ERISA After 25 Years: *A Framework for Evaluating Pension Reform*

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▶Labor Day 1999 marks the 25th anniversary of the passage of the Employee Retirement Income Security Act (ERISA), the landmark legislation that enacted sweeping reforms in the nature and structure of the private pension system. *Since that time, the taxation and regulation of pensions has been further revised on numerous occasions. Nevertheless, the impact of existing policy and the appropriate direction of future pension policy have become even more controversial issues, especially in light of the aging of the baby boom generation and the need for Social Security reform.*◀

Ensuring adequate retirement income for Americans will be one of the most pressing public policy issues of the next several decades. Reductions in the generosity of Social Security, longer life spans, diminishing family networks and low levels of personal saving other than pensions will combine to raise the importance of private pensions in meeting future retirement needs. The central goal of a major research project that we are organizing, described briefly in this article, is to examine appropriate public policies for pensions in the future. This involves: (1) synthesizing what is known about pensions and pension policy; (2) developing new research to fill in the gaps; and (3) providing the policy making community with a blueprint of prescriptions—and the scholarly backing for those prescriptions—for effective and durable reform.

This article is structured as follows. The next section explains the impetus for our project by summarizing current concerns and issues on the horizon. Then we describe the role and evolution of pension policy by giving a brief history of the passage of ERISA and significant legislation passed in the 25 years since 1974, and by summarizing major pension reform proposals recently introduced in Congress. We illustrate some of the sources of complexity and administrative difficulty for plan sponsors and participants by reviewing the nondiscrimination and

We are organizing two conferences, one in September 1999 and the second in September 2000, in Washington, D.C. to examine the foundations and the future of the private pension system. The main goals are to provide a comprehensive view of the underlying assumptions, characteristics and effects of existing pension policy, and alternative views on how public policy toward pensions should evolve in the future. The invited papers from each conference will be gathered in two books, with discussants' comments and editors' summary. The conference volumes will also serve as a basis and blueprint for recommendations for pension reform.

minimum distribution requirements, and the creation in the law of new pension types. The final section describes how our project is organized—two research conferences, the first providing a framework by examining broad issues in pensions, and the second delving into the specific impact and design of key aspects of pension policy.

CURRENT CONCERNS AND ISSUES ON THE HORIZON

At least since World War II, retirement income in the United States has relied on the so-called three-legged stool: Social Security, pensions and private saving. The system must be judged a success in that the incidence of poverty among the elderly has been sharply reduced even while people have been retiring at younger ages and significant mortality improvements have been experienced.

However, important problems loom in the future as a result of the confluence of a number of factors. First, the impending retirement of the baby boomers will put pressure on Social Security (and Medicare), as the number of beneficiaries per worker is expected to rise to 0.5 in 2030, compared to 0.3 in 1998 and about 0.1 in the 1950s. Any solution to these problems, even privatization, will necessarily involve some combination of (perhaps hidden) contribution increases or benefit cuts. Second, as life spans continue to lengthen, the amount of time most households spend in retirement increases and, therefore, the cost of financing retirement grows. Third, private saving, other than pensions and home ownership, has virtually evaporated in the United States. Fourth, family networks, a traditional source of retirement security, have diminished in importance. Fifth, labor mobility has increased, and the participation of many in the labor force has become more sporadic, increasing the difficulty of retirement planning.

Against this backdrop, the adequacy of future retirement income depends on the private pension system. Although Social Security has been the focus of a huge number of studies and public attention in recent years, the role of private pensions in meeting future retirement needs has been relatively overlooked. Nevertheless, the private pension system already carries a significant load: It accounts for about 20% of the retirement income of the elderly, about 25% of total net financial worth in the United States, and roughly 100% of all net personal saving since the mid-1980s.

But all is not well here, either. The principal legislation regulating pensions—the Employee Retirement Income Security Act (ERISA)—was passed in 1974. Since that time, coverage has stagnated at around 50% of the labor force, many low- and middle-income households are not covered, and most small- and medium-sized employers do not provide coverage. The pension laws and regulations have been modified in a piecemeal fashion since 1974, and complexity has increased greatly. Some pension rules appear to discourage firms from providing or expanding plans. The increase in labor mobility has made traditional defined benefit pension plans, with back-loaded benefits and long vesting periods, less attractive. The very impressive performance of asset markets, especially equities, in the last two decades, has made workers more comfortable with participant-directed defined contribution plans. The resulting major shift over the last 25 years, from defined benefit to defined contribution plans, has provided workers with better portability of pension benefits and more choice. At the same time, however, it has raised concerns about workers' ability to make appropriate decisions regarding participation, contribution levels, portfolio allocation and withdrawals.

ERISA and subsequent legislation seem to have accomplished the goal of securing the accrued benefit rights of plan participants. Those rights may also have been broadened somewhat as a result. It is unknown, however, whether all the legislative and regulatory activity has led to any increase in the retirement income of Americans with pensions. Furthermore, some analysts have argued that, by increasing administrative costs and complexity, the passage of ERISA and subsequent legislation may even have caused the cessation of the favorable trend in coverage of the 1960s, particularly for defined benefit plans. The central focus of ERISA and, therefore, the brunt of much of the subsequent legal and regulatory activity, was the defined benefit plan type.

These questions and issues are particularly important now in light of evidence that many individuals in the baby boom generation are not preparing adequately for retirement and the probable downsizing of the defined benefit aspect of the Social Security program. The central issues, therefore, are whether the federal rules pertaining to pensions can be simplified and reformed sufficiently to revive employer interest in sponsoring *adequate* pension plans for most of the labor force without jeopardizing the protection for participants or the public fiscal position.

Yet another concern arises from the increased complexity of the pension law and regulations: the integrity of the current public policy itself. Stated more directly, are all the rules observed in practice, and are they enforceable? Quoting a prominent pension law practitioner:

> The notion that one can make the law simpler and more predictable by adding more and more mechanical rules, until at last all the questions are anticipated and answered is misguided. In addition, at some point the rules simply become so complex that they become unworkable. On the one hand, it becomes impossible for employers to get everything right, no matter how hard they try. On the other hand, though, it becomes impossible for the IRS, or any other agency, meaningfully to enforce rules that have become too numerous to remember, too complicated to understand, and too complex to administer. Laws are enforced out in the field by ordinary people, and what is needed is a system that can be understood and applied in a relatively efficient way by just such people. (Leon Irish, p. 929.)

Or as another prominent practitioner, head of a committee on pension simplification of the New York Bar and the first IRS Assistant Commissioner for Employee Plans, has asked even more bluntly:

> How many practitioners do you suppose there are who could read a plan and determine whether it fully satisfied the current requirements, or at what stage of the law's changes the plan ceased to be qualified? How many IRS agents could do that? (Alvin Lurie 1999, p. 1060.)

THE ROLE AND EVOLUTION OF PENSION POLICY

There is a need to understand and evaluate current policy, and to formulate a new federal policy toward pensions. In the past, federal policy has reacted to developments in the design of pensions (especially perceived abuses) and influenced further developments. Because of the broad scope and specificity of the federal law and regulations in this area, knowledge of past federal policy is essential to understanding the historical development of pensions. Careful design of the next major steps in policy is critical to influencing in a positive direction the path that will be taken in the future.

The Passage of ERISA[1]

Before ERISA was enacted in 1974, disparate federal and state laws regulated private pension and savings plans. Plans funded through life insurance companies were partially covered by state insurance laws relating to solvency and investments. The assets of plans funded through banks and trust companies were somewhat protected by general trust law and the supervision of federal and state banking authorities. The Internal Revenue Service interpreted and enforced the provisions of the Tax Code affecting pensions, namely (1) to prevent discrimination in favor of officers, supervisors and highly compensated individuals with respect to coverage, benefits and financing of private plans, and (2) to protect federal revenues against "excessive and unjustified" tax deductions.

In 1958, a federal law was passed requiring that plan participants be given enough information about the nature and operations of their plan to detect any wrongdoing and to seek relief under existing state and federal insurance and trust laws. In 1962, the Department of Labor was given authority to prescribe forms for this requirement, enforce compliance and conduct investigations. Embezzlement, false reporting, bribery and kickbacks were made federal criminal offenses. Most of the focus was on the preservation of plan assets, however, rather than the preservation of rights of individuals to plan benefits.

During the 1960s, there was a growing realization that pensions represented a major element of the economic security of American workers and their families, that they are a significant source of financial power, and that they affect the mobility of the American labor force. (This realization was accomplished most graphically by the termination of the Studebaker defined benefit pension plan in 1964 when thousands of workers lost their vested pension benefits.) The report from the President's Committee on Corporate Pension Funds, issued in 1965, recommended that there be mandatory minimum vesting and funding standards, a program of pension plan benefits insurance and a mechanism for pension portability. The Johnson administration set up a working group to develop legislation to implement the recommendations of the report, legislation that was introduced in Congress in 1968. Following hearings, the bipartisan development of their own legislation by the Labor and Tax Committees, and resolution of a severe jurisdictional dispute, President Ford signed ERISA on Labor Day 1974.

ERISA is a massive, comprehensive and complex law because of its specificity and the scope of matters covered. The legislation regulates virtually every aspect of pensions, including employee benefit rights, reporting and disclosure rules, participation, coverage, vesting, funding, fiduciary responsibilities, amounts that can be contributed or withdrawn, nondiscrimination, and tax penalties. (Portability of defined benefit plan benefits, however, has never been addressed directly by ERISA, despite the recommendation of the 1965 committee, because of the concerns of plan sponsors about mandated costs.) It specified which aspects of the law were to be administered and enforced by the Department of Treasury (usually through the Internal Revenue Service), the Department of Labor, both Treasury and Labor jointly, or the Pension Benefit Guaranty Corporation (PBGC).

ERISA created the PBGC specifically to administer a program of pension plan benefit insurance whose purpose is to ensure the fulfillment of the vested rights of participants in a defined benefit plan, then the dominant pension plan type, irrespective of the funded status of the plan at the time of termination. The administrator of any private defined benefit plan is required to report to the PBGC any developments that might portend plan termination. The PBGC has a claim on the assets of the plan sponsor to cover the amount of any unfunded benefit liabilities. To the extent that corporate assets cannot cover the unfunded liabilities, the PBGC uses assets accumulated from guaranty funds, financed by premium income gathered from all sponsors of defined benefit plans, plus investment earnings of the funds.

The Last 25 Years

Since 1974, a staggering amount of federal legislative and regulatory activity has been added to the basic framework established by ERISA. To some extent, this activity deepened and developed trends already present in ERISA. For example, the minimum funding requirements for defined benefit plans have been tightened several times, and the negotiating position of the PBGC in bankruptcy situations strengthened. These actions were in response to actual and perceived abuses by plan sponsors, underfunding of certain large plans, and weaknesses of the insurance system. The net result is improved finances for the PBGC guaranty funds, an exceedingly complex and constraining set of laws and regulations, and considerably fewer defined benefit plans of all sizes, but especially small and medium ones, covering fewer active workers. Similarly, minimum vesting and participation standards for private plans have been tightened, resulting in improved portability of benefits and some increase in the costs for plan sponsors. Discrimination in favor of the highly compensated and company officers, particularly at small plan sponsors, was intended to be limited through the adoption of so-called top-heavy and family aggregation rules, stricter rules on integration (permitted disparity) of pension benefits with Social Security, as well as mechanical nondiscrimination tests (described below).

Other changes in pension law did not necessarily reflect the inherent logic of ERISA, but were reactions to newer social, economic and political conditions. In the 1980s, as federal budget deficits soared, in order to finance the lowering of marginal income tax rates and other aspects of tax reform, limits on benefits from, and contributions to, qualified plans were tightened severely. Similarly, minimum distribution rules were applied to all qualified plans, forcing the payout of taxable benefits at certain ages. Spousal rights to benefits were strengthened, and age and gender discrimination were also addressed.

The above litany might lead one to think that the tendency of pension law in the last 25 years has been entirely restrictive, constraining and complicating. This is not true. Individual retirement accounts, 401(k) plans and cafeteria plans were created in the early part of this period and have been enormously popular, although they have also been subjected to legal and regulatory ebb and flow. (We'll discuss the more recent creation of SIMPLE plans below.) A few of the more difficult rules have been repealed in the last three years, as it became apparent that they resulted in confiscatory taxation or were impossible to administer. The so-called success tax (15% surtax on distributions over a certain threshold level) was repealed as confiscatory,[2] and the family aggregation rules and limits on the benefits from a combination of a defined benefit and defined contribution plan were repealed as excessively complex and burdensome.

Current Legislative Proposals[3]

In 1999, four major pension reform packages were introduced in Congress. Combined, the packages put forth more than 80 pension and IRA reform proposals. In general, there seems to be growing recognition, as reflected in most of these bills, that reform and simplification are required. There is also a tendency, common with past legislation, however, to make piecemeal changes to address specific narrow problems rather than undertake a wholesale rethinking of federal pension policy.

Among the proposed changes in the reform packages are relaxation or elimination of some of the caps on pension and IRA benefits for high-income workers, loosening the limitations imposed in the 1980s. For example, bills would increase the limit on contributions to defined contribution plans from $30,000 to $45,000, increase the limit on contributions to 401(k) and 403(b) plans from $10,000 to $15,000, and increase the benefit limits in defined benefit plans. (403(b) plans are 401(k)-like plans with a slightly lighter regulatory burden, available only to nonprofit and public educational and research institutions.) A couple of the bills would also increase the limit on compensation used to determine benefits from $160,000 to $235,000.

There are also simplification aspects included in these bills. The top-heavy rules requiring special vesting and minimum contributions to "non-key" employees would be made simpler and less restrictive. Those 401(k) plans using a "negative election" arrangement would be exempted from nondiscrimination rules, and the "multiple use" nondiscrimination test for contributions to 401(k) plans would be repealed. For those plans other than 401(k) and 403(b) plans, facts and circumstances tests would be allowed instead of the mechanical nondiscrimination, coverage and line-of-busi-

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ness tests imposed under current rules. The bills would also provide some limited relief from the minimum distribution rules (described below).

The bills would provide specific relief to pension plans sponsored by small businesses. The bills contain a tax credit for administrative expenses incurred by small employers setting up a new pension plan, a waiver of some IRS fees and a reduction of premiums paid to PBGC. Some of the bills create a fully funded minimum defined benefit plan type for small employers, not subject to the nondiscrimination and top-heavy rules.

Other aspects of the bills are meant to improve portability of pension benefits in defined contribution plans. These provisions include faster vesting of employer matching contributions, allowance of rollovers among various types of plans (that is, 401(k), 403(b) and 457 plans), relaxation of restrictions on transfers between plans, and allowance of the purchase of service credit from governmental defined benefit plans using funds from 403(b) and 457 plans. (457 plans are 401(k)-like plans available only to governmental employers.) Finally, provisions in the bills are meant to improve the fairness of pension benefits, particularly for women. These provisions include the increase of spousal survivor benefits, improved disclosure of spousal benefits and relaxation of contribution limits for employees over the age of 50 so that employees can catch up for past contribution opportunities that they missed or that were unavailable to them.

THREE EXAMPLES OF COMPLEX PENSION RULES

Despite the attention beginning to be paid to pension reform, including simplification, pension policy is still likely to be marked for some time by many complex and outmoded provisions, and a proliferation of special provisions designed for narrow purposes, which also add, perhaps inadvertently, to complexity. In this section, we give three examples of particularly complex rules.

Nondiscrimination Requirements

As we mentioned above, nondiscrimination in pension benefits in favor of highly compensated employees and officers has long been prohibited by the tax law, even before the passage of ERISA. IRS traditionally interpreted and enforced the law using a "facts and circumstances" approach, which some plan sponsors criticized as arbitrary, uncertain and inconsistent. Beginning in the 1980s, the Treasury and IRS began interpreting this somewhat vague law in a progressively, even aggressively, specific and mechanical manner. In particular, the tax agencies stated that in order for a retirement plan to remain qualified, in any year no highly compensated employee may receive any contribution or benefit that is not provided to any nonhighly compensated participant. (*Highly compensated* is defined in the law in both absolute (dollar) and relative (top percentile) terms.) Because this interpretation would have meant the disqualification of virtually all plans then in existence, the agencies created in the regulations safe harbors and "general" nondiscrimination requirements whereby plans are examined as to whether they meet a series of highly mechanical ratio tests.

These general nondiscrimination tests ask whether the benefits and contributions for various "rate groups" of employees covered by the plan pass "ratio-percentage" or "average benefits" numerical tests. "Cross testing" is also allowed, that is, testing a defined benefit plan as a defined contribution plan, and vice versa. Furthermore, "fresh starts" and "imputed permitted disparity" are also allowed in the regulations, some employees can be excluded from testing, and various alternative definitions of *compensation* are allowed. In fact, because so many alternative tests, definitions and considerations are given, some benefits practitioners advise plan sponsors to "keep on testing until it passes." The tax agencies, wise to this approach, therefore included in the final version of the regulations a fallback position that the pension plan still had to be nondiscriminatory according to a "facts and circumstances" determination, a highly ironic outcome. In the words of the former executive director of the PBGC, "It is often difficult for non-specialists to comprehend just how complex our pension laws have become. The nondiscrimination rules in particular are extremely intricate and cumbersome . . . and require esoteric and complex distinctions with little or no economic merit: What is a separate line of business? What is a leased employee?" (Utgoff 1991, p. 386.)

Minimum Distribution Requirements

Tax law holds that payouts of retirement plan assets must start at least by a specified time and may continue periodically, at least annually, over the relevant lives or life expectancies of the plan participant and his or her designated beneficiary.[4] These requirements were first adopted in 1962 for Keogh plans when there were no limits on contributions to retirement plans and plan assets were not counted in the taxable estate. Their goal was mainly to prevent Keogh plans, used frequently by professionals, from becoming vehicles for income and estate tax avoidance. Coverage under the requirements was expanded to all types of retirement plans in 1984 and 1986, even though, by then, strict limitations on contributions were imposed and pensions were included in the taxable estate.

The "biological age" at which minimum distributions must begin, relative to the life expectancy of those receiving such distributions, has declined significantly since this requirement was introduced. The Social Security actuary reports that life expectancy for the average 30-year-old man in 1960 was 70.45 years. Hence, in 1962 the age of 70½—the age when the law requires distributions to begin—might have been deemed a reasonable age at which to force retirees to begin taking distributions. Today, however, the life expectancy of a 30-year-old man is 74.5 years. Life expectancy for a 30-year-old woman is 80.8 years, and the labor force today includes a much higher fraction of women than it did in 1960. Thus minimum distribution requirements today apply to many more years of retirement, on average, than they did when they were introduced.

A plan participant may elect to receive benefit payouts over his or her life expectancy. In this event, the minimum required payment is determined every year by dividing the accumulation by the applicable life expectancy factor. One other person's life expectancy can also be included in the factor, and the calculation is then based on the joint life expectancy of the participant and that other person, subject to certain limitations. Life expectancies are calculated using an outdated IRS unisex mortality table.

The retiree may choose, at the time of the first required distribution, between two methods of calculating his or her life expectancy and that of the designated beneficiary. (The designated beneficiary is also known as the *calculation beneficiary*.) Under the *recalculation* method, which is available to a participant and to his or her spouse if the spouse is the calculation beneficiary, the actual age-appropriate life expectancy factor is used each year. For example, for an individual with no calculation beneficiary, the life expectancy factor is 15.3 at age 71, 14.6 at age 72, 13.9 at age 73, and so on. In contrast, under the *one-year-less* method, which is available to a participant and to any type of calculation beneficiary, one year is subtracted from the original life expectancy factor as he or she ages. For example, for a recipient with no calculation beneficiary, the factor is 15.3 at age 71, 14.3 at age 72, 13.3 at age 73, and so on. Under the one-year-less method, the entire retirement asset is distributed by the age of (joint) life expectancy, whereas under the recalculation method, payments can continue, albeit in dwindling amounts, until the last age in the IRS mortality table.

Minimum distribution rules can affect many aspects of asset drawdown by retirees. These effects are discussed in detail in Warshawsky, 1998, but we summarize them here. First, for the significant minority of elderly individuals who are still working at age 70½, the current rules require them to begin taking distributions from IRA and prior employers' plans, even though they may still be contributing to their current pension plans.

Second, these rules create awkward situations when a spouse, who survived a plan participant who had not yet received distributions from the plan, must initiate payments no later than the date the participant would have turned 70½, regardless of the surviving spouse's age or labor force status. Spouses in this setting could roll over pension accumulations into an IRA and postpone distributions until they reach age 70½, but it is not clear how many spouses are aware of this option and pursue it.

Third, one consequence of using a unisex life table in the calculation of minimum required distributions is that women, who have longer life expectancies as a group, must receive higher distributions than would be consistent with a female-only life table. For example, at age 71, the life expectancy factor for a woman is 17.2 under the Annuity 2000 table, nearly two years more than under the IRS table.

Finally, the choice for the ordinary plan participant between the recalculation and one-year-less calculation methods is difficult, risky and complex. Under the recalculation method, when one member of the couple dies, his or her life expectancy is set to zero, and required distributions to the survivor are accelerated and increased. By contrast, under the one-year-less method, when one member of the couple dies, required distributions continue on the old schedule to the survivor. But, as we mentioned above, under the recalculation method, required distributions are generally lower than under the one-year-less method. Hence, participants who do not immediately need their retirement account funds are faced with a difficult choice about calculation method, involving mortality prospects and prospective consumption needs. This choice is made harder because it cannot be revisited or postponed.

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"SIMPLEs"

Because the costs imposed by nondiscrimination tests and other compliance burdens are relatively insensitive to plan size—that is, they are fixed costs—small plan sponsors are particularly saddled with high administrative costs per participant. In recognition of this economic fact, Congress recently created savings incentive match plans (SIMPLEs), 401(k)-like plans for small employers that are not otherwise sponsoring a retirement plan. SIMPLEs do not have nondiscrimination requirements, but employers are required to make matching contributions up to 3% of the compensation of employees who make elective deferrals. Under these plans, elective deferrals are limited to $6,000 per year, compared to $10,000 for 401(k) plans.

As Kovach, 1998, points out, despite the attempt to reduce administrative costs by creating SIMPLEs, Congress has actually increased complexity, by giving employers yet another choice in their design of retirement plans, which they will have to evaluate, at some cost. In particular, each employer will have to examine, for its own situation, whether the $4,000 reduction in the maximum amount an employee can elect to defer per year and a somewhat fixed, but still uncertain, amount of mandatory matching contributions is worth it to get a somewhat simpler retirement plan.

THE NEED FOR FULL ANALYSIS AND OUR PROJECT

Some limited progress has been made in simplifying and rationalizing federal pension policy, and there is the uncertain prospect of further progress in the pension reform bills described above. Nevertheless, there still is no agenda for a wholesale rethinking of pension policy, nor has there been a close and careful examination of specific laws and regulations still on the books. We furthermore believe that even the limited attention and thinking given to pension reform thus far has not considered fully the concerns and issues that we raised at the beginning of this article. Hence, we have proposed, and are leading, a full-scale review project geared toward generating informed and detailed policy suggestions for reforming the pension sector in light of the challenges and opportunities of the next several decades.

The project will address these issues through two conferences. The conferences will be interdisciplinary in nature, featuring economists, lawyers, actuaries, policy makers and benefits consultants as authors, discussants and speakers. The first conference will be a one-day event in September 1999 in Washington, D.C. It will feature papers examining what the main features and effects of previous legislation have been, the role of pensions in the economy (including labor markets, savings and capital markets), pension policy in other countries, emerging developments in pensions (in light of demographic and economic trends) and proposals for reform. The papers will combine (1) critical reviews and syntheses of existing literature and policy, (2) original research on unresolved issues and (3) emphasis on the policy implications of the findings.

The second conference, which will convene for two days in September 2000, will feature a series of research papers and analyses of particular aspects of pension policy. These aspects include, for example, integration of pensions with Social Security, nondiscrimination rules, taxation, financial education, contribution limits, distribution options, appropriate investment strategies, improving benefits and coverage for a heterogeneous workforce, and administrative and simplification issues.

By integrating the broad overview of pension issues in the first conference with the detailed examination of various aspects of policy in the second conference, the papers as a whole will generate a body of information that can provide both a broad statement on the appropriate direction for pension policy as well as a series of particular recommendations that would be consistent with that broad direction. The integration and interaction of these themes will be a dominant concern in the editors' comments on the drafts of papers by invited authors and in the editors' summary of the two conference volumes.

Ensuring adequate retirement income will be one of the most pressing public policy issues of the next several decades. Reductions in the generosity of Social Security, longer life spans, diminishing family networks and low levels of personal saving other than pensions will combine to raise the importance of private pensions in meeting future retirement needs. The central goal of the project that we are organizing is to examine appropriate public policies for pensions over the course of the next several decades.

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Endnotes

1. This section summarizes the first two-thirds of Chapter 2, "Historical Review of Pension Regulation," in McGill, Brown, Haley and Schieber, 1996.
2. One of the authors of this article was the first to identify the perverse consequences of the success tax and to publicize its inequity; see Shoven and Wise, 1996.
3. This section summarizes the article by Sullivan, 1999.
4. The requirements can be avoided by selecting a life annuity as the payout mechanism.