

June 2008

INDIVIDUAL RETIREMENT ACCOUNTS

Government Actions Could Encourage More Employers to Offer IRAs to Employees





Highlights of [GAO-08-590](#), a report to the Committee on Ways and Means, House of Representatives

Why GAO Did This Study

Congress created individual retirement accounts (IRAs) with two goals: (1) to provide a retirement savings vehicle for workers without employer-sponsored retirement plans, and (2) to preserve individuals' savings in employer-sponsored retirement plans. However, questions remain about IRAs' effectiveness in facilitating new, or additional, retirement savings. GAO was asked to report on (1) how IRA assets compare to assets in other retirement plans, (2) what barriers may discourage small employers from offering IRAs to employees, and (3) the adequacy of the Internal Revenue Service's (IRS) and the Department of Labor's (Labor) oversight of and information on IRAs. GAO reviewed reports from government and financial industry sources and interviewed experts and federal agency officials.

What GAO Recommends

GAO believes Congress should consider whether payroll-deduction IRAs should have some direct oversight in response to Labor's comments that it does not have jurisdiction over these IRAs. GAO also recommends Labor examine ways to encourage employer sponsorship of IRAs, and evaluate ways to determine whether employers offering IRAs are in compliance with the law, and ways to collect additional information on IRAs. GAO recommends IRS routinely publish and give Labor data on IRAs. Neither IRS nor Labor agreed or disagreed with the recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-590](#). For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov.

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Government Actions Could Encourage More Employers to Offer IRAs to Employees

What GAO Found

Individual retirement accounts, or IRAs, hold more assets than any other type of retirement vehicle. In 2004, IRAs held about \$3.5 trillion in assets compared to \$2.6 trillion in defined contribution (DC) plans, including 401(k) plans, and \$1.9 trillion in defined benefit (DB), or pension plans. Similar percentages of households own IRAs and participate in 401(k) plans, and IRA ownership is associated with higher educational and income levels. Congress created IRAs to provide a way for individuals without employer plans to save for retirement, and to give retiring workers or those changing jobs a way to preserve retirement assets by rolling over, or transferring, plan balances into IRAs. Rollovers into IRAs significantly outpace IRA contributions and account for most assets flowing into IRAs. Given the total assets held in IRAs, they may appear to be comparable to 401(k) plans. However, 401(k) plans are employer-sponsored while most households with IRAs own traditional IRAs established outside the workplace.

Several barriers may discourage employers from establishing employer-sponsored IRAs and offering payroll-deduction IRAs to their employees. Although employer-sponsored IRAs were designed with fewer reporting requirements to encourage participation by small employers and payroll-deduction IRAs have none, millions of employees of small firms lack access to a workplace retirement plan. Retirement and savings experts and others told GAO that barriers discouraging employers from offering these IRAs include costs that small businesses may incur for managing IRA plans, a lack of flexibility for employers seeking to promote payroll-deduction IRAs to their employees, and certain contribution requirements of some IRAs. Information is lacking, however, on what the actual costs to employers may be for providing payroll-deduction IRAs and questions remain on the effect that expanded access to these IRAs may have on employees. Experts noted that several proposals exist to encourage employers to offer and employees to participate in employer-sponsored and payroll-deduction IRAs, however limited government actions have been taken.

The Internal Revenue Service and Labor share oversight for all types of IRAs, but gaps exist within Labor's area of responsibility. IRS is responsible for tax rules on establishing and maintaining IRAs, while Labor is responsible for oversight of fiduciary standards for employer-sponsored IRAs and provides certain guidance on payroll-deduction IRAs, although Labor does not have jurisdiction. Oversight ensures the interests of the employee participants are protected, that their retirement savings are properly handled, and any applicable guidance and laws are being followed. Because there are very limited reporting requirements for employer-sponsored IRAs and none for payroll-deduction IRAs, Labor does not have processes in place to identify all employers offering IRAs, numbers of employees participating, and employers not in compliance with the law. Obtaining information about employer-sponsored and payroll-deduction IRAs is also important to determine whether these vehicles help workers without DC or DB plans build retirement savings. Although IRS collects and publishes some data on IRAs, IRS has not consistently produced reports on IRAs nor shared such information with other agencies, such as Labor. Labor's Bureau of Labor Statistics National Compensation Survey surveys employer-sponsored benefit plans but collects limited information on employer-sponsored IRAs and no information on payroll-deduction IRAs. Since IRS is the only agency that has data on all IRA participants, consistent reporting of these data could give Labor and others valuable information on IRAs.

Contents

Letter		1
	Results in Brief	3
	Background	7
	IRAs Hold the Most Retirement Assets	11
	Comparisons between IRAs and 401(k) Plans Are Difficult	17
	Several Barriers May Discourage Small Employers from Offering Payroll-Deduction and Employer-Sponsored IRAs to Employees	18
	IRS and Labor Share Responsibility for Overseeing IRAs, but Labor Has No Process in Place to Monitor IRAs and Data Gaps Exist	31
	Conclusions	41
	Matter for Congressional Consideration	43
	Recommendations for Executive Action	43
	Agency Comments and Our Evaluation	44

Appendix I	Objectives, Scope, and Methodology	49
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Appendix II	Comments from the Department of Labor	52
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Appendix III	Comments from the Internal Revenue Service	57
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Appendix IV	GAO Contact and Staff Acknowledgments	59
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Tables		
	Table 1: Characteristics of Different IRA Options	10
	Table 2: Contribution Limits for IRAs and Traditional 401(k) Plans, 2008	17
	Table 3: Key Differences between Employer-Sponsored IRAs and Traditional 401(k) Plans	18
	Table 4: Key Advantages of Payroll-Deduction and Employer-Sponsored IRAs	20

Figures		
	Figure 1: Retirement Plan Assets, 1995 to 2004	12

Figure 2: IRA Contributions and Rollovers, 1998 to 2004	13
Figure 3: IRA Ownership and 401(k) Participation among U.S. Households, 2004	15
Figure 4: Persistency in 401(k) and IRA Contributions, 1999 to 2002	16
Figure 5: Access of Certain Workers to an Employer-Sponsored Retirement Plan, 2006	19
Figure 6: Primary Responsibilities of IRS and Labor for IRAs	33
Figure 7: IRS Form 5498, IRA Contribution Information	35
Figure 8: IRS Form 1099-R, Distributions from Pension, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts, etc.	36
Figure 9: IRS Form W-2, Wage and Tax Statement	37

Abbreviations

DB	defined benefit
DC	defined contribution
EBSA	Employee Benefit Security Administration
ERISA	Employee Retirement Income Security Act of 1974
ICI	Investment Company Institute
IRA	individual retirement account
IRS	Internal Revenue Service
Labor	Department of Labor
SAR-SEP	Salary Reduction Simplified Employee Pension
SCF	Survey of Consumer Finance
SEP	Simplified Employee Pension
SIMPLE	Savings Incentive Match Plans for Employees
SOI	Statistics of Income

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United States Government Accountability Office
Washington, DC 20548

June 4, 2008

The Honorable Charles B. Rangel
Chairman
The Honorable Jim McCrery
Ranking Member
Committee on Ways and Means
House of Representatives

Individual retirement accounts—popularly known as IRAs—have grown in importance and become key retirement savings vehicles for many individuals, including small business owners, independent contractors, and other workers who are not covered by an employer-sponsored retirement plan. IRAs totaled an estimated \$3.5 trillion in 2004.

Created more than 30 years ago by the Employee Retirement Income Security Act of 1974 (ERISA), IRAs were established to (1) provide a way for individuals not covered by a pension plan to save for retirement, and (2) give retiring workers or individuals changing jobs a way to preserve assets in employer-sponsored retirement plans by allowing them to roll over, or transfer, plan balances into IRAs. Employers sponsor defined benefit (DB) plans, which pay monthly benefits to retired workers based on their previous salary, years of employment, and other factors; they also sponsor defined contribution (DC) plans, such as 401(k) plans, which allow workers to save for retirement by contributing to mutual funds and other financial market investments, sometimes with an employer contribution as well, to save for retirement. Roughly half of all workers participate in an employer-sponsored retirement plan.

There are several types of IRAs, including traditional and Roth, and two types of employer-sponsored IRAs—Saving Incentive Match Plans for Employees (SIMPLE) and Simplified Employee Pension (SEP). The traditional IRA allows eligible individuals to make tax-deductible contributions and accumulate tax-deferred investment earnings.

Distributions from these accounts are generally subject to tax.¹ The Roth IRA allows eligible individuals to make after-tax contributions. Distributions, including investment earnings, are generally tax-free. Under payroll-deduction IRA programs (also known as payroll-deduction IRAs), employees establish and contribute to traditional or Roth IRAs via the employer withholding contributions through payroll deductions and transmitting the funds to the employee's IRA. SIMPLE IRAs allow small employers to either match participating employee contributions or to contribute a fixed percentage of all eligible employees' pay.² SEP IRAs allow employers of any size to make voluntary tax deductible contributions into traditional IRAs for themselves and their employees. Contributions to all IRAs may not exceed certain limits.

The rapid and continuing growth in IRA assets has raised questions about the overall role of IRAs in facilitating retirement savings, including employer-sponsored IRAs and how the federal government oversees the use of these savings vehicles. To address these questions, you asked us to report on (1) how IRA assets compare to assets in pension plans, (2) what barriers may discourage small employers from establishing employer-sponsored IRAs and offering payroll-deduction IRAs to their employees, and (3) how the Internal Revenue Service (IRS) and the Department of Labor (Labor) oversee IRAs and the adequacy of oversight and information on employer-sponsored and payroll-deduction IRAs.

To answer these questions, we compared assets in IRAs and pension plans using published data from federal agencies and industry associations on retirement funds. We analyzed demographic data from household surveys and studies focused on IRA ownership to provide descriptive information on IRA participants, such as demographic characteristics including age and income. To determine the barriers that may discourage small employers from establishing employer-sponsored IRAs and from offering payroll-deduction IRAs to employees, we interviewed federal agency officials, industry associations, financial company representatives, small business and consumer advocacy groups, and retirement and savings

¹Taxpayers ineligible for the deduction can make nondeductible contributions to take advantage of the deferral on investment earnings. Distributions are partially taxable. Distributions received before age 59½ are subject to an additional 10-percent income tax unless they meet certain requirements or are used for specific purposes, including the purchase of a first home or for higher education expenses.

²Employers must have 100 or fewer employees who earned \$5,000 or more during the preceding calendar year.

experts. To determine how IRS and Labor oversee IRAs and assess the adequacy of oversight and information, we interviewed officials at IRS and Labor and reviewed laws governing agency responsibilities regarding IRAs. A more detailed discussion of our methodology is provided in appendix I. We conducted this performance audit from September 2007 through May 2008 in accordance with generally accepted government auditing standards, which included an assessment of data reliability. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

IRA assets exceed those in defined contribution (DC) plans and defined benefit (DB) plans, or pensions, which employers offer workers. In 2004, IRAs held about \$3.5 trillion in assets, while DC plans held \$2.6 trillion in assets and DB plans held about \$1.9 trillion in assets. Similar percentages of households own IRAs and participate in 401(k) plans, and IRA ownership is associated with higher educational and income levels. Preserving retirement savings was one of the two reasons Congress created IRAs, and, in keeping with that idea, rollovers—money transferred to IRAs from DC or DB plans—have outpaced IRA contributions. Given the amount of assets held in IRAs, they may appear to be comparable to 401(k) plans. However, 401(k) plans and other pension plans are employer-sponsored retirement savings vehicles, whereas most households with IRAs own traditional IRAs established outside of the workplace. In addition, most of the assets held in IRAs are in traditional IRAs and not in employer-sponsored IRAs.

Millions of employees of small firms lack access to a workplace retirement plan, and several barriers may discourage small employers from establishing employer-sponsored IRAs and offering payroll-deduction IRAs to their employees. Although IRAs have been largely successful at helping individuals preserve their retirement savings through rollovers, experts told us that IRA participation falls short of Congress's first goal for creating IRAs—to provide individuals without retirement plans at work with a tax-preferred account in which to save for their retirement. Although employer-sponsored IRAs have fewer reporting requirements than 401(k) plans to encourage small employers to offer these IRAs to their employees and payroll-deduction IRAs have no reporting requirements for employers, experts told us that relatively few employers appear to offer or sponsor these IRAs. According to IRA providers and

small business groups that we interviewed, several barriers may discourage employers from offering payroll-deduction IRAs. Some examples of such barriers include a perceived lack of flexibility for employers seeking to promote these IRAs to their employees based on Labor's guidance for these IRAs and costs that some employers may incur for offering payroll-deduction IRAs. Information is lacking, however, on what the actual costs to employers may be for offering payroll-deduction IRAs. Other factors that may discourage employers from offering payroll-deduction IRAs are limited incentives to employers to offer these IRAs and a lack of awareness for how these IRAs work. In addition, several experts raised questions on how expanded payroll-deduction IRAs may affect employees. Employer-sponsored IRAs may help workers to save, as these IRAs offer greater savings opportunities than payroll-deduction IRAs. However, employer sponsorship of these IRAs may, in some cases, also be limited by costs, including required employer contributions. Retirement and savings experts noted that several legislative proposals may encourage employer sponsorship of and employee participation in IRAs, but limited government actions have been taken to increase the number of employers sponsoring employer-sponsored IRAs.

IRS and Labor share oversight responsibilities for all types of IRAs, but gaps exist within Labor's area of responsibility. IRS has responsibility for tax rules governing how to establish and maintain IRAs, while Labor has sole responsibility for oversight of fiduciary standards for employer-sponsored IRAs, and has issued guidance to employers related to payroll-deduction IRAs regarding when such an arrangement would be a pension plan subject to Labor's jurisdiction. Labor does not have jurisdiction to oversee payroll-deduction IRA programs that are operated within the conditions of their guidance. Oversight ensures the interests of the employee participants are protected, that their retirement savings are properly handled, and Labor's guidance and the law are being followed. However, because payroll-deduction IRA programs do not require employers to report to the federal government that they are offering this service to employees, and reporting requirements for employer-sponsored IRAs are limited, Labor does not have processes in place to identify all employers offering IRAs, which affects its ability to ensure that employers are following its guidance and are in compliance with the law. Obtaining information about employer-sponsored and payroll-deduction IRAs is also important to determine whether these vehicles help workers without pensions and 401(k) plans build retirement savings. Although IRS collects and publishes some data on IRAs, IRS has not consistently produced reports on IRAs nor shared such information with other agencies, such as Labor. Labor's Bureau of Labor Statistics National Compensation Survey

surveys establishments in the private and State and local government sectors to collect information on employer-sponsored benefit plans. However, the National Compensation Survey collects limited information on employer-sponsored IRAs and no information on payroll-deduction IRAs. In our discussions with Labor officials, they said they rely on industry data to obtain information. Since IRS is the only agency that has data on all IRA participants, consistent reporting of these data could give Labor and others valuable information on IRAs.

We believe that Congress should consider determining whether direct oversight is needed for payroll-deduction IRAs. We also make several recommendations to Labor and IRS that are intended to help increase IRA coverage, improve IRA oversight, and provide policymakers with more useable information on IRAs. We recommend that Labor: (1) examine ways to better encourage employer sponsorship of and employee participation in employer-sponsored and payroll-deduction IRAs, (2) evaluate ways to better monitor employer-sponsored and payroll-deduction IRAs, and (3) evaluate ways to collect more useful information on these IRAs. We recommend that IRS (1) provide Labor with summary information on IRAs, including employer-sponsored IRAs, and (2) release statistical information on all IRAs on an annual basis.

In written comments on the draft, Labor stated that it does not have jurisdiction over payroll-deduction IRAs. Although Labor is responsible for oversight of fiduciary standards for employer-sponsored IRAs, Labor stated in its comment on our draft report that payroll-deduction IRAs are not under Labor's jurisdiction because they are exempt from the requirements imposed on plans by Title I of ERISA.³ In our report, we describe that IRS's primary responsibility is for tax rules governing how to establish and maintain an IRA. After further review we agreed with Labor's analysis that payroll-deduction IRAs are not under Labor's jurisdiction. We then concluded that there is an absence of direct oversight of payroll-deduction IRAs. As a result of agency comments, we added a matter for congressional consideration.

³As long as employers follow guidelines set by Labor for managing payroll-deduction IRAs, employers are not subject to the fiduciary requirements in ERISA Title I that apply to employer-sponsored retirement plans, such as 401(k) plans. As a consequence payroll-deduction IRAs that are operated within the conditions of Labor's guidance are not under its jurisdiction.

In our first recommendation, we asked Labor to examine ways to better encourage employers to offer and employees to participate in payroll-deduction IRAs, which would include examining costs to employers, developing policy options to help employers defray the cost to employers, and evaluating whether its guidance on payroll-deduction IRAs need modifications or clarifications. In partial response to this recommendation, Labor stated that payroll-deduction IRAs are not under its jurisdiction. However, Labor stated that it would consider examining the costs of payroll-deduction IRA programs when developing its research agenda. Labor also stated that the development of additional policy options to defray costs would be more properly considered by the Department of the Treasury (Treasury). We believe some further examination by Treasury and Labor of this area would be appropriate. In addition, Labor stated that it has not received feedback from small employers or IRA service providers that its guidance on payroll-deduction IRA programs lack clarity. We maintain that IRA providers have reported that this guidance does not provide employers with adequate flexibility to promote employee participation without becoming subject to ERISA Title I requirements. With regard to our second recommendation that Labor evaluate ways to better monitor employer-sponsored and payroll-deduction IRAs, Labor described its enforcement program for employer-sponsored IRAs, and its reliance on targeting, and provided information on the number of investigations and amount of monetary results obtained in the past three years from these investigations. We acknowledge the results that Labor has achieved through its enforcement of employer-sponsored IRAs. However, we do not believe that this information precludes our recommendation or diminishes its validity. Moreover, we maintain that because Labor lacks specific information on employers that sponsor such IRAs, including the number of employers that do so, Labor relies primarily on employee complaints as sources for its investigations. With regard to our third recommendation that Labor evaluate ways to collect more useful information on employer-sponsored and payroll-deduction IRAs, Labor's comments focused on statutory requirements and policy considerations, and stated that any collection of information on employer-sponsored and payroll-deduction IRAs should not impose burdens on employers to report information. However, Labor did not specifically respond to our recommendation to evaluate alternative ways to collect useful information that would not be overly burdensome to employers, such as through the Bureau of Labor Statistics National Compensation Survey.

In its written comments, IRS recognized the need for federal agencies and others to have routine and timely access to information on IRAs and will

continue to provide such information to Labor and the public. Although IRS will be providing summary information on all IRAs to Labor and for public information, we stand by our recommendation that IRS should also consider providing information to Labor and others on employers that sponsor IRAs, such as the number of employers that sponsor SEP and SIMPLE IRAs, which is currently absent in the information IRS stated it would provide to Labor.

Background

Roughly half of all workers participate in an employer-sponsored retirement or pension plan. Private sector pension plans are classified either as defined benefit (DB) or as defined contribution (DC) plans. DB plans promise to provide, generally, a fixed level of monthly retirement income that is based on salary, years of service, and age at retirement, regardless of how the plan investments perform. In contrast, benefits from DC plans are based on the contributions to and the performance of the investments in individual accounts, which may fluctuate in value. Examples of DC plans include 401(k) plans, employee stock ownership plans, and profit-sharing plans. The most dominant and fastest growing DC plans are 401(k) plans, which allow workers to choose to contribute a portion of their pretax compensation to the plan under section 401(k) of the Internal Revenue Code.

IRAs were established under the Internal Revenue Code provisions of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA was generally enacted to protect the interests of employee benefit plan participants and their beneficiaries by requiring the disclosure to them of financial and other information concerning the plan; by establishing standards of conduct for plan fiduciaries;⁴ and by providing for appropriate remedies and access to the federal courts. To give IRAs flexibility in accumulating assets for retirement, Congress designed a dual role for these accounts. The first role is to provide individuals not covered by employer-sponsored retirement plans an opportunity to save for retirement on their own in tax-deferred accounts. The second role was to give retiring workers or individuals changing jobs a way to preserve assets

⁴ERISA defines fiduciaries as persons who (1) exercise discretionary authority or control over the management of a private sector employee benefit plan or the plan's assets, (2) render investment advice for a fee or other compensation with respect to plan assets, or (3) have any discretionary authority or responsibility to administer the plan. Under ERISA, fiduciaries are required to act prudently and exclusively in the interest of plan participants and beneficiaries.

in employer-sponsored retirement plans by allowing them to roll over or transfer plan balances into IRAs.

Individual IRAs

Over the past 30 years, Congress has created several types of IRAs designed with different features for individuals and small businesses. The types of IRAs geared toward individuals are:

- **Traditional IRAs:** Traditional IRAs allow individuals to defer taxes on investment earnings accumulated in these accounts until distribution at retirement. Eligible individuals may make tax-deductible contributions of earned income to these accounts. Other individuals may make nondeductible contributions to receive the tax deferral on earnings. Yearly contribution amounts are subject to limits based on income, pension coverage, and filing status. Taxpayers over age 70½ cannot contribute and must begin required minimum distributions from these accounts. Withdrawals are generally taxable; and early distributions made before age 59½, other than for specific exceptions, are subject to a 10 percent additional income tax.⁵
- **Roth IRAs:** In the Taxpayer Relief Act of 1997, Congress created the Roth IRA, which allows eligible individuals to make after-tax contributions to these accounts. After age 59½, enrollees may take tax-free distributions of their investment earnings. Withdrawals of investment earnings before age 59½ are subject to a 10 percent additional income tax and other taxes. Yearly contribution amounts are subject to limits based on income and filing status. There are no age limits on contributing, and no distributions are required during the Roth IRA owner's lifetime. Withdrawals are generally tax-free after age 59½, as long as the taxpayer held the account for 5 years; early distributions other than for specific exceptions are subject to an additional 10-percent income tax.

Traditional and Roth IRAs can also be established as payroll-deduction IRAs, which requires employer involvement.

- **Payroll-deduction IRA Programs (also called payroll-deduction IRAs):** Through payroll-deduction IRAs, employees may establish either traditional or Roth IRAs, and employees may contribute to these accounts through voluntary deductions from their pay, which are forwarded by the

⁵Early withdrawals are generally subject to an additional income tax. However, withdrawals in certain instances, for example, withdrawals for the purchase of a first-time residence or related to payments for higher education, are not subject to additional tax, as provided under specific tax rules.

employer to the employee's IRA. As long as employers follow guidelines set by Labor for managing the payroll-deduction IRA,⁶ employers are not subject to the fiduciary requirements in ERISA Title I that apply to employer-sponsored retirement plans, like 401(k) plans.

Employer-Sponsored IRAs

Other types of IRAs that are intended to encourage savings through employers include:

- **SEP IRAs:** In the Revenue Act of 1978, Congress established SEP IRAs, which were designed with fewer regulatory requirements than traditional employer pension plans to encourage small employers to offer retirement plans to their workers. SEP IRAs allow employers to make tax deductible contributions to their own and each eligible employee's account. SEP IRAs have higher contribution limits than other IRAs, but they do not permit employee contributions. Yearly contributions are not mandatory, but as with pension plans, they must be based on a written allocation formula and cannot discriminate in favor of highly-compensated employees.
- **SIMPLE IRAs:** In the Small Business Job Protection Act of 1996, Congress created SIMPLE IRAs to help employers with 100 or fewer employees more easily provide a retirement savings plan to their employees. In this plan, eligible employees can direct a portion of their salary, within limits, to a SIMPLE IRA and employers may either match the employees' contribution up to 3 percent or make nonelective, 2 percent contributions of each employee's salary for all employees making at least \$5,000 for the year. This IRA replaced the Salary Reduction Simplified Employee Pension IRA (SAR-SEP IRA)—a tax-deferred retirement plan provided by sole proprietors or small businesses with fewer than 25 employees. New SAR-SEP IRAs could not be established after December 31, 1996, but plans in operation at that time were allowed to continue. Each of these IRAs have their own eligibility requirements, as shown in table 1.⁷

⁶See 29 C.F.R. § 2509.99-1 (also known as Interpretive Bulletin 99-1).

⁷In addition to SEP and SIMPLE IRAs, employers may offer "deemed IRAs" to their employees, which allow employees to keep IRA assets in their employer's tax-qualified retirement plan as a separate, traditional or Roth IRA. Employees may make voluntary contributions to the deemed IRA, subject to IRA rules. According to the Department of the Treasury, few such IRAs exist.

Table 1: Characteristics of Different IRA Options

	Payroll-deduction IRAs	SIMPLE IRAs	SEP IRAs	Roth IRAs	Traditional IRAs
Contribution limits ^a	Applicable limits for traditional and Roth IRAs: \$4,000 for 2007; \$5,000 for 2008 with \$1,000 “catch-up” contributions for eligible participants over age 50	Employee: For 2007 and 2008, \$10,500, with additional, “catch-up” contributions up to \$2,500 for participants over age 50 Employer: Either 100 percent match of employee contributions up to 3 percent of employee compensation, with allowances to reduce match to 1 percent of compensation in any 2 of 5 years; or contribute 2 percent of each eligible employee’s compensation	Up to 25% of employee’s annual compensation, not to exceed \$45,000 for 2007 and \$46,000 for 2008	\$4,000 for 2007; \$5000 for 2008 with \$1,000 “catch-up” contributions for eligible participants over age 50	\$4,000 for 2007; \$5000 for 2008 with \$1,000 “catch-up” contributions for eligible participants over age 50
Employer eligibility	Any employer with one or more employees	Any employer with fewer than 100 employees that does not offer another retirement plan	Any employer with one or more employees	N/A	N/A
Employee eligibility	Applicable limits for traditional and Roth IRAs: any employee, subject to IRA eligibility requirements for either traditional or Roth IRAs	Employers may choose to cover all employees, or only those receiving at least \$5,000 compensation during any 2 years prior to the year the plan was established	Employers must cover all employees who are at least 21 years of age who have performed service in at least 3 of the last 5 years	Workers with taxable compensation may contribute based on income and filing status	Any worker with taxable compensation under the age of 70½ may contribute; tax deduction eligibility varies based on pension coverage, income, and filing status. Taxpayers over age 70½ may not contribute to a traditional IRA
Contribution options	As determined by the individual, based on applicable contribution limits.	Employee decides contribution amount up to \$10,500 annually; employers must either match employee contribution up to 3 percent of employee’s salary, or make nonelective 2 percent contributions of each eligible employee’s salary	Employer decides whether to make contributions year-to-year	As determined by the individual, based on applicable contribution limits	As determined by the individual, based on applicable contribution limits

Sources: IRS, Publication 590, Individual Retirement Arrangements (IRAs), 2007 and Publication 590, Retirement Plans for Small Business, 2007.

^aThe annual total IRA contribution limit applies across payroll-deduction, Roth, and traditional IRAs and is not an annual limit for each IRA type.

Labor's Employee Benefits Security Administration (EBSA) shares responsibility for overseeing the IRA component of ERISA with IRS. EBSA enforces Title I of ERISA, which specifies, among other standards, certain fiduciary and reporting and disclosure requirements and seeks to ensure that fiduciaries operate their plans in the best interest of plan participants. IRS enforces Title II of ERISA, which provides, among other standards, tax benefits for plan sponsors and participants, including participant eligibility, vesting, and funding requirements.

IRAs Hold the Most Retirement Assets

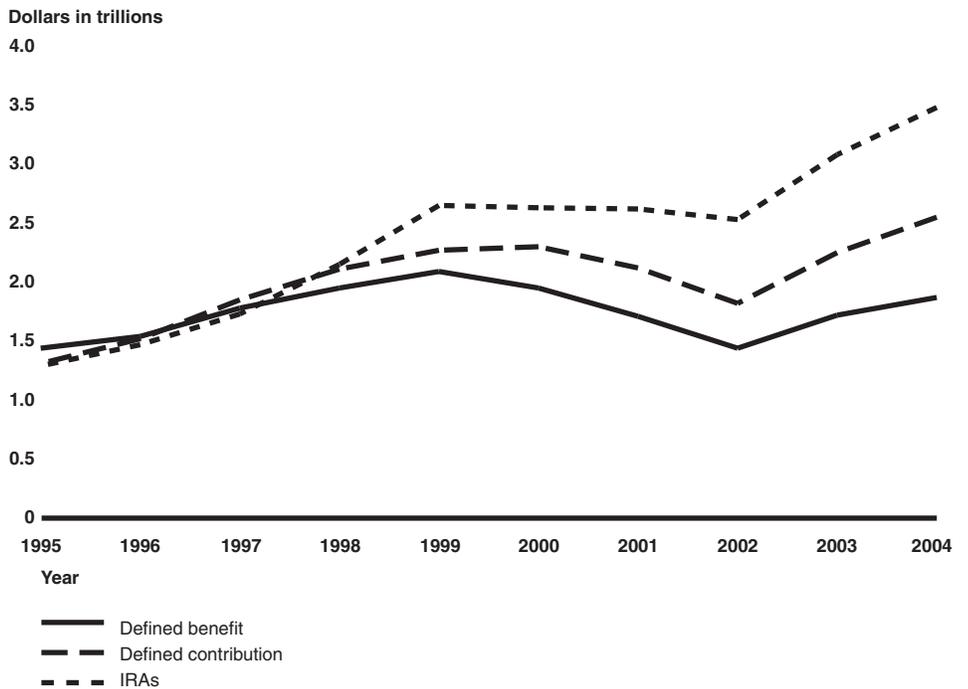
IRA assets have surpassed DC plan assets and DB plan assets, but the majority of assets that flow into IRAs come from assets being rolled over from other accounts, not from contributions. We also found that IRA ownership is associated with higher education and higher income levels. The percentage of households that own IRAs is similar to those that participate in 401(k) plans, and total contributions to IRAs are lower than contributions to 401(k) accounts. In addition, there are key differences between the structure of employer-sponsored IRAs and that of 401(k)s.

IRA Assets Exceed DC and DB Plan Assets and Largely Come from Rollovers

Since 1998, IRA assets have comprised the largest portion of the retirement market. As shown in figure 1, in 2004, IRA assets totaled about \$3.5 trillion compared to DC assets of \$2.6 trillion and DB assets of \$1.9 trillion.⁸

⁸Craig Copeland, "Individual Account Retirement Plans: An Analysis of the 2004 Survey of Consumer Finances," *Issue Brief*, no. 293 (Washington, D.C., Employee Benefit Research Institute, May 2006).

Figure 1: Retirement Plan Assets, 1995 to 2004

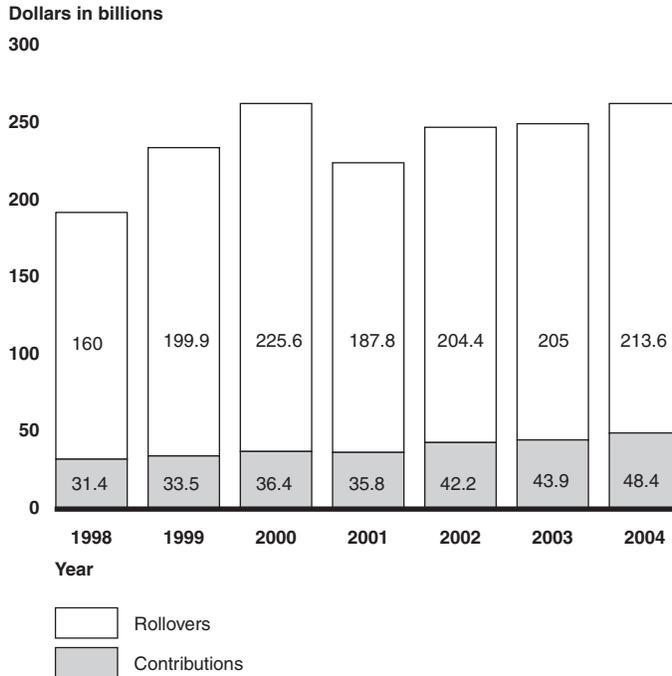


Source: Employee Benefit Research Institute.

Most assets flowing into IRAs come from the transfer of retirement assets between IRAs or from other retirement plans, including 401(k) plans, not from contributions. These “rollovers” allow individuals to preserve their retirement savings when they change jobs or retire. As shown in figure 2, from 1998 to 2004, over 80 percent of funds flowing into IRAs came from rollovers, demonstrating that IRAs play a smaller role in building retirement savings than they play in preserving retirement savings. IRA accounts that contain rollover assets also exceeded those without rollover assets. For example, in 2007, the median amount in a traditional IRA with rollover assets was \$61,000, while the median amount in a traditional IRA without rollover assets was \$30,000.⁹

⁹Sara Holden and Michael Bogdan, “The Role of IRAs in U.S. Households’ Saving for Retirement,” *Research Fundamentals*, vol. 17, no.1 (Washington, D.C., Investment Company Institute, January 2008).

Figure 2: IRA Contributions and Rollovers, 1998 to 2004



Source: Investment Company Institute.

Note: IRA contributions include those made to traditional IRAs, Roth IRAs, and employer-sponsored IRAs. Figures for 2003 and 2004 include estimates and projections.

Households with IRAs Tend to Have Higher Education, Higher Incomes, and Own Traditional IRAs

Traditional and Roth IRA ownership is associated with higher education and income levels. In 2004, 59 percent of IRA households were headed by an individual with a college degree, and only about 3 percent were headed by an individual with no high school diploma.¹⁰ Over one-third of these IRA households earned \$100,000 or more, and less than 2 percent earned less than \$10,000. Households with IRAs also tend to own their homes. Research shows that higher levels of education and household income

¹⁰Additional analysis of the Federal Reserve's Survey of Consumer Finance (SCF) by the Employee Benefits Research Institute, Craig Copeland, "Individual Account Retirement Plans: An Analysis of the 2004 Survey of Consumer Finances."

correlate with a greater propensity to save.¹¹ Therefore, it is not surprising that IRA ownership increases as education and income levels increase. Lastly, IRA ownership is highest among households headed by individuals aged 45 to 54.

More households own traditional IRAs, which were the first IRAs established, than Roth IRAs or employer-sponsored IRAs. In 2007, nearly 33 percent of all households owned traditional IRAs, and about 15 percent owned Roth IRAs. In contrast, about 8 percent of households participated in employer-sponsored IRAs.¹²

Similar Percentages of Households Own IRAs and Participate in 401(k) Plans, but IRA Contributions Are Lower Than Contributions to 401(k) Plans

The percentage of households that own IRAs is similar to the percentage that own 401(k)s, but IRA contributions are less than 401(k) contributions. In 2004, 29 percent¹³ of households owned individually arranged IRAs, and 26 percent participated in 401(k) plans (see fig. 3).¹⁴ Ten percent of households own a traditional or Roth IRA and participate in 401(k) plans.

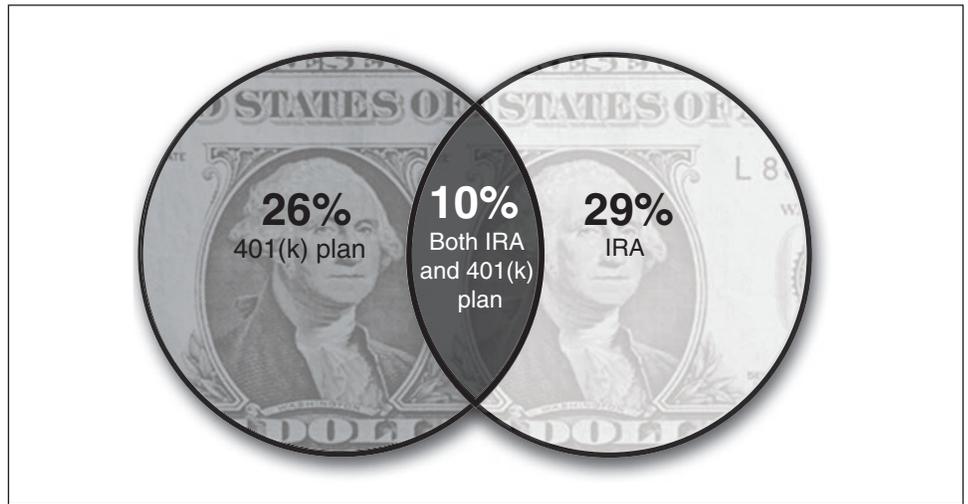
¹¹Sara Holden, Kathy Ireland, Victoria Leonard-Chambers, and Michael Bogdan, "The Individual Retirement Account at Age 30: A Retrospective," *Perspective*, vol. 11, no. 1 (Washington, D.C., Investment Company Institute, February 2005).

¹²Sara Holden and Michael Bogdan, "Appendix: Additional Data on IRA Ownership in 2007," *Research Fundamentals*, vol. 17, no. 1A (Washington, D.C., Investment Company Institute, January 2008).

¹³This figure does not include employer-sponsored IRAs. Other industry data indicates that 8 percent of households participated in employer-sponsored IRAs in 2004.

¹⁴Survey of Consumer Finance (SCF) data is based on a sample of households, and estimates from the SCF survey have associated sampling errors. Therefore, it is not known whether the 29 percent and 26 percent point estimates represent statistically significant differences in the underlying populations. Additional analysis of the SCF by the Employee Benefit Research Institute, Craig Copeland, "Individual Account Retirement Plans: An Analysis of the 2004 Survey of Consumer Finances."

Figure 3: IRA Ownership and 401(k) Participation among U.S. Households, 2004



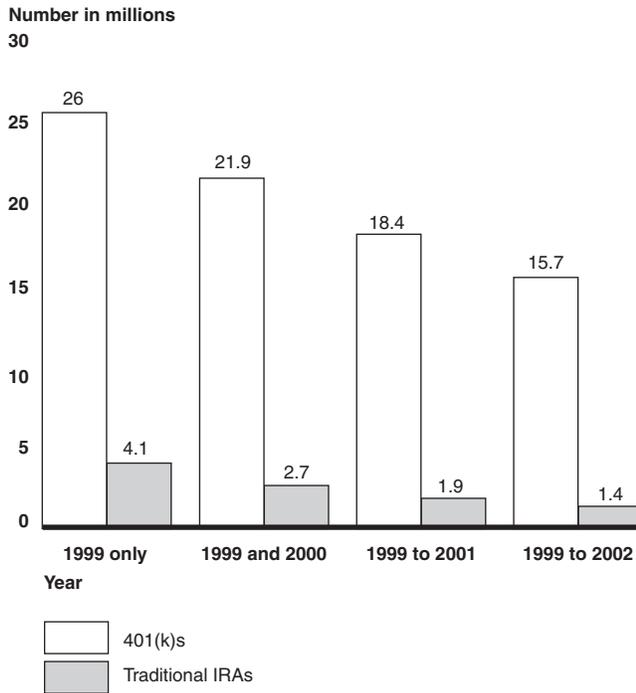
Sources: Employee Benefit Research Institute; PhotoDisc (images).

Note: Data does not include employer-sponsored IRAs.

Although contributions to both 401(k) plans and IRAs increased from 2002 to 2004, 401(k) contributions were almost four times greater than those made to IRAs. Few studies have been done that have compared contributions by IRA owners and 401(k) participants. However, one study assessed the consistency of taxpayer annual contributions to traditional IRAs and to 401(k) plans from tax years 1999 to 2002.¹⁵ As shown in figure 4, the study found that only 1.4 million taxpayers contributed to their traditional IRAs in all 4 years, while nearly 16 million taxpayers contributed to their 401(k) accounts in the same time period.

¹⁵Peter Sailer, Victoria Bryant, and Sara Holden, "Trends in 401(k) and IRA Contribution Activity, 1999-2002 – Results from a Panel of Matched Tax Returns and Information Documents," Internal Revenue Service, Washington, D.C.

Figure 4: Persistency in 401(k) and IRA Contributions, 1999 to 2002



Source: Internal Revenue Service.

The study found that the persistency in making IRA contributions may partially be attributed to limits in the tax deductions some owners could take for their contributions. Certain criteria, including age, income, tax filing status, and coverage in a work-based retirement plan, affect the tax deduction taxpayers could take for contributing to an IRA.

In addition, a study by the Investment Company Institute that included data on contributions by IRA owners shows that more households with Roth IRAs or employer-sponsored IRAs contribute to their accounts than households with traditional IRAs.¹⁶ For example, in 2004, more than half of households with Roth, SAR-SEP, or SIMPLE IRAs contributed to their accounts, but less than one-third of households with traditional IRAs contributed to their accounts. This, again, may be partly attributed to the emerging role of traditional IRAs as a means to preserve rollover assets

¹⁶Sandra West and Victoria Leonard-Chambers, "The Role of IRAs in Americans' Retirement Preparedness," *Research Fundamentals*, vol. 15, no. 1 (Washington, D.C., Investment Company Institute, January 2006).

more than to build retirement savings. The Investment Company Institute study also stated that the median household contribution to traditional IRAs was \$2,300 compared to the median contribution to Roth IRAs of \$3,000. The median contribution to SAR-SEP and SIMPLE IRAs was \$5,000. The study noted that this difference may be related to the higher contribution limits for employer-sponsored IRAs than for traditional IRAs and Roth IRAs. Table 2 shows contributions limits for the current tax year.

Table 2: Contribution Limits for IRAs and Traditional 401(k) Plans, 2008

	Traditional IRA	Roth IRA	SEP IRA	SAR-SEP IRA	SIMPLE IRA	Traditional 401(k) plans
Employee contribution limit ^a	Up to \$5,000	Up to \$5,000	Employees cannot contribute	Up to \$15,500	Up to \$10,500	Up to \$15,500
Employer contribution limit	Not applicable	Not applicable	25 percent of an employee's compensation up to maximum of \$46,000	25 percent of an employee's compensation up to maximum of \$46,000	A contribution equal to 2 percent of employee's compensation or a matching contribution of up to 3 percent of employee's compensation ^b	100 percent of employee's compensation, or up to \$46,000

Source: Internal Revenue Service.

^aEmployee contribution limits to traditional IRAs, Roth IRAs, SIMPLE IRAs, and traditional 401(k) plans are higher for individuals age 50 or older (see table 1).

^bEmployers may reduce the 3 percent contribution limit to a lower percentage, but not lower than 1 percent. Employers may not lower the 3 percent limit for more than 2 calendar years in a 5-year period.

Comparisons between IRAs and 401(k) Plans Are Difficult

Comprehensive comparisons between IRAs and 401(k) plans are difficult because of differences in plan structures. 401(k) plans are sponsored by employers, whereas most households with IRAs own traditional IRAs established outside of the workplace. In addition, most of the assets in IRAs are in traditional IRAs that are set up by individuals and provide individual investors with a vehicle to contribute to their own retirement savings. Employer-sponsored IRAs, such as SIMPLE and SEP, were established for small employers who lack the resources to provide a 401(k) plan. In addition, payroll deduction IRA programs enable small employers to provide employees the opportunity to save for retirement.

Key differences exist between employer-sponsored IRAs and 401(k) plans, as shown in table 3.

Table 3: Key Differences between Employer-Sponsored IRAs and Traditional 401(k) Plans

	Employer-sponsored IRAs	Traditional 401(k) plans
Reporting requirements	No annual reporting requirements	Must report information on plan and plan operations to federal government annually Subject to annual testing to ensure contributions to nonmanagerial employees are proportional to contributions employers make for themselves and their managers
Vesting ^a	Contributions are immediately 100% vested	Employee salary reduction contributions are immediately 100% vested; employer contributions may be vested over time according to plan terms
Withdrawals, loans, and payments	Withdrawals permitted anytime subject to federal income taxes, early withdrawals subject to an additional tax	Withdrawals permitted after specified event occurs (e.g., retirement, plan termination, etc.) subject to federal income taxes; plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax

Sources: Department of Labor and Internal Revenue Service.

^aVesting refers to when a participant has earned a right to a benefit that cannot be taken away (i.e., a nonforfeitable right to the participant's accrued benefit).

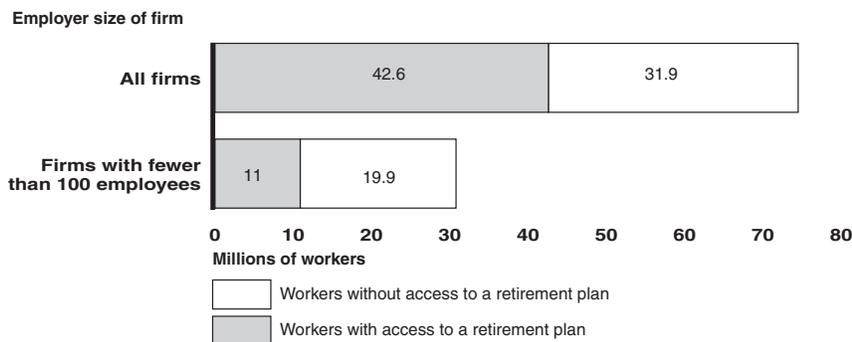
Several Barriers May Discourage Small Employers from Offering Payroll-Deduction and Employer-Sponsored IRAs to Employees

Several barriers may discourage small employers from offering payroll-deduction and employer-sponsored IRAs to their employees. Although employer-sponsored IRAs were designed with fewer reporting requirements to encourage small employers to offer them, few employers appear to do so. In addition, few employers appear to offer payroll-deduction IRA programs. Retirement and savings experts said payroll-deduction IRAs could help many workers save for retirement and these IRAs may be the easiest way for small employers to offer a retirement savings opportunity to their employees. Several barriers, including costs, may discourage employers from offering them; however, information is lacking on the actual costs to employers. In addition, several experts raised questions on how expanded payroll-deduction IRAs may affect employees. Employer-sponsored IRAs offer greater savings opportunities than payroll-deduction IRAs, but employer sponsorship of IRAs may also be hindered by costs, including required employer contributions. Retirement and savings experts offered several legislative proposals to encourage employers to offer and employees to participate in IRAs, but limited government actions have been taken to increase the number of employers sponsoring employer-sponsored IRAs.

Barriers May Discourage Small Employers from Offering IRAs to Employees, and Many of These Employees Lack Access to Workplace Retirement Savings

Employees of small firms are more likely to lack access to a retirement plan at work than employees of larger firms, and several barriers may limit small employers from offering payroll-deduction programs and employer-sponsored IRAs to their employees. Although IRAs have been largely successful at helping individuals preserve their retirement savings through rollovers, experts told us that IRA participation falls short of Congress' first goal for creating IRAs—to provide a tax-preferred account for workers without employer-sponsored retirement plans to save for their retirement. For example, millions of employees of small firms lack access to a workplace retirement plan. The Congressional Research Service found that private-sector firms with fewer than 100 employees employed about 30.9 million full-time workers between the ages of 25 and 64 in 2006. About 19.9 million of those workers lacked access to an employer-sponsored retirement plan, as shown in figure 5.¹⁷

Figure 5: Access of Certain Workers^a to an Employer-Sponsored Retirement Plan, 2006



Source: Congressional Research Service analysis of the U.S. Census Bureau, Current Population Survey, 2006.

^aPrivate sector, full-time, full-year, wage and salary workers, between the ages of 25 and 64.

To address the issue of low retirement plan sponsorship among small employers, Congress created SEP and SIMPLE employer-sponsored IRAs, and has encouraged employers not offering a retirement plan to offer payroll-deduction IRAs. These IRAs were designed to have fewer and less burdensome reporting requirements than 401(k) plans to encourage participation, and payroll-deduction IRA programs do not have any

¹⁷Patrick Purcell, *Pension Sponsorship and Participation: Summary of Recent Trends, CRS Report for Congress*, Order Code RL30122 (Washington, D.C., Congressional Research Service, Sept. 6, 2007).

employer reporting requirements. Payroll-deduction and employer-sponsored IRAs offer several advantages, as shown in table 4.

Table 4: Key Advantages of Payroll-Deduction and Employer-Sponsored IRAs

	Payroll-deduction IRAs	Employer-sponsored IRAs	
		SIMPLE IRAs	SEP IRAs
Key advantages	Employees contribute through payroll deduction to traditional or Roth IRAs	Employees contribute through salary reduction	Only employer contributions allowed
	No employer contributions	Employers choose to either make up to a 3 percent match of participating employee's compensation, or contribute 2 percent of each eligible employee's compensation	Employers may contribute up to 25 percent of their own and each eligible employee's annual compensation to SEP IRAs
	Not considered employer retirement plan; employers are not subject to requirements for such plans	Employers may be able to claim a tax credit for part of start-up costs	Contributions are not mandatory annually
	No annual financial reporting requirements	No annual financial reporting requirements	Employers may be able to claim a tax credit for part of start-up costs
			No annual financial reporting requirements

Source: GAO analysis of IRS documents.

Labor issued a regulation under which an employer could maintain a payroll deduction program for employees to contribute to their IRAs without being considered a pension plan under ERISA. Through payroll-deduction IRAs, an employer withholds and forwards an amount determined by the employee directly to an IRA (traditional or Roth) established by the employee. Although any employer can provide payroll-deduction IRAs to their employees, regardless of whether or not they offer another retirement plan, retirement and savings experts told us that very few employers offer their employees the opportunity to contribute to IRAs through payroll deduction. Further, Labor and IRS officials told us that

data is limited on how many employers offer payroll-deduction IRAs.¹⁸ Because there are no reporting requirements for payroll-deduction IRAs, and very limited reporting requirements for employer-sponsored IRAs—as discussed later in this report—we were unable to determine exactly how many employers offer these IRAs to their employees. For example, because an employer’s responsibility with payroll-deduction IRAs is to forward employee contributions to IRAs, employers are not required to report to the federal government that they are providing this service to employees. Consequently, neither Labor nor IRS is able to determine how many employers offer payroll-deduction IRAs.

Employee access to SIMPLE and SEP IRAs also appears limited. SIMPLE IRAs are only available to firms with 100 employees or fewer who do not already offer another retirement plan; and SEP IRAs are available to employers of any size, including those who may offer either a DC or DB plan. The Bureau of Labor Statistics reported that, in 2005, 8 percent of private sector workers in firms with fewer than 100 employees participated in a SIMPLE IRA, and 2 percent of workers participated in a SEP IRA.¹⁹ An IRS evaluation of employer-filed W-2 forms estimated that in 2004, 190,000 employers sponsored SIMPLE IRAs. However, officials told us that this figure was likely understated, as it does not include accounts that may be owned by sole proprietors or individuals who own unincorporated businesses by themselves, who are not required to file W-2 forms.²⁰ GAO was unable to determine the number of employers sponsoring SEP plans, but IRS data from 2002 show more taxpayers owned SEP than SIMPLE IRAs, with 3.5 million SEP accounts compared to 2 million SIMPLE accounts.

¹⁸Labor and IRS have taken steps to promote these plans. For example, in 1975, Labor issued a regulation describing the conditions under which payroll-deduction IRA programs offered by employers are not considered a pension plan under Title I of ERISA. See 29 C.F.R. § 2510.3-2(d). Through this regulation—and several other advisory opinions and an Interpretive Bulletin issued in 1999—Labor provided employers with a “safe harbor” from reporting and disclosure requirements, fiduciary duties, and enforcement rights under ERISA Title 1 that apply to employer-sponsored pensions. 29 C.F.R. § 2509.99-1 (also known as Interpretive Bulletin 99-1). See 64 Fed. Reg. 33000 (June 18, 1999). In 1999, IRS issued an announcement providing information to employees and employers on payroll-deduction contributions for Roth and traditional IRAs. See Internal Revenue Bulletin 1999-2, at 44 (Jan. 11, 1999).

¹⁹U.S. Department of Labor, U.S. Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States, 2005*, Bulletin 2589 (May 2007).

²⁰IRS was also unable to estimate the number of SEP IRAs sponsored by sole proprietors.

Payroll-Deduction IRAs Could Help Workers Save, but Barriers May Discourage Employers from Offering a Payroll-Deduction IRA Program

Retirement and savings experts reported that increased worker access to payroll-deduction IRAs could help many workers to save for retirement at work. Through payroll-deduction IRA programs, employees may either contribute to traditional or Roth IRAs, depending on the eligibility requirements of these plans. Any individual under the age of 70½ with taxable compensation may contribute to a traditional IRA, and many individuals could receive a tax deduction for their contribution.²¹ Most low- and middle-income individuals are eligible to contribute to Roth IRAs.²² In theory, all of the estimated 20 million employees of small firms mentioned previously who lacked an employer-sponsored retirement plan in 2006 could be eligible to contribute to a traditional IRA through payroll-deduction; and many of these individuals would be eligible to claim a tax deduction for their contribution.

According to Labor’s guidance on payroll-deduction IRAs and several experts we interviewed, individuals are more likely to save in IRAs through payroll deductions than they are without deductions. Payroll deductions are a key feature in 401(k) and other DC plans. Economics literature that we reviewed identifies payroll deduction as a key factor in the success of 401(k) plans, and participation in these plans is much higher than in IRAs, which do not typically use payroll deduction. According to the Congressional Budget Office, in 2003, 29 percent of all workers contributed to a DC plan, while only 7 percent of all workers contributed to an IRA.²³ According to recent economics literature that we

²¹Eligibility for a full or partial deduction for traditional IRA contributions depends on whether a taxpayer or spouse is covered by an employer plan, as well as limits on modified adjusted gross income (AGI) and filing status. For example, a single worker not covered by an employer plan is eligible for the full deduction regardless of income, and a married taxpayer filing jointly whose spouse is covered by an employer plan can take the full deduction if the couple’s modified AGI is \$159,000 or less for 2008. Other individuals may be eligible for partial deductions, and even those ineligible for any deduction can still make nondeductible contributions to a traditional IRA.

²²An individual’s eligibility to contribute to Roth IRAs is based on their modified AGI and their tax filing status. For example, in 2008, single, head-of-household, and married individuals filing separately with a modified AGI of less than \$101,000 could contribute up to \$5,000 (\$6,000 if age 50 or older.) Individuals with an AGI that is more than \$101,000 but less than \$116,000 could contribute at reduced limits, and individuals making \$116,000 or more could not contribute to Roth IRAs. Individuals that are married, filing jointly, or qualified widowers with a modified AGI less than \$159,000 could contribute up to the \$5,000 limit (\$6,000 for age 50 or older). Couples with income between \$159,000 and \$169,000 could contribute at lower levels, and those making more than \$169,000 cannot contribute.

²³Congressional Budget Office, “Utilization of Tax Incentives for Retirement Saving: Update to 2003,” *Background Paper* (Washington, D.C., March 2007).

reviewed, several papers point to the importance of employment-based defaults, employer endorsements, and advice from peers as factors that may influence an employee's decision to participate in a retirement plan.²⁴ The influential role that employers may have in an employee's decision to participate in a workplace plan may encourage some employees to also participate in payroll-deduction IRAs.²⁵

Payroll deduction facilitates retirement savings by addressing key behavioral barriers of procrastination and inertia, or a lack of action, according to economics literature that we reviewed and experts we interviewed. Although many individuals have intentions to save for retirement, some may procrastinate because retirement is seen as a remote event and more immediate expenses take precedence. Some individuals also experience inertia because they lack knowledge on how to save or have difficulty making decisions with a number of complex options. Literature that we reviewed states that payroll deduction gives employees a "commitment device" to help them automatically contribute to retirement before wages are spent, relieving them of making ongoing decisions to save.²⁶

Retirement and savings experts and representatives of small business and consumer groups told us payroll-deduction IRAs are the easiest way for small employers to offer their employees a retirement savings vehicle. According to Labor publications and experts, payroll-deduction IRAs provide employers with a low-cost retirement benefit for their employees, because these IRAs do not permit employer contributions. Payroll-deduction IRAs also have fewer requirements for employee

²⁴John Beshears, James J. Choi, David Laibson, Brigitte C. Madrian, "The Importance of Default Options for Retirement Savings Outcomes: Evidence from the United States," *Working Paper 12009* (Cambridge, Mass., National Bureau of Economic Research, January 2006); Ester Duflo and Emmanuel Saez, "The Role of Information and Social Interactions in Retirement Plan Decisions: Evidence from a Randomized Experiment," *Quarterly Journal of Economics*, Vol 68. (2003).

²⁵Under Labor's Interpretive Bulletin 99-1, an employer may encourage its employees to save for retirement by providing general information on the payroll-deduction program and other educational materials that explain the advisability of retirement savings without converting the payroll-deduction program into a plan covered under Title I of ERISA.

²⁶Steven F. Venti, "Choice, Behavior, and Retirement Saving," in *The Oxford Handbook of Pensions and Retirement Income*, Eds. Gordon C. Clark, Alicia H. Munnell, J. Michael Orszag (Oxford, Great Britain, 2006) 603-17 and Olivia Mitchell and Stephen Utkus, "Lessons from Behavioral Finance for Retirement Plan Design," *Pension Research Council Working Paper*, PRC WP 2003-6 (Philadelphia, Pa., 2003).

communication than SIMPLE and SEP IRAs,²⁷ and employers are not subject to ERISA fiduciary responsibilities so long as they meet the conditions in Labor's regulation and guidance for managing these plans.²⁸ Finally, payroll-deduction IRAs allow employers to select a single IRA provider to service the accounts to keep administrative costs down and simplify the process for employees.²⁹

Despite these advantages, payroll-deduction IRAs may present several limitations which discourage employers from offering a payroll-deduction IRA program, including: (1) costs to small employers for setting up payroll deductions, (2) lack of flexibility to promote payroll-deduction IRAs to employees, (3) lack of incentives to employers, and (4) lack of awareness about how these IRAs work.

- **Costs to employers.** Additional administrative costs associated with setting up and managing payroll-deduction IRAs may be a barrier for small employers, particularly for those without electronic payroll processing. According to Labor, costs to employers are significantly influenced by the number of IRA providers an employer must remit contributions to on behalf of employees. As such, Labor's guidance allows employers to select a single IRA provider for all employees. Also, under Labor's guidance, an IRA sponsor may reimburse the employer for the actual costs of operating a payroll-deduction IRA as long as such costs do not include profit to the employer. Small business groups told us that costs could also be influenced by the number of employees participating in the program and whether an employer has a payroll processing system in place to make automatic deductions and direct deposits to employee accounts. Several experts told us that many small employers lack electronic, or automatic, payroll systems, and these employers would be subject to higher management costs for offering payroll-deduction IRAs. Moreover, representatives from small business groups and other experts told us that

²⁷For example, SIMPLE IRAs require employers to provide employees with a summary plan description and an annual election notice. SEP IRAs require employers to provide employees with written statements that explain the terms of the pension, how changes are made, and when employees will receive information about contributions to their accounts.

²⁸Further, employers are not required to determine an employee's eligibility status for Roth contributions or tax-deferred contributions to traditional IRAs, which may vary based on the employee's modified adjusted gross income or tax filing status. These responsibilities would fall on the employee.

²⁹If one or more of the conditions are not met, the employer may be considered to have established or maintained a pension plan.

providing health care insurance is a more pressing issue to many small employers than providing a retirement savings opportunity.

Although experts reported that payroll-deduction IRAs represent costs to employers, we found that opinions on the significance of those costs varied. Experts advocating for expanded payroll-deduction IRAs reported that most employers would incur little to no costs since most employers already make payroll deductions for Social Security and Medicare, as well as federal, state, and local taxes. According to these experts, payroll-deduction IRAs function similarly to existing payroll tax withholdings and adding another deduction would not be a substantial requirement. However, other experts reported that costs to employers may be significant. One report indicated that costs to employers for managing payroll-deduction IRAs were substantial, particularly for employers without electronic payrolls; however, the study did not estimate what the actual costs to employers may be on a per account basis.³⁰ In our review, we were unable to identify reliable government data on actual costs to small employers.

- **Flexibility to Promote Payroll-Deduction IRAs.** According to IRA providers, some employers are hesitant to offer a payroll-deduction IRA program because they find Labor’s guidance limits their ability to effectively publicize the availability of payroll-deduction IRAs to employees for fear of being subject to ERISA requirements.³¹ Labor officials told us they issued this guidance to make it easier for employers to understand the guidelines to follow in order to maintain the safe harbor that applies to payroll-deduction IRAs. This guidance explains the conditions under which employers can offer payroll-deduction IRAs and not be subject to the ERISA reporting and fiduciary responsibilities, which apply to employer retirement plans, like 401(k) plans. Labor officials said they have not received any feedback from employers or IRA providers on the clarity of the guidance since it was issued in 1999. However, at the time the guidance was issued, some employers had indicated to Labor that they were hesitant to offer payroll-deduction IRAs due to ERISA fiduciary

³⁰Mary M. Schmitt and Judy Xanthopoulos, “Automatic IRAs: Are They Administratively Feasible, What Are the Costs to Employers and the Federal Government, and Will They Increase Retirement Savings?” Preliminary Report Prepared for AARP, Optimal Benefit Strategies, LLC (Mar. 8, 2007.)

³¹Labor’s guidance on payroll-deduction IRAs is summarized in Interpretive Bulletin 99-1, Payroll Deduction Programs for Individual Retirement Accounts, 29 C.F.R § 2509.99-1.

responsibilities.³² IRA providers told us that employers need greater flexibility in Labor’s guidance to promote payroll-deduction IRAs and provide a greater sense of urgency to employees to save for retirement. However, Labor told us that it has received no input from IRA providers as to what that flexibility would consist of, and Labor officials note that Interpretive Bulletin 99-1 specifically provides for flexibility.

- **Lack of savings incentives for small employers.** Small business member organizations and IRA providers said that the contribution limits for payroll-deduction IRAs do not offer adequate savings incentives to justify the effort to offer these IRAs.³³ Because the contribution limits to these IRAs are significantly lower than those that apply to SIMPLE and SEP IRAs, employers seeking to provide a retirement plan to their employees would be more likely to choose other options, which allow business owners to contribute significantly more to their own retirement than payroll-deduction IRAs allow.
- **Lack of awareness.** One reason payroll-deduction IRA programs have not been widely adopted by employers may be a lack of awareness about how payroll-deduction and other IRAs work. Representatives from small business groups said many small employers are unaware that payroll-deduction IRAs are available or that employer contributions are not required. However, Labor has produced educational materials describing the payroll-deduction and employer-sponsored IRA options available to employers and employees, and one Labor official told us that that Labor has received positive feedback from small businesses for their efforts. IRA providers told us they experience challenges in marketing IRAs because varying eligibility requirements make it difficult to communicate IRA benefits to a mass market. Instead, providers said it is more efficient to market IRAs to current customers and focus advertising budgets on capturing rollover IRAs.

³²In the explanation section of the Federal Register notice in which Labor issued Interpretive Bulletin 99-1, Labor stated that “some employers have indicated that they are reluctant to create payroll withholding programs for individual retirement accounts because they are concerned that such programs would be considered pension plans covered by ERISA and therefore subject to the requirements of Title I of ERISA.” *64Fed. Reg.* 33000 (June 18, 1999).

³³In 2008, eligible individuals were allowed to contribute a total of \$5,000 to one or more traditional and Roth IRAs, and individuals older than age 50 could contribute \$6,000.

Questions Remain on How Expanded Payroll-Deduction IRAs May Affect Employees

Some experts questioned whether increased worker access to payroll-deduction IRA programs will in fact lead to increased participation and retirement savings for many workers. For example, IRA providers and experts expressed concerns that low- and moderate-income workers may choose not to participate in payroll-deduction IRAs because they lack discretionary income. Many low- and moderate-income workers are already eligible to contribute to IRAs, but have chosen not to do so because they lack sufficient income to save for retirement. Experts raised doubts that payroll-deduction IRA programs would lead to adequate retirement savings, as low-income individuals would be unable to contribute to these IRAs consistently. Further, experts said that individuals with low-balance IRAs would be inclined to make early withdrawals and be subject to additional income taxes. Experts also reported that because the incentives for tax-deferred IRA contributions are based on marginal tax rates, lower-income individuals receive a lower immediate tax subsidy than higher income individuals. Two experts told us that policymakers should begin their evaluation of payroll-deduction IRAs by calculating how much savings is required for an adequate standard of living in retirement, and then determine what role payroll-deduction IRAs could play in reaching that level.

SIMPLE and SEP IRAs Can Help Workers to Save, but Several Factors May Discourage Employer Sponsorship

We found that employer-sponsored SEP and SIMPLE IRAs can help small employers and their workers to save for their retirement, but several factors may discourage small employers from offering these IRAs to their employees. Experts said the higher contribution limits and flexible employer contribution options of SEP and SIMPLE IRAs offer greater savings benefits to employers and employees than payroll-deduction IRAs.³⁴ For example, the 2007 SIMPLE contribution limit of \$10,500 per year for individuals under age 50 is more than twice the amount allowed in 2007 in payroll-deduction IRAs. In 2007, SEP IRAs allowed employers to contribute the lesser of 25 percent of an employee's compensation or up to \$45,000.³⁵ Moreover, because SIMPLE IRAs require employers to match the

³⁴SIMPLE IRAs require that employers contribute to their employees' IRAs by either making "nonelective" 2 percent contributions to the accounts of all employees, or by matching the salary-reduction contributions of participating employees up to 3 percent of the employee's compensation, up to \$10,500 in 2007. Individuals over age 50 at the end of the 2007 calendar year could make an additional "catch-up" contribution of \$2,500 to their SIMPLE IRAs. Under a SEP, employers contribute directly to SEP-IRAs for all employees, including the employer, with contributions up to 25 percent of each employee's pay, but no more than \$45,000 in 2007.

³⁵Compensation generally does not include contributions to the SEP.

contributions of participating employees or to make “nonelective” contributions to all employee accounts, employees are able to save significantly more per year in SIMPLE accounts than they are in payroll-deduction IRAs. Under SEP rules, employers must set up SEP IRAs for all employees working for them in at least 3 of the past 5 years who have reached age 21 and received at least \$500 in compensation in 2007, and employees may not contribute to their own accounts. Annual employer contributions are not mandatory; however, if an employer decides to contribute, they must make contributions to the SEP IRAs of all employees performing services in that year. Because annual contributions are not mandatory for SEP IRAs, employers have the flexibility to adjust contributions depending on business revenues. Employers offering SIMPLE IRAs must either make a nonelective contribution of 2 percent of each eligible employee’s compensation or a minimum of a 1 percent match to the SIMPLE IRAs of those employees who choose to contribute to their accounts.³⁶

Certain factors may limit employer sponsorship of SIMPLE and SEP IRAs. Small business groups told us that the costs of managing SEP and SIMPLE IRAs may be prohibitive for small employers. Experts also pointed out that contribution requirements for SIMPLE and SEP plans may, in some cases, limit employer sponsorship of these plans. For example, because SIMPLE IRAs require employers to make contributions to employee accounts, some small firms may be unable to commit to these IRAs. Small business groups and IRA providers told us that small business revenues are inconsistent and may fluctuate greatly from year to year, making required contributions difficult for some firms. In addition, employers offering SIMPLE IRAs must determine before the beginning of the calendar year whether they will match employee contributions or make nonelective contributions to all employees’ accounts. According to IRA providers, this requirement may discourage some small employers from offering these IRAs, and if employers had the flexibility to make additional contributions to employee accounts at the end of the year, employers may be encouraged to contribute more to employee accounts.

With regard to SEP IRAs, two experts said small firms may be discouraged from offering these plans because of the requirement that employers must

³⁶According to IRS Publication 560, employers sponsoring SIMPLE IRAs who elect to match employee contributions may not match less than 3 percent for more than 2 years in a 5-year period. See IRS, *Retirement Plans for Small Business*, Publication 560 (2006).

set up a SEP IRA for all employees performing service for the company in 3 of the past 5 years and with more than \$500 in compensation for 2007. These experts stated that small firms are likely to hire either seasonal employees or interns who may earn more than \$500, and these employers may have difficulty finding an IRA provider willing to open an IRA small enough for these temporary or low-earning participants.

Proposals Exist to Encourage Employers to Offer and Employees to Participate in IRAs

Retirement and savings experts reported that several legislative proposals could encourage employers to offer and employees to participate in IRAs. While several bills have been introduced in Congress to expand worker access to payroll-deduction IRAs, limited government actions have been taken to increase the number of employers sponsoring employer-sponsored IRAs.

- **Employer incentives to offer IRAs.** Several retirement and savings experts said additional incentives should be in place to increase employer sponsorship of IRAs. For example, experts suggested tax credits should be made available to defray start-up costs for small employers of payroll-deduction IRAs, particularly for those without electronic or automatic payroll systems. These credits should be lower than the credits available to employers for starting SIMPLE, SEP, and 401(k) plans to avoid competition with those plans, these experts said.³⁷ IRA providers and small business groups said increasing contribution limits for SIMPLE IRAs to levels closer to those for 401(k) plans would encourage more employers to offer these plans. Other experts said doing so could provide incentives to employers already offering 401(k) plans to switch to SIMPLE IRAs, which have fewer reporting requirements.
- **Employee incentives to participate in IRAs.** Experts offered several proposals to encourage workers to participate in IRAs, including: (1) expanding existing tax credits for moderate- and low-income workers, (2) offering automatic enrollment in payroll-deduction IRAs, and (3) increasing public awareness about the importance of saving for retirement and how to do so. Several experts said expanding the scope of the Retirement Savings Contribution Credit, commonly known as the saver's

³⁷The currently available "Tax Credit for Small Employer Pension Plan Startup Costs" applies to eligible employers who offer SEP, SIMPLE, and qualified plans. This credit is intended to cover costs to set up, administer, and educate employees about the plan for up to a maximum of \$500 per year for each of the first 3 years of the plan. It should be noted that providing a similar tax credit for employers offering payroll-deduction IRAs would have revenue implications for the federal budget.

credit, could encourage IRA participation among workers who are not covered by an employer-sponsored retirement plan.³⁸ They said expanding the saver's credit to include more middle-income earners and making the credit refundable—available to tax filers even if they do not owe income tax—could encourage more moderate- and low-income individuals to participate in IRAs. However, an expanded and refundable tax credit would have revenue implications for the federal budget. Other experts told us that automatically enrolling workers into payroll-deduction and SIMPLE IRAs could increase employee participation; however, small business groups and IRA providers said that mandatory automatic enrollment could be burdensome to small employers.³⁹ In addition, given the lack of available income for some, several experts told us that low-income workers may opt out of automatic enrollment programs or be more inclined to make early withdrawals, which can result in additional income taxes. Experts also said increasing public awareness of the importance of saving for retirement and educating individuals how to do so could increase IRA participation. Several experts reported the growth of DC plans and IRAs has resulted in individuals bearing greater responsibility for their own retirement and earlier and more frequent information about retirement savings could encourage IRA participation.

³⁸Currently, the saver's credit provides a nonrefundable tax credit to low- and moderate-income savers of up to 50 percent of their annual IRA or 401(k) contributions up to \$2,000. In 2007, the credit was available to single and married individuals filing separate income tax returns who make no more than \$26,000 and to married couples filing jointly who make no more than \$52,000. Depending on income and filing status, taxpayers may claim a credit as high as 50 percent or as low as 10 percent of their contributions. The saver's credit was designed to provide greater savings incentive to low- and moderate-income workers who, because of their lower marginal tax rates, receive lower tax subsidies by saving in tax-preferred accounts, such as IRAs, than higher income individuals.

³⁹Several studies show that 401(k) plans with automatic enrollment features have increased participation rates, especially among young and lower income workers who are less likely to participate in these plans. However, as previously mentioned, 401(k) plans are different from IRAs with different incentives. One study of a large firm found that automatic enrollment increased participation by eligible employees from 57 percent to 86 percent in one year for new hires. Brigitte C. Madrian and Dennis F. Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," *The Quarterly Journal of Economics*, vol. 116, issue 4 (November 2001).

IRS and Labor Share Responsibility for Overseeing IRAs, but Labor Has No Process in Place to Monitor IRAs and Data Gaps Exist

IRS and Labor share oversight for all types of IRAs, but Labor lacks a process to monitor all IRAs and data gaps exist. IRS is responsible for tax rules on establishing and maintaining IRAs, while Labor is responsible for oversight of fiduciary standards for employer-sponsored IRAs. Payroll-deduction IRAs are not under Labor's jurisdiction;⁴⁰ however, Labor does provide guidance to help ensure such a retirement program is not subject to the Title I requirements of ERISA. Reporting requirements for employer-sponsored IRAs are limited. Under Title I, there is no reporting requirement for SIMPLE IRAs, and an alternative method available for reporting of employer-sponsored SEP IRAs.⁴¹ Labor does not have processes in place to identify all employers offering IRAs, numbers of employees participating, and employers not in compliance with the law. Obtaining information about employer-sponsored and payroll-deduction IRAs is also important to determine whether these vehicles help workers without pensions and 401(k) plans build retirement savings. Although IRS publishes some IRA data, IRS has not consistently produced IRA reports.

IRS and Labor Share Responsibility for Overseeing IRAs

IRS and Labor share responsibility for overseeing IRAs. IRS has primary responsibility for tax rules governing how to establish and maintain an IRA, as shown in figure 5.⁴² Labor has sole responsibility for overseeing ERISA's fiduciary standards for employer-sponsored IRAs. Fiduciaries have an obligation, among others, to make timely contributions to fund benefits. When contributions are delinquent for those IRAs subject to Labor's jurisdiction, Labor investigates and takes action to ensure that contributions are restored to the plan. Labor also issues guidance related to payroll-deduction IRAs. In 1999, Labor issued an interpretive bulletin that consolidated Labor regulations and various advisory opinions on

⁴⁰As long as employers follow guidelines set by Labor for managing the payroll-deduction IRA, employers are not subject to the fiduciary requirements in ERISA Title I that apply to employer-sponsored retirement plans, such as 401(k) plans.

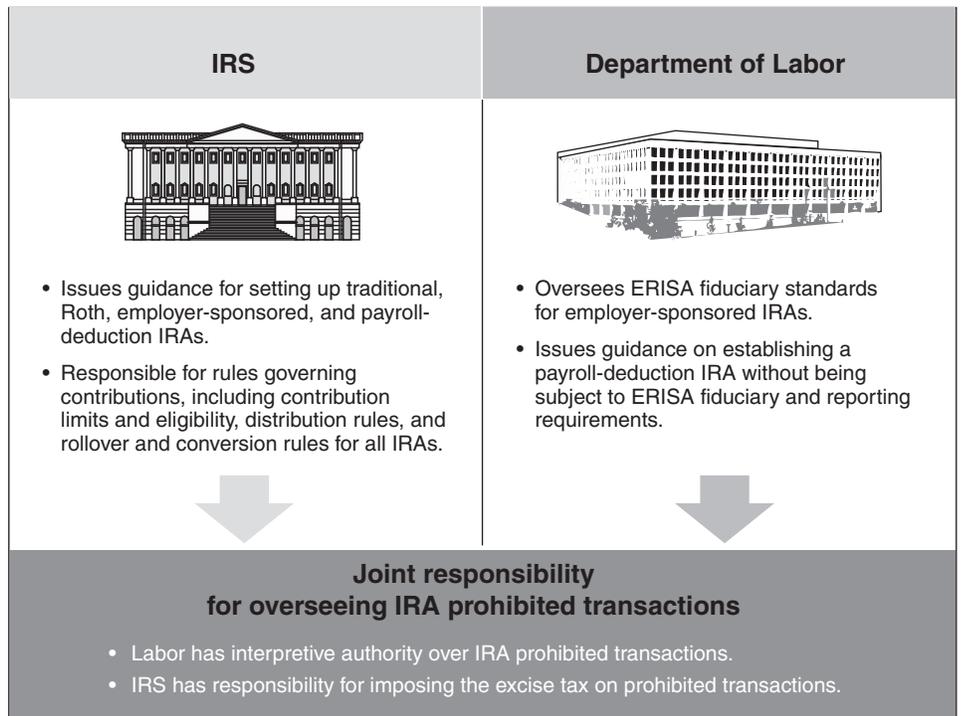
⁴¹Section 101(h)(1) of ERISA Title I provides that no report shall be required for qualified salary reduction arrangements under section 408(p) of the Internal Revenue Code (SIMPLE IRAs). In addition, Labor provides an alternative method of compliance for reporting SEP arrangements through IRS Form 5305-SEP.

⁴²IRS issues guidance for setting up traditional and Roth IRAs through its Publication 590, Individual Retirement Arrangements, and similar guidance for employer-sponsored IRAs can be found in IRS's Publication 560, Retirement Plans for Small Business. These publications include information on the type of financial institutions that can be used to establish an IRA, and the requirements that a taxpayer must meet to establish such an account.

payroll-deduction programs for IRAs into one set of guidance. Specifically, the bulletin sets out Labor's safe harbor under which an employer may establish a payroll-deduction IRA program without inadvertently establishing an employee benefit plan subject to all of the ERISA requirements.⁴³

⁴³Labor's guidance explains that an employer that establishes a payroll-deduction IRA program (traditional or Roth) is not considered to have established an employee retirement plan subject to ERISA if the following are satisfied: (1) in employee communications regarding the program, the employer maintains neutrality with respect to IRA investment options available; (2) if the employer establishes limitations on the number of IRA investment options available, the program discloses any costs or limitations on employees' ability to rollover to other IRAs; (3) the employer does not pay any administrative, investment management, or other fees which the IRA sponsor would require an employee to pay for establishing or maintaining the IRA; (4) the employer does not receive any consideration for operating the program.

Figure 6: Primary Responsibilities of IRS and Labor for IRAs



Sources: GAO analysis of Employee Retirement Income Security Act of 1974 and the Internal Revenue Code; Art Explosion (images).

Labor and IRS also work together to oversee IRA prohibited transactions; generally, Labor has interpretive jurisdiction and IRS has certain enforcement authority.⁴⁴ Both ERISA and the Internal Revenue Code contain various statutory exemptions from the prohibited transaction rules and Labor has authority to grant administrative exemptions and

⁴⁴Generally, prohibited transactions include any improper use of an IRA by the account holder or any disqualified person, which includes the individual who established the IRA, members of the individual's family, and fiduciaries with respect to the IRA. Examples of prohibited transactions with an IRA include: borrowing money from an IRA, selling property to it, receiving unreasonable compensation for managing the account, using the account as security for a loan, and buying property for personal use with IRA funds. Treasury retains authority only with respect to transactions that are exempted by subsection 404(c) of ERISA from the application of the prohibited transaction provisions of Title I of ERISA.

establish exemption procedures.⁴⁵ Labor has interpretive authority over prohibited transactions and may grant administrative exemptions on a class or individual basis for a wide variety of proposed transactions with a plan. IRS has responsibility related to imposing an excise tax on parties that engage in a prohibited transaction.⁴⁶

Reporting Requirements for Employer Sponsored IRAs Are Limited

Reporting requirements for employer-sponsored IRAs are limited. Currently, the financial institution/trustee handling the employer-sponsored IRA provides the IRS and participants with annual statements containing contribution and fair market value information on IRS Form 5498, IRA Contribution Information, as shown in figure 7.

⁴⁵The statutory exemptions generally include loans to participants, the provision of services needed to operate a plan for reasonable compensation, loans to employee stock ownership plans, and investment with certain financial institutions regulated by other state or federal agencies. Reorganization Plan No. 4 of 1978 transferred the Treasury Department's authority over prohibited transaction exemptions to Labor, with certain exceptions.

⁴⁶A provision of the Internal Revenue Code directly imposes an excise tax against disqualified persons, including employee benefit plan sponsors and service providers, who engage in prohibited transactions with tax-qualified pension and profit sharing plans. The IRS must coordinate with Labor regarding the imposition of the excise tax under section 4975 of the Internal Revenue Code. In place of the imposition of an excise tax under the Internal Revenue Code, if the prohibited transaction involves the IRA owner, the IRA is disqualified from favorable tax treatment.

Figure 7: IRS Form 5498, IRA Contribution Information

2008 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0747		2008 Form 5498	IRA Contribution Information
TRUSTEE'S or ISSUER'S name, street address, city, state, and ZIP code		1 IRA contributions (other than amounts in boxes 2-4 and 8-10) \$		2 Rollover contributions \$			
TRUSTEE'S or ISSUER'S federal identification no.	PARTICIPANT'S social security number	3 Roth IRA conversion amount \$		4 Recharacterized contributions \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
PARTICIPANT'S name		5 Fair market value of account \$		6 Life insurance cost included in box 1 \$			
Street address (including apt. no.)		7 IRA SEP SIMPLE Roth IRA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		9 SIMPLE contributions \$			
City, state, and ZIP code		8 SEP contributions \$		11 Check if RMD for 2009 <input type="checkbox"/>			
Account number (see instructions)		10 Roth IRA contributions \$					
Form 5498		Cat. No. 50010C		Department of the Treasury - Internal Revenue Service			
Do Not Cut or Separate Forms on This Page				— Do Not Cut or Separate Forms on This Page			

Source: Internal Revenue Service.

Distributions from that same plan are reported by the financial institution making the distribution to both IRS and the recipients of the distributions on IRS Form 1099-R, Distributions from Pension, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts, etc., as shown in figure 8.

Figure 9: IRS Form W-2, Wage and Tax Statement

22222		Void <input type="checkbox"/>	a Employee's social security number		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld	
			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9 Advance EIC payment		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12
f Employee's address and ZIP code			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other		12c	
					12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement **2008** Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable. For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D. Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page — Do Not Cut, Fold, or Staple Forms on This Page

Source: Internal Revenue Service.

Employers who offer payroll-deduction IRAs have no reporting requirements, and consequently, there is no reporting mechanism that captures how many employers offer payroll-deduction IRAs. Although IRS receives information reports for all traditional and Roth IRAs, those data do not show how many of those IRAs were for employees using payroll-deduction IRAs. In our discussions with Labor and IRS officials, they explained that the limited reporting requirements for employer-sponsored IRAs were put in place to try to encourage small employers to offer their employees retirement plan coverage by reducing their administrative and financial burdens.

According to Labor officials, IRS does not share the information it receives with Labor because it is confidential tax information. IRS clarified that it does not share tax information involving specific employers or employees with Labor because it is confidential. Consequently, Labor does not have information on employer-sponsored IRAs. Labor also does not receive information, such as annual financial reports, from such employers, as it does from private pension plan sponsors. For example, pension plan sponsors must file Form 5500 reports with Labor on an annual basis, which provides Labor with valuable information about the financial health and operation of private pension plans.⁴⁷ Labor's Bureau of Labor Statistics (BLS) National Compensation Survey surveys employee benefit plans in private establishments, receiving information on access, participation, and take-up rates for DB and DC plans. The BLS survey, however, collects less information on employer-sponsored IRAs.

Labor Has No Process in Place to Monitor Employer-Sponsored and Payroll-Deduction IRAs

Given the limited reporting requirements for employer-sponsored IRAs and the absence of requirements for payroll-deduction IRAs, as well as Labor's role in overseeing these IRAs, a minimum level of oversight is important to ensure that employers are acting in accordance with the law. Yet, Labor officials said that they are unable to monitor (1) whether all employers are in compliance with the prohibited transaction rules and fiduciary standards, such as by making timely and complete employer-sponsored IRA contributions or by not engaging in self-dealing,⁴⁸ and (2) whether all employers who offer a payroll-deduction IRA are meeting the conditions of Labor's guidance.

- **Employer-sponsored IRAs:** Labor officials said that they do not have a process for actively seeking out and determining whether employer-

⁴⁷The Form 5500 has multiple parts and various schedules. The main part of the form provides basic information to identify the plan and type of plan. Form 5500 schedules are used to collect more in-depth information, including data on assets, liabilities, insurance, and financial transactions. These schedules can be separated into two distinct groups: those that contain financial information on the plan and those that contain information on the benefits that the plan expects to pay out. Information from the financial schedules helps to provide a picture of a plan's financial condition, while the benefit schedules collect information on the contributions to and distributions made from the plan in the current and future years.

⁴⁸Section 406(b) of ERISA and §4975 of the Internal Revenue Code prohibit a plan fiduciary from engaging in self-dealing, which is described as conduct by fiduciaries that consists of taking advantage of their position in a transaction and acting for their own interests rather than for the interests of the beneficiaries of the plan.

sponsored IRAs are engaging in prohibited transactions or not abiding by their fiduciary responsibilities, such as by having delinquent or unremitted employer-sponsored IRA contributions. Instead, as in the case of Labor's oversight of pension plans, Labor primarily relies on participant complaints as sources of investigative leads to detect employers that are not making the required contributions to their employer-sponsored IRA. For example, according to Labor officials, about 90 percent of its IRA investigations were the result of participant complaints. However, while Labor has other processes in place for private pension plan oversight, such as computer searches and targeting to identify ERISA violations, Labor does not have other processes for IRA investigation leads. Unlike its oversight of pension plans, Labor is at a greater risk of not being able to ensure that all IRA sponsors are in compliance with the laws designed to protect individuals' retirement savings.

- **Payroll-deduction IRAs:** Through payroll-deduction IRAs, employees may establish either traditional or Roth IRAs, and employees may contribute to these accounts through voluntary deductions from their pay, which are forwarded by the employer to the employee's IRA. As long as employers meet the conditions in Labor's regulation and guidance, employers are not subject to the fiduciary requirements in ERISA Title I that apply to employer-sponsored retirement plans, such as 401(k) plans. According to Labor officials, if they become aware of an employer operating a payroll-deduction IRA that may not be following agency guidance, Labor will conduct an investigation to determine if the IRA should be treated as an ERISA pension plan. The IRA may be become subject to the requirement of Title I of ERISA, which includes filing a detailed annual report (Form 5500) with Labor. Labor officials said this was done in an effort to ensure that plans are being operated and maintained in the best interest of plan participants.

Labor officials told us that they are not aware of employers improperly relying on the safe harbor regarding payroll-deduction IRAs. However, without a process to monitor payroll-deduction IRAs, Labor cannot be certain of the extent or nature of certain employer activities which may fall outside of the guidance provided by Labor. For example, Labor does not know the extent to which employers are sending employee contributions to IRA providers, exercising any influence over the investments made or permitted by the IRA provider, or receiving any compensation in connection with the IRA program except reimbursement for the actual cost of forwarding the payroll deduction. In addition, Labor does not have information on the number of employers that are operating payroll-deduction IRAs.

Regulators Lack Information and Consistent Reporting on Employer-Sponsored and Payroll-Deduction IRAs

Ensuring that information is obtained about employer-sponsored and payroll-deduction IRAs by regulators is one way to help them and others determine the status of these IRAs and whether those individuals who lack employer-sponsored pension plans are able to build retirement savings through employer-sponsored and payroll-deduction IRAs. However, key information on IRAs is currently not reported, such as information that identifies employers offering payroll-deduction IRAs, distribution by employers of the number of employees that contribute to payroll-deduction IRAs, and distribution by employer of the type of payroll-deduction IRA account offered (traditional or Roth) and the total employee contributions to these accounts. Experts that we interviewed said that, without information on the distribution by employer of the type of payroll-deduction IRA offered and the total employee contributions to these accounts, they are unable to determine how many employers and employees participate in payroll-deduction and the extent to which these IRAs have contributed to the retirement savings of its participants. In addition, the limited reporting requirements prevent information from being obtained about the universe of employers that offer employer-sponsored and payroll-deduction IRAs. Also, without information on the distribution by employer of the type of payroll-deduction IRA offered, and the total employee contributions to these accounts, it is difficult to determine the extent to which payroll-deduction IRAs are being used and to determine ways to increase retirement savings for workers not covered by an employer-sponsored pension plan. This information can be useful when determining policy options to increase IRA participation among uncovered workers because it provides a strong foundation to assess the current extent to which these IRAs are being utilized and information about the people that are participating in these plans.

Although IRS does publish some of the information it receives on IRAs through its Statistics of Income program (SOI), IRS does not produce IRA reports on a consistent annual basis. IRS officials told us that they are currently facing three major challenges that affect their ability to publish IRA information on a more consistent basis. First, IRS relies, in part, on information returns to collect data on IRAs, which are not due until the following year after the filing of the tax return. IRS officials said that these returns have numerous errors, making it difficult and time-consuming for IRS to edit them for statistical analysis. They also said that the IRA rules, and changes to those rules, make it difficult for some taxpayers, employers, and trustees to understand, which contributes to filing errors. Second, IRS's reporting of IRA data is not a systematic process. In the past, the production of IRS reports on IRAs was done on an ad hoc basis. IRS officials told us that they recognize this problem and are in the early

stages of determining ways to correct it. Third, in the past, one particular IRS employee, who has recently retired, took the lead for developing a statistical analysis on IRAs. Since IRS does not have a process in place to train another employee to take over this role, a knowledge gap was created that IRS is trying to fill.

Labor officials and retirement and savings experts told us that without the consistent reporting of IRA information by IRS, they use studies by financial institutions and industry associations for research purposes, which include assessing the current state of IRAs and future trends. These experts said that although these studies are helpful, some may double count individuals because one person may have more than one IRA at different financial institutions. They also said that more consistent reporting of IRA information could help them ensure that their analyses reflect current and accurate information about retirement assets, such as the fair market value of IRAs. Since IRS is the only agency that has data on all IRA participants, consistent reporting of these data could give policymakers and others a comprehensive look at the IRA landscape.

Conclusions

Thirty years ago, when Congress created IRAs, these accounts were designed, in part, to help workers who do not have pensions or 401(k) plans save for their retirement. Currently, IRAs play a major role in preserving retirement assets but a very small role in creating them. Although studies show that individuals find it difficult to save for retirement on their own, millions of U.S. workers have no retirement savings plan at work. Employer-sponsored and payroll-deduction IRAs afford an easier way for workers, particularly those who work for small employers, to save for retirement. They also offer employers less burdensome reporting and legal responsibilities than defined benefit pension plans and defined contribution plans, such as 401(k) plans. Yet, encouraging employers to offer IRAs to their employees will not be productive if Congress and regulators do not make sure that there is also adequate information and improved oversight of employer-sponsored and payroll-deduction IRAs. Given that limited reporting requirements for employer-sponsored IRAs and the absence of reporting requirements for payroll-deduction IRAs were meant to encourage small employers to offer retirement plans to employees, providing more complete and consistent data on IRAs would help ensure that regulators have the information they need to make informed decisions about how to increase coverage and facilitate retirement savings. Currently, IRS collects information on employer-sponsored IRAs that it does not share with Labor because it is confidential tax information, but IRS does report summary information on employer-sponsored IRAs that could be useful for Labor to have on a

consistent basis. Without IRS sharing such information, data on IRAs will continue to be collected on an episodic basis, and mapping the universe of IRAs, especially employer-sponsored IRAs, will continue to be difficult.

Steps must be taken to improve oversight of payroll-deduction IRAs and determine whether direct oversight is needed. Currently, neither Labor nor IRS is able to determine how many employers are offering their employees the opportunity to contribute to traditional or Roth IRAs through payroll-deduction IRA programs, and Labor has no process in place—nor responsibility—to monitor employers offering payroll-deduction IRAs. Consequently, Labor is unable to determine the universe of employers offering payroll-deduction IRAs, the prevalence and nature of activities that fall outside Labor’s safe harbor, and the impact on employees. As a result, Labor lacks key information on employers who offer payroll-deduction IRAs. Without information on the number of employers offering these IRAs to employees, and the number of employees participating in these programs, neither Labor nor IRS is able to determine the effectiveness of payroll-deduction IRAs in facilitating retirement savings for workers lacking an employer-sponsored pension. Moreover, given that payroll-deduction IRAs currently lack direct oversight, it is important to decide whether such oversight is needed. Without direct oversight, employees may lack confidence that payroll-deduction IRAs will provide them with adequate protections to participate in these programs, which is particularly important given the current focus in Congress on expanding payroll-deduction IRAs. However, any direct oversight of payroll-deduction IRAs should be done in a way that does not pose an undue burden on employers or their employees.

Although the limited reporting requirements for employer-sponsored IRAs and the absence of reporting requirements for payroll-deduction IRAs were meant to encourage small employers to offer retirement savings vehicles to employees, there is also a need for those responsible for overseeing retirement savings vehicles to have the information necessary to do so. This will help ensure that there is a structure in place to help protect individuals’ retirement savings if they choose either employer-sponsored or payroll-deduction IRAs. If current oversight vulnerabilities are not addressed, future problems could emerge as more employers and workers participate in employer-sponsored and payroll-deduction IRAs. However, any improvements to plan oversight and data collection should be done in a way that does not pose an undue burden on employers or their employees.

Matter for Congressional Consideration

Given the absence of direct oversight of payroll-deduction IRAs, Congress may wish to consider whether payroll-deduction IRAs should have some direct oversight.

Recommendations for Executive Action

We recommend that the Secretary of Labor take the following three actions:

1. To increase retirement plan coverage for the millions of workers not covered by an employer-sponsored pension plan and the possibility that payroll-deduction IRAs can help bridge the coverage gap, examine ways to better encourage employers to offer and employees to participate in these IRAs that could include:
 - examining and determining the financial and administrative costs to employers for establishing payroll-deduction IRA programs, especially for those employers that do not have an automatic payroll system in place;
 - developing policy options to help employers defray the costs associated with establishing payroll-deduction IRA programs, while taking into consideration the potential costs to taxpayers and small employers; and
 - evaluating whether modifications or clarifications to its guidance on payroll-deduction IRAs are needed to encourage employers to establish payroll-deduction IRA programs.
2. To improve the federal government's ability to regulate employer-sponsored and payroll-deduction IRAs and protect plan participants, evaluate ways to determine whether employers who establish employer-sponsored IRAs and offer payroll-deduction IRAs are in compliance with the law and the safe harbor provided under Labor's regulations and Interpretive Bulletin 99-1, while taking employer burden into account.
3. To improve the federal government's ability to better assess ways to improve retirement plan coverage for workers who do not have access to an employer-sponsored retirement plan, and to provide Congress, federal agencies, and the public with more usable and relevant information on all IRAs, evaluate ways to collect additional information on employer-sponsored and payroll-deduction IRAs, such

as adding questions to the Bureau of Labor Statistics National Compensation Survey that provide:

- information sufficient to identify employers that offer payroll-deduction and employer-sponsored IRAs and
- the distribution by employer of the number of employees that contribute to payroll-deduction and employer-sponsored IRAs.

We also recommend the Commissioner of the Internal Revenue Service take the following two actions:

1. To supplement information Labor would receive through the Bureau of Labor Statistics National Compensation Survey, provide Labor with summary information on IRAs and information collected on employers that sponsor IRAs.
2. Considering the need for federal agencies, Congress, and the public to have access to timely and useful information on IRAs, release its reports on IRA contributions, accumulations, and distributions on a consistent basis, such as annually.

Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of Labor, the Secretary of the Treasury, and the Commissioner of Internal Revenue. We obtained written comments from the Assistant Secretary of Labor and from the Commissioner of Internal Revenue, which are reproduced in appendixes II and III. Both agencies neither agreed nor disagreed with our recommendations, and provided more information about what each agency was currently doing. Treasury and both EBSA and BLS within Labor provided technical comments, which were incorporated in the report where appropriate.

Labor clearly stated in its comments that payroll-deduction IRAs are not under Labor's jurisdiction. We agree with Labor and have revised our report to reflect Labor's authority. As stated in our report, Labor does provide guidance to help ensure that payroll-deduction programs are not subject to the Title I requirements of ERISA. In addition, we described in our report that IRS's responsibility over IRAs is to provide tax rules governing how to establish and maintain an IRA. As previously described in the report, several bills have been introduced to Congress to expand worker access to payroll-deduction IRAs. However, without direct oversight of payroll-deduction IRAs, employees may lack confidence that

payroll-deduction IRAs will provide them with adequate protections to participate in such programs, which is particularly important given the increasing role that IRAs have in retirement savings. Given that Labor and IRS do not have direct oversight over payroll-deduction IRAs, we added the matter for congressional consideration to the report suggesting that Congress may wish to consider whether payroll-deduction IRAs should have some direct oversight.

In response to our first recommendation that Labor should examine and determine the financial and administrative costs to employers for establishing payroll-deduction IRA programs for their employees, Labor neither agreed nor disagreed with the recommendation and stated that payroll-deduction IRAs are not under its jurisdiction. However, as a part of its broad program of research, Labor studies costs and expenses related to retirement programs and said it will consider GAO's recommendation in developing its research agenda on costs and expenses related to retirement programs.

Labor also stated that its Interpretive Bulletin 99-1 addresses the costs related to payroll-deduction IRA programs, which states that employers may select one IRA sponsor to receive payroll contributions to keep administrative costs down, and that employers can receive payments from an IRA sponsor to cover the actual costs of operating the IRA payroll-deduction program. Even though Labor's Interpretive Bulletin addresses some costs related to payroll-deduction programs, because we do not know the actual costs of managing a payroll-deduction IRA program, it is difficult to determine if these remedies are sufficient. For example, if the actual costs of maintaining such a program are minimal—as some experts have suggested—limiting employees to one IRA provider may discourage some employees from participating in the program unnecessarily. On the other hand, if the costs of managing these programs are significant—as other experts have suggested—this allowance may be insufficient to encourage employers to offer a payroll-deduction IRA program.

Labor also noted that Interpretive Bulletin 99-1 indicates that employees can receive payments from an IRA sponsor to cover the actual costs of operating the IRA payroll-deduction program. However, employers may not receive any consideration beyond “reasonable compensation for services actually rendered in connection with payroll deductions.” Without an accurate assessment of what the actual costs of operating these programs are to employers, Labor may be unable to readily determine whether such programs fall outside the safe harbor and may be considered to have become ERISA Title I programs. Furthermore, without

accurate cost estimates and a determination of what constitutes “reasonable compensation” to employers, employers may be reluctant to seek compensation from IRA service providers to defray the costs of operating a payroll-deduction IRA program.

In response to our recommendation that Labor should develop policy options to help employers defray the costs associated with establishing payroll-deduction IRA programs, Labor stated that Interpretive Bulletin 99-1 advises employers on how to defray the costs of operating payroll-deduction IRA programs without subjecting the program to coverage under ERISA, but also noted that payroll-deduction IRAs operated in accordance with Interpretive Bulletin 99-1 are outside of Labor’s jurisdiction. Consequently, Labor suggested that the development of additional policy options to help employers defray costs may be more properly considered by the Secretary of Treasury. We believe some further examination by Treasury and Labor of this area would be appropriate. We believe that any policy options proposed to defray costs to employers should, in fact, be based on an accurate assessment of what the actual costs to employers of managing such programs. Efforts to identify appropriate policies to defray costs would be most efficiently executed if coordinated with the process of determining the actual costs of managing payroll deduction programs, and that responsibility may lie more with Labor. Proposals designed to defray employer costs that are not determined by an accurate accounting of actual costs to employers’ risks providing either an excessive or insufficient benefit to employers. Labor stated that Interpretive Bulletin 99-1 advises employers on how to defray the costs of operating payroll-deduction IRA programs without subjecting the program to coverage under ERISA.

In response to our recommendation that Labor evaluate whether modifications or clarifications to its guidance on payroll-deduction IRAs are needed, Labor stated that the draft report does not provide specifics regarding why employers believe they cannot effectively publicize the availability of payroll-deduction IRAs, and stated that Labor had not received any input from employers or IRA sponsors about being unable to effectively publicize the availability of payroll-deduction IRAs. Our report includes a discussion of the barriers identified by retirement and savings experts that may discourage employers from offering payroll-deduction IRAs to employees. IRA providers told us that Labor’s guidance lacks adequate flexibility for employers to promote these IRAs to their employees, without operating outside of the safe harbor and potentially becoming subject to ERISA Title I requirements. In addition, as we noted in our report, employers have indicated that they are hesitant to offer

payroll-deduction IRAs due to the possibility that ERISA fiduciary responsibilities could apply.

In response to our second recommendation that Labor evaluate ways to determine whether employers who establish employer-sponsored IRAs and offer payroll-deduction IRAs are in compliance with law, while taking employer burden into account, Labor simply described its enforcement program and its reliance on targeting, and stated that during the past three fiscal years, 170 SIMPLE IRAs and SEP plans had been investigated with approximately \$1.2 million obtained in monetary results.

We acknowledge that Labor's enforcement program for employer-sponsored IRAs has led to investigations and has produced monetary results. However, as indicated in our report, Labor has primarily relied on the complaints of participants as sources for its investigations, as about 90 percent of its investigations into employer-sponsored IRAs were the result of participant complaints. In addition, our report indicates that because of the limited reporting requirements for employer-sponsored IRAs, Labor does not have specific information on employers that sponsor such IRAs, or even how many there are. Because Labor lacks such information, it is unable to target and investigate potential ERISA violations for employer-sponsored IRAs. We do not believe the information provided by Labor on its enforcement activities precludes our recommendation and we believe our recommendation remains valid.

Regarding our third recommendation that Labor evaluate ways to collect additional information on employer-sponsored and payroll-deduction IRAs, Labor's comments focused on statutory requirements and policy considerations, and stated that any collection of information on employer-sponsored and payroll-deduction IRAs should not impose burdens on employers to report information. The intent of our recommendation was to evaluate alternative, less burdensome approaches to obtain important information, such as through the Bureau of Labor Statistics National Compensation Survey. As we noted in our report, key information on IRAs is currently not reported and ensuring that such information is obtained can help determine valuable information about whether employers are choosing to sponsor employer-sponsored IRAs or offer payroll-deduction IRAs, and whether individuals are able to build retirement savings through these vehicles. We do not believe the information provided by Labor makes our recommendation less important and we believe our recommendation remains valid.

In response to our recommendation that IRS provide Labor with summary information on IRAs and information collected on employers that sponsor IRAs, and release its reports on IRA contributions, accumulations, and distributions on a consistent basis, IRS stated that it recognizes the need for federal agencies and others to have access to routine and timely information on IRAs and then listed the information it currently provides. IRS also stated that it will continue to provide data and ensure that Labor receives information on IRAs on the same day that such information is published or otherwise made available to the public. Although IRS will be providing summary information on all IRAs to Labor and for public information, we stand by our recommendation that IRS should also consider providing information to Labor and others on employers that sponsor IRAs, such as the number of employers that sponsor SEP and SIMPLE IRAs, which is currently absent in the information IRS stated it would provide to Labor.

We are sending copies of this report to the Commissioner of Internal Revenue, the Secretary of Labor, the Secretary of the Treasury; appropriate congressional committees; and other interested parties. We will also make copies available to others on request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions concerning this report, please contact me at (202) 512-7215 or bovbjerg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix IV.



Barbara D. Bovbjerg
Director, Education, Workforce
and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

During our review, our objectives were to (1) compare individual retirement account (IRA) assets to assets in pension plans, (2) describe the barriers that may discourage small employers from offering employer-sponsored and payroll-deduction IRAs to their employees, and (3) describe how the Internal Revenue Service (IRS) and the Department of Labor (Labor) oversee IRAs and assess the adequacy of oversight and information of employer-sponsored and payroll-deduction IRAs.

To identify how IRA assets compare to assets in pension plans and to describe the demographic characteristics of IRA owners, we reviewed reports with published data from the Federal Reserve's Survey of Consumer Finance (SCF), Statistics of Income (SOI), and relevant industry surveys. The following is a list of the studies we reviewed:

- Copeland, Craig. "Individual Account Retirement Plans: An Analysis of the 2004 Survey of Consumer Finances." *Issue Brief*, no. 293 (Washington, D.C., Employee Benefit Research Institute, May 2006). This report is based on analysis of data from the 2004 SCF. SCF is a triennial survey that asks extensive questions about household income and wealth components. In 2004, it sampled 4,522 households. The Employee Benefit Research Institute (EBRI) is a private nonprofit organization that conducts public policy research on economic security and employee benefits issues. Its membership includes a cross-section of pension funds, businesses, trade associations, labor unions, health care providers and insurers, government organizations, and service firms.
- Holden, Sara and Michael Bogdan. "The Role of IRAs in U.S. Households' Saving for Retirement." *Research Fundamentals*, vol. 17, no. 1 (Washington, D.C., Investment Company Institute, January 2008). The demographic and financial information of IRA owners come from the May 2007 IRA Owners Survey. The 599 randomly selected respondents are representative of U.S. households owning traditional or Roth IRAs. The standard error for the total sample is ± 4 percentage points at the 95 percent confidence level. The Investment Company Institute (ICI) used the American Association for Public Opinion Research #4 method to calculate its response rate and believes it achieved a response rate in line with comparable industry surveys. ICI is a national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-trade funds, and unit investment trusts. Its research department collects and disseminates industry statistics, and conducts research studies relating to issues of public policy, economic and market developments, and shareholder demographics.

- “The U.S. Retirement Market, Second Quarter 2007.” *Research Fundamentals*, vol. 16, no. 3-Q2 (Washington, D.C., Investment Company Institute, December 2007). The information on total IRA market assets comes from tabulations of total IRA assets provided by the IRS SOI for tax years 1989, 1993, and 1996 through 2004. The tabulations are based on a sample of IRS returns. See information above for a description of ICI.
- Holden, Sara and Michael Bogdan. “Appendix: Additional Data on IRA Ownership in 2007.” *Research Fundamentals*, vol. 17, no. 1A (Washington, D.C., Investment Company Institute, January 2008). Information on the number of households owning IRAs is based on data from the U.S. Bureau of the Census Current Population Reports. See information above for a description of ICI.
- Sailer, Peter, Victoria L. Bryant, and Sara Holden, Internal Revenue Service, “Trends in 401(k) and IRA Contribution Activity, 1999-2002 – Results from a Panel of Matched Tax Returns and Information Documents.” (Washington, D.C., 2005). This study is based on SOI’s database of over 71,000 individual taxpayers who filed for tax years 1999 through 2002. The analysis is limited to those taxpayers who filed for all 4 years in the study. The weighted file represents 143.2 million taxpayers, or about 81 percent, of the original 177 million who filed for 1999.
- West, Sandra and Victoria Leonard-Chambers. “The Role of IRAs in Americans’ Retirement Preparedness.” *Research Fundamentals*, vol. 15, no. 1 (Washington, D.C., Investment Company Institute, January 2006). The demographic and financial information of IRA owners come from the May 2005 survey of 595 randomly selected representative U.S. households owning IRAs, including traditional IRAs, Roth IRAs, Savings Incentive Match Plans for Employees (SIMPLE), Simplified Employee Pensions (SEP), and Salary Reduction Simplified Employee Pension (SAR-SEP) IRAs. The standard error for the total sample is ± 4 percentage points at the 95 percent confidence level. ICI used the American Association for Public Opinion Research #4 method to calculate its response rate and believes it achieved a response rate in line with comparable industry surveys. See information above for a description of ICI.

To describe barriers that may discourage employers from offering employer-sponsored and payroll-deduction IRAs, we interviewed retirement and savings experts, including individuals representing public policy research organizations, small business member organizations,

consumer and employee advocacy groups, financial industry associations, IRA service provider companies and a pension professional member association. We also interviewed officials at Labor and IRS to gather the perspective of officials of federal agencies with responsibility for payroll-deduction and employer-sponsored IRAs. In our interviews with these experts, we gathered information on challenges that small employers face in offering IRAs to their employees and challenges that employees face in participating in IRAs. In these interviews, we also gathered information on proposals that exist to encourage employers to offer and employees to participate in IRAs. In addition, we reviewed available economics literature and research conducted by federal agencies, public policy organizations, and academic researchers on the factors affecting employer sponsorship of and employee participation in IRAs and other retirement savings plans.

To describe how the IRS and Labor oversee IRAs and to assess the adequacy of oversight and information on employer-sponsored and payroll-deduction IRAs, we obtained and reviewed information about Labor's and IRS's oversight practices and responsibilities regarding IRAs. To accomplish this, we interviewed Labor and IRS officials about the steps they take to monitor IRA plans. However, we did not assess the effectiveness of IRS and Labor compliance and enforcement efforts. We also reviewed the agencies' statutory responsibilities in the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) for overseeing IRAs. We analyzed Labor and IRS oversight processes to identify any gaps that may exist.

We conducted this performance audit from September 2007 through May 2008 in accordance with generally accepted government auditing standards, which included an assessment of data reliability. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210



May 22, 2008

Ms. Barbara D. Bovbjerg
Director, Education, Workforce, and
Income Security Issues
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Bovbjerg:

We have reviewed the Government Accountability Office's (GAO) draft report entitled "Individual Retirement Accounts: Government Actions Could Encourage More Employers to Offer IRAs to Employees" (GAO-08-590).

The Department is dedicated to supporting the growth of the private benefit system and to encouraging retirement income savings. There are approximately 700,000 employer-sponsored retirement plans currently under the jurisdiction of the Employee Benefits Security Administration (EBSA). Employers enjoy an array of retirement plan design options that Congress created to encourage employer sponsorship of plans.

As stated in the draft report, some of these options specifically address the concerns of small employers. Employer-sponsored IRAs have fewer reporting requirements than other types of employee benefit plans. In addition, small employers may provide payroll-deduction programs that simply enable employees to make voluntary contributions to IRAs. These payroll-deduction IRAs are not employer-sponsored plans and are not subject to the requirements imposed on plans by Title I of ERISA. EBSA provides guidance to help employers ensure that payroll-deduction IRAs are not subject to Title I requirements,¹ if that is the employer's goal, and to understand the differences among the various types of plans and non-employer sponsored programs.

In this regard, the Department has devoted significant resources to assist small employers in choosing a retirement program, through comprehensive education and outreach² and regulatory programs. EBSA's education and outreach program focuses on providing information on the various retirement savings

¹ Interpretive Bulletin 99-1 (29 CFR 2509.99-1)

² Section 516 of ERISA requires the Department to maintain a program designed to effectively promote retirement income savings by the public, including information on the forms of retirement income savings.

options to small businesses with no retirement plan. These initiatives include publications as well as seminars, a DVD providing the peer perspective from employers that sponsor the most popular plans, such as SIMPLE IRAs and SEPs, and an interactive website. Specific publications include "Choosing a Retirement Solution for Your Small Business," "Payroll Deduction IRAs for Small Business," "SEP Retirement Plans for Small Business," and "SIMPLE IRA Plans for Small Business." The Department partners with the American Institute of Certified Public Accountants to reach accountants of small businesses to assist them in their role in the small business owner's decision to set up a plan. The Department also works with local Chambers of Commerce and other organizations to reach small businesses directly.

Recommendation: The Secretary of Labor should examine and determine the financial and administrative costs to employers for establishing payroll-deduction IRA programs, especially for those employers that do not have an automatic payroll system in place.

The draft report states that administrative costs associated with setting up and managing payroll-deduction IRAs may be a barrier for small employers, particularly for those without electronic payroll processing. Some of the costs listed depend on whether an employer has a payroll processing system in place to make automatic deductions and direct deposits, and the number of employees participating in the program. The draft report also states that opinions regarding the significance of these costs varies.

EBSA's Interpretive Bulletin 99-1 addresses the costs related to payroll-deduction IRA programs. The guidance clarifies that employers may select one IRA sponsor to receive payroll contributions to keep administrative costs down and simplify the process for employees. The guidance also states that employers can receive payments from an IRA sponsor to cover the actual costs of operating the IRA payroll-deduction program.

While payroll-deduction IRAs are not under the jurisdiction of the Department, as part of its broad program of research,³ the Department studies costs and expenses related to retirement programs. While these studies examine a range of retirement programs, they generally emphasize employer-sponsored plans under the Department's jurisdiction. We will consider this recommendation as we develop our research agenda.

Recommendation: The Secretary of Labor should develop feasible policy options to help employers defray the costs associated with establishing payroll-deduction IRA programs, while taking into consideration the potential costs to taxpayers.

The Department generally pursues policies to help employers defray the costs associated with establishing employer-sponsored retirement plans. In addition, EBSA's Interpretive Bulletin 99-1 advises employers on how to defray the costs of operating payroll-deduction IRA programs without subjecting the program to coverage under ERISA. Payroll-deduction IRAs operated in accordance with this guidance fall outside the Department of Labor's jurisdiction. Thus, the development of additional policy options may be more properly considered by the Secretary of the Treasury.

Recommendation: The Secretary of Labor should evaluate whether modifications or clarifications to its guidance on payroll-deduction IRAs are needed to encourage employers to establish payroll-deduction IRA programs.

We appreciate that the draft report on page 20 explains that the Department has taken steps to promote payroll-deduction IRAs in issuing Interpretive Bulletin 99-1. The Interpretive Bulletin provides employers a "safe harbor" and easy-to-use guidance to avoid coverage as a plan under Title I of ERISA. Under the guidance, if an employer limits its involvement to collecting deducted amounts and remits them to the IRA, the IRA will not be an ERISA covered plan. The guidance also details the requirements for the maintenance of employer neutrality with respect to the IRA sponsor and through example details what it means for an employer to endorse the program.

The draft report states that according to IRA providers, some employers are hesitant to offer payroll-deduction IRA programs because they find the Interpretive Bulletin limits their ability to effectively publicize the availability of payroll-deduction IRAs to employees for fear of being subject to ERISA requirements. Other than this perceived lack of flexibility for employers seeking to promote IRAs, the draft report does not provide any other specifics regarding why employers believe they cannot effectively publicize the availability of payroll-deduction IRAs. The safe harbor states that an employer may encourage an employee to save for retirement through payroll withholding and contribution to an IRA, and provide informational materials written by the IRA sponsor without making the IRA a pension plan subject to Title I of ERISA. The Department has not received any input from employers or IRA sponsors stating the guidance does not permit them to effectively publicize the availability of payroll-deduction IRAs.

Recommendation: To improve the federal government's ability to regulate employer-sponsored and payroll-deduction IRAs and protect plan participants, the Secretary of Labor should evaluate ways to determine whether employers who establish employer-sponsored IRAs and offer payroll-deduction IRAs are in compliance with the law, while taking employer burden into account.

Ensuring the security of retirement benefits is a core mission of EBSA. In the draft report the GAO is concerned that EBSA is unable to monitor whether all employers are in compliance with the law and recommends that the Department evaluate ways to determine whether employers who establish employer-sponsored IRAs and offer payroll-deduction IRAs are in compliance with the law.

EBSA operates an aggressive enforcement program to protect the benefits of workers, retirees and their families. In FY 2007 alone, EBSA's activities yielded \$1.5 billion in monetary results; and EBSA's investigations led to the indictment of 115 persons for criminal activity related to employee benefit plans. Since 2001, EBSA has achieved nearly \$11 billion in monetary results and more than 800 criminal indictments.

EBSA relies on targeting to focus its enforcement resources in an effective manner. "Targeting" is the process whereby specific individuals or entities are identified for investigation because of some indication that an ERISA violation may have occurred or may be about to occur. On the national level, we identify broad topic areas which have been shown to involve a number of potential violations. Each region then bases its enforcement activities on both national initiatives and regional initiatives. We believe that these methods of selecting cases have been very successful, as EBSA has consistently reported enforcement results nearly double those of just a few years ago.

The draft report specifies that a minimum level of oversight is important to ensure that employers are acting in accordance with the law. Targeting permits EBSA to provide this level of oversight. During the past three fiscal years, EBSA was able to maintain this level of oversight by investigating 170 SIMPLE IRA and SEP plans and obtaining monetary results of approximately \$1.2 million.

Recommendation: To improve the federal governments' ability to better assess ways to improve retirement plan coverage for workers who do not have access to an employer-sponsored retirement plan, and to provide Congress, federal agencies, and the public with more usable and relevant information on all IRAs, the Secretary of Labor should evaluate ways to collect additional information on employer-sponsored and payroll-deduction IRAs, such as

adding questions to the Bureau of Labor Statistics National Compensation Survey that provide:

- information sufficient to identify employers that offer payroll-deduction and employer-sponsored IRAs,
- the distribution by employer of the number of employees that contribute to payroll-deduction and employer-sponsored IRAs.

In creating IRAs, Congress weighed the benefits of promoting retirement savings and the burdens of reporting requirements, and decided to limit reporting requirements for employer-sponsored IRAs. Under section 101(h)(1) of ERISA, reports are not required by an employer maintaining any simple retirement account established pursuant to section 408(p) of the Internal Revenue Code. In the case of a SEP described in section 408(k) of the Internal Revenue Code, Department regulations⁴ provide for an alternative method of compliance with the reporting and disclosure requirements of Title I of ERISA by using simple IRS Form 5305-SEP. Payroll-deduction IRAs are not Title I ERISA covered plans and have no reporting obligations under ERISA. Given the statutory requirements, and the policy consideration to encourage small employers to provide retirement programs, EBSA agrees that any collection of information on employer-sponsored and payroll-deduction IRAs should not impose burdens on employers to report information.

Conclusion

EBSA is committed to protecting the employer-sponsored benefits of American workers, retirees, and their families, and to promoting policies to encourage retirement savings. We will continue to strive to improve our outreach programs to educate employers and the public on retirement savings programs, as well as our enforcement program to deter, detect and correct violations of ERISA. We appreciate having had the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,



Bradford P. Campbell
Assistant Secretary

⁴ 29 CFR 2520.104-48.

Appendix III: Comments from the Internal Revenue Service



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 23, 2008

Ms. Barbara D. Bovbjerg
Director, Education, Workforce and
Income Security Issues
U.S. Government Accountability Office
Washington, DC 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to comment on the Government Accountability Office's draft report on: *Individual Retirement Accounts: Government Actions Could Encourage More Employers to Offer IRAs to Employees* (GAO-08-590). Our comments are shown below:

- The IRS recognizes the needs for federal agencies, Congress, and the public to have access to routine and timely information on Individual Retirement Accounts (IRAs). As such, the IRS regularly has made information available on the statutory adjustment to income claimed by taxpayers for contributions to IRAs as well as total taxable IRA distributions reported on Forms 1040 and 1040A as a part of its annual *Statistics of Income -- Individual Income Tax Returns*, Publication 1304. The first data in the annual series were available for Tax Year 1975 and the most recent annual published information is for Tax Year 2005. Data for Tax Year 2006 will be available later this summer.
- The IRS has regularly made available in the *Statistics of Income Bulletin*, statistical information for IRAs from information returns and documents filed with the IRS such as Form 5498, IRA Contributions. Data for Tax Year 2000 are available in the Spring 2004 edition (Publication 1136 -- Volume 23, Number 4). Data for Tax Years 2001 and 2002 are available in the Spring 2006 edition (Publication 1136 -- Volume 25, Number 4) while data for Tax Year 2004 will be available in the soon to be released Spring 2008 edition (Publication 1136 -- Volume 27, Number 4). In addition, the IRS has made data available on this subject as part of the Statistics of Income Division's participation in meetings of the American Statistical Association, National Tax Association and other professional forums. Papers resulting from these activities are routinely published in the SOI Division's annual *Paper Series* (formerly called the *Special Studies in Federal Tax Statistics* series). All of these data are also available in electronic format as part of the Tax Stats home page on the IRS web site at <http://www.irs.gov>.

- The IRS plans to continue providing IRA data in the annual Publication 1304 (Individual Income Tax Returns), as well as the periodic information in Publication 1136 (SOI Bulletin), and the SOI *Paper Series*. The IRS will also ensure that the Department of Labor receives information on IRAs on the same day that such information is published or otherwise made available to the public.

If I can further assist you, please call me or contact Thomas B. Petska, Director, Statistics of Income Division, at (202) 874-0700.

Sincerely,



Douglas H. Shulman

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Barbara Bovbjerg, (202) 512-7215 or bovbjergb@gao.gov

Staff Acknowledgments

In addition to the contact above, Tamara Cross, Assistant Director; Raun Lazier; Susan Pachikara; Matt Barranca; Joseph Applebaum, Susan Aschoff; Doreen Feldman; Edward Nannenhorn; MaryLynn Sergent; Roger Thomas; Walter Vance; and Jennifer Wong made important contributions to this report.

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