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MPIfG Discussion Paper 14/12

Neoliberalism without Neoliberals

Evidence from the Rise of 401(k) Retirement Plans

Michael A. McCarthy

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MPIfG Discussion Paper 14/12
Max-Planck-Institut für Gesellschaftsforschung, Köln
Max Planck Institute for the Study of Societies, Cologne
July 2014

MPIfG Discussion Paper
ISSN 0944-2073 (Print)
ISSN 1864-4325 (Internet)

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Abstract

This paper considers the rise of defined-contribution (DC) pensions – such as 401(k) plans – in order to contribute to the debate about neoliberalism. It challenges the generalizability of two common accounts: the weak state intervention thesis, which argues that neoliberal policy change is driven by state retreat and deregulation, and the state-managed transition thesis, which argues that neoliberal policies are both enacted and managed through new regulations. In contrast, this paper argues that the development of the employer-based pension system between 1970 and 1995 is an instance of "neoliberalism without neoliberals." A battery of regulations was passed between 1974 and the late 1980s that were intended to make the traditional system of defined-benefit (DB) pensioning more secure. However, this legislation triggered a business shift to 401(k)s. The legislation worked in such a counterintuitive way because of three factors related to changes in "the balance of class forces" in American society: (1) new laws increased costs for firms, with small businesses being hit the heaviest, (2) employment in the manufacturing sector, labor's traditional stronghold, declined as a share of total employment, and (3) because unions were unable or unwilling to unionize emergent sectors of the economy, new businesses in them were not compelled to negotiate DB plans. In such a context, growing regulatory costs pushed many firms to adopt DC pensions for their employees. The outcome was a major policy shift, considered by many to be a defining feature of the neoliberal era.

Zusammenfassung

Als Beitrag zur Debatte um den Neoliberalismus befasst sich dieser Artikel mit dem Aufstieg der betrieblichen Altersversorgung auf Basis „garantierter Beiträge" (*defined contributions*, DC) in den USA, wie etwa der 401(k)-Rentenpläne. Er stellt zwei weitverbreitete Auffassungen hinsichtlich ihrer Allgemeingültigkeit infrage: zum einen die These des schwachen, in seinen Interventionsfähigkeiten begrenzten Staates, die besagt, der Politikwechsel hin zum Neoliberalismus werde durch den Rückzug des Staates und die Deregulierung vorangetrieben, und zum anderen die des staatlich gelenkten Übergangs, die behauptet, neoliberale politische Maßnahmen würden durch neue Regelungen in Kraft gesetzt und gesteuert. Demgegenüber legt diese Studie dar, dass die Entwicklung der betrieblichen Altersvorsorge zwischen 1970 und 1995 als ein Fall von „Neoliberalismus ohne Neoliberale" bezeichnet werden kann. Von 1974 bis in die späten 1980er-Jahre wurde eine Vielzahl von Regelungen verabschiedet, um das traditionelle Altersversorgungssystem auf Basis „garantierter Leistungen" (*defined benefits*, DB) sicherer zu machen. Doch lösten diese Gesetze vielmehr eine Umorientierung der Unternehmen zu 401(k)-Rentenplänen aus. Drei Faktoren im Zusammenhang mit den Veränderungen des „Kräfteverhältnisses zwischen den Klassen" in der US-amerikanischen Gesellschaft führten dazu, dass sich die Gesetze völlig anders auswirkten als erwartet. Erstens verursachten neue Gesetze Kostensteigerungen in Unternehmen, wobei Kleinbetriebe am stärksten betroffen waren. Zweitens sank der Anteil der Beschäftigung im produzierenden Gewerbe, einer traditionellen Arbeiterhochburg, an der Gesamtbeschäftigung. Und drittens konnten oder wollten die Gewerkschaften junge Wirtschaftssektoren nicht gewerkschaftlich organisieren; neue Unternehmen in diesen Bereichen waren nicht zur Aushandlung von Altersversorgungsplänen auf Basis garantierter Leistungen verpflichtet. In einem solchen Kontext wurden viele Betriebe durch die steigenden regelungsbedingten Kosten dazu gedrängt, für ihre Mitarbeiter eine Altersversorgung auf Basis garantierter Beiträge einzuführen. Die Folge war ein Politikwechsel von großer Tragweite, den viele als ein prägendes Merkmal der neoliberalen Ära ansehen.

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Neoliberalism without Neoliberals: Evidence from the Rise of 401(k) Retirement Plans

1 Introduction

George W. Bush began his second term as president by calling for a retrenchment of America's Social Security program. On January 20, 2005, in his Second Inaugural Address he declared:

> To give every American a stake in the promise and future of our country, we will … build an ownership society. We will widen the ownership of homes and businesses, retirement savings and health insurance – preparing our people for the challenges of life in a free society. By making every citizen an agent of his or her own destiny, we will give our fellow Americans greater freedom from want and fear, and make our society more prosperous and just and equal. In America's ideal of freedom, the public interest depends on private character – on integrity, and tolerance toward others, and the rule of conscience in our own lives. Self-government relies, in the end, on the governing of the self.

How did the Bush administration intend to achieve an ownership society? In part, it pushed to incorporate elements of the employer-based 401(k) system into Social Security to partially privatize it. Under the administration's leading proposal, eligible citizens would choose from a range of investment options once the money in their Social Security funds reached a certain threshold. If those investments reaped windfalls, they could draw on them. But there was a catch. Workers alone would face the risk of loss if the investments failed. In the end, however, the administration could not garner enough support for the reform, and as a result, House Republicans left it out of the legislation they rolled out in the summer of 2005.

Both the public and scholarly debate about retirement security in America has centered on the issue of Social Security. Long considered the "third rail" in American politics, it is a hot-button issue that generates an almost semi-annual outpour of commentary when politicians consider program cuts. However, employer pensions, America's second tier retirement system, have received less attention. Employer pensions account for a significant percentage of total retirement savings in the United States. In 2009, 45.1 percent of retirement income was attributable to occupational pensions, a figure well

The Max Planck Institute for the Study of Societies proved a wonderful place to produce this discussion paper. There Helen Callaghan, Alexander Spielau, Francesco Boldizzoni and Martin Höpner provided useful help on the most recent draft. I also benefitted from conversations about the work with Wolfgang Streeck and Thomas Paster. In addition, several others read earlier versions when I began the project at New York University. Fred Block, Jeff Goodwin, Jeff Manza, Aaron Major, and the participants of the Economic and Political Sociology Workshop all weighed in, Barry Eidlin helped locate data, and Matt Nichter suggested the title. Finally, the archivists at the George Meany Memorial Archives and the Hagley Library were particularly helpful for navigating the historical records.

above the OECD average of just 19.5 percent (OECD 2009). Moreover, the numerous proposals considered by the Bush administration that aimed to fully or partially replace the guaranteed benefits provided by Social Security with personal retirement accounts are analogous to a change that occurred within the system of employer pensioning in the 1980s, when 401(k) plans gained popularity.

401(k) retirement plans, a type of defined-contribution (DC) pension, do not guarantee retirement benefit levels like their historical predecessor, defined-benefit (DB) plans. Instead, in DCs, the beneficiaries are responsible for making smart investment choices that will create a nest egg large enough to adequately supplement the retirement income they earn from Social Security and personal savings. The net effect of this shift toward DC plans is to allocate more risk to employees and less to employers (Munnell/Sundén 2004).

The emergence of 401(k)s is one instance among many policy changes in the 1980s that shifted risk onto workers and the middle class. This paper explores their rise to contribute to the debate about neoliberal policy change. Two perspectives can be drawn out of the research about how neoliberal policies in the period came to be. The first view characterizes neoliberal change as simply the advance of the market and the retreat of the state. Here, ideologically driven policy makers deliberately weaken the state's regulatory capacity, as occurred when Ronald Reagan cut the operating budget of the Environmental Protection Agency. In doing so, neoliberals allow markets to govern the distribution of goods that were once regulated or public. I call this the weak state intervention thesis. More recent research argues the second view that, while the neoliberal ideology emphasizes free markets, in practice neoliberalism is a state-managed project that actually entails forms of reregulation intended to broker in a more marketized system. I call this more nuanced perspective the state-managed transition thesis.

Yet the developmental path taken by American 401(k)s is inconsistent with both the weak state intervention thesis and the state-managed transition thesis. Firstly, there were *more* rules being imposed on private pensions in the period, not fewer. Secondly, these rules were *not intended* by neoliberals to spur privatization. Instead of being state-managed, the emergence and rise of 401(k)s was unintended by the policy makers in power at the time and in part a result of legal institutions that were established when unions were strong. Because it happened behind the backs of policy makers, the growth in the number of 401(k)s is an instance of neoliberalism without neoliberals. Regulatory agencies, seeking both to bolster the security of the DB system and to undermine unions with administrative control of their pension plans, unleashed a torrent of legislation between 1974 and 1993. In the context of the increasing administrative costs of DB plans, a growth of small firms in the service sector and a decline in goods-producing industries, and the weakening of the labor movement, employers shifted into the DC system. While neoliberal policy makers mattered, they mattered in spite of their intentions, which were motivated in part to use stronger regulations to crack down on

unions. In the case of 401(k)s, neoliberalism occurred as a business reaction to both increased regulatory costs, deeper changes in the country's employment structure, and a weakened labor movement.

2 Studying pension marketization

This article draws on archival data to explore the shift from DB pension plans to DC pension plans in the United States. I use materials from unions, businesses, and congressional committees. In particular, I draw heavily from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) unprocessed files that are housed at the George Meany Memorial Archives. I also draw from the materials of the country's key business associations: the United States Chamber of Commerce (USCOC), the National Association of Manufacturers (NAM), and the National Industrial Conference Board (NICB), the premiere employers' research institution. These materials are housed at the Hagley Library. In both instances the materials included subcommittee reports, memoranda, studies related to pensioning, letters, speeches, literature, and congressional testimony.

I used two analytical strategies to make sense of the shift toward DC plans. Firstly, I chronicled the most important pension legislation passed between 1974 and 1996 and drew on archival documentation to understand how businesses, unions, and policy makers reacted to the new regulatory rules. Did they support it? Did it adequately deal with past problems in the pensioning system or did it create new ones? Secondly, I drew on existing statistical data compiled by economists in the 1980s and 1990s to show how these regulations actually worked to push employers into the DC system. I considered firm size, whether a firm was in the manufacturing, service or another sector of the economy, and whether the firm was unionized or not. Relying on studies that use IRS filing Form 5500, I show that smaller firms (which bore a larger regulatory burden in terms of administrative costs) in newer service industries, which were nonunion, adopted DC plans at much higher rates than their counterparts. This suggests that the argument that new regulations alone incentivized firm exits from DB plans into DC plans needs to be given greater nuance. Instead, this exit incentive was mediated by the "balance of class forces" because in the sectors of the American economy where unions remained strong, the DB system was more durable. In the liberalization of the American pension system, regulations mattered. How they mattered depended on the relative strength of business and labor in the particular firm.

3 States and neoliberalism

The research on neoliberalism is clustered around two distinct lines of inquiry. One line asks why policy makers, both in advanced democracies and less developed countries, embraced an ideologically driven liberalization agenda in the 1980s and the 1990s. Why, in other words, did "market fundamentalism" emerge as the dominant policy-making paradigm, and what gave it such durable staying power (Block/Somers 2014; Bourdieu 1998; Fourcade-Gourinchas/Babb 2002; Somers/Block 2005)? Scholars in this research vein identify several causal factors. The neoclassical perspective, advocated by government agencies and state actors themselves, argues that the break with Keynesianism was the result of structural shifts in the global economy that made neoliberal policy ideas not only inevitable, but also desirable (Boix 2010). Critics also adopt this account by pointing to the policy imperatives of globally integrated production and financial markets (Callinicos 2001). Others point to the role of ideas themselves and identify how moral imperatives were linked up to the value of competition (Amable 2011). When monetarists came to occupy key state agencies and political posts, they made decisions guided by the efficient market hypothesis (Babb 2009). Neoliberalism, as a set of policy ideas, then came to radiate out of the United States' superior geopolitical position (Blyth 2007; Bourdieu/Wacquant 1999) and was diffused globally in the 1990s (Dobbin et al. 2007; Henisz et al. 2005).

Finally, another perspective identifies the core cause in power relations, namely the business offensive in the late 1970s (Brenner 2006; Duméneil/Levy 2004; Piven/Cloward 1997) and the breakdown of the so-called labor capital accord formed in the postwar period (Glyn 2006; Harvey 2005). Here, neoliberalism was the state-led restoration of class power. In this story, states acted both in coordination with and on behalf of emerging constituencies of business such as large capital (Fairbrother 2007), finance (Krippner 2011; Verdier 2002), and business associations like the NAM, the USCOC, and the Business Roundtable (Hacker/Pierson 2011).

Regardless of the ultimate cause of the rise in this ideology, most agree that free market views were locked in place with a set of policies dubbed the "Washington Consensus" (Williamson 1990). In America, transportation was deregulated as early as the 1970s under the Carter administration, and deregulatory measures, which sometimes took the form of re-regulatory policies, accelerated rapidly in the 1980s under the Reagan administration (Albo 2002; Brenner 2006; Harvey 2005; Krippner 2011). Social scientists tend to agree that this policy trend dismantled and suppressed extramarket forms of economic coordination (Amable 2011). Taken together, the neoliberalism of the period can be considered a repertoire or package of policies with six long-term aims: privatization, liberalization, separation of regulatory authority, the depoliticalization of regulatory authorities by insulating them from political influence, the favoring of monetary policy over fiscal policy, and the departure from a *dirigisme* approach where investment is subject to the winds of politics (Mudge 2008: 718; Cateno/Cohen 2012).

But another causally and historically distinct question remains: Once this ideology comes to dominate policy making, putting neoliberals where there were once Keynesians, how do neoliberal policies themselves come to be constructed and enacted? Here scholars tend to support one of two views. The first, which I term the *weak state intervention thesis*, is the default view. It presupposes a state versus market dichotomy and argues that the primary modality of neoliberal change is the advance of the market and the retreat of the state beginning around the time Reagan took office in 1980. In this view, neoliberalism is driven by market-oriented policy makers who deregulate, privatize, and marketize distributive processes historically under public direction or weaken the capacities of the state's regulatory agencies to do their job (Harvey 2005; MacEwan 2000). This view suggests that the state's role has been to remove rules to let competition work things out through the dull compulsion of the market.

However, a second perspective, which I term the *state-managed transition thesis*, characterizes neoliberalism as a political project that entails major forms of reregulation (Crouch 2011; Krippner 2007; Major 2012; Panitch/Gindin 2012; Vogel 1996). These scholars still contend that the core outcome of neoliberalization is the dissolving of collective goods and the shifting of risk onto individuals. But in this view, neoliberal policy makers create new rules to manage marketization instead of simply weakening the role of the state. In this process, scholars suggest that neoliberalism is state managed and rife with dilemmas and contradictions that have to be overcome through active political intervention (Krippner 2007). Far from withering the state away as the weak state intervention thesis predicts, "freer markets" has meant "more rules" in this perspective (Vogel 1996).

The American puzzle

Pension privatization in America, the rise of DC plans in general and 401(k)s in particular, appears peculiar in the historical narratives offered in both the weak state intervention thesis and the state-managed transition thesis. DC pensions increased, both in the number of plans and the number of workers covered, in the late 1970s and 1980s, a context in which state regulation over the pension system was *increasing* not decreasing. Furthermore, these laws were *not intended* to broker in a marketized retirement system. Instead, for somewhat peculiar reasons, regulatory agencies, often staffed with neoliberal policy makers, passed laws that imposed heavier regulations on the traditional pension system that were intended, in part, to make it more secure. Moreover, a section of the labor movement, far from being marginal in this process, was quite active in pushing for and expanding these regulations.

To understand the rise of the DC pension system, one needs to understand how policies function relative to the "balance of class forces." In the American case, increased pension regulations might have made the pension system more secure had unions been strong enough to defend and expand the existing DB system. However, unions were not. In the

same period that they were lobbying congressional committees for a more robust regulatory regime to govern DB plans, their membership was hemorrhaging. In a context of a weakening labor movement, the increasing regulations and the larger administrative costs for employers with DB plans accompanying such regulations only created incentives for firms to exit and for new firms to adopt DC plans instead.

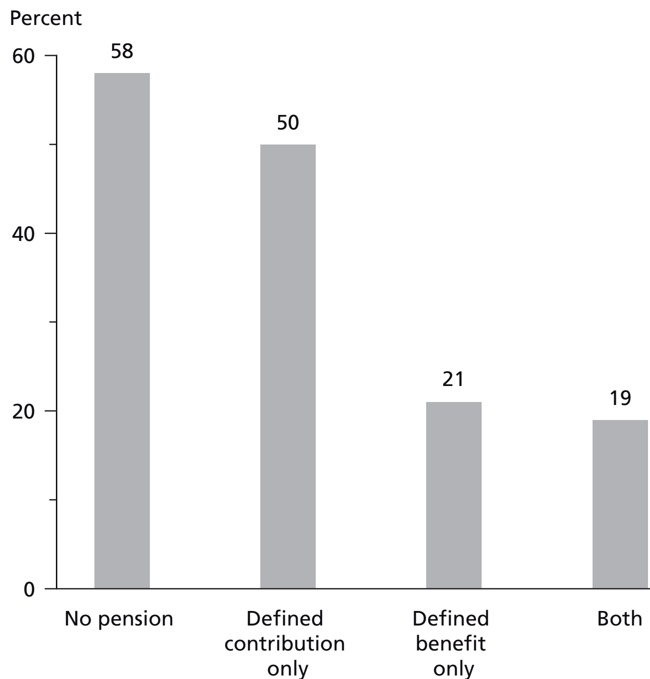
4 The ABCs of DBs and DCs

Employer retirement programs come in two broad types: DBs and DCs. In a DB plan, the employee's pension benefit is preset by a formula that takes into account years of employment and, typically, salary or wage levels. In a DC plan, participating employees have a retirement account into which the employer contributes on a regular basis. If the program is designated as "contributory," the employee pays into the fund as well. In DC plans, benefit levels are not guaranteed but instead depend on the total investment earnings in the account at the time the employee retires.

DB and DC plans allocate risk to employers and employees quite differently (Bodie et al. 1988). An employee that qualifies for a DB plan will get a set income flow until her or his death. In a DC plan, however, more decision-making authority is given to plan participants to determine the retirement income. The worker chooses from a limited number of investment options and gains access to the accumulated savings upon retirement. The critical difference in risk allocation is that an employee that is covered by a DB plan will accumulate a specified entitlement that is backed by both federal law and federal insurance. A DC plan, by contrast, produces a retirement income that is determined by the employee's strategic investment choices and the state of the stock market at the time of retirement. As a result, participants in DC plans are at a much greater risk of having lower replacement rates (retirement incomes relative to preretirement earnings) during their retirement years than those with DB plans. Figure 1 reports calculations of the National Retirement Risk Index (NRRI) prior to the crash in 2008. The NRRI compares replacement rates for households in that year with the rates that would allow them to maintain their working-life standard of living and calculates the risk of falling short: the higher the index, the higher the risk of not being able to maintain their preretirement standard of living by pension type. Recalculations of the NRRI in 2012 showed a substantial increase in risk for future retirees after the 2008 crash (Munnell/Webb/Golub-Sass 2012).

Prior to the 1980s, DC plans were marginal in the employer pension system, typically being reserved for higher paid employees. After unions won collectively bargained DB plans in the postwar period, such plans quickly became the norm and spread to non-unionized sectors (McCarthy 2014). In the context of neoliberal restructuring in the 1980s, this arrangement broke down. By the early 1990s, the number of participants in DB and DC plans was evenly split, and by the 2000s, DC plans had clearly become the private retirement vehicle of choice (see Figure 2).

Figure 1 National retirement risk index by pension coverage, 2004



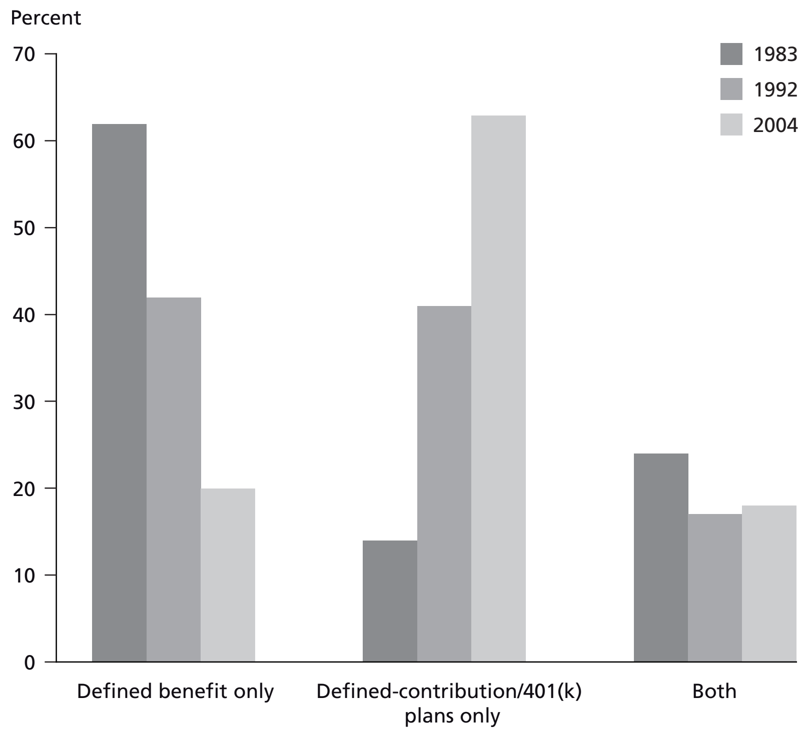
Source: Munnell/Webb/Delorme (2006).

401(k)s are a type of DC plan. In 1978, they were named after a section of the US Internal Revenue Code that concerns bonus payments. The (k) section was inserted into the code to allow employers to offer a deferred profit-sharing bonus that would go untaxed until the point of payment. Like all DCs, the money is put into a fund where it is invested. Employees select between several stylized asset allocation combinations offered by fund fiduciaries. These can include short-term portfolios that invest in the money market, income portfolios that invest in bonds and mortgages, growth portfolios that invest in equities, or other portfolios that combine these approaches in different ways.[1]

401(k) plans were nonexistent before 1981. They rapidly grew, however, during the 1980s and 1990s. In 1984, they represented just 3 percent of all private plans and 4 percent of all DC plans. By 1998, those values were 41 percent and 45 percent, respectively (see Figure 3). Similarly, as a percentage of all plan participants in both DB and DC plans, 401(k)s grew from 12 percent in 1984 to 51 percent in 1998. For just those participants in DC plans, 401(k)s grew from 25 percent in 1984 to 74 percent in 1998 (EBRI 2002).

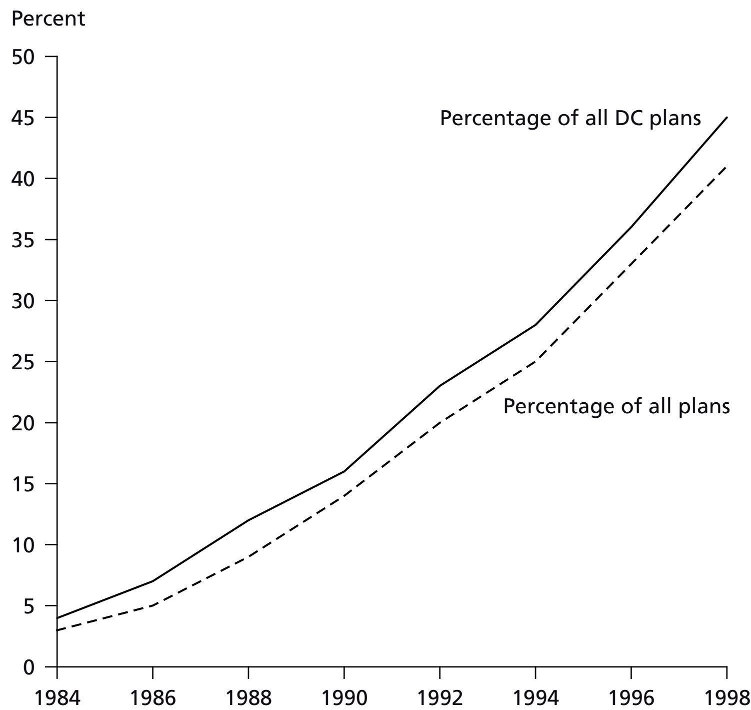
1 Employers often encourage employees to invest in the stock of the sponsoring company. In the early 1990s, 23 percent of 401(k) assets were invested in the sponsoring firm, 32 percent in GICs (Guaranteed investment contracts; Blackburn 2002: 107).

Figure 2 Percentage of workers with pension coverage by type of plan, 1983–2004



Source: Munnell/Sundén (2006).

Figure 3 401(k) trends



Source: EBRI (2002).

401(k)s and business preferences

The shift toward 401(k)s specifically, and DC plans more broadly, was consistent with the vision of retirement income promoted by America's largest business organizations, which emphasized individual savings. In multiple conferences and reports by business associations such as the USCOC and NAM in the postwar period, American firms promoted "old-fashioned, individualistic thrift" and "old-fashioned, individualistic insurance."[2] In 1947, the Chamber argued that

> the primary responsibility for providing against the hazards of old age must rest with the individual. In our American system, this is a powerful incentive for personal thrift and savings, for the sane and orderly planning of our lives; a powerful incentive for home ownership, for investment, for insurance, and for working and striving to ever improve our standard of living.[3]

A decade later, despite collectively bargained gains that made DB plans the norm, these organizations pursued the same goal. According to an internal report produced by NAM's Employee Health and Benefits Committee in 1958, "utmost consideration should be given to incentives for individuals to provide for their own security in old age."[4] In the same year, the USCOC held a large conference that included leaders of industry and prominent American academics all eager to tackle the issue of retirement security. From the Chamber's perspective, its main aim was to develop momentum for a national shift toward individual planning for retirement.[5]

DC plans do not rely exclusively on individualized thrift strategies, but compared to the alternative, DB plans, they greatly reduce the financing burden on employers and shift risk onto individuals.[6] So, short of being able to achieve their real goal of a personal savings-based system, business strategically preferred DC plans relative to the DB standard (cf. Paster 2013). Firstly, DC plans are much easier to administer because contribution rates are clearly defined and the benefits are in plain view. Secondly, only DB plans generate liabilities for plan sponsors that increase their default risk – the risk that the plan won't have enough assets to pay out the benefits to retirees. Employers with DC plans are not saddled with the obligation of paying pension benefits throughout the lifetime

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2 Richard R. Tryon, Management Policy Research Associates. "Report on Pensions." 1949. NAM Collection, Series 1, Box 75. See the reference list for more about the four archival collections cited in this paper.

3 Conference on Employee Pension Plans. "Conference minutes." July 9 and 10, 1947. USCOC Collection, Series 3, Box 6, Employee pension plans folder.

4 Employee Health and Benefits Committee. NAM. "A Fresh Look at Retirement Security." March 1958. NAM Collection, Series 1, Box 274.

5 National Conference on Individual Planning for Retirement. "Conference minutes." October 2, 1958. USCOC Collection, Series 4, Box 4.

6 Neal F. Healy. "Clinging to Defined-Benefit Pensions Is Poor Policy." *The Wall Street Journal*, Letters to the Editor. September 9, 1982. AFL-CIO Collection, 87-0011, Box 2. Unprocessed files.

of an employee. Finally, they are flexible. In most cases, tax-sheltered savings benefits, including 401(k), profit-sharing, and thrift plans, can be transferred when employees move from one company to the next.[7]

Yet for employees, DC plans create large information problems and payout risks (Ghilarducci 1992: 79). In DB plans, workers know exactly what their benefits will be when they retire. In DC plans, they don't. Instead, retirement income depends on two factors: investment decisions and the market. An article in *Business Week* in 1989 noted that "instead of faceless managers deciding how pension funds get invested, employees choose their own course."[8] Yet economists have shown that employees are generally much more averse to risk than employers when thinking about pension financing, leading to smaller retirement accounts in the long run (Bodie et al. 1987). Even if employees invest by the book, their retirement income will be smaller if they retire in a bear market than if the choice to begin retirement had taken place during a bull market. In a DB plan, an employee's retirement benefits are not subject to reduction if there is turbulence in the stock market (Clowes 2000: 16; Munnell/Sundén 2004).

5 Complicating the rules

The passage of new regulations is a key dimension of the neoliberal shift in retirement security toward DC plans. Since at least the Taft–Hartley Act in 1947, the private pension system has been embedded in a complex legal regime. For the most part, the main aim of the law was to incentivize the adoption of DB plans by offering generous tax deductions for participating firms. Yet in 1974, the Employee Retirement Income Security Act (ERISA) radically revised the rules of the game. ERISA is a comprehensive law that governs all aspects of employer pensioning. After ERISA, a wave of legislation passed through Congress, solidifying its rules and expanding its scope. Taken together, these regulations on the whole have concerned DB plans to a far greater extent than DC plans (Clark/McDermed 1990; Hustead 1998). See Table 1 for a chronological list of pension regulations, what type of plan the legislation effected, and what the legislation actually did.

Prior to the establishment of ERISA, the Internal Revenue Code was the main way the state managed employer benefits. As early as 1914, at the height of welfare capitalism, Congress established favorable tax treatment of retirement plans to encourage their expansion.[9] In actual practice, Treasury officials allowed employers to deduct contribu-

7 Greg Burns. "The Perils of Pensions." *Mature Outlook.* April 1988. AFL-CIO Department of Legislation. AFL-CIO Collection, 1994-0224, Box 9. Unprocessed files.

8 "The New Breed of Pensions That May Leave Retirees Poorer." *Business Week.* November 6, 1989. AFL-CIO Department of Legislation. AFL-CIO Collection, 1994-0224, Box 11. Unprocessed files.

9 Welfare capitalism is "any service provided for the comfort or improvement of employees which was neither a necessity of the industry nor required by law" (Brandes 1970: 5). It refers to em-

Table 1 Main legislation regulating pensions, 1921–2001

Year	Legal change	Coverage type	Impact on pensions
1921	Internal Revenue Code	All plans	Established tax incentives for plan adoption
1942	Internal Revenue Code	All plans	Established rules against discrimination
1947	The Taft–Hartley Act	All plans	Limited union administrative control, made ME plans joint control
1958	Federal Welfare and Pensions Plans Disclosure Act (amended 1962)	All plans	Established rules about information disclosure to beneficiaries
1974	Employee Retirement Income Security Act	All plans	Changed vesting, funding, information disclosure, fiduciary duties, and investment guidelines
1976	Tax Reform Act	All plans	Changed tax deductibility requirements
1978	Revenue Act	All plans	Established the 401(k) option
1980	Multiemployer Pension Plans Amendment Act	ME plans	Insured ME plans under the PBGC
1981	Economic Recovery Tax Act	All plans	Expanded provisions for ESOPs
1982	Tax Equity and Fiscal Responsibility Act	All plans	Imposed penalties on top-heavy plans
1984	Retirement Equity Act	All plans	Required joint-and-survivor annuity as the default annuity
1986	Tax Reform Act	All plans	Established minimum coverage and nondiscrimination tests, redefined "highly compensated employee," changed minimum vesting standards, and new integration rules
1986	Single-Employer Pension Plan Amendments Act	SE plans	Raised insurance premiums to deal with PBGC deficits
1987	Pension Protection Act	DB plans	Increased minimum funding requirements, reduced maximum tax deductible contribution, and raised PBGC premiums
1996	Small Business Job Protection Act	All plans	Liberalized and simplified nondiscrimination standards
1997	Taxpayer Relief Act	Public plans	Exempted government plans from nondiscrimination standards
2001	Economic Growth and Taxpayer Relief Reconciliation Act	All plans	Raised pretax contribution limits for most plans

Notes: ME=multi-employer pension funds; PBGC=Pension Benefit Guaranty Corporation; ESOP=employee stock ownership plan; SE = single employer.

tions to retirement plans beginning in 1921, and in 1942 more changes were made to prevent discrimination in plan coverage (Howard 1997: 55). In 1947, the Taft–Hartley Act established rules governing the allotment of employer and union seats on the boards of trustees of the multiemployer pension funds (noted in the table as ME). A decade later, the Federal Welfare and Pension Plans Disclosure Act of 1958 established rules on disclosing information about the plan to plan participants. However, the act was largely a failure.

ployers' voluntary provision of nonwage benefits, greater employment security, and employee representation.

Business groups opposed the bill, arguing that the behaviors that Congress was trying to minimize were largely confined to union-run, multiemployer plans instead of the single-employer plans that represented the larger amount of participants. As pension expert Dan McGill writes, "To persuade the business community to accept application of the law to all employer plans, investigative and enforcement powers originally intended for the Department of Labor were removed" (McGill et al. 2005: 82).

Firms faced relatively small operating costs prior to ERISA. In fact, most of the postwar legislation concerning the pension system was passed with business interests in mind by providing tax incentives for firms with plans. But ERISA's passage in 1974 established a comprehensive and complicated set of regulations to govern the administration of the plans, and subsequent changes in the law only complicated it further. In the following, I explore the regulations that govern pensions. In particular, I will consider the regulatory costs imposed on those that design, administer, and provide services for plans, and the incentives, usually through the tax code, that make private plans attractive to sponsors. I show how regulations and taxation policies developed, how they distributed administrative costs to smaller firms, and who supported and resisted them.

The politics of pension regulation

Although ERISA was passed in 1974, some of its core provisions had been debated since the Eisenhower administration when policy makers put forward draft versions of it. Unlike other pieces of legislation, such as the Taft–Hartley Act, businesses and unions were never neatly divided over it. There was just as much division within labor and business as there was between them (Wooten 2004). In multiemployer plans, unions retained more administrative control and therefore resisted regulations because of potential costs they would incur. Unions that sponsored multiemployer plans were generally hostile to the legislation.[10] These included the Garment Workers, the Textile Workers, the Teamsters, the Mine Workers and various building and construction trades unions, among others. In single-employer plans, the opposite was true. Unions such as the United Auto Workers and the United Steel Workers were the most vocal advocates for increased regulations on the pension system, while employers in these industries most staunchly resisted them (McCarthy forthcoming).

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10 Either the union bargains directly with single, large employers on behalf of the employer's employees, or bargaining is industry-wide, between many small employers and the union-represented employees of an industry. In the former case, *single-employer* pension plans are the norm. Here fund management is the responsibility of one firm and one union. In the latter case, *multi-employer* plans emerge. Here fund management is the responsibility of many small employers and one, typically large, union.

After President Kennedy created The President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs in 1962, it recommended regulatory reforms such as federal minimum vesting and funding standards to ensure that plan participants would receive their benefits. At the time, Anthony Boyle, president of the United Mine Workers union, argued that "the proposed report to the President is based on the erroneous concept that Government specification of standards in private pension plans can be mandated by public law to a similar extent that such standards are fixed by law in public pension plans." The United Mine Workers primarily relied on multiemployer pension plans. Even George Meany, president of the AFL-CIO, objected to vesting and funding requirements for multiemployer plans when it was suggested by Kennedy's committee because of the division it would create within the federation between unions with single-employer plans and those with multiemployer plans (Wooten 2004: 109). The proposal triggered significant opposition from businesses as well, primarily those with single-employer plans that bore the administrative burden (Wooten 2004; McGill et al. 2005: 84). However, those unions that relied on single-employer plans, such as the United Auto Workers and the United Steel Workers, actively supported the legislation and continued to make it a priority in the congressional committees where they testified.

With another flurry of congressional interest in pension reform, this division arose in the public debate once again in 1967. That year the AFL-CIO Executive Council drafted a policy that opposed pension reform. According to ERISA scholar James Wooten,

> [i]n a collectively bargained single-employer plan, the union usually played little or no role in plan administration. This made pension reform the employer's problem. In a multiemployer plan, the union usually controlled the plan administration, so pension reform was the union's problem. The difference between single-employer and multiemployer plans explains why much of the analysis in the draft policy statement might have come from the Chamber of Commerce or the National Association of Manufacturers. (2004: 140)

In fact, it was so rare for a multiemployer plan to support increased pension regulations that when the United Brotherhood of Carpenters and Joiners of America decided to prior to the passage of ERISA, Bert Seidman, director of the AFL-CIO Department of Social Security, made a special note of it in congressional testimony, saying, "To my knowledge this is the first time that a building trades union has endorsed vesting and funding standards."[11]

Despite opposition from the unions with multiemployer plans, however, the interests of single-employer unions came to dominate the AFL-CIO by the 1970s. When pension reform was debated again during that decade, the federation leadership supported it.

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11 James F. Bailey, Legislative Advocate, United Brotherhood of Carpenters and Joiners of America. "On H.R. 2 and H.R. 462 Pension Reform Bills." General Subcommittee on Labor of the Committee on Education and Labor US House of Representatives. March 6, 1973. AFL-CIO Department of Legislation. AFL-CIO Collection, Box 38, Folder 37.

Initially, in 1973, when the legislation was making its way through the House, multiemployer unions again tried to hold it up. But the standoff broke when the United Steel Workers threatened a "reevaluation of its position as an affiliate of the AFL-CIO" if the legislation was not supported by the federation as a whole. Under the threat of a federation split, AFL-CIO President George Meany was spurred to inform Congress that the AFL-CIO supported the bill (Wooten 2004: 230-233).

ERISA was signed into law in 1974 by President Ford. In a meeting over pension regulation in the early 1980s, unions in the AFL-CIO Department of Legislation agreed that the best way to make the pension system more secure was to tighten and expand the rules, and time after time during the decade they mobilized their political power to do so.[12] Lawrence Smedley, director of the Department of Occupational Safety, Health, and Social Security said in 1987 that "like most laws, it is not perfect. Though we are dissatisfied with a number of its provisions and with some aspects of its administration, we still feel the law is beneficial and support its basic provisions."[13]

ERISA established a comprehensive package of federal minimum standards for employer-provided pension plans. While it does not make employer pensions mandatory, those companies that do adopt them must meet certain requirements concerning information disclosure about plan features and funding, fiduciary standards for asset investments that include transaction prohibitions, minimum standards for participation, and vesting and funding standards. It also guarantees a payment of certain retirement benefits through the Pension Benefit Guaranty Corporation (PBGC), a federally chartered corporation, if a DB plan is terminated by the sponsoring employer. Since its passage, ERISA has become "one of the business community's worst regulatory headaches."[14]

Somewhat unintentionally, ERISA mobilized businesses to become more involved in issues related to pensioning because of the costs it imposed on them. The USCOC, NAM, the American Council of Life Insurance, and the American Bankers Association all increased their involvement in policy discussions after its passage. Led by the National Federation of Independent Business, an association that represents small businesses, they lobbied to roll back many of the regulations ERISA put on the private system (Howard 1997: 133).

12 AFL-CIO Department of Legislation. Memo on ERISA. February, 3 1983. AFL-CIO Collection, 1984, Box 4. Unprocessed files.

13 Statement by Lawrence T. Smedley, Associate Director AFL-CIO Department of Occupational Safety, Health and Social Security. At the Joint Hearings of the Senate Subcommittee on Labor and the House Subcommittee on Labor Management Relations on Administration Proposals for the Funding and Termination of Defined Benefit Pension Plans. March 24, 1987. AFL-CIO Department of Legislations. AFL-CIO Collection, 1994-0224, Box 11. Unprocessed files.

14 Diane Hal Gropper. "The Ordeal of Jeffrey Clayton." *Institutional Investor.* August 1982. Social Security Department. AFL-CIO Collection, 85-0036, Box 1. Unprocessed files.

Business countermobilized against the rules because ERISA requires a large commitment of their resources to administrative and technical matters that concern their DB pension plans. Many firms threatened that they would stop offering pensions to their workers altogether if the legislation remained intact. According to business testimony at the Department of Labor (one of the agencies in charge of enforcing ERISA), "The question … is whether the rules can be simplified and even in some cases eliminated in order to reduce the possibility that employers will decide not to adopt qualified plans or even to terminate plans that they have been maintaining."[15]

Even prolabor politicians, although they supported tightening the regulations, acknowledged the problems that ERISA generated in the years after its passage. According to congressional testimony from Claude Pepper, a Florida Democrat and chairman of the House Select Committee on Aging,

> [m]any of the problems associated with the funding of retirement benefits are related to the nature, operation, and regulation of a defined-benefit plan under [ERISA]. This involves not only the organic provisions of this law but the regulation and enforcement of the federal agencies, the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation, which administer the provisions of ERISA and the Internal Revenue Code which apply to employee pension benefit plans.[16]

ERISA's provisions

ERISA contains five core areas of concern for businesses, unions, and future retirees. Firstly, the law establishes disclosure provisions that vastly strengthen the ineffectual ones included in the Federal Welfare and Pensions Plans Disclosure Act. Under these rules, plan sponsors must report much more detailed information about their funds' investments to the Department of Labor, who with the IRS is in charge of overseeing the vesting and funding provisions (Brooks 1975: 11). Almost immediately, firms and business associations came out in opposition of the so-called "paperwork burden," and many reported a "deeply felt hostility to paperwork requirements."[17] This was costly for

15 Andrew H. Cox, Esq. "The Impact of ERISA and Related Legislation on the Development of Private Retirement Plans." The Department of Labor ERISA Advisory Council on Employee Welfare and Pension Benefit Plans. March 15, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

16 Claude Pepper, Chairman. "Briefing on Problems in Pension Funding and Guarantees." June 7, 1982. House Select Committee on Aging. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011 Box 2. Unprocessed files.

17 Michael S. Gordon. "Policy Forum: Reflections on Selected Issues of Private Pension Regulation." *National Journal.* August 11, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

business in terms of both time and expenses.[18] Its passage resulted in "strenuous efforts to eliminate or curtail reports, simplify them for small plans, and remove certain annual audit requirements."[19]

Secondly, ERISA's section 404 (1)(a) requires that pension fund fiduciaries manage a plan "for the exclusive purpose of providing benefits to participants." Although this principle was not entirely new, the act heightened the awareness of those likely to assert complaints about plans sponsors and increased the capacity of the aggrieved to formally make them. This increased employer liability by easing jurisdictional and procedural access to courts, broadening court remedies to violations, giving courts discretionary authority to award litigation costs, making fiduciaries personally liable, and making plan operations more visible through disclosure provisions.[20] Like those above, these rules have been criticized as being too restrictive by business and those in the pension community.[21]

Thirdly, ERISA established the PBGC, which guarantees against losses in DB plans (but not DC plans) that are terminated. This termination insurance created a regulatory dilemma. For employers remaining in the DB system, ERISA uses insurance premiums that sponsors have to pay to the PBGC to subsidize unfunded plan benefits that solvent employers could afford to fund more generously. According to a corporate fund manager at the time,

> [e]fforts to make the regulatory structure more equitable by expanding an employer's post-withdrawal or post-termination funding responsibilities – the former in the case of the multi-employer amendments of 1980, the latter in the case of the proposed single employer insurance legislation – make defined benefit plans considerably less attractive to employers.[22]

Fourthly, the law prohibits certain kinds of transactions. In particular, it imposes restrictions on sales, exchanges, lending, or furnishing of goods and services between the plan and parties of interest such as the sponsoring employer, the union, or the plan fiduciaries. For instance, it restricts plans from investing in the stock of the sponsoring

18 Andrew H. Cox, Esq. "The Impact of ERISA and Related Legislation on the Development of Private Retirement Plans." The Department of Labor ERISA Advisory Council on Employee Welfare and Pension Benefit Plans. March 15, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

19 Michael S. Gordon. "Policy Forum: Reflections on Selected Issues of Private Pension Regulation." *National Journal.* August 11, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

20 Jeffrey D. Mamorsky and Lee T. Polk. "Indemnification and Fiduciary Liability Insurance." *Pension World.* August 1976. AFL-CIO Social Security Department. AFL-CIO Collection, 85-0036, Box 1. Unprocessed files.

21 Michael S. Gordon. "Policy Forum: Reflections on Selected Issues of Private Pension Regulation." *National Journal.* August 11, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files. .

22 Ibid.

company. However, it does not completely prohibit it: plans can invest up to 10 percent of their assets into the sponsor's stock (Brooks 1975: 55–6). This is illustrative of the complexity of the rules. Furthermore, with most plans, lawyers spend the majority of their time on transaction rules, which makes it a costly aspect of the code for plan administrators.[23] Since no one has the perfect formula for regulating conflicts of interest, regulators err on the side of extra safeguards. Although the business community has expended significant effort to soften prohibited transaction rules, its efforts were unsuccessful throughout the 1980s.

Finally, ERISA imposes minimum funding requirements on DB plans (by their nature, DC plans are always fully funded and are therefore not subject to these rules). These mandate that employers contribute the normal costs of the plan plus amortization of past service liabilities into a "funding standard account." Every year, the employer is required to contribute the necessary amount to achieve a targeted fund value. Before the enactment of ERISA, only minimum funding rules existed. For those employers with underfunded plans, these new rules were an unwelcomed change. As a result, many participants lost their benefits when their underfunded plans were terminated by their employers.[24]

Pension regulations after ERISA

When Reagan took office in 1980, it was rumored that he would ask for a repeal of ERISA. That didn't happen. Although the 1980s are widely recognized as a period of state-managed deregulation, that trend did not extend to pension legislation. Even Jeffrey Clayton, a conservative Mormon from Utah appointed by Reagan to the Pension and Welfare Benefit Program in the Department of Labor, the position in charge of enforcing ERISA, took a middle-road approach saying that "we'll deregulate where prudent. But to protect plans from abuse, we have to be tougher in enforcing the meaningful provisions of ERISA."[25]

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23 Andrew H. Cox, Esq. "The Impact of ERISA and Related Legislation on the Development of Private Retirement Plans." The Department of Labor ERISA Advisory Council on Employee Welfare and Pension Benefit Plans. March 15, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

24 Joseph F. Delfico, Director, Income Security Issues in the U.S. General Accounting Office. "Most Underfunded Plan Sponsors Are Not Making Additional Contributions." April 20, 1993. Testimony before the Subcommittee on Oversight, Committee of the Ways and Means, House of Representatives. AFL-CIO Department of Legislation. AFL-CIO Collection, 1996-0010, Box 3. Unprocessed files.

25 Diane Hal Gropper. "The Ordeal of Jeffrey Clayton." *Institutional Investor.* August 1982. Social Security Department. AFL-CIO Collection, 85-0036, Box 1. Unprocessed files.

For rather peculiar reasons, Clayton and other Reagan-era conservatives faced a "dilemma of enforcement" in the decade that followed. On the one hand, following business demands, neoliberals wanted to roll back some of the regulatory provisions that disproportionately placed burdens on employers. Along these lines, Clayton and his staff at the Department of Labor proposed several changes to the ERISA legislation, including easing prohibited transactions, simplifying plan asset guidelines, and reducing paperwork. He went as far as to put together a "paperwork reduction taskforce" to reduce the administrative burden of the lengthy reporting Form 5500. Many of these goals, however, went unrealized.[26]

On the other hand, the law gave neoliberals a legitimate means to pursue an antilabor agenda. In particular, it granted the state the regulatory capacity to rein in the multiemployer unions that had gained some control over their funds.[27] Because of their antilabor orientation, neoliberals saw these rules as, on balance, beneficial, despite business opposition. Along these lines, neoliberal policy makers ramped up the enforcement of these provisions under the Reagan administration. Just a few years after its passage during the Carter administration, ERISA was used as justification for the government taking over the Teamsters' Central States Pension Fund (McCarthy forthcoming). When Reagan appointees were put into the Department of Labor, they wanted an even stronger enforcement of the rules.

Donald Dotson, who worked under Clayton at the Department of Labor, said candidly, "The DOL's record on protecting and recovering plan assets has not been good." Conservative members of the Senate Permanent Subcommittee on Investigations released a report in 1981 specifically saying that the department had not acted strongly enough in several cases related to union pension funds, including the Teamsters' Central States Pension Fund. Similarly, in the Senate Committee on Labor and Human Resources, Chairman Orrin Hatch (R-Utah), argued that the Department of Labor had not enforced the criminal or civil provisions of ERISA strongly enough on union funds. Far from weakening the law or the Department of Labor, neoliberals, in their words, wanted to make it "a better policeman."[28]

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26 The Pension and Welfare Benefit Programs in the Department of Labor shouldered a disproportionately large share of the budget cuts imposed on the Labor Management Services Administration by the Reagan administration because it had lost out in the political battles with rival programs in the department. Its chief adversary, the program of Labor Management Standards Enforcement (LMSE), the department's only other enforcement arm, is widely viewed as having gained the upper hand in influence and resources. As a monitor of union elections and auditor of union books, LMSE enforces the anticorruption provisions of the Landrum-Griffin Act, which regulated internal union affairs (Diane Hal Gropper. "The Ordeal of Jeffrey Clayton." *Institutional Investor.* August 1982. Social Security Department. AFL-CIO Collection, 85-0036, Box 1. Unprocessed files).

27 Ibid.

28 Ibid.

The key point is that neither the changing political winds, the rise of a neoliberal ideology, nor the comprehensiveness of ERISA slowed the expansion of the regulatory activity governing pensions in the 1980s. Unions with single-employer plans, who had no administrative capacity over their funds, saw new rules as a way to make their own plans more secure, and progressives in Congress generally followed their lead by supporting stronger regulations. However, pension regulations were Janus-faced. While the neoliberals in Congress did want to remove some of those regulations, higher costs for some businesses had benefits for neoliberals that hindered the momentum for liberalization. Regulations allowed the state to weaken unions in industries that relied on multiemployer plans. As Table 1 shows, the semiannual passage of pension legislation (annual between some years) both expanded the scope of existing rules and generated entirely new ones. The speed in which plan designs were changed and the emergence of deficiencies in the existing regulatory regime led to the congressional tendency to revise and amend throughout the decade. Legislators were on a path-dependent track and found themselves, to use Lindblom's phrase, "muddling through" unintended problems (1959).

As part and parcel of this trend, tax policy regarding plan qualification guidelines seesawed between favorable and unfavorable provisions, thereby creating significant uncertainty for cost-averse firms. After the passage of ERISA, the Joint Committee on Taxation noted that "the Federal laws and regulations governing employer-provided retirement benefits are recognized as among the most complex set of rules applicable to any area of the tax law" (cited in Howard 1997: 132). Far from being streamlined during the 1980s, the tax code only became more difficult to comprehend.

Firms applauded when the tax advantages for Individual Retirement Accounts (IRAs), which were established in ERISA for those without access to an employer pension, were expanded significantly in 1981. IRAs were Reagan's favored market-based alternative to the Social Security program. However, fiscal and political pressures on the state to reduce the deficit eventually led to provisions that rolled back tax incentives for all types of retirement plans. The first of these was the Tax Equity and Fiscal Responsibility Act of 1982, which imposed penalties on top-heavy plans – those that primarily provided pensions for top-tier employees. These penalties were made more stringent in the 1987 Pension Protection Act, and in 1986 eligibility for tax-exempt IRAs was made more restrictive. Nearly 30 percent of those previously eligible either lost their eligibility entirely or saw their tax incentives scaled back (Hacker 2002: 162).

The largest changes to the tax code concerning pensions were written into the Tax Reform Act of 1986, which significantly revised the Internal Revenue Code. The act continued to exclude pension contributions and trust income from taxation. A coalition of insurance companies, business groups, and unions with political clout were intent on retaining the tax-free status of their plans (Hacker 2002: 161), but because the act significantly revised ERISA, almost every qualified pension plan had to be amended.

Just a year later, the Pension Protection Act of 1987 increased minimum funding requirements, reduced maximum tax-deductible contributions, and further increased PBGC premiums.[29] The act's authors intended to push companies to fully fund their plans. Instead, the percentage of plans paying the PBGC's variable rate premium because of their underfunded status increased from 17 percent in 1989 to 23 percent in 1991. During the same period, the underfunded amount in plans insured by PBGC increased from $30 billion to over $50 billion.[30] As a result of these changes, the largest cost increases in both absolute and relative terms of administering DB versus DC plans occurred in the late 1980s (Hustead 1998).

By the middle of the 1990s, policy makers were made aware of the fact that pension coverage was stagnant overall and declining for DB plans. As a percentage of the private workforce, coverage had remained the same since the passage of ERISA. To counter this trend, legislators argued that it was necessary to dismantle the large regulatory wall that had been built up around DB plans. But by then, many firms had already adopted DC plans, making any hope of salvaging the DB system a case of too little too late. Nonetheless, in 1996, the Small Business Job Protection Act greatly simplified and liberalized discrimination standards and the Tax Payer Relief Act of 1997 then extended the nondiscrimination exemptions to government plans.

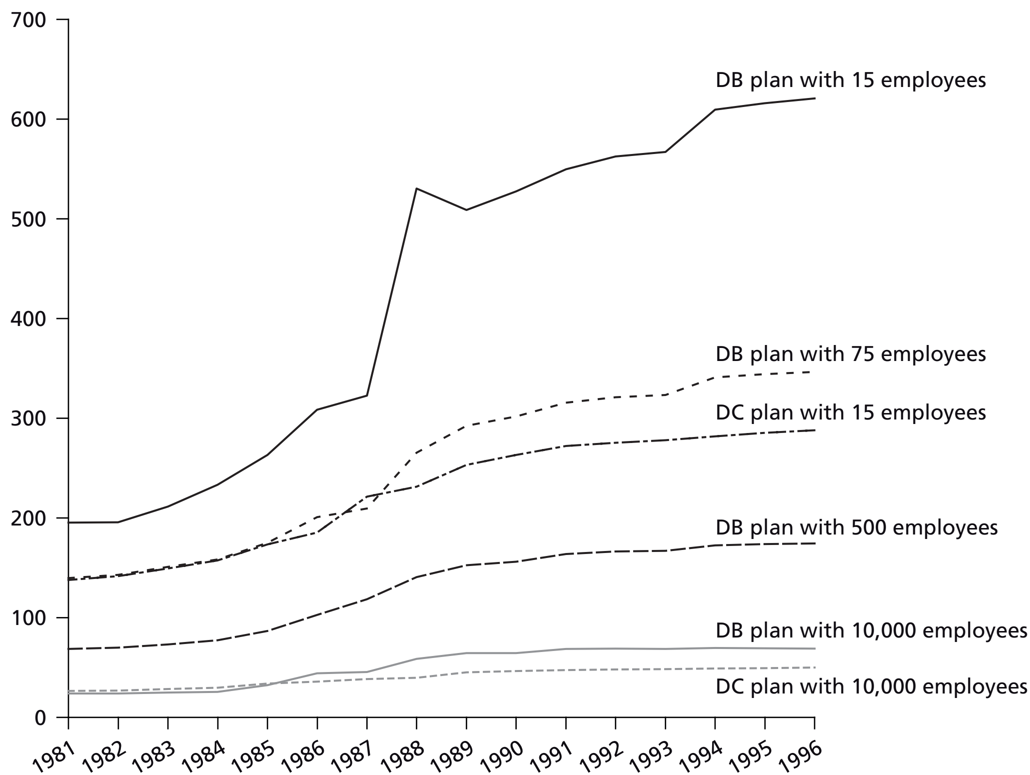
6 How regulations triggered neoliberal policy change

The result of the wave of new laws was a general increase in the administrative costs of operating a retirement plan up to 1996 when the legal regime was subject to deregulation under Clinton. On balance, however, the regulatory changes after ERISA did not fall equally on DC and DB plans. Several requirements, such as those concerning minimum participation and funding, only apply to DB plans. Other requirements under the Internal Revenue Code might include certain types of DC plans, such as money purchase plans, but primarily relate to DB plans (McGill et al. 2005: 94). Congress also repeatedly raised PBGC premiums during the 1980s and imposed an excise tax on employers who claimed the excess assets of terminated defined-benefit plans (Munnell/Sundén 2004: 26). DC plans, alternatively, do not pay premiums to the PBGC for pension insurance and by their very design are incapable of having "excess assets." The regulatory costs for DB and DC plans that accumulated between 1981 and 1996 were estimated by Hustead

29 "Facciani & Company Memorandum." March 28, 1988. AFL-CIO Department of Legislation. AFL-CIO Collection, 1994-0224, Box 9. Unprocessed files.

30 Joseph F. Delfico, Director, Income Security Issues in the U.S. General Accounting Office. "Most Underfunded Plan Sponsors Are Not Making Additional Contributions." April 20, 1993. Testimony before the Subcommittee on Oversight, Committee of the Ways and Means, House of Representatives. AFL-CIO Department of Legislation. AFL-CIO Collection, 1996-0010, Box 3. Unprocessed files.

Figure 4 Annual per capita pension administration costs in 1996 dollars



Source: Hustead (1998: 166–177).

(1996). On average, he found that the cost of administering a DB plan in 1981 was approximately 140 percent higher than administering a DC plan. By 1996, the relative cost had grown to approximately 210 percent.

Furthermore, smaller plans disproportionately felt the regulatory burden relative to plans that covered larger numbers of beneficiaries. As shown in Figure 4, costs for smaller plans, especially those operating as DB, increased dramatically in the 1980s – with the largest increase in administrative costs occurring after the 1986 Tax Reform Act. Per capita costs decrease with more participants because of economies of scale, but the legislation included several requirements that were particularly burdensome for small firms operating a DB plan. The withdrawal liability established by the Multiemployer Act in 1980 disproportionately affected small plans and, according to business testimony at the Department of Labor, "has a very negative impact on the adoption of multiemployer plans by new employers."[31] Furthermore, provisions aimed to reduce top-

31 Andrew H. Cox, Esq. "The Impact of ERISA and Related Legislation on the Development of Private Retirement Plans." The Department of Labor ERISA Advisory Council on Employee Welfare and Pension Benefit Plans. March 15, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

heavy plans in the tax reforms of both 1982 and 1986 also disproportionately affected small plans. Top-heavy plans, as established by the 1982 Act, are plans where more than 60 percent of the accounts or accrued benefits are attributable to employees at the top of the internal job ladder. These regulations reduced incentives for small businesses to adopt or maintain DB plans (Olsen/VanDerhei 1997).

In addition to the existing administrative costs, business anticipated increased future costs. During the 1980s, political signs suggested that the cost burden would only get heavier. In the 1970s, Congress was indifferent to pension funds because a lethargic stock market had left many employers scrambling just to meet ERISA funding levels. But congressional interest was aroused when a bull market in the 1980s infused pension funds with assets.[32] As Senate Finance Committee Chairman Bob Dole (R-Kansas) said at the time,

> [t]ax-free benefits have been growing at a much faster rate than taxable wages … To the extent narrowing the tax base causes pressure to increase marginal tax rates, these tax-free benefits will only appear to be free, because ultimately every taxpayer will have to pay for them in the form of higher taxes on the portion of his compensation that is subject to taxes.[33]

Congress wanted some of the pension money.

According to Howard C. Weizmann, executive director of the Association of Private Pension and Welfare Plans, a trade group in Washington, "This magnificent system is in jeopardy because Congress is undermining it."[34] By the end of the 1980s, businesses were expecting Congress to launch an all-out assault on the tax-exempt status of retirement plans. In the words of a 1989 *Business Week* article, that "would kill employer-paid plans." Congress debated several reforms in the late 1980s: legislation that would make it harder for employers to engage in reversions, joint-trustees on single-employers plans, increased taxation, and an age-discrimination regulation. As Weizmann noted, "What we're seeing is a battle for control of pension assets between labor, employers, and the government."[35] The net result was fewer employer-sponsored plans – a somewhat inevitable result of the growing institutional complexity of regulations and their increased administrative burdens on a system that is voluntary.[36]

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32 "The Power of Pension Funds." *Business Week.* November 6, 1989. AFL-CIO Department of Legislation. AFL-CIO Collection, 1994-0224, Box 11. Unprocessed files.

33 Martha M. Hamilton. "Hill, Budgeteers to Look at Fringe Benefits." *Washington Post.* August 12, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

34 "The Power of Pension Funds." *Business Week.* November 6, 1989. AFL-CIO Department of Legislation. AFL-CIO Collection, 1994-0224, Box 11. Unprocessed files.

35 Ibid.

36 Andrew H. Cox, Esq. "The Impact of ERISA and Related Legislation on the Development of Private Retirement Plans." The Department of Labor ERISA Advisory Council on Employee Welfare and Pension Benefit Plans. March 15, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files.

According to 1994 congressional testimony from the American Society of Pension Actuaries,

> [s]ince 1982, continual change of the rules under which qualified retirement plans operate has been a major deterrent to employers adopting and maintaining these plans. As a consequence, the percentage of employees covered under qualified retirement plans has decreased during the last decade.[37]

Many firms that remained in the DB system due to obligations in the late 1980s and early 1990s underfunded plans as a way to defer costs, taking what U.S. Secretary of Labor Robert Reich called a "contribution holiday" at the time.[38] Unfunded liabilities doubled between 1987 and 1992, growing from $27 billion to $53 billion. This underfunding was concentrated in those industries most likely to have union-negotiated, single-employer DB plans such as steel, auto, manufacturing, and airlines.[39]

Class power as a mediating factor

Yet, do increased regulatory costs *alone* explain this shift toward DC plans? If this was the only dynamic at work, we should see a uniform shift away from DB plans among all employer types. However, data suggests a number of things that make the story more causally nuanced. Firstly, the shift did not primarily result from employers with DB plans terminating them and replacing them with DC plans (see Figure 5). Considering the net change in plan participants between 1985 and 1993, there were about 3.7 million fewer employees with a DB plan and almost 18.4 million more with a DC plan, which shows that reversions were not the primary cause of the shift (see Kruse 1995). Secondly, the largest increases in DC plan participants occurred disproportionately in smaller pension plans. In fact, in large plans, those that covered ten to twenty thousand participants, the number of DB plan participants actually increased more than DC plan participants. This trend is only intensified when the unit of analysis is plans rather than participants. As Figure 6 reports, almost all of the new DC plans were adopted in firms that had 249 or fewer employees.[40]

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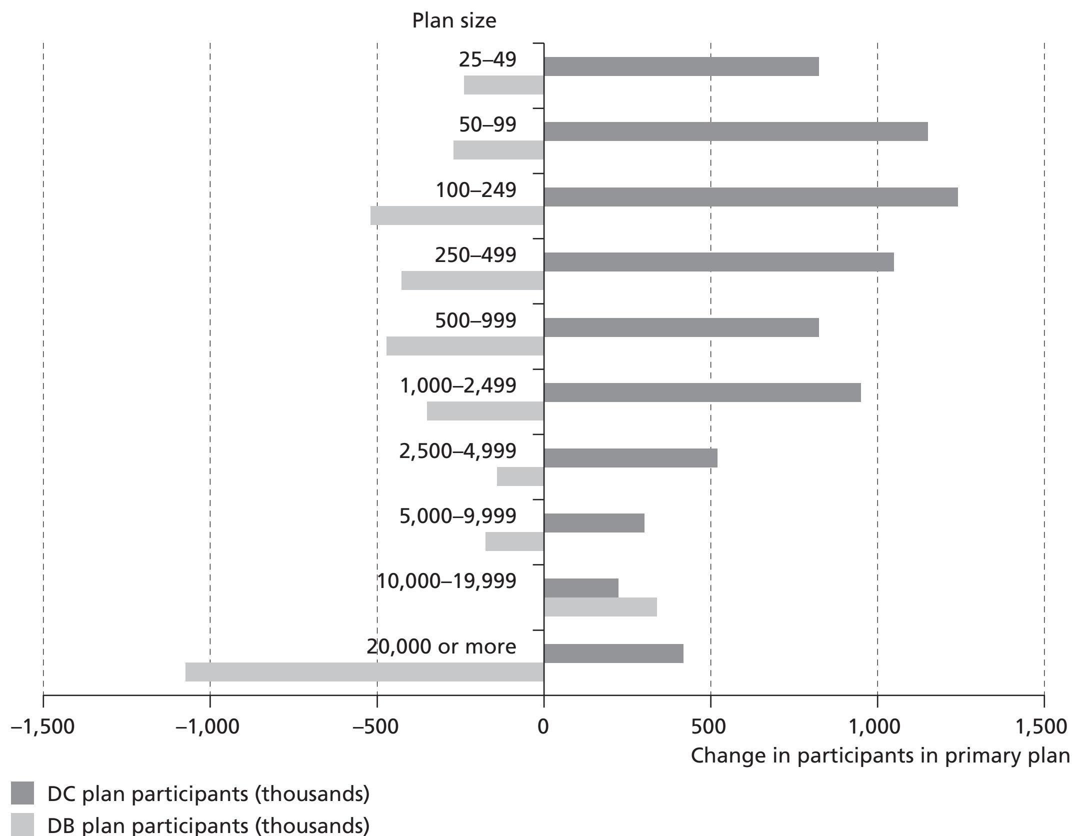
37 American Society of Pension Actuaries. "Comments of the American Society of Pension Actuaries on The Retirement Protection Act of 1993 H.R. 3396." House Ways and Means Committee, April 19, 1994. AFL-CIO Department of Legislation. AFL-CIO Collection, 1996-0010, Box 3. Unprocessed files.

38 Ibid.

39 Robert Reich, Secretary of Labor. Testimony before the Committee on Ways and Means, United States House of Representatives. April 19, 1994. AFL-CIO Department of Legislation. AFL-CIO Collection, 1996-0010, Box 3. Unprocessed files.

40 It may appear peculiar in Figure 5 that in very large plans with twenty thousand or more plan participants, participants in DB plans declined so drastically. There were well over a million fewer participants in these kinds of plans. Despite this large decline, it is surprising that there was only a net loss of 8 plans of this size in the same period, as is barely visible in Figure 6. This

Figure 5 Net change in participants in primary plan by plan size, 1985–1993



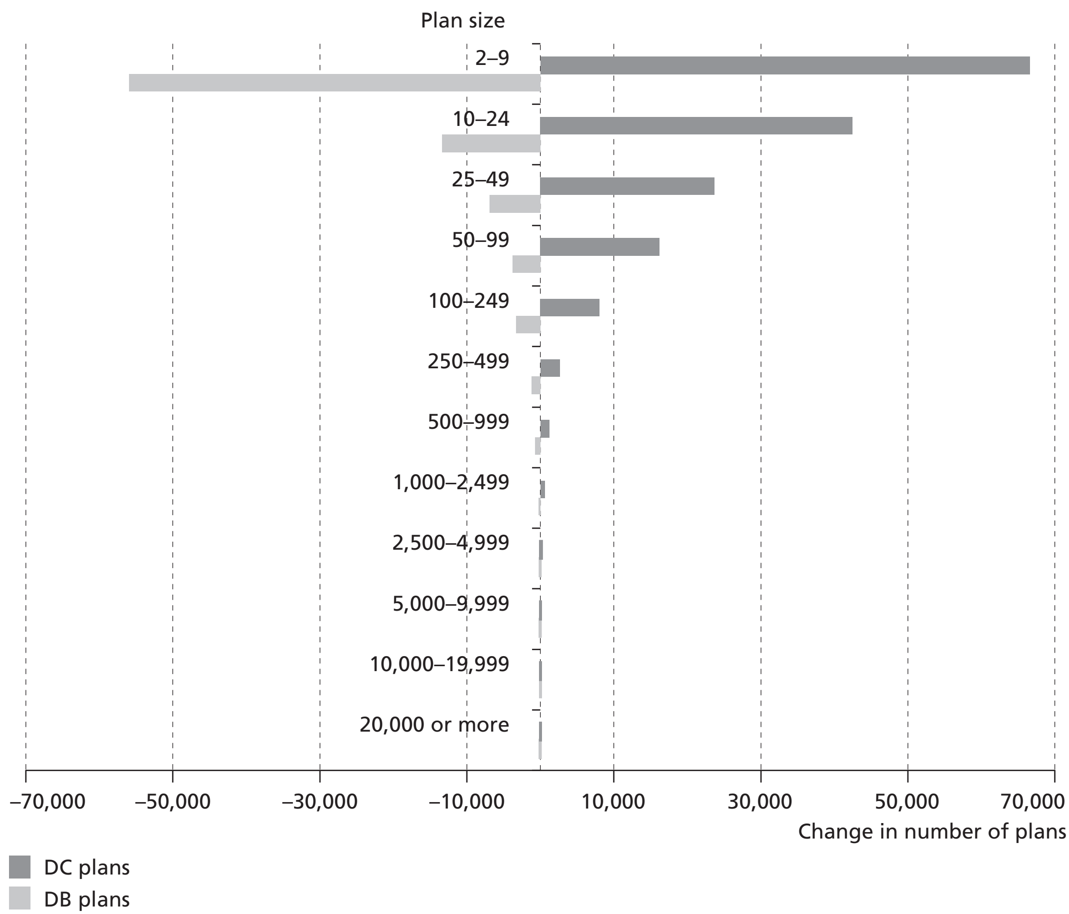
Plan size = number of employees in a firm covered by a group plan.
Source: EBRI (2002); data drawn from Form 5500 filed with the Internal Revenue Service.

Change in the "balance of class forces" is a critical mediating factor that explains the way the regulations impacted the pension system over the period. It is now well know that shifts in the employment structure favored a large growth in service sector work in the 1970s and 1980s and a decline in manufacturing as a share of total employment. Goods-producing industries were already in decline by the passage of ERISA in 1974, and the share of service industries – usually smaller, owner-run businesses that tended to employ younger, female, and part-time workforces – began to increase as early as the postwar period.

Manufacturing jobs were once American labor's stronghold (Goldfield 1987: 126). As Figure 7 shows, although union density in goods-producing firms declined over the period, from about 30 percent in 1983 to 16 percent in 2002, it was always higher than the density in the services sector. While the services sector grew rapidly after 1983, Figure 7 also reports that unions were unable to organize a meaningful percentage of those new employees in response. However, even in the goods-producing industries where

suggests that much of this loss in participants was driven by only a few very large plans closing their doors.

Figure 6 Net change in number of plans by plan size, 1985–1993

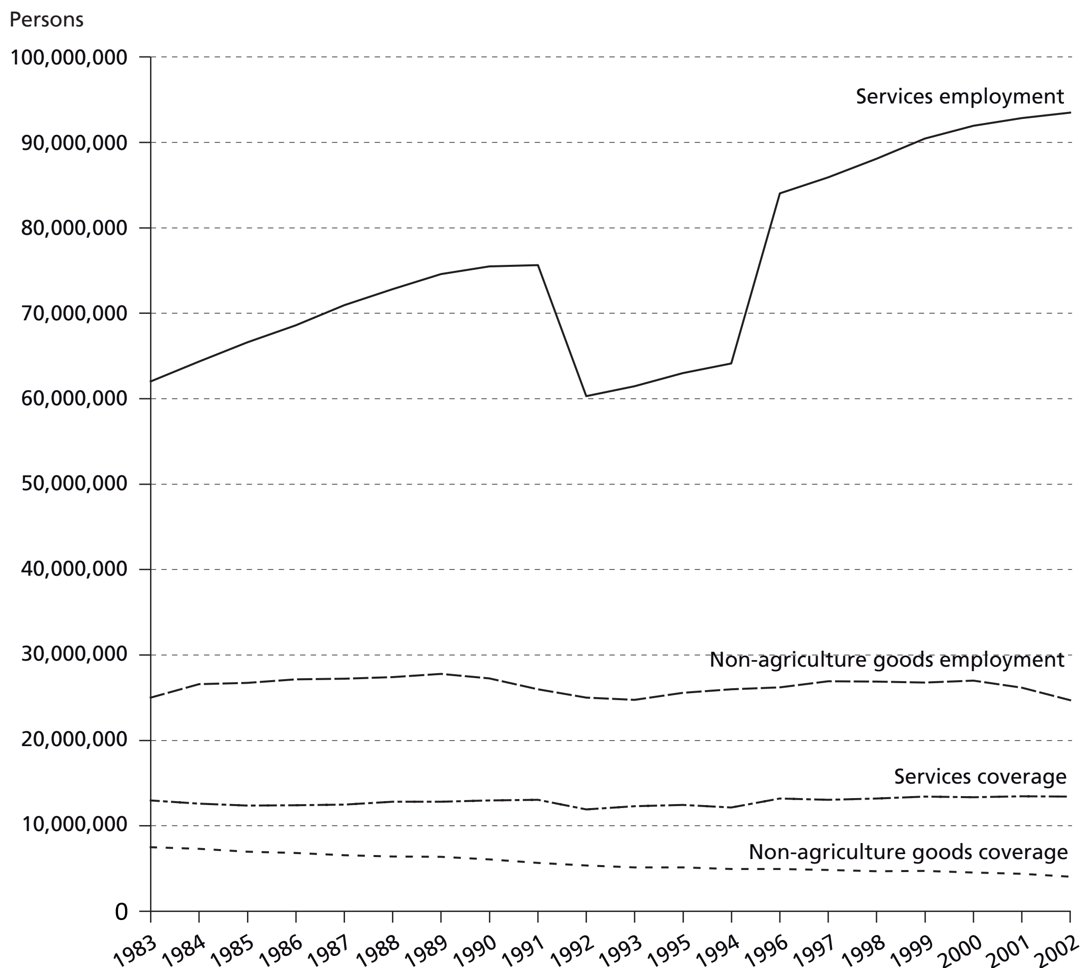


Plan size = number of employees in a firm covered by a group plan.
Source: EBRI (2002); data drawn from Form 5500 filed with the Internal Revenue Service.

they had made historic gains, unions faced absolute declines in worker coverage. Over the period of the 1980s and 1990s, union density went into decline across most sectors (with the special exception of the public sector).

Like regulatory costs, this structural shift toward services might appear at first glance to be the main reason why we see the growth of DCs and the weakening of traditional pensions. In other words, is it possible that the regulations of the period did not ultimately matter and that firms would have chosen DC plans regardless? Two points suggest that a structural explanation alone would also be incomplete. On the one hand, to focus only on structural changes fails to explain timing. There is no substantive shift toward DC plans until the 1980s, long after the marked increase in services relative to the goods-producing sectors in the employment share. Although the growth in services accelerated in the 1970s, there had been a gradual move of the economy in the direction of services since at least the 1950s. On the other hand, if structural factors are all that matter for plan adoption, then traditional plans should have never been dominant. From the postwar period on, services always accounted for a greater share of employ-

Figure 7 Sectoral employment and union coverage trends, 1983–2002



Source: Hirsch/Macpherson (2014), data drawn from the Current Population Survey.

ment than goods-producing industries. Even in the beginning of the 1980s, over 30 million more people worked in services than they did in goods-producing sectors (see Figure 7). However, the dominance of this sector prior to the 1980s did not lead to the dominance of DC-type plans in the same period. In short, if sectoral trends alone explained the rise of DC plans, we should have seen them much sooner, and they should have always been dominant. Instead, the interactive effects of regulatory costs and class power must be highlighted.

Labor was in retreat during the period. Union density in the 1970s fell by a fifth, with the share of the unionized workforce dropping from 26 percent to 20 percent of the total workforce. In the 1980s, it fell another 5.4 percent. Depending on the study, researchers believe that structural factors like the shift toward services account for 20 percent to 60 percent of the decrease in union density since the postwar period. Even with no change in the absolute number of union members, union density would have declined

if unions had remained strong in the goods-producing sectors of the economy that were shrinking (Clawson/Clawson 1999: 98). However, Western's comparative analysis shows that union decline in the period was not driven exclusively by these structural changes; unions were also weakened in the sectors where they were strongest, such as manufacturing (1997: 145).[41]

Employers had become especially hostile to unions in the early 1970s, when many firms faced declining profit rates (Brenner 2003). Employers were further politically emboldened to oppose unions when Reagan broke the air traffic controllers strike in 1981. In the next decade, businesses aggressively sped up production, fired union organizers, hired antiunion consultancy firms to protect themselves against organizers, delayed and disputed National Labor Relations Board rulings, and threatened to relocate production to push unions to make concessions (Brenner et al 2010; Bronfenbrenner et al. 1998; Cowie 2001; Fantasia 1988; Goldfield 1987). In short, firms resisted unionization to a greater degree than they had done since the postwar period.

After World War II, unions were a key force in both the establishment and spread of the DB pension system (McCarthy 2014). Once collective bargaining was made mandatory by the Supreme Court in 1947, all unions had to do was pressure employers into agreements. However, when union strength began to wane and employers were free to run their businesses without labor interference, the latter had less reason to be concerned with which plan was best for workers. In a context of weakening of union strength, employers in the new sectors that were being disproportionately hit by administrative costs were free to ignore union demands for DB plans. As a result, firms in emergent sectors of the economy simply adopted DC plans, which were increasingly 401(k)s. By 1993, just 21 percent of all contributions to DC plans were provided by employers with unionized employees and 79 percent were employers with nonunion workforces (Olsen/VanDerhei 1997: 26).[42] Had union density been the only factor that mattered to plan adoption, like the structural shifts toward the services, again we would not be able to explain timing. Union density in America had been in decline since the mid-1950s. But during that decade and the next, traditional plans were becoming more popular, not less. Instead, regulatory costs increased adoption disincentives for firms, and it was those firms that had more capacity in the emergent nonunion sectors that were able to avoid these costs by adopting DC plans.

41 Western's analysis shows that the growth in services was not a primary cause of the overall decline in density. In the 1970s, union density grew in many OECD countries (not including America) despite the fact that, in the 1970s, just like in the following decade, manufacturing shrank while services grew there too (1997: 151).

42 It does not follow here that 21 percent of all contributions to DC plans were for union workers. Many firms in which some of their workforce was unionized provided separate retirement schemes for their top-tier employees, such as those at different levels of management who were not affiliated with a union. These employees typically received a DC pension as a supplement to a DB one. Also plans can be set up that have both DB and DC features, these are known as a hybrid pension plans (McGill et al. 2005).

Table 2 Percentage of employees with a pension in a defined benefit plan, 1977–1985

	Year		
	1977	1981	1985
Union status			
Union	97.2	97.6	96.0
Nonunion	82.9	83.7	76.8
Firm size			
< 100 employees	84.2	68.6	60.6
100–249	63.8	56.5	45.3
250–499	69.3	63.2	50.9
500–999	77.3	72.4	60.7
1000+	90.2	90.8	82.2
Industry			
Agriculture, forestry, fishing	88.0	82.3	65.2
Mining	86.5	86.2	76.3
Construction	91.2	81.3	70.8
Manufacturing	92.2	91.9	86.0
Transportation, communication	92.0	95.8	85.8
Wholesale trade	79.2	72.4	65.1
Retail trade	83.0	78.5	68.3
Finance, insurance, real estate	85.2	83.1	78.5
Services	87.7	81.0	69.9
Using weights			
1977 weights	89.7	90.0	85.7
Unweighted			
Total plans	89.7	88.0	79.3

Source: Gustman/Steinmeier (1992).

A spate of statistical studies in the 1980s and 1990s by economists tried to identify the core characteristics of the new companies that were adopting DC plans. There is general consensus among these studies that the union status, industry status, and the size of the firm were the most important determinants for the kind of pension plans that were adopted by businesses. They found that employees of large firms were more likely to be offered a traditional pension plan than workers at small firms (Hodson 1986), that the shift from manufacturing to the services decreased participation in defined-benefit plans – services being much less likely to provide one (Bloom/Freeman 1992; Kruse 1995), and that deunionization in these sectors was a final key factor for the fall in DB coverage (Bloom/Freeman 1992). Ippolito notes that "about half of this shift is attributable to a loss of employment in large unionized firms where DB plans are used intensively" (1995). In short, traditional plans in large unionized firms in the goods-producing sector lost a significant portion of the total pension plan and participant share to DC plans in smaller nonunion firms in the service sector (Ippolito 1995).

In Table 2, Gustman and Steinmeier (1992) use data from the IRS Form 5500 filings to report that, between 1977 and 1985, union status, firm size, and industry status all heavily correlated with the type of plan adopted. What they find of particular interest is found in the "using weights" row of the table. The 85.7 percent value in the final column indi-

cates that, if the number of employees in each grouping (union status, firm size, industry status) were held at the 1977 distribution, then the percentage would have fallen to 85.7 percent. This predicts the degree to which the shift is due to the changing industrial features of firms or the tendency of a firm with a given union status, size, and industry status to change. It is an indicator of how much of the growth in DC plans can be explained by shifting employment across industries, all other things being equal, and shows that about half of the change was probably due to the changing characteristics of firms.

At the end of the 1980s, a commenter on pensions noted that

> the crisis over defined-benefit plans may be losing its momentum due to organic developments in the national economy. The shift from heavy industry and manufacturing to high tech and services may account for the increasing popularity of defined contribution and Internal Revenue Code section 401(k) plans. These plans may be more suitable and attractive for younger, more mobile employees in less-traditional, less-unionized occupations. If so, the risk of discouraging defined-benefit growth by tighter insurance regulation may now be that great because the natural limits of that growth may already have been reached.[43]

Throughout the period, neoliberals supported policies that helped them weaken union control over multiemployer pension funds at the cost of raising the administrative burden on firms with single-employer plans. For their part, unions with single-employer plans supported these regulations as well. However, given structural changes in the economy and the weakening of unions, they had the unintended consequence of triggering a business shift out of the traditional pension system altogether.

7 Conclusion

The 1980s are often described as a period of neoliberal restructuring for most capitalist countries. Neoliberalism, in practice, has come to be viewed as a repertoire of policies that typically include privatization, separation of regulatory authority, the depoliticalization of regulatory agencies, liberalization, and the favoring of monetary over fiscal policy. However, two competing perspectives have emerged that offer strikingly different characterizations of neoliberal policy making. In this paper, I term them the weak state intervention thesis and the state-managed transition thesis. The former suggests that the neoliberal policy change occurs when policy makers weaken the capacity of the state, while the latter suggests that it is a state-managed project, rife with new forms of regulation and the creation of new state capacities. Along these lines, in Vogel's account, "more rules" have been necessary to achieve "freer markets" (1996).

43 Michael S. Gordon. "Policy Forum: Reflections on Selected Issues of Private Pension Regulation." *National Journal*. August 11, 1984. AFL-CIO Occupational Safety, Health, and Social Security. AFL-CIO Collection, 87-0011, Box 10. Unprocessed files..

The rise of 401(k) retirement plans does not fit neatly into either narrative about the modality of neoliberal change. Firstly, there were *more* rules imposed on pension plan administrators in the 1970s and 1980s, and secondly, these rules were *intended* to increase the security of the traditional, DB pension system, not to broker in more DC plans. When Congress added Section 401(k) to the tax code in 1978, it was primarily concerned with resolving a set of disputes that were related to profit-sharing plans, not the private pension system as a whole. The only real mention of the provision in Congress was that it would be "negligible" (Hacker 2006: 118). When the Reagan administration positively ruled in 1981 on the legality of the provision, even Ted Benna (the author of the provision) admits he had no idea about its implications for retirement policy (ibid.). Furthermore, much of the congressional debate and legislation in the period aimed to make the DB system more secure. Even neoliberals, such as the administrator appointed by Reagan to enforce the rules, Jeffrey Clayton, worked to shore up regulations, albeit to weaken unions. After the passage of ERISA in 1974, Congress regularly passed amendments and new laws that expanded the scope of regulatory oversight. They did so on an almost annual basis up to the mid-1990s, when, under the Clinton administration, the regulatory regime governing pensions began to be liberalized in a manner consistent with the weak state intervention thesis. By this point, however, 401(k)s were already the retirement plan of choice for American businesses.

This article argues that this wave of regulations had the unintended consequence of triggering a shift to the DC system. New rules worked in such a counterintuitive way because of how the policies themselves functioned relative to changes in the balance of class forces between businesses and unions. Neoliberalism in the 1980s was not simply the weakening of state capacity or a state-managed project. By taking a "hard case," one in which neoliberal policy makers were trying to maintain and expand the security of a policy area, this paper suggests that neoliberal rules worked in the way they did in large part because of the weakening of the labor movement and despite the conscious intentions of neoliberals themselves. The rise of 401(k) plans are a case of neoliberalism without neoliberals. As union strength in the labor market went into decline, by losing members and finding it difficult to organize emergent economic sectors, firms were free to choose their own path. In the absence of collective bargaining, new employers saw both the increasing regulatory costs associated with adopting a DB plan and the lower risk associated with DC plans and thus made the economic decision to embrace the latter.

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