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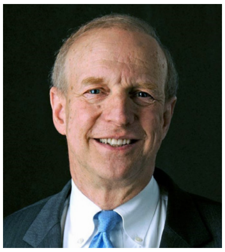
Mark Iwry

J. Mark Iwry is one of the nation's foremost authorities on law and policy relating to retirement plans and the U.S. private pension system. Cass Sunstein, Robert Walmsley University Professor at Harvard Law School has referred to him as "one of the most constructive public servants in the United States" and "the most important force behind massive improvements in U.S. retirement policy, including the rise of automatic enrollment in pension plans."[1]

Alicia Munnell, director of the Center for Retirement Research at Boston College, recognized him as "an indispensable figure in the retirement policy arena not only for his substantive expertise but also his ability to get things done."[2] *His work as a senior regulator and policy maker in the public sector spans four presidential administrations, including service as senior advisor to the Secretary of the Treasury for national retirement and health policy, deputy assistant secretary of the Treasury, and as a policy and legislative advisor to numerous members of Congress, congressional staff, state treasurers and legislators, and various presidential candidates. Munnell recently referred to Iwry as "probably the nation's leading expert on the policy and law of retirement plans."*[3]

Iwry, who has been referred to as the "godfather of auto-enrollment,"[4] *has been instrumental in developing and advising numerous significant legislative initiatives, including the Pension Protection Act of 2006 and the recently enacted SECURE and SECURE 2.0 retirement legislation. He has testified before Congress on 27 occasions, both as a government official and as a private-sector expert.*

In the private sector, he has served as a nonresident senior fellow at the Brookings Institution, a partner in the law firm of Covington & Burling, a visiting scholar at The Wharton School of the University of Pennsylvania, outside counsel to AARP, a research professor at Georgetown University, Of Counsel to the law firm of Sullivan & Cromwell, a co-founder and principal of the nonpartisan Retirement Security Project, an expert witness in federal litigation, and an advisor to numerous retirement plan sponsors, investment firms, fintech firms, other financial institutions, plan service providers, trade associations, research entities, and others.

Iwry has received numerous awards for leadership, achievement, and innovation from a wide variety of organizations and institutions, including the small business community, institutional investment advisors, the financial services industry, the payroll industry, pension professionals, the Internal Revenue Service, Harvard University, Georgetown University, workers' rights groups, and others, and he has co-authored three edited volumes and numerous articles and papers on private pensions and retirement saving. He has been recognized by the press and various other publications as one of the nation's most influential individuals in pensions, savings, and finance. He was named number three among the 100 most influential people in the 401(k) space (numbers one and two were the chief executive officers of Fidelity and Vanguard);[5] *as one of 20 individuals expected to have a major influence on the financial services industry;*[6] *and in 2011, the* Wall Street Journal's *magazine,* SmartMoney, *recognized Iwry as one of the world's 30 "top financial players."*[7]

Harvard's Kennedy School of Government recently honored him as the recipient of its 2020 Alumni Public Service Achievement Award for having "significantly improved the human condition" and "for his extraordinary public service on behalf of the people of the United States."[8]

In August 2023, Robert Powell, CFP®, RMA®, editor-in-chief of the Retirement Management Journal, *Bruce Wolfe, CFA®, Insight Investment, and Steve Sass, PhD, spoke with Iwry about U.S. retirement security public policy initiatives that would positively impact the future of the voluntary retirement system, expand retirement coverage, and bring retirement income into the defined contribution world.*

Robert Powell: You're dedicated to helping all Americans achieve financial, retirement, and healthcare security. Tell us what inspired you to pursue a career in retirement policy, and what do you consider to be your biggest accomplishments in this field?

Mark Iwry: Bob, if you don't mind my reframing your question a bit, I think of these efforts not as accomplishments but as works in progress, consisting largely of an ongoing series of misadventures and failed attempts, occasionally interspersed by a bit of forward movement.

IN PURSUIT OF EXPANDED COVERAGE

The single most important retirement policy issue, in my view, is how to expand coverage. As we know, the U.S. private pension system is voluntary. It pursues public policy objectives through markets and taxpayer subsidies that attempt to influence the behavior of profit-seeking private-sector firms and limit the cost of Social Security and other public programs. While the system has amassed many trillions of dollars of investment capital and has provided meaningful benefits to tens of millions of middle-class families, it skews benefits toward the affluent and leaves behind about a third or more of American workers who aren't eligible to participate in any workplace plan. Unfortunately, while we've made some significant headway in expanding coverage in the healthcare area with the Affordable Care Act (ACA)—I was privileged to be part of the team that helped develop and implement the ACA in the Obama administration—we haven't achieved any breakthrough yet in retirement coverage. But we do seem to be moving the needle gradually.

THE SIMPLE IRA

I've been working on this since the early 1990s, while in government and out. In 1995, while at the Treasury Department, I developed what became known as the SIMPLE IRA [individual retirement accounts], proposed by the Clinton administration in 1995 to encourage small businesses to adopt retirement plans. I reached out on this to Senator Bob Dole's staff when he was running for president against Bill Clinton, and that helped get it enacted on a bipartisan basis—working closely with Republican Senate finance pension counsel Doug Fisher and with Brian Graff—the following year. These plans now cover an estimated 3–4 million workers who weren't saving before, and I was involved in designing their recent expansion in SECURE 2.0. This made a dent in the coverage problem, but it was hardly a dramatic breakthrough relative to the estimated 57–58 million uncovered workers.

PAYROLL DEDUCTION IRAS

Soon after, my team and I at Treasury, where I was serving as the benefits tax counsel in the 1990s, got the administration to launch an effort to promote small business coverage expansion through payroll deduction IRAs. We developed and issued IRS [Internal Revenue Service] guidance confirming their favorable tax treatment and Department of Labor (DOL) guidance to the effect that they were generally exempt from ERISA [the Employee Retirement Income Security Act of 1974]. I wrote some legislative history. Our hope was that small employers that could not be persuaded to adopt 401(k)s or SIMPLE IRAs might be willing at least to let their employees use the employer's payroll system as a convenient way to save in tax-favored accounts in much the same way as a 401(k) plan.

When Treasury Secretary Larry Summers asked, "Mark, are you proposing we do this as mandatory or voluntary for employers?" I emphatically told him that, as a new initiative in a voluntary pension system, payroll deduction IRAs had to be purely voluntary. This also had the advantage of not requiring legislation, although I was able to draft some legislative history, which we sneaked into other retirement legislation, in which Congress stated its strong support for expanding coverage through payroll deduction IRAs. The result? Total failure. Take-up over the ensuing years gave new meaning to the word "zero." In fact, many retirement experts and industry players never even realized that this option existed.

THE AUTOMATIC IRA

Some eight years later, while out of government and a nonresident senior fellow at Brookings, I reached out to David John, then a senior research fellow at the Heritage Foundation. When we co-authored our Automatic IRA proposal, my disappointing experience with voluntary payroll deduction IRAs was one of the key drivers of our proposal that employers that had not chosen to sponsor a plan be required to support payroll deduction IRAs for their employees. Our proposal immediately drew interest from Republicans and Democrats in Congress and endorsement by AARP. It also incorporated another late-1990s Treasury initiative, voluntary automatic enrollment, which, in contrast to payroll deduction IRAs, was catching on in the market. (More on auto-enrollment shortly.)

This requirement that non-plan-sponsor employers (other than the smallest and newest ones) allow their employees to save through automatic enrollment in private-sector IRAs—without employers having to comply with the plan qualification or 401(k) rules, or ERISA, and without employer contributions, investment responsibilities, or fiduciary duties—was endorsed in 2008 by both competing presidential candidates, Senators Barack Obama and John McCain. It was also endorsed by the *New York Times* in editorials, by the chief political correspondent of the conservative *Washington Times*, and by the former chairs of both President Reagan's and President Clinton's Council of Economic Advisors. But its prospects of passage by Congress were hampered by the increasingly divisive partisanship that followed the enactment of Obamacare.

In 2021, 15 years after we proposed it, and under the leadership of then Ways and Means Committee Chairman Richie Neal, the leading proponent of the auto-IRA on Capitol Hill, the bill was approved and reported out by the Committee. But that is as far as it has gotten so far. While this federal, nationwide auto-IRA legislation continues to be introduced in every Congress (and I've been heavily involved in drafting both the House and the somewhat different Senate versions of each bill) and although (or because) it was proposed by President Obama in every one of his eight annual budget proposals, it has yet to be enacted.

STATE-FACILITATED AUTO-IRAS

In 1998–1999, several of us at Treasury and in the White House developed a Universal Savings Account (USA) proposal to achieve universal retirement savings coverage and offer Congress an alternative to privatizing Social Security or granting massive, regressive tax cuts to make use of the then projected budget surpluses. This expensive and progressive proposal, put forward by President Clinton at a major White House Rose Garden event, did not survive the advent of the Bush administration and its 2001 tax cut legislation. But it inspired a small local think tank to explore whether its state government might adopt some similar kind of universal pension program for all citizens in the state. In 2002, I was brought in to explain why this was neither feasible nor permissible under federal law. In the process, I began to explore the somewhat outlandish question of whether states might conceivably play any constructive role in expanding private-sector retirement coverage.

By 2005, when I was invited to address annual conferences of the National Association of State Treasurers and the National Council of State Legislatures, the thought was beginning to gel that there might be one or two ways states could play a supporting role. I traveled to California, Michigan, Vermont, and other states to work with state officials and helped organize a few national convenings to bring together interested officials and other supporters from various states. Soon a number of treasurers and legislators in various states asked me to draft legislation they could introduce.

> *Although it's still relatively early days for the state-based auto-IRAs, so far they have given proof of concept to the auto-IRA model.*

Intent on preventing these from becoming government-run plans or programs, as opposed to private-public partnerships, I suggested use of the term "state-facilitated retirement programs." I gradually came around to the notion that the best model for state-level involvement in expanding coverage might be a state-based pilot project for the auto-IRA that my auto-IRA co-author and I had been proposing—on a completely separate track starting in 2006—as a nationwide federal initiative. At the time, among other activities, I was serving as outside counsel to AARP on retirement policy, and I proposed this idea to David Certner at AARP as a project for their state-based organizations. AARP embraced the idea and has been instrumental in achieving enactment of the auto-IRA in some 15 states to date, with many more considering it.[9]

Although it's still relatively early days for the state-based auto-IRAs, so far they have given proof of concept to the auto-IRA model. The state-facilitated auto-IRAs have extended coverage to three-quarters of a million new savers, a number that is steadily increasing. These and the rest of the state-facilitated auto-IRA target population represent the highest-hanging fruit in the market: lower-wage, lower-income working households, often living from paycheck to paycheck, disproportionately Black and Hispanic, who have traditionally been ignored by the mainstream financial services industry as unlikely to be a source of meaningful profits. One out of three workers eligible for the state-facilitated auto-IRAs opts out, demonstrating that auto-enrollment is not "forcing" saving on those who are currently so financially desperate that they cannot or should not save.

Four other encouraging developments are worth noting regarding the state-based programs:

- First, the 15 states that have adopted auto-IRAs have generally enacted essentially the same auto-IRA program, and these 15 states account for nearly 40 percent of the U.S. population. (I have drafted or participated in drafting the relevant provisions of many of these state auto-IRA statutes as well as some of the state regulations implementing them.)
- Second, they are beginning to combine in partnerships for interstate uniformity and greater economies of scale.
- Third, the state auto-IRA programs have successfully prevailed in federal court litigation challenging their validity. I was heavily involved in defending these state-facilitated programs, which provide for employer-facilitated auto-IRAs, not employer-sponsored plans, from this challenge on ERISA preemption grounds. The challenge was rejected at both the federal district court and court of appeals levels, with the Supreme Court denying cert [see Iwry 2020].
- And finally, initial but increasing evidence is demonstrating that our original intention and hope—that auto-IRAs would cover millions more workers and also support and enhance the private pension system—is being realized: The state auto-IRA requirements and deadlines are having a positive spillover effect, spurring significantly greater sales of 401(k) plans.

LEVELING THE PLAYING FIELD FOR LOW-BRACKET SAVERS: THE SAVER'S CREDIT AND MATCH

Also in the effort to expand coverage and address the racial, ethnic, and gender gaps in retirement saving and wealth, several Treasury colleagues and I in 1999–2000 developed what I called the "saver's credit" (which we have now expanded in SECURE 2.0 and renamed "the saver's match"). We proposed this as an additional tax benefit targeted to level the playing field just a bit for lower- and moderate-income workers who save in a 401(k), IRA, or other qualified retirement vehicle. It was proposed as a 50-percent refundable tax credit (hence available to those who have no income tax liability as well as those who do) that the IRS would deposit in a plan or IRA in which a qualifying worker saved. Unfortunately, Congress cut back the saver's credit drastically to shift revenue to competing priorities when it was enacted in 2001, making it a nonrefundable 10-percent or 20-percent credit without deposit to retirement accounts. (Even so, it is claimed by some 10 million people each year.) Finally, SECURE 2.0 restored the credit to its earlier proposed form (50-percent credit, refundable and deposited in the saver's account), functioning a bit like an employer match in a 401(k). I'm currently working with Treasury and IRS and private-sector stakeholders to help address the challenges of implementing this novel saver's match, which takes effect in 2027.

LIMITING LEAKAGE: REPLACING FORCED CASHOUTS WITH AUTOMATIC ROLLOVERS

The same legislation (EGTRRA)[10] that enacted the saver's credit also included an "automatic rollover" provision that I had also been advocating for on behalf of the Clinton-era Treasury Department. Originally proposed by AARP's David Certner and endorsed by the ERISA Advisory Council, it would address what was then the greatest source of leakage in the retirement system—involuntary cash-outs of vested benefits up to $5,000 owned by qualified plan participants whose employment had terminated. Plan sponsors were permitted to force out these smaller benefits as a lump-sum distribution to the departing participant unless the participant explicitly requested otherwise, and most of these small cash-outs were consumed rather than saved or rolled over. The new provision prohibited these cash-outs and instead allowed plan sponsors to send these small benefits to an IRA established for the terminating employee unless the employee directed otherwise. That way the savings would remain in the tax-favored retirement system rather than leaking out.

Unfortunately, though, DOL insisted that the former employer sponsoring the plan would get a safe harbor from fiduciary exposure for rolling the funds to an IRA only if the funds were invested for principal preservation (rather than in a qualified default investment alternative or QDIA, for example). In an era of record low interest rates, this meant that many of these automatic rollover IRA balances shrank as annual administrative fees exceeded the modest investment returns—a result that can be avoided if DOL would extend the safe harbor treatment to IRA investments similar to those the funds were invested in while in the former employer's plan (commonly QDIA target-date funds). Some of this problem will be alleviated by the SECURE 2.0 auto portability ("Portability Services Network") provisions.

SHIFT FROM DEFINED TO UNDEFINED BENEFIT AND UNDEFINED CONTRIBUTION PLANS

Stepping back for a moment, most discussions of the private pension system start with the conventional and somewhat misleading story that the private pension system has shifted from defined benefit to defined contribution plans. I'd argue though that what has actually happened has been more like a shift from defined to undefined, from defined benefit (DB) pension plans to undefined benefit and undefined contribution plans. Yes, DBs have continued to erode over time, but without being replaced by what you might call "real" defined contribution (DC) pension plans such as money purchase, target benefit, or even traditional profit-sharing plans, which are funded, invested, and managed by employers, and which often provide regular retirement income.

Perhaps the broad change in the system is more meaningfully viewed as a shift away from employer responsibility and from employer risk-bearing (or facilitation of collective risk-bearing by participants) by providing lifetime pensions, and toward leaving the financial risks to be borne by individuals on their own. Yet when it comes to financial risks, individuals are not in a good position to bear those risks individually rather than collectively through employers, unions, government, or other group arrangements. It's not so much a shift within the private pension system as a shift away from a private pension system. Goodbye pensions, hello you're-on-your-own, DIY [do-it-yourself] saving (as the Pension Rights Center's founder, the remarkable Karen Ferguson, put it).

When first coming into government in the early 1990s, I was concerned about what we could do to help revive or at least preserve DBs and private pensions. Perhaps DB erosion was a larger movement that U.S. regulators couldn't affect; we could see much the same phenomenon happening in the United Kingdom and to some extent in other countries. But to the extent that pension legislation and administrative regulation had been contributing to the problem, how could we do more to avoid over-regulating DB plans?

This was buttressed by the fact that, at least until the early to mid-1990s, the IRS attitude to our private pension and healthcare systems was perceived by the market as reflecting the IRS's traditional norms and roles as enforcer and tax administrator, far more than a buy-in to the social policy of using tax preferences to subsidize retirement and health security. Over time, though, Treasury elevated the employee benefits and regulatory policy role, creating a more senior benefits tax counsel position with greater authority. This helped improve the orientation and stakeholder perceptions of Treasury and especially the IRS as supporting, not just policing, the private pension system in light of its broad policy objectives of promoting retirement security and saving.

So, I tried to encourage a non-adversarial posture and a shift to an integrated pro-pension strategy. With respect to DB pension plans, I was starting with the premise that we need to do what we can to hold the line and help the system hang on to DB plans where still possible, but that there wasn't much hope of bringing back the DB as we had known it. DB plans were succumbing to globalization, shrinkage of the union footprint, the erosion of corporate paternalism, the resurgence in the United States of an ideology based on what, in an earlier age, would have been called an "every man for himself" attitude, the change in financial accounting that exposed corporate DB plan sponsors to financial statement volatility by reason of fluctuation in interest rates and market values, and the impact of greater DB funding and other DB regulation in a system where employers' plan sponsorship is voluntary and plan design decisions need not be made exclusively or even mainly in the interest of participants.

Unlike some of our trading partners, in the United States, given our form of government, free market orientation, and voluntary private pension system, our corporate DB plans are subject to intervention by the CFO [chief financial officer] when things are not going well. At times when the DB was contributing to the financial statements in a positive way—no problem. But when this turned around, as it inevitably would, given market volatility, then the income statement and balance sheet consequences caused agita in the C-suite, i.e., the people to whom the corporate benefits and human resources functions report. As a result, corporate DBs have been soft-frozen, hard-frozen, and then hollowed out with pension risk transfers.

Instead of deifying the DB, 'DBify' the DC.

So, I was trying to formulate an alternative strategy instead of just mourning the loss of the DB (outside of the public employee sector), idealizing it, and indulging in DB nostalgia. It's true that DBs pretty broadly covered the workforces of the companies that had them because the employee didn't have to decide whether to participate. The employer just said, "You're covered, you're getting these benefits." But it didn't cover enough of the total U.S. workforce. And, as we know, DB nostalgia and idealization did not focus on the fact that you had to be a long-term employee to get those early retirement subsidies—you had to be a lifer with the company, more or less, to earn the really substantial benefits. Especially, you had to be there the second half of your career to really benefit from the rich backloading in the benefit accrual formula of the final average pay DB plan, in particular. The DB benefits were so concentrated in long-service employees, and the unions, which are integral to keeping and negotiating the DBs, were traditionally focused on seniority and on benefiting the top people. The people who'd been there the longest often happened to be the officers and the leaders of the union. So we still had a very back-loaded system in our final average pay DB, concentrating benefits on the owners, executives, and long-service employees.

For some fraction (perhaps 15 or 20 percent) of the covered workforce, including millions of middle-class families, the DBs were great, providing meaningful pensions to longer-service and older employees in manufacturing, extraction, and industries such as transportation—steel, autos, tires, airlines, railroads, trucking—telephones, construction, defense, etc. But the benefits of the traditional final average pay DBs were fairly concentrated. Other workers at firms like GM, IBM, GE, TWA, and US Steel also benefited, but not as much if they didn't stay for years and retire from the company to take advantage of final average pay formulas and early retirement subsidies.

Over time, these traditional DB plans couldn't survive global competition, the decline of stable manufacturing jobs, the increasing ratio of retirees to active workers, low foreign labor costs, and high U.S. healthcare costs—not to mention the eventual change in accounting standards with its major impact on corporate balance sheets and income statements, and increased volatility. As American companies such as TWA, the Big Three automakers, and the steel industry gradually ceased to be the immortal behemoths astride the world economy, and as the labor unions' footprint shrank in the United States, their DBs obviously were not long for this world.

So, while in government in the 1990s, I urged that, instead of "deifying" the DB, let's "DBify" the DC. I tried to generate thinking among my team at Treasury and our IRS colleagues, as well as discussions most importantly with the private sector and thought leaders, about how to go about doing this. We wanted to support and help keep DBs alive, but we recognized that there probably was no full turning back to DBs. The underlying conditions were no longer there: Employers did not want the volatility, unpredictability, and magnitude of the DB funding and lifetime income obligations, and employees apparently were developing a taste for the more tangible and immediate gratification of accumulating 401(k) account balances (without adequately appreciating the long-term effects). Employers noticed this difference, and that 401(k) replacement of DBs meant corporate budgets and financials were no longer as burdened as they had been by DB pension funding obligations.

LEVERAGING DB PLAN DESIGN ATTRIBUTES IN 401(K) PLANS: THE AUTOMATIC 401(K)

The "DBification" strategy involves a half-dozen cardinal virtues of the DB that we're trying to replicate in the DC chassis: automatic coverage of nearly all employees without requiring them to sign up if they want to participate; employer funding of at least most of the benefits; employer-supervised collective, professional investing with economies of scale to reduce the cost of investments and plan administration generally; a gradual increase in the rate of benefit accrual as employees get more senior and earn more; minimizing leakage by precluding in-service withdrawals (or plan loans); longevity risk protection through the offering of lifetime or long-term reliable retirement income instead of all or mostly lump sums; and spousal protection through joint and survivor benefits or something similar.

Bruce Wolfe: Mark, on this risk pooling issue and the aspiration to make DC more of a risk pooling structure, where do you think we stand? I'm not sure we've made a ton of progress there.

Mark Iwry: I think you're right, Bruce, we're not doing very well in pooling risk in our 401(k)s. Looking under the hood at the key attributes of the plan rather than focusing mainly on the DB versus DC chassis, how do DB plans help participants? How do they manage risk and perform other functions collectively that individuals cannot efficiently perform on their own? Reliable funding can usually be achieved by significant employer contributions, and reliable participation can be achieved by not giving employees the unguided choice of whether or not to participate in the first place.

When it comes to pooling and managing longevity risk and bringing retirement income into the DC world, we're not very far along compared to where we thought we'd be now, or where we could be. There are many reasons, including the structure of the insurance and investment industries and their all-important distribution networks and channels, the sales practices and incentives, commission structures, the way they compete, and the regulatory framework. As DB plans have eroded, it has become increasingly significant that DC plans cannot self-insure lifetime income absolutely the way an annuity contract or DB plan can guarantee lifetime income. So we've now been working hard on all the ways that a DC plan can promote, in effect, lifetime income or long-term multi-decade guaranteed or reliable retirement income—whether it's through purchase of annuity contracts or by providing systematic with-drawals, or managed or bond-like investing, bond ladders, or various creative ways of bringing various kinds of DB payout styles and investments and structures to DCs. For years, I think it was just acknowledged that, well, a DC can't pay an annuity itself and that, while the insurance companies were selling DC plans in order to sell their annuity contracts, employees were not taking them up. We're finally beginning to make progress in that regard, as we're recognizing and we're pushing all these alternative income approaches.

Steve Sass: One thing has always concerned me about the reform community dealing with these issues that you've raised. When automatic enrollment was in vogue because it expanded enrollment among low-income and young workers, it was a good thing from a public policy point of view, but it might not have been a good thing from an employer's point of view. It actually could increase their expenditure on people who are now getting a match, for example.

With a DB plan for certain employers and unions, there's clearly a benefit if you're trying to encourage longevity and loyalty, and so forth. But a DC plan, in some ways, recognizes that there's not this employer interest in various personnel benefits that the employer would get that are associated with a retirement plan. So, there's the limit on what the employer is going to get out of all these nice things that you've mentioned about annuitization or about conservative funding. There's a limit to what an employer gets out of a plan.

There's been all this concern about why individual workers participate in a plan, who does and who doesn't. How much they save, however, is largely determined by the design of the plan. Most employees, or large numbers of them, will save what they need to get the employer match, and they save what they contribute to get the employer match. Where does the employer set those parameters? There's almost no research on that, it just seems that the individual makes all these decisions.

Mark Iwry: Steve, I agree, that's a key issue. We all know that DB plans have traditionally been used for what we euphemistically call "workforce management." Employers often want to avoid paying costly health benefits for employees in their late 50s or 60s. and for various other business reasons, including making room to promote younger employees, companies often want to push some or many older workers out of their workforce while perhaps keeping others, depending on the industry and even the individual. As we know, DBs allowed employers to nudge or induce older employees to leave using limited-time offers under window plans with early retirement subsidies and lump sums.

And in many cases, when organized labor had a larger footprint, they bargained successfully for DBs, consistent with the emphasis many unions placed on seniority. What's more, back in the time of Bismarck and then the American Express plan, DB pension sponsors didn't suffer from the kind of rapidly growing ratio of retirees to revenue-producing active workers that later developed in the U.S. manufacturing sector. Back in the America of *Ozzie and Harriet* and *Leave It to Beaver*, DBs weren't seen as involving the same burdens, and they were financially feasible and sustainable for companies that seemed omnipotent and immortal like GM, GE, Bethlehem Steel, and AT&T.

As you say, DC plans don't have the same workforce management advantages for the employer. It's more a matter of keeping up with the competition in recruiting and retaining valuable talent, so what's the employer's incentive for stretching to offer retirement income in a DC plan unless employees are demanding it? And what's the incentive for offering more equitable benefits to the rank and file, unless they demand this in a powerful way? Of course, when it comes to an equitable allocation of benefits, we rely on nondiscrimination requirements as conditions for tax-qualified treatment rather than on the incentives by themselves.

As you suggest, we can only do so much to coax the business community to provide pensions absent compelling demands from labor. We use incentives, and the carrot is the tax-favored treatment of qualified plans. But the explosion of equity-based and other executive compensation in the United States, including stock options, restricted stock, stock appreciation rights, restricted stock units, supplemental executive retirement plans, golden parachutes, split-dollar life insurance (at one time), and other nonqualified programs, has of course greatly diminished corporate senior management's personal stake and interest in tax-qualified retirement plans. This explosive expansion of executive and nonqualified compensation has been a far more dominant factor than Congress's periodic imposition of reasonable limits on the maximum amount of tax-favored benefits that business owners and executives can derive from qualified plans.

To your point, Bruce and Steve, many employers don't see what's in it for them if their plans provide real pensions paying reliable lifetime or long-term retirement income, equitably covering nearly all employees, and funded by significant employer contributions.

In addition, to be frank, the well-funded lobbying and narrative-shaping interests have been effective in dominating and misdirecting the narrative: avoiding the issue of the pension tax subsidy's return on investment for taxpayers, including its net costs and benefits and its target efficiency, in fact, avoiding the term "tax subsidy" and taking for granted the tax preferences for retirement saving, as part of the landscape, instead of asking how best to target scarce tax dollars to do the most good from a public policy standpoint.

The taxpayers have made a major investment in the public policy goal of maintaining a broad-based, reasonably equitable private pension system in addition to Social Security. Many of us think there is merit to this, especially if it can be made equitable and effective, and broader than simply based on employer-employee relationships—instead of replacing this whole private-public pension and retirement saving system with an expansion of Social Security. I think we're on the right track in supplementing Social Security with private retirement savings and retirement security—and can also expand and reform Social Security to better help the most vulnerable while placing Social Security on a more sound financial footing.

Another factor bearing on the questions you've raised, Steve, about why employers do this, is the nondiscrimination regime. As we know, the basic bargain is that employers and employees get the tax subsidy with strings attached: Plans are required to share some of the benefits, not in an equitable way or a proportional way, but in a not-too-inequitable and not-too-disproportionate way. There has to be some worker protection in the form of not delaying vesting for 30 years the way Studebaker did (helping give rise to ERISA) and not cutting back benefits that are already accrued and vested.[11] But the cat-and-mouse dynamic between industry and regulators has created, of course, a regulatory structure that has become highly complex, sometimes overreaching, which is one of the reasons many employers have cited for their hesitation to adopt plans.

Simplification is a public good. It starts with the misplaced notion that pensions need to be tailored individually to each and every employer's workforce because they are all so different and the employer knows what's best for its employees. As a result, when viewed in detail, retirement plan designs are all over the map, and when Congress or regulators try to simplify, no corporate plan sponsor wants to be made to give up its longstanding special features or practices. So, they pay their lawyers and lobbyists to persuade Congress and regulators that all of their bespoke plan designs and features are innocuous—which is often true, and should be accommodated in the rules—which is not necessarily wise because of the resulting complexity. This process, repeated frequently, breeds complexity and potential for abuse by others who figure out how to exploit the designs for other purposes. Then, having protected each corporate member's special-interest provisions, industry trade associations turn around and complain loudly that regulators have created a monstrously lengthy and complex set of rules, though the rules are typically designed to prevent less scrupulous consultants and plan sponsors or vendors from exploiting exceptions or flexibility. All this would be more transparent if each complex legislative or regulatory special rule and exception was named, like municipal sports arenas or bowl games, after the corporate sponsor that paid for it. That doesn't happen, though, except among a handful of insiders, because the investor in special rules or exceptions is not seeking publicity but secrecy.

THE 25TH ANNIVERSARY OF AUTOMATIC ENROLLMENT

Robert Powell: Mark, it seems like what you've described is that what we have today is a less than perfect solution. What does the perfect solution look like?

Mark Iwry: Bob, in a system where plan sponsorship is voluntary, most of Congress is for sale, and democracy is hanging by a thread, even a less than perfect solution may be too much to hope for. Let's recall that the retirement saving system is governed largely by the tax code—the most eloquent brief ever written in favor of campaign finance reform.

Yet what we have been trying to do with the 401(k) is at least to improve on the really imperfect model of a DIY plan with diminishing employer funding and management. Employees in those DIY plans are left to decide whether to participate, and if they do participate, how much to contribute, and how to invest it.

So in 1998—a quarter century ago, and some 15 years after the 401(k) first got going—we at Treasury elevated the idea that 401(k)s could take a page from DB pensions and put everybody into the plan, but with one key difference: We approved the use of auto-enrollment if it allows employees to opt out if they want to, because those who can't make ends meet at a given moment and who are drowning in high-cost debt probably shouldn't be in the plan just now and perhaps should wait a couple more years.

When we wrote this first ruling [Revenue Ruling 98-30], which defined, approved, and promoted auto-enrollment in June 1998, 25 years ago, we deliberately made sure to avoid imposing any unnecessary regulation. Essentially, it said, "Plans can auto-enroll employees if they just give advance notice in writing, and let employees opt out any time if they want to."

The regulatory art form we chose for this was not a regulation but a revenue ruling. This is because a regulation usually is expected to map out the entire relevant territory whereas a ruling more narrowly describes a set of facts and then declares that fact pattern permissible or not. We opted for the fact pattern approach because there were practices we hoped to encourage or discourage that we lacked the authority to require or prohibit. We didn't have authority to condition a 401(k) plan's adoption of auto-enrollment on continuation of the plan's employer matching contributions, of course, any more than we had authority to require the employer to sponsor a plan in the first place. But we tried to nudge the system toward keeping employer contributions by saying, in effect: "Here's a 401(k) plan that has added auto-enrollment and continued its employer matching contributions. By the way, it's not invested in employer stock, and the default investment is a diversified balanced fund. It's all approved. Have a nice day." Especially if a ruling is breaking new ground, as this one was, we know that corporate plan sponsors and especially their ERISA counsel tend to get nervous if they venture very far beyond the narrow confines of the facts recited in the ruling.

The backstory includes my attempt to persuade our partners at DOL to issue companion guidance on the automatic investing—making clear that the default investment could be an asset-allocated, diversified fund like a balanced fund or target-date fund. That would be in effect a QDIA regulation. I had a very good relationship with Alan Lebowitz, the senior career person in this area at DOL and an outstanding public servant, so I reached out to Alan to propose a joint effort.

Alan was supportive of what we were planning to do and understood why we wanted to illustrate the use of a balanced fund as the default investment. But DOL guidance signaling a positive attitude toward a balanced fund as the default investment was a bridge too far in 1998. It would have been unprecedented. DOL was willing, though, to let Treasury at least indicate in a footnote to our ruling that DOL had reviewed and cleared a draft of the ruling that included the balanced fund in the example. The market could see that DOL's fingerprints were on this. Over the next few years, as auto-enrollment spread, the market steadily shifted from principal protection default investments to asset-allocated, diversified default investments such as balanced funds and target-date funds.

It would be seven more years before DOL felt that it could issue a regulation blessing particular types of QDIAs—which came about under the leadership of my friend DOL Assistant Secretary Ann Combs and my former law partner DOL Deputy Secretary Rod DeArment during the Bush 43 administration. By 2006, when the Pension Protection Act directed DOL to issue a QDIA regulation, Congress was aware that DOL on its own initiative already had been developing just that for the better part of a year, and was about to issue it as a proposed rule.

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The reason we decided to use the term "auto-enrollment" was to suggest the idea that, soup to nuts, a plan could use defaults or behavioral strategies at each phase of the saving cycle to achieve better outcomes. If auto-enrollment, why not auto-investment, auto-rollover, etc.? So, first, auto-enrollment gets nine out of 10 eligible employees participating. Second, Treasury and IRS later approved and promoted automatic escalation of contribution rates (as proposed by Richard Thaler and Shlomo Benartzi[12]) to help people at least start to approach an adequate level of saving by having their contribution rate rise by 1 or 2 percentage points a year—again, allowing employees to opt out of this automatic feature at any time. Third, as noted, our rulings encouraged (without purporting to require) employer matching in plans that use auto-enrollment. Fourth, defaulting participants into automatic investing in asset-allocated funds such as balanced or target-date funds (which later became QDIAs). Fifth, automatic rollovers to IRAs in certain distribution situations. Sixth, to your point, Bruce, we've tried to use behavioral strategies to encourage 401(k) plans to provide reliable, long-term retirement income in various forms. In short, an integrated strategy seeking to convert the DIY 401(k) to something more closely resembling a retirement plan.

Steve Sass: It worked.

Mark Iwry: Well, Steve, I guess it did, as roughly four out of five large 401(k)s now use auto-enrollment. But it felt lonely pitching it to industry for quite a while. During the early years after June 1998, most of the major mutual funds, consulting firms, and asset managers who later became such vocal champions of auto features in 401(k)s would tell me, "Yes, Mark, I personally think it's a great idea for our system, but our plan sponsor clients aren't interested because they don't see what's in it for them." Because only a minority of small plan sponsors have adopted auto features, SECURE 2.0 requires them in most newly adopted plans (but grandfathers plans adopted before enactment in 2022), although roughly four out of five large existing 401(k)s use auto features. And as Bruce is pointing out, we haven't yet had a breakthrough in terms of retirement income, systematic withdrawals, managed payout funds, annuities. Other income alternatives haven't taken hold yet, though not for lack of effort, and I continue to be optimistic that we'll get there.

UPDATING ERISA

Bruce Wolfe: We've had SECURE Act 1.0, SECURE Act 2.0, which I think on the periphery tried to address decumulation or when individuals want to drawdown assets and receive steady retirement income. What would be your suggestion for SECURE Act 3.0 that would, maybe more firmly, more clearly address the topic, so that plan sponsors aren't going back and parsing it out with their lawyers, and then turning around and saying, "I'm not going to do anything."

Mark Iwry: Yes, I think we do need to revisit the structure of ERISA and its fiduciary standards in a thoughtful way. When formulated in the early 1970s, it was very much focused on the employer-employee relationship, on protecting employees from employer misconduct, and on traditional DB pension plans. Obviously, so much has changed in the ensuing half century, including the shift of risks onto workers, the huge growth of the financial services industry, the outsized impact of self-directed investing and ERISA section 404(c), the expansion of nonemployee and nontraditional work patterns, and the fact that IRAs now hold more retirement savings than all DC plans combined.

ERISA counsel advise plan sponsors to be cautious because they are the ones with fiduciary responsibility, exposed to heightened litigation risk. But although many employers, especially larger ones, are able and willing to run excellent plans and comply with their fiduciary duties, and could continue to do so, many others are not well suited to be pension providers with fiduciary responsibility. In those cases, the employer's payroll system might be used (as in auto-IRAs) without imposing plan sponsorship or fiduciary responsibilities on the employer other than to withhold, deduct, and remit to a pension provider. Instead, the role of plan sponsor and the ERISA fiduciary duties—with appropriate safe harbors—could be assumed by the many recordkeepers, asset managers, consultancies, and other providers that are or could be willing to take on fiduciary responsibility as private-sector, regulated entities acting in the best interests of participants.

ERISA 2.0 would cover nonemployee participants and nonemployer providers, including IRAs and other vehicles for providing benefits to nonemployees (independent contractors, gig workers, etc.). This might add to our system something like the kind of superannuation trust structure that many current regulated financial institutions, recordkeepers, and asset managers would be well-equipped to run. Regulators could determine that firms meet the statutory and regulatory standards to be qualified to do this, and they would be subject to fiduciary duties with appropriate safe harbors, including continual monitoring and effective prevention of conflicts of interest. Ideally, the regulatory standards would be clearer and more predictable, replacing much of the litigation that now occurs, but, importantly, also more effective in protecting participants from conflicts of interest and excessive expenses.

Steve Sass: The audience of this interview will be the investment management industry, investment advisors, and investment providers. I think what you've just raised is that the industry has some value in doing something that we think is the right thing, creating some way to provide lifetime income or whatever. The investment industry has an interest in this, and I think that's a very clever and very right way to speak to this community.

Is there also something that they can bring to employers to say, "Do the right thing, this provides you with some benefit." I'm not sure what that is, what employers would have to get to voluntarily elect using the financial industry to do the right thing that would advance their personnel management interests, as well.

But if you can think of some of those things, I'm sure you'd have an interested audience here that could go to employers and say, "If you do X, Y, and Z, it would benefit your employees, as well as you, and as well as us." What might be that value proposition?

Mark Iwry: Yes, Steve, I think we're doing a lot of that. We've loaded on the tax incentives, tax credits for the part of the employer universe that often isn't sponsoring plans, namely the smaller ones. The employers that are sponsoring plans haven't been willing to generally take on the retirement income, but I think if that's outsourced appropriately and becomes part of the competitive benefits package for attracting and retaining employees, then we'll be there in a private-sector competitive market.

In the lower part of the market, the lower-income people working for smaller businesses, we're hitting the limit in terms of employer incentives. There's a danger in looking for other ways to let employers serve different purposes through pensions. The participant and the uncovered worker need to be our central focus, reflecting the huge taxpayer public policy investment in this area. So this might become a kind of parallel system where employers just let the asset managers and recordkeepers run a retirement savings and pension system that covers those who would otherwise remain uncovered.

With respect to retirement income, I'd like to think we're getting closer to converting a portion of our account balances into reliable, understandable retirement income. Although, frankly, I view the SECURE 1.0 fiduciary safe harbor as a huge, missed opportunity. The insurance industry was split on whether to have a safe harbor that was limited to the higher-rated, more financially solid firms, or that would pretty much let everyone through, except for a few bad apples. They went the wrong way on that, in favor of the less well-capitalized smaller carriers that wanted to let essentially every insurance company (even low-rated ones) be selectable by an employer without any fiduciary risk for the employer. And that's how it was lobbied.

As a result, I think many smart employers and consultants, who of course are key in all of this, are nervous about relying too heavily on that safe harbor, as opposed to going back to what plan sponsors have done in the past: Pay experts a fair amount to figure out who the really solid annuity providers would be, rather than following the safe harbor that allows plans to choose nearly any provider that is not in trouble with its regulators. Meanwhile, the insurance industry is undergoing some other developments that are potentially concerning, including increasing private equity control, and complex and controversial offshore reinsurance arrangements with various entities that might not be subject to U.S. regulation. What do these kinds of developments mean for the protection of individuals and families who are relying on these long-term promises for their lifetime security?

All of this could drive the market increasingly toward the non-annuity retirement-income options, including the alliances or partnerships between investment firms, recordkeepers, and others to provide retirement income. Maybe I'm too optimistic, but I think we're close to breaking through.

While in government during the Obama years, I made it a priority to join with DOL and focus national attention on the need for long-term reliable retirement income. We used hearings and an extensive request for information from stakeholders to conduct a national conversation on lifetime retirement income, and, based largely on the feedback, we issued guidance seeking to facilitate progress in this area. This included guidance allowing a default QDIA target-date fund to include a fixed income annuity embedded in it as its fixed income exposure, which is what a number of players are now doing. We worked out a DOL information letter from Phyllis Borzi[13] representing DOL to me representing Treasury confirming that the target-date fund doesn't lose its QDIA status when it includes a fixed income annuity.

At Treasury and the IRS we also took the initiative, thanks to the expert efforts of Harlan Weller, after key input from Marjorie Hoffman, to create a new type of deeply deferred income annuity starting at age 80 or 85, for example—which we called the qualified longevity annuity contract, or QLAC—for the qualified plan and IRA market. The idea (similar to the nonqualified advanced life deferred annuity or ALDA) is to provide a cost-efficient, targeted annuity for retirees who prefer to keep and manage their own savings for the foreseeable future instead of paying the insurance company for regular payments earlier in retirement. But these people might still reasonably want to use a lifetime income annuity to protect themselves against the tail risk of outliving their savings (or suffering cognitive decline) in the out years. We offered an incentive in the form of a special exemption of the QLAC premium from the required minimum distribution (RMD) rules. We designed these annuities to be simple, no-frills products to maximize transparency and try to set an example for the design of annuities in the market, which so often are loaded with bells and whistles that defeat consumer price comparison and that seek to compete with more profitable investment products.

We also issued another piece of guidance, which the author of the idea, my colleague Harlan Weller, called "self annuitization." The guidance made clear how employers sponsoring a traditional or cash balance DB plan, including a soft- or hard-frozen one, can use it as an annuity factory, allowing participants in the employer's 401(k) plan to roll a lump-sum payout from the 401(k) into the employer's DB plan and buy a lifetime pension from that DB plan. We also encouraged the Pension Benefit Guaranty Corporation to issue companion guidance, which it helpfully did. There has not been much take-up of this option, although it presents an interesting alternative to the changes IBM recently made to their cash balance and 401(k) plans.

IT'S TIME TO FIX SOCIAL SECURITY

Robert Powell: Curious about what you think should be done about Social Security, what's most likely to be done, and how much time we have to act.

Mark Iwry: Social Security is so critical because it's still our first pillar—the bedrock of our retirement security. We clearly need to make it solvent and, more generally, balance our budget and reduce the national debt. I think we need to raise the wage base significantly (phasing in the increase gradually), keep affluent people in the system to maintain universal political support, plug the gaps and increase benefits for the most vulnerable, and generally encourage people to work longer but without reducing benefits for manual workers who are so often physically unable to work as long as white-collar workers. We can achieve consensus on Social Security reform, but unfortunately, Congress seems unable to act until the last minute. And the problem is that the reforms get more costly every day we delay.

It might not be evident, but much of our recent and current efforts to expand coverage in the private pension system actually stemmed from Social Security reform debates in the 1990s. In the later 1990s, privatization of Social Security using individual, personal accounts seemed almost sure to happen because it had so much political momentum and because projected budget surpluses looked to be available to fund the transition to privatization as well as tax cuts for the affluent. At Treasury during the Clinton years, a handful of us stuck our fingers in the dike to fend off Social Security privatization. Because we already have market-based personal accounts in our private-sector DC plans and IRAs, it's important to preserve the mother of all DB plans, our pillar-one Social Security system. Instead of converting part of the universal mandatory DB Social Security system to DC, we pushed to democratize and expand 401(k)s, IRAs, and DC plans to provide universal pensions offering investment returns, growth, and upside potential.

It might not be evident, but much of our recent and current efforts to expand coverage in the private pension system actually stemmed from Social Security reform debates in the 1990s.

Spearheading this effort at the White House was National Economic Council Director Gene Sperling, who named it universal savings accounts (or USAs). The then beleaguered President Clinton—in the throes of the Monica Lewinsky impeachment drama—embraced it. I particularly recall one meeting we had with him and several cabinet secretaries regarding USAs when First Dog Buddy ambled into the cabinet room and worked the room like he owned the place, which he pretty much did. President Clinton interrupted the meeting to show Buddy some attention and noted plaintively: "Buddy, right about now, you're my only real friend in this town."

Led by President Clinton, we rolled out the USA proposal at a major Rose Garden event. USAs would be hugely costly, providing required contributions and/or progressive matching contributions for tens of millions of lower- and moderate-income households, while preserving the private pension system for employers that want to have plans. They would have the effect of preventing Republicans in Congress then from using the then-projected large budget surpluses to privatize Social Security and/or to provide tax cuts to well-off taxpayers and businesses.

With key input from my friend, astute and creative colleague, and predecessor as benefits tax counsel, Randy Hardock, we later reformulated the USAs' progressive government matching to become the saver's credit/saver's match, providing more incentive for lower- and moderate-income households to save in plans or eventually in payroll deduction IRAs for those who don't have an employer willing to sponsor a real plan. Eventually, as I've recounted elsewhere, I began reaching out to various states and traveled at my own expense to explore some possible coverage-expanding ideas with them. One state wanted to have some kind of universal but mandatory pensions apparently inspired by the USA proposal. They really didn't know what they were dealing with in terms of ERISA preemption, and so forth, so we tried to redesign it in a way that would work.

So, in a sense, that Social Security privatization debate indirectly, several steps later, actually led to state auto-IRAs and an attempt to have a federal auto-IRA as a limited backstop for people who are not covered by real plans, and as an attempt to encourage employers to have real plans.

So, I think we have made progress with initiatives such as these and the saver's credit match, which we proposed in the year 2000. The saver's credit was implemented in a really diminutive way, without a match and with a small credit rate. Finally, after 22 years of careful consideration, Congress is on a path to implement the proposal for a 50-percent tax credit for—and deposited as a matching payment in the retirement saving accounts of—people whose income is essentially below the median.

THE NEED FOR RETIREMENT DECISION SUPPORT TOOLS

Steve Sass: Why can't the government provide some sort of decision aid to tell the individual worker—and that includes Social Security, their 401(k), and maybe their house—where they are and what they need to do to retire at age 70, or 62, or something?

Mark Iwry: My colleagues and I have written on that topic, as some of you probably have as well. We can provide a universal retirement security dashboard that shows savers online—confidentially and securely—where all of their retirement benefits and accounts are (including Social Security, private-sector employer plans, IRAs, and other individual savings), makes the current investments and expenses clear in a uniform, standard format, and also helps them find lost accounts. The SECURE 2.0 lost and found provision is a very modest and limited down payment on that—an online registry of retirement benefits, which originally was supposed to be more robust. The reason that we don't have that is, frankly, many stakeholders are concerned about losing their business and clients to their competitors and about too much of a government role. They want the private sector to do this, but the private sector doesn't have the same access to all the data, and people are fearful about privacy, cybersecurity, and other risks of centralizing that access.

For well over a decade, the Brits have been trying to create a dashboard that's government-run, but the industry seems to keep holding it back. In this country, we'd have to make it a partnership between the private sector and the government. Meanwhile, we have the new requirement that DC plans provide at least a rough estimate of the lifetime income their account balance would buy. I've been pushing for that since 2009, when I went back into government.

Steve Sass: And Social Security gives you something, but they don't combine them.

Mark Iwry: We could combine them, and savers can combine them now, but DOL would not allow that estimate, so far, to be made useful by allowing contributions and earnings to be projected forward to retirement according to clearly stated assumptions, and with explicit protection for the private sector in making those projections. When you put that together with Social Security, as you're suggesting, you get two of the basic building blocks in one place. The annual Social Security statements need to be hard copy statements mailed out to people as they once were. You can get it all online, but a lot of people wouldn't go online and don't know where to find it. After funding for that was cut, there is an effort to restore it, but it remains to be seen whether that will succeed.

Steve Sass: Well, maybe this audience reading this interview could think of something that they could do that would be very useful.

Mark Iwry: Steve, this might be a good moment to circle back to Bob's first question about things I've tried to do in our field, including some of the more memorable misadventures.

THE myRA, R.I.P.

One that people always bring up is the "myRA"—regularly confused with the auto-IRA. As we've discussed, the auto-IRA, federal and state, is an effort to achieve a breakthrough by expanding coverage to potentially tens of millions of uncovered working families. The myRA, in contrast, was a niche solution that I intended as a kind of utility infielder to play a number of useful but not dramatic roles in our system. Originally referred to in discussions with industry as the "R Bond" (R for retirement), it was an updated, 21st-century version of U.S. savings bonds to be held as the sole investment of a Roth IRA provided by the U.S. Treasury or its delegate. It was designed to be a simple, easy-to-use, risk-free and cost-free way for new savers to start a lifelong saving habit, and was tailored to appeal to risk-averse lower- and moderate-income people who have never saved or invested before and who may be suspicious of the financial services industry.

For me, the idea grew out of my years of discussions with the financial services industry about their reluctance to serve moderate- and lower-income working people because they were relatively small savers and therefore seemed unlikely to be profitable customers. I argued that if the for-profit industry is uninterested in serving the bottom half of our population (by income or wealth), they should stop objecting to the government stepping in to serve that demographic, especially as the product is designed expressly to avoid competing with the industry.

So the industry generally supported the R bond, as they believed my assurances that a new type of U.S. savings bond would not be a threat to compete with industry products—especially as we capped at $15,000 (a level we negotiated with industry) the maximum lifetime balance any individual could accumulate in these instruments and provided for them to be ultimately rolled over into private-sector, commercial IRAs.

I hoped the myRA would be made available as an investment that would satisfy the DOL fiduciary safe harbor for qualified plans making auto-rollovers of small distributions to safe harbor IRAs. In addition, it turned out that the first three state-facilitated auto-IRA programs—in California, Oregon, and Illinois—were keen on getting Treasury's permission, during the last phase of the Obama administration (2015–2016), for myRAs to be offered as an investment option in those new state-based auto-IRA programs. In fact, they sought our assurance that Treasury had the capacity to make several million myRA accounts available for the state-based programs to offer as a capital preservation investment alternative and potentially a temporary initial investment before savers were defaulted into target-date funds.

We assured them that the capacity was there. However, soon after the next administration took office in 2017, intense lobbying in Congress and the executive branch by industry opponents to the state-based auto-IRA programs made sure that Treasury under new management would stop supporting the state-initiated auto-IRAs, whether by offering them the myRA or in other ways. That new administration also viewed the myRA as a creature of the Obama administration, which was more than sufficient to doom it in their eyes, and they canceled the entire myRA program. We had done it by regulation without requiring legislation after I sold the idea to Treasury and then the Council of Economic Advisors, National Economic Council, and White House between 2009 and 2013. At that point President Obama embraced and prominently showcased the myRA as a new "starter account" in his 2014 State of the Union address (well, it seemed like a good idea at the time).[14]

OTHER PROJECTS AND INITIATIVES

We have neither the time nor the patience, in my case, to describe the range of other past and present projects and efforts I've initiated, co-authored, or been heavily involved in (many of them unsuccessful) in an attempt to innovate and improve the private pension and retirement saving system. Among many other initiatives and projects not referred to above, these include:

- Working with Congress on legislation, enacted in the SECURE Act or SECURE 2.0, to expand and reform the saver's credit and match; to require automatic enrollment in 401(k) and 403(b) plans; to facilitate and expand emergency saving in qualified plans; to expand SIMPLE IRAs; to expand QLACs; to provide for emergency saving in ERISA-governed, qualified plans; to permit qualified plans to offer employees immediate, taxable financial incentives to participate in the plan; to negotiate the terms of the multiple employer plan/pooled employer plan provisions and the fiduciary safe harbor provisions of SECURE and the automatic enrollment, saver's credit/match, emergency saving, long-term part-time, rollover standardization, Employee Plans Compliance Resolution System (EPCRS) expansion, supplemental immediate taxable incentive payment, and other provisions of SECURE 2.0;
- Developing proposed legislation to provide a startup tax credit for small employers adopting a new qualified retirement plan for the first time;
- Developing proposed legislation to exempt most retirement accounts (except for large balances) from RMD rules;
- Developing proposed legislation requiring 401(k) plans to allow participation by long-term part-time employees;
- Initiating and overseeing the development of draft Treasury and IRS guidance (still not adopted) that would authorize and facilitate emergency saving (including employer matching and automatic enrollment) in 401(k) plans;
- Working with Congress on legislation and with Treasury and IRS on guidance to facilitate the use of matched after-tax employee contributions as a method of saving for retirement in qualified plans;
- Expanding, streamlining, reorganizing, and rationalizing the IRS EPCRS program assisting plan sponsors and other stakeholders to correct errors in plan administration and compliance without risk of plan disqualification, including in particular initiation of a safe harbor for correcting errors in implementing auto-enrollment and auto-escalation;
- Enabling taxpayers to direct the IRS to save part of their federal income tax refund by direct deposit to the taxpayer's IRA (a project begun with Treasury and IRS colleagues during the Clinton administration and completed by former Treasury Bush administration colleagues, especially Fred Goldberg and Pam Olson, during the Bush administration, after I left government);
- Enabling taxpayers to save part of their refund by investing it in U.S. savings bonds instead of an IRA;
- Multiple guidance items facilitating rollovers between plans and/or IRAs and protecting plans receiving rollovers from disqualification;
- Simplifying the tax code by proposing the legislation that repealed section 415(e), possibly the most complex single provision of pension tax law, which imposed combined benefit and contribution limits on an employer's DB and DC plans;
- Negotiating and developing Treasury/IRS anti-discrimination regulations to cut back on "new comparability" practices that were skewing qualified plan retirement benefits in favor of business owners and executives;
- Working behind the scenes to organize and lead a confidential series of informal negotiations between major interest groups, including corporate management and organized labor, to reach consensus on the formulation of the 2006 legislation that helped resolve the major controversy surrounding cash balance pension plans;
- Drafting and working to achieve inclusion of the 401(k) automatic enrollment provisions in the Pension Protection Act of 2006;
- Working with DOL to develop and issue joint request for information and conduct joint information-gathering public hearings regarding the use of lifetime income in ERISA-governed and qualified retirement plans (2009–2010);
- Working with DOL to develop their administrative guidance exempting payroll deduction IRAs from ERISA (1999); facilitating the use of annuity contracts to provide lifetime income in ERISA-governed retirement plans (2015); amending fiduciary standards for investment advice (2013–2016); providing a safe harbor from ERISA coverage for state-facilitated automatic IRA programs (2016); exempting myRAs from ERISA coverage (2014); determining that target-date funds with embedded fixed income annuities can retain their status as QDIAs (2014);
- Developing Treasury/IRS guidance permitting the use of paid time off for 401(k) plan contributions (2009);
- Directing Treasury's analytical and decision-making processes on the landmark Central States Teamsters case and other multi-employer plan applications to obtain financial relief from Treasury under the Multiemployer Pension Reform Act of 2014.
- Preparing and filing amicus briefs in support of the Biden administration's DOL environmental, social, and governance (ESG) proposed rule in federal court ERISA litigation challenge with Covington & Burling as counsel.

Incidentally, in all of this discussion, I haven't tried to discuss the research and writing over the years, mostly with my

Brookings Institution co-authors Bill Gale and David John, and previously Peter Orszag, as well as occasionally others. It consisted mainly of edited volumes and various articles, papers, and other pieces that describe, analyze, and also in a number of instances have given rise to several of the policy ideas and proposals I've mentioned here.

AUTO-ENROLLMENT INCREASING RETIREMENT SAVINGS PLAN PARTICIPATION BY LOWER- AND MODERATE-INCOME, BLACK, HISPANIC, AND FEMALE WORKERS

Robert Powell: Is there anything that we might have missed that you would like to say right now? Or anything that you've said that just bears emphasizing?

Mark Iwry: Clearly, the rise of the 401(k) (and IRAs) is the biggest change in the modern private pension system, and the key inflection point in the history of the 401(k) has been the shift from DIY 401(k)s to automatic 401(k)s with auto-enrollment and automatic investment in diversified, target-date, managed account, or balanced funds. Those automatic 401(k) developments resulted largely from policy decisions at Treasury, starting in 1998 and continuing thereafter, with a major expansion thanks to DOL's QDIA regulations project (launched by DOL in 2005 before it was mandated by Congress in 2006) and from Congress jumping on the bandwagon in 2006 (and, in fairness, actually providing quite significant substantive help by flattening a few speed bumps through legislative fixes that continued to support the increasing rate of takeup). But we still need to do much more, which is why SECURE 2.0 requires at least new 401(k) plans to use auto-enrollment and auto-escalation.

Steve Sass: Alicia Munnell[15] found that the tremendous rise in the longevity of higher-income people, and not lower-income people [Munnell 2023] undermines the progressivity of the Social Security program. If we're going to encourage annuitization of 401(k) participants, it would also undermine the progressivity of that program if everybody is going to have the same annuity rate. That would be beneficial for high-income people and would discriminate against low-income people, because of this difference in longevity. And how do we think about that? We'd like that insurance, but it is undermining the progressivity of that program.

Mark Iwry: Regarding longevity, I think Alicia and you are absolutely right. We need to recognize these differences in life expectancy. And it's worse, because it's also, as we know, unfortunately, not only income related but also racially related. Black people, especially Black males, have a much shorter life expectancy than others. That exacerbates the whole problem and makes it that much more of a challenge.

Steve Sass: Automatic enrollment has been successful in increasing participation. It's really been lauded by the whole academic and policy community: "This is such a good thing. We're getting low-income and young people to participate." But automatic enrollment also allows employers to reduce their matching contribution to meet the anti-discrimination requirements.

The Urban Institute came out with the study that showed that auto-enrollment was associated with a reduction in the employer match. So, we got more people but total retirement saving might not have gone up [Butrica and Karamcheva 2015]. The study suggests that this might lead to a reduction in employer contributions, and little or not much overall increase in retirement savings. Do you have any thoughts about the reputation of automatic enrollment in the policy world?

Mark Iwry: Yes. I thought Barbara Butrica's and Nadia Karamcheva's Urban Institute piece took on an important topic and did a good job based on the data they had. But they were appropriately careful not to draw conclusions that are not warranted by the data or analysis. As they very appropriately made clear, they lacked the data to do a longitudinal study showing how adoption of auto-enrollment by 401(k) plans affected the employer match then or later. Some have drawn unsupported conclusions based on a misunderstanding of the study and of how 401(k) plans work. A company's effort to hold overall costs constant is only a small part of the story.

It's important to take into account the mixed motives and tensions within many companies, the company and its work force and management: corporate decision-makers' motives to maximize management employees' benefits from the employer match, which has little directly to do with auto-enrollment; human resources's fear of ever having to tell their bosses that a portion of their contributions must be returned to them with the tax-favored effect undone; the second-order spillover effects of auto-enrollment on nondiscrimination compliance and the risk of having to disgorge executives' tax-favored contributions; the fact that auto-enrollment often affects mainly lower-paid eligible employees who might not otherwise participate, and might have little or no direct impact on most others; the level of the default contributions relative to what employees are otherwise contributing and relative to the maximum matched level of employee contributions and whether default contributions are automatically increasing with tenure; the structure of the match in terms of cents-on-the-dollar and the maximum employee contribution level matched, potential multiple tiered matching; etc.

It is also relevant that plan sponsors typically view the prospect of removing or reducing the employer match as a major takeaway and therefore potentially unacceptable from an employee relations standpoint unless the company or perhaps the economy is already known to be in real trouble. Employers know that the nondiscrimination rules preclude replacing the employer match only for those employees who benefit most from auto-enrollment; that employer matching is a key factor in reassuring corporate personnel that they can justify auto-enrollment to employees who don't read corporate notices and are angrily surprised to discover their reduced take-home pay.

In addition, plans without auto-enrollment might have higher match rates than plans using auto-enrollment because the former might originally have had to take stronger measures to increase participation and nondiscrimination performance. Having taken those measures, it might consider auto-enrollment unnecessary. A plan with a smaller employer match might therefore be having less success meeting nondiscrimination standards and therefore might be more likely to resort to auto-enrollment (as an alternative to increasing its match, which might not be an option on the table in any event).

In addition, plans without auto-enrollment might have higher match rates than plans using auto-enrollment because the former might originally have had to take stronger measures to increase participation and nondiscrimination performance.

In short, without our even addressing the work by Jack VanDerhei[16] that tends to point in a very different direction, the Urban piece does not begin to form a basis for determining whether auto-enrollment replaces employer matching or what we even mean by that.

All that said, your question—would auto-enrollment prompt a major reduction or elimination of employer matching—bedeviled me for months in early 1998. I thought: "If we at Treasury and IRS announce that the nation's 401(k) plans can auto-enroll all eligible employees consistent with all the qualified plan and 401(k) rules, if we do this by administrative guidance without any congressional involvement, will employers drop their matching contributions?" After losing plenty of sleep trying to gauge this risk in the absence of any good evidence, I concluded, for three reasons, to go ahead with our plan to define, approve, and promote automatic enrollment.

THREE REASONS WHY AUTO-ENROLLMENT IS HERE TO STAY

Steve Sass: The target audience for the auto-enrollment is people who are not likely to be induced by the tax benefits of the plan because they're low-income, young workers.

Mark Iwry: Exactly.

Steve Sass: The match was the real payoff to those people financially.

Mark Iwry: Right.

Steve Sass: There's something you mentioned about tying it with automatic escalation or other things. If there's a package of automatics, you maybe have to take the whole package, not just the auto-enrollment or something.

Mark Iwry: That's right, Steve. We had to confront that question when we made the initial decision, and we decided we didn't have authority to require plans to tie auto-enrollment and auto-escalation together. Similarly, we lacked legal authority to prohibit plans from eliminating the employer match prospectively—whether or not in connection with the adoption of auto-enrollment. The issue arises because auto-enrollment may be an even more effective tool for expanding coverage and does the same kind of work that the match does, inducing comparatively reluctant savers to participate by giving them an additional reason to do so. Eliminating the match would strike many employers as saving costs, at least in the short term.

But I agree that employer matching generally provides a valuable benefit in its own right—apart from inducing employees to participate in plans by contributing on a salary reduction basis. Because I was concerned about the risk of losing the employer match, the decision to go ahead and pull the trigger on auto-enrollment was a big decision. We recognized that an employer using the match to meet the ADP [average deferral percentage] and ACP [average contribution percentage] nondiscrimination standards and to expand coverage could see auto-enrollment as a potential substitute and, therefore, might reduce the match.

Ultimately, there were three reasons I wasn't held back by that. One is that the nondiscrimination rules prevent an employer from removing the match from only those who are being auto-enrolled. The higher-paid people who are subject to auto-enrollment but are unaffected by it will continue to contribute at high rates, doing what they were before. Those induced to participate by auto-enrollment can't be excluded from receiving the match because that would make the match discriminatory. It clearly would be quite a takeaway if the employer then just removed the match for everyone.

You could tell the executives, "We'll bulk up the non-qualified benefits and make you whole," but that would be a dramatic step and one that probably wouldn't work for everyone. So, I made the bet that employers would hang on to the match, given that they'd be unable to eliminate it just for those affected by auto-enrollment, while keeping it for those who don't need auto-enrollment and would participate, and eliminating the match for everyone would be too much of a takeaway to everyone in the plan.

The second reason is, frankly, I figured that, to your earlier point, Steve, auto-enrollment provides an opportunity to move the entire DC system to an automatic place rather than DIY—not just expanding participation, which is obviously huge, as auto-enrollment has done in a big way, most importantly for people of color, for women, for lower-income people, for ethnic minorities, for the most vulnerable populations. But there is also the step-up in contributions that we'd normally have in a DB plan, where you're saving more as your career unfolds. We knew that automatic escalation could be part of the auto-401(k).

Even more importantly, I was concerned that the way 401(k) participants were investing was so suboptimal in a self-directed investment world that auto-enrollment might be part of the solution by requiring a default investment. This might steer the 401(k) system into a more professionally informed set of default investments, i.e., modern portfolio theory-inspired, diversified funds, such as balanced or target-date funds.

The third reason I took the gamble on not killing off employer matching was I figured we could reduce that risk a little bit by steering the market away from thinking along those lines, through the use of a different art form for the guidance than a regulation. Because a regulation would force a relatively coherent mapping out of what's permissible and not permissible, and where the edge is, I knew that we didn't have any authority to require them to keep the employer match. Even if we didn't have auto-enrollment, again, everyone could drop their employer match going forward anytime they want, other than collectively bargained plans.

We did it through a revenue ruling, which involves a narrative that describes a fact pattern, and then approves it or disapproves it. In this case, we set a plan with a 401(k) that auto-enrolls people. We coined the term auto-enrollment rather than negative election. It gives them advanced written notice, allows them to opt out, and has a match. Those are just the facts in this scenario. The employer has a match and it adds auto-enrollment. Our ruling didn't really have to describe the investment because I was at Treasury, and DOL, of course, had the jurisdiction over investing in plans, but I asked DOL to do this companion guidance, a QDIA kind of thing. They declined.

So this was our compromise: I persuaded them that if we put a footnote in our plan saying, "Labor Department advises the following," whatever they're willing to say about modern portfolio theory or diversified funds, it would illustrate auto-enrollment going into a default investment that was a balanced fund—target-date funds were just in their infancy in 1998, but the same idea, a balanced fund—and if DOL didn't visibly choke on it, the world would see that DOL had gotten advance notice of the ruling and had cleared it. In a sense, they would have their fingerprints on it even if they simply said, in the footnote, "Yes of course the fiduciary standards apply here as they do to any retirement investment." But the market would take away the message that it's okay to have auto-enrollment, keep your employer match, and default employees into a balanced fund.

That's why I ultimately swallowed hard and decided we would go with auto-enrollment. I've been relieved to hear very little about erosion of the match, and have hoped the evidence would not show that auto-enrolling plans were dropping the match. In a study like Urban's, using correlation and not longitudinal data, you can easily expect to get, in many cases, a lower employer match in auto-enrolling plans because they resorted to auto-enrollment since they weren't getting a high enough participation rate—perhaps partly because their match wasn't rich enough, or they had a demographic that was particularly low paid. What do you think?

Steve Sass: I think it was a great explanation of how policy was structured and thought through. I'm very impressed. I've learned a lot from that. That was pretty cool, Mark.

Mark Iwry: Steve, one thing to add regarding your earlier point about the behavioral economists and lots of people saying that auto-enrollment has been a great step forward: Some of my good friends in the behavioral economics community, whom I've worked with closely, still tweak me about the 3-percent initial default contribution rate. "Mark, it was all great, but why did you illustrate it at only 3 percent? You know all about anchoring. Basic behavioral econ 101. Your ruling's fact pattern included and thereby encouraged some good things, like continuing the employer match at the same level and investing in a balanced fund and not in employer stock. But illustrating auto-enrollment at an initial default rate of 3 percent had the effect of anchoring the market at that level. Why didn't you illustrate auto-enrollment at a higher rate such as 6 percent? If it's good at 3 percent, it's better at 5 or 6 percent."

My answer is that, while illustrating and approving auto-enrollment had the potential to reshape the 401(k) world, we were planning to do this by administrative action without any congressional involvement. Otherwise it could take forever—it might get politicized and never get done. That said, going forward without Congress and launching auto-enrollment—which was by no means an accepted concept at that time—administratively risks attack from the right as a paternalistic, nanny state initiative of a Democratic administration. And there was a risk of attack from the left as well: Are poor people being nudged too hard into saving when they can't afford to and/or should instead be paying down their payday loans or other high-cost debt? The higher the default contribution rate, the more likely to be attacked—from the right, the left, or both.

So, we decided to go gentle in introducing what could prove to be a controversial practice, and start with a 3-percent default contribution.

As you know, we officially launched auto-enrollment essentially by approving it through guidance, deciding to not regulate it (other than require, of course, advance notice so people would know that they're being auto-enrolled), and by promoting it aggressively. The most important evolution in the history of the 401(k) is from DIY to automatic 401(k)s: auto-enrollment, auto step up in contributions, default investments, auto-rollover, and hopefully behavioral strategies to promote the offering of lifetime income.

We did that as part of an integrated strategy to introduce, into the 401(k) system at least, some of the cardinal virtues of the DB pension (as we discussed earlier). In concluding that as regulators, again, when I was at Treasury during the 1990s, we tried to do a few things to prop up the DB system. But we knew that there wasn't much we could do to actually revive it, or that anyone seemed to want to do to revive it.

So, the strategy I tried to promote, given the inability to revive the dying DB pension, was a kind of organ transplant from that patient into the 401(k) system. Could we help the DC system evolve from the DIY model of the 1980s and 1990s into an automatic 401(k) that would use defaults and behavioral nudges to achieve broader participation and higher contribution levels? Hence, the focus on the impact on employer matching, wiser investing, less leakage from the plans, as well as ultimately more retirement income as opposed to lump sums.

THE IMPACT OF LONGEVITY ON RETIREMENT SECURITY

Steve Sass: Earlier, we talked about Alicia Munnell's observation that the rising longevity of high-income workers, but also increases in their claiming age, has really undermined the progressivity of the Social Security system. I don't think this is that well known, but it does create a justification for certain reforms of the Social Security program that one might want to do anyway, or in response to restoring progressivity. These include raising the wage base, so high-income workers will throw more money in, but since you're going to get more that's justified. Or you could flatten the benefit by say raising the bottom tranche, the 90-percent tranche of the AIME [average indexed monthly earning] that's replaced.[17] Or you could change the actuarial adjustment for early and delayed retirement. What are your thoughts about how the declining progressivity of the system could justify or be part of Social Security reform initiatives?

Mark Iwry: First of all, I very much agree with Alicia Munnell, who is a champion of a strong Social Security system, and I appreciate the steadfastness and thoughtfulness she's brought to the defense of Social Security. One concern about Social Security is the decline in progressivity of the system as a whole because of the increase in the concentration and therefore inequality of earnings, of incomes, which has taken us from a Social Security payroll tax covering 90 percent of taxable incomes down to one that now covers only 82 percent or so of taxable incomes. Is that the reduction in progressivity that you're referring to?

Steve Sass: No, it's basically longevity, that they collect for so many more years.

Mark Iwry: Yes, the longevity gap has been more pronounced, I guess, over time as longevity has increased.

Steve Sass: At the top.

Mark Iwry: Yes, and with respect to the increasing regressivity on the tax revenue side, I agree with lifting or eliminating the taxable wage base. We might need a donut hole to protect middle-class incomes from an increase but impose the payroll tax in addition, up to $160,200, where it is today. Restart it at $400,000 or $250,000, or something like that, and have it apply to all incomes above that. That's one way to make the system more progressive on the tax or revenue side. On the benefit side, which is what you're referring to, we know that Black people, especially Black males, have a distinctly shorter life expectancy, so they collect less Social Security. Other lower socioeconomic groups, likewise.

The solution, I think, should be to bolster the benefits, to add benefits for the most vulnerable groups, the people at the bottom. Flatten the benefit formula while reducing (but not eliminating) benefits at the top. I continue to believe in FDR's [Franklin D. Roosevelt] original strategy of keeping everybody in Social Security in order to preserve the political support. But wouldn't you think affluent people could afford to get less Social Security than they now get?

Steve Sass: Does this decline in progressivity enter the discussion of Social Security reform?

Mark Iwry: Well, I think that there's a pretty discernible consensus, Steve, maybe not so much framed as an overall decline in progressivity, but a recognition that there are very vulnerable people, groups, categories of people who aren't being adequately saved from the risk of poverty. I think there is some broader recognition that we do need to shore up the bottom in various places, and that, whatever else we do to achieve long-term sustainable solvency, that needs to be part of the solution.

Clearly, the most sensitive issue is whether we should cut benefits in any way. Again, my sense is that it is not politically impossible to reduce (but not eliminate) benefits for the most affluent.

HELPING YOUNGER WORKERS NAVIGATE THE EVOLVING RETIREMENT LANDSCAPE

Bruce Wolfe: I reference the gig economy, but I think it's more systematic than just the gig economy, in that more and more individuals, particularly younger folks, just don't work at firms very long. That's become more than a trend. Seems to be the norm.

So, the idea of having your retirement savings connected to an employer seems to be becoming a little bit outdated in terms of really optimizing, maximizing, not leaving money behind. All the issues associated with working in a firm for two years and then going to another firm for a year. I guess my core question is, should we be rethinking or promoting other ways for which an individual can centralize their savings process beyond the employer?

Mark Iwry: Absolutely. The one part I would be cautious about is whether we should be looking to industry-based savings platforms, as seen in other countries, rather than the employer-based system. Do you think that where employers are able and willing to continue providing really good plans—which many employers provide with a heck of a lot of skill and experience—we ought to keep supporting the employer-based system? Let all the employers that are willing to participate stay in it but make it more portable.

Bruce Wolfe: I don't know though, Mark. I don't think it's the employer, I think it's the employee—there may be a great plan, great match, all that kind of stuff, but the employee is only there for two years and doesn't get the benefits of that great plan, then it's kind of like, "Who cares?" Right? You know what I mean?

Mark Iwry: Right. If they're going to another employer that has a great plan, which has, of course, been our theoretical model, right?

Bruce Wolfe: Right.

Mark Iwry: I think you're pointing out that that isn't a reality in a very large percentage of cases, and I agree. I'm very strong on "first do no harm" to the existing system. So, where we've got people going from one good job to another good job that has good plans, we ought to keep that in place, because so many employers are willing and able, but in a more readily portable way. One example is something like the auto portability that the Portability Service Network has put together, but applied to all distributions, not only the small ones that auto portability currently is limited to.

I advocated for Congress to include in SECURE 2.0 the portability/rollover provisions that charge Treasury with issuing model standard rollover forms and procedures after private-sector input. I actually advocated for a much stronger version on the grounds that participants would be best served if every plan and recordkeeper were ultimately required to use the same standard forms and procedures for rollovers. But the enacted provision was watered down because, frankly, Congress has never interpreted ERISA to mean that the system as a whole actually should be run mainly—much less exclusively—for the benefit of participants.

And I think you're absolutely right that we need to recognize that many people aren't going from one good plan to the next good plan.

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Bruce Wolfe: Exactly.

Mark Iwry: The state-facilitated auto-IRAs demonstrate how a much more portable system could work. When starting the state retirement savings movement, I was thinking not that the states were the best vehicle, but that state-based examples might help nudge Congress into doing what you're talking about—at least creating an extension of our system that would work for the people who don't move from one good job with a plan to the next.

Because many small employers don't want to sponsor a plan, can we create a kind of backup system by auto-enrolling workers into IRAs with reasonable oversight and investments in a way that replicates a kind of basic defined contribution-type experience and that avoids competing with or crowding out the current employer plan system? Without requiring employers to sponsor a plan, can we get them to help people, including, as you say, the gig workers, freelancers, independent contractors, etc., to save continuously, effectively, and easily? The auto-IRA creates a kind of synthetic 401(k) for both employees and non-employees working for a firm or for several firms that don't sponsor plans.

I would go further with what I think you may be pointing to, Bruce. Trying to also introduce here something like the U.K. master trust or Australian superannuation models that shift much of the direction of the system over to the financial services industry—the asset managers, recordkeepers, consultants, etc., who are really expert in providing benefits, rather than relying only on widget makers (employers) who are reluctantly having to be amateur pension administrators on the side.

I agree we ought to be moving in that direction but would like to be very cautious about any risk of doing so to the detriment of the employer-based system, because the good things that system has done are so substantial even though the system leaves much to be desired. Tens of millions of middle-income people and blue-collar people have gotten meaningful benefits from the employer-sponsored system. At the same time, given all the employers that don't want to sponsor a plan, their people, whether independent contractors or employees, need a system that will cover them. The people who are really independent and don't relate to a particular firm need this even more. So emphatically, yes, as long as we (in my view) do no harm to the current system, we should shore up its portability and expand coverage through an additional system.

Bruce Wolfe: Right, that seems to make sense. It seems many other countries have tried to find, we'll say, a bridge between the traditional DC and the traditional DB worlds, to try to create some institutionalized aspects to a DC plan, which can bring some advantages, such as types of investments you make, the level of investment or sophistication. What are some of your thoughts about things you think have worked, and things, more importantly, that maybe we should be thinking about more seriously here in the United States, within the existing structure? So, it'd be tangential, not something that'd be totally different or outside of the bounds of reality.

Mark Iwry: I think that's spot on. I totally agree with the premises there; the good models that you've alluded to, like the collective DC plans, defined ambition plans,[18] variable DB plans, are important ways to bring more DB back into the DC or to introduce more flexibility into DB. You and I have talked about this in the past, including the money purchase pension plan that used to be a familiar feature of our U.S. system. It's now more like an endangered species, approaching extinction in terms of new formation.

Why are those good, creative plan designs not being more widely adopted, at least in this country? I've written with my co-authors about these models, including some consideration of your question.[19] It's not that these models are unattractive or not sensible. Although they've all got their challenges, they also have considerable advantages. However, the market in general isn't that interested. Although thought leaders—forward-thinking people who care about the common good—are interested, the market at large doesn't seem to be and, unfortunately, most of the time Congress acts a lot like just another market.

The way retirement legislation is done in the United States, not much gets done unless lobbyists press for it because some stakeholders have concluded that there's a lot of money to be made on it. If a new idea makes sense and will be good for working families and plan participants, then it seldom stands a chance on Capitol Hill unless stakeholders in the market believe it will be sufficiently lucrative for them to sell it and are willing to pay Congress for legislation. It's a bit like the old question: "How many psychiatrists does it take to change a light bulb? Just one, but only if the bulb really wants to change." Our system generally doesn't really want to change unless someone in the market expects to profit from the change (even if only to counteract fee compression)—enough to be worth lobbying for.

Bruce Wolfe: Right.

Mark Iwry: Logically, there should be a way to create solutions that really answer people's need for regular, reliable retirement income, sharing collectively the longevity risk and the other financial risks such as nonparticipation, underfunding, investment, inflation, myopia/financial illiteracy/misjudgment, counterparty risks. The collective DC plans, money purchase or target benefit plans, and variable DBs can provide an annuity or a nonannuity stream of reliable income, whether guaranteed for life or not. They generally feature professional investment management that can take advantage of group purchasing and economies of scale, and can pursue long-term investments, such as infrastructure, that benefit from illiquidity premium. These types of plans also generally are designed to cover employees and determine the level of contributions or other funding without an employee decision, and to avoid the funding volatility and therefore financial statement volatility of the traditional DB plan.

It's hard to get there without some political and social consensus around the sharing of financial risks confronting individuals—not necessarily through government as opposed to private-sector arrangements. Again, too often in our system, it's hard to get positive change without figuring out how to package reform into a product or service someone can sell for profit.

Bruce Wolfe: Right.

Mark Iwry: By the way, Bruce, you know the money purchase plan you mentioned?

Bruce Wolfe: Yes.

Mark Iwry: The 2001 Portman–Cardin EGTRRA legislation did in the money purchase pension plan because the lobbyists and congressional proponents of the legislation were all about expanding tax benefits, especially for those at the top, without giving sufficient care or thought to preserving the ecology of the system. The system had deliberately accorded more tax benefits to the money purchase plan because it was a pension in a meaningful sense.

The money purchase pension plan is mostly or entirely employer-funded, and is considered a "pension" plan largely because it pays regular retirement income, provides spousal protections, restricts in-service withdrawals, and is professionally invested in a collective way rather than 401(k)-style DIY employee self-direction. In view of these added advantages and protections for employees, employers for many years were given greater tax incentives to adopt money purchase pension plans than 401(k) or profit-sharing plans. The 2001 legislation disregarded this traditional ladder of higher tax incentives for plans with more policy virtues and changed the ecology of the system by increasing the tax incentives for profit-sharing plans (including when they are part of a 401(k) plan) to be similar to money purchase plans. The money purchase plan thereby lost its comparative advantage and much of its appeal.

THE SURPRISING FACT ABOUT THE WALMART RETIREMENT PLAN DESIGN

Steve Sass: I was thinking about why employers offer 401(k) plans, and I was shocked to find that Walmart has one and do you know what the match is?

Mark Iwry: What is it?

Steve Sass: It's 100 percent up to 6 percent of pay. Now, their employees don't pay much income tax at all, the ones that they're targeting. So, I think this is probably the Ippolito effect,[20] that Walmart's trying to attract what he called low discounters, people who like to save, and through the match pay them more. So, a 401(k) plan can help them select what they consider to be better workers. Such plans are not driven by compensation that's "free" to the employer, that they're "paying" their workers with tax benefits. There are other personnel management benefits that a savings plan provides.

Mark Iwry: Yes, that kind of plan design can have good effects. But wouldn't it be better if that employer contribution was designed more strategically to also give employees below a certain pay level a nonmatching contribution, even a small one, to ensure that they have the experience of participating in a tax-favored saving account given that it's harder for them to save? And/or a higher cents-on-the-dollar matching rate for lower pay ranges to encourage those employees to save, while perhaps maintaining cost neutrality for the employer by reducing the cents-on-the-dollar rate (say to 50 cents on the dollar) for higher pay ranges while increasing to 8 percent or 10 percent the maximum percentage of pay that is matched?

This is why I've been pushing the saver's credit match for the past quarter century. High-income people in high tax brackets have greater incentives to save. Even if their brackets are the same at the time of contribution as at the time of distribution, the tax-deferred buildup of their earnings is worth more to high-bracket savers. We can make the retirement tax incentives less unfair and more effective without necessarily imposing any takeaways. Instead of just continuing to allow the current retirement tax incentives to fuel income and racial disparities, we could at least add a tax benefit for lower-income households in the form of the saver's credit match.

More generally, the tax preferences are the life blood of the private pension and retirement savings system, and they are part of a larger tax system that many of us believe needs to be more fair, with a more progressive income tax. You know, there's a reason Congress likes to call the Internal Revenue Code the "IRS Code," even though the IRS rarely is given much say about the makeup of the Code. It's not an innocent error: Many in Congress hope voters will think of it as the "IRS Code" rather than focusing on who actually runs the factory where those sausages are made, and why. In fact, our Internal Revenue Code is probably the most eloquent brief ever written for campaign finance reform.

THE SEARCH FOR STABILITY, LIQUIDITY, AND LONG-TERM POTENTIAL

I've suggested in congressional testimony that we could reduce leakage of retirement savings much more if we recognized that we don't have to make every change in employment a distribution event. People could, for example, when they leave an employer, be subject to the same sort of regime that we have for in-service hardship withdrawals or, better, plan loans. We don't make the 401(k) balance money so readily available to everybody while they're in service; so, when they leave service, why serve up that lump sum as readily as we do? Imagine a regime where the termination of employment is not automatically a distributable event.

If terminating employees were unemployed or had another bona fide hardship, they could access their savings. But if they had a new job lined up or arranged new employment within a reasonable time, then they shouldn't have a greater right to take and consume the retirement savings than they would be able to do as an in-service loan or withdrawal. Obviously, that would be a big takeaway in terms of optionality for participants if you applied it to existing balances. But these rules could be applied only to new money, new contributions, so people would know that if they contribute to the plan and later terminate employment, the money won't become automatically and immediately available. It'll be kept in the plan or directly rolled to a new plan, with no easier access than while the employee was in service.

Plan sponsors could start down this road using future employer matching contributions (not existing balances of employer match, because that would change the rules in the middle of the game). But plan sponsors could say: "From now on, our match is going to be less leaky. It's our money, not yours yet, so we're going to exercise leadership. From now on, the match will be treated as long-term retirement savings, and termination of employment will no longer by itself be a distributable event."

Bruce Wolfe: Also, it'd be, "You can invest that then in strategies that have a higher potential."

Mark Iwry: Exactly. Reducing the leakage means longer-term infrastructure, illiquidity premium investing.

Bruce Wolfe: Great, makes sense.

Mark Iwry: Also, plan sponsors could choose to design the employer contributions (nonmatching and/or matching) to be invested in deferred accumulation annuity contracts or otherwise explicitly designed to be payable as regular retirement income.

SHOULD DEPARTING EMPLOYEES KEEP RETIREMENT MONIES IN THE COMPANY PLAN?

Bob Powell: Just a quick follow-up, Mark. Cerulli just released some research that said upwards of 58 percent of plan sponsors are now encouraging workers who leave the firm to keep money in the plan, which is sort of contrary to history. They wanted small balances to leave. Or they wanted you to leave because of the recordkeeping issues and costs, etc. But now, because balances are growing and their ability to negotiate lower fees is greater, then leaving the money in the plan is more acceptable.

Mark Iwry: Yes. that's been a positive development in our system in recent years. As a very broad generalization, employer plans—with their carefully curated menu of investments, often benefiting from group purchasing and economies of scale to limit costs, ERISA fiduciaries in charge, ERISA standards that apply, and protection from creditors—can be a particularly good place to hold one's savings during retirement (depending on one's circumstances). But this is one of the areas in which SECURE 2.0 raises policy concerns. It can be somewhat more convenient for plan administration (in plans that want to avoid maintaining small accounts for former employers) to increase from $5,000 to $7,000 the maximum account balances that can be ejected from a plan when the participant leaves employment, as SECURE 2.0 now permits. But that's not necessarily good for the individual saver. Have we reached the point, in the age of blockchain and high-tech electronic recordkeeping, where recordkeepers and plans should reasonably be expected to suck it up and handle smaller accounts as a cost of doing business and as an inevitable byproduct of expanding coverage and addressing racial and ethnic disparities?

Certainly if the saver has a new employer with a new plan, and the funds roll over to the new plan—to be facilitated by the new auto portability run by the Portability Services Network—the result can be less leakage, more consolidation of savings, and greater retirement security. But for other people, raising that dollar limit to $7,000 often will mean more savings moving out of ERISA-governed employer plans and into auto-rollover safe harbor IRAs with principal preservation investments, which often might reduce rather than enhance retirement security.

CONCLUDING REMARKS

Bob Powell: The Investments & Wealth Institute is largely made up of financial advisors serving clients. We do have institutional members, the likes of Fidelity, Empower, and Vanguard, etc. But what message would you have for the financial advisors who are reading this, given all that we've just talked about. What's the takeaway for them?

Mark Iwry: Bob, I think there's such a wealth of knowledge, experience, and creativity in that group. I see it when I speak to them at conferences and in other interactions. I hope they continue to contribute to this effort to come up with improvements to our system and that they collectively support reforms that are participant-centered. Bruce mentioned the institutional DC approach. I think that's really key. Advisors are an important part of the system. They often make the difference between a lot of especially smaller- and medium-sized employers having plans or not having plans. And they influence the plan design a lot. So, I would continue to encourage them to bring their good ideas to the fore, because there's a lot they know and understand about how things really work in this field.

Robert Powell: Finally, our favorite question that we ask everyone in these interviews is, when do you plan to retire?

Mark Iwry: Bob, do you recall the old *New Yorker* cartoon showing two businessmen having a phone conversation in which one says, "We should really get together for lunch some time," and then follows up right away by asking what date would work for the other guy. The other guy then looks at his calendar and responds: "Well, actually, how about never? Would never work for you?"

My focus is not on retiring but on trying to help others who want or need to retire—in a secure and dignified way.

Robert Powell: Well, at our current pace, that could be a long-term job.

Mark Iwry: Exactly. A long-term job for all of us, Bob, and I know you, Bruce, and Steve are equally into it. I admire what you're doing as well.

Bruce Wolfe: Well, I'm so grateful that you were willing to share your knowledge and wisdom with us.

Mark Iwry: It's a pleasure talking with the three of you, and getting the benefit of your thoughts and ideas, as reflected in your questions.

ENDNOTES

1. See "Mark Iwry MPP/JD 1976 is dedicated to helping all Americans achieve financial, retirement, and health care security," Harvard Kennedy School 2020 Alumni Public Service Award, https://www.hks.harvard.edu/alumni/connect/community-stories/mark-iwry-mpp/jd-1976-dedicated-helping-americans-achieve-financial-security.
2. Ibid.
3. Ibid.
4. Ibid.
5. "401kWire's 2009 Hundred Most Influential," http://www.401kwire.com/influencers.asp?year=2009&bhcp=1.
6. "The InvestmentNews 20 of 2010" (December 13, 2009), https://www.investmentnews.com/industry-news/news/the-investmentnews-20-of-2010-25939.
7. See "Power 30: The World's Most Influential Players, *SmartMoney* (October 18, 2011), https://web.archive.org/web/20111108031217/http:/www.smartmoney.com:80/invest/strategies/the-power-30-20199/?#article_tab_comments.
8. See endnote 1.
9. To date, 19 states have enacted legislation creating "work and save" programs to directly facilitate nest-egg building for people whose employers don't offer a retirement plan. Ten of these programs are up and running, with most of the rest set to start in the next two years. The 19 states are: California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia, and Washington. https://www.aarp.org/retirement/planning-for-retirement/info-2023/states-with-automatic-ira-savings-programs.html.
10. The Economic Growth and Tax Reconciliation Relief Act of 2001 (EGTRRA) is a U.S. tax law signed by President George W. Bush that made significant changes to retirement plan rules and overall tax rates. The law was passed with a sunset provision to end in 2010 but was extended and is widely known today as the Bush tax cuts.
11. Until 1974, there was little or no protection for pensions. One of the most shocking incidents of workers losing their retirement benefits occurred in 1963 when Studebaker terminated its employee pension plan, and more than 4,000 auto workers at its automobile plant in South Bend, Indiana, lost some or all of their promised pension plan benefits. Workers everywhere were in jeopardy of losing their pensions when companies went out of business, and there was nowhere they could turn for help. In 1974, Congress passed the Employee Retirement Income Security Act (ERISA), a sweeping reform of the private pension system that, among other things, laid the foundation for a sound and workable pension insurance program to guarantee workers' benefits in private pension plans. https://www.pbgc.gov/about/who-we-are/pg/history-of-pbgc.
12. Thaler and Benartzi (2004) proposed "a prescriptive savings plan, called Save More Tomorrow^{TM} (hereafter, the SMarT plan). The essence of the plan is straightforward: people commit in advance to allocate a portion of their future salary increases toward retirement savings."
13. Phyllis C. Borzi is the nation's leading expert on the law that governs workplace benefits, the Employee Retirement Income Security Act of 1974 (ERISA). A U.S. Senate-confirmed appointee in the Obama administration's Department of Labor, she served as assistant secretary of the Employee Benefits Security Administration, where she oversaw issues relating to the administration and enforcement of laws affecting retirement plans, group health plans, and other ERISA-covered benefit plans, including primary responsibility for implementation of the Affordable Care Act as it related to employer-sponsored plans.
14. For more about this story, see J. Waggoner, "J. Mark Iwry, Architect of myRA, Discusses Its Demise," *InvestmentNews* (August 2, 2017), https://www.investmentnews.com/industry-news/news/j-mark-iwry-architect-of-myra-discusses-its-demise-71896.
15. Alicia Munnell is an American economist and a leading retirement expert who is the Peter F. Drucker Professor of Management Sciences at Boston College's Carroll School of Management and director of the Boston College Center for Retirement Research.
16. Jack VanDerhei is director, retirement studies and public policy at Morningstar Investment Management LLC. From 1996–2002, he was research director of the Employee Benefit Research Institute and the editor of *Benefits Quarterly*. He has more than 200 publications devoted to employee benefits and insurance, but his major areas of research focus on the financial aspects of private defined benefit and defined contribution retirement plans.
17. AIME, a key element of Social Security benefit calculations, is the average amount of taxable income earned over a person's career, adjusted for inflation, https://www.fool.com/retirement/social-securitys-aime-what-is-it.aspx. It takes into consideration the 35 years of highest earnings, https://www.investopedia.com/terms/a/aime.asp.
18. Traditional defined benefit (DB) plans have become too expensive for plan sponsors, and the financial crisis that began in 2008 has exposed many of the challenges facing DB plans today. Negative equity returns, low interest rates, and demographic shifts have put pressure on guaranteed benefits. To help alleviate this pressure, a new type of plan called "defined ambition" (DA) has been established. These plans allow for more flexibility when a financial shock or other external factors affect the plan adversely. The concept is that there is still a target benefit, but with the DA plan, the benefits can be adjusted by removing the "guarantee" that is typically found in DB plans. https://rpc.cfainstitute.org/en/research/cfa-digest/2013/11/the-defined-ambition-pension-plan-a-dutch-interpretation-digest-summary.
19. See, for example, Iwry et al. (2020) and Iwry et al. (2021).
20. The Ippolito effect is a term coined by the economist Richard Ippolito to describe the phenomenon of people saving less for retirement when they have a pension plan, especially a DB pension plan that guarantees a certain income after retirement. It is the economic substitution effect suggesting that people tend to view their pension as a substitute for their own savings, rather than as a complement to it.

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