THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 AND PRIVATE PENSION SYSTEM REFORM

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I. INTRODUCTION

Americans derive income from three major sources after retirement: individual assets accumulated over their working life (i.e. savings and investments), social security, and employment-based pension plans. Although it may appear less effective for the federal government to change the individual habit of saving for retirement, especially on a national scale, the government has made significant efforts to improve the social security system and private pension plans through extensive legislation. Social security is a mandatory, federally administered system, designed to provide people with basic financial support in retirement and to reduce poverty among seniors. In contrast, the government allows employers to choose whether to offer pension plans to their employees, and promotes their use through preferential tax treatments for employees who participate in private pension plans.

“Retirement security has become a national priority.” The United States population aged during the 20th century, partially because the population of citizens aged 65 years and older grew at a far greater rate than did the total population. During that time those within the 65-74 age

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1. JAY CONISON, EMPLOYEE BENEFIT PLANS IN A NUTSHELL 36-37 (2d ed. 1998).
2. Id. at 37.
3. Id. at 38-39.
group made up the majority of the elderly. Meanwhile, the work force in the United States has also been aging. The “baby-boom generation” (those born between 1946 and 1964) is fifty percent larger than the generation it supports through Social Security, while the post-1964 “baby-bust” generation is significantly smaller than the generation that it will eventually be responsible for. Therefore, Social Security funding will likely be insufficient to provide a satisfactory living standard for retiring baby boomers.

With both an aging population and an aging workforce, society is paying greater attention to federal pension policies. Further efforts to save for retirement through the mandatory Social Security system or through tax incentives for individuals who accumulate personal assets are unlikely to produce the desired improvements in retirement security, whereas more saving efforts may be encouraged at the private employment level. The federal tax laws have traditionally been the major source of incentives for the sponsorship of employment-based pension plans, and pension system reforms are often achieved through tax legislation.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) started a new round of pension reform. The Act provides substantial tax benefits by using the federal budget surplus to subsidize the private pension system and to encourage private employers to sponsor new employee pension plans. Meanwhile, the recent financial collapse of the Enron Corporation and the financial losses suffered by participants in Enron’s retirement plans sounded the alarm to all regarding the vulnerabilities of the private pension saving mechanisms. Tax benefits alone will not be enough to ensure pension security.

and that the population of those 65 and over increased more than tenfold).

6. Id.
7. See generally Dep't of Labor, supra note, 4 at 3 (reciting a history of retirement security and income legislation).
9. See Dep't of Labor, supra note 4, at 5 (detailing the history of retirement security and income legislation).
11. David M. Walker, Comptroller General of the United States, Testimony before the Senate Finance Committee, Private Pensions: Key Issues to Consider Following the Enron Collapse (Feb. 27, 2002), available at http://www.gao.gov/new.items/d02480t.pdf at 1 (“The financial losses suffered by participants in Enron’s retirement plans have raised questions about the benefits and limitations of such private pension and savings plans and the challenges employees face in saving for retirement through their employer-provided plans.”)
12. In his State of the Union Address, President George W. Bush called on Congress to
What should be the future of the private retirement system in 21st century America? How far has EGTRRA gone to address the problems in the pension systems and to promote retirement security for the elderly? The purpose of this comment is to evaluate the pension reform provisions under EGTRRA against the various reform proposals of the private pension system, and to explore areas of further improvement that can better achieve the social policy objective of providing "retirement benefits to a broad group of employees."\textsuperscript{13}

Part II provides an overview of the current employment-based private pension system in the United States. Part III examines the major problems of the private pension system. Part IV outlines some major changes to pension regulations made by EGTRRA and evaluates the likely effect of EGTRRA on the problems of the private pension system. Part V introduces some pension reform proposals. Part VI concludes the comment by proposing a general direction for future reforms of the private pension system on the basis of selected proposals related to the various aspects of pension reform.

II. EMPLOYMENT-BASED PRIVATE PENSION SYSTEM IN THE UNITED STATES

A. EMPLOYMENT-BASED RETIREMENT BENEFIT PLANS

Most private sector pension plans are covered by ERISA, which provides protections for plan participants and beneficiaries and specifies standards of fiduciary responsibilities for those who manage plans.\textsuperscript{14} ERISA does not require an employer to provide a pension plan for its employees. Instead, it sets certain minimum standards and requirements that an offered plan must meet.\textsuperscript{15} The Internal Revenue Code ("the Code") and ERISA are the "stick and carrot" in the regulation of pension plans. That is, where ERISA curbs the mismanagement of pension plans, the Code provides favorable tax treatments to qualified retirement plans in order to encourage the sponsorship of plans in a way that would be
beneficial to participating employees.\textsuperscript{16} To qualify for the associated tax benefits, a retirement plan must satisfy the rules and requirements under the Code, the Employee Retirement Income Security Act of 1974 ("ERISA"),\textsuperscript{17} and the Age Discrimination in Employment Act ("ADEA").\textsuperscript{18} A non-qualified plan is not entitled to the tax advantages offered to a qualified plan.

The tax benefits for a qualified retirement plan under the Code include immediate deduction of contributions by the employer (even though they may not be included in a participant’s income),\textsuperscript{19} earnings accumulation on a tax deferred basis,\textsuperscript{20} and potentially favorable tax treatment for the participants when they receive distribution.\textsuperscript{21} The federal government’s greatest tax expenditure has been pension-related preferential tax treatment.\textsuperscript{22}

ERISA covers two major types of qualified pension plans: defined benefit plans\textsuperscript{23} and defined contribution plans.\textsuperscript{24} In recent years, a number of hybrid plans with some characteristics of both have emerged.

1. Defined Benefit Plans.

A defined benefit plan provides participants with determinable retirement benefits over a period of years, usually for life.\textsuperscript{25} Under a defined benefit plan, an employer promises to pay a specific amount through a trust fund while making contributions to that fund.\textsuperscript{26} Such a plan maintains no individual accounts and pays benefits according to a formula; hence the employer bears the investment risk.\textsuperscript{27} Traditional defined benefit

\textsuperscript{16} Id. at 50.
\textsuperscript{17} 29 U.S.C. §§ 1001-1461 (2002).
\textsuperscript{18} See id. § 621 (2001).
\textsuperscript{19} I.R.C. § 404(a)(1), (3) (2002).
\textsuperscript{20} Id. §§ 401(a), 501(a).
\textsuperscript{21} Id. § 402(a).
\textsuperscript{22} The Joint Committee on Taxation estimated that employer-provided retirement plans cost the federal government $87.9 billion in foregone revenues for fiscal year 2002. Joint Committee on Taxation, \textit{Estimates of Federal Tax Expenditures for Fiscal Years 2002-2006} (Jan. 17, 2002).
\textsuperscript{25} Id. at 18.
\textsuperscript{26} Scott, supra note 23, at 31.
\textsuperscript{27} See infra note 46 and accompanying text (explaining that the employer is responsible for a funding deficiency at the time of distribution and must pay premiums to the Pension Benefit Guaranty Corporation ("PBGC") to insure against any loss of benefits.)
plans include: the flat benefit plan, the unit benefit plan, and the pension equity plan.

2. Defined Contribution Plans

A defined contribution plan distributes the accumulated contributions and earnings allocated to the participant's individual account upon retirement. Under this type of plan, the employee bears the investment risk. The most common types of defined contribution plans are: profit sharing plans, 401(k) plans (or cash or deferred arrangements), money purchase pension plans, target benefit plans, stock bonus plans, and

28. A flat benefit plan is based on a flat dollar amount or a flat percentage of compensation for life. Scott, supra note 23, at 32.

29. A more common type of defined benefit plan is the unit benefit plan. Under a unit benefit plan, the participant receives credit for a specific unit of benefit (i.e., a percentage of pay or a flat dollar amount) for each year of service. Typically, in a final average pay unit benefit plan, the benefit is based on average pay immediately prior to retirement—usually the last three or five years. Id. at 32-33. For example, a plan might provide that a worker's annual retirement benefit is equal to two percent of the number of years of service times final average compensation. Id.

30. A pension equity plan is a defined benefit plan that expresses an employee's benefit as a lump sum based on the employee's final average salary times a percentage per year of service. For example, a lump sum equal to ten percent of the employee's final average pay times the number of years of service. Id. at 36.

31. See CONISON, supra note 1, at 4 (introducing defined contribution plans).

32. Hirsh, supra note 24, at 18.

33. A profit sharing plan is the most common form of defined contribution plan. Id. at 18. Contributions to the plan are generally at the discretion of the employer's board of directors. This allows employers great flexibility because no commitment is required in unprofitable years, and contributions are allocated among participating employers in proportion to salaries for the year in question. David A. Pratt, Symposium: Nor Rhyme Nor Reason: Simplifying Defined Contribution Plans, 49 BUFF. L. REV. 741, 762 (2001).

34. 401(k) plans or cash or deferred arrangements are profit sharing plans that permit a participant to defer a percentage of his earnings and contribute them to a plan where they are allocated to his account. Hirsh, supra note 24, at 18. Employers often match participant deferrals with employer matching contributions. Id. 401(k) plans are generally subject to special nondiscrimination tests to prevent discrimination in favor of highly compensated employees. See I.R.C. §§ 401(k)(3), (m)(2).

35. A money purchase pension plan is a defined contribution plan in which the employer's contribution is not discretionary but fixed and determinable. Hirsh, supra note 24, at 19.

36. A target benefit plan is a type of money purchase pension plan which provides for a theoretical or targeted pension benefit that will be payable at normal retirement age. Id. The employer makes contributions each year to a fund for this benefit, and when a participant terminates employment, he is entitled to the amount in his account. Id.

37. A stock bonus plan is almost identical to a profit-sharing plan except that distributions of benefits are generally made in the form of employer stock. Id. However, a participant may require the employer to purchase the stock if it is not readily tradable on an established market. Id.
employee stock ownership plans ("ESOP").

3. Hybrid Plans

A hybrid plan combines the characteristics of both defined benefit and defined contribution plans, but is classified as neither.

The cash balance plan is a type of hybrid that has become increasingly popular in recent years. It is a defined benefit plan that resembles a defined contribution plan in many ways. In a cash balance plan, each participant has a hypothetical account, the retirement benefit is expressed in terms of a lump sum, and the account is credited with a specified rate of interest not related to actual trust earnings. The account exists for bookkeeping purposes only, allowing employees to track the current value of their accrued benefits. Employers make regular credits (typically a percentage of salary) to employee's accounts, as well as "interest" credits (which may be tied to a specific index) on a plan-specified basis. In addition, "as is the case with all defined benefit plans, the retirement benefits in cash balance plans are guaranteed by the employer and by the [Pension Benefit Guaranty Corporation]."

B. The Choice of Plans

Employers often seek to manage their workforce as well as provide financial security for retirees, through employer-sponsored pension plans. The availability of multiple pension plan designs provides employers with a better opportunity to reach these goals. Employers should compare the advantages and disadvantages of defined-benefit versus defined-contribution plans before deciding which will be most appropriate and beneficial for all. Additionally, employers must consider which particular

38. ESOP is a stock bonus plan, or a combination of a stock bonus plan and a money purchase plan, which is designated to invest primarily in the common stock of the employer. Id.
40. It was first implemented in the mid-1980s and has gained attention recently as employers have converted their traditional pension plans into cash balance plans. Elizabeth E. Drigotas, Cash Balance Plans: An Overview, 16 TAX MGMT. FIN. PLAN. J. 115, 115 (2000).
41. Jefferson, supra note 39, at 519 (It "has many of the features of a defined contribution plan, but in reality is a defined benefit plan.").
42. Id.
43. Id.
44. Scott, supra note 23, at 35.
46. See CONISON, supra note 1, at 31 (discussing the economic aspects of plans).
versions of plans within the larger categories will suit their business needs and provide employees with a competitive benefits package.

Under a defined benefit plan, the eligible participating employee has the right to a specified monthly income for life, and the employer bears the investment risk of the fund. ERISA provides for the establishment of the Pension Benefit Guaranty Corporation ("PBGC") to administer an insurance scheme aimed at providing "timely and uninterrupted payment of pension benefits to participants and beneficiaries" under these plans. The employer must pay premiums to PBGC to insure against any benefits lost, and also must make up for any funding deficiency at the time of distribution. The reporting and compliance requirements and the necessity of plan administration may subject the sponsor of a defined benefit plan to additional administrative costs. However, from the employees' perspective (especially those who are unsophisticated investors), the security that a defined benefit plan offers makes this type of plan a desirable retirement savings vehicle.

In contrast, under a defined contribution plan, the employer fulfills its funding obligation by making an annual lump sum payment to the plan while placing the ultimate investment risk on employees. Participating employees are less secure under defined contribution plans, but these plans are less costly to employers than defined benefit plans. For example, employers can save insurance premiums and other administrative costs. Although for many types of defined contribution plans the funding is less flexible than for a defined benefit plan, more and more employers are adopting defined contribution plans as the primary savings vehicle for employee retirement benefits. Employees may favor a defined contribution plan over a defined benefit plan for several additional reasons. First, a defined contribution plan has a simpler formula; it is much easier to understand than the formula for a defined benefit plan, which requires employers to calculate the present value of the monthly benefit that an employee expects to receive at retirement. Second, employees may benefit from smart investment decisions. Finally, the employees can change jobs without risking significant reductions in their accrued benefits, which may occur with a defined benefit plan.

47. 29 U.S.C. § 1302(a)(2).
48. See id. § 1307 (setting the deadline for premium payment to pension benefit guaranty corporations).
50. This feature has been considered especially appealing in today's labor market where people change their jobs more often than in the past. See Jefferson, supra note 39, at 514; see also, Press Release, U.S. Dep't of Labor, Labor Day 2000 - 10 Workforce Facts, 2000 available at http://www.dol.gov/ocianews/September-2000/labor_day_2000_fun_facts.htm ("The average person in the U.S. holds 9.2 jobs from age 18 to age 34. More than half of
Since Congress passed ERISA in 1974, private employers have gradually been shifting the mode of primary employee pension plans from defined benefit to defined contribution plans.\textsuperscript{51} For employers that do maintain defined benefit plans, more and more have converted their traditional format to hybrid plans, such as the cash balance plans.\textsuperscript{52}

### III. PROBLEMS OF THE PRIVATE PENSION SYSTEM

Private retirement system legislation targets three major concerns: pension coverage, security of benefits, and tax expenditure cost. These three areas are often closely related.

#### A. Pension Coverage

Although the government’s tax expenditure on private pension plans increases each year, pension coverage has been stagnant and has fallen behind labor force growth in the 1990s.\textsuperscript{53} Since the decision to sponsor private pension plans by employers is entirely voluntary, the coverage of such plans is often affected by people’s employment patterns. "A Government Accounting Office (GAO) report found a majority of persons without pension coverage had at least one of the following characteristics: low income, part-time employment, employment at small firms, or youth."\textsuperscript{54} Professor Bernstein observed that the shrinking coverage had these jobs were held between the ages of 18 and 24.

\textsuperscript{51} See Jefferson, supra note 39, at 514 n.1 (explaining that ERISA completely revised the legal framework for qualified pension plans); Collins, supra note 49, at 601 ("While defined contribution plans continue to become more popular, defined benefit plans have experienced a marked decline in the past 15 years outside the governmental and collectively bargained sectors."); Fact Sheet: Changes in the Private Employment Based Pension and Health Systems (Sept. 1999), at http://www.dol.gov/ebsa/publications/25splash.htm (last visited Feb. 1, 2003) (indicating that from 1975 to 1996, pension plan participants, enrolled only in a defined benefit plan, declined from sixty-eight percent to nineteen percent, whereas those enrolled in only a defined contribution plan increased from thirteen percent to fifty percent and those enrolled in both types of plans increased from nineteen percent to thirty-one percent.)

\textsuperscript{52} See Hybrid Pension Plans: Hearing Before the Senate Comm. on Health, Educ., Labor, and Pensions, 106th Cong. 5 (1999) (statement of Sen. Leahy) (stating "[i]n recent years, at least 325 companies, with more than $330 billion in pension-defined benefit assets, have adopted cash-balance plans. This changeover is the biggest development in the pension world in years" and listing IBM, AT&T, CitiGroup, Bell Atlantic, SBC Communications, CIGNA Corp., AETNA, Eastman Kodak, and CBS among the most notable companies that have converted to cash balance plans).


\textsuperscript{54} See Pratt, supra note 33, at 746 n. 11 (2001) (citing GEN. ACCT. OFF., PENSION PLANS: CHARACTERISTICS OF PERSONS IN THE LABOR FORCE WITHOUT PENSION COVERAGE 4 (2000)("The GAO report found a strong correlation between having one or more of these
been aggravated by the following factors: 1) increasing layoffs; 2) reclassifying full-time employers as independent contractors; and 3) shifting workers from full-time to part-time positions. Moreover, pension coverage does not necessarily equal pension benefits. Short-term employees and young long-term employees who have cashed out their small vested benefits are likely to be the losers.

Small employers, with notably lower rates of plan participation, have naturally been the focus of private pension reforms. Congress has enacted new types of defined contribution plans that are intended for use by small employers: employer-sponsored individual retirement accounts (IRAs), simplified employee pension plans (SEPs), salary reduction SEPs (SARSEPs), SIMPLE IRAs, SIMPLE 401(k) plans, and safe harbor 401(k) plans. Unfortunately, these new types of plans have been so far ineffective in increasing pension coverage by small employers. Perhaps,


55. Id. (citing American Academy of Actuaries, Policy Monograph 1998 No. 1, Financing the Retirement of Future Generations: The Problems and Options for Change 1, 10 (1998), available at http://www.actuary.org/pdf/pension/retirement.pdf (finding that "[i]n both the public and private sectors, there is a major difference in coverage between part-time and full-time employees. Only twelve percent of part-time workers in the private sector participate in pension plans, versus fifty percent of full-time workers").

56. See Bernstein, supra note 53, at 386-87 (arguing that increased pension coverage does not mean more people will receive pension benefits).


58. See I.R.C. § 408(c) (requiring that employer-created trusts made for the exclusive benefit of employees must be treated as an IRA).

59. See id. § 408(k) (defining simplified employee pension plans and their treatment in the tax code).

60. See id. § 408(k)(6) (describing the election of salary reduction plans).

61. See id. § 408(p) (defining simple retirement accounts and their treatment in the tax code).

62. See id. § 401(k)(11) (requiring that all simple plans meet nondiscrimination requirements).

63. See id. § 401(k)(12) (listing alternative methods to meeting nondiscrimination requirements). In addition, Roth 401(k) plans and Roth 403(b) plans have been added to the mix by EGTRRA effective in 2003. EGTRRA, Pub. L. No. 107-16 § 617, 115 Stat. 38.

64. SERS, supra note 57, at 4 (noting that among the surveyed employers that refuse to sponsor retirement plans, fifty-two percent of them have never heard of SEPs and an additional sixteen percent have heard of them, but are not too familiar with them. Thirty-four percent have never heard of SIMPLE plans—plans created by Congress specifically for
since each of these plans is subject to a different set of rules, their complexity has effectively prevented small employers from adopting them. However, there are additional reasons that have likely contributed to small employers’ hesitancy to offer plan coverage. In 2001, the Small Employer Retirement Survey suggested a list of items that may incentivize small employers to increase plan coverage. These items included increasing the company’s profits, reducing low administrative costs and requirements, eliminating employer contribution requirements, and offering additional business tax credits.

Women, as an important subgroup of the larger workforce, suffer even more from low pension coverage. This is because women are more likely to work in part-time jobs that do not qualify for coverage, or to work fewer years in pension-covered employment because of interruptions in their careers. Nevertheless, retirement income may be even more critical for women than for men because they have a longer life expectancy.

Minorities also face special challenges for retirement savings. As of 1999, compared to forty-seven percent of Caucasians working in the private sector participating in pension plans, only forty-one percent of African Americans, thirty-eight percent of Asian and Pacific Islanders, and twenty-seven percent of Hispanic-Americans participate in such plans.

B. Pension Security

While more and more employers have shifted from a defined benefit plan to a defined contribution plan, participating employees face increased risk because defined contribution plans allow individual plan participants to

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small employers—and thirteen percent are not too familiar with them. Surprisingly, many nonsponsors are also not familiar with more traditional pension or deferred profit-sharing plans. By comparison, very few of them say they have never heard of or are not too familiar with 401(k) plans.

65. Pratt, supra note 33, at 746-47.

66. In fact, the Small Employer Retirement Survey in 2001 found that while cost and administrative issues play a role, they might not be the main obstacles to plan sponsorship. SERS, supra note 57, at 3.

67. Id. at 6-7.


70. Id. (“On average, a female retiring at age 55 can expect to live another 27 years, four years longer than a male retiring at the same age, and needs to save for these extra years.”)

71. U.S. Dep’t of Labor, supra note 68.
make investment decisions. Defined benefit plans, on the other hand, rely on investment decisions made by professional asset managers.\textsuperscript{72} In addition, under defined contribution plans, employees lose the protection of ERISA’s fiduciary standards and PBGC’s insurance.\textsuperscript{73} As a result, retirement plans are providing employees with less protection overall, especially those with low incomes or who are unsophisticated investors.\textsuperscript{74}

Women and minorities are likely to suffer more than other workforce subgroups. Studies have shown that women (especially Caucasian women) and minorities are disparately impacted by self-directed defined contribution plans because they tend to invest more conservatively than Caucasian males.\textsuperscript{75}

Will better investment education help improve pension security? The effect will likely be limited.\textsuperscript{76} Professor Stabile suggests that employees are not an easy group to educate.\textsuperscript{77} Also, the job of an investment manager is a difficult one. Moreover, with respect to over-investment in employer securities, education is unlikely to be even minimally effective because such decisions are often based on emotional factors like loyalty. Even financially sophisticated employees, who well understand the dangers of excessive investment in a single stock, may tend to over-invest in employer securities due to these emotional factors.\textsuperscript{78}

\begin{itemize}
\item \textsuperscript{72} Susan J. Stabile, \textit{Paternalism Isn’t Always a Dirty Word: Can the Law Better Protect Defined Contribution Plan Participants?} 5 \textsc{Employee Rts \\ & Emp. Pol’y J.} 491, 498 (2001).
\item \textsuperscript{73} \textit{Id.} at 501-503.
\item \textsuperscript{74} In the fastest growing type of defined contribution plan (the 401(k) plan) because contributions are often made on behalf of only those employees who elect to participate, low-paid employees who are covered exclusively by such plans but who cannot afford to make contributions, often receive little or no benefits when they retire. Jefferson, \textit{supra} note 39, at 516.
\item \textsuperscript{75} See Jayne Elizabeth Zanglein, \textit{Investment Without Education: The Disparate Impact on Women and Minorities in Self-Directed Defined Contribution Plans}, 5 \textsc{Employee Rts. \\ & Emp. Pol’y J.} 223, 238-41 (2001) (summarizing studies that indicate why women are more conservative investors); \textit{See also}, U.S. \textsc{Dep’t of Labor}, \textit{supra} note 69 ("Studies indicate that women tend to invest more conservatively than men, receiving lower rates of return from their investment over time, thus reducing the amount of savings they have at retirement.").
\item \textsuperscript{76} Empirical evidence suggests that education has not been effective despite the efforts by employers and the Department of Labor. \textit{See} Colleen E. Medill, \textit{The Individual Responsibility Model of Retirement Plans Today: Conforming ERISA Policy to Reality}, 49 \textsc{Emory L.J.} 1, 20 (2000) (evaluating a study by the Employee Benefits Research Institute whose results showed a failure of 401(k) plan participants to invest their plan assets despite their access to employer-run investment education programs).
\item \textsuperscript{77} Stabile, \textit{supra} note 72, at 504.
\item \textsuperscript{78} \textit{Id.} at 505.
\end{itemize}
C. **Tax-Expenditure Cost**

While tax benefits have been the primary means for the legislature to encourage the sponsorship of private pension plans, the distribution of these benefits often raises serious issues of equity. Many have argued that although the tax expenditure cost to the government on private pension plans has been significant, the tax subsidies actually flow mostly to those who are already better off. Highly paid corporate officers and executives are most likely to enjoy plan coverage and are most capable of making the maximum contribution to their pension plans. Therefore, these individuals receive the greatest tax benefits from their retirement investment. The tax costs burden all taxpayers; nevertheless, those who need pension income the most (i.e., low-income workers) and whose conditions have justified those tax incentives, could end up with only a minor percentage of the benefits, if they receive any at all.

IV. **THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001: A CRITICAL EVALUATION**

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA),\(^\text{81}\) includes over forty provisions affecting pension plans and benefits. “Most of these provisions are designed to encourage the expansion of retirement savings and to reduce the complexity of existing statutory provisions.”\(^\text{82}\) In an effort to reform the retirement benefit system, EGTRRA has sacrificed almost fifty billion dollars of tax revenues on private pension plans and individual retirement arrangement, including more than twenty billion dollars for expanding pension coverage.\(^\text{83}\) A question still remains as to how well EGTRRA addressed the problems and concerns of the pension coverage and pension security systems. This section will evaluate the major retirement plan provisions of EGTRRA from this perspective.

A. **Increased Contribution and Benefit Limits**

The tax law imposes limits on: 1) contributions and benefits under

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79. See Bernstein, supra note 53, at 386; See also, Pamela Perun, *The Limits of Saving*, 49 *BUFF. L. REV.* 873, 903-04 (stating that low-income savers are often left behind by a private pension system which is “based solely on tax system incentives and subsidies.”).

80. Bernstein, supra note 53, at 386.


qualified plans; 2) the amount of compensation that may be taken into account under a plan for determining benefits; and 3) the amount of elective deferrals to limit the tax benefits associated with the qualified plans.\textsuperscript{84} With a primary focus on retirement plan contribution limits, EGTRRA has extensively increased these maximum dollar amounts.

In 2002, the limit on compensation under a qualified plan increased from $170,000 (as adjusted for 2001 under pre-EGTRRA law) to $200,000.\textsuperscript{85} Elective deferral limits for defined contribution plans (applicable to 401(k), 403(b), and 457 Plans) will be increased in stages from $10,500 for 2001 to $15,000 for 2006 and thereafter.\textsuperscript{86} Starting in 2002, elective deferral limits for a SIMPLE plan increased incrementally by an additional $1,000 each year until 2005.\textsuperscript{87}

In 2002, the annual maximum benefit from a defined benefit plan increased from $140,000 to $160,000.\textsuperscript{88} The maximum annual contribution to a defined contribution plan was increased from $35,000 to $40,000.\textsuperscript{89} The maximum percentage of compensation that can be contributed and deducted by an employer (based on aggregate compensation of all participants) to a profit-sharing plan, including SEPs, was increased from fifteen percent to twenty-five percent.\textsuperscript{90} Money purchase pension plans are treated identically for purposes of the deduction rules.\textsuperscript{91}

The tax burden forgiven by increasing these dollar limits will be significant. The Committee Reports explain that the changes to the contribution and benefit limits are aimed at increasing plan coverage:

One of the factors that may influence the decision of an employer, particularly a small employer, to adopt a plan is the extent to which the owners of the business, the decisionmakers, or other highly compensated employees will benefit under the plan. The Committee believes that increasing the dollar limits on


\textsuperscript{85} EGTRRA, Pub. L. No. 107-16 § 611(c), 115 Stat. 38. This will be indexed for inflation in $5,000 increments, compared with the previous indexing of $10,000 increments. \textit{ld.}

\textsuperscript{86} See \textit{id.} § 611(d) (charting the deferral limit increase from 2002 to 2006). The $15,000 will be indexed for inflation after 2006 in $500 increments. \textit{ld.} at § 611(d)(2) para. 5.

\textsuperscript{87} See \textit{id.} § 617(f) (stating that these amendments will be enacted after December 31, 2005). The $10,000 regular contribution limitation will be index for inflation in $500 increments starting in 2006. \textit{ld.}

\textsuperscript{88} See \textit{id.} § 611(a) (describing the dollar limit changes for defined benefit plans).

\textsuperscript{89} See \textit{id.} § 611(b) (describing the dollar limit changes for defined contribution plans). Before EGTRRA, indexing was in $5,000 increments. H.R. REP. NO. 1909-1836, ¶ 5039 (2001).

\textsuperscript{90} See \textit{id.} § 616(a) (outlining the modification of deduction limits for stock bonus and profit sharing trusts and defined contribution plans).

\textsuperscript{91} \textit{ld.}
qualified plan contributions and benefits will encourage employers to establish qualified plans for their employees.\(^2\)

For employees already covered by a section 401(k) plan or other plans that allow elective deferrals, the increased limits to the deferrals are intended to better enable the employees to save for their retirement.\(^3\) However, it remains unclear whether the tax incentives will produce the intended improvement in pension coverage or whether the improvement, if any, will be worth the promised expenditure once added to the political expenses already incurred in connection with its enactment.\(^4\) Indeed, whether raising the limits on contribution will actually improve individual retirement savings through the private pension system is a "highly controversial" issue.\(^5\)

This legislation promises most of its immediate benefits to: employers, the highly compensated employees who control an employer's retirement benefit decisions, and those employees already covered by a pension plan and are earning enough to contribute to retirement savings through the plan. The limit on recognized annual compensation of a plan participant in determining the participant's benefits has been an important measure to impose a ceiling on the benefits of very highly-compensated employees.\(^6\) The limit had risen to $235,840 before it was reduced to $150,000 in 1993 to mitigate against a bias in favor of highly-paid employees.\(^7\) Although some believe that the reduced limit has deterred some employers from adopting qualified plans, it is at least doubtful that employers' adoption of defined contribution plans, as compared to defined benefit plans, has been deterred given the substantial increase in the number of defined contribution plans in recent years.\(^8\)

A study by Pamela Perun analyzing the likely impact of some reform proposals which raised contribution and benefit limits (largely the same as those changes adopted by EGTRRA) questioned such an approach even before the enactment of EGTRRA.\(^9\) Perun found that the reform proposals

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93. Id. at 70.
94. See Perun, supra note 79, at 903 (suggesting that from a political cost-benefit perspective, the proposals do not attempt to make fundamental changes in the structure or operation of the system and thus are not worth the political capital expended on them).
95. Id. at 874 (arguing that the reforms would do little to change the status quo in the private pension system).
97. Id. In Collins' view, the classification of this reduction as a "revenue raising measure" under the Revenue Reconciliation Act of 1993 revealed the true reason for the change. Id.
98. Id. at 622.
99. Specifically, the proposals studied would make the following changes:
(1) standardize the contribution limits in 401(k), 403(b), and 457 plans; (2) raise
would primarily benefit those individuals who wish to and are capable of saving a large portion of their incomes, and that they would not increase the average or marginal tax subsidies but may well decrease them. She also found that the reform proposals would increase the absolute dollar amount received in tax subsidies, thus concluding that the primary effect would be to help those who can afford to save more for retirement by doing so with federal tax dollars.

The effectiveness of the legislation is also limited by the inherent defects of defined contribution plans. Since these plans place the investment risk upon participants, increased investment through defined contribution plans does not necessarily optimize the retirement accumulations of participants. Unsophisticated rank-and-file employees are more likely than other, more highly-paid employees, to end up with sub-optimal retirement benefits.

Since the benefits under EGTRRA are available to all qualified plans, and there is no added incentive for employers to adopt defined benefit plans as their primary pension plan, any positive effect on sponsorship of a defined benefit plan would be minimal.

For those employers already offering defined benefit plans and considering a cash balance conversion, EGTRRA provides a partial response to the debate over conversion. This will at least help prevent more employers from withdrawing their offers to sponsor defined benefit plans.

B. Catch-up Contribution and Annual Benefit Limit Changes

For participants of defined contribution plans, taxpayers who are fifty or older will be allowed to make additional contributions, which “will not be subject to anti-discrimination rules or other limitations, except that contributions may not exceed earnings.” The catch-up contributions to

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Perun, supra note 79, at 879.
100. Id. at 903.
101. Id.
102. Stabile, supra note 72, at 492-93.
104. Gary S. Lesser & William A. Clemmer, EGTRRA, EGTRRA, Read All About It, ROUGH NOTES, Aug. 1, 2001, at http://www.roughnotes.com/rnmag/august01/. For instance, an employee who is over age 50 could contribute an extra $1,000 even though other plan provisions may limit the 401(k) contribution, for instance, to $6,500.
various types of defined contribution plans for these individuals may have some positive effects on the pension coverage of older workers. The Committee Reports explain the rationale for the catch-up contributions provision:

Although the Committee believes that individuals should be saving for retirement through their working lives, as a practical matter, many individuals simply do not focus on the amount of retirement savings they need until they near retirement. In addition, many individuals may have difficulty saving more in earlier years, e.g., because an employee leaves the workplace to care for a family. Some individuals may have a greater ability to save as they near retirement. The Committee believes that the pension laws should assist individuals who are nearing retirement to save more for their retirement.105

Another potential effect of the catch-up contribution provision is that older workers covered by a defined contribution plan may be encouraged to delay retirement.106 Postponed retirement helps older workers save more.

The catch-up provisions may potentially have a negative impact as well. Allowing catch-up contributions for every worker who has attained fifty years of age instead of providing for those who are in danger of having inadequate retirement income may increase the distributional inequities of the pension tax law system.107 Also, such a provision encourages misconceptions "among younger workers that they do not need to begin saving large amounts for retirement until later in their working careers."108

In addition, EGTRRA reduces the limit on annual benefits paid out of a defined benefit plan for retirement before age sixty-two instead of the pre-EGTRRA age of sixty-five.109 This may discourage some workers between the ages of sixty-two and sixty-five who are covered by a defined benefit plan, from remaining in the labor force and saving for retirement.110

C. Plan Administration and Simplifications

106. See Jonathan Barry Forman, How Federal Pension Laws Influence Individual Work and Retirement Decisions, 54 TAX LAW. 143, 145 (2000)(arguing that the pension system is "fraught with financial incentives that push able-bodied elderly workers into retirement just when instead they should be encouraged to remain in the work force to accumulate additional retirement assets" and suggesting that a rule that permits older workers to accrue additional benefits for each additional year of service might help expand pension coverage).
108. Id.
110. See Forman, supra note 106, at 180 (indicating that although the benefit reduction for taking benefits prior to age sixty-five is considered actuarially fair, empirical research suggests that the Social Security earnings test slightly discourages labor supply).
A series of miscellaneous provisions under EGTRRA can help simplify and reduce the costs of plan administration, thus providing better protection to employee participants.

Small employers are entitled to a fifty percent (up to $500) credit for their pension start-up costs incurred during each of the first three years of the plan (beginning after December 31, 2001). In addition, after 2001, for the plan’s first five years, a small employer may waive the user fees charged by the IRS for the determination letter issued to establish qualified plan status. In 2001, the fees ranged from $125 to $1,250.

The distinction between 401(k)/profit sharing, 403(b) plans, and governmental 457 plans is further blurred by the ability to commingle assets, making it easier for employees to move from for-profits to nonprofits and/or government employment. The ability to rollover assets between various plans further simplifies the system and provides an incentive for individuals to continue to accumulate funds for retirement. In 2003, Roth 401(k) and Roth 403(b) plans became available to provide participants with more choices.

A faster vesting schedule applies for employers who match contributions for plan years beginning in 2002. Thus, matching contributions in a 401(k) plan must become fully available to the plan participant after three years of service (or six years, if the employer contributions vest gradually). The vesting schedule used to be five and seven years, respectively. This provision was inserted to allow many lower and middle-income employees to “take full advantage of the retirement savings opportunities provided by their employer’s section.

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112. See id. § 620 (allowing the Secretary of the Treasury to waive user fees for eligible employers).
113. H.R. REP. No. 107-51, at 70.
114. See EGTRRA, Pub. L. No. 107-16 §§ 641-643, 115 Stat. at 118-23 (addressing rollovers among various plans, of IRAs, and after-tax contributions); id. at §§ 646 (rationalizing restrictions on distributions); id. at § 649 (specifying minimum distribution and inclusion requirements for section 457 plans); id. at § 666 (repealing the multiple-use test).
115. Lesser & Clemmer, supra note 104.
116. But other changes also add complexity to the current system so that the overall pension system is not significantly simplified. See Pratt, supra note 33, at 852-53 (analyzing the complexity of changes to 403(b) plans, Roth contributions, ESOPs, as well as 401(k) plans).
117. Also called a tax-sheltered annuity or section 403(b) annuity.
119. See id. § 633(a), 115 Stat. at 115-16.
120. Id.
401(k) plan,” to “make section 401(k) plans more attractive,” and to “enable short-service employees to accumulate greater retirement savings.”\(^\text{122}\)

These miscellaneous incentives, however modest, are constructive moves toward the improvement of pension coverage and security. The simplification of plans and the reduction of administrative costs may encourage small employers to sponsor new employee pension plans. Faster vesting schedules help short-term employees to take advantage of pension saving opportunities. Easier asset rollover between various plans also encourages people with mobile employment patterns to save more for their retirement. These changes target those employees whose employment patterns have disadvantaged them in taking advantage of private pension plans, and (to the extent that their employment patterns have caused the disparate impact) may serve to improve the retirement benefit conditions of women and minorities in the workforce.

As suggested above, many factors have contributed to the low pension coverage of these subgroups. Response to any single factor might not achieve a significant effect. However, it is still commendable to respond to some identified problems in the private pension system.

V. REFORM PROPOSALS

Professor Bernstein believes that a lack of awareness of serious structural problems in private pension plans makes reform unlikely.\(^\text{123}\) Employers' interests are expected to dominate under the structure of employer-sponsored plans.\(^\text{124}\)

Admittedly, EGTRRA leaves many important issues unresolved. First, private pension plans are still risky for unsophisticated employees, especially in a slow economy, because EGTRRA gives more incentives for defined contribution plans but little for defined benefit plans. Second, significant tax benefits have gone to those who are already well-off in order to encourage sponsorship of employee pension plans that are inevitably dominated by employer interests.

However EGTRRA does respond to some hotly debated issues in the private pension world, such as cash-balance conversions and small-employer pension coverage problems. With the problems of various types of pension plans becoming more obvious, a review of some of the current reforms may direct future reforms after EGTRRA.

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\(^{122}\) Ibid. at 73. \\
\(^{123}\) Bernstein, supra note 53, at 389 (concluding that the lack of awareness of structural problems within employer-sponsored plans will make reform unlikely). \\
\(^{124}\) Ibid.
A. Choice of Plans and Plan Reforms

With the trend moving away from defined benefit plans and toward defined contribution plans, many are advocating for a more diversified coverage of pension plans, as “[a] sound retirement policy would encourage employers to sponsor both defined benefit and defined contribution plans for their employees because, in combination, the plans can help provide adequate income for employees’ retirement years.”

1. Reviving Defined Benefit Plans

Because of the income security offered by a defined benefit plan and the marked decline of such plans in recent years, more incentives should be proffered for continued sponsorship of defined benefit plans.

Professor Collins has proposed increasing the compensation limit of defined benefit plans, which he believes would directly and favorably impact the decisionmakers, i.e., highly compensated employees with authority to adopt defined benefit plans, which are preferable to defined contribution plans in terms of pension security and will benefit those employees earning between the old and new compensation limits.

Noting that “unnecessary complexity and poorly thought-out rules have deterred many employers, especially small employers, from adopting defined benefit plans, and also have been a major factor in the termination of thousands of defined benefit plans over the past 15 years,” Collins suggests simplifying the rules and creating employer incentives in order to revive defined benefit plans so that coverage of such plans and the current form of the qualified plan regime can be substantially improved.

However, simplification of rules is “simpler to state than to achieve.” Alternatively, adopting hybrid plans can be a better way to revive defined benefit plans, which may capture the best features of both and distribute investment risk between the sponsor and its employees. Cash-balance pension plans are a viable option because they “combine the portability and simplicity of defined contribution plans with the predictability and security of traditional defined benefit plans.”

126. Id. at 622.
127. Id. at 656. Collins also points out that those complicated rules were adopted often for revenue-driven reasons.
128. Id. at 602. (“[T]his article assumes that the qualified plan regime will be retained largely in its current form.”).
129. Pratt, supra note 33, at 752.
The conversion from a traditional defined benefit plan to a cash balance plan has been controversial. The traditional defined benefit plan is heavily back loaded. That is, the benefit is based on average pay immediately prior to retirement, whereas a cash balance plan allocates a fixed percentage of compensation to each worker's hypothetical account each year. The traditional defined benefit plan encourages employees to work for a single employer until retirement and creates incentives for employers to encourage early retirement, whereas the cash balance plan is neutral as to employees' retirement decisions.

Because of these different features between the two types of plans, "[o]lder participants may be disadvantaged under the cash balance plan design. This is true for both converted and unconverted cash balance plans." First, replacing a traditional pension plan with a cash balance plan might significantly reduce the expected pension benefits of older workers. Some of them may also experience a "wear-away period," which "prevents employees from accruing new benefits under a converted cash balance plan until the accruals in the cash balance accounts exceed the value of the benefits already accrued under the prior accrual formula." Second, the disproportionate impact on older workers within different age groups due to the elimination or reduction of early retirement benefits offered under the prior plan further complicates the situation with age discrimination concerns.

Due to all of these uncertainties about cash balance conversions, some employers are deterred from adopting cash balance plans. While some commentators call for congressional clarification to clear the path for cash balance plans, a compromise has also been suggested: strike a balance between the interests of employers and employees by:

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131. See supra notes 28 and 36 and accompanying text in II.A.1 and II.A.3 for a discussion of defined benefit plan and cash balance plans.
132. Forman, supra note 106, at 156 (discussing how defined contribution plans can effect employee retirement timing).
133. See Jefferson, supra note 39, at 538.
134. Id. at 546.
135. Id. at 546-47. Opponents of the plan argue that the conversion for violating the Age Discrimination in Employment Act ("ADEA") is a matter of law. Proponents of the plan argue that the conversion will not violate ERISA or ADEA because the employer-provided pension system is only voluntary. Moreover, if an employer does provide a pension plan to the employees, ERISA generally ensures that the employees will receive the benefits that the employer has promised them. Jonathan B. Forman & Amy Nixon, Cash Balance Pension Plan Conversions, 25 OKLA. CITY U.L. REV. 379, 383 (2000). See Stabile, supra note 72, 511-12 (noting that the conversion of defined benefit plans to cash balance plans raises two concerns, the "wear-away" issue and age discrimination). See generally, Edward A. Zelinsky, The Cash Balance Controversy, 19 VA. TAX REV. 683 (2000).
137. Id. at 652.
(1) requiring that employers who convert their traditional defined benefit plans to cash balance plans provide sufficient notice to affected plan participants regarding the impact of the change on their projected retirement benefits; and (2) limiting the amounts by which the retirement benefit of affected plan participants can be reduced as a result of plan conversions.\footnote{138}

EGTRRA has adopted the notice approach, thus endorsing more adoption of cash balance plans in the future. The Act requires meaningful disclosure concerning a plan amendment that provides for a "significant reduction in the rate of future benefit accrual," including any elimination or reduction of an early retirement benefit or retirement-type subsidy.\footnote{139} Section 659 of the Act imposes an excise tax on the failure to disclose.\footnote{140} The Committee believes that this can "strike a balance between providing meaningful disclosure and avoiding the imposition of unnecessary administrative costs on employers."\footnote{141} The Committee reports also note that issues, particularly with respect to "wear-away" situations, will be further studied by the Treasury to provide guidance to Congress.\footnote{142}

2. Reforming Defined Contribution Plans

A major issue for any reform of defined contribution plans will likely be simplification of the rules. The current complex rules have likely hindered small employers from adopting pension plans for their employees.\footnote{143} Professor Pratt proposed to eliminate the unnecessary differences between the rules applicable to different plans and to simplify the rules for all defined contribution plans. This would relieve current plan sponsors of the severe compliance burdens and encourage small employers to start new plans for their employees.\footnote{144} Although EGTRRA has made some efforts to simplify the existing rules,\footnote{145} it simultaneously complicates others.\footnote{146} The government is still working to simplify these rules. The

\footnotesize{\begin{itemize}
\item \footnote{138}{Jefferson, \textit{supra} note 39, at 574.}
\item \footnote{139}{H.R. \textit{REP. NO. 107-51, at 95 (2001).}}
\item \footnote{140}{EGTRRA, \textit{Pub. L. No. 107-16, \S 659, 115 Stat. 137 (2001).}}
\item \footnote{141}{H.R. \textit{REP. NO. 107-51, at 95-96.}}
\item \footnote{142}{\textit{Id.}}
\item \footnote{143}{See \textit{Pratt, supra} note 33, at 746-48 (illustrating the complexity of the rules and citing from the 2000 Small Employer Retirement Survey the factors most likely to influence a small employer to start a plan as an increase in profits (sixty-nine percent), a tax credit for starting a plan (sixty-five percent), a plan with reduced administrative requirements (fifty-two percent), and availability of easy-to-understand information (fifty percent)).}
\item \footnote{144}{\textit{Id.} at 851.}
\item \footnote{145}{Examples of these efforts are: the portability provisions affecting 401(k)/profit sharing, 403(b) plans, and governmental 457 plans.}
\item \footnote{146}{\textit{See, e.g., Pratt, supra} note 33, at 851-853 (differentiating between the EGTRRA changes that promote simplification and those that add complexity).}
\end{itemize}}
Treasury Department announced on January 31, 2003 that the President proposes replacing 401(k) accounts with Employer Retirement Savings Accounts (ERSAs), which would consolidate 401(k), thrift, 403(b), and governmental 457 plans as well as SARSEPs and SIMPLE IRAs into a streamlined and simpler account, and which could be sponsored by any employer.\textsuperscript{147}

Simplification of rules, however, is not enough. Expanded coverage of defined contribution plans does not necessarily mean that plan participants will retire with sufficient plan benefits. The lack of pension security under current defined contribution plans, calls for further reforms.\textsuperscript{148} Professor Stabile proposes that Congress should consider whether ERISA should be amended to eliminate participant direction of investments in 401(k) plans.\textsuperscript{149} As a supplement to the elimination of participant direction, the employer-sponsors should be required to provide some minimum guaranteed level of benefits, or as Professor Jefferson has proposed, to create an insurance scheme under ERISA for defined contribution plans similar to that which exists for defined benefit plans.\textsuperscript{150}

In essence, Professor Stabile has proposed another type of hybrid plan. It is a defined contribution plan with a defined benefit plan’s security features, and like a cash balance plan, possesses the best features of both types of the traditional plans.

B. Creating Right Incentives—Targeted Pension Reform

Professor Medill’s targeted pension reform proposal provides inspiration beyond the modification of specific plans. She notes that the federal budget balancing process has produced cycles in pension tax law reforms:

In periods of budget deficits, pension tax law becomes more ‘complex’ as Congress amends the laws to reduce the amount of the pension tax subsidy. These amendments, inscrutable except to relatively few pension tax law experts, are in effect hidden, and thus politically palatable, tax increases. Conversely, in times of budget surplus the political debate over tax cuts naturally


\textsuperscript{148} See Stabile, supra note 72, at 510-17 (“A major source of concern with defined contribution plans is participant direction of investments, combined with the inability of ERISA’s fiduciary standards to meaningfully address participant direction.”) Id. at 513.

\textsuperscript{149} Id. at 513-14.

\textsuperscript{150} Id. at 515-16 (citing Regina T. Jefferson, Rethinking The Risk of Defined Contribution Plans, 4 FLA. TAX REV. 607, 682 (2000)).
extends to the pension tax laws, but often masquerades under the rubric of pension 'simplification' or 'fairness.'

EGTRRA seems to follow this traditional approach in times of budget surplus. It possesses all the three themes Professor Medill has identified in the pension law surplus cycle: "administrative simplification, special incentives based solely on employer size, and increased incentives for individual retirement savings." Accordingly, such a reform would be unlikely to expand retirement plan coverage to workers who currently have none, but would enhance the benefits of highly-compensated employees who already have coverage. "Draining the fisc is likely to exaggerate the cyclical effects of the budget balancing process on pension tax law policy in the future."

Professor Medill's proposal utilizes two general approaches:

1) by developing legislation that strategically target the pension tax expenditure toward broadening the coverage base rather than increasing the tax-subsidized retirement benefits available to highly compensated employees; and (2) by focusing legislative attention on obstacles to and incentives for new plan sponsorship that are the least susceptible to budgetary cycles.

Specifically, to broaden the coverage base, unlike EGTRRA's approach of increasing the limitations rules for qualified plans, the targeted reform would "amend the coverage and eligibility rules governing qualified plans to require more comprehensive coverage of the employer's workforce" thus resulting in "retirement plan coverage for more rank-and-file employees." The tax incentive under targeted reform would result in a more equitable pension tax law system that primarily benefits people in lower income brackets.

The targeted reform proposes three methods for encouraging the sponsorship of new plans: 1) simplification of administrative procedures; 2) increased market efficiency; and 3) education of employers.

First, administrative procedures should be adequately simplified to truly simplify plan administration, and proposals that "masquerade under the rubric of simplification," but "actually serve to redistribute a larger share of the pension tax subsidy to higher-income employees" should be rejected.

151. Medill, supra note 107, at 2.
152. Id.
153. Id. at 24.
154. Id. at 2.
155. Id. at 63.
156. Id. at 64.
157. Id.
158. Id. at 66.
Second, promoting a more efficient market for plan administrative services, which would produce longer-lasting incentives to plan sponsorship than the one-time only tax credits currently available to smaller employers.159

Third, stimulating employee demand through effective public education,160 as opposed to increasing tax benefits for high-ranking employees in order to induce new plan sponsorships.

VI. CONCLUSION

A sound retirement benefit system that will provide sufficient retirement income to the increasingly aging workforce is crucial to the public welfare and to the maintenance of social stability in the United States.

EGTRRA provides significant tax benefits to employers and employees by increasing the limits of contributions and benefits to encourage the sponsorship of new pension plans. Nevertheless, to the extent that it follows the same pattern of reform traditionally enacted when the country experiences a tax surplus, most of the tax monies will probably flow to those who are already wealthy. This approach, unfortunately, leaves many of those most in need of pension protection still outside the system. EGTRRA also adopted changes to simplify pension administration and reduce administrative costs for small employers. Congress continues efforts to simplify the rules governing defined contribution plans in order to encourage small employers to start plans for employees.

A review of the pension reform proposals suggests that, due to significant differences in the investment risk allocation and the costs associated with administering defined benefit plans versus defined contribution plans, it is sound policy to encourage an employer to sponsor both. Sponsoring both plans and giving employees a choice allows risks and costs to be distributed equitably between employers and employees. Alternatively, new hybrids that capture the best features of the two traditional plans may be able to achieve the same goals.

In directing the future reform of the private pension system in the United States, Congress should carefully design incentives and regulations to efficiently and equitably achieve the national goal of sufficient retirement income for all employees. Congress should look beyond its traditional patterns of reform, which involve creating large scale financial incentives. It should instead seek to adopt targeted reforms. Meanwhile, as the “stick and carrot” in pension regulation, ERISA and the Internal

159. Id. at 67.
160. Id.
Revenue Code should be amended together to ensure that tax incentives will bring about the intended effects without being abused.