The Future of Americans' Pensions: Revamping Pension Plan Asset Allocation to Combat the Pension Benefit Guaranty Corporation's Deficit

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THE FUTURE OF AMERICANS’ PENSIONS: REVAMPING PENSION PLAN ASSET ALLOCATION TO COMBAT THE PENSION BENEFIT GUARANTY CORPORATION’S DEFICIT

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Throughout history, American workers have long depended on personal savings, pension plans and Social Security for an economically sound retirement. Historically, these types of savings and pensions were expected to prevent poverty during retirement. Unfortunately today and in the future, most people during retirement will have little personal savings, will not receive the expected pensions, and will have a small chance of receiving a sufficient amount from Social Security. Among the many relative factors affecting pensions, the acceleration of failure among American businesses has raised concerns among employees and retirees of a stable financial future. Recent business failures have caused thousands of employees to lose jobs and millions of employees and retirees to lose financial resources for retirement. Across the nation, pension plans have been left unfunded or underfunded by failed companies. With millions of people approaching retirement, Congress is focusing on protecting their financial future.

1See Ralph Nader & Kate Blackwell, You and Your Pension 1-2 (1973). Social Security was never intended to be used as the only source of retirement income. See id. at 13. Today, however, both pension plans and Social Security have proven to be inadequate to provide financial stability during retirement. See, e.g., Mary Williams Walsh, Many Companies Fight Shortfalls in Pension Funds, N.Y. Times, Jan. 13, 2003, at A1; Mary Williams Walsh, $8 Billion Surplus Withers at Agency Insuring Pensions, N.Y. Times, Jan. 25, 2003, at A1; Robert Perez and Susan Malley, Asset Allocation and the Social Security System, Fin. Mgmt., Spring 1983, Vol.12, Issue 1, at 29. Millions of people have relied on pension funds as an insured income for retirement, yet many have failed to receive any amount of promised pension funds. See, e.g., id.

2See generally Nader & Blackwell, supra note 1.

3Id. at 1-5.


5See id. at *1. Business failures range from bankruptcy to corporate fraud. See id.; see also Connelly, infra note 232.

6William McQuillen, Enron Ex-CFO Andrew Fastow is Indicted in Fraud Case, Bloomberg News, Oct. 31, 2002. Enron’s collapse alone led to 5,500 workers losing their jobs, severance pay and insurance. Id. In 1992, the risk of losing future retirement benefits was enormous as the estimated deficit of underfunded pension plans was $18 billion by the end of 1997. U.S. Pension Threat Continues to Grow, Newsday, Nov. 20, 1992, at 44.

7See George F. Will, Steel and the National Security, Wash. Post, Feb. 14, 2002, at A33 (“[T]he suffering of 600,000 retired steelworkers—30 times more numerous than Enron employees—whose retirement benefits could become nothing but billions of dollars of...”)
Retirement income for employees and beneficiaries is funded through three main retirement programs: Social Security, individual savings accounts, and pensions. Impacts on the economy, such as September 11th, WorldCom and Enron, have stagnated the economy, directly affecting every type of retirement savings. As a result, Social Security funds continue to dwindle, leaving today’s younger generation with uncertainty of receiving government assistance during retirement.

In an effort to combat issues such as these, Congress enacted the Employee Retirement Income Security Act of 1974 (“ERISA”) to address economic downfalls and to provide rules and regulations for employer pension plans. Thereafter, ERISA created the Pension Benefit Guaranty Corporation (“PBGC”) with the goal of


See generally U.S. Representative Jim Saxton (R-NJ) Holds Hearing on the Economic Report of the President: Hearing Before the Joint Economic Comm., 107th Cong. (2002). In the Congressional hearing, Rep. Saxton addressed the economic downfall and discussed ways that may improve pension security. Among these methods are financial disclosures and information. Id.


[E]mployee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest. . . . Despite the enormous growth in (benefit) plans, many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans . . . employees and their beneficiaries have been deprived of anticipated benefits.

§ 1001.
protecting employee pension plans through insuring the defined benefit pensions given by employers. However, the recent downfalls of the economy post-9/11 have left the PBGC to bear the burden of insuring billions of dollars of unfunded and underfunded pensions, resulting in deficits totaling $2.123 billion in 2001. Unfortunately, this deficit is only expected to get larger, complicating the PBGC’s ability to insure retirement funds.

While historically pension plans have been an important source of retirement income for retirees, the post-9/11 state of the economy is forcing Congress to focus on the future of the PBGC’s ability to insure these pension funds. Since the PBGC is financially dependent or directly affected by the companies in the economy, it is paramount that Congress take action to secure the future of the PBGC in order to protect and preserve the retirement benefits of employees.

To protect the financial future of retirees, this Note advocates that Congress pass legislation mandating a certain percentage of retirement plan funds be allocated into a low-risk individual retirement account (“IRA”) insured by the Federal Depository Insurance Corporation (“FDIC”). This plan will shift the massive financial burden off of the PBGC. Section II of this Note provides an overview of pension plans and the PBGC with reference to economic and demographic factors that affect pensions. Thereafter, Section III discusses the current economic circumstances and their affect on retirement savings and the future of the PBGC. Section IV analyzes pending federal legislation that attempts to solve the problems of unfunded and underfunded pension plans. This section also outlines alternative solutions proposed by legal scholars and the various flaws in those plans. Finally, section V details this Note's proposed solution of a statutory mandate to invest a certain percentage of retirement


17 Id. at 25.

18 Mary Williams Walsh, $8 Billion Surplus Withers at Agency Insuring Pensions, N.Y. TIMES, Jan. 25, 2003, at A1. At the end of the month of January 2003, the PBGC is expected to bear a deficit between $1 billion to $2 billion. Id. Additionally, more and more companies are declaring bankruptcy with insufficient funds to cover their present and future retirees' pensions. See id.; see also David Cay Johnston, At the Pension Agency, A Much Healthier Glow, N.Y. TIMES, Jan. 21, 2001, at 10; PBGC, supra note 16.


21 Financial security. Keep Tabs on Your Pension, CONSUMER REP., Oct. 2002, Vol. 67, No. 10, at 10-11. “[I]f the employer goes under or can’t continue the plan, the Pension Benefit Guaranty Corp. (PBGC) . . . will step in and pay beneficiaries instead.” Id.

22 Johnston, supra note 18, at 10. In 2000, the PBGC had a surplus of almost $10 billion. Id.
funds into a low-risk IRA that is insured by the FDIC. In conjunction with this proposal, this Note addresses certain pension management factors such as diversification in plan assets and improving information disclosures to plan participants. By implementing this proposal, Congress, through legislation, can protect the future of the PBGC and the future of pensions.

II. OVERVIEW OF PENSION PLANS AND THE PENSION BENEFIT GUARANTY CORPORATION

A. History

The pension movement began during the late 19th century. While the movement began to grow rapidly during the Industrial Revolution, it slowed throughout the Great Depression. Initially, pensions served as part of the corporate strategy to lure more employees to work for corporations instead of the common family business. After the Depression, the pension movement continued to grow as the senior population of people 65 years of age and over grew, along with low birthrates, high life expectancy, and an increase in the work force. As a result of this growth, private pensions became the largest owner of corporate stock. The unexpected popularity of pensions assisted in establishing a country of “big business, big labor and big government.”

The Social Security Act of 1935 started the government’s involvement in retirement plans. This Act was intended to provide government assistance in retirement. The Depression in the 1930s had created severe unemployment, which had altered pension policy and influenced Congress to pass legislation that would provide retirement benefits to American workers. While Social Security has provided the foundation of our country’s retirement income system, it is facing a solvency crisis. Although there have been many ideas of how to increase pension coverage to
supplement Social Security through a Minimal Universal Pension System,\textsuperscript{34} a required individual savings account,\textsuperscript{35} and mandatory employer-funded individual separate plans, none of these ideas have worked independently of the other. Thus, Social Security continues to be of great concern to the American population in that the depletion of funds may result in inadequate payments to retirees and beneficiaries.\textsuperscript{36}

In 1974 Congress enacted ERISA,\textsuperscript{37} one of the most ambitious and extensive efforts to provide pension benefit security for employees and their beneficiaries.\textsuperscript{38} Specifically, ERISA provides employees and dependents payment security in their benefit plans\textsuperscript{39} by addressing their shortcomings: a lack of disclosure to participants, loss of benefits, inadequate funding, plan terminations and fiduciary misconduct.\textsuperscript{40} ERISA serves these goals by imposing reporting and disclosure requirements, as well as minimum participation, vesting and funding standards on the employer.\textsuperscript{41}

\textsuperscript{34}President’s Comm’n on Pension Policy, Coming of Age: Toward a National Retirement Income Policy 42 (1981). The presidential committee proposed a Minimum Universal Pension System (MUPS) to be a mandatory minimum pension plan provided by employers to their employees. This plan recommended that the employer contribute three percent of payroll contribution. Id.

\textsuperscript{35}David A. Pratt, Nor Rhyme Nor Reason: Simplifying Defined Contribution Plans, 49 Buffalo L. Rev. 741, 749 (2001). The proposal by President Clinton to supplement Social Security included individual savings accounts and a mandatory matching of funds by the federal government. Id.

\textsuperscript{36}Meier & Dittmar, supra note 32, at iii; see also United States General Accounting Office, Social Security: Criteria for Evaluating Social Security Reform Proposals (Mar. 25, 1999), available at http://www.gao.gov/archive/1999/he99094t.pdf (last visited Jan. 27, 2003); Appendix C: Gains and Losses from Social Security, Average Pension Accrual Gains, and Net Gains and Losses Combined. Social Security investments render an increased loss of pension gains with a higher income and larger length of employment. Appendix C.


\textsuperscript{38}See 29 U.S.C. § 1001 (2002); see also Sass, supra note 27, at 3.

\textsuperscript{39}§ 1001(a).

\textsuperscript{40}Id.

\textsuperscript{41}Id. Before ERISA in 1974, pension plans were considered to be non-gratuitous contracts. See, e.g., Hoefer v. Atlas Tack Corp., 581 F.2d 1 (1st Cir. 1978) (holding that retirees have a contractual right to their pensions and an employer must pay these pensions regardless of the employer’s financial difficulties).

The pension plan provided that all employees of the defendant, if they remained in the employ of the defendant ten or more years would be entitled, on attaining retirement age, to certain specified pension rights. While unilateral, that offer, when accepted by an employee as evidenced by rendering services for ten or more years, became ‘irrevocable’ and such employee acquired ‘a right no less contractual than if the plan were expressly bargained for.’ By rendering service for the period required under the
While ERISA monitors pension plans that are established by an employer to provide retirement income to employees, it excludes coverage to government plans that are established or maintained for government employees, plans governed by the Railroad Retirement Act, plans that deal with an international organization, and plans maintained for the purpose of complying with applicable unemployment compensation, workmen's compensation, or disability insurance laws. However, the tide has shifted with regard to pension plans. Once considered a gratuitous contribution by the employer in recognition of faithful service, pension plans are now considered by the courts as a binding obligation by the employer to the employee.

With the growing concern of ensuring and insuring pension plan funds, ERISA legislation created the PBGC. The PBGC is a nonprofit corporation, wholly owned

plan, the employee's rights to the benefits under the plan are 'earned no less than the salary paid to him (the employee) each pay period' and are 'in the nature of delayed compensation for former years of faithful service.' Whether the plan be contributory or noncontributory, the benefits, thus earned, are not gratuities.


Even though the employer has reserved the right to amend or terminate the plan, once an employee, who has accepted employment under such plan, has complied with all the conditions entitling him to participate in such plan, his rights become vested and the employer cannot divest the employee of his rights thereunder.


[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result surrounding circumstances such plan, fund or program: (i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

§ 1002(a).


Id.

Id.

§ 1003(b)(3).

McGill et al., supra note 25, at 20.

See Hoefel, 581 F.2d at 10 (citing Balkin v. Frank M. Katz, Inc., 367 N.E.2d 628, 630 (1977)). A pension plan will be binding on an employer if the employee rendered service in reliance on the employer's promise. Id.

29 U.S.C. § 1305 (2002). “PBGC insures pension benefits of a corporation’s employees if a company sponsoring an underfunded defined benefit pension plan becomes insolvent. PBGC becomes trustee of the plan and its assets, and is then responsible for investing those assets and paying benefits to the plan’s participants.” Pension Benefit Guaranty Corporation

http://engagedscholarship.csuohio.edu/clevstlrev/vol51/iss2/3
by the United States Government.\textsuperscript{50} It is operated by a board of directors that consists of the Secretaries of Labor, Treasury and the Commerce.\textsuperscript{51} Its primary purpose is to encourage private pension plans, to provide payment of pension benefits, and to maintain reasonable premiums.\textsuperscript{52} However, the PBGC’s large deficit is impeding its ability to protect and encourage pensions.

\textit{B. Economic and Demographic Factors of Pension Plans}

For the past few decades, this nation has experienced an inflationary economy.\textsuperscript{53} With the value of the dollar decreasing\textsuperscript{54} and cost of living increasing,\textsuperscript{55} a pension plan may be insufficient for a retiree to have a comfortable retirement.\textsuperscript{56} Additionally, factors such as life expectancy, retirement age, labor market demand, plan complexity and tax treatment affect employers’ ability to establish and maintain pension plans. While some of these factors may deter employers from establishing private pensions, others may benefit the employer. These economic and demographic factors that impact pension plans are discussed in more detail below.

\underline{\textsuperscript{50}29 U.S.C. § 1302 (2002).}

\underline{\textsuperscript{51}Id.}

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this title, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and (3) to maintain premiums established by the corporation under section 4006 [29 U.S.C. § 1306] at the lowest level consistent with carrying out its obligations under this title.

\underline{\textsuperscript{52}§ 1302(a)(1)-(3).}


\underline{\textsuperscript{54}Christina Wise, Weak Economies Abroad Put Lid on Benefits of a Weaker Dollar, INVESTOR’S BUS. DAILY, Mar. 4, 2003, at A1.}


\underline{\textsuperscript{56}See generally McGILL ET AL., supra note 25, at 1. Because a defined benefit pension plan does not adjust to inflation, the set amount of a pension benefit will be worth less today in an inflationary economy than it would twenty years ago when inflation was not as high. Id.}
1. Cost of Living

As cost-of-living expenses and medical costs increase, the real value of a pension plan will decrease. Most pension plans provide for a fixed amount or percentage of benefits to be repaid at retirement. The increase of the Consumer Price Index, accompanied by decrease in the value of the U.S. dollar, creates an inflationary effect, which results in a decrease in the value of pension assets. This inflationary result is damaging to private pension plans because they are not indexed for inflation, which causes a loss of purchasing power. Exacerbating this issue is the fact that adjustments for these cost-of-living increases also increase the cost of Social Security and pension plans. Therefore, the continuation of an inflationary economy is detrimental to employees and retirees who are relying on fixed pension income.

2. Life Expectancy

Life expectancy is one of the many factors that can affect a person’s retirement. Improvements in medical science, public health services, and general living standards increase one’s life span. In 1995, life expectancy was estimated at 75 years versus 64 years in 1940. Increase in life expectancy will increase the amount of time that an employer will have to pay pension benefits to retirees, resulting in an increased cost to the employer.

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58 See Wise, supra note 25, at 27.

59 See Id.; see also Appendix B: Relative Value of Money and Returns in a Normal Savings Account Paying a Ten Percent Rate of Return with a Five Percent Inflation Rate and Subject to a Twenty-five Percent Tax Rate. This chart illustrates that both real returns on savings and purchasing power decreases with inflation. Appendix B.

60 See McNeill & Dittmar, supra note 25, at 27.

61 See McNeill & Dittmar, supra note 25, at 478; see also McConnell & Brue, infra note 274 and accompanying text.

62 See McNeill & Dittmar, supra note 32, at 79.

63 RESEARCH INSTITUTE OF AMERICA, INC., TAX PLANNING AND PRACTICE GUIDE, PLANNING FOR INDIVIDUALS NEARING RETIREMENT AGE 5 (1997). Life expectancy is calculated using Internal Revenue Service tables. An employee, IRA owner and spouse may have their life expectancy recalculated annually. Id.

3. Retirement Age

To be eligible for benefits under a pension plan, many employers require that an employee be at least 21 years old and be employed by that employer for a minimum of one year.66 Traditionally, the normal retirement age is the “earliest age at which eligible participants are permitted to retire with full benefits.”67 Currently, retirement age is a factor in rising pension costs.68 Although the age of 65 remains the standard retirement age, this age is expected to rise.69 If retirement age rises, employers will be required to pay into pension plans longer. This result will potentially decrease the use of private pension plans by employers due to the increased cost in maintaining pensions.

4. Labor Market

The size of the labor market can directly affect pension plans. The post-9/11 state of the economy with inflation and corporate bankruptcies has increased unemployment and has decreased the amount of people eligible for pensions.70 However, as “baby boomers” retire, a large amount of people will leave the labor market, creating an increased demand for labor that will, in turn, decrease the unemployment rate.71 This decrease in unemployment rates may increase the financial burden on employers to provide more pensions, but the increase in productivity due to an increase in employees may offset any financial burden.

5. Labor Costs

A lowered labor cost may be achieved through employers’ use of pension plans. Pension plans provide employees an incentive to stay with a company.72 This incentive benefits both the employee and the employer. By offering a pension plan to decrease the mobility of the employer’s workers, the employer minimizes labor costs.73 By retaining workers, employers save on training costs and provide more


67See McGill et al., supra note 25, at 213. “ERISA defined normal retirement age simply as the normal retirement age specified in the plan, but not later than age 65 with 10 years of participation.” Id. (quoting John H. Longbein & Brice A. Walk, Pension & Employee Benefit Law 376 (2d ed. 1995)); see also ERISA § 3(24); I.R.C. § 411(a)(8) (2003).

68Meier & Dittmar, supra note 32, at iii.

69See McGill et al., supra note 25, at 341. Retirement age is expected to increase to age 67 by the year 2022. Moore, supra note 11, at 545.

70See generally Bureau of Labor Statistics, Table A-7. Selected Unemployment Indicators, Seasonally Adjusted (2003), available at http://www.bls.gov/news.release/empsit.t07.htm (last visited Feb. 28, 2003). The unemployment rate was 5.6% in January 2002 and increased up to 6.0% in December 2002. Id. As of January 2003, the unemployment rate was 5.7%, which is still higher than what it was a year prior. Id.

71See McGill et al., supra note 25, at 4-5.

72See Sass, supra note 27, at 1.

73McGill et al., supra note 25, at 445.
productive workers.\textsuperscript{74} Therefore, the cost of providing pension plans may be viewed as an investment on behalf of the employer.

6. Plan Complexity

The complex nature of federal pension laws discourages employers from participating in such pension programs.\textsuperscript{75} Developments and changes among pension plans have led to a voluminous amount of legislation that deters employers from partaking in pension plans.\textsuperscript{76} Furthermore, the long-term nature of pension plans subjects employers to the constant burden of updating and familiarizing themselves with an excessive amount of regulation and legislation.\textsuperscript{77} For instance, the PBGC must submit annual reports to measure its success of insuring employees.\textsuperscript{78} In compiling this data, the administrators of pension plans and companies that sponsor the plans have numerous reporting and administrative responsibilities.\textsuperscript{79} Additionally, employers are required to keep basic records of employee information including date of birth, date of employment, earnings, and contributions.\textsuperscript{80} What results is a complex bureaucracy of paperwork that deters employer participation.

Many scholars and legislators advocate a simpler method of establishing and maintaining pensions. Some scholars have recommended uniform rules and a decrease in the amount of plans available in an effort to simplify defined contribution plans.\textsuperscript{81} In order to avoid the transformation of employers from defined benefit plans to defined contribution plans there must be a reduction in regulation.

\textsuperscript{74}Id.
\textsuperscript{75}Overview of Present-Law Rules Relating to Qualified Pension Plans, (JCX-30-98), Prepared by the Staff of the Joint Comm. on Tax’n (May 4, 1998). The Joint Committee on Taxation has commented on the need for pension simplification. Id.
\textsuperscript{78}29 U.S.C. § 1303(a) (2002).
Operation of corporation (a) Investigatory authority; audit of statistically significant number of terminating plans. The corporation may make such investigations as it deems necessary to enforce any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and whether section 1350(a) of this title has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.
Id.
\textsuperscript{80}McGill ET AL., supra note 25, at 53.
\textsuperscript{81}Pratt, supra note 35, at 752.
7. Tax Liability

Employers who participate in pension plans benefit from favorable tax treatment, which as a result increases the adoption of such plans. The Internal Revenue Code offers favorable tax treatment for employers who maintain “qualified” retirement plans, as the employer can deduct contributions for income tax purposes. The investment earnings or the contributions only become taxable upon actual payment of the benefits to the plan participants. Additionally, a tax exemption is granted for the trust that holds the plan assets. Tax-deferred accounts render a much lower tax liability than does a normal savings account, which results in a higher after-tax benefit. For example, an employer can deduct a maximum of 25 percent of covered compensation if it covers the same group of employees in both qualified defined benefit pension plans and qualified defined contribution plans. However, ERISA will place an excise tax penalty on any “disqualified person” that engages in a prohibited transaction.

C. Types of Pension Plans

There are two types of pension plans: defined benefit plans and defined contribution plans.

82 I.R.C. § 404(a) (2003). However, “no tax deduction for any year cannot exceed the amount needed to bring the plan to a fully funded status. That is, no deductions can be taken for contributions that would raise the plan assets to a level above the actuarial value of plan liabilities.” MCGILL ET AL., supra note 25, at 132.

83 See MCGILL ET AL., supra note 25, at 115.

84 See I.R.C. § 404(a), supra note 82; MCGILL ET AL., supra note 25, at 132.

85 MCGILL ET AL., supra note 25, at 136.


87 See Appendix A: Alternative Taxes and Benefit Accumulations Under Normal Savings and Tax Deferred Accounts at Twenty-five Percent Tax Rates (dollars). In comparing the results of a normal savings account and a tax-deferred account, the overall tax liability is less with a tax-deferred account. Id.

88 MCGILL ET AL., supra note 25, at 133 (citing I.R.C. § 404(a)(7)).

89 I.R.C. § 4975 (2003). For the purpose of the labor provisions, a disqualified person is one who is equivalent to a party-in-interest. See id.

90 29 U.S.C. § 1002(35) (2002). Defined benefit plans are pensions derived from employer contributions, other than an individual account plan. See id.; see also Donald R. Korobkin, Employee Interests in Bankruptcy, 4 AM. BANKR. INST. L. REV. 5 (1996).

91 29 U.S.C. § 1002(34) (2002). Defined contribution plans (or individual account plans) are pensions provided for each participant and the benefits “are based solely upon the amount contributed to the participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant’s account.” Id.
1. Defined Benefit Plans

Defined benefit plans are those plans under which the employer promises a fixed periodic payment of funds during retirement. These plans must meet funding requirements including minimum rates of benefit accrual, insurance coverage by the PBGC, and certain restrictions on termination of the plan. Most plans are set up to pay the employee a set amount of money after retirement based on a percentage income multiplied by a factor considering the employee's length of service. Others may provide that the benefit amount will vary in conformance with some fixed standard. The plan itself specifies the benefit that will be payable to the employee or the beneficiary upon retirement or termination of employment.

a. Advantages of Defined Benefit Plans

The greatest advantage of defined benefit plans is that the employee receives a guaranteed benefit by the employer at retirement. If there is a shortfall resulting from investment losses, it is the employer’s duty to make up the difference. Since the employer bears the risk of the investment, employees do not have to invest in low-risk and conservative funds. This low-risk type of pension investment appeals to less sophisticated investors and employees because it decreases the heightened responsibility and complex understanding of investing.

Economically, defined benefit plans promote employee loyalty and long-term employment resulting in an efficient capitalist market. For the employer, long-term

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92 See Korobkin, supra note 90, at 20. Every defined benefit plan must cover the minimum of 50 employees or 40 percent of the employer’s labor force. McGill et al., supra note 25, at 73. A basic pension plan that pays an annual pay increase of 5 percent will pay an annual pension accrual of 1 percent for each year’s pay. See, e.g., Appendix D: Illustration of Career Average Pension Accrual.


98 McGill et al., supra note 25, at 201.


100 Collins, supra note 19, at 607; see also Financial security, supra note 21, at 11.

101 See Collins, supra note 19, at 607.

102 Id.

103 See id. at 656.

employment decreases the turnover rate of employees and reduces training cost.\textsuperscript{105} For the employee, long-term employment creates the potential to earn more money for retirement through defined benefit pension plans.\textsuperscript{106} If the employee leaves the current employer, the employee’s plan must be vested at the time he or she leaves in order to receive that pension income at retirement.\textsuperscript{107}

Another advantage of a defined benefit plan is that it is insured by the PBGC.\textsuperscript{108} In the event that a plan becomes insolvent, the beneficiary of the defined benefit plan will receive a portion of his or her promised defined benefit pension due to PBGC coverage.\textsuperscript{109} This advantage may appeal to employees because it is an insured investment guaranteed at the time of retirement.

\paragraph*{b. Disadvantages of Defined Benefit Plans}

The disadvantage of defined benefit plans is that their benefits are smaller than defined contribution plans. Additionally, the complexity of defined benefit plans makes them difficult to understand and administer,\textsuperscript{110} which has contributed to the marked decline in the use of defined benefit pension plans.\textsuperscript{111} By 1995, defined benefit plans among private sector employers numbered just 64,000, after peaking at nearly 120,000 in 1977.\textsuperscript{112} In 2001, this type of retirement plan numbered just 38,000.\textsuperscript{113}

Additionally, there is a disadvantage for employees in monitoring a plan’s level of funding. A company is required to file an annual report with the PBGC and to notify the plan participants if its plan is underfunded by more than $50 million in vested benefits.\textsuperscript{114} However, this requirement is not always carefully monitored by the PBGC, and may lead to detrimental surprises to plan participants of underfunded pensions.\textsuperscript{115}

\begin{itemize}
\item \textsuperscript{105}See NADER \& BLACKWELL, supra note 1, at 13-16.
\item \textsuperscript{106}Daniel J. Sennott, Finding the Balance in Cash Balance Pension Plans, 2001 U. ILL. L. REV. 1059, 1061 (2001). Since defined benefit plans do not transfer if the employee leaves his or her current employers, employees may be more inclined to stay with the current employer in order to accumulate a larger private pension benefit. \textit{Id.}
\item \textsuperscript{107}\textit{Id.}
\item \textsuperscript{108}Collins, supra note 19, at 607.
\item \textsuperscript{109}Collins, supra note 19, at 607.
\item \textsuperscript{110}Pratt, supra note 35, at 761.
\item \textsuperscript{111}U.S. Dept. of Labor, Pension and Welfare Benefits Administration, Private Pension Plan Bulletin: Abstract of 1996 Form, 5500 Annual Reports, Table E1 (1999).
\item \textsuperscript{112}\textit{Id.}
\item \textsuperscript{113}See PBGC, supra note 16.
\item \textsuperscript{114}Financial security, supra note 21, at 11. Annual filing will continue until the plan is no longer underfunded. \textit{Id.}
\item \textsuperscript{115}\textit{Id.}
\end{itemize}
2. Defined Contribution Plans

In a defined contribution plan, or individual account plan, the employee and often the employer contribute directly, making the plan benefits vest in full immediately. Many of the employer-sponsored plans, including IRAs, 401(k) plans, and salary reduction Simplified Employer Pensions (“SEP”), entail the employer paying a certain percentage of money into the plan. Although no specific benefits are guaranteed at retirement, the employee may directly benefit from the interest on a successful investment.

a. Advantages of Defined Contribution Plans

This type of pension plan allows employees to have greater mobility among jobs. Because the American workforce has become more mobile in job transitions, the defined contribution plan may be more compatible with the younger generation because it vests in full immediately for the funds contributed. An employee remains in control over pension funds even if he or she leaves the current place of employment. Furthermore, the ability to roll over these funds into other defined contribution plans or into individual retirement accounts allows an employee to keep

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116Tax Planning and Practice Guide, supra note 63, at 6. The amount available at retirement is the balance of the account. A distribution of the funds is made annually and must equal the amount of the employee’s benefit divided by the applicable life expectancy. Id.

117See Robert L. Clark & Ann A. McDermed, The Choice of Pension Plans in a Changing Regulatory Environment 66 (1990). The term “individual account plan” or “defined contribution plan” means a pension plan which provided for an individual account for each participant and for benefits based solely upon the amount contributed to the participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account. Id.; see also 29 U.S.C. § 1002(34) (2002).

118I.R.C. § 401(k) was enacted by the Revenue Act of 1978, Pub. L. No. 95-600, Title I 135(a), 92 Stat. 2765, 2785 (1985). A 401(k) plan allows the employee to contribute a portion of their income into the plan without being subject to income tax. Additionally, most employers contribute or match a percentage of the amount in which the employee contributes. 401(k) plans are not subject to minimum funding requirements. See I.R.C. § 412; 29 U.S.C. §§ 1081-1086 (2002). The 401(k) plan is one of the most popular plans and allows the employee to determine the amount to personally contribute to the plan and the employer will then typically match the contribution. See Sennott, supra note 106, at 1062 (citing Olivia S. Mitchell & Sylvester J. Schieber, Defined Contribution Pensions: New Opportunities, New Risks, in Living with Defined Contribution Pensions: Making Responsibility for Retirement 3 fig. 2 (1998)).

119See Pratt, supra note 35, at 759-71; see also McGill et al., supra note 25, at 299-306.

120See Pratt, supra note 35, at 759-61.

121See Clark & McDermed, supra note 117, at 32. Employers with high training costs may prefer defined benefit plans as a part of a compensation package in order to increase long-term service, which may increase efficiency and productivity. Id.


123Id. at 542.
the same fund throughout his or her career.\textsuperscript{124} These reasons have led to the increased growth of defined contribution plans in the past few decades.\textsuperscript{125}

\textbf{b. Disadvantages of Defined Contribution Plans}

The largest disadvantage of a defined contribution plan is that the employee bears the risk of return on the investment\textsuperscript{126} because there is not a guaranteed level of benefits promised to the employee.\textsuperscript{127} Therefore, a defined contribution plan pays an amount equal to the plan assets regardless of whether the plan experienced gains or losses.\textsuperscript{128} Moreover, defined contribution plans are not insured by the PBGC.\textsuperscript{129} In the event of a market failure, employees will receive only the balances of their individual plans.\textsuperscript{130}


Over the past several years, the use of defined benefit pension plans has decreased while the adoption of defined contribution plans has increased.\textsuperscript{131} Indeed, between 1984 and 1993 alone, defined contribution plans have grown by almost 900%.\textsuperscript{132} The contributing factors for this shift in pension plans include the increased government regulation of defined benefit pensions, increased administrative costs, employment growth in small businesses, and the greater mobility that defined contribution plans offer.\textsuperscript{133}

\textbf{D. Types of Employers}

The PBGC insures and administers two types of plans: “single-employer” and “multi-employer” plans.\textsuperscript{134}

\textsuperscript{124}Id. at 543.
\textsuperscript{125}Pratt, supra note 35, at 749-50.
\textsuperscript{126}Id. at 761.
\textsuperscript{127}Id. at 759.
\textsuperscript{128}Id.
\textsuperscript{129}Collins, supra note 19, at 607.
\textsuperscript{131}Plan Administration, supra note 79, at 14. Although there has been a large decrease in the amount of plans, there has been an increase in the total number of participants. Id. The number of participants has increased from 35.5 million in 1980 to 44 million in 2001. Id. However, the total number of participants includes both active workers and retirees. Id.
\textsuperscript{132}JOHN H. LANGBEIN \& BRUCE A. WOLK, PENSION AND EMPLOYEE BENEFIT LAW 51 (3d ed. 2000).
\textsuperscript{133}Keville, supra note 122, at 535 (citing CLARK \& McDERMED, supra note 116, at 5); see also McGILL ET AL., supra note 25, at 39-42.
\textsuperscript{134}PBGC, supra note 16, at 30-33. The single-employer and multiemployer programs are separate programs in which ERISA provides with revolving funds to be used by the PBGC in order to support operational and administrative functions of the PBGC and also fund deficits
1. “Single-employer” Plans

An individual employer establishes a “single-employer” plan in order to protect the benefits of its employees.\textsuperscript{135} When a “single-employer” plan is terminated either voluntarily by the employer or involuntarily by the PBGC and there are insufficient funds to pay the benefits, the PBGC is liable for guaranteed benefits for the underfunded terminated plans up to the designated statutory amount.\textsuperscript{136} Furthermore, the PBGC may involuntarily terminate the plan if the employer is unable to fund the program.\textsuperscript{137} If the PBGC terminates a plan, it must guarantee payment of the non-forfeitable benefits.\textsuperscript{138}

Currently, “single-employer” plans cover about 35 million workers and retirees.\textsuperscript{139} In 2001, 101 underfunded plans were terminated, mostly involuntarily by the PBGC.\textsuperscript{140} The largest reason for PBGC’s terminations were that the sponsoring employer’s plans were underfunded or the sponsoring employer went out of business.\textsuperscript{141} As a result, “single-employer” plans reported a net loss of almost $2 billion in 2001.\textsuperscript{142}

\textsuperscript{135}29 U.S.C. § 1002(41). “The term ‘single-employer plan’ means an employee benefit plan other than a multi-employer plan.” \textit{Id.}

\textsuperscript{136}29 U.S.C. §§ 1341-1342 (2002). The net liability assumed by PBGC is generally equal to the present value of the future benefits (including amounts owed under Section 4022(c) of ERISA) less (1) the amounts that are provided by the plan’s assets and (2) the amounts that are recoverable by PBGC from the plan sponsor and members of the plan sponsor’s controlled group, as defined by ERISA.\textit{PBGC, supra note 16, at 32.}

\textsuperscript{137}Wheeling-Pittsburgh Steel Corp. v. PBGC, 103 B.R. 672, 679 (W.D. Pa. 1989).


\textsuperscript{139}PBGC, \textit{supra} note 16, at 9.

\textsuperscript{140}\textit{Id.} In 2001, some of the largest plans in PBGC’s twenty-seven year history were terminated including: “Trans World Airlines (36,500 workers and retirees), The Grand Union Company (17,000 workers and retirees), Outboard Marine Corporation (10,000 workers and retirees), Bradlees Stores (8,000 workers and retirees), Northwestern Steel and Wire Company (4,000 workers and retirees) and Laclede Steel Company (4,000 workers and retirees).” \textit{Id.}

\textsuperscript{141}\textit{Id.}

\textsuperscript{142}\textit{Id.} at 30.
2. “Multi-employer” Plans

A “multi-employer” plan is established by a collective bargaining agreement and covers workers of one or more unrelated employers. A “multi-employer” plan covers about 9.4 million workers and retirees. Currently, “multi-employer” plans are funded and administered differently and separately from the “single-employer” plans. Instead of the triggering event being a termination used in “single-employer” plans, “multi-employer” plans trigger PBGC guarantees when there is an inability of a covered plan to pay benefits. If a plan becomes insolvent, the PBGC will financially assist the plan in order to pay participants their guaranteed benefits. The guarantee of plan benefits by the PBGC operates as a loss to the corporation. Earnings such as “future plan contributions, employer withdrawal liability or investment” do not go to the PBGC for the losses accrued. In 2001, the PBGC had a net loss of $151 million due to some of the largest “multi-employer” plan terminations in history.

E. ERISA Requirements of Pension Plans

ERISA has certain requirements that employers who provide private pension plans must follow. These requirements are a integral part in the management of pensions.

1. Vesting Requirements

When a plan participant enters payment status, retirement, death or total disability benefits are vested. However, if the employee leaves the employer before any benefits are vested, death and disability benefits usually will not be vested immediate or at some future date. Immediate vesting is infrequently found among conventional pension plans. Vesting is generally deferred until stipulated service requirements are met. Immediate vesting is more often found in profit-sharing plans, which are considered plans of deferred compensation rather than plans providing retirement income. It is more difficult to justify deferred compensation plan since the services that earned the compensation were provided even if the payment of the compensation was deferred to a later date.

143 See Korobkin, supra note 90, at 21. A “multi-employer plan” is a plan –
(i) to which more than one employer is required to contribute, (ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and (iii) which satisfies such other requirements as the Secretary may prescribe by regulation. 29 U.S.C. § 1002(37).

144 PBGC, supra note 16, at 13.

145 Id.

146 Id.

147 Id.

148 Id. at 32.


150 McGill et al., supra note 25, at 103. [V]esting may occur immediately or at some future date. . . . Immediate vesting is infrequently found among conventional pension plans. Vesting is generally deferred until stipulated service requirements are met. Immediate vesting is more often found in profit-sharing plans, which are considered plans of deferred compensation rather than plans providing retirement income. It is more difficult to justify deferred compensation plan since the services that earned the compensation were provided even if the payment of the compensation was deferred to a later date.

Id. at 104.
paid. But if the employee terminates employment after becoming vested, the employee will be eligible for death and total disability benefits if death or disability occurs before the employee’s benefit payments begin.

ERISA established minimum vesting standards after a short period of service to assure equal and fair treatment of all plan participants, to remove barriers to long-term employment, and to ensure the social role of private pension plans in providing retirement benefits. Normally, pension benefits will vest and become non-forfeitable to the participant or the participant’s spouse upon the completion of no more than seven years of service.

2. Diversification

Diversity of plan assets is the best method to earn money through hedging the risks of investments. Diversification protects plan assets against the exposure to one source of risk, which may lead to a detrimental downfall in one’s assets. Additionally, diversification helps the employer to hedge any losses that may occur from high-risk investments. ERISA requires plan trustees to diversify plan investments in order to minimize the risk of losses. Diversification provides a risk-minimizing way to invest, which benefits both employers and employees.

3. Information

It is important that plan investors have sufficient information about their investment choices and investment advisor. It is required that the plan must provide enough information about the plan to allow the plan investor to make an educated investment. However, the sponsoring employer will be deemed an investment advisor and will be liable for the investment if too much information is provided on investments. The liability to plan investors associated with investment guidance has left employers hesitant to provide investors with information.

Employers may hire an outside service provider to provide investment advice to the investors. However, the employer is still liable if this advisor breaches its

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151 Death and total disability benefits are intended to extend only to active employees. Id. at 104.

152 Upon the death of the participant, the annual benefit must be paid to a “qualified pre-retirement survivor.” Id.

153 Id. at 106.


156 Id. at 208-09.


159 See id.

160 Id. at 1375.

161 See id.
fiduciary duty to plan investors. Therefore the advisor is still hesitant to give such investment advice. If the advisor receives a fee for the investment advice, the advisor would be an ERISA fiduciary and may be subject to liability.

There are two views to employers giving employees information. The first view protects the employer from liability by providing investment information to the plan’s investors. The second view takes into consideration the giving of too much investment advice to the employee because the employer will then face fiduciary liability. ERISA fiduciary law discourages employers to provide investment advice, a result that is contrary to the employee’s best interest. Therefore, to increase the employer’s obligation to give investment advice, the fiduciary liability would have to decrease.

Overall, employers may provide investment advice to the investor about the benefit plans they sponsor for two reasons. First, employers design benefit pension plans to respond to the needs of the workforce. Second, employers try to ensure that employees can maximize their retirement earnings to the extent of high investment. Therefore, it seems consistent with public policy that sufficient information be given to plan participants.

4. Fiduciary Responsibilities

Fiduciary responsibility extends to any person who exerts any discretionary authority over the management of pension plans or any person who renders investment advice for compensation. ERISA mandates that fiduciaries act “with

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162 Id. at 1365.
164 See supra note 158, at 1364-67. Professor Muir analyzes the liability issues the employer faces regarding investment education and investment advice. However, she discusses how important it is to the investor to have adequate knowledge about the plans that he or she may be paying into. Id.; see also I.R.C. § 401(c) (2003).
166 Muir, supra note 158, at 1364-67.
167 See id.
168 See id.
169 McGILL ET AL., supra note 25, at 54. This definition includes the following individuals to be fiduciaries: “directors and certain officers of the plan’s sponsor, members of a plan’s investment committee, and persons who select these individuals.” Id.; see also ERISA § 3(21); 29 U.S.C. § 1104(a).
(a) Prudent man standard of care (1) . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and - (A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan; (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (D) in accordance with the
the care, skill, prudence, and diligence under circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.\textsuperscript{170} If the fiduciary fails to act in accordance with this statute, ERISA will hold the fiduciary personally liable to the plan for losses resulting from a breach of her fiduciary duties.\textsuperscript{171}

This fiduciary standard aims to prohibit fiduciaries from taking unprecedented risks with other people's pension funds.\textsuperscript{172} While this standard can create much civil liability on behalf of plan fiduciaries, a plan may purchase insurance to protect the plans assets and fiduciaries from being held liable.\textsuperscript{173} However, the ability of an employer to insure against a liability of a plan fiduciary creates a major conflict in regards to pension funds. Employers who participate in defined benefit plans may take unreasonable investment risk in order to receive the excess interest profits.\textsuperscript{174} As a result, employees' ability to receive pension funds is at a higher risk without sufficient insurance to cover the full amount of the plan.

5. The “Moral Hazard” Problem

There is a “moral hazard” problem with insuring defined benefit plans. Insurance against certain risks decreases the incentive for a person to invest in risk adverse assets.\textsuperscript{175} For example, a sponsoring employer who has PBGC insurance protection is more likely to invest in high-risk, high-yield instruments with the goal of earning a larger return and decreasing retirement contributions in that it would be only secondarily liable for the plan’s assets if it became insolvent.\textsuperscript{176} While ERISA was amended to hold sponsors liable to reimburse the PBGC for the benefits paid to plan participants,\textsuperscript{177} collection from these sponsors rarely occurs.\textsuperscript{178}

\textsuperscript{170}ERISA § 404(a)(1)(B); 29 U.S.C. § 1104 (2002).
\textsuperscript{171}ERISA § 409; 29 U.S.C. § 1109 (2002).
\textsuperscript{172}MGI\textsc{L} ET AL., supra note 25, at 54.
\textsuperscript{173}See generally id. For example, civil liability can ensue from plan fiduciaries being sued for negligently of investing funds. Id.
\textsuperscript{174}Jefferson, supra note 76, at 664.
\textsuperscript{175}Id. (citing Daniel Keating, Pension Insurance, Bankruptcy and Moral Hazard, 1991 WIS. L. REV. 65, 66-68).
\textsuperscript{176}See, e.g., id. Although this article uses an example of the “moral hazard” problem with reference to a defined contribution plan sponsor, the same result would occur with a defined benefit plan sponsor. Id. “For a moral hazard problem to exist, there must be some element of reactive risk involved.” Keating, supra note 175, at 68. Meaning that the insured sponsor must have some opportunity to implement due care. Id.
\textsuperscript{177}The Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987). This act increased the employers plan liability to the PBGC by removing the 30% cap. Id.
\textsuperscript{178}See PBGC v. LTV Corp., 496 U.S. at 638.
In determining if a “moral hazard” problem of insurance exists, one must distinguish between reactive risk and fixed risk. A reactive risk is a risk that the insured has some ability to control (i.e., personal accident) while a fixed risk is a risk that the insured has no control (i.e., natural disaster). If an employer is insuring against a reactive risk, there is a “moral hazard” problem.

F. Role of the PBGC

The legal role of the PBGC over a plan’s assets begins upon the termination of a pension plan. A plan terminates only upon one of the following events: (1) death of the plan participant; (2) disability, retirement or severance of from employment by the plan participant; (3) termination of the plan by the employer or the PBGC; or (4) attainment of normal retirement age by the plan participant as provided in the plan. Additionally, the PBGC may terminate a plan involuntarily or the employer may terminate the plan voluntarily.

One example of the PBGC’s role in insuring pensions is as follows. When a plan is terminated by an employer without sufficient assets to pay its pension obligations, the PBGC becomes trustee of the plan, taking over the plan’s assets and liabilities. The PBGC then disburse the plan’s assets to cover what it can of the benefit obligations. After the PBGC pays the benefit obligations of the employees, it may assert a claim against the employer for reimbursement.

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179 Keating, supra note 175, at 68.
180 Id.
181 29 U.S.C. § 1302 (2002); see also In re Wheeling-Pittsburgh Steel Corp., 103 B.R. 672, 679 (W.D.Pa. 1989). The PBGC may not become the trustee of the plan until several years after the plan’s termination. PBGC 2001 Annual Report, supra note 16, at 10. The PBGC will start to monitor plans that are underfunded by 10 percent. See Financial security, supra note 21, at 11.
182 See Rev. Rul. 56-693, 1956-2 C.B. 282; Rev. Rul. 74-21, 1974-2 C.B. 131 (finding that in certain circumstances, benefits may be distributed prior to severance of employment).
183 See I.R.C. § 401 (2003); ERISA §§ 1341, 1342(a). In “single-employer” plans, a plan termination can be made voluntarily by the employer or involuntarily by the PBGC. See id.
184 See Rev. Rul. 71-24, 1971-1 C.B. 114; ERISA § 3(24); see also, supra note 62.
185 See 29 U.S.C. § 1342(a) (2002). The PBGC may terminate a plan involuntarily when “(1) the plan has not met the minimum funding standard required... (2) the plan will be unable to pay benefits when due... (4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.” Id.
186 See 29 U.S.C. § 1341. Employers may voluntarily terminate a plan through a standard termination which occurs when the employer has sufficient assets to pay all benefits or a distress termination which occurs when an employer demonstrates financial distress. Id.
188 PBGC v. LTV Corp., 496 U.S. at 637.
189 See McGill et al., supra note 25, at 162 (citing ERISA § 4062(a)). The amount of assets that the PBGC can reach in the situation of an underfunded plan is not governed by the plan sponsor’s business form. Id.
PBGC can obtain a lien to secure its claim by making a demand to the employer and filing a public notice.\textsuperscript{190} The lien will go against the debtor/employer's assets for the amount of unfunded benefit liabilities to both plan participants and beneficiaries from the date of plan termination and any delinquent minimum funding contributions.\textsuperscript{191} Pension benefits normally vest and become non-forfeitable to the participant or the participant's spouse upon the completion of no more than seven years of service.\textsuperscript{192} To ensure payment of the remaining non-forfeitable benefits, the PBGC adds its own funds.\textsuperscript{193}

ERISA limits the benefits that the PBGC guarantees.\textsuperscript{194} First, the employee is limited to a claim of no more than $4,000.\textsuperscript{195} Secondly, the employer does not actually pay the employee until liquidation of the company's assets and dividends are paid.\textsuperscript{196} To illustrate, if a company goes bankrupt, the PBGC is required to pay plan participants the accrued and vested benefit up to the guaranteed amount.\textsuperscript{197} Like creditors, employees have unsecured claims that entitle them to receive an equal share of available assets.\textsuperscript{198} Unlike creditors, the PBGC is third in line to collect those unsecured claims including wages, salaries and commissions to the extent of “$4,000 for each individual or corporation . . . earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor’s business,

\begin{itemize}
\item 190 Korobkin, supra note 90, at 8-9; see 29 U.S.C. § 1368(a) (2002).
\item 193 PBGC v. LTV Corp., 496 U.S. at 637.
\item 196 For a person who retires at the age of 65, the maximum benefit insurable is approximately $35,000 per year. See Jefferson, supra note 76, at 610. See 11 U.S.C.S. § 104; see Korobkin, supra note 89, at 10.
\item 197 Jefferson, supra note 76, n. 11. The PBGC guarantees "basic benefits,” which include (1) pension benefits at normal retirement age, (2) most early retirement benefits, (3) disability benefits for certain disabilities, and (4) certain benefits for survivors of plan participants. Id. The maximum monthly benefit paid by the PBGC for a plan terminated in 2000 is $3,221.59. Id. Benefits “include all retirement, death, and disability benefits of current retirees and, for vested current participants, the regular retirement benefit payable under the normal annuity form.” Id. However, basic benefits do not include those plans that encourage early retirement. Alicia H. Munnell, ERISA—The First Decade: Was the Legislation Consistent With Other National Goals, 19 U. Mich. J. L. Ref. 51, 54. The employer becomes liable to the PBGC upon termination of the plan. See PBGC v. LTV Corp., 496 U.S. 633.
\item 198 Korobkin, supra note 90, at 7-8.
\end{itemize}
Thereafter, the PBGC is fourth to collect unsecured claims contributions to an employee benefit plan. Unfortunately for employees and retirees, this coverage does not guarantee the full amount of the promised employee pension, but it does provide some compensation to the employee. 

1. Premiums

The PBGC covers most defined benefit plans. Unlike other government agencies, the PBGC is not funded by general tax revenues. Instead, to finance benefit payments, the PBGC obtains funding from two sources: (1) annual insurance premiums paid by the administrators of covered plans, and (2) employer liability payments collected by the PBGC from employers with unfunded or underfunded plans. Each business engaged in providing defined benefit pension plans pays a

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202 Financial security, supra note 21, at 11. The PBGC does not cover pension plans with less than 26 plan participants. Id. Government pension plans are not insured by the PBGC. Id. Additionally, ERISA places limits to the amount recoverable from the PBGC. Id. The PBGC will not cover lump sums, vacation pay, and severance over $5,000. Also, the PBGC will not make cost-of-living adjustments. Id.

the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—(i) in the case of a single-employer plan…an amount equal to the sum of $ 19 plus the additional premium (if any)…; (ii) in the case of a multiemployer plan…an amount for each individual who is a participant in such plan for such plan year equal to the sum of—(I) 50 cents, multiplied by a fraction the numerator of which is the number of months in such year ending on or before such date and the denominator of which is 12, and (II) $ 1.00, multiplied by a fraction equal to 1 minus the fraction determined under clause (i), (iii) in the case of a multiemployer plan, for plan years beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 [enacted Sept. 26, 1980], an amount equal to—(I) $ 1.40 for each participant, for the first, second, third, and fourth plan years, (II) $ 1.80 for each participant, for the fifth and sixth plan years, (III) $ 2.20 for each participant, for the seventh and eighth plan years, and (IV) $ 2.60 for each participant, for the ninth plan year, and for each succeeding plan year.
204 29 U.S.C. §§ 1306, 1307.
premium for each person covered by the PBGC.\textsuperscript{206} For example, the premium for unfunded benefits is $9 per $1,000 of promised pension.\textsuperscript{207} In 2001, the PBGC’s premiums for both “single-employer” and “multi-employer” programs accounted for an income of $845 million, however, the net loss in that year was $2.123 billion.\textsuperscript{208} Even with this deficit, the PBGC will insure defined benefit pensions if the employer fails to pay their premium or becomes insolvent.\textsuperscript{209} Although the employer becomes liable to the PBGC for the insured benefits paid,\textsuperscript{210} there is little chance that the PBGC will recover the entire portion of that liability.\textsuperscript{211} In trying to resolve the PBGC’s deficit, Congress has increased the annual premiums of employers.\textsuperscript{212} Yet, these increases have not sustained the growth of the PBGC deficit.\textsuperscript{213}

2. Benefits

Each year ERISA sets the PBGC’s maximum benefit guarantee. In 2002, pension plans were guaranteed the maximum amount of $3,579.55 per month for a worker who retires at age 65.\textsuperscript{214} If one begins receiving payments before age 65 or if one’s pension includes benefits for a survivor or other beneficiary, the guaranteed benefit will be lower.\textsuperscript{215}

III. CURRENT STATUS OF PBGC

Today, federal tax incentives given to private pensions consume more corporate revenue than any other fringe benefit given to employees.\textsuperscript{216} Since the early 1980s, there has been a decrease in the use of defined benefit pension plans.\textsuperscript{217} In 1995, the number of PBGC insured defined benefit plans was around 114,000 while in 2001, that number decreased to slightly more than 35,000 plans.\textsuperscript{218} In 2001 alone, the PBGC reported a net loss of $2.123 billion.\textsuperscript{219}

\textsuperscript{206}See Walsh, supra note 18, at A1.
\textsuperscript{207}Collins, supra note 19, at 607.
\textsuperscript{209}See Muir, supra note 157.
\textsuperscript{211}Id. at 638.
\textsuperscript{212}Id.
\textsuperscript{213}See PBGC 2001 Annual Report, supra note 16.
\textsuperscript{214}Id. This monthly amount produces an annual salary of $42,954.60 per year.
\textsuperscript{215}Id.
\textsuperscript{216}SASS, supra note 27, at 2. There is a possible exception to health insurance. \textit{Id.} Private pension funds and state and local pension funds together hold 25.1% of corporate equities in the United States. Bodie ET. AL., supra note 155, at 5.
\textsuperscript{217}SASS, supra note 27, at 2.
\textsuperscript{218}Id. at 14.
\textsuperscript{219}Id. at 30.
Currently, the PBGC insures defined benefit pensions plans covering nearly 44 million American workers and retirees.\(^{220}\) By year-end of 2001, the PBGC was responsible for the pension benefits of about 624,000 participants from both “single-employer” and “multi-employer” plans.\(^{221}\) Nearly 269,000 people received benefit payments totaling more than $1 billion,\(^{222}\) marking the first time that the PBGC’s annual benefit payments surpassed $1 billion.\(^{223}\)

Thus far, the PBGC has been successful in insuring pension plans and improving the financial future for millions of employees.\(^{224}\) It is important to secure the future of the PBGC in order to secure the future of retirees. The wave of employer bankruptcies and underfunded or unfunded defined benefit plans has left millions of Americans with depleted retirement funds and inadequate time to build any retirement savings. Many employees turn to the PBGC for help to receive the pension benefits promised, but the large deficit of the PBGC and the lack of employer responsibility makes filling these pension promises a difficult task.\(^{225}\) Unfortunately, this problem of plan terminations is only expected to worsen leaving the PBGC with a burden much higher than it bargained for.\(^{226}\)

**A. Downward Trend of the Economy**

There has been a significant decline in the economy’s prosperity. At the end of fiscal year 2002, investment companies managed a total of $6.7 trillion.\(^{227}\)

During the fiscal year, stock prices continued to retreat from record highs set in 2000, with the major stock indices recording declines of between 11 and 19 percent. The technology-oriented NASDAQ Composite index closed at 1,172.06 on September 30, 2002, down more than 75 percent from its March 10, 2000, peak of 5,048. At the end of 2002, a total of 31,100 investment company portfolios were managed or sponsored by 995 investment company complexes. Open-end management investment companies, commonly known as mutual funds, comprise the largest segment of the investment company industry as approximately 54 million U.S. households, representing 50 percent of total households, own mutual funds.\(^{228}\)

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\(^{220}\)Id. at 14.

\(^{221}\)Id.

\(^{222}\)See SASS, supra note 27, at 1.

\(^{223}\)Id.

\(^{224}\)See, e.g., American Metal Market, Republic Hiking Pension Fund, Nov. 5, 1998, at 12. The PBGC made an agreement with the new owners of Republic Engineered Steels Inc., Massillon, Ohio to provide an additional $178 million financing for the company’s underfunded pension plan. Id. This agreement gave 3,600 steelworkers a much better financial standing for retirement. Id.

\(^{225}\)See generally PBGC 2001 Annual Report, supra note 16.

\(^{226}\)Id. The PBGC expects to represent double the participants in 2002 that it did in 2001. Id.


\(^{228}\)Id.
Given the current investment landscape, “[t]he risk that thousands of American workers will not receive [their promised] retirement benefits continues to worsen.”229 In 2001, the PBGC defended 122,000 participants of defined benefit pension plans in 118 cases, due to the bankruptcies of companies that sponsor defined benefit pension plans.230 For example, the Enron accounting fraud caused many of the company’s employees to lose their entire retirement savings as their employer’s stock dramatically decreased in value.231 The State of Florida alone lost $330 million in state pension plans from the Enron scandal.232

The bankruptcy of LTV Corporation led the PBGC to assume pension payments of $1.6 billion in March 2002.233 The PBGC assumed unfunded pension claims of $1.1 billion from National Steel and assumed $3.7 billion from Bethlehem Steel.234

Another leading example of an enormous loss of pensions is the WorldCom scandal. WorldCom’s illegal bookkeeping caused New York City police and firefighters to lose $100 million from their pension plans235 and the entire state to lose $300 million.236 Additionally, the Massachusetts pension plan lost $25 million,237 the State of Maryland’s pension plan lost about $52 million and Washington State lost $83 million.238 The WorldCom scandal also caused the State of California to lose $1 billion in pension funds;239 the state pension system alone lost $590 million.240

Furthermore, experts expect that 600,000 retired steelworkers241 may suffer a loss of retirement benefits that may lead to billions of dollars of unfunded liabilities by insolvent corporations.242 Public pension funds lost more than $4 billion from the WorldCom scandal alone.243


231 Kennedy, supra note 12, 491-93.


233 Walsh, supra note 18.

234 Id.

235 Connelly, supra note 232, at A2.

236 Arnold Beichman, Pension Fallout Anxieties, WASH. TIMES, Aug. 21, 2002 at A14.

237 Id.

238 Id.

239 See Connelly, supra note 232.

240 See Beichman, supra note 236.

241 Will, supra note 7, at A33. This equates to 30 times more employees than Enron. Id.

242 Id.

243 Beichman, supra note 236, at A14.
Due to the current economic conditions, Congress is proposing new legislation pertaining to ERISA.\textsuperscript{244} The Supreme Court has seen the PBGC being taken advantage of by employers through plan terminations.\textsuperscript{245} Unfortunately, the PBGC's insurance system has resulted in a society where some employers are abusing the social benefit of the PBGC by promising larger retirement benefits without the ability or concern to pay them.\textsuperscript{246}

While these current economic conditions may be temporary, they have had a detrimental effect on pension plans. This economic situation warns that a pension plan proposal must incorporate a contingency plan that will secure retirement assets even in the event of economic tragedy.

**B. Future of Employee Benefits**

If bankruptcies and massive unfunded pension liabilities persist, the demands on the PBGC will increase and its deficit will worsen.\textsuperscript{247} The $8 million surplus that the PBGC once had is rapidly decreasing.\textsuperscript{248} If this trend continues, the future of pension plans will be greatly threatened.\textsuperscript{249} Employees will be unable to call upon the PBGC for promised benefits in the case of a plan termination. Therefore, Congress must take steps to protect the financial future of the PBGC.

**IV. CURRENT PROPOSED SOLUTIONS**

There are several possible approaches to the problem of unfunded and underfunded pension plans, including two bills currently pending in Congress and other proposals by legal scholars. None of these solutions seem to solve the issue at hand. This section will explain the existing proposals and their problems.

\textsuperscript{244}See, e.g., infra notes 247-48.

\textsuperscript{245}Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359 (1980).

\textsuperscript{246}Uylaki, supra note 201, at 105 (citing Impact of Underfunded Defined-Benefit Pension Plans on the Federal Deficit, Plan Retirees, and Plan Sponsors: Hearing Before the Subcomm. On Oversight of the House Comm. On Ways & Means, 103d Cong. 5 (1993)).


\textsuperscript{248}Walsh, supra note 18, at A1; see PBGC 2001 Annual Report, supra note 16. In 2001, the net loss was $2,123 billion compared to a net gain of $2,734 billion in 2000. Single-Employer programs alone accounted for a net loss of $1,972 billion compared to the net income in 2000 of $2,666 billion. PBGC 2001 Annual Report, supra note 16. “The $4,638 billion decrease was primarily attributable to the net change in losses from completed and probable terminations and in financial activity.” Id. Multiemployer programs reported a net loss of $151 million in 2001. Id.

\textsuperscript{249}See generally McGill ET AL., supra note 25, at 140. The PBGC was of high concern during President George Bush's Administration because it was possible that the agency could lose an increased amount of $10 billion from 1989 to 1993. Id. Furthermore, the PBCG vulnerability induced President Clinton's administration to improve and amend the PBGC's role in insuring pension plans and in bankruptcy claims. Id.
A. Proposed Legislation

Currently, there are numerous pieces of legislation in Congress that address some aspect of pension plans. Among these are the Protecting America’s Pensions Act of 2002 and the Pension Security Act of 2002.

1. Protecting America’s Pension Act of 2002

The Protecting America’s Pensions Act of 2002, introduced on March 6, 2002, proposes “[t]o amend the Employee Retirement Income Security Act of 1974 to improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes.”

The bill also proposes an increase in pension benefit information to participants in both individual account plans and defined benefit plans. Specifically, the Act requires that a plan administrator supply the plan participant or beneficiary with a pension benefit statement at least every three years and upon request. Under this Act, the statement shall provide recent information regarding the plan benefits, to be written in plain English, or in a manner comprehensible to the average participant, and it must be provided in written, electronic or other appropriate form reasonably accessible to the participant.

2. Pension Security Act of 2002

The Pension Security Act of 2002, introduced in the House of Representatives on February 14, 2002, would amend title I of ERISA and the Internal Revenue Code of 1986 to provide extra protection to participants and beneficiaries in defined contribution plans. This legislation proposes to curtail excessive investment in employer securities and to increase investment counseling to workers managing their personal retirement assets. Additionally, this legislation seeks to amend the

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253 Id. This Act will amend §105(a) of ERISA [29 U.S.C. 1025(a)] according to § 201(a) of the Protecting America’s Pension Act of 2002. See id.
254 Id. at § 201(a)(1)(A)-(B).
(A) The administrator of an individual account plan shall furnish a pension benefit statement—(i) at least once each calendar quarter to a plan participant of an individual account plan which permits a participant or beneficiary to exercise control over the assets in his or her account, and (ii) to a plan participant or beneficiary upon request.
(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—(i) at lease once every 3 years to each participant, and (ii) to a participant or beneficiary of the plan upon written request.
Id.
255 Id. at § 201(a)(1)(B). See supra note 14 and accompanying text.
256 Id. at § 201(a)(2)(A).
257 H.R. 3762.
258 See id.
Securities Exchange Act of 1934 to protect plan participants and beneficiaries against insider trading.  

Specifically, the Pension Security Act of 2002 proposes to secure pension plans through provision of periodic pension benefit statements, information and educational support for pension plan fiduciaries. The more knowledge plan participants have, the more informed their decisions will be about their financial future. Therefore, if employees do plan to invest money into defined contribution plans, their financial future will be more protected through knowledge and diversification. Additionally, the information required by the employer will be more likely to put the employee on notice of any financial difficulties the company may be having.

The Pension Security Act has recently been passed by the House of Representatives and is pending resolution in the Senate. The compelling state of our economy was reflected in the resolution.

Whereas recent events have highlighted the need to provide American workers with stronger pension protections and greater access to professional investment advice, the Pension Security Act of 2002 would provide working Americans with more investment education and information regarding their retirement plans, greater access to professional investment advice, rights to diversified pension plan assets, protections against corporate abuses and mismanagement of pensions, and other reforms that would increase pension coverage;...the Pension Security Act of 2002 would enhance the retirement security of American workers.

3. Arguments in Support of the Proposed Legislation

Though this legislation relates primarily to defined contribution plans, both could also assist in the improvement of defined benefit plans. For instance, an increase in diversification of low-risk funds may be beneficial to plan participants in that they are more likely to be guaranteed their promised pension. Mandating the employer to furnish adequate information to the plan participant will keep the participant more informed about his or her pension plan. Accountability among plan administrators and monitors would surely reduce the possibility of unfunded or underfunded plans.

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259 Id.

260 H.R. 3762. Title I—Improvements in Pension Security. Section 101. Periodic pension benefit statements. Section 103. Informational and educational support for pension plan fiduciaries. The Act also implements civil penalties for failure to comply with these standards.


262 H.R. Res. 540.

263 H.R. 3762 § 2(a)(1). Section 2(c)(1)(A)-(B) requires these statements to inform the participant of the value of investments allocated to the individual account and an explanation, understandable by the average participant, of the diversified investment portfolio and the risks involved. Id.
Last but not least, minimizing plan asset investment in employer securities will sufficiently separate the burden of an unsuccessful business year from affecting pension plan assets.

4. Counter Arguments to the Proposed Legislation

The PBGC remains financially vulnerable to underfunding of large plans, economic downfalls, and interest rate declines. The legislation currently proposed in Congress will not succeed in providing a security of defined benefit plans. While the proposals regarding defined contribution plans seem promising in the increase of disclosures and diversification, they are only a bandage on to the larger problem of inadequate pension funds that society faces. These proposals meaningfully focus on employers while ignoring the financial burdens of the PBGC.

B. Alternative Solutions to Guaranteeing Pension Funds

Many scholars have proposed solutions to eliminate the PBGC’s massive financial burden. These proposals include the PBGC achieving lien priority status in a bankruptcy proceeding and insuring defined contribution plans. These plans are discussed more elaborately below.

1. Lien Priority Status

One proposed solution to guaranteeing pension funds is for the PBGC to have lien priority status in a bankruptcy proceeding. This proposal aims to hold employers financially responsible for defined benefit pension plans. In order to do so, the PBGC would perfect a lien against the employer before the employer files for bankruptcy. This procedure is similar to that of a tax or statutory lien. Through this method of obtaining a lien priority, the PBGC would obtain secured creditor status.

For this proposal to work, the PBGC must make a demand to the employer for payment and file notice of its lien all before the employer files Chapter 11. The narrow time period creates a minimal opportunity to use this solution. Overall,

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265 Uylaki, supra note 201, at 80-81. By granting the PBGC lien priority status under section 507(a)(8) of the Bankruptcy Code, creditors would have the incentive to “monitor the underfunded employer and would simultaneously bolster the PBGC's enforcement powers.” Id. at 111.

266 Id. at 106. It is proposed that by giving the PBGC lien priority status, two public policy goals would be achieved. “First, congressional action would dispel the myth that the PBGC was designed to subsidize unsuccessful corporate endeavors or employer mishandlings of pension money…. Second, granting priority status would make it unmistakably clear that employers may not unreasonably inflate their pension benefit programs to entice qualified employees.” Id.


268 Uylaki, supra note 201, at 94.

269 Id.; see 11 U.S.C.S. §501(d).
these strict restrictions would discourage employers from participating in pension plans.

2. Insure Defined Contribution Plans

Defined contribution plans provide an important segment of retirement income that may earn more money than a defined benefit plan but incur more risk. Therefore, one scholar proposes to insure defined contribution plans against poor investment performance that leaves uncertainties in retirement income. In order to insure these plans, the “Hypothetical Account” proposal suggests guaranteeing an average rate of return over a plan participant's working life. Although this solution sounds feasible, it has been largely criticized by economists. First of all, it is difficult to insure a volatile investment. Second, critics worry that employers will be deterred from establishing defined contribution plans due to the increase of regulations, fiduciary rules, insurance requirements, and funding rules. Lastly, excessive administrative costs would be involved in the development of any new insurance agency to regulate defined contribution plans, collect premiums, and administer coverage.

V. Solution

The economic realities surrounding pension funds must not be ignored when finding the most beneficial way to provide adequate economic support during retirement. In order for people to provide themselves with adequate financial support during retirement, cost-of-living expenses must be taken into account. The real dollar value of fixed benefit pension payments decreases with inflation, a problem aggravated by the continual increase in American life expectancy. Thus,

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270 Uylaki, supra note 201, at 95. “[P]erfecting the PBGC lien prior to the bankruptcy petition is seldom accomplished and proves to be a rather formidable task, because the single-employer plan typically will not terminate until after the employer has commenced bankruptcy proceedings.” Id.; see The Nat'l Bankr. Conference's Code Review Project, Reforming the Bankruptcy Code: Final Report 95 (1994).

271 See supra notes 116-125.

272 See Jefferson, supra note 76, at 644.

273 Id. at 651-52. “The Hypothetical Account proposal allows sponsoring employers and plan participants to insure some, or all, of an account balance, in exchange for the payment of an annual insurance premium.” Id. at 652.

274 See Bodie et al., supra note 155, at 989. Volatile assets are difficult if not impossible to insure due to their unpredictable nature of assets tied to the market economy. Id.

275 See id.

276 Jefferson, supra note 76, at 682.


278 See generally CAMPBELL R. MCCONNELL & STANLEY L. BRUE, MACROECONOMICS: PRINCIPLES, PROBLEMS & POLICIES 214 (13th ed. 1996). The wealth effect explains that the purchasing power of a person's assets will decrease at a higher price level. Id.
even if insured, fixed pension payments cannot fully fund an adequate retirement.\textsuperscript{279} However, it is beneficial for people to have a secure and low-risk portion of retirement income. Since the PBGC-insured defined benefit plans are in crisis, a financial and self-sustaining plan is needed.

The federal government’s ability to insure retirement income has declined drastically. For years, Social Security and other benefit pension programs have been a concern of both the older and younger generations.\textsuperscript{280} Many people, especially the younger generation, do not anticipate Social Security government assistance throughout retirement.\textsuperscript{281} This uncertainty has influenced many individuals to initiate their own personal retirement plans through a variety of methods. Among these, personal savings and stock investments have become the most popular and a rather simple way for the average investor to prepare for retirement.\textsuperscript{282}

While investing into both defined benefit and defined contribution plans will provide a lower income than investing into defined contribution plans alone, the low-risk insured pensions from a defined benefit plan provide a secure portion of retirement income in the case economic downfalls. A solution that mandates investment of plan assets into defined benefit plans and defined contribution plans will be the most beneficial. Therefore, a sufficient solution to the problems of the PBGC deficit in insuring unfunded or underfunded pension plans is for legislation to be passed by Congress that will mandate the employer to invest a portion of defined benefit pension plan assets into a low-risk investment. This solution is not intended to diminish the importance of individual retirement investment as a potential for a higher level of retirement income. Rather, this solution focuses on the importance of a guaranteed income during retirement, which a defined pension plan ideally achieves.

\textit{A. Importance of Maintaining Defined Benefit Plans}

As stated previously, pension plans are one of the largest sources of retirement income and need to be maintained and protected.\textsuperscript{283} Although employers may voluntarily participate in pension plans,\textsuperscript{284} the pension payments made to employees are crucial to their retirement savings.\textsuperscript{285} Specifically, defined benefit plans provide an employee with a promised benefit during retirement. Individuals who are too late in their careers or too uneducated to invest are directly harmed by an employer's empty promise of pension benefits. These employees and retirees then seek assistance from the PBGC. With its increasing deficit, however, help may be postponed.

\textsuperscript{279}Defined benefit pension plans are not adjusted with inflation or cost-of-living.
\textsuperscript{280}See generally Moore, supra note 11, at 543.
\textsuperscript{281}Id.
\textsuperscript{282}See SASS, supra note 27, at 252.
\textsuperscript{283}See Collins, supra note 19, 604-605.
\textsuperscript{284}See Karen M. Sakanashi, Note: Unfunded Vacation Benefits: Determining the Scope of ERISA, 87 COLUM. L.R. 1702, 1722 fn. 95 (1987). Employers are under no obligation to establish pension plans for their employees. Id.
\textsuperscript{285}See McGILL ET AL., supra note 25, at 26-27. Employees rely on pension plans for income during retirement. Id.
B. Lower-Risk Investments

Investments that are low risk are appealing to risk-adverse investors. A number of factors may play a part in creating and maintaining low-risk investments. Particularly, the Federal Depository Insurance Corporation (“FDIC”) aids in insuring certain types of investments.\textsuperscript{286} The FDIC is a nonprofit government organization that insures bank deposits up to $100,000.\textsuperscript{287} This insurance includes coverage of certificates of deposit, personal savings accounts, some individual retirement accounts, and other bank deposits. Similar to the purpose of the PBGC, the FDIC insures deposits if the bank becomes insolvent.\textsuperscript{288}

Currently the FDIC has been unable to collect insurance premiums from a majority of the banking industry because insurance funds exceed the designated reserve ratio (DRR).\textsuperscript{289} If a bank’s fund reserve ratio falls below the DRR, the FDIC must either initiate an increase in premiums to offset the decrease in the reserve ratio or charge at least 23 basis points (23 cents per $100 of deposits) until the reserve ratio joins the DRR.\textsuperscript{290}

1. Certificates of Deposit Accounts

Certificates of Deposit (“CDs”) provide a low-risk investment option that is beneficial for those individuals approaching retirement.\textsuperscript{291} While banks provide CDs at a higher interest rate than a regular savings account, these types of investments do have limitations.\textsuperscript{292} Because a CD is a time deposit, it may not be withdrawn before maturity without incurring a penalty.\textsuperscript{293} Nonetheless, CDs are insured by the FDIC, protecting their investors in the case of insolvency.

\textsuperscript{286}Federal Deposit Insurance Corporation, \textit{FDIC 2000 Annual Report 3}, \textit{available at http://www.fdic.gov/about/strategic/report/2000AnnualReport/BIF.html} (last modified Jan. 10, 2002). After The Depression, Congress intended to restore the nation’s confidence in the banking industry by establishing an insurance company to insure deposits. \textit{Id.} “The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was enacted to reform, recapitalize, and consolidate the federal deposit insurance system.” Currently, the FDIC insures a depositor up to $100,000. \textit{Id.}

\textsuperscript{287}\textit{Id.}

\textsuperscript{288}See generally BODIE ET AL., supra note 155, at 94.

\textsuperscript{289}\textit{FDIC 2000 Annual Report, supra} note 286, at 1-2. The FDIC is required to maintain a ratio of required reserves to insured deposition (DRR) equally 1.25 percent.

\textsuperscript{290}\textit{Id.}


\textsuperscript{292}See, e.g., Bankrate.com, Mar. 17, 2003 \textit{available at http://www.bankrate.com/brm/rate /brm_depo_avg.asp}. Comparing the rates between passbook and statement savings with the varieties of CDs, it is evident that CDs render a larger interest rate.

\textsuperscript{293}See BODIE ET AL., supra note 155, at 31.
2. Individual Retirement Accounts

Individual retirement accounts (“IRAs”) are tax-sheltered accounts. All IRAs are available to employees, self-employed persons or sole proprietors. Additionally these accounts are available to those who work in the public and private sectors. IRAs are promoted by commercial banks, savings and loan associations, mutual funds, life insurance companies and trust companies. Those savings and CD IRAs provided by banks are insured by the FDIC.

Annual contributions up to the maximum of the lesser of $3,000 or 100 percent of a person’s compensation is allowed. Once an individual reaches the age of 70½ years, no contribution is allowed for that tax year. If distributions are made before the attainment of age 59½, except for death or disability, or after the age of 70½, a 10 percent excise tax will be imposed. As long as investment earnings stay in the plan, they are exempt from federal income taxation. IRA assets may not be commingled with other property unless it is an approved common investment fund or common trust fund. Although some assets are invested in stocks, mutual funds and money markets, a larger portion are invested in CDs or savings accounts. This larger allocation into lower-risk funds creates a more secure investment.

3. Simplified Employee Pensions

Simplified employee pensions (SEPs) are a simplified form of an employer-sponsored pension plan. Like an IRA, a SEP is vested in full from the beginning. These pensions are IRAs that are set up and financed for each individual employee.

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294Id. at 881; see also McGILL ET AL., supra note 25, at 307. There are some exceptions to tax deductions including an adjusted gross income that exceeds $40,000 for married couples filing together, $0 for married couples filing individually, and $25,000 for unmarried people. Id. Additionally, a tax deduction will not be available if the person participated in a qualified plan in that year. Id.

295Id. at 306.

296Id. at 307.

297See id. at 309.

298Id.


302McGILL ET AL., supra note 25, at 308. Unrelated business income is excluded from the tax exemption. Id.

303Id. at 309.

304Id. at 310.

305See generally id.

306Id. at 312.

307Id. at 314.
by the employer.\textsuperscript{308} It is within the employer's full discretion to either allow each
employee to choose his or her own IRA or type of IRA, or the employer can choose
the agency and funding instrument for the employee’s IRA.\textsuperscript{309} Employers can
contribute the lesser of $40,000 or 25 percent of covered compensation in any tax
year.\textsuperscript{310}

Employer contributions are not subject to federal income tax.\textsuperscript{311} Social Security
Federal Insurance Contributions Act, and unemployment taxes.\textsuperscript{312} Additionally, like
IRAs, an employee must make a withdrawal no earlier then the age of 59½ (unless
caused by death or disability) and no later than 70½ to avoid the federal excise tax.\textsuperscript{313}

4. Money Market Accounts

Money market accounts are a type of mutual fund that is “traded on the money
market are used by economic units to adjust their balance sheets for temporary cash
surpluses and deficits.”\textsuperscript{314} These accounts allow the investor to access money already
deposited in the financial institution.\textsuperscript{315} While these accounts provide a safer
investment because they seek to preserve the investment, they also limit access to the
funds.\textsuperscript{316} The investor may not earn as much from an investment in a money market
account versus investments in stocks because the rates of return are usually lower.\textsuperscript{317}

5. Bonds

A bond is defined as a loan an investor makes to a company or government
entity.\textsuperscript{318} The bond market is composed of corporate bonds, municipal bonds,

\textsuperscript{308}Id. at 312.
\textsuperscript{309}Id.
\textsuperscript{310}I.R.C. § 402(h) (2003). SEPs are viewed as defined contribution plans.
\textsuperscript{312}I.R.C. §§ 3121(a)(5), 3306(b)(5) (2003).
\textsuperscript{314}HOWARD P. LANSER, JOHN A. HALLORAN, & WILBUR G. LEWELLEN, FINANCIAL
MANAGEMENT; AN INTRODUCTION TO PRINCIPLES AND PRACTICE 554 (2002).
\textsuperscript{315}See Bankrate.com available at http://www.bankrate.com/brm/green/mut/mm_basic1.asp
(last visited Jan. 30, 2003).
\textsuperscript{316}See BODIE ET AL., supra note 155, at 34. Withdrawals out of money market accounts are
limited to 6 monthly and out of those, only 3 are permitted to be made by check; See also
Bankrate.com available at http://www.bankrate.com/brm/green/mut/mm_basic1.asp (last
\textsuperscript{317}See id. at 34.
\textsuperscript{318}See id.
treasury notes and bonds, mortgage securities and federal agency debt. These bonds range from less risky government bonds to high-risk junk bonds.

Generally, government bonds provide a lower-risk investment than stocks with the tradeoff of achieving a lower overall rate of return. The interest income provided by these bonds is usually consistent and steady. Additionally, bonds of higher quality seem to be less volatile than many stocks. However, bonds, while generally less risky, will result in a lower overall return than stocks.

C. Higher-Risk Investments

Investing in higher-risk investments usually establishes an increased return for investors. When it comes to individually saving and investing for retirement, many people may act illogically in that they are usually more risk-seeking.

1. Stocks

Stocks are securities issued to the public that represent ownership in a corporation. Unlike some low-risk investments, stocks are traded on a variety of stock exchanges. Stocks generally have the capacity to earn more over time due to their higher risk and higher rates of return. However, the risk-return continuum holds true; while stocks may yield a higher return on one's investment than low-risk investments, their volatility can also render a larger loss to an individual's investment.

2. Mutual Funds

Mutual funds are investment accounts that compile money from hundreds or thousands of investors. One or several professional money managers supervise and monitor the account or portfolio. Additionally, these money managers have the discretion of choosing which stocks or bonds to buy or sell. What makes these

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319 See id.

320 High Yield or Junk Bonds, Mar. 8, 2003, available at http://www.finpipe.com/bndjunk.htm (last visited Mar. 10, 2003). “Junk” bonds are corporate bonds that offer a higher rate of return but have a higher risk of default. Id.

321 See id.

322 See generally Louis Uchitelle, Economic View; Why It Takes Psychology to Make People Save, N.Y. TIMES, Jan. 13, 2002 at 4. A University of Chicago economist, Richard H. Thaler stated “[y]ou have to force savings and take the money away before people have it and can't resist spending it.” Id.

323 See generally BODIE ET AL., supra note 155, at 70.

324 See id. These stock exchanges include national and local security exchanges. Id.

325 See Appendices E & F.

326 See id.

327 See BODIE ET AL., supra note 155, at 985.

328 Id. at 12.

329 See id. at 105.
funds appealing is the large amount of diversification that can be achieved by compiling people's money. These funds generally produce a lower investment risk compared to stocks and therefore may be more appealing.

D. Financial Analysis

In order to fix the PBGC's deficit, there needs to be mandated allocation of pension plans in a low-risk investment. The best solution would be to require the employer to invest a portion of the pension funds into a FDIC insured IRA. Among the benefits of allocating a portion of pension funds into a FDIC insured IRA is that in case of an employer's insolvency or a bank's insolvency, this deposit will be insured up to $100,000 per depositor. Although this form of investment may yield a smaller return on investment than would stocks or high-risk bonds, it offers a more secure retirement.

Additionally, an IRA is a good tool for pensions because it is catered to retirement. These accounts offer the tax-shelter benefit that employers and employees prefer, and they have standards in place to regulate the deposits and withdrawals of such funds. These existing standards make the solution simple to implement.

Under this proposed solution, the IRA-allocated portion of the private pension would be guaranteed up to the amount of $100,000. This security to the employee is achieved without the employer paying insurance premiums to the FDIC. This allocation would shift the excessive burden of underfunded and unfunded pension plans away from the PBGC and onto the FDIC. This solution will be beneficial to employees in that they will have guaranteed pension plan assets for the portion invested in FDIC insured IRAs up to $100,000 and have the PBGC insurance for the remainder of the funds.

The proposal is based on the illustration in Appendix E-Illustration of Pension Allocation with Interest Benefits in Favor of Employer and Security of Funds in Favor of Employee (“Appendix E”), which shows an allocation of retirement funds over a 30-year period. First and foremost, this simulation takes into account interest rates and insurance premiums; it does not take into account inflation. The solution proposed in Appendix E is a mandatory allocation of 20 percent of an individual's defined benefit pension funds, to be put into a low-risk FDIC insured IRA. This spreadsheet further illustrates the allocation of defined benefit pension funds into stocks and bonds of 60 percent and 20 percent respectfully.

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330 See id.
331 See supra note 287.
332 See Appendices A, E & F. It is evident that stocks and bonds yield a higher interest rate than do normal savings accounts, certificates of deposits and individual retirement accounts.
333 See supra note 287.
334 Id.
335 Most banks have not paid premiums to the FDIC since 1996 and since then 900 banks have started. See FDIC 2000 Annual Report, supra note 289, at 2. See generally supra notes 286-289.
336 See generally supra notes 286-287.
In comparing Appendix E and Appendix F—Employer Returns on Pension Investment Without Allocation in Individual Retirement Account and Paying the Premium to PBGC (“Appendix F”), the annual pension accrual for the plan beneficiary remains constant, but the interest income for the employer varies drastically. In Appendix E, applying the current applicable interest rates for stocks, bonds and IRAs rendered the employee the designated pension accrual and enabled the employer to earn interest income totaling $984.26 per plan participant. In comparing this calculation to Appendix F, which experiments with four different fund allocations not including an IRA and using the average rate of returns of stocks and bonds from almost the past 130 years, the solution Appendix E provides renders the employer more interest income.

Appendix G—Employer Returns on Pension Investment Without Allocation in Individual Retirement Accounts and Paying the Premium to the PBGC—Using the Rates Applied in Appendix E (“Appendix G”) illustrates the results when implementing the current interest rates used in Appendix E in a format similar to the one used in Appendix F. The compilation of the results of Appendix G shows that the employer’s interest income increases without investing in FDIC insured IRAs. While the employer may receive a larger interest income from the illustration in Appendix G, the employee’s anticipated pension is at a much greater risk.

Mandating companies to invest a portion of retirement funds in low-risk investment will increase or maintain a safe level of earnings for the employer in the long-run. Additionally, this solution will help eliminate the possibility of employers taking unreasonable investment risks at the cost of the employee.

VI. EFFECTS OF THE PROPOSED SOLUTION

The proposed solution of mandating a portion of the pension assets to be invested into a FDIC insured IRA provides extra insurance protection to employees and takes the excessive financial burden of covering insolvent plans off of the PBGC. Allocating pension funds this way resembles the balance in burdens that employers, the PBGC, and the FDIC will share in providing secure retirement funds to retirees. If this solution can operate effectively and efficiently in today’s post-9/11 economy, then there is no doubt that this solution can operate in a prosperous economy.

A. Stakeholder Analysis of the Proposed Solution

1. Effect on the PBGC

If employers continue to have underfunded or unfunded pension plans, the PBGC will run the risk of going bankrupt and will not be able to insure any defined benefit pension plans. If Congress passes legislation that mandates plan sponsors to allocate a portion of plan assets into an IRA, there will be a guaranteed benefit of that portion to go to plan participants in case of insolvency. Additionally, this will provide a portion of funds that the PBGC will not have to insure since the FDIC will insure that portion. This shift of the insurance burden will allow the PBGC to use current premiums to pay for its current deficit.

2. Effect on the FDIC

If the solution is put into effect, the FDIC will not be burdened with any new regulations and standards. The only change that will occur is an increase in bank deposits, which will increase the amounts banks pay to the FDIC to maintain their
relative reserve ratio. This effect is not detrimental to the operations of the FDIC. Instead, the past success of the FDIC in insuring bank deposits makes this solution even more realistic.

3. Effect on Banks

Banks would not be burdened by this proposed solution. This solution would permit banks to operate in the same manner as they currently do. With the increased amount of investment in bank IRAs, banks will be benefited by an increase in the amount of money available for loans. In making loans, banks will charge the borrower a higher interest rate than what it pays to investors. Therefore, banks will actually profit from this solution.

4. Effect on Employees and Retirees

Due to the large number of underfunded and unfunded plans, employees are losing out on those private pension plans that their employers promised. Instead of receiving a flat rate back from the PBGC, employees will be eligible to receive a larger amount of their promised pensions in the event of an employer’s insolvency due to the insurance provided by the FDIC for the portion of the pension invested in the IRA. Overall, this plan increases the amount of money that the employee or retiree can recover from insurance companies in the case of employer insolvency. In turn, this solution will aid the availability of the employee’s pension income during retirement, helping to protect the employee from effects such as an increase in cost-of-living expenses, increased health care costs, and increased life expectancy.

5. Effect on Employers

It is an inevitable effect that the proposed allocation will slightly increase the cost to employers by a decrease in interest income earned by pension funds, and increase the burden on allocating the funds. However, this solution is similar to a “safe harbor” plan used by employers who sponsor defined contribution plans. A “safe harbor” plan reduces an employer's liability for poor investments by offering its plan participants broader investment options. The similarity is that by mandating a low-risk allocation of pension funds, employees’ pensions will be better insured, decreasing the chance of employer liability. Additionally, the burden currently put on employers to improve disclosures and information requirements is consistent with ERISA and will also serve to decrease potential employer liability. Furthermore, this solution will continue to provide employers with the tax incentive to participate in defined benefit pensions.


339 Jefferson, supra note 76, at 633; see also ERISA 29 U.S.C. § 404(c).

340 29 U.S.C. § 1104(c). This section provides:
(c) Control over assets by participant or beneficiary. (1) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account—(A) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and (B) no person who is
6. Effect on the Economy

The economy will be benefited by this proposal. An increased investment in low-risk accounts will have a cyclical effect on the economy. First, an increase in savings will increase the funds that banks will have to loan, which, in turn, will create a lower demand to borrow money and will promote investment in capital (land, buildings, machines, etc.) due to the excess of supply of money. This excess supply will drive interest rates down and will make it cheaper to borrow money and invest in capital. This increase in borrowing will increase the interest rate of saving money, which will increase the return on investment. People will both be able to increase their retirement earnings and capital investment, and enable economic growth as well.

B. Counter-Arguments to the Solution

1. It is Costly to Administer

Some may argue that this proposal would be costly to administer. However, since IRAs are already in service, the only administrative cost would be to familiarize plan managers and administrators with the mandatory allocation. Additionally, the insurance and governmental agencies already exist and are in place, which decreases the expense of initiating new agencies to oversee this proposal. This proposal, in utilizing existing agencies, provides a cost-effective solution to the issues associated with maintaining pension plans and stabilizing the PBGC.

2. Insufficient Retirement Funds

The increase of individuals investing in the stock market creates a higher expectation of larger retirement returns. Indeed, many investors may actually make more money investing in funds with higher risks and interest rates that the stock market provides; however, investors can also lose pension assets because of these same risks and returns.

Therefore, in the spirit of diversification, investors may choose to invest a portion of their assets for retirement in a low-risk investment in order to diversify the risk and maintain a secure level of investments. Individuals rely on defined benefit plans to give them reliable income during retirement, which affords an adequate standard of living.

Although it is beneficial for the future of Americans to independently invest for retirement, it is equally beneficial to be guaranteed a minimum income during retirement. If an individual's entire retirement assets were invested in the stock...
market and directly affected by the well being of the economy, it would only take a short dramatic downfall across the board to decrease the individual’s pension funds and financial status. Therefore, a sufficient combination of pension plans and personal investing will optimize a person’s financial stability during retirement.

Some critics may argue that society should focus more on defined contribution plans due to the larger potential to earn money. Although this statement is true with regard to earning potential, there is a larger risk of losing a large portion of retirement savings if investors allocate all of their retirement savings into stocks and bonds. If the latter occurs, those people who have insufficient retirement savings will look to the government for financial support through a variety of social programs. If they were to do this, then the whole process of establishing adequate retirement savings becomes cyclical. In actuality, the government supporting and paying retirement benefits now will decrease the likelihood of it paying and supporting retirees who have insufficient funds to maintain an adequate standard of living at retirement.

VII. CONCLUSION

Defined benefit plans provide participants with a safe and stable income during retirement. Unfortunately, economic downfalls are causing pensioners to lose out on their promised benefits. Currently the PBGC is the trustee of nearly 3,000 pension plans, including some of the largest unfunded pension plans in the country. Most of these underfunded pension plans are the result of insolvent employers who made empty promises of retirement funds to their employees.

In order to secure the future of defined benefit pension plans, Congress must act now. Congress must preserve the PBGC and its future of providing insurance for defined benefit plans. By mandating a portion of pension funds to be allocated into a FDIC insured IRA, the PBGC will be relieved partially of its excessive burden to insure unfunded and underfunded pension plans. Additionally, Americans can look forward to retirement knowing that their pensions are more secure.

Kathleen H. Czarney


345See id. at 19-21.

346Kathleen Czarney, J.D. candidate, Cleveland State University, Cleveland-Marshall College of Law, 2004; B.A., John Carroll University, 2001. My sincere thanks to Professor Christopher Sagers and Professor Clare Robinson May for their guidance and comments. Also, I would like to thank my fiancé Matt, my family and friends for all of their love, support, and encouragement throughout law school.
Appendix A

Alternative Taxes and Benefit Accumulations Under Normal Savings and Tax-Deferred Accounts at 25 Percent Tax Rates (dollars)

<table>
<thead>
<tr>
<th></th>
<th>Normal Savings Account</th>
<th>Tax-Deferred Account</th>
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<tbody>
<tr>
<td></td>
<td>End Net Value Tax Liability Value of Taxes Net Value Tax Liability</td>
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</tr>
<tr>
<td>Pretax income</td>
<td>$1,000.00 $250.00</td>
<td>$648.44</td>
</tr>
<tr>
<td>Investment net of taxes paid</td>
<td>$750.00 n.a.</td>
<td>-----</td>
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<tr>
<td>End of year:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>$806.25 $18.75</td>
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<td>$43.21</td>
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<td>3</td>
<td>$931.72 $21.67</td>
<td>$42.22</td>
</tr>
<tr>
<td>4</td>
<td>$1,001.60 $23.29</td>
<td>$41.27</td>
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<tr>
<td>5</td>
<td>$1,076.72 $25.04</td>
<td>$40.33</td>
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<td>6</td>
<td>$1,157.48 $26.92</td>
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<tr>
<td>10</td>
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<td>$35.95</td>
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<tr>
<td>Gross benefits paid</td>
<td>$1,545.77 $0.00</td>
<td>-----</td>
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<tr>
<td>After-tax benefits paid</td>
<td>$1,545.77 -----</td>
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<tr>
<td>Accumulated value of taxes paid plus interest</td>
<td>----- -----</td>
<td>$1,047.97 $648.44</td>
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Source: DAN M. MCGILL, KYLE N. BROWN, JOHN J. HALEY & SYLVESTER J. SCHIEBER, FUNDAMENTALS OF PRIVATE PENSIONS 143 Table 8-2 (7th ed. 1996). These amounts were calculated by the authors listed above. The normal savings account produces less financial benefit than does the tax-deferred account.
## Appendix B

Relative Value of Money and Returns in a Normal Savings Account Paying a 10 Percent Rate of Return with a 5 Percent Inflation Rate and Subject to a 25 Percent Tax Rate

<table>
<thead>
<tr>
<th>Year</th>
<th>Nominal Value of Constant Purchasing Power</th>
<th>Nominal Value of Savings</th>
<th>Gross Interest</th>
<th>Net Interest</th>
<th>Inflation Return on Savings Balance</th>
<th>Real Return in Excess of Inflation</th>
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<td>1</td>
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Appendix C

Gains and Losses from Social Security, Average Pension Accrual Gains, and Net Gains and Losses Combined

<table>
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<tr>
<th>1991 Wages</th>
<th>Years in Last Job</th>
<th>Social Security Gains or Losses</th>
<th>Pension Accrual Gains</th>
<th>Net Gains or Losses</th>
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## Appendix D

### Illustration of Career Average Pension Accrual

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<tr>
<th>Year</th>
<th>Pay</th>
<th>Annual Pension Accrual</th>
<th>Total Pension Accrual</th>
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<td>1</td>
<td>$20,000</td>
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<td>2</td>
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Source: Dan M. McGill, Kyle N. Brown, John J. Haley & Sylvester J. Schieber, Fundamentals of Private Pensions 204 (7th ed. 1996). The assumptions used in this chart include an annual pay increase of 5 percent and an annual pension accrual of 1 percent for each year's pay.
## Appendix E

Illustration of Pension Allocation with Interest Benefits in Favor of Employer and Security of Funds in Favor of Employee

<table>
<thead>
<tr>
<th>Year</th>
<th>Pay</th>
<th>Annual Pension Accrual</th>
<th>Stocks 60%</th>
<th>Bonds 20%</th>
<th>Individual Retirement Account 20%</th>
<th>Less PBGC Premium</th>
<th>Total Interest Income for Employer</th>
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<tbody>
<tr>
<td></td>
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<td>4.85%</td>
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<td>3.67%</td>
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</tbody>
</table>

Total Pension: $13,324  Total Interest: $984.26

Assumptions: Annual pay increase by 5 percent and annual pension accrual of 1 percent of income.

*Rates are not adjusted for inflation.

*Amount earned is compounded annually.

*Stock rate is based on the Standard & Poor’s 500 Index (S & P 500) is the average annual return rate as of December 31, 2002 for a 10 year investment. [See Standard and Poor's Mutual Fund Rate of Return, Jan. 28, 2003, available at http://www.advisorinsight.com/data/infr1/10385.html. The S&P 500 Index is representative of the U.S. economy. The S&P 500 Index is calculated daily by dividing the total market value of the 500 companies in the S & P’s Index by the Index Divisor (number that keeps the Index comparable over time). Standard & Poor's 500 Index Calculation, Jan 28, 2003, at 1, 5 available at http://www.cftech.com/BrainBank/FINANCE/StdIndexCalc.html.]

*IRA rate is based on 5 year certificate of deposit. [See IRA Saving Average for the United States, Jan. 28, 2003, available at http://www.bankrate.com.]


*The premiums used in column J are the rates used in Multi-employer funded plans as required by the Multi-employer Pension Plan Amendments Act of 1980 and by title 29 sections 1306 and 1307 of the United States Code. These premiums are not to be used for underfunded plans. [See Michael J. Collins, Reviving Defined Benefit Plans: Analysis and Suggestions for Reform, 20 Va. Tax Rev. 599, 607 (2001).]
### Appendix F

**Employer Returns on Pension Investment Without Allocation in Individual Retirement Account and Paying the Premium to PBGC**

<table>
<thead>
<tr>
<th>Year</th>
<th>Pay Accrual</th>
<th>25% Stock 75% Bond</th>
<th>60% Stock 40% Bond</th>
<th>75% Stock 25% Bond</th>
<th>100% Stock Return</th>
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<td>$200</td>
<td>3.02% $6.04</td>
<td>4.06% $8.12</td>
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<td>$21,000</td>
<td>$200</td>
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<td>4.46% $9.76</td>
</tr>
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<td>4.06% $9.33</td>
<td>4.46% $10.29</td>
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<td>4.46% $11.36</td>
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<td>4.46% $11.92</td>
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<tr>
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<td>$26,900</td>
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<td>3.02% $8.36</td>
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<td>4.46% $12.53</td>
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<td>3.02% $8.77</td>
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<td>4.06% $13.13</td>
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**TOTAL** $13,324, **TOTAL** $408.08, **TOTAL** $554.25, **TOTAL** $611.28, **TOTAL** $696.22

*Source: The rates used above are the means of each of the four allocation of funds that was calculated by Ligun Liu, Andrew J. Rettenmaier & Zijun Wang, Social Security and Market Risk, National Center for Policy Analysis, NCIPA Policy Report No. 244, July 2001, at 13. Table III: Summary Statistics of Internal Rates of Return on Annuitized Personal Retirement Account. This data is based upon the stock and bond returns between the years 1872-2000.

*All interest is compounded annually.

*This analysis does not take in the higher risk of return that a stock yields. Therefore, although it is evident that investing all funds in the stock market yields a higher return, there may be a loss to the investor by a decrease in rates, bankruptcy of a company, etc.*
## Appendix G

Employer Returns on Pension Investment Without Allocation in Individual Retirement Account and Paying the Premium to FBGC—Using Interest Rates of Appendix E

| Year | Pay | Pension Accrual | 25% Stock 75% Bond | 60% Stock 40% Bond | 75% Stock 25% Bond | 100% Stock | Rate Return | Rate Return | Rate Return | Rate Return |
|------|-----|----------------|---------------------|--------------------|--------------------|------------|-------------|-------------|-------------|-------------|-------------|
| 1    | $20,000 | $200 | 5.97% | $11.94 | 7.54% | $15.08 | 8.20% | $16.40 | 9.34% | $18.68 |
| 2    | $21,000 | $210 | 5.97% | $13.25 | 7.54% | $16.97 | 8.20% | $18.56 | 9.34% | $21.36 |
| 3    | $22,100 | $221 | 5.97% | $13.98 | 7.54% | $17.94 | 8.20% | $19.64 | 9.34% | $22.64 |
| 4    | $23,200 | $232 | 5.97% | $14.69 | 7.54% | $18.85 | 8.20% | $20.63 | 9.34% | $23.78 |
| 5    | $24,400 | $244 | 5.97% | $15.44 | 7.54% | $19.82 | 8.20% | $21.70 | 9.34% | $25.01 |
| 6    | $25,600 | $256 | 5.97% | $16.21 | 7.54% | $20.80 | 8.20% | $22.77 | 9.34% | $26.25 |
| 7    | $26,900 | $269 | 5.97% | $17.03 | 7.54% | $21.85 | 8.20% | $23.93 | 9.34% | $27.58 |
| 8    | $28,200 | $282 | 5.97% | $17.85 | 7.54% | $22.91 | 8.20% | $25.09 | 9.34% | $28.91 |
| 9    | $29,600 | $296 | 5.97% | $18.74 | 7.54% | $24.05 | 8.20% | $26.33 | 9.34% | $30.35 |
| 10   | $31,100 | $311 | 5.97% | $19.69 | 7.54% | $25.26 | 8.20% | $27.66 | 9.34% | $31.88 |
| 11   | $32,700 | $327 | 5.97% | $20.70 | 7.54% | $26.56 | 8.20% | $29.08 | 9.34% | $33.52 |
| 12   | $34,300 | $343 | 5.97% | $21.71 | 7.54% | $27.86 | 8.20% | $30.51 | 9.34% | $35.17 |
| 13   | $36,000 | $360 | 5.97% | $22.79 | 7.54% | $29.25 | 8.20% | $32.02 | 9.34% | $36.91 |
| 14   | $37,800 | $378 | 5.97% | $23.93 | 7.54% | $30.71 | 8.20% | $33.62 | 9.34% | $38.75 |
| 15   | $39,700 | $397 | 5.97% | $25.13 | 7.54% | $32.25 | 8.20% | $35.31 | 9.34% | $40.70 |
| 16   | $41,700 | $417 | 5.97% | $26.40 | 7.54% | $33.87 | 8.20% | $37.09 | 9.34% | $42.75 |
| 17   | $43,800 | $438 | 5.97% | $27.72 | 7.54% | $35.58 | 8.20% | $38.96 | 9.34% | $44.90 |
| 18   | $46,000 | $460 | 5.97% | $29.12 | 7.54% | $37.37 | 8.20% | $40.91 | 9.34% | $47.16 |
| 19   | $48,300 | $483 | 5.97% | $30.57 | 7.54% | $39.24 | 8.20% | $42.96 | 9.34% | $49.52 |
| 20   | $50,700 | $507 | 5.97% | $32.09 | 7.54% | $41.19 | 8.20% | $45.10 | 9.34% | $51.98 |
| 21   | $53,200 | $532 | 5.97% | $33.68 | 7.54% | $43.22 | 8.20% | $47.32 | 9.34% | $54.54 |
| 22   | $55,900 | $559 | 5.97% | $35.38 | 7.54% | $45.41 | 8.20% | $49.72 | 9.34% | $57.30 |
| 23   | $58,700 | $587 | 5.97% | $37.16 | 7.54% | $47.68 | 8.20% | $52.21 | 9.34% | $60.18 |
| 24   | $61,600 | $616 | 5.97% | $38.99 | 7.54% | $50.04 | 8.20% | $54.79 | 9.34% | $63.16 |
| 25   | $64,700 | $647 | 5.97% | $40.95 | 7.54% | $52.56 | 8.20% | $57.55 | 9.34% | $66.33 |
| 26   | $67,900 | $679 | 5.97% | $42.98 | 7.54% | $55.16 | 8.20% | $60.40 | 9.34% | $69.61 |
| 27   | $71,300 | $713 | 5.97% | $45.13 | 7.54% | $57.92 | 8.20% | $63.42 | 9.34% | $73.10 |
| 28   | $74,900 | $749 | 5.97% | $47.41 | 7.54% | $60.84 | 8.20% | $66.62 | 9.34% | $76.78 |
| 29   | $78,600 | $786 | 5.97% | $49.75 | 7.54% | $63.85 | 8.20% | $69.91 | 9.34% | $80.58 |
| 30   | $82,500 | $825 | 5.97% | $52.22 | 7.54% | $67.02 | 8.20% | $73.38 | 9.34% | $84.58 |

**TOTAL**: $13,324 TOTAL= $850.02 TOTAL= $1,066.01 TOTAL= $1,167.21 TOTAL= $1,345.28

**Source:** The rates used above are the same rates used for stocks and bonds in Appendix E. The layout of this spreadsheet is the same as Appendix F. See Liqun Liu, Andrew J. Rettenmaier & Zijun Wang, Social Security and Market Risk, National Center for Policy Analysis, *NC4 Policy Report No. 244*, July 2001, at 13. Table III: Summary Statistics of Internal Rates of Return on Annuitized Personal Retirement Account.

*All interest is compounded annually.

*This analysis does not take in the higher risk of return that a stock yields. Therefore, although it is evident that investing all funds in the stock market yields a higher return, there may be a loss to the investor by a decrease in rates, bankruptcy of a company, etc.*

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