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ERISA—THE FIRST DECADE: WAS THE LEGISLATION CONSISTENT WITH OTHER NATIONAL GOALS?

Alicia H. Munnell*

Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA)¹ in response to documented failures of the private pension system. Prior to the federal legislation, some employers imposed such stringent vesting and participation standards that many workers reached retirement age only to discover that a layoff, merger, or other break in service made them ineligible for a pension. Even workers who satisfied their plans' participation and vesting requirements had no assurance that accumulated pension fund assets would adequately finance benefits. Although employers were expected to fund their plans over periods of ten to forty years, they were not legally required to do so. Workers covered by inadequately funded plans risked losing pension benefits if their plans were terminated.

Not only were many plans funded inadequately, but a few were administered in a dishonest, incompetent, or irresponsible way. Other forms of financial manipulation, while not illegal, also jeopardized the welfare of plan participants. Pension assets were often concentrated in the stock of the plan-sponsoring company or used to make large loans to that company. This disregard for diversification of pension plans' assets often left workers' benefits dependent on the financial condition of their company.

In the pre-ERISA era, pension plan participants were generally at the mercy of plan sponsors. If the pension plan lacked sufficient funding or suffered investment losses, the claimants could forfeit part or all of their benefits. In spite of this uncer-

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1. Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified as amended in scattered sections of 5, 18, 26, 29, 31 & 42 U.S.C.).

tainty, employees often negotiated for pension benefits that they believed were legally secure forms of deferred compensation.²

After ten years of hearings and prolonged debate, Congress adopted ERISA in 1974. As its principal objective, the legislation sought to secure the rights of plan participants so that a greater number of covered workers would receive their promised benefits.³ To this end, the legislation regulated five aspects of pensions: reporting and disclosure of plan administration; employee participation and vesting standards; funding schedules and fiduciary integrity; retirement plans for the self-employed; and the delivery of vested benefits.⁴ ERISA's participation and vesting standards enable workers to establish a legal claim to benefits. The implementation of funding and fiduciary standards and the establishment of the Pension Benefit Guaranty Corporation⁵ ensure that money remains available to pay these legal benefit claims.

Most observers agree that ERISA has been successful in meeting its stated objectives. This Article assesses the extent to which the provisions and implications of ERISA are consistent with federal tax provisions, employment policy, and retirement income objectives. Three general conclusions emerge from the following analysis. First, any consistency between ERISA and other government policies exists coincidentally. Congress gave almost no consideration to the impact of ERISA on employment or overall retirement income. Even consistency with tax policy, although cited as a motivation for federal regulation of private pension plans, received little weight during the congressional debates. Second, in some areas, such as employment policy, no clearly defined and internally consistent national policy exists, so that any assessment of the consistency of ERISA with such objectives is necessarily ambiguous. Finally, to the extent that

2. For evidence that workers trade off current wages for future retirement benefits, see Schiller & Weiss, *Pensions and Wages: A Test for Equalizing Differences*, 62 REV. ECON. & STATISTICS 529 (1980); Ehrenberg & Smith, *The Wage/Pension Trade-Off*, in THE FINAL REPORT OF THE PRESIDENT'S COMMISSION ON PENSION POLICY, COMING OF AGE: TOWARD A NATIONAL RETIREMENT INCOME POLICY 1200 (1981) [hereinafter cited as PRES. COMM'N REP.].

3. ERISA § 2, 29 U.S.C. § 1001 (1982).

4. Reporting & disclosure—ERISA §§ 101-111, 29 U.S.C. §§ 1021-1031 (1982); participation & vesting—ERISA §§ 201-211, 29 U.S.C. §§ 1051-1061 (1982); funding—ERISA §§ 301-306, 29 U.S.C. §§ 1081-1086 (1982); fiduciary responsibility—ERISA §§ 401-414, 29 U.S.C. §§ 1101-1114 (1982); retirement plans for the self-employed—26 U.S.C. §§ 404, 408 (1982); administrative enforcement—ERISA §§ 501-514, 29 U.S.C. §§ 1131-1145 (1982); plan termination insurance—ERISA §§ 4001-4068, 29 U.S.C. §§ 1301-1368 (1982).

5. ERISA § 4002(a), 29 U.S.C. § 1302(a) (1982) establishes the Pension Benefit Guaranty Corporation within the Department of Labor.

national objectives exist in taxation, employment, or retirement income policies, the provisions and implications of ERISA appear more or less consistent with these goals, although some interesting anomalies exist.

Although ERISA explicitly sanctioned defined contribution plans as a legitimate form of retirement saving, this Article focuses almost exclusively on defined benefit plans. ERISA aimed at changing the basic provisions of defined benefit plans, not at modifying the nature of defined contribution plans.⁶ Therefore, although a study of the consistency of pension plan provisions with national economic goals would necessarily include an analysis of both defined benefit and defined contribution plans, a study of the impact of ERISA seems appropriately limited to defined benefit plans.

I. ERISA AND FEDERAL TAX POLICY

The report of the President's Committee on Corporate Pension Funds, a committee President Kennedy established in 1962, cited favorable treatment of private pensions under the tax laws as a reason for government regulation of pension plans.⁷ Under current law, compensation in the form of employer contributions to qualified pension and profit-sharing plans is deductible, like wages, by the employer when the contributions are made,⁸ but, unlike wages, is not taxed to the employee until the benefits are distributed. Deferral until retirement of taxes on compensation in the form of pension contributions offers an employee three advantages over compensation in the form of wages. First, the full dollar of contribution, without any reduction for income tax, remains available for investment during the employee's working years. Second, an employee does not pay tax on the investment income from accumulated pension assets, whereas an employee pays federal income tax on interest earned from his ordinary savings as the income accrues. Finally, when benefits are distributed, they are likely to be taxed at a lower marginal rate than if they had been taxed as they accrued to the employee, because

6. Individual retirement accounts and the expansion of Keogh plans provide two exceptions.

7. PRESIDENT'S COMMITTEE ON CORPORATE PENSION FUNDS AND OTHER PRIVATE RETIREMENT AND WELFARE PROGRAMS, PUBLIC POLICY AND PRIVATE PENSION PROGRAMS: A REPORT TO THE PRESIDENT ON PRIVATE EMPLOYEE RETIREMENT PLANS 11 (1965) [hereinafter cited as PRES. COMM. ON CORPORATE PENSION FUNDS].

8. 26 U.S.C. § 404 (1982).

the employee's income is usually lower after retirement and subject to the double exemption for persons over sixty-five.⁹

The special tax provisions for pension plans date from 1921, but Congress first attempted to use the tax code to influence the design and operation of private pension plans in 1938. To prevent employers from using pensions simply as tax avoidance schemes, the Revenue Act of 1938 included a "nondiversion rule" to make pension trusts irrevocable, so that employers could not take large deductions for contributions during years of high earnings and then recapture those earnings by revoking the trust in poor years.¹⁰ To ensure that employers did not establish pensions solely for small groups of officers and key employees in high-income brackets, the Revenue Act of 1942 completely revised the definition of an exempt person or profit-sharing trust and significantly broadened the participation standards by requiring that plans be nondiscriminatory for tax qualification purposes.¹¹

The Treasury Department issued numerous regulations from 1942 to 1954 to ensure that tax incentives aimed at encouraging the growth of pension plans were not abused. These regulations sought to prevent discrimination in favor of shareholders, officers, supervisors, and other highly compensated individuals in either coverage, benefits, or financing and to protect the federal coffers against excessive and unjustified tax deductions. Although Congress extensively revised the Internal Revenue Code in 1954, it made few substantive changes in the sections covering private pension plans.

Thus, the goal of federal tax policy since 1942 has been to encourage, through favorable tax provisions, the use of tax-qualified pension and profit-sharing plans to ensure greater retirement security for employees in general and not just the highly paid few. In other words, the rationale for favorable tax treatment of qualified pension plans is that retirement benefits for rank and file employees will exist if Congress provides tax incentives that induce higher paid employees to support the establishment of employer-sponsored pension plans. Before the enactment of ERISA, however, the tax code contained no mandate for the Internal Revenue Service (IRS) to police the actuarial soundness of pension plans, and provided little protection for the pension rights of individual participants.

9. 26 U.S.C. § 151(c)(1) (1982).

10. Revenue Act of 1938, Pub. L. No. 75-554, § 165, 52 Stat. 447, 518.

11. Revenue Act of 1942, Pub. L. No. 77-753, § 162, 56 Stat. 798, 862-67.

Title II of ERISA, an amendment to the Internal Revenue Code of 1954, establishes participation, vesting, and funding standards that pension plans must satisfy to qualify for favorable tax treatment. Title II also contains provisions designed to expand coverage of tax-favored forms of retirement savings,¹² and provisions that limit the benefits or contributions an individual can receive under a qualified plan.¹³

ERISA's provisions are generally consistent with federal tax policy, because the legislation's principal goal was to ensure that employees of companies with qualified pension plans receive benefits. ERISA's participation and vesting standards go beyond the tax code's traditional discrimination concerns and aim at ensuring the accrual and preservation of benefits. These standards reflect the conviction that favorable tax treatment of pension plan contributions is justified only if pension plans actually provide significant retirement income for broad groups of employees.

A. Enforcing Broad-Based Receipt of Benefits

Title I of ERISA provides a series of minimum standards designed to enhance the likelihood that workers will secure pension rights. Vesting and participation rules¹⁴ brought into pension plans workers who might otherwise have been excluded and helped ensure that workers' long years of service would result in eventual pension receipt.¹⁵ To prevent violation of the spirit of

12. 26 U.S.C. §§ 404, 408 (1982).

13. Under ERISA, the largest annual benefit payable to any individual under a defined benefit plan was the lesser of \$75,000 or 100% of average annual compensation during his three consecutive highest paid years. 26 U.S.C. § 415(b)(1) (1976). Under a defined contribution plan, the annual addition to an employee's account was limited to the lesser of \$25,000 or 25% of compensation. 26 U.S.C. § 415(c)(1) (1976). These limits were subject to the automatic cost-of-living adjustments applied to social security benefits. In 1982, the Tax Equity and Fiscal Responsibility Act, Pub. L. No. 97-248, § 235(a), 96 Stat. 324, 505 reduced these limits from their adjusted levels to the lesser of \$90,000 for defined benefit plans or 100% of average compensation for highest years, 26 U.S.C.A. § 415(b)(1) (West Supp. 1984), and to the lesser of \$30,000 for defined contribution plans or 25% of the participant's compensation, 26 U.S.C.A. § 415(c)(1) (West Supp. 1984). The limits are still subject to automatic adjustments. 26 U.S.C.A. § 415(d)(1) (West Supp. 1984).

14. ERISA §§ 201-211, 29 U.S.C. §§ 1051-1061 (1982).

15. The vesting objectives may be achieved in one of three ways: (1) 100% vesting after 10 years of credited service; (2) 25% vesting after 5 years of service, 5% additional vesting for each of the next 5 years, and 10% additional vesting for the following 5 years; or (3) the "rule of 45," whereby there is 50% vesting when the employee's combination of age and service (a minimum of 5 years) equals 45 and 10% additional vesting for the

earlier vesting by employers' "backloading" the benefit formulas, ERISA introduced rules designed to prevent the disproportionate accrual of benefits until late in the worker's employment.¹⁶ ERISA also established specific guidelines for defining a "break in service."¹⁷ The combination of the participation, vesting, backloading, and break-in-service rules has improved employees' chances of accruing the right to pension benefits.

To ensure that vested pension benefits are actually paid, ERISA established funding schedules, mandated fiduciary standards, and created the Pension Benefit Guaranty Corporation (PBGC), which guarantees payment of essentially vested benefits, up to a specified dollar limit, in the event of plan termination.¹⁸ ERISA also established fiduciary responsibility for pension plan trustees, for investment managers, and for any other person who may have control over a plan's assets.¹⁹ Responsible financial management, combined with stricter funding standards, should ensure that adequate funds remain available to pay benefits.

In short, ERISA's provisions increase the likelihood that an employee covered by a qualified pension plan will receive retirement benefits. This development is fully consistent with the goal of federal tax policy to ensure that rank and file workers receive supplementary retirement benefits by providing tax incentives that encourage establishment of retirement savings plans.

B. Individual Retirement Accounts—The Exception

Generally, ERISA operates consistently with national tax policy. A provision included in ERISA to expand the coverage of

next 5 years. ERISA § 203(a)(2), 29 U.S.C. § 1053(a)(2) (1982).

16. ERISA § 204(b), 29 U.S.C. § 1054(b) (1982); 26 U.S.C. § 411(b) (1982). See D. MCGILL, *FUNDAMENTALS OF PRIVATE PENSIONS* 97-98 (5th ed. 1984).

17. ERISA § 202, 29 U.S.C.A. § 1052 (West 1985); ERISA § 203, 29 U.S.C.A. 1053 (West 1985); 26 U.S.C.A. § 410 (West 1985); 29 C.F.R. § 2530.200b-4 (1985); 26 C.F.R. § 1.410(a)-5 (1985); 26 C.F.R. § 1.410(a)-7 (1985). See D. MCGILL, *supra* note 16, at 86-87.

18. The PBGC guarantees the payment of what it terms "basic benefits," which include all retirement, death, and disability benefits of current retirees and their beneficiaries, and the normal retirement benefit payable in monthly installments for vested current employees. Basic benefits do not include lump-sum and special supplementary benefits payable under some plans to encourage early retirement, or death and disability benefits not in current payment status. See Munnell, *Guaranteeing Private Pension Benefits: A Potentially Expensive Business*, *NEW ENGLAND ECONOMIC REVIEW*, Mar./Apr. 1982, at 24.

19. ERISA §§ 401-414, 29 U.S.C. §§ 1101-1114 (1982).

private pension arrangements, however, has caused discriminatory tax treatment of certain pension plans. In an attempt to offer retirement income opportunities to more individuals, ERISA authorized a new form of retirement plan, namely the individual retirement account (IRA). Beginning in 1975, persons not covered by either an employer plan or a Keogh plan could establish an IRA and make tax-deductible contributions to it equal to fifteen percent of their income, up to a maximum of \$1,500.²⁰ Almost immediately, however, an equity question arose. The statute prohibited employees covered by pension plans from making tax-deductible IRA contributions²¹ even though their employer's contributions to their pension plans might be quite small, or might never vest because of frequent job changes. In some instances employees withdrew from active plan participation to set up IRAs. In an attempt to alleviate this inequity, the Economic Recovery Tax Act of 1981 expanded eligibility to IRAs to encompass all workers, including those currently covered by pension plans.²²

Although IRAs fulfill the nation's policy of providing tax incentives to encourage saving for retirement, IRAs conflict with the policy that favorable tax provisions concerning pension plans should apply nondiscriminatingly. A significantly greater percentage of higher paid employees use the IRA deduction than lower paid employees. Indeed, survey data indicate that fifty-eight percent of individuals earning over \$50,000 contributed to an IRA in 1982 compared to only seventeen percent of people earning between \$15,000 and \$20,000 (see Table 1 on following page).

20. Pub. L. No. 93-406, § 2002, 88 Stat. 829, 958-71 (1974).

21. *Id.*

22. Pub. L. No. 97-34, § 311, 95 Stat. 172, 274-83 (1981) (amending 26 U.S.C. § 219 (1976)).

TABLE 1

Usage of Individual Retirement Accounts and Employer-Provided Pension Plans in 1982, by 1983 Earnings Levels

1983 Earnings levels	Percent with IRAs ^a	Percent with employer-provided pension plans ^a
Total	16.9%	43.1%
\$1- 4,999	7.1	7.8
5,000- 9,999	8.5	23.5
10,000-14,999	11.1	47.2
15,000-19,999	17.3	63.7
20,000-24,999	20.1	72.8
25,000-29,999	28.4	73.0
30,000-49,999	38.7	77.4
50,000 and over	57.6	74.4

^aPercentages exclude respondents whose earnings were not reported.

Source: Employee Benefit Research Institute Issue Brief, *Individual Retirement Accounts: Characteristics and Policy Implications*, July 1984, at 18 (Table 18).

This disparity among income groups' use of IRAs far exceeds that found in pension coverage generally, except in the case of the lowest income groups. Thus, the IRA provisions ERISA introduced violate the basic goal of tax policy in the pension area: to encourage pension provisions that ensure employees at all levels of compensation relatively comparable retirement protection.

C. Maintaining Integration—Perhaps Another Exception?

Although only nondiscriminatory private pension plans qualify for favorable tax treatment, an employer may consider its contributions to social security in determining whether its plan discriminates in favor of officers, shareholders, or higher paid executives. This approach adopts the premise that public and private retirement programs should function as a unified system. Thus, if the social security program favors low-income workers, the private pension system should favor high-income workers so that all workers will receive the same percentage of their earnings as retirement benefits. Congress incorporated this reasoning

for "integration" into the tax code in 1942.²³ Basically, the IRS finds pension plans nondiscriminatory if the ratio of combined benefits to earnings remains relatively constant for employees whose wages exceed the taxable wage base and for employees with fully covered wages. Nonetheless, the question remains whether existing integration procedures under ERISA operate consistently with the goals of federal tax policy.²⁴

The IRS integration guidelines allow or encourage the payment of tax subsidized benefits to higher paid workers, while permitting the denial of benefits to some lower paid workers.²⁵ During its deliberations on ERISA in 1974, Congress recognized the inequities that existed under the IRS integration guidelines. Subsequently, both the House Committee on Ways and Means and the Conference Committee voted to freeze further integration pending full consideration of the issue. In the face of last-minute opposition by employers and pension practitioners, however, Congress rejected the freeze proposal.

Employers defend integration on the ground that without it they would have to provide more than 100% of preretirement pay to lower paid workers in retirement, to ensure adequate benefits, as a percent of pay, to higher paid ones. Employers contend that the cost of these excessively high benefits for lower paid workers would result in much lower wages for these workers and an unnecessary reduction in their preretirement standard of living.

Despite the protestations of employers, reforms have been proposed to narrow the discrepancy between the ratio of retirement benefits to preretirement pay for higher paid workers and for lower paid workers.²⁶ These reform proposals respond to two troubling basic issues that the existing integration procedures

23. Revenue Act of 1942, Pub. L. No. 77-753, § 162, 56 Stat. 798, 862-67.

24. For a thorough discussion of the issues surrounding integration, see J. SCHULZ & T. LEAVITT, *PENSION INTEGRATION: CONCEPTS, ISSUES AND PROPOSALS* (1983); STAFF OF THE SUBCOMM. ON FISCAL POLICY OF THE JOINT ECONOMIC COMM., 93D CONG., 2D SESS., *INTEGRATION OF PRIVATE PENSION PLANS WITH SOCIAL SECURITY, STUDIES IN PUBLIC WELFARE*, Paper No. 18, 174-75 (Comm. Print 1974) (prepared by R. Schmitt).

25. The current guidelines include provision for integration through either an "excess" or an "offset" method. Under a pure excess plan, the employer can limit benefits to that portion of an employee's final average pay in excess of the "integration level." The integration level is a career average of the social security wage base applicable to a particular employee. For instance, an employee reaching retirement age in 1984 would face an integration level of \$12,840, and an integrated plan could pay benefits in 1984 up to 37.5% of final pay in excess of \$12,840 without providing any benefits below that level. Under the offset method of integration, an employer can reduce a worker's pension benefit by as much as 83⅓% of a worker's primary social security benefit.

26. See, e.g., A. MUNNELL, *THE ECONOMICS OF PRIVATE PENSIONS* 56-59 (1982).

raise. First, if workers in fact pay for pension benefits throughout their working lives through reduced wages, it seems difficult to justify provisions that may deny lower paid employees retirement benefits.

Additionally, integration apparently operates on the assumption that social security benefits fully replace the preretirement earnings of low- and middle-income workers. Yet, this is not the case. As shown in Table 2, social security benefits amount to only thirty-five percent to forty-seven percent of preretirement earnings for individuals and couples in the bottom two quintiles of the income distribution. Even taking into account that social security benefits are nontaxable for this group,²⁷ replacement rates still do not exceed sixty-five percent of low-income employees' earnings before retirement. Therefore, lower paid employees and their families experience a substantial drop in their standard of living in retirement, unless they receive supplementary private pensions or have saved considerable sums on their own.

TABLE 2

Median Social Security Replacement Rates—Before and After Tax—for Men, Nonmarried Women, and Married Couples, by Preretirement Earnings Levels^a

Preretirement earnings quintiles ^b	Median social security replacement rate			Median after-tax social security replacement rate		
	All men	Nonmarried women	Married couples	All men	Nonmarried women	Married couples
Lowest	44	47	n.a.	n.a.	60	63
Second	35	39	n.a.	n.a.	47	51
Third	32	33	n.a.	n.a.	44	44
Fourth	26	28	n.a.	n.a.	42	36
Highest	18	22 ^c	n.a.	n.a.	33	28

n.a.—not available.

^a Social security benefits as a percent of estimated total price-indexed earnings in the highest 3 of the last 10 years.

^b Quintiles derived from combined earnings distribution of all sample respondents. Quintile boundaries are—\$6,283, \$9,290, \$12,780, and \$16,246.

^c Based on 50 or fewer cases; subject to high sampling variability.

Source: Fox, *Earnings Replacement Rates and Total Income: Findings from the Retirement History Study*, Soc. SECURITY BULL., Oct. 1982, at 13, 20 (Tables 7, 10).

D. The Implications of Favoring Employer Contributions

ERISA maintained the asymmetry between tax treatment of employer and employee contributions to qualified pension plans. While an employee pays no tax for employer contributions until she receives retirement benefits, an employee makes mandatory contributions from net after-tax income. As a result of this asymmetry, private pension plans in this country are financed almost entirely on a noncontributory, employer-financed basis. This emphasis on employer-financed plans works against the policy of the Internal Revenue Code and ERISA of ensuring broad-based receipt of benefits.

When employers finance pensions, employees have no immediate claim on contributions, even though they have implicitly accepted lower wages in return for pension coverage. Rather, entitlement to benefits based on employer contributions hinges on specific provisions of the pension plan. Even though the participation and vesting standards ERISA established significantly improved employees' rights, many workers covered by private plans who fail to complete the ten-year vesting requirement will not receive benefits.

If employees were to finance their pensions through tax deferred contributions, the trade-off between pension coverage and wages would become explicit. The employee would also have an immediate right to the accumulated contributions even if ultimate entitlement to benefits remained contingent on satisfying a ten-year vesting standard. An employee could transfer accumulated contributions to either an IRA or a new plan upon changing jobs. Thus, employee-financed plans would reduce forfeiture of earned pension rights and would probably lead to greater portability within the private pension system. Furthermore, if plans were financed by employees, any inequities inherent in the current IRS integration guidelines would become obvious. If lower paid workers, like their higher paid counterparts, were to receive lower wages in exchange for deferred pension income, no justification would exist for denying them benefits at retirement. Employee contributions would clarify the issue; either low-paid workers would contribute and become eligible for benefits, or they would make no contributions and rely solely on social security for retirement income.

One further problem remains that is probably insolvable. The tax concessions for pension plans represent a loss to the Treasury of significant revenues. Although controversy exists concern-

ing the precise amount of this revenue loss, the amount is undoubtedly quite large.²⁸ The Treasury Department calculates a tax expenditure for public and private pension plans that amounted to \$50 billion in 1984.²⁹ In addition, the Treasury estimates that favorable treatment of IRAs costs the federal government another \$9 billion.³⁰ Only half the work force is covered by a pension plan and only seventeen percent utilize IRAs (Table 1); yet all taxpayers must pay higher taxes to make up for these foregone revenues. With such an inequitable distribution of tax concessions, proposals constantly surface for either eliminating the favorable tax provisions for private plans or making coverage universal so that all workers can enjoy the advantages of deferral.³¹

II. ERISA AND EMPLOYMENT POLICY

In 1962 President Kennedy directed the Committee on Corporate Pension Funds to explore, among other issues, how pension plans could "contribute more effectively to efficient manpower utilization and mobility."³² In response, the Committee reported on three separate but interrelated effects of private pension plans on manpower: (1) labor mobility; (2) employment opportunities for older workers; and (3) retirement behavior. Underlying the Committee's analysis of each of these aspects of manpower policy was an explicit or implicit statement of a desirable national objective. In some areas, these national manpower goals remain the same today as two decades ago; in other areas, some changes have occurred.

The effect of pensions on labor mobility has remained an important concern of manpower policy. As the Committee's report noted, "In a changing and growing economy, continuing shifts in

28. See Employee Benefit Research Institute Issue Brief, *Retirement Program Tax Expenditures: A Case of Unsubstantiated, Undocumented, Arbitrary Numbers* (Apr. 1983); *Hearings on Administration and Other Proposals Concerning Tax Shelters, Accounting Abuses, and Corporate and Securities Reforms Before the House Comm. on Ways and Means*, 98th Cong., 2d Sess. A-1 to A-5 (1984) (statement of Alicia Munnell, Vice President, Federal Reserve Bank of Boston).

29. BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1985, SPECIAL ANALYSES, G-47 (Table G-2) (Revenue Loss Estimates for Tax Expenditures by Function).

30. *Id.*

31. See, e.g., SENATE SPECIAL COMM. ON AGING, 98TH CONG., 2D SESS., *THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974: THE FIRST DECADE 130* (Comm. Print 1984) (chapter by D. Grubbs) [hereinafter cited as SPECIAL COMM. ON AGING].

32. PRES. COMM. ON CORPORATE PENSION FUNDS, *supra* note 7, iii (quoting memorandum from Pres. Kennedy to the Committee, Mar. 28, 1962).

the occupational, industrial, and geographical needs for manpower take place. Private pensions, along with seniority and other benefits based on length of service, tend to reduce labor mobility by tying workers to a particular employer."³³ Maintaining a mobile labor force is considered just as desirable today as it was in the early 1960's. An efficient allocation of resources requires an adaptable work force willing to relocate in response to changing demands. Ironically, of course, any attempt to alleviate the adverse impact of pensions on labor mobility conflicts with one of the major motivations for the development of private pensions—namely, increasing job tenure. Additionally, excess turnover can result in costly and inefficient utilization of resources.

The employment of older workers has become, at least theoretically, a more important goal since the early 1960's. Despite the continuing liberalization of early-retirement provisions in private plans and the trend toward earlier retirement, national legislation seems premised on the desirability of keeping older workers in the labor force. The 1978 Amendments to the Age Discrimination in Employment Act, which raise the age for mandatory retirement from sixty-five to seventy,³⁴ and the 1983 Amendments to the Social Security Act, which extend gradually the age for normal retirement benefits from sixty-five to sixty-seven,³⁵ represent the two most obvious examples. As in the case of mobility, however, any changes in the structure of pension plans to encourage the employment of older workers directly contradict one of the primary motives for the introduction of pensions, namely retiring superannuated employees.

With regard to the third dimension of manpower policy, retirement behavior, the Committee argued that pension plan provisions should operate neutrally. In short, older employees should not be pushed out of the labor force to alleviate unemployment problems for younger cohorts, yet adequate retirement income ought to exist for those who choose to retire. Today, national policy is schizophrenic on the issue of retirement. Pension arrangements in the private sector enable earlier and earlier retirement, while public policy developments generally encourage older workers to remain in the labor force. For example, the 1983 Social Security Amendments increased the delayed retirement credit for workers who postpone retirement beyond the

33. *Id.* at 27.

34. Pub. L. No. 95-256, § 3, 92 Stat. 189, 189 (amending 29 U.S.C. § 631 (1976)).

35. Pub. L. No. 98-21, § 201, 97 Stat. 65, 107-09 (amending 42 U.S.C. § 416 (1982)).

normal retirement age,³⁶ and the provision that gradually extends the retirement age will further reduce the benefits available to workers who choose to retire early.³⁷

After identification of some of the major goals of employment policy that private pension plan regulations may affect, the question arises whether the reforms ERISA enacted are generally consistent or inconsistent with these goals.

A. *The Impact of ERISA on Mobility*

Delayed vesting and the lack of post-termination indexing are the main characteristics of pension plans that impede labor mobility. The absence of portability is also discussed in this context, but it is unclear how improved portability would reduce the potential loss for the mobile employee unless accompanied by some form of post-termination indexing. ERISA probably improved labor mobility by accelerating vesting, but significant impediments remain because the legislation failed to address the impact of inflation on the vested benefits of terminated employees.

1. *Vesting*— Delayed vesting adversely affects labor mobility. A worker who loses a pension plan's coverage before attaining the age and service requirements for vesting forfeits all claim to the plan's potential benefits. The importance of this factor in a job change decision depends on the level of promised benefits, the proximity of the qualifying date, and the age of the worker.

The hypothesis that pension plans influence labor mobility has been confirmed in several studies that compare the behavior of workers covered by a pension plan with that of noncovered workers.³⁸ A more recent and ambitious study by Bradley R. Schiller and Randall D. Weiss attempted to move beyond the pension/no pension dichotomy and determine to what extent the specific features of a pension plan affect firm attachment.³⁹ Us-

36. *Id.* § 114, at 79 (amending 42 U.S.C. § 402 (1982)).

37. *Id.* § 201, at 107-09 (amending 42 U.S.C. § 416 (1982)).

38. Schiller & Weiss, *The Impact of Private Pensions on Firm Attachment*, 61 REV. ECON. & STATISTICS 369 (1979) (citing JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 93D CONG., 1ST SESS., STUDIES IN PUBLIC WELFARE No. 11, THE LABOR MARKET IMPACTS OF THE PRIVATE RETIREMENT SYSTEM (Comm. Print 1973) (prepared by Robert Taggart) (1976)); 4 H. PARNES, THE PRE-RETIREMENT YEARS (1974); Flowers & Hughes, *Why Employees Stay*, 51 HARV. BUS. REV. 49 (1973); R. Freeman, *Non-Wage Effects of Trade Unions on the Labor Market: An 'Exit-Voice' Model* (1976) (unpublished manuscript, Harvard University).

39. Schiller & Weiss, *supra* note 38, at 369.

ing characteristics for 133 of the largest plans and earnings records for workers in firms sponsoring these plans, Schiller and Weiss tested the impact of particular vesting and benefit provisions on the probability of quitting. Their results with regard to the impact of vesting on firm attachment were predictable: (1) quit rates fell among young workers as they approached vesting, and then rose among vested workers once their benefits were secured; and (2) stringent vesting requirements significantly increased quits among younger workers, because of the low, discounted expected value of benefits for such workers. Nevertheless, these results offer some insight into the impact ERISA's vesting changes have had on labor mobility.

ERISA undoubtedly has resulted in more rapid vesting. The law specifies three alternative vesting procedures,⁴⁰ but most United States companies have adopted the option that provides one hundred percent vesting after ten years of service.⁴¹ Prior to ERISA, some plans required employees to remain until retirement to receive a benefit, but now almost any worker who leaves a plan after ten years receives a retirement benefit.

Accelerating vesting has probably reduced the quit rate among younger workers. Earlier vesting of retirement benefits greatly increases the discounted expected value of benefits for this group and lowers the likelihood that these workers will leave a firm. On the other hand, ten-year vesting has probably increased the likelihood of quits among workers with more than ten years of service. Previously these workers might have remained with the same employer fifteen or twenty years to become vested; they now receive a benefit after ten years even if they leave. On balance, ERISA's vesting provisions have probably increased mobility.

2. *Effect of inflation on vested benefits*— Although the vested worker has less to lose from changing jobs than the nonvested worker, a worker still receives a lower benefit as a result of changing jobs than he would have received from continuous coverage in a single plan. This difference arises because final earnings levels determine pension benefits. The worker who remains with a plan receives benefits related to earnings just before retirement, but the mobile employee's benefits are based on his earnings at the time he terminated employment. Assum-

40. ERISA § 203(a)(2), 29 U.S.C. § 1053(a)(2) (1982).

41. W. MISCHO, S. CHANG & E. KASTON, *CORPORATE PENSION PLAN STUDY: A GUIDE FOR THE 1980's* 338-40 (Bankers Trust, 1980) [hereinafter cited as *CORPORATE PENSION PLAN STUDY*].

ing that wages rise generally with seniority, the mobile employee receives relatively lower benefits.

The magnitude of this effect depends, of course, on the rate earnings rise during an employee's work life. Table 3 shows the ratio of benefits for workers with continuous and discontinuous employment under various assumptions about the rate of inflation and wage growth. Even though all employers in this example have identical plans, it is clear that the mobile employee is severely penalized. If inflation were six percent, the pension of a worker who held four jobs would equal fifty-one percent of the pension of a worker who remained continuously employed by one firm. If inflation were ten percent, the relative position of the mobile employee would deteriorate further, so that his retirement benefits would constitute only forty percent of that awarded to the one-job worker. Thus, the higher the rate of inflation, the more discontinuous employment reduces the real value of benefits. This erosion of benefits occurs because pension plans do not index benefits to the inflation rate between termination of employment and retirement.

TABLE 3

Comparison of Pension Benefits for a Four-Job Worker and a One-Job Worker^a

Item	Compensation base: final pay ^b	Compensation rule (percent of salary) ^c	Benefits	Ratio of benefits four-job/ one-job worker
<u>Inflation rate: 0 percent</u>				
Four-job worker ^d				
Job 1	\$ 10,000	10%	\$ 1,000	...
Job 2	10,000	10	1,000	...
Job 3	10,000	10	1,000	...
Job 4	10,000	10	1,000	...
Total	...	40	4,000	...
One-job worker	10,000	40	4,000	1.00
<u>Inflation rate: 6 percent</u>				
Four-job worker ^d				
Job 1	17,908	10	1,790	...
Job 2	32,071	10	3,207	...
Job 3	57,435	10	5,744	...
Job 4	102,857	10	10,286	...
Total	...	40	21,027	...
One-job worker	102,857	40	41,143	0.51
<u>Inflation rate: 10 percent</u>				
Four-job worker ^d				
Job 1	25,937	10	2,594	...
Job 2	67,275	10	6,728	...
Job 3	174,494	10	17,449	...
Job 4	452,593	10	45,259	...
Total	...	40	72,030	...
One-job worker	452,593	40	181,037	0.40

^aAssumes a consistent annual increase in wages to compensate for inflation, and no growth in wages due to productivity.

^bBase salary is \$10,000 and benefit is calculated on earnings in last year of employment.

^cAssumes annual benefit accrual of one percent a year.

^dAssumes worker stays at each job for 10 years.

Source: A. MUNNELL, *THE ECONOMICS OF PRIVATE PENSIONS* 176 (Table 7-2) (1982).

Post-termination indexing meets with considerable resistance in the United States, even though such a proposal was recently introduced in Great Britain. Employers willingly provide implicit indexation, by basing benefits on final salary, for people who remain under their pension plans until retirement, but they resist any indexation for terminated employees. Firms likely fear bearing the full cost of increases due to unanticipated inflation for terminated employees, whereas in the case of active employ-

ees firms can shift the burden by slowing the rate of wage growth. Furthermore, by providing lower benefits to mobile employees, firms can perhaps reduce employee turnover and more readily retain skilled workers. Without post-termination indexing, however, the mobile employee suffers a substantial loss in the value of this pension benefit because of inflation (see Table 4). ERISA did not address this issue and, therefore, the potential erosion of vested pension benefits continues to provide a significant deterrent to labor mobility.

TABLE 4

Purchasing Power of \$100 in Vested Benefits at Age 65, at Varying Inflation Rates and Age at Job Termination

Age at job termination	Annual Inflation Rate		
	6 percent	8 percent	10 percent
30	\$13	\$7	\$4
40	23	15	9
50	42	32	24

Source: Author's calculations.

3. *Limits to the power of portability*— Increased portability alone cannot preserve the value of pension benefits between termination and retirement. Literally, portability means the ability of an employee to transfer the present monetary value of *vested* pension credits to a succeeding plan or a central clearinghouse upon termination of employment.⁴² ERISA made some very minor changes to facilitate this type of portability.⁴³

The transferring of vested pension credits to an IRA or cen-

42. D. MCGILL, *PRESERVATION OF PENSION BENEFIT RIGHTS* (1972). Several proposals have been made over the years to create a central clearinghouse to permit workers to transfer accrued pension credits. See M. BERNSTEIN, *THE FUTURE OF PRIVATE PENSIONS* (1964); PRES. COMM. ON CORPORATE PENSION FUNDS, *supra* note 7; *Pension Plans: Hearings Before the Subcomm. on Retirement Income and Employment of the House Select Comm. on Aging*, 95th Cong., 2d Sess. 529-65 (1978) (statement of Donald Grubbs).

43. First, ERISA requires each plan to provide an annual statement to the IRS regarding employees who have terminated employment that year with a right to a deferred vested benefit. This information is passed on to the Social Security Administration which will inform employees of their accumulated pension credits when they apply for social security benefits. See ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1) (1982). Second, ERISA introduced "tax-free rollovers" whereby participants can transfer money from a qualified pension plan to an IRA or another qualified plan within 60 days without paying taxes. 26 U.S.C. § 402(a)(5) (1982). Finally, ERISA directs the PBGC to provide advice and assistance in establishing IRAs or transferring funds. ERISA § 4009, 29 U.S.C. § 1309 (1982).

tral clearinghouse, however, does not prevent the erosion in the value of benefits given that market interest rates do not exceed the interest assumption used by actuaries to calculate the discounted value of the future benefit. Consider the example of a fifty-year-old worker, who leaves a plan in which he has gained credits equal to twenty percent of final pay, to be paid at age sixty-five. At termination, his yearly salary totals \$30,000; so the plan entitles him to a benefit of \$6,000 per year beginning at sixty-five. If the actuaries assume an interest rate of eight percent in calculating the present value of this sum, the worker will receive \$1,890 at age fifty to transfer to his IRA. If he earns eight percent in his IRA, he will have \$6,000 at retirement. At that time, however, his salary would, most likely, have increased. For example, if his salary ultimately increased to \$60,000, his pension if he had stayed with the firm would have equaled \$12,000, or twice the value of his deferred vested benefit. Thus, transferring money to an IRA may not help the value of the pension keep pace with potential salary growth. The only possible advantage to the employee lies in the chance that the interest rate in the market is higher than that assumed by the actuaries. Such a discrepancy would be unlikely to persist, however, if portability provisions became widespread. Hence, increasing portability of vested benefits would be unlikely to increase labor mobility.

The concept of portability has gained substantial appeal, however, because many people have incorrectly interpreted it as a means for allowing the mobile worker to count all service with all employers toward meeting the conditions for a pension. This type of "portability" exists in collectively bargained, multiemployer plans, under which all of an employee's service for any of the contributing employers functions as if it were service for a single employer. This enables employees, who can expect to work for many different employers and in several geographical areas during the course of their working lives, to accumulate sufficient service to qualify for a benefit. Enhancing this type of transfer of service credits among defined benefit plans would reduce the loss a nonvested employee suffers and would enhance labor mobility. ERISA did not, however, consider this type of reform.

In summary, ERISA's vesting provisions have probably reduced mobility among younger workers, but facilitated mobility among workers with more than ten years of service. For this latter group, however, the potential loss in the value of frozen vested benefits probably still acts as an important deterrent to

job changes. Nevertheless, on balance, ERISA has improved mobility, which is consistent with our national employment goals, but contrary to employers' motivations for introducing pension plans.

B. ERISA and Employment of Older Workers

Employer-sponsored defined benefit plans may adversely affect the employment of older workers because the cost of providing benefits increases significantly with the age of the employee. The younger an employee and the longer the period of his participation, the more time a firm gains to earn interest on its contribution and the greater the likelihood the worker will leave before qualifying for benefits. Thus, because older workers are closer to retirement and, therefore, more likely to remain under the plan and to have fewer years to earn interest income on the funds in their pension accounts, the cost of offering pensions to this group is significantly higher than for younger workers. The discrepancy in cost increases with the level of interest rates; consequently, the cost differential today far surpasses that of the 1960's.

In competitive labor markets, employers could pay older workers less in cash wages to compensate for the higher pension cost. If employers do not have control over their wage structure in the short run, however, due to union contracts or other institutional arrangements, then as alternative strategies for controlling costs employers may encourage turnover among older employees, through varying working conditions and other nonwage characteristics of employment, and avoid hiring older workers. ERISA contains two provisions that, at first glance, might mitigate the adverse impact of pension costs on hiring and retaining older employees, and one provision that definitely makes the hiring of older workers less attractive.

ERISA allows an employer to exclude from a pension plan any employee hired within five years of the normal retirement age⁴⁴ and to cease the accrual of benefits for an employee after age sixty-five.⁴⁵ In theory, both of these provisions should reduce the cost of hiring an older employee and thereby increase the likelihood of such an event. Setting the maximum participation age at five years before normal retirement, however, represents an

44. ERISA § 202(a)(2)(B), 29 U.S.C. § 1052(a)(2)(B) (1982).

45. ERISA § 204, 29 U.S.C. § 1054 (1982).

increase over earlier practices, under which the maximum age was often ten to fifteen years before retirement.⁴⁶ In addition, it seems unlikely that many firms would consciously employ older workers to avoid pension costs, because this would run counter to the purpose of having a plan—decreased employee turnover. The second provision, which allows an employer to deny any benefit accrual after normal retirement age, probably has little impact on the hiring of older workers and also appears grossly inconsistent with the 1978 legislation prohibiting mandatory retirement before age seventy.⁴⁷

Although two ERISA provisions aim at controlling the cost differential under defined benefit plans between old and young workers, one of the vesting provisions included in ERISA exacerbates the cost differential. Companies that adopt the “rule of 45” vesting schedule,⁴⁸ whereby fifty percent vesting occurs when the sum of the employee’s age and service of a minimum of five years equals forty-five, and ten percent vesting occurs each year for the next five years, substantially increase the relative costs of hiring older workers. Under the “rule of 45,” if a worker aged forty were hired and worked for five years, then fifty percent of her retirement benefits would vest at the end of the five-year period. Under the identical vesting schedule a thirty-year-old worker would not have any vested rights after five years and a twenty-five-year-old would have no vested rights until the tenth year of service.

Thus, although two provisions in ERISA have some potential for stimulating the employment of older workers, neither standardizing the maximum participation age nor allowing benefit accrual to cease after age sixty-five has succeeded in relieving employers of the high costs of hiring and retaining these workers. This, in conjunction with the adverse effect of the “rule of 45” on the costs of hiring older workers, indicates that the passage of ERISA did not substantively reflect the national desire to increase employment opportunities for older workers.

46. STAFF OF THE JOINT ECONOMIC COMM., 93D CONG., 1ST SESS., STUDIES IN PUBLIC WELFARE, PAPER NO. 11: THE LABOR MARKET IMPACTS OF THE PRIVATE RETIREMENT SYSTEM 102 (Table 35) (Comm. Print 1973) (prepared by Robert Taggart).

47. Age Discrimination in Employment Act Amendments of 1978, Pub. L. No. 95-256, § 3, 92 Stat. 189, 189 (amending 29 U.S.C. § 631 (1976)).

48. ERISA § 203(a)(2)(C), 29 U.S.C. § 1053(a)(2)(C) (1982).

C. *ERISA and Retirement Behavior*

One of the original purposes of pension plans was to provide employers with an impersonal and egalitarian means of retiring older workers in order to restructure the age composition of their work force.⁴⁹ Recent studies have confirmed that economic factors, rather than health and other noneconomic considerations, primarily determine a worker's retirement decision, and that, all else equal, higher pension benefits will likely hasten a worker's withdrawal from the labor force.⁵⁰ Accordingly, any change in benefit levels or the age at which benefits become available should have an important impact on retirement behavior.

Although ERISA contains no special provisions aimed at the amount or timing of benefits provided by a qualified pension, the legislation principally sought to ensure that individuals covered by pension plans receive pension benefits. As a result of the legislation, more people reaching retirement age will have supplementary private pension benefits than would have in the absence of ERISA. Consequently, the net impact of ERISA has been to encourage earlier retirement. This effect, though, has probably been mitigated somewhat by inflation during much of the post-ERISA era, and the legislation's lack of provisions to ensure that plan sponsors offer post-retirement cost-of-living adjustments. Without such adjustments, retirees' living standards decline in retirement as inflation erodes the purchasing power of their benefits. No amount of planning can ensure protection from inflation, because the future pattern of price increases defies prediction.

For private plans to provide benefits that keep pace with inflation, they must earn a return on fund assets that fully reflects increases in the price level. In other words, pension funds must be channeled into investments with real rates of return that are not affected by inflation. Most of the evidence in the economic literature suggests that real returns on corporate equities and fixed-income securities decline in the face of unanticipated increases in inflation.⁵¹ Hence, plan sponsors cannot offer fully in-

49. W. GRAEBNER, *A HISTORY OF RETIREMENT: THE MEANING AND FUNCTION OF AN AMERICAN INSTITUTION 18-53* (1980).

50. The most careful analysis of the effect of pension benefits on the retirement decision is G. FIELDS & O. MITCHELL, *RETIREMENT, PENSIONS, AND SOCIAL SECURITY* (1984). For further studies, see bibliography included in the Fields-Mitchell monograph.

51. See Modigliani & Cohn, *Inflation, Rational Valuation and the Market*, FIN. ANALYSTS J., Mar.-Apr. 1979, at 24; Oudet, *The Variation of the Return on Stocks in Periods*

dexed benefits without incurring higher real costs. On the other hand, although returns on assets do not fully incorporate the effects of inflation, nominal yields rise as the rate of price increases accelerates. Although many plan sponsors currently provide ad hoc cost-of-living adjustments, others appropriate the partial inflation premium incorporated in asset yields to reduce their contributions. Therefore, real costs of providing pensions may fall below costs incurred in the absence of inflation.

To increase the number of pension recipients eligible for cost-of-living adjustments, Congress could amend ERISA to require plan sponsors to value their firms' liability for benefits in payment status at a real rate of return of two or three percent and to use anything above this amount to provide partial post-retirement cost-of-living adjustments.⁵² This form of indexing would not impose additional real costs on plan sponsors beyond the costs incurred in a noninflationary environment, and would ensure beneficiaries roughly the same inflation protection as individual retirement investments.

Despite the lack of automatic post-retirement cost-of-living adjustments, ERISA has probably led to more and earlier retirement through ensuring that plan participants actually receive pension benefits. This trend toward earlier retirement is not entirely consistent with the public policy of permitting workers to remain in the labor force for longer periods of time, and increasing incentives in the private sector for early retirement will create serious problems when the baby boom reaches retirement age after the turn of the century.

III. ERISA AND RETIREMENT INCOME POLICY

National retirement income goals have been expressed in a variety of ways—through federal legislation, by White House Conferences on Aging and, most recently, by the President's Commission on Pension Policy.⁵³ The recommendation of the President's Commission was the most specific and the most am-

of Inflation, 8 J. FIN. & QUANT. ANALYSIS 247 (1973); Lintner, *Inflation and Security Returns*, J. FIN., May 1975, at 259; Fama, *Stock Returns, Real Activity, Inflation and Money*, 71 AM. ECON. REV. 545 (1981).

52. For a comprehensive discussion of indexation, see R. MYERS, *INDEXATION OF PENSIONS AND OTHER BENEFITS* (1979).

53. For a summary of these goals, see E. MEIER, C. DITTMAR & B. TORREY, *RETIREMENT INCOME GOALS* (Mar. 1980) (working paper for the President's Commission on Pension Policy).

bitious—namely, to ensure the full replacement of preretirement disposable income.⁵⁴ The White House Conferences on Aging have emphasized the need to establish a minimum level of retirement income, and to maintain adequate total benefits throughout the retirement period.

To meet these retirement goals, a three-tiered system of retirement income maintenance has developed in the United States. This system consists of (1) welfare programs, such as the Supplemental Security Income (SSI) program,⁵⁵ which provides a minimum guaranteed income to the needy elderly; (2) compulsory public contributory programs, such as Federal Old-Age, Survivors, and Disability Insurance Benefits (OASDI);⁵⁶ and (3) private provisions for retirement through private pensions and individual savings. In view of the substitutability of the programs, the importance of private pensions in the provision of retirement income depends upon the gap between the income requirements of the elderly and the benefits provided by government programs—primarily social security.

The extent to which social security benefits meet the income goals of the elderly can be assessed against two alternative measures: an absolute standard of living and the maintenance of preretirement living standards. For measurement against an absolute standard, budgets the Bureau of Labor Statistics (BLS) constructed previously served as useful benchmarks. These budgets represented the cost of hypothetical lists of goods and services for retired couples at three relative standards of living. The Bureau annually updated these budgets on the basis of changes in the Consumer Price Index and in consumer expenditure patterns. Because publication of the BLS budget data was discontinued in 1982, updated budgets can be estimated only by increasing the 1981 level by the Consumer Price Index, making no adjustment for changes in consumption patterns. Using this approach, the low, intermediate, and high budgets for a retired couple were estimated at \$7,900, \$11,200, and \$16,500, respectively, for the autumn of 1983. Even though these budgets may be too high as a level for welfare support, the 1982 White House Conference on Aging designated the intermediate budget as the minimum standard for aged couples in the United States. The intermediate budget, therefore, presents a reasonable goal for combined social security and private pension benefits for a

54. PRES. COMM'N REP., *supra* note 2, at 42.

55. 42 U.S.C. §§ 1381-1383(c) (1982).

56. 42 U.S.C. §§ 401-433 (1982).

worker with a history of average earnings and steady employment.⁵⁷

As shown in Table 5, social security benefits in 1984 for a retired couple with average earnings amount to about eighty-seven percent of the intermediate budget. For those with a history of earnings at the taxable maximum, benefits exceed the intermediate budget by thirteen percent and benefits for low-wage workers equal fifty-eight percent of the intermediate budget. The diagonal elements of the table, however, may represent the most relevant data, because they present the three couples in post-retirement income groups that correspond with their respective pre-retirement income groups. It is difficult to argue that a low-wage couple earning \$7,000 in 1983 should receive a social security benefit of \$11,200 to attain the intermediate budget. The diagonal percentages indicate that social security benefits to couples with low, average, and maximum earnings amount to approximately eighty-two percent, eighty-seven percent, and seventy-seven percent of the low, intermediate, and high budgets, respectively.⁵⁸

TABLE 5

Social Security Benefits for a Retired Couple, January 1984, as a Percentage of Three Budget Levels^a

1983 earnings of retired worker and spouse, both age 65 ^b	Low budget (\$7,900)	Intermediate budget (\$11,200)	High budget (\$16,500)
Low earnings (\$7,000)	82%	58%	39%
Average earnings (\$15,100)	124	87	59
Maximum earnings (\$35,700)	160	113	77

^a Budgets are projected to autumn 1983. The projections are based on a 6.2% increase in the consumer price index in 1982 and a 3.2% increase in 1983.

^b The annual social security benefit amounts payable to a worker and spouse retiring in 1984 with 1983 earnings equal to the low, average, and maximum earnings levels are \$6,498, \$9,770, and \$12,665, respectively.

Source: Author's calculations based on U.S. Bureau of Labor Statistics, *Three Budgets for a Retired Couple, Autumn 1981*, BLS NEWS, July 30, 1982.

57. 1981 WHITE HOUSE CONFERENCE ON AGING, COMMITTEE RECOMMENDATIONS FROM WHITE HOUSE CONFERENCE ON AGING recommendation 23, at 3 (Nov. 30-Dec. 31, 1981).

58. Although the benefits in Table 5 include the 50% supplement for a nonworking spouse, the percentages would be identical for retired individuals, assuming that the cost of supporting a couple is 50% greater than it is for an individual.

Social security benefits can also be evaluated in terms of pre-retirement living standards rather than against a monetary standard, in which case replacement rates rather than benefit levels comprise the relevant measure of benefit adequacy. Once a minimum level of income support is assured, a replacement rate—the ratio of benefits to preretirement earnings—is actually a more appropriate criterion against which to assess wage-related benefit programs.

Retirees require considerably less than one hundred percent of their preretirement income to maintain their standard of living. First, whereas preretirement earnings are subject to federal income tax, social security payroll tax, and state and municipal income taxes, a large portion of retirement income escapes taxation.⁵⁹ Second, work-related expenses, such as transportation, clothing, and meals purchased away from home, decline during retirement. Finally, expenditures decrease for services such as cleaning and cooking that a person purchased while working, but that a retiree is likely to perform for himself. Due to lower taxes, reduced work expenses, and lower expenditures for household services, retirees require approximately sixty-four to eighty-one percent of preretirement earnings to maintain their preretirement living standards (see Table 6).

59. Social security benefits, which constitute the bulk of retirement income, are not taxable for most retirees. For taxpayers, though, whose incomes exceed certain base amounts, up to one-half of their social security and Railroad Retirement Tier 1 benefits are included in taxable income. The base amounts are \$25,000 for a single taxpayer, \$32,000 for married taxpayers filing jointly, and zero for married taxpayers filing separately. Income for purposes of calculating these base amounts includes adjusted gross income and one-half of the excess of the taxpayer's combined income, adjusted gross income plus one-half of benefits, over the base amount. For more detail, see Svahn & Ross, *Social Security Amendments of 1983: Legislative History and Summary of Provisions*, SOC. SECURITY BULL., July 1983, at 3, 26.

TABLE 6
Retirement Income Needed to Maintain Preretirement Standard of Living for Persons Retiring in January 1984, Selected Income Levels

Gross pre-retirement income	Preretirement taxes		Reductions in expenses at retirement				Post-retirement taxes ^d			Equivalent retirement income	
	Federal ^a	State and local ^b	Disposable preretirement income	Work-related expenses ^c	Savings and investments		Net pre-retirement income	Federal income	State and local ^b	Amount	Ratio
					Amount	Percent					
Single person											
\$7,000	\$1,114	\$116	\$5,770	\$346	\$0	0.0%	\$5,424	\$0	\$0	\$5,424	0.77
8,000	1,331	143	6,526	392	98	1.5	6,030	0	0	6,030	0.75
10,000	1,795	203	8,002	480	240	3.0	7,282	0	0	7,282	0.73
15,000	3,108	379	11,513	691	691	6.0	10,131	150	27	10,308	0.69
20,000	4,716	608	14,676	881	1,321	9.0	12,474	420	76	12,970	0.65
30,000	6,156	746	23,098	1,386	2,772	12.0	18,940	1,328	239	20,507	0.68
50,000	12,236	1,747	36,017	2,161	5,403	15.0	28,453	4,581	825	33,859	0.68
70,000	19,145	2,990	47,865	2,872	8,616	18.0	36,377	7,260	1,307	44,944	0.64
Married couple (filing jointly)											
7,000	898	77	6,025	362	0	0.0	5,663	0	0	5,663	0.81
8,000	1,104	102	6,794	408	102	1.5	6,284	0	0	6,284	0.79
10,000	1,538	156	8,306	498	249	3.0	7,559	0	0	7,559	0.76
15,000	2,685	302	12,013	721	721	6.0	10,571	0	0	10,558	0.71
20,000	3,951	470	15,579	935	1,402	9.0	13,242	0	0	13,242	0.66
30,000	5,062	549	24,389	1,463	2,927	12.0	19,999	613	110	20,722	0.69
50,000	10,023	1,348	38,629	2,318	5,794	15.0	30,517	3,558	640	34,715	0.69
70,000	15,899	2,406	51,695	3,102	9,305	18.0	39,288	5,957	1,072	46,317	0.66

^a 1984 federal income and social security taxes.

^b Based on state and local income tax receipts, which were 18% of federal income tax receipts from 1973 to 1983. Does not include property tax.

^c Estimated as 6% of disposable income.

^d Post-retirement taxes are on income in excess of social security benefits for single persons with retirement income below \$25,000 and married couples with retirement income below \$32,000. For all others, post-retirement taxes include federal income taxes levied on one-half of social security benefits received. Source: Author's calculations based on PRESIDENT'S COMMISSION ON PENSION POLICY, AN INTERIM REPORT 11-12 (Nov. 1980).

Table 7 presents social security replacement rates for various types of hypothetical beneficiaries retiring at the beginning of 1984.

TABLE 7
Social Security Replacement Rates by Type of Beneficiary,
Early 1984

Age and type of beneficiary	Preretirement earnings ^a		
	Low (\$7,000) ^b	Average (\$15,100) ^c	Maximum (\$35,700) ^d
Single worker			
Age 65	62.2%	43.0%	23.7%
Age 62	49.7	34.4	18.9
Worker age 65, with spouse			
Age 65	93.3	64.5	35.5
Age 62	85.5	59.2	32.5
Worker age 62, with spouse			
Age 65	80.8	55.9	30.7
Age 62	73.0	50.5	27.8
Widow age 65, spouse retired at			
Age 65	62.2	43.0	23.7
Age 62	51.5	35.7	19.6

^a1983 earnings levels.

^bAssumes an annual income slightly below the minimum wage during working years.

^cAssumes an annual income approximately equal to the average of total wages in each year of work life.

^dAssumes income equal to the maximum taxable amount each year of work life.

Source: Author's calculations based on unpublished data from Social Security Administration, Office of the Actuary (July 1984).

As illustrated, a worker aged sixty-five earning \$15,100, the average earnings level in 1983, received a benefit in early 1984 equal to forty-three percent of preretirement earnings; to maintain his preretirement standard of living, he would need approximately sixty-nine percent of prior earnings (Table 6). The replacement rate for a couple with average earnings eligible for the fifty percent supplementary spouse's benefit amounts to 64.5%, while the couple requires a replacement rate of seventy-one percent to maintain its preretirement standard of living.

These comparisons, however, probably overstate the adequacy of social security in providing retirement income for two reasons. First, the analytical construct of a hypothetical individual with a

history of average earnings exaggerates the size of social security benefits. Even though the “average earner” designation implies that the replacement rate for an “average earner” reflects the replacement rate for retiring workers in the approximate middle of the earnings distribution of all retiring workers, that is simply not the case.⁶⁰ Rather, the concept of average earnings arises from a composite of earnings for all workers at all stages in their careers and does not reflect the fact that earnings of retiring workers usually surpass those of their younger counterparts. For instance, the average earnings for men in 1983 equalled \$19,175, whereas the average for full-time men in their mid-fifties and early sixties amounted to \$27,084. In other words, the “average” preretirement man in 1983 actually earned close to the taxable maximum of \$35,700 in 1983. Thus, the “average” replacement rate amounts not to forty-three percent, but to thirty to thirty-five percent of preretirement earnings.

Second, the assumption that people retire at sixty-five exaggerates the relative level of social security benefits. In early 1964, sixty-four percent of workers receiving social security benefits had retired before age sixty-five. For the “average” worker, retirement at age sixty-two reduces the replacement rate from forty-three percent to thirty-four percent. Indeed, data on actual replacement rates for men in the middle quintile of the income distribution showed benefits equal to thirty-two percent of preretirement earnings (Table 2). In short, conventional replacement rate analyses exaggerate the extent to which social security benefits replace preretirement income and consequently underestimate the importance of private pensions.

If full replacement of disposable income is the nation’s retirement income goal and social security meets roughly three-quarters of this goal for the low-income recipient, half for the middle-income worker, and a third for the person with a history of maximum earnings, then private pensions have an important supplementary role to play throughout the income distribution. Do the provisions of ERISA enhance or restrict the ability of private pension plans to fulfill their required role?

60. The following discussion is based on work by James H. Schulz. For a statement of his argument, see PRES. COMM’N REP., *supra* note 2, at 82-83 (testimony before the President’s Commission on Pension Policy, Jan. 11, 1980).

A. *Enhancing the Likelihood of Benefit Receipt*

ERISA principally sought to ensure that more employees covered by qualified pension plans actually receive benefits in retirement. The participation, vesting, and insurance provisions in the legislation significantly increase the probability of a covered worker receiving a benefit. Some commentators have argued, however, that ERISA has reduced the incentive to establish defined benefit plans and encouraged employers to terminate existing plans, thereby lowering the number of workers who could expect to receive pensions from a defined benefit plan. Indeed, a rash of defined benefit plan terminations occurred following the enactment of ERISA.⁶¹

One should consider three important points, however, when assessing the impact of ERISA on the number of people who will ultimately receive benefits. First, to the extent that abuse existed prior to ERISA, any attempt to impose constraints on the operations of pension plans will encourage employers with no intention of fulfilling benefit commitments to terminate their pension plans. Workers lost very little retirement income protection by this type of termination. Second, the passage of ERISA preceded an extremely severe recession that put economic pressure on many businesses to terminate their plans. In surveys conducted by the PBGC to determine the reasons for plan termination, employers cited either business failure or generally adverse business conditions as the major reason for plan termination in the majority of cases, while ERISA was an important factor to less than seventeen percent of the terminating employers.⁶² The business cycle has continued to have an important effect on pension plan terminations. Terminations declined sharply after 1976 as the economy recovered and then rose again in 1982 and 1983 in the wake of the severe economic downturn. Finally, although many plans have disbanded since the passage of ERISA, more defined benefit plans exist today than in 1974. The number of these plans grew by forty-two percent, from 232,838 in 1974 to 330,485 in 1983.⁶³ This increase occurred over a period when the labor force grew by only sixteen percent.

61. See SPECIAL COMM. ON AGING, *supra* note 31, at 114-15 (chapter by D. Salisbury).

62. PENSION BENEFIT GUARANTY CORPORATION, PREMIUM REQUIREMENTS FOR THE SINGLE EMPLOYER BASIC BENEFITS INSURANCE PROGRAM, PART I SUMMARY REPORT, III-16 (Table 3).

63. See SPECIAL COMM. ON AGING, *supra* note 31, at 114 (Table 1) (chapter by D. Salisbury).

In short, ERISA's provisions designed to ensure the delivery of pension benefits will result in more workers receiving pensions than would have in the absence of ERISA. This aspect of the legislation operates consistently with the nation's retirement income policy, which requires supplementation of social security benefits by private pensions to avoid a substantial decline in economic well-being upon retirement.

B. Introduction of Joint-and-Survivor Option

One of the major failures of this nation's retirement income system is illustrated by the large number of elderly single women with incomes below the poverty line.⁶⁴ This situation has arisen, in part, because before 1974 most pension plans made no provision for retirees' surviving spouses. The passage of ERISA reversed this trend by requiring that pension plans offer spousal protection through the provision of joint-and-survivor annuities.⁶⁵ Such an annuity consists of a worker's pension payable over the life of the participant plus a survivor pension payable over the life of the surviving spouse. A retiree usually purchases the extra protection offered by the joint-and-survivor option through reductions in the retiree's own pension, and most plans automatically provide such an option unless the retiree rejects it in writing. The introduction of the joint-and-survivor option is consistent with the nation's retirement income goals and should contribute to the well-being of elderly widows.

C. Gaps in Protection ERISA Did Not Address

The preceding assessment of retirement goals reveals that all workers need additional retirement income beyond social security benefits to maintain preretirement standards of living. Yet supplementary pension plans cover only half the work force and IRS integration guidelines allow plans to pay few or no benefits to low-paid workers. In addition, private pension benefits are not automatically indexed after retirement, so their real value can decline substantially if inflation accelerates. Although all these failures are inconsistent with a sensible retirement income

64. See, e.g., BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, CONSUMER INCOME, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL: 1983 (Table 11).

65. ERISA § 205, 29 U.S.C. § 1055 (1982).

policy, ERISA addressed none of them.

1. *Coverage*— Although ERISA attempted to correct perceived abuses and inequities in the private pension system, the legislation did not mandate the establishment of such plans. Consequently, the formation and continuation of pension plans by employers or through collective bargaining remains a strictly voluntary decision. As a result, pension coverage is far from universal.

Considerable controversy surrounds estimates of the extent of pension coverage. Some experts argue that very young, part-time, or mobile workers would not participate in a company's pension plan even if offered the opportunity and thus should be excluded from coverage statistics. Because of the controversy, two surveys conducted in 1979 sought to determine the extent of pension plan coverage. The President's Commission on Pension Policy found that 48.1% of all active workers eighteen years and older were participants in some type of employment-based pension, profit-sharing, or retirement plan in their current jobs.⁶⁶ The Census Bureau found nearly identical results in a similar survey of private pension plans conducted for the Department of Labor and the Social Security Administration.⁶⁷ Analysis of the Census Bureau's survey, however, indicates that the coverage picture improves as the definition of the eligible population narrows. For full-time workers over twenty-five with one or more years of service with their current employer, coverage increased to sixty-one percent.⁶⁸

Because of the influence of industry structure on pension coverage, the percentage of the work force covered by pension plans will not likely increase significantly in the future. Industries with traditionally high pension coverage, such as manufacturing, are expected to employ a declining share of workers, while employment in industries with low pension coverage, such as retail trade and services, is projected to increase. Moreover, small

66. PRESIDENT'S COMMISSION ON PENSION POLICY, PRELIMINARY FINDINGS OF A NATION-WIDE SURVEY ON RETIREMENT ISSUES 2 (1980) [hereinafter cited as PRELIMINARY FINDINGS].

67. D. BELLER, PATTERNS OF WORKER COVERAGE BY PRIVATE PENSION PLANS (Dep't of Labor, Labor-Management Servs. Admin., Pension & Welfare Benefit Programs (1980)). For a summary of survey results, see Beller, *Coverage Patterns of Full-Time Employees Under Private Retirement Plans*, SOC. SECURITY BULL., July 1981, at 3; Rogers, *Vesting of Private Pension Benefits in 1979 and Change from 1972*, SOC. SECURITY BULL., July 1981, at 12.

68. This figure must be interpreted cautiously because only 58% of the private sector work force fell into the category of full-time, over 25, more than one year of service with current employer, and over 1,000 hours of work a year. PRELIMINARY FINDINGS, *supra* note 66, at 3.

businesses, which employ the bulk of noncovered workers, are unlikely to adopt pension plans. These businesses operate on very tight profit margins in highly competitive environments and cannot afford the additional cost of pension plans, especially because the relative cost of establishing such plans tends to be higher for small firms.

Indeed, preliminary tabulations from a May 1983 survey indicate that pension coverage has actually declined in the 1979-83 period (see Table 8).

TABLE 8

Percent of Nonagricultural Wage and Salary Workers Covered by Pension Plans, 1979 and 1983

Earnings levels	<u>Percent covered by pension plan</u>	
	1979	1983
Total	61.1%	56.1%
\$1- 4,999	n.a.	24.3
5,000- 9,999	n.a.	37.5
10,000-14,999	n.a.	57.9
15,000-19,999	n.a.	71.9
20,000-24,999	n.a.	79.3
25,000-29,999	n.a.	79.1
30,000-49,999	n.a.	83.9
50,000 and over	n.a.	84.9
Not reported	n.a.	27.2
Addenda:		
Private sector only		
Civilian employment	51.0	47.1
Wage and salary workers	56.2	51.1

n.a.—not available.

Source: Employee Benefit Research Institute Issue Brief, *New Survey Findings on Pension Coverage and Benefit Entitlement*, Aug. 1984, at 5, 16, 17 (Tables 1, 8, 9).

Again, the precise percentage of the work force covered depends on the definition of the eligible population. Including government employees, most of whom have pension coverage, the percentage of the work force covered by pension plans has fallen from 61.1% to 56.1%. In terms of the private sector only, coverage has fallen from 51.0% to 47.1% of private employment, or from 56.2% to 51.1% of private wage and salary workers.

Regardless of the coverage figures selected, a large part of the

United States work force remains uncovered by a private pension plan. In most industries the uncovered employees are heavily concentrated in small companies and tend to be at the lower end of the wage scale.⁶⁹ Table 8 illustrates the concentration of coverage among higher paid workers. Even though this table describes coverage by public as well as private pension plans, it nevertheless shows the strong correlation between income class and pension plan coverage.

In enacting ERISA, Congress recognized that a large segment of the working population was ineligible for the tax advantages associated with private pension plans. Instead of mandating coverage, however, ERISA established individual retirement accounts for workers not participating in a plan and liberalized contribution limits on Keogh plans for the self-employed. But while the ERISA provisions broadened the group eligible for tax-deferred retirement plans, most of the benefits accrued to higher income persons. Thus, the problem of inadequate coverage remains. Although the substantial tax concessions offered higher paid workers have encouraged the growth of private plans, these concessions have not led to widespread coverage among lower paid workers.

2. *Integration*— The major conclusion that emerges from careful consideration of replacement rates provided by social security benefits is that low-income as well as high-income individuals need supplementary retirement income to maintain their preretirement living standards. Hence, little justification exists for allowing plans to “fully” or “maximally” integrate with social security so that lower paid workers receive no benefits at all from their pension plans. ERISA failed to address the gaps in protection that arise because of the current integration provisions and, therefore, to go far enough to be considered totally consistent with existing retirement income policy.

3. *Inflation indexing*— Recommendations from the White House Conferences on Aging have stressed the importance not only of establishing initial benefits at appropriate levels, but also of maintaining the value of those benefits over the entire retirement period. Although social security and federal government pension plans provide automatic cost-of-living adjustments,

69. Coverage has been shown to be directly related to both wage rates and firm size. In 1972 only 18% of private nonfarm workers earning less than \$3 an hour were in firms with retirement plan expenditures. The comparable figure for those earning \$7 or more an hour was 88%. Similarly, only 38% of firms with under 100 employees provided retirement benefits as against 93% of firms with 500 or more employees. Bell, *Prevalence of Private Retirement Plans*, MONTHLY LAB. REV., Oct. 1975, at 18.

most private plans do not offer similar protection.

Sponsors of private plans, nevertheless, have been aware of the erosive power of inflation and have usually provided some ad hoc adjustments for beneficiaries. The 1980 Bankers Trust study⁷⁰ indicates that during the 1975-79 period roughly seventy percent of the 325 plans surveyed extended a cost-of-living adjustment to some or all of their beneficiaries. Nearly three out of five plans that provided adjustments, however, did so only once during the period. According to Bankers Trust calculations, the average cost-of-living adjustment over the 1975-79 period for persons who retired in January 1975 equaled a one-time increase in their pension of \$480, or nine percent, under a conventional plan and \$660, or eight percent, under a pattern plan.⁷¹ Because the CPI rose forty-seven percent over the same period, most retirees experienced a substantial decline in their living standards.

A slightly more favorable picture emerges from a survey of post-retirement cost-of-living adjustments between 1973 and 1979 for a nationally representative sample of persons in defined benefit plans who retired prior to 1973.⁷² The mean benefit for this group rose from \$2,129 in 1973 to \$2,639 in 1979, an increase of twenty-four percent. The benefit increases were fairly widespread, with seventy-five percent of the group receiving at least one adjustment. Nevertheless, because the CPI rose by sixty-three percent between 1973 and 1979, the cost-of-living adjustments compensated for less than two-fifths of the total price increase.

The lack of automatic cost-of-living adjustments means that retirees cannot know whether their private pension benefits will retain their value over the full period of their retirement. This type of uncertainty is inconsistent with the nation's retirement

70. CORPORATE PENSION PLAN STUDY, *supra* note 41.

71. Under conventional plans, which account for three-quarters of the Bankers Trust sample, most firms increased pensions by a stated percentage for each year of retirement. The most common figure was two or three percent, so that a person who retired in 1975 would have received an eight to twelve percent increase in his pension over the 1975-79 period. Other firms increased pensions by a flat percentage, usually ten percent. And some other firms simply increased benefits by a fixed percentage that depended on the employee's retirement date; for example, fifteen percent if he retired before 1966, ten percent if he retired between 1966 and 1970, and five percent if he retired between 1971 and 1975. Under pattern plans, an increase of a flat dollar amount or dollar increase for each year of service was most common. *Id.* at 52-55.

72. R. CLARK, S. ALLEN & D. SUMNER, INFLATION AND PENSION BENEFITS (final report under Dep't of Labor Contract No. J-9-P-1-0074, Aug. 1983); S. ALLEN, R. CLARK & D. SUMNER, POST-RETIREMENT ADJUSTMENTS OF PENSION BENEFITS (working paper No. 1364) (National Bureau of Economic Research, June 1984).

income goals as expressed by the White House Conferences on Aging and other groups.

CONCLUSION

ERISA successfully ameliorated many of the problems that existed in the private pension system. No longer do workers forfeit pension rights because of overstrict participation and vesting requirements, mismanagement of pension assets, or the termination of insufficiently funded plans. As a result of the legislation, more people covered by qualified pension plans now receive benefits.

The major goal of ERISA, to ensure the receipt of benefits, is fully consistent with the objectives of federal tax policy. The favorable tax provisions associated with qualified pension plans have sought to induce higher paid employees to adopt retirement savings plans that will also benefit the rank and file. IRAs provide the only exception in ERISA to generally accepted tax policy goals. Although Congress developed these accounts to expand the opportunity for tax-deferred saving, their lack of non-discrimination requirements has resulted in considerably greater usage among high-income than low-income workers.

The consistency of ERISA with national employment goals defies easy assessment, because the interests of individual employers and public policymakers diverge dramatically. For example, ERISA has probably encouraged earlier retirement by ensuring that more workers receive private pension benefits to supplement social security benefits. This outcome may be consistent with the preferences of employers, who established pension plans in large part to retire superannuated workers, but it may be inconsistent with public policy that would permit workers to postpone retirement. Similarly, more rapid vesting has probably increased mobility among workers with more than ten years of service. Greater mobility may increase macroeconomic efficiency, but the interest of the individual employer rests with retaining highly trained workers.

The main purpose of ERISA—to ensure the receipt of private pension benefits—fully comports with national retirement income goals. Social security benefits alone fail to maintain prereirement living standards for retirees at any income level; consequently, most individuals would experience a decline in their economic well-being upon retirement without supplementary private pension benefits. By ensuring that more workers covered

under a private pension plan receive the retirement benefits due them, ERISA has made progress toward the President's Commission on Pension Policy's recommended goal of fully replacing preretirement disposable income.

Most of ERISA's major provisions seem consistent with national goals, with the possible exception of IRAs and the effect of increased benefit security on retirement behavior. Inconsistencies between national goals and present pension policy arise over issues that ERISA did not address. For example, in the area of tax policy, ERISA failed to consider ways to ameliorate inequities created by the current integration guidelines or to explore alternatives to a totally employer-financed pension system. In employment policy, ERISA failed to address the erosive impact of inflation on the vested benefits of mobile employees and to consider ways to reduce the higher costs of employing older workers. The greatest failings of ERISA are in retirement income policy, where partial coverage, liberal integration guidelines, and lack of post-retirement indexing leave serious gaps in the nation's retirement system.

The major conclusion that emerges from the preceding analysis is that ERISA has proven extremely successful and has ameliorated many of the documented inequities in the private pension system. But some significant problems still remain, because Congress could not address all inequities in 1974. In addition, other concerns have become more pressing since the passage of ERISA, such as the effect of inflation on the value of benefits during work years and in retirement. The continuation of past problems and the development of new concerns indicate that, a decade after ERISA, the time may have arrived to formulate new pension legislation.

