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A Timeline of the Evolution of Retirement in the United States

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A TIMELINE OF THE EVOLUTION OF RETIREMENT IN THE UNITED STATES

This document provides key highlights in the history of retirement in the United States. It provides some background on how the concept of retirement, and its legal treatment, has evolved. This timeline does not include every law related to pension and retirement plans. Rather, it emphasizes those laws that have come to shape how we view retirement, particularly the tax laws that encouraged employers to establish pension and retirement plans in the first place.

1875 – The American Express Company establishes the first private pension plan in the United States in an effort to create a stable, career oriented workforce.[i]

Late 19th Century – Roughly 75 percent of all males over age 65 are working. If a male over age 65 is not working, it is likely because he is disabled.[ii]

1899 – There are 13 private pension plans in the country.[iii]

1900 – Life expectancy is approximately 49 years at birth. Individuals who reach the age of 60 can expect to live, on average, an additional 12 years.[iv] In general, workers continue to work as long as they are able.[v]

1913 – Congress enacts the first federal income tax law.

1914 – Although there is no explicit provision about pensions in the 1913 income tax law, the IRS rules that pensions paid to retired employees are deductible, similar to wages, as ordinary and necessary business expenses.[vi]

1919 – Over 300 private pension plans exist, covering approximately 15 percent of the nation's wage and salary employees.[vii] The growth of pension coverage is attributed to employers' desire to attract workers, reduce labor turnover, and "more [humanely] remove older, less productive employees."[viii]

1921 – The Revenue Act of 1921 exempts trust income coming from stock bonus or profit sharing plans from an employee's current taxable income. It also provides that trust income is taxed at the time that it is distributed to an employee, to the extent that this income has exceeded the employee's own contributions. The Revenue Act of 1921 also established that a profit-sharing or stock bonus plan must be established for the exclusive benefit of "some or all" employees.

1926 – The Revenue Act of 1926 exempts trust income coming from pension plans from an employee's current taxable income. This act also established that pension plans must be established for the exclusive benefit of "some or all employees.

1935 –Social Security is enacted, establishing age 65 as the normal retirement age. At the time of enactment, it is believed most workers will not live for an extended period after retirement and thus will receive Social Security benefits for a minimal amount of time.[ix]

1935 – Life expectancy in 1935 is about 60 years at birth. Individuals who reach the age of 65 can expect to live, on average, another 12 years.[x]

1939 – Only 6% of the nation pays income taxes.[xi]

1940 – 4.1 million private-sector workers (15 percent of all private-sector workers) are covered by a pension plan.[xii] Similar to Social Security, these plans are designed with the expectancy that they will need to pay benefits for a minimal number of years after the retirement of participants and before their death.[xiii]

1942 – The Revenue Act of 1942 adds a numerical nondiscrimination coverage test and a general nondiscrimination test for benefits and contributions for a pension or retirement plan to be qualified under the Code.

- The nondiscrimination in coverage test requires that the plan cover either 1) 70 percent of all full-time employees; 2) 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefits under the plan; or 3) a group that the IRS determines is a bona fide employee group.
- The benefits and contribution test provides that contributions or benefits may not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees or highly compensated employees. The definition of "employee," however, still permits employers to exclude certain groups of employees for testing purposes.[xiv]

1942 – The Wage and Salary Act of 1942 freezes wages in an attempt to contain wartime inflation.

1943 – The War Labor Board rules that the wage freeze does not apply to fringe benefits. This ruling encourages employers to offer pension, health and welfare benefits as an alternative means to attract workers. War-related increases in personal and corporate taxes may also serve as an incentive for businesses to offer more generous pensions as a means of avoiding such taxes.

1945 – Nearly 75 percent of the nation pays income taxes. This makes the tax deferral of pension income more attractive to the general population.[xv]

1947 – The Labor-Management Relations Act of 1947 provides fundamental guidelines for the establishment and operation of pension plans administered jointly by an employer and a union.

1948 – The National Labor Relations Board determines that the term "wages" under the National Labor Relations Act includes pensions for purposes of mandatory bargaining.[xvi]

1950 – 9.8 million private-sector workers (25 percent of all private sector workers) are covered by a pension plan.[xvii]

1956 – IRS issues Treasury Regulation Section 1.401-1(b)(1)(i) which provides that a pension plan is “a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement.”

1956 – The IRS issues Revenue Ruling 56-693 which states that funds in a pension plan may not be made available until “any severance of employment (e.g. retirement, disability, or death)” because allowing a distribution before such time “is inconsistent with the accepted concept of a pension plan which meets all of the requirements of section 401(a) of the Code.” This Revenue Ruling (and subsequent Revenue Rulings) reinforces the IRS’ definition of retirement for pension plan purposes as a permanent termination of employment.

1956 – The Social Security Act is amended to allow women to elect early, reduced benefits at age 62, with full retirement benefits remaining available for women who retire at age 65.[xviii]

1958 – The Welfare and Pension Plans Disclosure Act provides for registration, reporting and disclosure of the financial operations of welfare and pension plans.

1960 – 18.7 million private-sector workers (41 percent of all private-sector workers) are covered by a pension plan.[xix]

1961 – Social Security is amended to allow men to elect early, reduced benefits at age 62, with full retirement benefits remaining available to men who retire at age 65.[xx]

1967 – The Age Discrimination in Employment Act (ADEA) is enacted. It prohibits discrimination on the basis of age in employment for individuals who are age 40 and older and under the age of 65. ADEA does not prohibit discrimination against individuals over age 65 nor does it prohibit mandatory retirement.

1970 – 26.3 million private-sector workers (45 percent of all private-sector workers) are covered by a pension plan.[xxi]

1974 – The Employee Retirement Income Security Act of 1974 (ERISA) is enacted. ERISA:

- requires more disclosures regarding a plan to participants and the government such as a summary plan description, material modification notices, annual reports and a statement of the participant’s accrued benefits upon request;
- strengthens participation requirement by requiring that employees 25 years of age and older with one year of service may not be excluded from a pension or retirement plan (as long as they are in a job category covered by the plan and meet all other eligibility requirements);
- establishes vesting rules as follows:

  full vesting after ten years; graded vesting, achieving full vesting after 15 years; and the rule of 45: at least 50 percent vesting when the employee's age and service add to 45, increasing by 10 percent each succeeding year;

- requires that a joint and survivor annuity be provided to an employee who retires at normal retirement age, unless such annuity is waived;
- sets minimum funding rules for plans, including rules for past credits;
- sets fiduciary standards for plan sponsors;
- limits annual contributions by employees to profit-sharing and money purchase plans to the lesser of 25 percent of the employee's annual compensation or $25,0000, as adjusted for cost-of-living;
- limits the annual pension benefit that may be paid to a highly compensated employee to the lesser of $75,000 (as adjusted for cost-of-living) or 100 percent of average compensation for the three years of such individual's highest career earnings;
- establishes the Pension Benefit Guarantee Corporation to provide mandatory insurance for defined benefit plans.

1978 – The Revenue Act of 1978 establishes qualified deferred compensation plans (Code Section 401(k) plans), which allow for **pre-tax** employee contributions to such plans (known as elective deferrals). Employees are permitted to withdraw their contributions from such plans after age 59 & ½, or upon separation from service (currently "severance from employment"), or because of hardship or disability.

1978 – ADEA is amended to prohibit discrimination against individuals up to age 70. The law does not prohibit discrimination against individuals age 70 and above nor does it prohibit mandatory retirement.

1980 – 35.9 million private-sector workers (46 percent of all private-sector workers) are covered by a pension plan.[xxii]

1982 – The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) is enacted. TEFRA:

- limits the amount of annual additions (employer contributions, employee contributions and forfeitures) for each participant in a defined contribution plan to the lesser of $30,000 or 25 percent of such participant's annual compensation, down from $45,475 in 1982, which had included the cost-of-living increases;
- decreases the maximum dollar limit on employer-derived annual benefits under a defined benefit plan to the lesser of $90,000, down from $136,425, which had included the cost-of-living increases, or 100 percent of compensation;
- suspends cost-of-living increases for both contribution limits and benefit limits for three years (until January 1, 1986);

- for defined contribution plans that are integrated with Social Security, prohibits contributions based on the part of income above the Social Security wage base to exceed contributions with respect to income below the wage base by more than 5.4 percent;
- introduces "top heavy" rules in which a top heavy plan is defined as one in which 60 percent of accumulated benefits accrue to key employees (officers and highly compensated employees) and requires such plans to comply with special standards of vesting, contributions and benefits and Social Security integration;
- amends minimum distribution rules to require that distributions must begin for key employees no later than the taxable year in which such employee turns 70 & ½ and must begin for all other employees the later of the taxable year in which the employee turns 70 & ½ or retires.

1983 – The Social Security Amendments of 1983 amend the Social Security Act to gradually raise the normal retirement age from 65 to 67. For all individuals born after 1959, normal retirement age is age 67. (For example, per the graduated system, for individuals born in 1959, the normal retirement age is 66 and 10 months.)

1984 – The Deficit Reduction Act of 1984 (DEFRA) is enacted. DEFRA:

- changes TEFRA's required minimum distribution rules by requiring that minimum distributions be made to 5 percent owners, rather than to key employees, in the taxable year in which the 5 percent owner reaches age 70 & ½;
- changes the nondiscrimination testing requirements for Code Section 401(k) plans by making such plans subject to the Code Section 410(b) coverage test and a new actual deferral percentage (ADP) test;
- extends TEFRA's suspension on cost-of-living increases for both maximum contributions and maximum benefits until 1988.

1984 – The Retirement Equity Act of 1984 (REA) is enacted. REA:

- strengthens participation rules by lowering the minimum age that a plan may require for enrollment from age 25 to age 21, and lowers the minimum age for vesting service from age 22 to age 18;
- adds break in service rules under which an employee may have a break in service of up to five consecutive years, or the period of eligibility for vesting service accumulated before the break, without losing accumulated pre-break service;
- provides that maternity and paternity leaves are to be treated as though the employee is not on leave for service purposes;
- amends survivor rules for pension plans by providing pre-retirement death benefits to all vested employees, spousal consent for pension plan distributions other than qualified joint and survivor annuities, and rules

regarding qualified domestic relations orders;

- extends the Code's anti-cutback provisions (meaning that these benefits, once accrued, may not be reduced by plan amendment) to optional forms of benefits, early retirement benefits, and retirement-type subsidies.

1986 –The Tax Reform Act of 1986 (TRA 86) is enacted. TRA 86:

- changes the minimum vesting requirements to either one of the following options: five year cliff or graded, under which participants are 20 percent vested after three years, with an additional 20 percent each subsequent year;
- limits the amount of compensation that may be considered in contribution or benefit calculations to $200,000, the same as for top-heavy plans;
- limits all annual additions to defined contribution plans to $30,000;
- reduces the limit on employee contributions to 401(k) plans from $30,000 to $7,000;
- changes the Social Security integration rules:
- defines the term "highly compensated employee" for purposes of nondiscrimination testing;
- introduces new nondiscrimination coverage rules, under which one of the following three tests has to be satisfied:

  Percentage test: The plan must cover at least 70 percent of all non–highly compensated employees.

  Ratio test: The percentage of non–highly compensated employees covered under a plan must be at least 70 percent of the percentage of highly compensated employees covered. (The percentage and ratio tests are effectively combined later in the regulations.)

  Average benefits percentage test: the plan must cover a non–discriminatory classification of employees ***and*** the ratio of employer-provided benefits or contributions to the participant's compensation for non–highly compensated employees must be at least 70 percent that of highly compensated employees.
- tightens the average deferral percentage (ADP) nondiscrimination test for Code Section 401(k) plans, which tests the amount that highly compensated employees elect to defer;
- adds the average contribution percentage (ACP) test to make sure that employer matching contributions do not discriminate in favor of highly compensated employees;
- modifies the required minimum distribution rules to require that all participants must begin the required minimum distributions by the April 1 of the year following the year in which the individual reaches age 70 & ½, regardless of whether the individual has actually retired;

- establishes a uniform rule for taxing early distributions from qualifying retirement plans (including employer plans, tax-sheltered annuities and IRAs) for all individuals, including instituting a 10 percent tax penalty on distributions made prior to age 59 ½ (which previously applied only to IRAs).

1986 – ADEA is amended to prohibit discrimination against any individual age 40 and older, with no upper age limit. The law also prohibits mandatory retirement, except for tenured faculty members.

1986 – The Omnibus Budget Reconciliation Act of 1986 (OBRA 86) requires that employers with pension and retirement plans must provide pension accruals or allocations for employees who work beyond age 64. The law also requires that newly hired employees who are within five years of normal retirement age may not be excluded from a pension or retirement plan.

1987 – The Omnibus Budget Reconciliation Act of 1987 (OBRA '87) amends ADEA and ERISA to require that employers provide full pension service credits for participants who work beyond normal retirement age.

1990 – 39.5 million private-sector workers (43 percent of all private-sector workers) are covered by a pension plan.[xxiii] 11.5 million private-sector workers are covered only by defined contribution plans.[xxiv]

1990 – The Older Workers Benefit Protection Act of 1990 amends ADEA to apply the law to employee benefits, codifies the equal-benefit-for-equal-cost principle, and establishes a series of minimum standards for waiver of rights under ADEA in early retirement situations.

1992 – The Unemployment Compensation Amendments of 1992 imposes a 20 percent mandatory withholding tax on lump-sum distributions that are not rolled over into qualified retirement accounts; liberalizes rollover rules; and requires plan sponsors to transfer eligible distributions directly to an eligible plan if requested by a participant.

1993 – The Omnibus Budget Reconciliation Act of 1993 reduces compensation that may be considered for pension or retirement benefits from $235,840 to $150,000.

1994 – The IRS finalizes its nondiscrimination regulations per the 1986 changes to the Code. The final regulations are an attempt to draw “bright line” testing standards.

1994 – ADEA is amended to eliminate mandatory retirement for tenured faculty members.

1996 – Only 8% of Americans work in physically demanding jobs.[xxv]

1996 – The Small Business Job Protection Act of 1996 (SBJPA) is enacted. SBJPA:

- creates a new type of simplified retirement savings vehicle for small businesses (those with fewer than 100 employees) as an alternative to a qualified 401(k) plan, which does not need to meet many of the requirements applicable to qualified plans but does require that the employer make matching contributions up to 3 percent of compensation (up to the $6,000 limit on elective deferrals) or a nonelective contribution of 2% for all eligible employees (whether or not they elect to defer);

- changes the ADP and ACP tests to allow an employer to base its testing on the ADP and ACP for non-highly compensated employees for the plan year before the plan year being tested;
- adds a nondiscrimination safe harbor for 401(k) plans for both ADP and ACP testing, if the plan satisfies a minimum contribution and notice requirement;
- simplifies the definition of highly compensated employee to mean an employee who: 1) was a 5% owner of the employer at any time during the year or the preceding year; or 2) had compensation for the prior year in excess of $80,000 (to be indexed for inflation) and was in the top 20% of employees by compensation for the year;
- repeals the family aggregation rules, which had required that family members be combined for discrimination and compensation limitation purposes;
- repeals the minimum participation rules for defined contribution plans, which had required that a plan must cover lesser of 40% of all employees or 50 employees; modifies the rule for defined benefit pension plans to require that the plan cover the lesser of: 1) 50 employees; or 2) the greater of 40% of all employees or two employees (unless there is only one employee);
- amends the definition of compensation for purposes of allocations to a defined contribution plan and benefits under a defined benefit plan to include salary deferrals under Code Section 401(k) and cafeteria plan elections;
- repeals the Code Section 415 limit for employers who maintain both a defined contribution plan and a defined benefit plan;
- restores the TEFRA rule that a participant, other than a 5% owner, in a qualified plan need not commence distributions until the April 1 of the calendar year following the later of the year in which the participant attains age 70 & ½ or the year in which the participant retires.

1998 – ADEA is amended to create a “safe harbor” for colleges and universities who offer age-based voluntary early retirement incentives to tenured faculty members.

1999 – 40.1 million Americans in the private sector are covered by defined benefit plans and 60.4 million Americans in the private sector are covered by defined contribution plans.[xxvi]

2000 – The Social Security Act is amended to eliminate the earnings limit for individuals who have reached normal retirement age. The amendments also reward individuals who work past normal retirement age by making actuarially fair adjustments in their Social Security benefit for their continued work.

2001 – The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) is enacted. EGTRRA:

- increases the individual elective deferrals that may be made to a Code Section 401(k) plan from $10,500 per year (in 2001) to $11,000 in 2002, then increasing $1,000 each year until $15,000 in 2006 (with future indexing);
- adds “catch-up contributions” that allow individuals age 50 and older to make additional contributions (above the otherwise applicable limits) to Section 401(k) plans as follows: $1,000 in 2002 with $1,000 increments each year thereafter rising to $5,000 in 2006 (with future indexing);
- increases the maximum annual contributions to defined contribution plans from the lesser of $35,000 (in 2001) or 25% of compensation to the lesser of $40,000 (with future indexing) or 100% of compensation beginning in 2002;
- increases the maximum annual benefits under a defined benefit plan from $140,000 (in 2001) to $160,000 for limitation years ending after December 31, 2001 (with future indexing);
- increases the compensation limit taken into account in determining benefits from $170,000 (in 2001) to $200,000 beginning in 2002 (with future indexing);
- increases vesting on matching contributions: the 5-year cliff or 7-year graded is replaced by a 3-year cliff or 6-year graded vesting;
- changes the suspension of elective deferral (and after-tax) contribution rules for participants who receive hardship withdrawal to allow such participants to resume making elective deferrals (or after-tax contributions) six months after receiving such a distribution, rather than one year after the distribution;
- modifies the rollover rules to permit rollovers among Section 403(b) plans, Section 457 plans, qualified plans under Section 401(a), and IRAs and provides that after-tax employee contributions from plans may be rolled over to other plans and IRAs;
- changes the rules that permit plans to cash-out, without consent, terminated participants with benefits valued between $1,000 and $5,000, to require that such payments be rolled over to an IRA, unless the participant directs otherwise;
- replaces the “same desk rule” that had prevented 401(k) plan distributions after a business acquisition with a "severance from employment" standard;

- simplifies the testing rules for determining whether or not a plan is "top-heavy."

2004 – The IRS issues proposed regulations providing for distributions from defined benefit plans for employees participating in a formal phased retirement program.

2006 – Life expectancy is age 74 for men and age 79 for women. A man who reaches the age of 65 can expect to live until age 81; a woman who reaches the age of 65 can expect to live until age 84.

2006 – 20% of all private sector workers are covered by defined benefit plans and 43% of all private sector workers are covered by defined contributions plans.[xxvii]

2006 – The Pension Protection Act of 2006 (PPA) is enacted. The PPA:

- makes EGTRRA's compensation and contribution limits permanent;
- allows for automatic enrollment in Code Section 401(k) plan features;
- allows for a distribution from a defined benefit plan to an individual who is age 62 and has not terminated employment.

2007 – The IRS issues Notice 2007-8 requesting comments on issues relating to the age 62 in-service distribution provision in the PPA, including whether the IRS should issue proposed regulations for defined benefit plans that provide formal phased retirement programs.

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[i] Steven McCourt, *Defined Benefit and Defined Contribution Plans: A History, Market Overview and Comparative Analysis*, 43 Benefits and Compensation Digest (2006) available at http://www.ifebp.org/PDF/webexclusive/06feb.pdf.
[ii] STEVEN A. SASS, THE PROMISE OF PRIVATE PENSIONS, THE FIRST HUNDRED YEARS, at 9 (1997).
[iii] SASS at 54.
[iv] William Wiatrowski, *Changing retirement age: ups and downs – laws and research, United States – Statistical Data Included*, Monthly Labor Review (April 2001) available at http://www.bls.gov/opub/mlr/2001/04/art1full.pdf.
[v] Id.
[vi] Treasury Decision 2090, issued December 14, 1914.
[vii] SASS at 54.
[viii] Joanna Short, *Economic History of Retirement in the United States*, EH.NET ENCYCLOPEDIA (Robert Whaples, ed. 2002) available at http://eh.net/encyclopedia/article/short.retirement.history.us.
[ix] Age 65 was chosen as the age at which Social Security benefits would begin for two reasons. First, the few private pension plans that existed at that time used age 65. Second, half of the 30 state pension systems used age 65 as the retirement age and the other half used age 70. At the time, the Committee on Economic Security (the committee in charge of drafting the Social Security legislation), had an actuarial study commissioned which showed that "using age 65 produced a manageable system that could easily be made self-sustaining with only modest levels of payroll taxation." See

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SOCIAL SECURITY ONLINE, HISTORY, FREQUENTLY ASKED QUESTIONS: *The Origins of the Retirement Age in Social Security*, retrieved from http://www.ssa.gov/history/age65.html. Another scholar argues that age 65 was chosen because at that time many policy makers believed that age 65 marked a discrete decrease in mental and physical abilities. See COSTA, DORA, THE EVOLUTION OF RETIREMENT, AN AMERICAN ECONOMIC HISTORY 1880-1990, at 11-12 (1998).

[x] Wiatrowski.

[xi] SASS at 118.

[xii] Employee Benefits Research Institute, *History of Pension Plans* (1998) available at http://www.ebri.org/publications/facts/index.cfm?fa=0398afact.

[xiii] Wiatrowski.

[xiv] The purpose of the nondiscrimination rules was to prevent corporate pension plans from becoming a tax-favored savings vehicle for the highest paid employees and executives. "Even should tax avoidance be a sponsor's primary aim, tax regulations would force the plan to serve the public purposes as well." SASS at 111.

[xv] SASS at 118.

[xvi] Affirmed by Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949)).

[xvii] Employee Benefits Research Institute, *History of Pension Plans*.

[xviii] During the debate on these amendments, there were a variety of reasons offered as to why the age at which women should receive Social Security benefits should be lowered. Some of the reasons included: "'[w]ives are generally a few years younger than their husbands,'" wife benefits should be available earlier than age sixty-five so that couples can have both retired worker and wife benefits available when the working husband retires; (2) widow benefits should be available at an earlier age because women who are widowed a few years before age sixty-five often have difficulty finding jobs to support themselves (many of them "'never worked or have not'" worked recently); and (3) retirement benefits should be available at an earlier age for working women because they face age limits more frequently and at earlier ages than do working men." On the other hand, others argued that there was no compelling reason for the normal retirement age for women to be lower than men for these reasons: "(1) reducing the retirement age could reduce employment opportunities for older women; (2) reducing the retirement "'age for women workers would be contrary to trends in lifespan, employment, population, and private pension plans'"; (3) a variety of women's organizations had strongly opposed treating men and women differently; and (4) lowering the retirement age for women could create pressure to lower the retirement age for men which would be very costly." Therefore, a compromise was reached that allowed for early, *reduced* benefits rather than full retirement benefits at an earlier age. For a complete discussion of the debate, see Kathryn Moore, *Raising the Social Security Retirement Ages: Weighing the Costs and Benefits*, 33 Ariz. St. L.J. 543, 549-50 (Summer 2001).

[xix] Employee Benefits Research Institute, *History of Pension Plans*.

[xx] One of the primary justifications for lowering the age to 62 was that making benefits available would help older workers who have a difficult time finding new employment when they lose their jobs. Moore at 553.

[xxi] Employee Benefits Research Institute, *History of Pension Plans*.

[xxii] Id.

[xxiii] Id.

[xxiv] James Porterba, Joshua Rauh, Steven Venti, and David Wise, *Defined Contribution Plans, Defined Benefit Plans, and the Accumulation of Retirement Wealth*, at 4,

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September 2006 available at http://econwww.mit.edu/faculty/download_pdf.php?id=1411. We include data on defined contribution plans beginning in 1990 because of the growth of such plans beginning in the late 1980s.

[xxv] William Saletan, *The New 65,* SLATE, Feb. 22, 2005 available at http://www.slate.com/toolbar.aspx?action=print&id=2113883.

[xxvi] Employee Benefits Research Institute, *The U.S. Retirement Income System* (April 2005) available at http://www.ebri.org/pdf/publications/facts/0405fact.pdf.

[xxvii] Based on data collected from the 2006 National Compensation Survey.