payments, disability insurance, vacations and holidays, education subsidies, and employee discounts. Data are presented by type and size of industry, region, and worker status. Contact Kristin Olmstead, U.S. Chamber of Commerce, 1615 H St., NW, Washington, DC 20077-2565. (202) 659-6000. Cost $20; multiple-copy discounts.

Survey on Federally Mandated Health Care and Parental Leave Benefits, Buck Consultants, Inc.

Of the 1,000 employers contacted by Buck Consultants, 262 responded to questions on how their benefit programs would be affected by the Minimum Health Benefits for All Workers Act (S. 1265) and the Family and Medical Leave Act (H.R. 925), both proposed during the 100th Congress and likely to resurface during the 101st Congress. Most employers anticipated that enactment of either bill would increase their costs of doing business. Fifty-seven percent said they oppose federally mandated health coverage, while 64 percent said they oppose mandated parental leave. Nevertheless, most indicated they did not plan to take any action to make their opinions known. Contact Buck Consultants, Inc., 500 Plaza Drive, Secaucus, NJ 07094. (201) 902-2555. Cost $50.


Companies that sponsor profit-sharing plans, thrift-savings plans, 401(k) plans, and employee stock ownership plans found that, given a choice of investments for employee contributions and employer contributions, participants invested conservatively, preferring guaranteed investment contracts over various equity funds or bond funds, this survey of more than 400 employers found. Request report number 202-3 from Charles D. Spencer & Associates, 222 W. Adams St., Chicago, IL 60606. (312) 236-2615. Cost $25.


This study tracks salaried employee benefits among a constant sample of 240 major employers from 1982 through 1987. A major underlying theme, according to Hewitt, is that employers increasingly are sharing responsibility for benefits with their employees. Leading indicators of this trend are the movement away from employer first-dollar health coverage and increased use of medical cost management features. In the retirement area, more companies follow a “partnership” philosophy through the encouragement of employee savings by offering 401(k) salary reduction features in matched defined contribution plans. Contact Cathy Schmidt, Hewitt Associates, 100 Half Day Road, Lincolnshire, IL 60015. (312) 295-5000. Cost $45.
The Employee Benefit Research Institute (EBRI) is a nonprofit, nonpartisan public policy research organization based in Washington, DC. Established in 1978, EBRI provides educational and research materials to employers, employees, retired workers, public officials, members of the press, academics, and the general public. The Employee Benefit Research Institute Education and Research Fund (EBRI-ERF) is a nonprofit, nonpartisan education and research organization established by EBRI in 1979. EBRI-ERF produces and distributes a wide range of educational publications concerning health, welfare, and retirement policies. Through their books, policy forums, and monthly subscription service, EBRI and EBRI-ERF contribute to the formulation of effective and responsible health, welfare, and retirement policies. EBRI and EBRI-ERF have—and seek—a broad base of support among interested individuals and organizations, as well as among private-sector companies with interests in employee benefits education, research, and public policy.

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