Clearinghouse REVIEW

November–December 2009
Volume 43, Numbers 7–8

Journal of Poverty Law and Policy

THE SUPREME COURT CONTINUES ITS MARCH TO THE RIGHT

SHRIVER CENTER
Sargent Shriver National Center on Poverty Law

UNIVERSAL VOLUNTARY RETIREMENT ACCOUNTS

A Financially Secure Retirement

By Karen Harris and Michael Lezaja

There is no tragedy in growing old, but there is tragedy in growing old without means of support.

—Franklin D. Roosevelt[1]

Karen Harris
Supervising Attorney, Community Investment Unit

Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
312.263.3830
karenharris@povertylaw.org

Michael Lezaja
First-Year Student, Boston University School of Law

mlezaja@bu.edu

President Franklin D. Roosevelt tackled the issue of poverty among the elderly in the Great Depression by signing the Social Security Act in 1935.[2] The social security system has helped reduce the rate of poverty among the elderly, but millions of seniors continue to face economic insecurity. Although many seniors count on social security to provide for them in retirement, "Social Security is not, and was never intended to be, the sole source of retirement income."[3] It was instead intended to provide seniors with a modest standard of living, a baseline which was to be supplemented by private pensions and retirement savings.[4] Social security still provides modest benefits, but most experts agree that future generations will receive fewer benefits due to a projected shortfall of social security revenues relative to expenditures.[5]

Still, even a fiscally strong social security system is not enough by itself to ensure retirement security for millions of Americans. And many workers can no longer rely on employer-provided pensions to achieve retirement security—either the plans are unavailable or inadequate or, where the plans do exist, employees cannot afford to

[1]Franklin D. Roosevelt, Address to Advisory Council of the Committee on Economic Security on the Problems of Economic and Social Security (Nov. 14, 1934), http://bit.ly/VOAqI.

[2]Social Security Act, 42 U.S.C. §§ 301 *et seq.*

[3]Dean Baker, Center for American Progress, Social Security, the Wrong Retirement Crisis (Jan. 14, 2005), http://bit.ly/2BPrt8. See also Franklin D. Roosevelt, A Message Transmitting to the Congress a Report of the Social Security Board Recommending Certain Improvements in the Law (Jan. 16, 1939) ("[S]ocial security can furnish only a base upon which each one of our citizens may build his individual security through his own individual efforts."), http://bit.ly/ocsW6.

[4]Roosevelt, *supra* note 1, at 3.

[5]The 2009 Annual Report of the Board of Trustees of the Federal Old-Age and survivors Insurance and Federal Disability Insurance Trust Funds 10–11, http://bit.ly/WQstg. See also Kathy Ruffing & Paul N. Van de Water, Center on Budget and Policy Priorities, What the 2009 Trustees' Report Shows About Social Security (2009), http://bit.ly/40BAI6.

participate in the plans because their income is eaten up by daily expenses.[6] In particular, a majority of low-income and part-time workers are not offered an employer-sponsored pension plan.[7] Clearly we need other mechanisms that will promote both private pensions and personal savings in the years leading up to retirement, especially for workers of low to moderate income. More can and should be done to ensure that workers of low to moderate income have the economic security they will need for retirement.

One innovative policy proposal to bridge the retirement savings gap among workers of low to moderate income are universal voluntary retirement accounts (UVRAs), which would be government-sponsored, defined contribution retirement plans for workers who lack access to an employer-sponsored retirement plan.[8] Employers not offering a retirement plan would be required to give their workers the opportunity to enroll in a UVRA. Employees would contribute to UVRAs through regular payroll deductions administered by their employers. Within this basic UVRA framework are competing ideas regarding what the form of government sponsorship should take, what employee enrollment requirements there should be, whether UVRAs should be structured as an individual retirement account (IRA) or other retirement plan, and what types of investment options should be offered.

UVRA plans can be structured to minimize administrative costs and other burdens on employers, provide convenience for employees, encourage participation, and maximize investment returns.[9] The government sponsorship of UVRAs would provide bargaining power and economies of scale to achieve lower administrative costs, cited by many small businesses as a barrier to offering retirement plans.[10] The portability of UVRAs from job to job would encourage lifelong savings. A suggested UVRA feature calling for automatic enrollment of employees with an opt-out provision would ensure high participation rates.[11] And a UVRA plan requiring simple and financially sound default investment options would increase workers' accumulation of future financial retirement resources.

Advocates and lawmakers on both the federal and state level have begun proposing legislation to establish some form of UVRA. President Obama's proposed budget for 2010, for example, would require employees to be automatically enrolled in direct-deposit IRA accounts, but they would be allowed to opt out of the plan.[12]

Here we seek to inform advocates about the unique retirement security problems of low-income workers, UVRA design alternatives, the potential benefits and drawbacks of UVRAs, and advocacy methods of promoting UVRA legislation and implementation.

The Retirement Security Problem

The current economic crisis has understandably caused many Americans to be pessimistic about both the security of their retirement income and the adequacy of that income. According to a 2009 survey, only 13 percent of workers are

[6]Mary M. Schmitt & Judy Xanthopoulos, Optimal Benefit Strategies LLC, Preliminary Report for AARP, Automatic IRAs 26–27 (2007), http://bit.ly/mKJ51.

[7]Craig Copeland, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2007*, Issue Brief No. 322, (Employee Benefit Research Institute, Washington, D.C.), Oct. 2008, at 7–8, http://bit.ly/1YmdC.

[8]A universal voluntary retirement account is sometimes referred to as an automatic individual retirement account (IRA) or a portable retirement account.

[9]See generally J. Mark Iwry & David C. John, Retirement Security Project, No. 2009-3, Pursuing Universal Retirement Security Through Automatic IRAs (2009), http://bit.ly/3WOYoZ.

[10]*Id.* at 7–8.

[11]*Id.* at 4, 7; Schmitt & Xanthopoulos, *supra* note 6, at 27–28.

[12]Office of Management and Budget, Executive Office of the President, Budget of the United States Government, Fiscal Year 2010, A New Era of Responsibility: Renewing America's Promise 84–5 (2009), http://bit.ly/2SwTKz.

very confident that they will have enough money for a comfortable retirement.[13] Those in the bottom two quintiles (40 percent) of household income have suffered the highest percentage of losses in the financial downturn. In one projection the average net wealth of the bottom 20 percent of households aged 45–54 will fall from $3,500 in 2004 to negative $2,300 in 2009, and the net wealth of the second quintile will decline 54 percent during the same time span.[14]

Added to this drop in wealth is the decline of defined benefit pension plans as a source of retirement income.[15] Employers began replacing defined benefit plans with defined contribution plans, such as 401(k)s, in the early 1980s.[16] Between 1980 and 2008 participation of private-sector workers in defined benefit plans fell from 38 percent to 20 percent, whereas the percentage of private-sector workers participating in defined contribution plans increased from 8 percent to 31 percent.[17]

Defined benefit plans are funded by private-sector employers who contribute to a tax-favored trust that gives workers guaranteed lifetime annuities.[18] The advantage of defined benefit plans is that they generate a predictable, monthly retirement income which cannot be outlived.[19] Unlike defined benefit plans, defined contribution plans do not guarantee employees a specific lifetime payment. Instead participants in defined contribution plans are responsible for making their own contributions to a tax-favored individual account, and their available retirement savings are determined by the investment returns from that account.[20] Defined contribution plans need not be employer-sponsored. Thus, while defined benefit plans may be more advantageous for workers, defined contribution plans remain a valuable alternative for workers without access to defined benefit plans or indeed any employer-sponsored retirement plan.

In fact, and complicating retirement planning further, many employers do not sponsor retirement plans at all. About half of U.S. workers—or approximately seventy-five million Americans—work for an employer that does not offer *any* retirement plan to its employees.[21] Low- and moderate-income workers, particularly those who are part-time and those who are in the service industry, are the least likely to work for an employer that offers a retirement plan.[22] Only 25 per-

[13]Ruth Helman et al., *The 2009 Retirement Confidence Survey: Economy Drives Confidence to Record Lows; Many Looking to Work Longer*, Issue Brief No. 328 (Employee Benefit Research Institute, Washington, D.C.), April 2009, Executive Summary & 5–9, http://bit.ly/4ArVwQ.

[14]David Rosnick & Dean Baker, Center for Economic and Policy Research, The Wealth of the Baby Boom Cohorts After the Collapse of the Housing Bubble 6 (2009), http://bit.ly/xZFl4.

[15]Barbara A. Butrica et al., Urban Institute, Discussion Paper No. 09-01, The Disappearing Defined Benefit Pension and Its Potential Impact on the Retirement Incomes of Boomers 2, 5 (2009), http://bit.ly/vJGrb.

[16]A 401(k) is a defined contribution plan which is offered by a corporation to its employees and which allows employees to set aside tax-deferred income for retirement purposes; in some cases employers match the employee's contribution dollar for dollar. The name 401(k) comes from the Internal Revenue Service (IRS) code section describing the program.

[17]Butrica et al., *supra* note 15, at 5.

[18]Copeland, *supra* note 7, at 5; Butrica, et al., *supra* note 15, at 7. In public-sector defined benefit plans employees are generally required to make contributions along with the funding from the government entity sponsoring the plan (Copeland, *supra* note 7, at 5).

[19]Beth Almeida & William B. Fornia, National Institute on Retirement Security, A Better Bang for the Buck: The Economic Efficiencies of Defined Benefit Pension Plans 1–3 (2008), http://bit.ly/10q7le.

[20]Butrica et al., *supra* note 15, at 6. Note that under a private-sector defined benefit plan an employer may, but is not required to, contribute on behalf of its employees, but under a public-sector defined contribution plan the government typically makes contributions in addition to the employees' contributions.

[21]Office of Management and Budget, *supra* note 12, at 84–85. See also Iwry & John, *supra* note 9, at 3, and Copeland, *supra* note 7, at 1, 6.

[22]Copeland, *supra* note 7, at 7; Economic Opportunity Institute, Universal Voluntary Retirement Accounts Coaching Brief: Engaging Small Business 4 (n.d.) (on file with Karen Harris).

cent of all workers (including both the public and private sectors) with annual earnings of between $15,000 and $19,999 work for an employer that sponsors a plan, whereas almost 71 percent of those workers earning more than $50,000 are offered a retirement plan at work.[23]

Small businesses, which employ a large percentage of the U.S. workforce, are the majority of those employers not offering a retirement plan, often due to administrative costs.[24] A small business cannot spread the fixed administrative costs of plan sponsorship across a large number of employees, and this results in higher per capita costs for small business as compared to large employers.[25] Small employers also "lack the economies of scale and bargaining power of a large employer when negotiating fees and expenses with financial service providers."[26] In a 2003 survey of small businesses the second most frequent reason for not offering a retirement plan was the belief that retirement plans "cost too much to set up and administer."[27]

In addition to the advent of defined contribution plans, IRAs have evolved as an alternative for workers who lack access to employer-sponsored retirement plans. Contributions to and earnings from IRAs are generally exempt from federal taxes until distribution at retirement.[28] Despite the beneficial characteristics of IRAs, only 10 percent of Americans open such accounts.[29] Low IRA participation rates are frequently attributed to the perceived complication of opening an account. Individuals must decide (1) whether to open an IRA account, (2) which financial institution to use, (3) whether the IRA should be a traditional or Roth IRA, (4) how much to contribute, and (5) how to invest contributions.[30] These decisions can seem daunting to even the savviest of investors and especially individuals of low to moderate income.

UVRA Program Components

The basic framework of a UVRA program calls for a government agency, such as a state retirement board or treasurer's office, to act as the plan sponsor. The government would contract directly with a financial institution to administer the program, or, the government, using its bargaining power and economies of scale to reduce plan administration costs, would directly manage the UVRA investments internally. UVRA accounts would be portable, thereby encouraging continued savings behavior regardless of changes in employment.

Within this basic framework are alternative features. Should a retirement account be a 401(k) or take a different form? Should all employers be required to offer UVRAs? Should all employees be required to participate? How are account investment decisions to be made? UVRA plans requiring automatic payroll deductions, automatic enrollment, and limited investment options would reduce the inconvenience and complexity that discourages many employees and employers from participating in retirement plans.[31] We examine design options below.

---

[23]Copeland, *supra* note 7, at 7.

[24]*Id.* at 10; Iwry & John, *supra* note 9, at 7.

[25]Iwry & John, *supra* note 9, at 7; Schmitt & Xanthopoulos, *supra* note 6, at 32–33.

[26]Iwry & John, *supra* note 9, at 7.

[27]Jack VanDerhei, *Findings from the 2003 Small Employer Retirement Survey (SERS)*, Employee Benefit Research Institute Notes, Sept. 2003, at 1, 3, http://bit.ly/3jSk6W.

[28]Only traditional IRAs have such tax deferment; Roth IRAs' contributions are made on an after-tax basis and therefore are not taxed upon distribution (Internal Revenue Service, Department of the Treasury, I.R.S. Publication 590 (2009) (Individual Retirement Arrangements)).

[29]Iwry & John, *supra* note 9, at 6.

[30]See J. Mark Iwry, Expanding Saving and Retirement Security: A State-Based Strategy (2008), Asset Coalition Toolkit for States (Sargent Shriver National Center on Poverty Law, Chicago, Ill.), http://bit.ly/b93r5.

[31]*Id.*

What Form Should the Account Take? A top-of-the-line UVRA plan would have employees contribute to a standard 401(k). The benefit of a 401(k) model is that Internal Revenue Service rules allow employers to make matching or nonelective contributions, and employees are permitted to contribute up to $15,500 per year of pretax income through payroll deductions.[32] Under this model low-income workers would benefit from being allowed to fund their UVRAs by their own contributions as well as employer contributions. The major drawback of 401(k) plans is that the Employment Retirement Income Security Act of 1974 (Erisa) may pose costly administrative burdens and liability on employers.[33]

A savings incentive match plan for employees, commonly known as a Simple IRA, is an alternative that would also allow employers to contribute to accounts.[34] The Simple IRAs are more attractive to small businesses than 401(k)s because the Simple IRAs are less complex to set up and administer and employer fiduciary liability attached to the Simple IRAs is limited compared to that for 401(k)s.[35] Unlike 401(k) plans, however, employer contributions to the Simple IRAs are limited to a 3 percent match or a 2 percent nonelective contribution.[36]

A payroll deduction IRA model is the simplest UVRA plan option. Employers are not permitted to contribute to payroll deduction IRAs and instead act simply as a conduit for voluntary employee contributions through direct payroll deposits.[37] Since the employer is not a plan sponsor contributing to the plan, Erisa does not apply and employers are freed from Erisa's restrictions.[38] The main drawback to this model is that employees would not benefit from employer contributions.

Should a UVRA Plan Be Mandatory? Ideally a UVRA program would mandate that all employers who do not offer a retirement plan must offer a UVRA plan.[39] Practical concerns may, however, limit the feasibility of a universal employer mandate. For instance, small businesses which do not utilize electronic payroll processing would face higher administrative burdens to set up the direct deposits necessary to comply with a UVRA mandate. One proposal would resolve this concern by limiting the mandate to employers with more than ten employees.[40] Another option would be to use a "soft" mandate. For example, California's UVRA proposal would require an employer to provide an account only if an employee affirmatively requested one.[41]

Should Employee Enrollment Be Auto-

[32]Employees 50 or older may contribute an additional $5,000 per year to a 401(k). Under a nonelective contribution formula, even if eligible employees do not contribute to their plans, the employees will still receive an employer contribution as a percentage of their salaries.

[33]Employment Retirement Income Security Act (Erisa), 29 U.S.C. §§ 1001–1461. Under U.S. Department of Labor regulations an employer's payroll deduction program in which employees contribute to their IRAs is not considered a pension plan under Erisa, unless employers also contribute to the IRA accounts. In other words, if employees contribute to IRA accounts through payroll deductions and the employer does not make contributions, then Erisa's requirements would not apply to this arrangement (29 C.F.R. § 2509.99-1 (2009) (also known as Interpretive Bulletin 99-1 (Relating to Payroll Deduction IRAs)); see also Iwry & John, *supra* note 9, at 10, 25.

[34]A Simple IRA plan is a Savings Incentive Match Plan for Employees (Internal Revenue Service, Department of the Treasury, I.R.S. Publication 560, Retirement Plans for Small Businesses (SEP, Simple and Qualified Plans) (2008)). "The Simple IRA is essentially a payroll-deposit IRA with an employee contribution limit that is in between the IRA and 401(k) limits and with employer contributions, but without the annual reports, plan documents, nondiscrimination tests, or most of the other administrative requirements applicable to other employer plans" (Iwry & John, *supra* note 9, at 31 n.8).

[35]Internal Revenue Service, *supra* note 34, at 10.

[36]*Id.*

[37]Iwry & John, *supra* note 9, at 9–10.

[38]*Id.* at 8–9.

[39]In order to reduce incentives for employers to drop coverage of more beneficial retirement plans, a UVRA program should not be available to employers offering a retirement plan.

[40]Iwry & John, *supra* note 9, at 3–4.

[41]A.B. 125, 2009–10 Reg. Sess. (Cal. 2009). Telephone Interview with Olivia Calderon, Legislative Director, New America Foundation (Aug. 4, 2009).

matic? Research on 401(k) plans reveals that certain automated features such as automatic enrollment can substantially increase plan participation.[42] Some poverty law advocates have expressed concern about automatic enrollment of low-income individuals in UVRAs. Automatic enrollment could have negative effects on low-income individuals if their current salaries—needed for daily expenses—are diverted to future retirement savings. If low-income individuals use high-interest-rate credit cards to pay for necessities while deferring income to a UVRA, they would incur a net loss of savings. Adopting a low, default contribution rate, such as 1 percent or 2 percent of income would alleviate this concern.[43]

What Investment Options Should Employees Have? Most UVRA proposals would provide employees only two to three investment options, including an automated investment default. Although more investment options could be offered, research indicates that the more options available the less likely individuals, whether low-income or not, are to participate in a retirement plan.[44] A default investment option is also a critical feature. For example, a life-cycle fund (also called a target-date fund) that automatically rebalances its asset allocation from more risky high-yield investments early in the life cycle to a more conservative mix of investments to preserve principal as the investor's retirement date approaches would be a convenient, easy-to-manage, and safe option for individuals lacking time for, interest in, or knowledge of complicated investment decisions.[45]

Federal and State Legislation

While many advocates recognize the benefits that UVRAs would bring to low-income workers, neither the federal government nor any state has passed legislation establishing UVRAs in any form. Advocates and legislators, however, have promoted UVRA legislation at both levels of government. And President Obama's proposed 2010 budget would require that employees be automatically enrolled in a direct-deposit IRA account with permission to opt out.[46] In 2007 Congress introduced the Automatic IRA Act.[47] This bill would have given the majority of the seventy-five million Americans without employer-based retirement plans the opportunity to participate in a retirement-savings plan. Employers who had more than ten employees, who had been in business for more than two years, and who did not offer a retirement plan would have been required to offer an automatic IRA to their employees.[48] The automatic IRAs would have been funded by employee contributions deposited through an employer's existing payroll tax deposit system. In exchange for this requirement, employers with fewer than one hundred employees would have received a tax credit of up to $250 in each of the first two years of their offering an automatic IRA. The maximum contribution to an automatic IRA account would have been the same as that for any other IRA.[49] The automatic IRA accounts would have been administered by existing financial institutions, and employees would have been able to select from two or three investment options. If an employee declined to choose an investment option, a preset automatic investment

[42]Iwry & John, *supra* note 9, at 7; see generally Schmitt & Xanthopoulos, *supra* note 6.

[43]Calderon, *supra* note 41.

[44]Sheena S. Lyengar et al., *How Much Choice Is Too Much?: Contributions to 401(k) Retirement Plans* (Wharton School, Pension Research Council, Working Paper No. 2003-10, 2003), in Pension Design and Structure: New Lessons from Behavioral Finance 83–96 (Olivia S. Mitchell & Stephen P. Utkus eds., 2004), http://bit.ly/2kW6Rc.

[45]Associated Press, Are Life Cycle Fund Investors Doing It Wrong?, MSNBC, July 6, 2006, http://bit.ly/3FBAH8.

[46]Office of Management and Budget, *supra* note 12; see also Press Release, Office of the Press Secretary, The White House, Weekly Address: President Obama Announces New Initiatives for Retirement Savings (Sept. 5, 2009), http://bit.ly/2Zcadt.

[47]Automatic IRA Act of 2007, H.R. 2167, 110th Cong. (2007).

[48]*Id.* § 2. Employers also had to meet certain employee compensation limitations.

[49]*Id.* The maximum contribution to an IRA in 2007 was $4,000 or $5,000 for those over 50.

option would have been applied to that employee's automatic IRA. Although this legislation was not passed, it was an important first step in developing a national UVRA program.

Several states have also proposed UVRA legislation. In January 2009 the California assembly introduced a bill to create the California employee savings program, which would offer one or more IRA options to private-sector workers who do not have access to an employer-sponsored retirement plan.[50] Instead of making the savings program automatic, the bill places the onus on the employee to notify the employer that the employee wants to participate in the program. Another notable feature of the California proposal is that the program would likely be managed but not funded by the California Public Employees' Retirement System, the executive branch agency that manages public employee pension and health benefits.[51] Virginia's UVRA bill, on the other hand, would outsource the administration of the program to a separate, nonprofit entity whose board members would be appointed by elected officials.[52] Washington State's proposed model is notable because it would establish a dual system of Simple IRAs and payroll deduction IRAs.[53] The IRA chosen would depend upon whether the employer wanted to contribute to the accounts. Connecticut, Maryland, Michigan, Pennsylvania, Rhode Island, and West Virginia either have proposed a UVRA bill or are studying the feasibility of a UVRA plan.[54] Given the current economic climate and state budget deficits, whether any UVRA bill will pass is unclear. Yet, at a time of precipitously decreased retirement savings, support for UVRAs may be at its strongest.

Advocating UVRAs

Advocating UVRAs involves discussing limitations as well as benefits. First, advocates need to be aware of current laws that have a negative impact on UVRAs and be prepared to advocate changes in those laws. Erisa, public benefit programs that require asset tests, and the Retirement Savings Contribution Credit, better known as the saver's credit, all affect the utility of UVRAs.[55] Second, advocates must be prepared to counter criticisms of UVRA plans on the grounds that they cost too much or that low-income individuals are unlikely to take advantage of the accounts because of their alleged poor savings habits. And, third, advocates should engage key stakeholders—the private financial security industry, small businesses, and organized labor—in discussions regarding the benefits of UVRAs to them as well as low-income workers. These groups can be made allies in the promotion of UVRA legislation.

Advocating Changes in Current Laws. Erisa requires plan sponsors to comply with burdensome and costly requirements and creates significant liabil-

[50]A.B. 125, 2009–10 Reg. Sess. (Cal. 2009).

[51]Initial start-up costs would be borrowed from California's general revenue fund and repaid as accounts generated deposits and returns. Thereafter the program would sustain itself through fees deducted from the accounts

[52]H.B. 2026, 2009 Reg. Sess. (Va. 2009) (proposing the creation of a program for qualified small employers with 50 employees or fewer to utilize one of the retirement plans permitted by the IRS tax code).

[53]S.B. 5791, 61st Leg., 2009 Reg. Sess. (Wash. 2009) (proposing the establishment of employer-sponsored plans and employee IRAs).

[54]S.B. 971, Session Year 2009, Reg. Sess. 2009 (Conn. 2009) (proposing the establishment of a retirement plan for small employers and self-employed individuals); S.B. 728 and H.B. 1228, Reg. Sess. 2008 (Md. 2008) (proposal to establish the Maryland Voluntary Employee Accounts program); S.B. 0024, 95th Leg., Reg. Sess. (Mich. 2007) (proposal to provide a retirement system to increase access to retirement plans for small business employees); H.B. 1669, 2007–28 Reg. Sess. (Penn. 2007) (proposal to establish Pennsylvania Voluntary Accounts program); H. 5696, Jan. 2009 Reg. Sess. (R.I. 2009) (proposal to create a legislative commission to study the establishment of UVRAs, including a defined contribution plan that would allow tax-deferred payroll deductions and portability between jobs and to offer a system with both workplace-based individual retirement accounts open to all workers and a deferred-compensation 401(k) or Simple IRA-type program open to all employers); West Virginia Con. Res. 6, 78th Leg., 1st Reg. Sess. 2008 (W. Va. 2008) (proposal to study the benefits, costs, and feasibility of establishing a UVRA program to assist private employers in offering employees an optional retirement plan).

[55]Rosanne Altshuler et al, Tax Policy Center, Urban Institute and Brookings Institution, Tax Proposals in the 2010 Budget 7 (2009), http://bit.ly/2BYSLK (among proposals are to expand saver's credit and automatic enrollment in IRAs and 401(k)s).

ity risks for employers. As noted above, small businesses are frequently unable to offer retirement plans because employers who make contributions to employee retirement plans are considered under Erisa to be plan sponsors. Under a UVRA model in which a small employer serves solely as a conduit for employees to save and does not make contributions to the UVRA, such as in an automatic payroll deposit plan, the employer would not be considered a plan sponsor and Erisa would not apply.[56] Conversely an employer who makes contributions to a UVRA plan would likely be considered a plan sponsor under Erisa. Congress can ensure that UVRAs are as flexible and beneficial as possible by amending Erisa specifically to exclude from the definition of plan sponsor an employer offering a UVRA.

Asset tests that do not exempt retirement account savings from countability may limit the efficacy of UVRAs. Most public benefit programs limit eligibility to individuals with few or no assets through the imposition of asset limits or asset tests. A family that needs short-term public assistance but that has assets above the specified limit for that program must "spend down" its longer-term savings in order to receive benefits.[57] Asset limits discourage saving and will likely impede the use of UVRAs by low-income individuals.[58] Asset tests vary with the type of benefit program and whether the program is primarily a federal or state program and may exclude some types of retirement accounts but not others.[59] For example, the Food Stamp Program used to exclude 401(k) contributions from asset tests but counted IRAs. The Food, Conservation, and Energy Act of 2008 corrected that problem by exempting all tax-preferred retirement savings accounts from the Food Stamp Program's asset limits.[60] Similarly, when Congress created the American Dream Demonstration project and individual development accounts (IDAs)—matched savings accounts—as a means for low-income families to save for long-term goals, Congress specifically exempted all tax-advantaged retirement accounts.[61] By working with other poverty law advocates, especially those engaged in asset-limit reform, UVRA advocates can both assist in asset-test-reform efforts and ensure that retirement savings such as UVRAs are excluded from such tests.[62]

The federal tax code can provide additional incentives to save for retirement. The saver's credit is a federal tax credit of up to $1,000 ($2,000 for married couples) for low-income to moderate-income individuals who contribute to an employer-sponsored retirement plan or an IRA.[63] Because the credit is nonrefundable, it is available only to offset a taxpayer's income tax liability. As a result, the credit may not be used by the es-

[56]See 29 C.F.R. § 2509.99-1.

[57]CFED, Assets and Opportunity Scorecard, Asset Limits in Public Benefit Programs 1 (n.d.), http://bit.ly/GiL4d.

[58]Signe-Mary McKernan & Caroline Ratcliffe, Urban Institute, New Safety Net Paper No. 7, Enabling Families to Weather Emergencies and Develop: The Role of Assets (2008), http://bit.ly/18t6qY.

[59]The federal government sets the program rules and asset tests for Supplemental Security Income, housing assistance, and the earned income tax credit, whereas states decide on the asset limits for Temporary Assistance for Needy Families, the State Children's Health Insurance Program, and Medicaid.

[60]Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246 (2008); see generally N. Baharanyi et al., Tuskegee University, The New Farm Bill and Asset Limit Reform (n.d.), http://bit.ly/3iqlma.

[61]The Assets for Independence Act of 1998 was signed into law in October 2009 and establishes a five-year, $125 million federal individual development account demonstration program, 42 U.S.C. § 604(h) (see Press Release, The Pew Charitable Trusts, Government Programs Penalize Retirement Saving by Low- and Moderate-Income Households (June 15, 2005), http://bit.ly/7Q738; see also Dory Rand, *Reforming State Rules on Asset Limits: How to Remove Barriers to Saving and Asset Accumulation in Public Benefit Programs*, 40 Clearinghouse Review 625 (March–April 2007), and its supplement, Sargent Shriver National Center on Poverty Law, State Asset Limit Toolkit (n.d.), http://bit.ly/2Kzh4P).

[62]See generally Baharanyi et al., *supra* note 60.

[63]The saver's credit was made permanent by 2006 amendments to Erisa (Pension Protection Act, Pub. L. No. 1069-280, 120 Stat. 780 (2006)).

timated fifty million working households who pay payroll taxes but have no income tax liability.[64] President Obama proposes to make the saver's credit refundable as a 50 percent credit up to $1,000 for an individual and indexed for inflation.[65] His plan would raise income-eligibility thresholds, and the credit would be automatically deposited into a qualified retirement plan, such as a UVRA.[66] UVRA advocates should support reforms that will allow more low-income individuals to take advantage of the credit and save for retirement.[67]

Addressing Criticisms. Many critics immediately point to the costs of implementing and maintaining a UVRA program. In these uncertain economic times adding to budget costs is particularly worrisome. Much of the cost of establishing a UVRA program lies in the start-up of the program and during the first few years. For example, Washington State estimated that a proposed UVRA program would cost roughly $4.4 million for its 2009–2010 UVRA program operations.[68] Over time investment returns would allow the program to become self-sustaining in that, as individuals' contributions to the program grew, administrative fees on account earnings would cover the costs of administration and investment management.[69]

Critics also argue that low-income people will be unlikely to save for retirement even with UVRAs. Since a UVRA plan is an untested concept, predicting the full impact of UVRAs on saving behavior is difficult. Some comparisons can be drawn from the American Dream Demonstration project, which tested IDAs' effectiveness.[70] IDAs were designed to enable low-income American families to save, build assets, and enter the financial mainstream.[71] Surveys of IDA participants reveal that 56 percent of them saved $100 or more, and that the average monthly net deposit was $32.44.[72] That a majority of low-income families save at all, although the amount of savings may appear to be low, demonstrates their willingness and ability to do so if given the opportunity.[73] Moreover, even these small amounts grow with compound interest and, when added to social security benefits, would ensure that fewer Americans would be retirement poor.

Engaging Key Stakeholders. Many in the financial services sector oppose the establishment of UVRAs. In their view government's role in promoting retirement savings should be restricted to marketing the Simple IRAs and other retirement plans already offered in the private market. Banks and investment companies typically argue that UVRAs will allow the government to compete unfairly with

---

[64]Retirement Security Project, Split Refund and Saver's Credit: Two Better Ways to Save for Retirement, at 2 (n.d.), http://bit.ly/31bIBi; see also Press Release, *supra* note 46.

[65]Office of Management and Budget, *supra* note 12, at 84–85;. see also a bill currently in committee, Savings for American Families' Future Act of 2009, H.R. 1961, 111th Cong. (2009) ("To Amend the Internal Revenue Code of 1986 to Expand the Availability of the Saver's Credit, to Make the Credit Refundable, and to Make Federal Matching Contributions into the Retirement Savings of the Taxpayer" (Title)).

[66]Office of Management and Budget, *supra* note 12, at 84–85.

[67]See Iwry & John, *supra* note 9, at 34 n.38.

[68]Multiple Agency Fiscal Note Summary FNS029 & Individual State Agency Fiscal Note FNS063 (to S.B. 5791, 61st Leg., 2009 Reg. Sess. (Wash. 2009)), http://bit.ly/3aO3X0 (click on "fiscal note" near bottom of page).

[69]*Id.* at 3.

[70]Telephone Interview with Gary Burris, Senior Policy Associate, Economic Opportunity Institute (July 31, 2009); see generally Center for Social Development, Washington University in St. Louis, American Dream Demonstration (n.d.), http://bit.ly/o7Qc8, and CFED, American Dream Demonstration (n.d.), http://bit.ly/1Gp0Vn.

[71]See generally CFED, IDAs (n.d.), http://bit.ly/cuxo9.

[72]Michael Sherraden, *IDAs and Asset-Building Policy: Lessons and Directions* 4 (Center for Social Development, Washington University in St. Louis, Working Paper No. 08-12, 2008), http://bit.ly/172bkK.

[73]Rourke O'Brien, New America Foundation, Ineligible to Save?—Asset Limits and the Savings Behavior of Welfare Recipients (2006), http://bit.ly/1jiR1B.

private firms.[74] Advocates can explain the benefits of UVRAs to the financial industry by noting that government intervention is needed to serve a niche market: low-income to moderate-income workers and small businesses. Financial service firms do not aggressively sell their products to this market because most low-income individuals would have relatively small account balances, and targeting large corporations and wealthy individuals who have more money to invest is more profitable.[75] At the same time UVRA plans could offer significant opportunities for the financial services sector. In the short run, financial institutions could benefit from plan-administration, fund-management, and other investment fees. In the long run, the financial industry would gain access to a whole new market of investors—millions of new Americans will be brought into the financial services marketplace and may later seek financial advice and products from traditional financial institutions.[76]

Some small businesses may view UVRAs as another attempt by government to interfere with the marketplace and burden private employers with excessive red tape, but advocates can help dispel this misconception.[77] Since employers are already required to withhold and remit income and payroll taxes from employees' pay, and many firms outsource administration of their payrolls, electronic payroll deductions for employee UVRA contributions would impose minimal costs.[78] The economies of scale and bargaining power made possible by UVRA plans would allow small employers to offer retirement plans at the same low administrative cost that large employers enjoy in offering retirement plans. This would allow small employers to compete better with large employers in recruiting and retaining workers, in turn making small employers more productive and potentially generating jobs.[79]

Advocates can target industries where employers are unlikely to sponsor retirement plans to gain small-business support. For example, advocates in Washington State recruited restaurant associations, which are confronting barriers in offering plans to temporary and part-time workers, to support UVRAs. Employee-formed associations or professional groups in fields without retirement coverage, such as home health care workers or child care workers, are similarly natural allies.[80]

Organized labor can also become a valuable ally. Many unions are wary of UVRAs because they believe that UVRAs are not an effective substitute for traditional defined benefit plans. Advocates can alleviate this concern by acknowledging that traditional defined benefit plans are a valuable option for many workers seeking retirement security and working with union leaders to keep defined benefit plans in place for workers who already have them.[81] Advocates can also remind union leaders that since small businesses are unlikely to sponsor new defined benefit plans, UVRAs may be the most practicable form of retirement plan to ensure at least some retirement security for small-business employees.[82]

■ ■ ■

[74]See, e.g., Iwry & John, *supra* note 9, at 3 ("Automatic IRAs would not crowd out or compete with 401(k) plans.").

[75]*Id.* at 8; Calderon, *supra* note 41; Economic Opportunity Institute, Universal Voluntary Retirement Accounts Coaching Brief: Connecting with the Private Financial Community 2 (on file with Karen Harris).

[76]Economic Opportunity Institute, *supra* note 75, at 2; Iwry & John, *supra* note 9, at 5, 8.

[77]Economic Opportunity Institute, Engaging Small Business, *supra* note 22, at 3.

[78]*Id.*; Iwry & John, *supra* note 9, at 5.

[79]Iwry & John, *supra* note 9, at 3.

[80]Economic Opportunity Institute, Engaging Small Business, *supra* note 22, at 4; Burris, *supra* note 70.

[81]*Saving Smartly for Retirement: Are Americans Being Encouraged to Break Open the Piggy Bank?: Hearing Before the S. Spec. Comm. on Aging*, 110th Cong 110–82 (2008) (statements of David John and Mark Iwry).

[82]Economic Opportunity Institute, Universal Voluntary Retirement Accounts Coaching Brief: Connecting with Organized Labor 1 (on file with Karen Harris).

The current economic meltdown demonstrates that Americans in general have failed to save and that this failure has had disastrous results. An increasing number of low-income workers lack the necessary savings to ensure a stable and financially secure retirement. Encouraging even modest retirement savings by low-income to moderate-income workers will increase the savings rate. That in turn will provide low-income to moderate-income families with a cushion for future economic downturns and at the same time boost the financial stability of the United States. UVRAs will facilitate savings by low-income to moderate-income workers and are affordable for small businesses that employ the bulk of low-income workers. Advocates can engage financial firms, small businesses, and organized labor in discussions regarding UVRAs and turn them into allies in seeking legislation establishing UVRAs.

Subscribe to Clearinghouse Review

Annual subscription price covers

- ❑ six issues (hard copy) of Clearinghouse Review and
- ❑ www.povertylaw.org access to current issues of Clearinghouse Review and all issues from 1990

Annual prices (effective January 1, 2006):

- ❑ $105—Legal Services Corporation–funded field programs (special discount)
- ❑ $250—Nonprofit entities (including law school clinics)
- ❑ $400—Individual private subscriber
- ❑ $500—Law school libraries, law firm libraries, and other law libraries (price covers a site license)

Subscription Order Form

Name ______________________________

Fill in applicable institution below

Nonprofit entity ______________________________

Library or foundation* ______________________________

Street address ______________________________ Floor, suite, or unit __________

City ______________________________ State __________ Zip __________

E-mail ______________________________

Telephone ______________________________ Fax ______________________________

*For Internet Provider–based access, give your IP address range ______________________________

Order

Number of subscriptions ordered __________

Total cost (see prices above) $ __________

Payment

- ❑ My payment is enclosed.
  Make your check payable to ***Sargent Shriver National Center on Poverty Law.***
- ❑ Charge my credit card: Visa or Mastercard.

  Card No. ______________________________ Expiration Date __________

  Signature ______________________________
  We will mail you a receipt.
- ❑ Bill me.

Please mail or fax this form to:
Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
Fax 312.263.3846

CUT HERE