American Academy of Actuaries

Issue Brief

ERISA After 50 Years: Looking Ahead

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Key Points

- Despite 50 years of ERISA-driven reform, many individuals still lack consistent access to employer-sponsored retirement plans, limiting meaningful accumulation of retirement savings.
- Converting accumulated savings into reliable lifetime income remains difficult, particularly in defined contribution plans that generally do not pool longevity risk.
- Targeted legislative changes and regulatory updates could modernize U.S. retirement policy to better align it with current workforce patterns and longer life expectancies.

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Introduction

The Employee Retirement Income Security Act of 1974 (ERISA) has profoundly reshaped the landscape of retirement security for American workers. Over the past 50 years, ERISA and subsequent legislation have expanded plan access, strengthened protections for participants and beneficiaries, and accelerated employer funding. Yet despite these reforms, critical weaknesses remain in the U.S. retirement system:

- Access to retirement plans for retirement asset accumulation remains limited.
- Current legislation does not adequately support evolving retirement patterns.
- Converting retirement assets into retirement income remains challenging under the current structure.

Law and regulations are not static, but instead evolve over time to address emerging issues that arise due to societal, economic, and other changes. Though ERISA has changed significantly in the past five decades, further changes to the law and regulations, as well as corresponding changes to the broader U.S. retirement policy, could help address these weaknesses and create a more effective and efficient retirement system.

Background

Today's regulatory and legislative environment is largely focused on expanding access to savings and the individual accumulation of wealth—that is, broadening the population of individuals with access to tax-favored savings vehicles, lowering barriers to participation, and making the process of saving more automatic. But access and accumulation are only part of a larger retirement story. Retirement is also affected by many factors beyond how much an individual chooses to save and how that individual chooses to invest that money.

The age at which an individual retires is particularly critical, as delaying retirement simultaneously lengthens the saving period and decreases the period over which the accumulated funds must last. Much of the messaging to individuals today still indicates that the appropriate retirement age is 65—a target that predates and was institutionalized with the establishment of Social Security in 1935. Yet individuals retiring at age 65 now can expect to live roughly seven years longer than those retiring at age 65 in 1940.[1] That translates to a roughly 50% longer retirement period (19.3 years vs. 12.7 years for males, 21.8 years vs. 14.7 years for females). These extended lifetimes have added an increasing cost-burden, putting pressure on both individuals and broader retirement systems.

Providing affordable lifetime income is critical for those ill-equipped to self-insure their own retirement and will lead to improved expected outcomes for many U.S. workers. The efficient use of the nation's finite supply of retirement assets is key. Defined benefit (DB) plans can easily and naturally pool the risk of providing lifetime income to participants, while defined contribution (DC) plans do not readily facilitate this. In recent years policymakers have begun to focus more on lifetime income from DC plans, but the structural changes necessary to provide efficient risk pooling in these plans have not yet been achieved.

1 2025 OASDI Trustees Report—Table V.A.5 Cohort Life Expectancy

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Lack of Access and Accumulation

Access to an employer-sponsored plan typically results in a greater accumulation of retirement savings. Favorable tax treatment, higher contribution limits, and potential employer matches mean that individuals participating in employer-sponsored plans can often accumulate a significantly larger pool of retirement assets than they could in an Individual Retirement Arrangement (IRA) or other savings vehicles. In addition, employer plans can give participants access to a broader range of investment funds and lower fees. Similarly, participants may benefit from certain features in employer-provided plans, such as auto-enrollment, auto-escalation, and even the simple automatic depositing of savings into a savings account.

However, despite changes in legislation since ERISA's enactment, many workers still do not have access to employer-sponsored plans, and many who do have access choose not to participate.[2] Many factors contribute to the lack of access and participation, including:

- **Gig Economy:** Gig workers[3] generally aren't in traditional employer-employee relationships earning salaries or wages, and therefore generally aren't eligible for employer-provided benefits such as a retirement savings program.[4] Limited tax-favored options for building retirement savings leave gig workers struggling to save as much for retirement as workers who hold traditional jobs. In addition, compared with employees in larger companies, fewer individuals who run a single-person business participate in a workplace retirement plan.[5] The implications are particularly concerning for women, who represent a growing proportion of self-employed workers, particularly post-COVID-19.[6]

- **Employer Sponsorship:** ERISA includes provisions designed to encourage employers to offer retirement plans and motivate employees to participate. Despite this, many employers either do not provide retirement plans or limit their contributions to matching only, which means many individuals receive no employer contributions—often a critical component of total retirement savings. State-sponsored plans like CalSavers offer tax-deferred savings options for workers without employer-sponsored coverage; however, these plans typically do not allow employer contributions and are available in fewer than half of U.S. states. Enhancing incentives for employer sponsorship or introducing new mandates could help address this coverage gap.

2 Per 2022 data from the Bureau of Labor Statistics, 85% of US employment is in the private sector. Within this sector, 69% of workers had access to employer provided retirement plans. However, while the majority of these workers were eligible to participate, 25% chose not to, resulting in nearly half of private-sector workers (48%) not participating in an employer-provided retirement plan.

3 *What Is a Gig Worker?*; U.S. Chamber of Commerce; Lauren Wingo (2021); March 16, 2021.

4 See the Academy's policy paper regarding gig workers for additional information.

5 According to a 2019 study from The Pew Charitable Trust examining coverage for the self-employed, only 13% of individuals who run a single-person business participate in a workplace retirement plan. In comparison, 72% of employees in larger companies took advantage of their company's 401(k) plan.

6 When examining the composition of the self-employed workforce by gender over the past two decades, the St. Louis Fed noted, "While the share of women in self-employment has been trending upward since 2010, it experienced a sharp increase during the COVID-19 recession."

- **Demographic Challenges:** Retirement saving poses unique challenges for certain demographic and social groups. Employer-sponsored DC plans often require employee contributions to unlock employer benefits, which can be difficult for lower-income workers. Additionally, part-time and temporary employees may be ineligible to participate in these plans. Competing financial priorities may also lead some demographic groups to deprioritize saving. For further insights, readers can refer to the Academy's policy paper, "*Improving Retirement Outcomes: Demographic Considerations*."

- **Leakage:** Leakage occurs when individuals use tax-favored retirement benefits and savings for purposes other than meeting retirement needs. Some provisions of the SECURE 2.0 Act of 2022 aim to address leakage, such as those allowing employers to provide matching contributions on amounts specifically dedicated to emergency savings or repayment of college loans, but deeper structural changes are needed to fully address the problem.

  The current rules discourage workers from tapping into tax-deferred retirement benefits or savings before retirement by immediately taxing early cashouts or withdrawals and assessing tax penalties. Funds withdrawn in this way cannot be moved back into a qualified retirement plan later. Penalizing early withdrawals in this manner, although intended to reduce leakage, may discourage saving altogether. Despite the relatively severe consequences, many individuals continue to withdraw from their retirement accounts before retirement. Workers leaving a job will often cash out their 401(k) plans instead of rolling them over into another tax-favored retirement account.[7] Similarly, DB plans that pay lump sums can also lead to leakage, especially with regard to small amounts, which are typically cashed out instead of saved for retirement. A better approach to preventing leakage could include improving portability and adding mechanisms to move withdrawn money back into the retirement system.

- **Rules and Regulations:** Finally, many new rules and regulations have been added since ERISA's passage. These include limits on compensation that may be considered by retirement plans and on annual savings, accruals and contributions; safe harbor rules and nondiscrimination tests; requirements for minimum distributions; the ability to make catch-up contributions, and taxation options for retirement savings accounts (pre-tax, Roth and IRA). This multitude of rules can be confusing and overwhelming for both employers and workers, creating additional costs and compliance challenges for plan sponsors. In addition, the financial burden associated with Pension Benefit Guaranty Corporation (PBGC) premiums has increased significantly, further discouraging plan sponsorship.[8]

7 According to the Employee Benefit Research Institute, approximately 40% of workers who leave a job cash out their 401(k) plans vs. moving the money over into another tax-favored retirement account.
8 For additional information, see the Academy's issue brief on single-employer PBGC premiums.

If ERISA is to achieve its goal of enhancing retirement security for individuals, it must support a system where accumulating retirement savings and benefits is easier, and where more of these savings and benefits are retained to support workers in retirement. Significant progress could be made through simplified and more portable plan structures, and a system that is less reliant on employer sponsorship.

Rationale for Promoting Longer Work

Longer lifetimes have led to growth in both the number of people surviving to retirement and the duration of retirement. However, with recent years' low fertility rates, the increase in the number of retirees is not accompanied by a corresponding increase in the number of workers. These factors result in an increasingly greater proportion of retirees in the population. This impact is currently exacerbated by the retirement of the outsized baby boom generation.

A declining trend in the worker/retiree ratio creates an array of issues for the macroeconomy. One key concern is that, as the portion of the population in traditional prime working years falls, the rate of economic growth will likely be suppressed, and the relatively smaller base of remaining workers may struggle to provide the goods and services required by a larger retiree group.[9] These challenges lead some economists to believe that workers should be encouraged to retire later.[10] In addition to the macroeconomic benefits, this could improve workers' retirement readiness by giving them more time to save.

Currently, the U.S. legislative and regulatory framework doesn't facilitate this objective. Variations in program design and regulation result in inconsistent signaling to workers about expectations for retirement age. Consider the following array of inconsistent design elements:

- Social Security benefits are based on a normal retirement age that reaches 67 in 2027. Individuals who postpone receipt of benefits may receive delayed retirement credits, but only until age 70.

- Medicare benefit eligibility has remained at age 65 since the program's inception. Even with the program's troubled financial status, no significant consideration has been given to delaying the eligibility age.

9 Disruptive societal changes such as rapid technological advances and artificial intelligence could potentially lead to a spike in the rate of productivity increases that could mitigate this effect to some extent.
10 Not all workers will have the opportunity or ability to extend their working lifetimes. Any policy solution will need to accommodate exceptions, for example, through liberalized disability provisions.

- Private sector pension plans are required to provide “normal” retirement benefits no later than age 65 and cannot use a later normal retirement age even if it is more appropriate for the industry. (Benefits after that age are labeled “late” retirement benefits.)

- The “required beginning date” for tax-qualified retirement account benefits (both DB and DC plans) for many years was age 70½, which people may have viewed as an upper limit for retirement age. (Recent legislation increased this age to 75.)

This piecemeal, uncoordinated approach to retirement program design and regulation results in fragmented and inconsistent signaling to workforce participants. A more effective strategy would align design features across the array of retirement-related programs. This would allow workers to better ascertain society’s expectations for work and retirement and provide greater focus for targeting the retirement resources made available to support that expectation. Better alignment would provide more clarity regarding benefit expectations and enable workers to more effectively plan for retirement.

Employers and policymakers might also consider structural changes to enable broader use of flexible work arrangements and phased retirement, which many older workers may prefer to the now-typical approach that results in a total cessation of work.

Efficiency in Providing Lifetime Income

The shift among employers from DB to DC plans has highlighted the challenges that individuals face when seeking to efficiently convert retirement assets into retirement income. In this context, an efficient approach is one that tends to maximize the amount of retirement income produced while minimizing financial risks.

Retirees do not know how long their retirements will last, which makes it very difficult to develop a strategy for drawing income from a retirement account. Retirees who want to be reasonably certain that they will not outlive their income stream must plan on reaching the very long end of the longevity spectrum. This approach produces substantially less income than using the average life expectancy, and may result in relatively large amounts of retirement assets that are never used during retirement.[11]

11 Tax policy, for example favorable tax treatment for inheritance, has further encouraged some individuals to prioritize generational wealth transfer to the detriment of their own well-being in retirement.

If retirees instead develop a draw-down budget based on the average life expectancy, they will have higher retirement income, but face a roughly 50% likelihood of exhausting their retirement accounts before death. Retirees could guard against this outcome by purchasing an annuity directly from an insurer, but rarely do, as anti-selection, expenses, and profit margins make this an expensive option.

The conversion of retirement assets into retirement income is far more efficient when longevity risk is pooled across a broad population. Under this approach, all participants draw retirement income from a collective pool of assets at a conversion rate based on the average longevity across the group, allowing higher income with minimal risk of exhausting those assets. DB plans pool longevity risks by design, making them highly efficient in this regard. However, employers have moved away from DB plans in large part due to the investment and interest rate risks these plans pose to the sponsor.

These risks can be mitigated through the use of variable benefit designs,[12] where the benefit varies based on factors such as investment performance. However, the current legislative and regulatory framework for these designs doesn't provide clear guidance on various funding and administrative issues. Legislative changes could encourage the efficient use of retirement assets through DB plans by implementing changes such as the following:

- To dampen benefit volatility while still recognizing investment performance, variable benefit plans could be given greater ability to smooth investment performance across time.

- To further share pooled experience, variable benefit plans could adjust benefits to also reflect non-investment experience, such as longevity.

- Funding requirements and PBGC premiums could be adjusted to reflect the reduced risk posed by variable benefit plans or other low-risk designs and structures.

- The Internal Revenue Code could permit employees to contribute to DB pension plans on a pre-tax basis. Such a provision could encourage plan designs that allow:
    - Traditional DB-type accruals with employers and employees sharing the cost
    - Account-type accruals funded with employee money within a DB structure, so that investments are aggregated and payouts are made in annuity form.

12 For more information, see the Academy's response to the Senate HELP Committee's Request for Information on ways to bolster the DB system.

Very few DC plans currently contain longevity pooling features. One reason for this is that these features work best when pooling is mandatory. Mandatory pooling avoids the additional costs resulting from anti-selection, by ensuring that longevity is pooled across retirees with both above average and below average longevity outlooks. (DB plans that pay lump sums also face anti-selection, but in that case the added cost is borne by the employer.)

DC plans almost uniformly offer unlimited lump sum payouts of the entire account balance. Employers may be concerned about the fiduciary liability exposure associated with implementing novel approaches such as mandatory risk pooling, particularly if employees are unable to opt out of them. Future ERISA provisions could support the efficient use of DC plan assets by clarifying the rules applicable to longevity pooling in these plans, creating fiduciary safe harbors for these approaches, and providing enhanced tax benefits for employers that implement them. For example, the law could provide:

- A framework for annuitizing benefits within a DC plan with or without the use of an insurer, through pooling mechanisms similar to those employed by variable annuity DB plans.
- A fiduciary safe harbor for in-plan annuitization, either mandatory or optional on the part of the participant.
- Incentives such as higher contribution limits or relaxed nondiscrimination requirements for plans that mandatorily annuitize all or a portion of employer contributions.

Conclusion

Future legislative changes could create a more effective and efficient national retirement system that would lead to workers accumulating more savings and keeping more of those savings to support themselves in retirement. The following may help achieve this goal:

- Law and regulations providing enhanced incentives or even mandates to broaden employers' support for retirement programs.
- Reductions to employers' financial burden associated with PBGC premiums.

- Retirement policy aimed at limiting leakage so that a greater portion of retirement savings is available to fund retirement, but without such severe penalties that saving is discouraged.

- More flexibility for employers to define “normal” retirement age and facilitate phased retirement.

- Improved regulatory support for variable benefit plans and appropriate reductions to PBGC premiums for these plans.

- Additional access to lifetime income through the removal of existing barriers to longevity pooling approaches in DC plans.