
CHAPTER 1

Disparities Affecting Lower- and Moderate- Income Workers' Retirement Savings—Creating an Incubator for Reform Proposals

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§ 1.01 INTRODUCTION

By some measures, the retirement savings system is booming: trillions in retirement accounts¹ providing investment capital for the nation. However, the benefits from billions of dollars of annual tax subsidies² in the retirement plan system fail to reach many lower- and moderate-income Americans who have little or no access to such retirement savings. In fact, the system mostly benefits higher-income workers and the disparity is worsening. A 2023 Government Accountability Office (“GAO”) report on whether households had a retirement account balance recognized: “Disparities between low-income and high-income³ older workers’ retirement accounts were greater in 2019 than in 2007, according to GAO’s analysis of . . . data on households [ages] 51 to 64. For example, about one in 10 low-income households had a retirement account balance in 2019 compared to about one in five in 2007, while about nine in 10 high-income households had a balance through the period.”⁴

Moderate-income workers’ retirement savings were also significantly behind higher-income workers. The 2023 GAO report study of median retirement account balances provided: “Specifically, in 2019 the median for high-income households was about 9 times that of middle-income households (about \$605,000 and \$64,300, respectively) [, while in 2007, the median for high-income households was about 4 times that of middle-income households (about \$333,000 and \$86,800, respectively)” (cleaned up).⁵

¹ See, e.g., *Older Workers: Retirement Account Disparities Have Increased by Income and Persisted by Race Over Time*, GAO-23-105342, July 27, 2023, <https://www.gao.gov/products/gao-23-105342>, at 8: “The Investment Company Institute estimated that IRA assets totaled \$12.5 trillion, while workplace retirement account balances totaled \$9.8 trillion at the end of March 2023.” See also, *Investment Company Institute, Retirement Assets Total \$43.4 Trillion in First Quarter 2025*, June 18, 2025, file:///Users/admin/Downloads/Release%20Quarterly%20Retirement%20Market%20Data%20First%20Quarter%202025.pdf at 1: “Assets in individual retirement accounts (IRAs) totaled \$16.8 trillion at the end of the first quarter of 2025 . . . Defined contribution (DC) plan assets were \$12.2 trillion at the end of the first quarter . . . Government defined benefit (DB) plans—including federal, state, and local government plans—held \$8.9 trillion in assets as of the end of March 2025 . . . Private-sector DB plans held \$3.2 trillion in assets at the end of the first quarter of 2025, and annuity reserves outside of retirement accounts accounted for another \$2.4 trillion.”

² See, e.g., *id.* GAO-23-105342, GAO Highlights: “In 2022, the tax incentives for workers to save in tax-preferred retirement accounts cost the federal government nearly \$200 billion in forgone revenue, according to the Department of the Treasury.”

³ *Id.* at 10, note 20: “For our analysis, we divided older households in the data into five groups, or quintiles, based on income. The low-income group is the first quintile of the income distribution (median income of about \$19,100), and the high-income group is the fifth quintile of the income distribution (median income of about \$282,000).”

⁴ *Id.* GAO Highlights.

⁵ *Id.* at 13. See *id.* at 2 regarding 2023 GAO terminology for this analysis: “To form income groups for this analysis of older households (ages 51 to 64), we estimated income terciles. We refer to the lowest third

The report also noted: "Congress is concerned that federal tax incentives for workers to save in tax-preferred retirement accounts are going mostly to higher income workers—and are doing little to help low-income workers save for retirement."⁶

You may share the concern that the current system does not result in adequate savings for lower- and moderate-income workers. Many efforts such as automatic enrollment, which has continued to evolve under law, have been shown to help move lower- and moderate-income workers in the right direction, but have not provided a full solution.⁷ The next step after concern can be involvement. What do you think can be done about it? Could you be part of the effort to raise awareness and provide solutions? Based on your experience, what plan features need reform to remedy the concerns for these workers? The concern presents an opportunity for benefits professionals and others to put on a public interest hat on behalf of lower- and moderate-income workers to make a difference. If you have ideas about what might be done, I hope this article explaining why and how the Retirement Reform Group ("RRG") came to be and especially sharing some of its developing ideas inspires you and others to add your voices and expertise.

§ 1.02 THE RETIREMENT REFORM GROUP

Like many informal lunch groups or private online list serves created out of the need to bounce ideas off respected colleagues, the RRG is an informal group formed by experienced professional colleagues to tackle lower- and moderate-income worker retirement savings. It started with discovering common concerns about such workers' retirement savings in online conversations. The collegial online discussions led to the resolve to work together to see what could be done to take advantage of a highly-experienced group collaborating to develop and implement ideas to improve the system.

Several factors have made this group come together:

as 'low-income,' the middle third as 'middle-income,' and the highest third as 'high-income.'"

⁶ *Id.* Fast Facts.

⁷ *Id.* GAO Highlights: From the 2023 GAO analysis: "The effects of selected strategies meant to increase workplace retirement savings vary across workers of different income groups, according to illustrative scenarios using GAO's analysis . . . For example, automatic enrollment can increase participation of low-income older workers with access up to about one-third. However, only about 23 percent of low-income workers have access to a workplace retirement account. Further, they may choose not to participate, for example, if they have limited disposable income or expect Social Security to provide most of their retirement income. In contrast, increasing contribution limits for workplace retirement accounts almost entirely benefits high-income workers, as about 23 percent of high-income compared with about 3 percent of middle-income older workers contribute the individual limit."

[1] Shared Public-Spirited Resolve to Work on Disparities Affecting Lower- and Moderate-Income Workers

Many who specialize in ERISA (the Employee Retirement Income Security Act of 1974) and in state and local retirement matters enjoy helping to build retirement benefits, but RRG members also see the shortcomings in the system. Benefits lawyers bring the knowledge of the complex system to help find reforms. RRG members are reexamining the retirement system from the vantage point of the lower- and moderate-income workers. Some RRG members have significant experience working on retirement issues for lower- and moderate-income workers, but others may have considered the effects of retirement savings laws for such workers before only in a glancing way. In any event, because some RRG members have clients who are employers, employer organizations, or third-party service providers with the resources to hire RRG members to act in their interest, the members' experience can be invaluable in understanding the practical workings of plans and how new plan design might affect all parties at the table.

[2] Foundation of Knowledge, Respect, and Trust

At this writing, the RRG is open only to Fellows of the honorary American College of Employee Benefits Counsel,⁸ from across the country. These attorneys bring a depth of experience on the front lines of ERISA and state and local retirement systems, including many policymakers with invaluable experience in making law changes to address the disparities. The RRG members bring an understanding of the history of the law as well as the practical problems and concerns of employers, employees, and service providers. Discussing solutions is made easier with others having common knowledge with collegial respect and trust. In many cases, the attorneys know each other and some have developed friendships from shared past professional or national bar experiences. Each participating attorney adds unique insights and ideas based on their careers including private practice, in-house representation, government service, academia, and policy development.

§ 1.03 OPERATING RULES FOR THE RRG

The resulting grassroots informal RRG is a type of incubator of ideas. It aims to enable the members to join together to share and develop ideas together regarding how to improve the retirement system (especially how to make it work better for lower- and moderate-income wage earners). This exercise allows idea development without the constraints of following the interests of a client. In addition, to encourage open

⁸ The Fellows are highly-experienced active and retired employee benefits attorneys. See <https://www.acebc.com/acebc-membership-criteria>. The RRG is not affiliated with the American College of Employee Benefits Counsel.

discussion of ideas, the group operates under ground rules that protect against disclosure of a member's identity with respect to their specific views without their consent.

With over 100 members, differences in interests and opinions on the best way to proceed will occur. Some members are interested in non-legislative actions like retirement education while others are looking at changes in the system itself. The members individually decide what to pursue. Except for the requirement to focus on the lower- and moderate-income disparity, the RRG does not approve of and is not responsible for the particular ideas or action steps that the members develop. Thus, individual members in agreement with an idea will have the opportunity to sign in support of that proposal to help make progress.

Starting in January 2025, regular video calls have been taking place developing ideas to bring back to the larger RRG in different areas: Defined Contribution Plans, Defined Benefit Plans, Individual Retirement Accounts ("IRAs"), Equity Issues, and Education. Each subgroup has a dedicated list serve in which articles and emails can be shared within the subgroup and is led by a volunteer who sets up and leads the calls.

§ 1.04 WHAT'S BEEN UNDER DISCUSSION?

ERISA has only recently passed the 50-year mark as a landmark law with much promise. The law was passed to protect the rights to benefits, but ERISA and subsequent law changes over time also shaped a dramatically different retirement savings system. In particular, a world of defined benefit pension plans has changed to mostly 401(k) or IRA savings. For many years, major efforts have been made (including past and ongoing work by a few individuals who are currently members of the RRG) to expand coverage, improve benefits, and reduce inequities in the private pension system with a special focus on lower- and moderate-income workers and other vulnerable populations.⁹ Important reforms such as these have made a significant positive difference in the system and continue to do so. However, they are far from enough to fully address the need for reform. It has been helpful to step back and look at the big picture with the lower- and moderate-income worker problem as a focus.

⁹ Past and ongoing reform efforts include the development of many legislative and regulatory initiatives such as: automatic features in 401(k) and similar plans (such as automatic enrollment and reenrollment, automatic escalation, diversified qualified default investment alternatives, automatic rollovers to IRAs, and automatic portability of small benefits); SIMPLE-IRA plan; saver's tax credit; saver's match; tax credits for small employer plan sponsors that adopt new plans, add automatic enrollment, or make employer matching contributions; limitation of leakage by restricting employer cashouts of small benefits; shortened statutory vesting periods; minimum gateway nondiscrimination rules; state-facilitated automatic IRA programs adopted as of this writing in 17 states; and proposed federal legislation to provide for nationwide automatic IRAs. (List provided by J. Mark Iwry, RRG member and former Senior Advisor to the Secretary of the Treasury and Treasury Department Deputy Assistant Secretary for national Retirement and Health Policy.)

Numerous concerns have been raised that help refine the discussion, including:

- **Not Enough Plans Offered to Lower- and Moderate-Income Workers, Especially by Small Employers and to Gig Workers.** Many lower- and moderate-income workers are not eligible to participate in a plan, including many who are self-employed or employed by small employers who do not opt to offer a plan to workers.¹⁰
- **Lack of Funds Available for Lower- and Moderate-Income Workers to Save.** Lower-income employees in particular often struggle to cover day-to-day expenses, leaving no room to save under a system that shifted that responsibility to them.¹¹
- **Complex Nondiscrimination Rules Are Insufficient.** The complex rules only minimally require employers to consider the non-highly compensated employee and are not robust enough to result in benefits savings equivalent to the highly compensated.
- **Employee Disadvantages Affect Investment Outcomes.** ERISA section 404(c) rules might appeal to employees and protect employers, but employees are in fact disadvantaged. The rules permit an employer to limit exposure for employee investment choices and to shift responsibility to the employee. The employee, however, does not have the same investment sophistication, risk tolerance, or economies of scale of, or professional resources available to, the employer.¹²
- **Costs Shifted to Employees Reduce Benefits.** Employers negotiate plan costs with service providers, but these costs often are shifted from the employer to participants. Costs might be lower if the employer had

¹⁰ See *supra* note 7. See also, e.g., Hearing before the Subcom. on Primary Health and Retirement Security of the U.S. Senate Com. on Health, Education, Labor, and Pensions, Exploring the “Gig Economy” and the Future of Retirement Savings, S. Hrg. 115-762, Feb. 6, 2018, <https://www.congress.gov/115/chrhg/CHRG-115shrg28635/CHRG-115shrg28635.pdf>, at 2, Sen. Enzi: “I suspect today’s panel will confirm that retirement savings options for those in the gig economy are quite limited compared to those available to their counterparts in the traditional workforce. And where they do exist, they impose complex burdens on the individual that will ultimately discourage saving. We often hear that there is a retirement security crisis in the United States, and while the extent of the crisis may be disputed, few dispute that Americans should save more and earlier for retirement.”

¹¹ See *supra* note 7.

¹² See, e.g., GAO Report, 401(k) Plans Labor and IRS Could Improve the Rollover Process for Participants, GAO-13-30, March 2013, <https://www.gao.gov/assets/gao-13-30.pdf>, at 24, note 56: “. . . numerous studies have found that many Americans lack basic financial literacy, including an understanding of fundamental investment concepts, such as the benefits of compounding interest, risk diversification, and inflation, that are necessary for making well-informed decisions and evaluating recommendations.”

to pay them.

- **IRAs and Rollovers to IRAs Offer Fewer Protections for Employees.** Employers reduce the burdens and costs of maintaining small plan accounts by implementing cash-out rollovers to IRAs, which shift more responsibility and offer fewer protections to the employee.¹³
- **IRA Providers Are Not ERISA Fiduciaries.** IRA providers are not held to similar standards of care with respect to fees and investment choices.¹⁴
- **Review Needed to Determine How Often and Why Some IRAs Are Being Considered “Unclaimed” and Transferred to State Unclaimed Property Funds.** IRAs are intended to be used in retirement and IRA owners expect those IRAs to be available when they decide to make withdrawals after retirement. Based on numerous anecdotal individual experiences of some RRG members and others, some IRAs that have not been required to be distributed have been transferred to state unclaimed property funds. Further review is appropriate given that some states have become more active in escheatment of IRA accounts and given the conflict of interest as such funds are used to fund state budgets.¹⁵
- **Concerns about Aging.** Health and cognitive issues in aging worsen the employee's ability to manage retirement plan or IRA accounts in retirement.¹⁶ IRA owners are responsible for compliance with complex

¹³ See, e.g., *id.* at 30, Table 3: Some Key Differences between 401(k) Plans and IRAs to Consider When Making Distribution Decisions.

¹⁴ See, e.g., *id.* at 30, Table 3: Some Key Differences between 401(k) Plans and IRAs to Consider When Making Distribution Decisions. Key differences include: Investment selection and monitoring: 401(k) Plan “Plan fiduciaries are responsible for selecting and monitoring investment options in the best interest of the participant.” versus IRA “Individual is solely responsible for selecting and monitoring investments.”

¹⁵ See, e.g., GAO-15-73, 401(k) Plans, Greater Protections Needed for Forced Transfers and Inactive Accounts, Nov. 2014, <https://www.gao.gov/assets/gao-15-73.pdf>, at 16, citing “U.S. Dept. of Labor, Field Assistance Bulletin, 2001-01. Forced-transfer IRAs providers told us that the accounts are sometimes escheated to states after the account holder reaches the age of required minimum distribution.” See also, e.g., California Legislative Analyst's Office, Unclaimed Property: Rethinking the State's Lost & Found Program, Feb. 10, 2015, <https://tao.ca.gov/reports/2015/finance/Unclaimed-Property/unclaimed-property-021015.pdf>, at 3: “Now generating over \$400 million in annual revenue, unclaimed property is the state General Fund's fifth-largest revenue source. This has created tension between two opposing program identities—unclaimed property as a consumer protection program and as a source of General Fund revenue.”

¹⁶ See, e.g., GAO-18-118SP, The Nation's Retirement System, A Comprehensive Re-evaluation Is Needed to Better Promote Future Retirement Security, Oct. 2017, <https://www.gao.gov/assets/gao-18->

required minimum distribution requirements for IRAs.

- **Equity Concerns.** The 2023 GAO report provided that: “Income, job-related factors, and race were strongly related to disparities in older worker households’ retirement account balances, according to GAO’s analysis of 2018 Health and Retirement Study (HRS) data. High-income households contributed a larger percentage of their pay than low-income households (about 8 and 5 percent) and received larger employer contributions. Households with higher income, longer job tenure, and a college education tended to have larger balances. Households of all other races than White and households with children had about 28 and 20 percent smaller balances, respectively.”¹⁷

§ 1.05 DECIDING WHICH IDEAS TO PURSUE

At this writing, the RRG subgroups are evaluating which ideas to develop. Numerous ideas have been suggested, from radical changes (such as increasing wages, or involving the Social Security Administration, Social Security, or the U.S. Thrift Savings Plan as part of a new yet-to-be-determined design) to more discrete reforms within ERISA to improvements in employee and employer education. Some of the ideas being discussed as of this writing are:

[1] Defined Contribution and Defined Benefit Plans

Recognizing that many lower- and moderate-income workers are not eligible for a plan and those that do not have adequate retirement savings, that savings can be reduced by plan costs, and that small employers’ resources are limited, considering whether to develop:

- Designs and incentives intended to extend qualified plan coverage to more lower- and moderate-income workers and provide such workers with a minimum base contribution or benefit that must be paid over the lifetime of the employee.
- Designs intended to increase availability and use of pooled investment and administration to achieve economies of scale to reduce costs, including modifications to improve and extend usage of multiple employer plans and pooled employer plans.

111sp.pdf, at 61: “Individuals face the risk that cognitive decline may affect their ability to manage their savings, especially later in retirement.”

¹⁷ See *supra* note 1 GAO Highlights.

[2] IRAs

Recognizing that IRAs are the largest pool of retirement assets, but have fewer protections than qualified plans and that IRA owners may have higher costs that reduce benefits, considering whether to develop:

- Designs that provide employee and spousal protections similar to qualified plans.
- Options to create larger investment pools for better investment rates for small IRAs.

[3] Education

Recognizing that the complexity of plans is a problem for employees and also may be an obstacle for plan adoption for some small employers, considering whether to develop:

- Projects to identify and support use of financial literacy materials provided by other organizations and identify gaps in existing financial literacy materials for individuals.
- Projects to identify issues and gaps in education and guidance for small employers.

[4] Equity

Recognizing that, as suggested in the 2023 GAO report, savings may vary by race and other factors, and that understanding why differences occur may help design a better solution, considering:

- Projects to explore possible new ways to improve plan coverage and enhanced plan designs specifically for those who do not adequately benefit from the current system based on race, gender, and other factors.

§ 1.06 THE FUTURE: MORE RESEARCH AND COLLABORATION IN THE PUBLIC INTEREST

At the time of writing, the RRG's discussions of what ideas it might develop are in the early stages. By sharing the steps RRG has taken to organize and sharing some initial identified concerns as well as a few possible ideas to pursue, it may help spur further idea development and support for retirement reform by other formal and informal groups. Collective efforts like the RRG may find creative solutions to help with the problem of lower- and moderate-income worker retirement savings. RRG members are excited about the potential.