Prescription Drug Expenditures, p. 1

Prescription Drugs: Continued Rapid Growth
don Craig Copeland, EBRI

Prescription drug expenditures have come to the forefront of the debate over health care in the United States. While expenditure growth has slowed for the other major sources of health care—hospital services and physician services—prescription drug costs have continued rising at double-digit rates, as they did throughout the 1990s. Consequently, many employers are planning to revise or have revised their drug benefits by changing copayment levels and/or introducing formularies (lists of preferred or covered drugs in a drug benefit plan), or refining those already in use.

This article summarizes the latest national health expenditure data on prescription drug expenditures, with a particular focus on the components that have contributed to the growth in these expenditures. In addition, it examines recent features that have been added to employers’ drug benefit plans.

Prescription Drug Expenditures

Prescription drugs accounted for 7.9 percent of all national health expenditures in 1998, up from 5.4 percent in 1990 (table 1), according to the Health Care Financing Administration (HCFA). However, in terms of private health insurance expenditures, prescription drugs totaled 12.7 percent in 1998, up from 5.4 percent in 1990. During this same period, the percentage of out-of-pocket expenditures by individuals for prescription drugs remained relatively constant, ranging between 12.1 percent and 12.7 percent.

Although prescription drugs accounted for less than 15 percent of expenditures in all of the categories previously described, the rapid growth rate of these expenditures has focused attention on this component of health care. In 1990, total prescription drug expenditures increased 14.6 percent. The growth rate subsequently slowed until 1993, and then accelerated, reaching 15.4 percent in 1998 (chart 1). For private health insurers, the growth rate for prescription drug costs has been even greater, twice surpassing 20 percent since 1990 and reaching nearly 20 percent (19.7 percent) in 1998.

Expenditures on prescription drugs are a function of both prices and the volume purchased. The prescription drug inflation rate—the increase in just the price of drugs—approached double digits in the early 1990s. However, it slowed considerably in the mid-1990s, reaching 2 percent in 1995, before rising again (chart 2). Compared with expenditure growth—including both price and volume increases—prescription drug inflation has been significantly slower since 1993. Consequently, although drug inflation was a predominant factor of expenditure...
growth in the beginning of the 1990s, it has not been the primary contributor in recent years. Starting about 1993, the driving force behind the increasing costs appears to be higher volume of prescription drugs purchased. A recent study examined prescription drug expenditures for seven diseases and found that the drug expenditure growth for treating these diseases was driven by drug volume increases, not drug price increases. Another study of physician visits found a significant increase in the number of new prescriptions written from 1993 to 1997. Other studies also have found the volume of drug products to be the primary contributor to increased expenditures. Consequently, this expenditure growth will persist as long as the need for prescription drugs and their availability continue to increase. All indicators point to this being the case for the foreseeable future.

**Prescription Drug Benefits**

Nearly all employers (99 percent) who offered health care benefits also offered prescription drug benefits in 1999, according to the 1999 Mercer/Foster Higgins National Survey of Employer-Sponsored Health Plans. However, 42 percent of employers said they had changed or would change their drug benefit plan in 1999 or 2000. Most of the changes involve increasing the cost sharing with plan participants through higher copayments. Approximately one-half of employers had a primary drug plan with separate copayments for generic and brand name drugs. The median copayments in these

### Table 1

**Prescription Drug Expenditures by Private Source, 1990-1998**

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<thead>
<tr>
<th>Year</th>
<th>National Health Expenditures</th>
<th>Private funds</th>
<th>Out-of-pocket payments</th>
<th>Private health insurance</th>
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<td>1990</td>
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<td>1993</td>
<td>$898,496</td>
<td>$513,172</td>
<td>$167,061</td>
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<td>$947,745</td>
<td>$524,732</td>
<td>$168,228</td>
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<td>1995</td>
<td>$993,275</td>
<td>$537,301</td>
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<td>1996</td>
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<td>$559,010</td>
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<td>1998</td>
<td>$1,149,065</td>
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<td>$199,540</td>
<td>$375,016</td>
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### Chart 1

**Percentage Growth in Prescription Drug Expenditures by Source, 1990-1998**

- **Total**
- **Out-of-Pocket Payments**
- **Private Health Insurance**

Source: EBRI estimates from the National Health Expenditures, Health Care Financing Administration.
plans were $7 for generics and $12 for brand name drugs.\textsuperscript{7}

A recent drug benefit plan design that has been adopted by some plans is the “three-tier” copayment structure. The three-tier copayment plans are of two varieties. In the first type, the plan charges the lowest copayment amount for a generic drug, a middle-range copayment for a brand-name drug without an equivalent generic, and the highest copayment for a brand-name drug with a generic equivalent. In the second type, the plan has a formulary for brand-name drugs, and the copayment amount for a brand-name drug is determined by whether it is on the formulary. Drugs not included on the formulary have the highest copayment, while brand-name drugs on the formulary have a middle-range copayment and generic drugs have the lowest copayment. In 1999, approximately 14 percent of employers had their primary drug plan structured with a higher copayment for brand-name drugs with a generic equivalent, while about 9 percent had a higher copayment for nonformulary drugs.\textsuperscript{8, 9}

**Conclusion**

The latest national health expenditures show that prescription drug expenditures have continued to grow at double-digit rates. This growth has been primarily due to increases in the volume of drugs purchased (both previously existing and new drugs). Private health insurance expenditures on prescription drugs have grown even faster, while out-of-pocket payments by individuals have increased at a much smaller rate than either overall or private health insurance rates. This has been a little-noticed phenomenon throughout the 1990s. In 1990, out-of-pocket payments accounted for about 50 percent of prescription drug expenditures, compared with just over 25 percent in 1998 (chart 3). For private health insurers, prescription drug expenditures exhibited the opposite trend.

This difference in cost trends between out-of-pocket and private health insurance expenditures is directly linked to the more generous coverage of prescription drugs in managed care plans than was traditionally available in fee-for-service plans. However, employers are leaning toward altering their drug benefit plans in ways that are likely to change this trend. The consequences of this change will depend on plan participants’ ability and willingness to accept increased out-of-pocket expenses when the drug benefit is altered. This is of

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**Chart 2**

**Prescription Drug Inflation, 1990–April 2000**


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**Chart 3**

**Out-of-Pocket Payments vs. Private Health Insurance Payments as a Percentage of Total Prescription Drug Expenditures, 1990–1998**

Source: Employee Benefit Research Institute estimates from the National Health Expenditures, Health Care Financing Administration.
particular significance in view of prescription drugs’ increasing importance in treating many illnesses, as well as their potential to substitute for other health care services.10

Endnotes
1 A volume increase can result from both increased sales of previously existing products and from the introduction of new products. The introduction of new products is particularly important in this context because of the high level of innovation in the pharmaceutical industry.

2 However, starting in 1998, prescription drug inflation showed a sharper upward trend (chart 2).


5 See Craig Copeland, “Prescription Drugs: Issues of Cost, Coverage, and Quality.” EBRI Issue Brief no. 208 (Employee Benefit Research Institute, April 1999) for cited studies as well as the reasons for volume growth.

6 William M. Mercer, Mercer/Foster Higgins National Survey of Employer-sponsored Health Plans 1999 (New York, NY: William M. Mercer, 2000). This is a random survey of all U.S. employers with 10 or more employees.

7 In 1997, the median copayments were $5 and $10, respectively. William M. Mercer, Mercer/Foster Higgins National Survey of Employer-sponsored Health Plans 1998 (New York: William M. Mercer, NY, 1999).

8 William M. Mercer, 2000, op. cit. In another survey, 5 percent of employers had a drug plan with a higher copayment for brand name drugs with a generic equivalent and 6 percent of employers had a higher copayment for nonformulary brand namedrugs in 1998. See Pharmacy Benefit Management Institute, Wyeth-Ayerst Prescription Drug Benefit Cost and Plan Design Survey Report (Pharmacy Benefit Management Institute, Inc., Tempe, AZ, 1999).

9 Whether these new types of drug benefit plans will be successful in containing expenditure growth remains an open question. While some employers may report some savings, it is not clear that these savings can be replicated or will be sustainable. Further research is needed on this issue. In a recent study of an employer using a closed formulary versus an employer who did not, the employer with the closed formulary had significantly slower drug expenditure and utilization growth. However, the study was not able to access the outcomes of the individuals, in terms of either other expenditures or resulting health status, who faced the constraints of a closed formulary, See Brenda R. Motheral and Rochelle Henderson, “The Effect of a Closed Formulary on Prescription Drug Use and Costs,” Inquiry, Vol. 36, no. 4 (Winter 1999/2000): 481–491.

10 This is explored further in Craig Copeland, “Prescription Drugs: Issues of Cost, Coverage, and Quality,” op. cit.

Pension Coverage:
Examining CPS Data
by Craig Copeland, EBRI

Annual estimates of pension coverage1 for wage and salary workers2 are not well documented. Two supplements to the U.S. Census Bureau’s Current Population Survey (CPS)—one conducted annually in March and the other every other year in February—include questions pertaining to pension coverage. These surveys ask different questions,3 and neither examines pension plan types (defined benefit or defined contribution).4 However, they provide some insight into overall pension coverage on an annual basis across various demographic and employer characteristics.

This article uses both CPS supplements to estimate pension coverage for all wage and salary workers. The March 1993–1999 surveys provide pension coverage estimates across various demographic and employer categories. The February surveys from 1995, 1997, and 1999 provide overall pension coverage estimates as well as data on why a worker is not covered (ineligible versus choosing not to participate) when working for an employer that sponsors a plan.

March CPS Estimates

According to the March 1993–1999 CPSs, the number of wage and salary workers covered by a pension plan increased from 51.5 million (or 42.6 percent) in 1992 to 61.5 million (or 46.7 percent) in 1998 (table 2). In
addition, the number and percentage of wage and salary workers working for an employer that sponsored a plan also increased, from 67.3 million (or 55.7 percent) in 1992 to 79.8 million (or 60.7 percent) in 1998.5

Worker Characteristics and Pension Coverage in 1998—Pension plan coverage varied significantly across worker characteristics. Pension coverage of workers increased with age up through the 45- to 54-year-old category, then decreased for the highest age categories (table 3). Approximately 21 percent of workers ages 21–24 were covered by a pension plan, compared with 64.3 percent of those ages 45–54. Other important factors were the workers’ wages and salaries, educational level, and work status. Pension coverage increased significantly as both income and educational level rose. Among those in the lowest income category, 6.5 percent were covered by a pension plan, while 80.8 percent of those in the highest income category were covered. Coverage rates increased from 17.5 percent to 72.7 percent as workers’ educational level increased from less than a high school diploma to a graduate/professional degree. Lastly, work status influences pension coverage: 60.3 percent of workers who worked full time, full year were covered by a pension plan, compared with 9.4 percent of those who worked part time, part year.

Workers’ gender and race/ethnicity were also important determinants of pension coverage. Male workers were more likely than female workers to be covered by a pension plan (49.5 percent, compared with 43.8 percent). White workers had a pension coverage rate of 50.0 percent, while both black workers and other workers had coverage rates of about 43 percent. Hispanic workers’ pension coverage rate was 29.6 percent.

Employer Characteristics and Pension Coverage in 1998—Certain employer characteristics also influenced pension coverage. The employer’s sector had a significant impact: 73.2 percent of public-sector workers were covered by a pension plan, compared with 41.9 percent of private-sector workers. In addition, pension coverage among workers increased with their employer’s size, from 12.7 percent of those working for employers with fewer than 10 employees to 57.3 percent of those working for employers with 1,000 or more employees. The employer’s industry also affected workers’ pension coverage: 60.6 percent of manufacturing workers were covered by a pension plan, compared with 29.5 percent of agricultural, mining, and construction workers.

Trends in Coverage Across Worker and Employer Characteristics, 1992–1998—Pension coverage increased across almost all worker and employer characteristics from 1992 to 1998.6 However, two exceptions emerged: coverage of those with the least education and in the middle-income categories. The percentage of workers with less than a high school diploma who were covered by a pension plan decreased slightly, from 17.9 percent to 17.5 percent (table 3). Moreover, pension coverage also declined among workers in the middle income categories between “less than $10,000” and “$50,000 or more.”7

February CPS Estimates

The number of wage and salary workers covered by a pension plan increased from 51.6 million in February 1995 to 58.2 million in February 1999, according to the February 1995 and 1999 CPSs (table 4). This translates into an increase in the coverage rate from 47.4 percent to 49.4 percent over that timeframe. Furthermore, the

Table 2
Percentage of Wage and Salary Workers Covered by a Pension Plan, 1992–1998

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<tbody>
<tr>
<td>All</td>
<td>120.8</td>
<td>121.5</td>
<td>124.0</td>
<td>126.0</td>
<td>127.8</td>
<td>129.3</td>
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<td>Works for an Employer Sponsoring</td>
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<td>66.5</td>
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<td>Covered by a Plan</td>
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<td>51.6</td>
<td>55.0</td>
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<td>57.4</td>
<td>58.2</td>
<td>61.5</td>
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**Table 3**

Percentage of Wage and Salary Workers Covered by a Pension Plan, by Various Categories, 1992-1998

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<tr>
<td>20 and under</td>
<td>10,987</td>
<td>10,852</td>
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<td>25–34</td>
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<td>32,788</td>
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<td>33,295</td>
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<td>45–54</td>
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<td>23,997</td>
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<td>55–64</td>
<td>10,573</td>
<td>10,499</td>
<td>10,883</td>
<td>11,241</td>
<td>11,525</td>
<td>11,910</td>
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<td>65 and older</td>
<td>3,229</td>
<td>3,494</td>
<td>3,559</td>
<td>3,736</td>
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<td>Male</td>
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<td>62,903</td>
<td>64,191</td>
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<td>66,071</td>
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<td>Female</td>
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<td>White</td>
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<td>Less high school diploma</td>
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<td>36,391</td>
<td>36,409</td>
<td>36,708</td>
<td>37,402</td>
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<tr>
<td>Bachelor’s degree</td>
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<td>Graduate/professional degree</td>
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<td>Less than $5,000</td>
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<td>$50,000 or above</td>
<td>8,730</td>
<td>8,856</td>
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<td>9,680</td>
<td>10,490</td>
<td>11,540</td>
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<td>Full-time, full-year worker</td>
<td>72,313</td>
<td>73,707</td>
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<td>78,907</td>
<td>80,448</td>
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<td>Full-time, part-year worker</td>
<td>21,973</td>
<td>21,313</td>
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<td>Part-time, part-year worker</td>
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<td>15,794</td>
<td>15,647</td>
<td>14,956</td>
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(continued)
The percentage of wage and salary workers covered by a pension plan increased from 42.6 per cent in 1992 to 46.7 in 1998, according to the March 1993–1999 CPSs.10 The February 1995 and 1998 CPSs show a similar increase from 47.4 per cent to 49.4 per cent. Although the February CPSs reveal a slight decline in the participation rate, the increased percentage of employees eligible to participate in a pension plan, the increased percentage of employees working for employers that sponsored a plan also increased, from 60.6 per cent to 63.7 per cent.

**Table 3 (continued)**

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<tr>
<td></td>
<td>Number of workers covered (000s)</td>
<td>Percentage (%)</td>
<td>Number of workers covered (000s)</td>
<td>Percentage (%)</td>
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<td>Percentage (%)</td>
<td>Number of workers covered (000s)</td>
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<td>Public</td>
<td>20,609</td>
<td>71.2%</td>
<td>20,982</td>
<td>70.3%</td>
<td>20,730</td>
<td>73.9%</td>
<td>19,969</td>
</tr>
<tr>
<td>Private</td>
<td>100,208</td>
<td>36.8%</td>
<td>100,254</td>
<td>36.7%</td>
<td>103,231</td>
<td>38.5</td>
<td>106,048</td>
</tr>
<tr>
<td>Employer Size</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fewer than 10 employees</td>
<td>15,877</td>
<td>8.5%</td>
<td>15,950</td>
<td>9.6%</td>
<td>16,483</td>
<td>10.0%</td>
<td>17,175</td>
</tr>
<tr>
<td>10–24 employees</td>
<td>11,162</td>
<td>16.9%</td>
<td>11,220</td>
<td>16.0%</td>
<td>11,535</td>
<td>17.3%</td>
<td>12,309</td>
</tr>
<tr>
<td>25–99 employees</td>
<td>16,492</td>
<td>27.2%</td>
<td>15,663</td>
<td>27.8%</td>
<td>15,758</td>
<td>30.3%</td>
<td>16,266</td>
</tr>
<tr>
<td>100–499 employees</td>
<td>16,338</td>
<td>42.2%</td>
<td>16,157</td>
<td>41.8%</td>
<td>16,255</td>
<td>44.4%</td>
<td>16,388</td>
</tr>
<tr>
<td>500–999 employees</td>
<td>5,810</td>
<td>50.0%</td>
<td>6,036</td>
<td>49.5%</td>
<td>6,466</td>
<td>52.3%</td>
<td>6,622</td>
</tr>
<tr>
<td>1,000 or more employees</td>
<td>34,736</td>
<td>56.8%</td>
<td>35,149</td>
<td>54.7%</td>
<td>35,764</td>
<td>56.3%</td>
<td>37,249</td>
</tr>
<tr>
<td>Public sector</td>
<td>20,609</td>
<td>71.2%</td>
<td>20,982</td>
<td>70.3%</td>
<td>20,730</td>
<td>73.9%</td>
<td>19,969</td>
</tr>
<tr>
<td>Industry</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture, mining, and construction</td>
<td>8,899</td>
<td>25.1%</td>
<td>8,565</td>
<td>23.7%</td>
<td>9,274</td>
<td>25.3%</td>
<td>9,803</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>27,736</td>
<td>55.8%</td>
<td>27,415</td>
<td>55.5%</td>
<td>27,828</td>
<td>57.6%</td>
<td>27,999</td>
</tr>
<tr>
<td>Wholesale and retail trade</td>
<td>30,509</td>
<td>20.4%</td>
<td>30,715</td>
<td>28.6%</td>
<td>40,615</td>
<td>30.1%</td>
<td>42,037</td>
</tr>
<tr>
<td>Personal services</td>
<td>23,983</td>
<td>32.8%</td>
<td>24,841</td>
<td>33.2%</td>
<td>25,514</td>
<td>35.6%</td>
<td>26,289</td>
</tr>
<tr>
<td>Public sector</td>
<td>20,609</td>
<td>71.2%</td>
<td>20,982</td>
<td>70.3%</td>
<td>20,730</td>
<td>73.9%</td>
<td>19,969</td>
</tr>
</tbody>
</table>

offsets this decline, thereby increasing the overall coverage among wage and salary workers. There are significant differences in the level of pension coverage by wage and salary workers across various demographic characteristics and employer characteristics. Workers under age 35 were less likely to be covered by a pension plan than those ages 45–64. Male, white, more educated, and higher earning workers were more likely to be covered by a pension plan than their comparison groups. Furthermore, 60.3 percent of full-time, full-year workers were covered by a pension plan in 1998, compared with 30.0 percent or less of workers in other status categories. Employees who worked for public-sector employers, large employers, or employers in the manufacturing industry were also more likely to be covered by a pension plan.

Pension coverage participation increased within almost all demographic and employer characteristics from 1992 to 1998. The exceptions were workers with less than a high school diploma and workers in the middle-income categories. Furthermore, although more workers were eligible to participate in a pension plan in February 1999 than in February 1995, a slightly lower percentage chose to do so.

### Endnotes

1. In Employee Benefit Research Institute publications, the coverage rate is the percentage of all workers who are covered by a pension plan. In contrast, the participation rate is the percentage of workers who work for an employer that sponsors a plan, are eligible to participate, and do so.

2. Wage and salary workers in this study include anyone who worked for pay for someone else in the previous year. This excludes self-employed workers.

3. The March CPS asks only two questions regarding pension coverage: (1) Does your employer sponsor a plan? and (2) Are you included in the plan? This survey asks about the job the respondent had for the longest time at any time during the previous calendar year. The February survey asks an additional question of those who work for an employer that sponsors a plan but are not covered by the plan: Why are they not covered? This makes it possible to determine the percentage of people who are actually eligible to participate but do not. Lastly, the February survey asks respondents about their job status only during February of the year of the survey.

4. The last CPS supplement that had detailed questions about pension coverage by plan type was the April 1993 Employee Benefits Supplement. See Employee Benefit Research Institute, “Employment-Based Retirement Income Benefits: Analysis of the April 1993 Current Population Survey,” EBRI Issue Brief no. 153 (Employee Benefit Research Institute, September 1994). A new supplement that includes data for 1998 is scheduled for release next summer. However, estimates of families’ pension coverage by plan type, using the Survey of Consumer Finances (SCF), are presented across demographic characteristics of the family head in Craig Copeland and Jack VanDerhei, “Personal Account Retirement Plans: An Analysis of the Survey of Consumer Finances,” EBRI Issue Brief no. 223 (Employee Benefit Research Institute, July 2000). In addition, pension coverage of working family heads by pension type, industry, and employer size are also examined using the SCF in Craig Copeland and Jack VanDerhei, “Recent Evidence on Pension Participation and Sponsorship, by Employer Size and Industry,” EBRI Notes no. 8 (Employee Benefit Research Institute, August 2000): 5–9.

5. One weakness of the March CPS data is that the question asks if the respondent works for an employer that sponsors a plan, not necessarily if the respondent is eligible to participate in the plan. Consequently, the percentage of employees working for an employer that sponsors a plan will not be further examined in this section. The February CPS distinguishes between the eligible and the ineligible.


7. Copeland and VanDerhei (July 2000), op. cit., found a similar result: those in the middle family income categories had a decreased pension coverage rate, while the
lower and highest income categories had increased pension coverage.

8 There is an important caveat concerning the ability to determine a worker’s eligibility for a plan: One of the reasons accepted for not being covered in the plan is “other.” It is not clear from the documentation whether those answering “other” were or were not eligible to participate in the plan. Consequently, a range of participation rates is presented to incorporate this uncertainty.

9 This rate includes participation in both defined contribution and defined benefit plans. Thus, choosing not to participate is not an option for some workers, particularly for those in a defined benefit plan. Copeland and VanDerhei (July 2000), op. cit., examined the participation rate of family heads in defined contribution plans (generally people can choose to participate in this type of plan). They found that 77.3 percent of the family heads eligible to participate in a defined contribution plan did so in 1998.

10 A slight increase in the percentage of workers covered by a pension plan (from 43 percent to 44 percent) was found from 1988 to 1993. However, this finding is from a different survey time reference, as it was from the April 1988 and 1993 Current Population Surveys, which referred to that month (April), not to the entire year, as the March surveys do. See Employee Benefit Research Institute (September 1994), op. cit.

Washington Update
by Teresa Turyn, EBRI

The Final Stretch: Issues to Watch

Lawmakers returned from their August/national convention recess on Sept. 6 for what is certain to be a hard-fought final stretch of the 106th Congress. While they were away, President Clinton vetoed, as promised, the “marriage penalty” tax relief bill. Pre-election combat over other Republican tax-cut bills will continue right up to adjournment.

Officially, Congress is aiming to wrap up its legislative work for the year by Oct. 6—a highly optimistic target, given that only two of the government’s 13 regular appropriations bills were enacted as of Labor Day, and that all work is supposed to be completed by the start of the new fiscal year (2001) on Oct. 1. With election-year politics making compromise increasingly difficult, it is unclear how or when lawmakers will finish the session.

Among the major employee benefit issues in Congress to watch this fall:

• Pension Reform (H.R. 1102)—This bill would make the most sweeping changes in private pension law in decades, but it faces White House opposition due to cost and “fairness” concerns. It passed the House shortly before the August recess and is high on the Senate’s priorities for this month. Among its other provisions, the bill would gradually expand the limits on tax-favored contributions to individual retirement accounts (IRAs) and 401(k) plans, permit “catch-up” retirement plan contributions by those close to retirement and stay-at-home mothers, and provide for faster pension vesting schedules.

• Patients’ Rights (S. 1334, H.R. 2990)—These sharply different bills would either create new legal rights for patients to sue their health plans (the House version) or take a less sweeping approach to changing managed care (the Senate version). The House-Senate conference committee that has been trying to find a compromise appears deadlocked—and the issue appears unlikely to survive the legislative surgery.

• Medicare Prescription Drug Benefit (H.R. 4680)—House Republicans passed a limited prescription drug plan that would be administered by the insurance industry rather than the government. Sen. William Roth, Jr. (R-DE), chairman of the tax-writing Senate Finance Committee, is siding with Democrats on a somewhat more expansive, government-run program. Getting either version through before adjournment won’t be easy.

• Minimum Wage (H.R. 833)—Raising the current $5.15 minimum hourly wage by $1 an hour over the next two years is currently tied to a bankruptcy overhaul bill, which remains stalled over various conflicts. With time running out, pension provisions in the bill appear likely
to expire along with the bill whenever Congress adjourns for the year.

**Clinton Seeks Ban on Cash Balance “Wear-away”**

In its first public statement on the issue July 19, the Clinton administration called on Congress to ban “wear-aways”—the temporary benefit plateaus that sometimes result for certain employees when companies convert defined benefit pension plans to cash balance plans. The use of wear-away in cash balance conversions is currently being investigated by federal agencies for possible age discrimination against older workers, and some members of Congress have made the issue a potent political topic. No agency has issued a finding on the issue yet, but a “Statement of Administration Policy” issued by the White House Office of Management and Budget last month said: “A prohibition on cash balance wear-aways—[for] both normal retirement benefits and early retirement benefits—should be enacted and should be a part of any broad-based retirement savings legislation.”

**Long-Term Care for Federal Employees**

As this is written, a bill (H.R. 4040) is awaiting President Clinton’s signature to create a new long-term care insurance benefit for federal workers. The Senate cleared the House-passed measure in July, sending it to the White House to be signed into law. Although workers would have to pay the entire premiums for the coverage without subsidy, the government would provide administrative support in offering the benefit. Supporters say the action is likely to spur more private-sector employers to offer long-term care benefits to their workers.

For extensive background on long-term care issues, including the potential impact of this new benefit for federal workers, see the April and May EBRI Issue Briefs, “Employer-Sponsored Long-Term Care Insurance: Best Practices for Increasing Sponsorship” (no. 220), and “Voluntary Long-Term Care Insurance: Best Practices for Increasing Employee Participation” (no. 221).

**Contingent Worker Legislation Introduced**

Seeking to clarify the eligibility of contingent workers for employee benefits, Rep. Rob Andrews (D-NY) introduced a bill July 26 (H.R. 4962) that would set new standards for when a worker can be excluded from an employer’s plans. The bill would require all workers to be covered under an employer’s benefits plans unless the plan sponsor can demonstrate that an exclusion is (1) provided on a “uniform basis”; (2) based on a “reasonable job classification”; and (3) based on “objective criteria.” This legislation is similar to H.R. 2299, introduced last year by Rep. Lane Evans (D-IL). Sen. Edward Kennedy (D-MA) is expected to introduce a companion bill to Rep. Andrews’ measure in the Senate. While this activity indicates that contingent worker issues are still receiving congressional attention, nothing is likely to pass this year.

**Recent Court Decisions**

**Court Rules on ERISA Disclosure Rules**—The Third U.S. Circuit Court of Appeals addressed whether including summary of material modification (SMM) information in the heart of a document for shareholders violated ERISA’s disclosure rules. The court ruled that placing SMM-required information in a general shareholder communication without any warning to participants that important benefits information was enclosed—combined with the company’s failure to follow its own established procedures for communicating information on benefit changes—could support the conclusion that the employer failed to take reasonable measures to ensure that the participants actually received the SMM-required information and that striking the plan amendment may be the appropriate remedy (Lettrich v. J.C. Penney Company, 2000 US App. LEXIS 11971, 5/31/00).

**Court Rules on Unfunded Pension Benefit Liabilities**—Affirming a major victory for the Pension Benefit Guaranty Corporation (PBGC), the Third U.S. Circuit Court of Appeals ruled that a selling company remained liable for unfunded pension benefits even though it had tried to transfer those benefit liabilities to an unrelated company that acquired the business and the plans. The Third
Keeping on Track

IRS Issues Plan Loan Rules—The Internal Revenue Service (IRS) has issued final rules under Code Sec. 72(p) relating to participant loans from qualified plans and 403(b) plans. The rules are similar to proposed rules issued in 1995 and 1998, but include several modifications affecting the treatment of “deemed distributions,” the use of new technologies in loan administration, and the treatment of loans made under a residential mortgage program. The regulations also address some additional issues, including the suspension of loan repayments during periods of military service and the application of Sec. 72(p) to refinancing arrangements and multiple loan arrangements. In addition, the IRS has requested comments on plan loan issues raised by the recent enactment of the Electronic Signatures in Global and National Commerce Act. Generally, the final regulations apply to loans made on or after Jan. 1, 2002. Also, the IRS proposed new rules affecting participants who refinance loans or have multiple loans outstanding.

IRS Issues Sec. 457 Plan Guidance—The IRS issued Notice 2000-38 on the tax withholding and reporting rules for eligible deferred compensation plans of governmental and tax-exempt entities under Sec. 457. The notice addresses: (i) income tax withholding and reporting requirements for annual deferrals to and distributions from eligible 457 plans; (ii) the inclusion of annual deferrals in FICA wages under the special timing rule described in Sec. 3121(v); and (iii) special reporting rules for trusts established by state and local governmental employers.

IRS Issues Guidance on 401(k) Distributions in Outsourcing Situations—The IRS recently issued several private letter rulings stating that workers who are “outsourced” to an unrelated company cannot receive distributions from their 401(k) accounts if they continue to provide services associated with the ongoing activities of their former employer (PLRs 200019048 and 200027059). These outsourcing transactions generally will not qualify for the “same desk” relief provided by the IRS earlier this year.

PBGC Discusses Early Warning Program—PBGC has issued guidance on its program aimed at informing pension plan sponsors that the agency is likely to be concerned that a business transaction may risk a plan loss that jeopardizes benefits owed to participants. The agency contacts a company only when it has a below-investment-grade bond rating and a plan with a current liability of more than $25 million, or when the plan has a current liability of more than $25 million and unfunded liability of more than $5 million.

GAO Issues Study on Contingent Workers—The General Accounting Office (GAO) July 26 released a study on temporary workers (Report No. GAO/HEHS-00-76) in response to a request from Sens. Edward Kennedy (D-MA) and Robert Torricelli (D-NJ). The GAO study, which was the subject of an Aug. 7 Wall Street Journal article entitled “Regulators Probe U.S. Reliance on Temporary Workers,” concluded that many such workers earn less than their full-time counterparts and are more likely to have annual family incomes of less than $15,000. The study also found that many companies attempt to “avoid legal responsibility for workers by claiming that they are not the employer,” and that some employers misclassify their full-time workers as temps in order to avoid paying benefits. The study also found temporary workers do not enjoy the protections of many labor laws because they do not work a sufficient number of hours for a particular employer.

The GAO study recommended legislation that would require employers to provide comparable benefits to all workers, regardless of the number of hours they work. It also recommended temporary workers be permitted to join collective bargaining units, which they are currently unable to do. An impending National Labor Relations Board decision would overturn an earlier case, Greenhoot, 205 NLRB 250 (1970), prohibiting temporary workers from joining unions.

900,000 Affected by Medicare+Choice Pullouts—The government’s list of pullouts from the Medicare+Choice (M+C) managed health care program shows that more than 900,000 enrollees will be affected. The majority of those affected live in areas where there are other M+C managed care plans. Texas has by far the largest number of beneficiaries affected by the pullouts. A large portion of the affected beneficiaries are enrolled in plans offered by Aetna US Healthcare and Cigna Healthcare, which announced in early July that they would no longer offer their M+C products in many major markets.
Circuit found that the seller's principal purpose in entering the sale was to evade pension liabilities. The seller remained liable in this case even though the sale transaction occurred more than five years before the plan termination (Pension Benefit Guaranty Corporation v. White Consolidated Industries Inc., 2000 US App. LEXIS 13983, 6/15/00).

Court Upholds Texas Right to Sue Law, Strikes Down Mandatory External Appeals—In a split decision, the Fifth U.S. Circuit Court of Appeals ruled that ERISA does not pre-empt a Texas law making insurance companies and managed care organizations such as health maintenance organizations (HMOs) liable for negligent delivery of medical services. The court also upheld portions of the law prohibiting restrictions on physician advocacy and “hold harmless” provisions in physician contracts. However, the court ruled that ERISA does pre-empt the state's mandatory external appeals provisions, a decision that raises doubts about the enforceability of independent appeal requirements in numerous other states (Corporate Health Ins., Inc. v. Texas Dept. of Ins., 2000 US App. LEXIS 18069 (5th Cir. 7/27/00).

DOL Family Leave Rule Struck Down—The Seventh U.S. Circuit Court of Appeals invalidated a Department of Labor (DOL) regulation by ruling that an employer’s failure to give a prompt notice of Family and Medical Leave Act eligibility does not mean that employees not otherwise eligible must be granted such leave. The appeals court said DOL “overstepped its authority” by requiring that “if the employer fails to advise the employee whether the employee is eligible [for family leave] prior to the date the requested leave is to commence, the employee will be deemed eligible” (Dormeyer v. Comerica Bank-Illinois).

AT&T Cash Balance Lawsuit Update—A federal district court in New Jersey dismissed an allegation that AT&T violated age discrimination laws by treating older workers differently than younger ones when the company converted its traditional pension plan to a cash balance formula. The court did not, however, dismiss allegations that AT&T violated ERISA because (i) the plan was implemented prior to formal adoption of the plan document, and (ii) the cash balance formula produced accrual rates that impermissibly declined with age. These issues will be decided later (Engers v. AT&T Corp.).

EBRI in Focus

EBRI “Members’ Conclave” in December
An EBRI “Members’ conclave” will be held in Washington, DC, on Dec. 7, 2000. The objective of the conclave is to help EBRI identify research and education topics and opportunities, while also providing Members with information and ideas that will assist them in setting strategic directions and in planning future design and implementation courses of action.

The Members-only event will begin with an overview of the recent election results and the implications for benefit issues, followed by a series of discussions of the “environmental conditions” that impact strategy and design. That will be followed by a series of facilitated group discussions and plenary reports that will lead to the development of a 2001 research agenda for EBRI. For more information, contact Dallas Salisbury at (202) 775-6322 or at salisbury@ebri.org

Book Published on Spring EBRI-ERF Policy Forum
This month marks the publication of a book on the proceedings of the May 3 EBRI-ERF policy forum on “The Economic Costs of the Uninsured: Implications for Business and Government.” An abbreviated version of the book’s executive summary was published in the August EBRI Notes. A copy of the
book is being distributed to all EBRI members, and additional copies are available for purchase; please contact Alicia Willis at (202) 775-9132 or willis@ebri.org

Choose to Save® PSAs Expand Nationally
The National Association of Broadcasters (NAB) distributed two Choose to Save® public service announcements (PSAs) in mid-August to stations around the nation. “Who Knew” and “The Mailman” went out as part of the NAB “monthly feed” to its members’ TV stations across the nation, and other Choose to Save® PSAs will be distributed by NAB in the months ahead. Watch for them on your local stations! You can also view them online at www.choosetosave.org.

August also saw distribution to over 1,000 TV stations of a Choose to Save® PSA video done with the National Partners for Financial Empowerment, the U.S. Savings Bond Office of the Treasury Department, and the Social Security Administration.

Choose to Save® Presented at U.S. Navy Seminar
The American Savings Education Council presented the Choose to Save® message to a U.S. Navy Worldwide Seminar on personal financial management held in Norfolk, VA, Aug. 2. The seminar brought in senior officers from the Navy’s top leadership to learn more about the new tools of personal financial management and discuss the latest initiatives in personal finance in the military. Portions of the conference were broadcast live over the Armed Forces Network and Navy’s LIFElines system to ships at sea and to military bases throughout the world.

EBRI and ASEC have previously participated in military personal finance programs with the Choose to Save® program, which are designed to help service men and women prepare for life after the military and improve their financial management skills.

New Publications & Internet Sites
[Note: To order publications from the U.S. Government Printing Office (GPO), call (202) 512-1800; to order congressional publications published by GPO, call (202) 512-1808. To order U.S. General Accounting Office (GAO) publications, call (202) 512-6000; to order from the Congressional Budget Office (CBO), call (202) 226-2809].

Dependent Care

Demographics

Employee Benefits
Health Care

Abromovitz, Les. Long-Term Care Insurance Made Simple. $14.95. PMIC, 2001 Butterfield Rd., #850, Downers Grove, IL 60515, (800) MED-SHOP.

Calfee, John E. Prices, Markets, and the Pharmaceutical Revolution. $9.95. AEI Press, 1150 17th St., NW, Washington, DC 20036.


Deloitte & Touche. Employer Survey on Managed Care. $50. Deloitte & Touche, 350 S. Grand Ave., #200, Los Angeles, CA 90071, (888) 361-9960.


InterStudy Publications. The InterStudy Competitive Edge 10.1 Databases [on CD-ROM] and Reports. $3,400; $3,200 prepaid. InterStudy Publications, P.O. Box 4366, St. Paul, MN 55104, (800) 844-3351, fax: (612) 854-5698.


Labor Force


Pension Plans/Retirement


Olson, Russell L. The Independent Fiduciary: Investing for Pension Funds and Endowment Funds. $69.95. John Wiley & Sons, 1 Wiley Dr., Somerset, NJ 08875, (800) 225-5945.


Family Leave

U.S. Congress. House Committee on Ways and Means. Oversight of Pension Issues. Order from GPO.

Postretirement Benefits

Savings
U.S. Congress. Senate Special Committee on Aging. Learning to Save: Innovations in the Pursuit of Income Security. Order from GPO.

Social Security
Gillion, Colin, et al. Social Security Pensions: Development and Reform. $79.95 + $8 S&H. ILO Publications Center, P.O. Box 753, Waldorf, MD 20604-0753, (301) 638-3152.
U.S. Congress. House Committee on the Budget. Report of the Task Force on Social Security to the Committee on the Budget (Together With Additional and Minority Views). Order from GPO.
U.S. Congress. Senate Special Committee on Aging. The Impact of Social Security Reform on Women. Order from GPO.
van Ginneken, Wouter. Social Security for the Excluded Majority: Case Studies of Developing Countries. $19.95. ILO Publications Center, P.O. Box 753, Waldorf, MD 20604-0753, (301) 638-3152.

Tax Expenditures
U.S. Congress. House Committee on Ways and Means. Tax Treatment of Employee Fringe Benefits. Order from GPO.

GAO Reports

Documents Available on the Internet
Health Care Trends and Indicators in California and the United States
www.kff.org/content/2000/3016/
Labor’s Money: A Newsletter for the Taft-Hartley Proxy Voter
www.irrc.org/newsletter/labmon.htm
Message to Japan: Beware the Defined Contribution Plan
www.contingencies.org/japan.htm
Where Will the Road to E-Health Lead? Ten E-Health Trends
WorkNet Employer Database (companies that offer domestic partner benefits)
www.hrc.org/worknet/data.html

2000 Election Year Sites
Brookings Priorities 2000
www.brookings.edu/P2K/
CNN/Allpolitics
www.cnn.com/ALLPOLITICS/
The Gallup Poll Election 2000
www.ideas2000.org/
The Political Insider
www.politicalinsider.com/
Politics.com
www.politics.com/
Project Vote Smart
www.vote-smart.org/
USElections.com
www.uselections.com/

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What we do

EBRI’s work advances knowledge and understanding of employee benefits and their importance to the nation’s economy among policymakers, the news media, and the public. It does this by conducting and publishing policy research, analysis, and special reports on employee benefits issues; holding educational briefings for EBRI members, congressional and federal agency staff, and the news media; and sponsoring public opinion surveys on employee benefit issues. EBRI’s Education and Research Fund (EBRI-ERF) performs the charitable, educational, and scientific functions of the Institute. EBRI-ERF is a tax-exempt organization supported by contributions and grants. The American Savings Education Council (ASEC), part of EBRI-ERF, is a coalition of private- and public-sector institutions with the goal of making saving and retirement planning a vital concern of all Americans.

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