RETIREMENT USA

Working for a *Universal*, *Secure*, and *Adequate* Retirement System

Administration Issues Paper

www.retirement-usa.org

Retirement USA is a national initiative that is working for a new retirement system, which, along with Social Security, will provide universal, secure and adequate income for future retirees. The initiative has developed *12 Principles for a New Retirement System* to provide a framework for a future system in which employers, workers, and the government would share responsibility for the retirement security for all American workers. The Principles are included as an appendix to this paper.

Retirement USA was convened by five organizations – the AFL-CIO, the Economic Policy Institute, the National Committee to Preserve Social Security and Medicare, the Pension Rights Center, and the Service Employees International Union. Twenty-one other organizations support the Retirement USA principles and are coming together to raise awareness about the need for comprehensive reform for the future. A list of conveners and supporters is attached.

These issue papers are part of Retirement USA's effort to promote discussion on a range of proposals that could lead to a universal, secure, and adequate retirement system. The issue papers cover five broad topics – universality, adequacy, security, design, and administration – and present options for designing features of a system that can provide an adequate and secure retirement for all American workers.

The papers were prepared for Retirement USA by Pension Rights Center staff and consultants. The principal authors were Jane T. Smith, Policy Associate; Norman P. Stein, Senior Policy Advisor; and John A. Turner, Consulting Economist. Editors were Henry Rose, Special Counsel; Nancy Hwa, Communications Director; and Karen Ferguson, Director. Invaluable insights and technical comments were provided for individual papers by Monique Morrissey, economist at the Economic Policy Institute; Alicia Munnell, director of the Center for Retirement Research; Daniel Halperin, professor at Harvard Law School, and Ben Veghte, research associate at the National Academy of Social Insurance.

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RETIREMENT USA ISSUES PAPER

ADMINISTRATION

This paper is one of five focusing on issues to be addressed in meeting Retirement USA's 12 Principles for a New Retirement System. These papers address the following topics: universality, security, adequacy, design, and administration.

This paper considers issues related to the administrative aspects of a new retirement system. There are two distinct administrative concerns: first, the organization and structure of the entity or entities that will provide retirement benefits, the "plan administrative structure"; and second, the organization and structure of the governmental agency that will provide regulatory oversight, the "regulatory structure."

I. PLAN ADMINISTRATIVE STRUCTURE

A Retirement USA principle is that a new system should have efficient and transparent administration: "The system should be administered by a governmental agency or by private, non-profit institutions that are efficient, transparent, and governed by boards of trustees that include employer, employee, and retiree representatives."

This principle presents two sets of choices: Should there be one or multiple administrative entities; and should these be governmental or non-profit entities. A system might be administered by a single governmental agency (along the lines of the Federal Thrift Savings Plan), a single non-profit organization (along the lines of TIAA), a number of governmental agencies, or a number of non-profit agencies. Conceivably, it could also be administered by a combination of governmental and private agencies. The principle requires that any non-profit structure be managed by a governing board that includes employee, employer, and retiree representatives.[1]

There are also questions about the responsibilities of the governing entity and how those responsibilities should be carried out. This final question is essential in charting

[1] In the United States if a union participates in the administration of a private retirement plan, the plan must also include management representation. Typically, these are multiemployer plans often referred to as "Taft-Hartley plans." There is no parallel requirement for union participation in other plans. In contrast, all but two other Organisation for Economic Cooperation and Development member countries require employee representation on the managing boards of retirement plans. Mexico and Ireland are the other exceptions, and in Ireland, many pension boards, nevertheless, include employee representation. Such representation in the United States is virtually non-existent in private sector funds other than Taft-Hartley funds and TIAA-CREF, the retirement plan for college and university teachers, although it is not uncommon in public retirement plans.

what functions should be performed by the plan and what functions by the regulatory body.

Issues Involving Choice of Single or Multiple Entities

The choice of establishing a nationwide retirement system managed by a single entity or multiple entities involves a series of tradeoffs. The primary advantages of a single entity include achieving economies of scale, ensuring equal treatment of all participants across the nation, and negating the need for competing entities to expend resources in marketing.

In addition, employers and employees do not have to expend resources evaluating different entities and moving from one entity to another to or chase returns. A single entity can provide centralized record-keeping and dispute resolution, and can draw expertise from a national pool for its governing board. There is likely to be more transparency and more focused oversight.

The disadvantages of a single entity include the investiture of extraordinary economic power in a single governing board, the potential for inappropriate political tinkering with investment policy, the loss of innovation that might come from having competing entities, possible political problems of shaping a regulatory agency to provide oversight over a single entity, and increased distance of a single entity from its members (since it would have fewer employee representatives than the combined boards of multiple entities).

Some of the advantages of having multiple entities might be muted if entities are subject to a rigorous regulatory regime (for example, regulations that place strong limitations on an entity's investment portfolio) or can be expected to follow similar investment strategies because of their sheer size and a reasonably established orthodoxy concerning such issues as diversification.

Designing a multiple-entity retirement platform requires the resolution of several issues, including determining what types of entities should be used (for example, government or non-profit, or some combination), whether the entities should be regional, local, or national; whether there should be a limit on the number of entities; whether and who should have choice in selecting a participant's retirement plan or moving from one plan to another; whether regulation should allow considerable or limited entity autonomy in various areas (for example, in shaping investment portfolios, in selecting members of boards, in dispute resolution, in converting assets in lifetime payments at retirement, in benefit design); and how to select, license, and monitor entities.

Issues Involving Governmental or Non-Profit Entities

Whether it would be better to build a retirement system using governmental agencies, non-profit agencies, or a combination, may depend primarily on one's political tastes and instincts than on some careful evaluation of evidence. There is a divergence of views on whether governments perform efficiently and on the benefits of an entity that is political (there is arguably more oversight, given that citizens can vote their dissatisfactions, but there is also opportunity for political interference and voter misinformation). But most observers agree that the federal government has efficiently managed its major retirement programs, most notably Social Security and the federal Thrift Savings Plan.

The alternative to administering a system through one or more governmental agencies is to administer the system through one or more non-profit entities.[2] The following questions suggest some of the issues that are raised if non-profit rather than governmental entities administer the system:

> (1) Should a non-profit plan administrator have as its sole purpose running a retirement plan? If not, what other types of non-profit organizations should be permitted to serve as a plan administrative structure? And if other types of organizations (for example, a professional organization, a charitable organization, or a labor union) can serve as retirement plan administrators, how should the plan administrative component of the organization be structured to avoid conflicts and ensure competence?
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> (2) Should there be a limit to the number of non-profit organizations that are permitted to administer retirement plans? Should plans be organized regionally or nationally?
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> (3) What sort of regulation and licensing are appropriate for non-profit organizations? Would different regulatory frameworks be necessary if both non-profits and governmental entities were permitted to serve as plan administrators?

[2] Since entities should be devoted exclusively to advance the retirement security needs of their members and not confronted with multiple loyalties or goals, Retirement USA determined that for-profit entities should not administer the new system. The non-profit entity or entities administering the program could, however, contract out the investment function or other services to one or more for-profit firms.

Board Membership

The Retirement USA principles provide that the board of an entity administering a program under the new system should include representatives of employees, employers, and retirees. Thus, a Retirement USA system must determine how members will be selected, how long they will serve, and what qualifications and training they will need. A plan might be given considerable or limited flexibility in answering such questions. In the Australian retirement system, all trustees are licensed and required to take regular training.

Plan Functions

There are numerous activities an entity administering a Retirement USA program might undertake. These include systems to receive contributions, to create and retain relevant records, to communicate with members, to shape investment policy and to manage investments, to contract for needed services, to coordinate with other plans (when members change plans), to monitor the actuarial soundness of the plan, and to resolve disputes. It is possible that a system could be designed so that some of these functions are performed by the regulatory agency (for example, dispute resolution). Moreover, a plan could be given considerable or limited discretion and autonomy in performing some or all of these functions.

II. Regulatory Structure

With respect to effective oversight, the Retirement USA principles provide: "Oversight of the new system should be by a single government regulator dedicated solely to promoting retirement security."

Overview

The private pension system is currently subject to a fractured regulatory structure, with at least four agencies – with sometimes overlapping, sometimes contrasting, and sometimes conflicting missions – having significant jurisdiction over retirement plans, their investment assets, or the entities that sell them their investment assets. (The agencies are the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission.[3]) It is

[3] Other governmental regulators also might play a role. For example, the Department of Justice might prosecute criminal actions; state insurance regulators might set various requirements for annuity contracts; the Federal Deposit Insurance Corporation might set rules for certain depository institutions; and the National Labor Relations Board might be called to intervene when there are conflicts between labor and pension laws.

because of the problems resulting from multiple agencies with different and sometimes conflicting areas of responsibility that this principle specifies that a Retirement USA system should be regulated by a single governmental agency dedicated solely to retirement security.

The problems of multiple agencies range from agencies taking uncoordinated action, to agencies fighting over turf, to agencies working at cross purposes, to agencies sometimes inadvertently imposing conflicting requirements on actors.[4]

For example, the Department of Labor's primary mission is to protect retirement plan assets, while the IRS's primary mission is collecting tax revenues. These can lead to different regulatory approaches. The statutory regime regulated by the Department of Labor has been interpreted to require plan trustees to act on non-public information when a retirement plan holds shares in the company sponsoring the plan. However, the Securities and Exchange Commission might view acting on this information as illegal insider trading. A single-purpose agency would ease these sorts of problems.

Regulatory Functions

There are three broad categories of regulatory functions in a Retirement USA system: (1) interaction between the plan, on the one hand, and plan participants and employers -- its stakeholders -- on the other; (2) restrictions on approaches to investments; and (3) rules on dealings with plan and third parties, especially investment managers.

There may be separate concerns if the government provides guarantees, although government guarantees would almost certainly be provided by an independent governmental entity and as such could be fit under the first category of regulatory function. It should also be said that there are some regulatory issues that may cross categories, such as requirements for how a program should be structured. Issues involving regulatory structures raised by each of these categories include:

(1) Plan/Stakeholder Interactions
Plans must be able to communicate effectively with employees so that employees can anticipate their benefits under the plan and are aware of plan rules and procedures; they must have procedures to collect contributions from employer and employee; they must have mechanisms to resolve disputes with either participants or employers; they must have mechanisms to make life-time payouts at retirement; they must have mechanisms to determine disability and entitlement to survivor benefits (if any).

[4] There are also different law-making committees in Congress, who can themselves have conflicting goals and have been every bit as capable of engaging in turf wars as the agencies. Indeed, the split-regulatory approach we find in the oversight of private retirement plans is, to a large extent, attributable to turf wars among competing congressional committees.

Regulations will also have to set either general or specific parameters for elections to governing boards of plans, including qualifications, and may also create educational programs or requirements for board members. Regulations will need to require extensive disclosure from plans to ensure transparency.

(2) Restrictions on Approaches to Investment
A regulatory system will need to place some restrictions on the type of portfolio that a plan can construct. These restrictions could be general, such as the prudence and diversification rules, or could be more specific, such as specifying corridors for certain types of assets classes or requiring separate investment portfolios for different age cohorts. The type and specificity of restrictions could have major impacts on capital markets.

(3) Plan/Third Party Interactions
A regulatory system will place some constraints on dealings with third parties, including vendors of investment vehicles. For example, regulations would almost certainly guard against conflicts of interest and may also place some substantive restrictions on certain types of transactions (such as investment fees[5]). Moreover, to the extent that plans will be acting as an investor, some of the regulation for plan/third party interactions might be appropriately delegated to a regulatory regime dealing explicitly with such interactions, such as the Securities and Exchange Commission.

Some Basic Regulatory Choices

There are several broad sets of regulatory choices for the architects of a Retirement USA system, which apply to each area of regulation. These include:

(1) Whether regulation should offer plans flexibility by creating general standards (be prudent in all undertakings) or specific (don't invest more than five percent of assets in hedge funds), or some combination of the two. As noted, a regulatory regime could take a specific approach to one aspect of regulation (such as shaping an investment portfolio) and a general approach to another.

(2) To what extent should state laws be preempted?

(3) Who should have enforcement power (agency, participant, employer, fiduciary, etc.) in what areas?

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[5] The plans, though, would presumably be sufficiently large to be able to bargain effectively on such subjects as fees.

(4) Whether certain functions should be performed by the regulatory agency (such as arbitrating disputes between plan and participant) or some other party?

Perspective on Regulation of Single Governmental Entity Plan

Finally, there are special regulatory concerns, particularly in the area of monitoring and enforcement, which would arise if plan administration were placed within a single governmental entity. Should there be regulatory oversight from a separate governmental actor? Or should the regulatory function be housed within the entity administering the plan? If so, what safeguards would be necessary to ensure that those who are administering the plan do not participate in their own oversight? Or should a hybrid be used, in which some regulatory functions are housed in the plan and some in a separate regulatory agency.

RETIREMENT USA

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Principles for a New Retirement System

Universal Coverage. *Every worker should be covered by a retirement plan in addition to Social Security.* A new retirement system should include all workers unless they are in plans that provide equally secure and adequate benefits.

Secure Retirement. *Retirement shouldn't be a gamble.* Workers should be able to count on a steady lifetime stream of retirement income to supplement Social Security.

Adequate Income. *Everyone should be able to have an adequate retirement income after a lifetime of work.* The average worker should have sufficient income, together with Social Security, to maintain a reasonable standard of living in retirement.

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Shared Responsibility. Retirement should be the shared responsibility of employers, employees and the government.

Required Contributions. Employers and employees should be required to contribute a specified percentage of pay, and the government should subsidize the contributions of lower-income workers.

Pooled Assets. Contributions to the system should be pooled and professionally managed to minimize costs and financial risks.

Payouts Only at Retirement. No withdrawals or loans should be permitted before retirement, except for permanent disability.

Lifetime Payouts. Benefits should be paid out over the lifetime of retirees and any surviving spouses, domestic partners, and former spouses.

Portable Benefits. Benefits should be portable when workers change jobs.

Voluntary Savings. Additional voluntary contributions should be permitted, with reasonable limits for tax-favored contributions.

Efficient and Transparent Administration. The system should be administered by a governmental agency or by private, non-profit institutions that are efficient, transparent, and governed by boards of trustees that include employer, employee, and retiree representatives.

Effective Oversight. Oversight of the new system should be by a single government regulator dedicated solely to promoting retirement security.

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Retirement USA Steering Committee

AFL-CIO
Economic Policy Institute
National Committee to Preserve Social Security and Medicare
Pension Rights Center
Service Employees International Union

Supporters of the Retirement USA Principles

Alliance for Retired Americans
American Federation of State, County and Municipal Employees
American Association of University Women (AAUW)
Association of BellTel Retirees, Inc.
Building Movement Project
Campaign for America's Future
Change to Win
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GM National Retiree Association/Over the Hill Car People LLC
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National Caucus and Center for the Black Aged, Inc.
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National Employment Law Project
National Retiree Legislative Network
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National Women's Law Center
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Public Citizen
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