Pension Reform Legislation of 1974

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Practically every private pension and welfare plan in the country is affected by the new comprehensive pension reform legislation enacted this past September. Pension plans must now conform to minimum standards designed to provide greater assurance that workers will receive the benefits due them. An insurance system has been instituted to protect workers in plans that terminate Both pension and welfare plans have new reporting, disclosure, and fiduciary responsibilities. Noncovered workers and self-employed persons are encouraged through tax incentives to set up their own retirement plans. A variety of other provisions touch upon almost every aspect of pension funding and administration This article summarizes the major features of the new law as they apply generally The many complex provisions and detailed formulas incorporated in the law to meet the special situations that abound in the pension field are not treated here.

MANY YEARS of study and deliberation have culminated in the Employee Retirement Income Security Act of 1974 (P.L. 93–406), signed by President Ford on September 2, 1974. A cabinet-level committee appointed by President Kennedy first drew national attention with its report of January 1965 to the need for private pension standards. Studies by the Department of Labor, the Social Security Administration, and Congress on the extent of vesting and funding provisions gave further impetus to legislative proposals. The first comprehensive pension reform bill was introduced in Congress in 1967, and similar legislation has been reintroduced in subsequent sessions. Executive support for legislation of this type was later registered by President Nixon in his 1971 and 1973 proposals for pension reform.

A major feature of the new legislation is the establishment of minimum vesting and funding standards designed to assure that a worker who participates in a private pension plan for many years will not lose all his pension credits because he left employment before retirement age or because employer contributions were not adequate to pay the benefits promised. Through the creation of an employer-financed, Government-operated insurance system, a worker is guaranteed payment of certain vested benefits that are not fully funded when a plan is terminated.

Disclosure and fiduciary standards, accompanied by administrative and judicial remedies, are included to protect against mismanagement and misuse of pension funds. Other provisions seek (1) to broaden the participation of workers in pension plans by prohibiting unduly restrictive age-and-service requirements, (2) to assure that participants are fully informed of their rights and benefits, and (3) to encourage individuals not covered to provide for their own retirement by granting tax incentives.

The legislation does not require a firm to set up a pension plan; it does establish standards for private plans, which now cover an estimated 30 million wage and salary workers or almost half the labor force in private industry. To continue to qualify for favorable tax treatment[1] retirement plans must satisfy certain new requirements in the area of vesting, participation, funding, and plan termination insurance. New plans must also meet the standards set down in the law. The major exceptions are church plans, government plans, workmen's compensation and unemployment compensation plans, certain types of unfunded ("pay-as-you-go") plans, nonresident alien plans, and union-sponsored or fraternal plans that do not provide for employer contributions. Unfunded plans and union plans are, however, covered by the reporting and disclosure provisions of the law.

For plans in existence on January 1, 1974, the vesting, participation, and funding standards will generally be effective for plan years begin-

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[1] The favorable tax treatment arises because employees covered by qualified pension plans are not subject to current Federal income tax on contributions made on their behalf by their employers. Nor are the investment earnings accumulated from the contributions subject to current taxation Usually, these funds become taxable only on retirement when presumably income and therefore tax brackets are lower. Employers' contributions in general are deductible as business expenses in the year in which they are accrued or made.

ning after December 31, 1975. For new plans, the standards are to be effective for plan years beginning after September 2, 1974. Existing plans were given the later effective date to provide time for making the changes needed under the new requirements. Collectively bargained plans may, in certain instances, postpone compliance with the new standards until plan years beginning after December 31, 1980.

MINIMUM STANDARDS FOR PENSION PLANS

Vesting

Vesting is the nonforfeitable right of an individual to receive a future pension based on his earned credits even if he leaves his job before retirement age. The new law requires that a private pension plan guarantee minimum vesting rights with respect to employer contributions[2] by meeting one of three standards: (1) A graded vesting standard under which the accrued pension would be 25-percent vested after 5 years of credited service, increasing by 5 percent for each of the next 5 years and by 10 percent for each year thereafter, thus reaching 100-percent vesting after 15 years of service; (2) a full-vesting standard that calls for 100-percent vesting after an employee has completed 10 years of credited service; or (3) a "rule of 45" standard that would provide 50-percent vesting when the combination of an employee's age and at least 5 years of credited service equals 45, with 10 percent additional vesting for each of the next 5 years.

Under any of the options, an employee's pension rights must be at least 50-percent vested after 10 years of service and 100-percent vested at 15 years—whatever his age. Alternative methods of satisfying the vesting schedule are provided if the new vesting provisions create substantial economic hardship. If a plan changes its vesting schedule after the law goes into effect, persons with at least 5 years of service may elect to stay under the previous vesting schedule. As under previous law, an employee's pension is 100-percent vested upon his reaching normal retirement age (defined as not later than age 65 or the 10th anniversary of his participation in the plan, whichever is later). Special provisions are included for providing vested benefits in actuarially reduced amounts at early retirement.

In determining the value of the vested benefits that accrue each year, employers are prohibited from using an accrual formula that permits accrual at a significantly faster rate in later years of employment than in earlier years. Three choices are offered employers.

The first limits the accrual rate for retirement benefits for any one year to not more than one and one-third times the accrual rate for any earlier year. The second alternative simply allows the accrual of retirement credits at a flat rate of at least 3 percent a year, subject to certain limitations. The third alternative credits a worker's accrued service on a pro rata basis, depending on his proportionate time with the company. That is, the minimum accrued benefit would be computed according to the ratio of an employee's total years of active participation in the plan to the total number of years he would have had if he continued his employment until normal retirement age. Under all three alternatives, the term "accrued benefit" would not apply to ancillary benefits such as death, "special" early retirement, disability, or medical payments.

Generally, these vesting rules are to apply to all accrued benefits, including those that accrued before the effective date of the provisions. For plans without an accrued-benefit formula for the past, the law provides that the accrued benefit for years before the effective date of the vesting provisions cannot be less than half the benefit that would have been accrued under one of the three alternatives described above. In a defined-contribution plan,[3] an employee's accrued benefit is the balance in his plan account.

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[2] An employee's right to vested benefits derived from his employer's contributions may be forfeited where the employee's vesting in these benefits is less than 50 percent and he withdraws all or part of his own mandatory contributions. Qualified plans must provide full and immediate vesting in benefits derived from an employee's contributions.

[3] A "defined-contribution" plan is a plan—such as a profit-sharing, stock bonus, or money-purchase pension plan—that provides an individual account for each participant and bases its benefits solely on the amount contributed to that account, adjusted for investment income or gains or losses. All other plans are "defined-benefit" plans (specifying a designated amount of benefits). It is estimated that more than three-fourths of the workers covered by private retirement plans are under defined-benefit plans.

The new law does not provide for a central portability fund that would permit the transfer and accumulation of pension credits from job to job and their eventual combination into a single pension. As noted later, some portability on a voluntary basis is, however, encouraged through "tax-free rollovers."

Participation

In general, the new law provides that a company must permit an employee to participate in a pension plan if he has reached age 25 and has worked for the employer for 1 year. Once an employee is a participant in a plan, he must generally be given credit for past service—up to at least 3 years (in effect, credit for service beginning at age 22 is thus possible).

An exception occurs for a plan that provides immediate 100-percent vesting from the date of employment: the new employee's participation can be delayed for 3 years. No employee may be excluded because he is too old, but a defined-benefit plan may exclude from participation a person who starts a job within 5 years of normal retirement age.

Usually, once an employee becomes eligible to participate in a pension plan, all his years of service with an employer (including preparticipation service and service performed before the effective date of the Act) are to be counted for purposes of determining his place on the applicable vesting schedule.

The plan may, however, ignore the following: (1) Periods for which the employee declined to make mandatory contributions; (2) periods for which the employer did not maintain the plan (if a plan provides past-service credits for purposes of benefit accrual, it must also provide past-service credits for purposes of vesting); (3) service performed before age 22 except where vesting is under the "rule of 45"; and (4) service performed before January 1, 1971, unless and until the employee has at least 3 years of service after December 31, 1970. The plan may also exclude part-time or seasonal service (generally years when the employee has less than 1,000 hours of service) or a "break" in service as defined in the law.

Funding

Funding is the process by which employers make contributions to pension plans in order to assure that sufficient funds will be available to pay employees their earned benefits when they are due. The previous law required employers to fund "normal costs" (costs attributable to current service) but did not require employers to fund the total cost of pension credits for past-service liability (costs of pension benefits earned in the past for which money has not been set aside). It did require that the employer pay the interest charge on unfunded past-service liabilities.

Effective January 1, 1976, for defined-benefit plans in existence on January 1, 1974, the new law requires employers to fund for their past-service obligations (nonvested as well as vested liabilities) in level annual payments over a period of not more than 40 years. Past-service liabilities created under newly established plans or by plan amendments are to be amortized in level annual payments over 30 years. Multiemployer plans (those negotiated with a union where no single employer finances as much as 50 percent of the contributions) are allowed to fund past-service liabilities, including those created after the effective date of the legislation, in level payments over 40 years.

Actuarial gains or losses arising from the difference between the anticipated and the actual experience of the plan are to be amortized over no more than 15 years for single-employer plans and 20 years for multiemployer plans. Any losses resulting from changes in actuarial assumptions must be amortized over 30 years. These are minimum standards, and funding may be at a higher rate if certain tax-deductible limits under the tax law are not exceeded.

The funding requirements for existing collectively bargained plans can be delayed until the expiration date of the bargaining agreement in effect on January 1, 1974. The expiration date may not be later than December 31, 1980, however.

To determine whether the funding standards are being met, actuarial valuations must be made at least every 3 years. In such valuations, the measurement of plan assets must generally take into account their fair market value.

If an employer fails to fund a plan at the minimum required levels, an initial excise tax of 5 percent of the accumulated funding deficiency may be imposed by the Internal Revenue Service. If the correction is not made within 90 days, an additional 100-percent tax may be imposed. Where the funding requirements would create financial hardship, variances such as extension of amortization periods and year-to-year waivers of requirements can be granted by the Government.

REPORTING AND DISCLOSURE REQUIREMENTS

Beginning January 1, 1975, each pension and welfare plan must file a plan description and an annual report, available for public inspection, with the Secretary of Labor. This report must include an audited financial statement prepared by an independent qualified public accountant. All plans are also required to furnish each of their participants on a regular basis an easily understandable summary description of the plan and summary of the annual report.

For pension plans, the annual report must include an actuarial report certified by an actuary enrolled to practice before the Department of Labor and the Department of the Treasury. Each employee is entitled to receive a statement from the plan administrator that specifies his accrued benefit and vesting status once a year and whenever he has a break in service or total termination of employment.

Pension plan administrators are required to file annual registration statements with the Internal Revenue Service for plan years beginning after December 31, 1975. The registration statements must contain (1) the name and address of the plan, (2) the name and taxpayer identification number of each individual who terminated employment during the year with deferred vested pension rights under the plan, and (3) the nature, amount, and form of vested benefits. The administrators must also notify Internal Revenue Service of any change in the above information. (The Internal Revenue Service can accept voluntary reports for earlier plan years and reports from plans not otherwise required to report, such as government plans.)

Copies of the registration statements will be transmitted by the Internal Revenue Service to the Social Security Administration's Bureau of Data Processing. The Social Security Administration in turn is to maintain records of the retirement plans in which individuals have vested benefits. Beginning January 1, 1978, the Social Security Administration will provide such information to participants and beneficiaries on their request or automatically when they apply for old-age, survivors, disability, and health insurance (OASDHI) benefits. The Social Security Administration will be reimbursed from general revenues of the Treasury for its expenses in administering the registration provisions.

PLAN TERMINATION INSURANCE

In order to assure that reasonable pension obligations will be met in the event that a plan terminates before full funding is achieved, the new law establishes a federally chartered, nonprofit insurance corporation within the Department of Labor—the Pension Benefit Guaranty Corporation (PBGC). The PBGC is governed by a board of directors consisting of the Secretary of Labor (chairman), the Secretary of Commerce, and the Secretary of the Treasury. There will also be an Advisory Committee composed of representatives of labor, management, and the public.

The new legislation provides for three plan termination insurance programs. One is mandatory insurance guaranteeing participants "basic" retirement benefits up to certain limits. The second covers an employer's contingent liability that is imposed by the Act if his plan terminates with insufficient assets. The third, to be established at PBGC's discretion, insures "nonbasic" benefits.

Under the basic benefits insurance program, the PBGC guarantees that participants in a terminated defined-benefit plan (of 5 years' duration) will receive their vested retirement benefits up to 100 percent of average wages during the participant's highest 5 consecutive years of wages or $750 monthly, whichever is less. The $750 limit is to be adjusted in accordance with changes in the OASDHI maximum taxable and creditable earnings limit (with 1974 as the base year). For plans or benefits that have been in effect less than 5 years at termination, insurance coverage is to be phased in at a rate of 20 percent a year until the plan or benefit is fully covered. Profit-

sharing, stock bonus, money-purchase, and other types of defined-contribution plans are exempted from termination insurance coverage.

The PBGC is authorized to borrow up to $100 million from the Treasury but is expected to become wholly self-financing through premiums paid by covered plans. The annual premium for the basic benefits was set initially at $1 per participant for single-employer plans and at 50 cents per participant for multiemployer plans. Subsequently, other bases such as unfunded liabilities may be used in setting premium rates.

The legislation establishes procedures under which plans may be terminated and includes provisions for court supervision of such terminations and for the appointment of trustees to administer plan assets. The law specifies in detail the order in which the assets of the plan must be allocated on termination.

On termination of a plan, the PBGC may look to the employer for reimbursement of any benefits paid from the insurance fund. In such cases, an employer is generally liable for the amount of insured benefits not covered by the plan assets up to 30 percent of his net worth. Employers will be able to pay an appropriate increased premium tax to insure against this contingent liability, but no coverage payments will be made until premiums have been paid for more than 5 years. The PBGC may arrange to have private insurance cover all or part of the liability.

Plan administrators are required to keep the PBGC informed of events that signal possible plan terminations, such as tax disqualification, inability to pay benefits when they are due, failure to meet minimum funding standards, reductions in benefits, and decline in the number of active participants.

The benefits of single-employer plans that terminated between June 30, 1974, and September 2, 1974, may be insured even though no premiums have been paid, if termination was for a reasonable business purpose. For multiemployer plans terminating before January 1, 1978, benefits are not insured except at the PBGC's discretion.

OTHER BENEFIT REQUIREMENTS

Limits on Benefits and Contributions

For the first time, Congress has placed a ceiling on the size of a benefit that can be paid under a private retirement plan. Starting January 1, 1976, the highest annual retirement benefit that can be paid under a defined-benefit plan is not to exceed the lesser of 100 percent of a participant's average compensation for his highest 3 years of earnings or $75,000 (reduced proportionately for less than 10 years of service). The $75,000 annual limit is to be adjusted downward actuarially if the benefit begins before age 55, but it cannot be reduced to less than $10,000. Benefits based on the participant's own contributions are not to be considered in computing the maximum benefit.

In defined-contribution plans, the annual amount added to an individual's account (including a specified portion of the employee's own contributions) may not exceed the smaller of $25,000 or 25 percent of salary.

The $75,000 and $25,000 figures are subject to an annual cost-of-living adjustment under procedures similar to those used to adjust OASDHI benefit amounts, with the final quarter of 1974 as the base period.

Joint Survivorship Option

Effective January 1, 1976, a plan must provide a joint-and-survivor annuity for a married retired worker unless the worker specifically elects otherwise. (Under a joint-and-survivor annuity provision, a retiring worker has the option of taking a reduced pension so that the spouse may receive an annuity after the worker's death.) The survivor annuity cannot be less than half the annuity payable to the participant during the joint lives of the participant and spouse. For a worker who is eligible to retire before normal retirement age but continues to work, the joint-and-survivor provisions will not apply unless the employee makes a positive election (instead of the negative election at normal retirement age).

Integration With OASDHI

The new law codifies the current administrative practice under which plans may not reduce the pension paid to a retired or disabled worker because of postretirement increases in retirement benefits or in the annual earnings base under

the OASDHI program. A similar protection is extended against reductions in plan benefits when an individual is separated from service before retirement. This provision in effect freezes the amount of the social security offset that can be applied against an individual's pension. The new law does not require private pension plans to provide cost-of-living adjustments for persons after retirement.

PLANS FOR THE SELF-EMPLOYED

The Self-Employed Individuals Tax Retirement Act, which authorized the establishment of retirement plans by self-employed business and professional persons for themselves and their employees, was amended to provide greater tax incentives for their expansion.

Effective for the year 1974, a self-employed individual can put aside in a retirement plan up to 15 percent of his annual earnings or $7,500, whichever is less. The previous limitation was the lesser of 10 percent of earned income or $2,500 per year. Such contributions are deductible from income for Federal income-tax purposes and can earn tax-free income until they are distributed in retirement. (Penalties are provided for distributions before age 59½.) For low-earning, self-employed persons, up to $750 a year but not more than 100 percent of earned income can be put aside tax-free.

As under previous law, full-time, full-year employees with 3 years of service must also be covered by the retirement plan and the self-employed person must contribute to the plan the same percentage of pay for his employees as for himself. The new law requires that not more than $100,000 of compensation can be taken into account in determining the contribution percentages, so that a self-employed person earning over that amount and wishing to take a maximum deduction for himself would have to contribute at least 7½ percent for his employees.

INDIVIDUAL RETIREMENT ACCOUNTS

Effective January 1, 1975, any individual not covered by a qualified private pension or profit-sharing plan or a public employee retirement plan can establish an individual retirement account (IRA) and thus enjoy the same tax advantages as self-employed persons and employees covered by retirement plans. An eligible employee can set aside annually the smaller of 15 percent of his earned income or $1,500 and deduct this amount from his reportable gross income for that year—or the payment may be made by his employer or union. If both husband and wife are eligible, each spouse can make contributions to a separate individual account.

Contributions to an IRA may be invested in a special trusteed or custodial account with a bank, savings and loan association, or credit union or may be used to purchase an individual annuity or endowment contract or special U.S. Treasury retirement bonds issued for this purpose. As with the plans for the self-employed, earnings from these invested funds are exempt from current taxation until they are distributed to the beneficiary. Such distributions cannot be made without penalty before age 59½, except for death or disability, and must begin with age 70½. They are not eligible for capital gains or the special averaging rules applicable to lump-sum distributions, but taxpayers can use the general averaging rules.

Portability

As noted earlier, the new law encourages some voluntary portability through a provision for tax-free transfers of vested benefits from one retirement plan to another, if all parties are agreeable. If an employer makes a lump-sum distribution to a separated employee,[4] the employee may transfer the amount into an IRA on a tax-free basis to be held for his retirement or until he joins a new company plan willing to accept the transfer (the "rollover" option).

FIDUCIARY REQUIREMENTS

Welfare as well as pension plans must meet new Federal standards for responsible administration

[4] Receipt of this lump sum is optional with the employee if it is $1,750 or more.

of the plan by a fiduciary—the one who holds or controls the funds in trust.

Funds set aside to provide benefits must be held in trust and used exclusively to provide benefits and pay necessary costs of running the plan. Fiduciaries are required to diversify plan assets and thus minimize the risk of large losses, except when it is clearly not prudent to do so. Generally, a plan is prohibited from investing more than 10 percent of its assets in the securities of the employer who maintains the plan. Defined-contribution plans are permitted to invest more heavily in the employer's securities.

Fiduciaries are required to perform their duties solely in the interest of plan participants and their beneficiaries and according to a "prudent man" rule. This rule, as stated in the Act, provides that a fiduciary shall discharge his duties "with the care, skill, prudence, and diligence . . . that a prudent man . . . would use." Fiduciaries who breach any of their responsibilities are personally liable to the plan and subject to other equitable remedies, including removal from office. Individuals who handle plan funds or property are required to be bonded.

To protect a plan against "kickbacks" and conflicts of interest, the law expressly forbids certain types of conduct and transactions between the fiduciary and a party-in-interest (someone with an interest in the plan or its administration): The sale, exchange, or leasing of any property, the extension of credit, the transfer of assets, and the furnishing of goods, services, or facilities. A fiduciary may not deal with the plan assets for his own account nor may he benefit personally from any transaction involving assets of the plan. Persons convicted of certain crimes are prohibited from holding office under a plan for 5 years after conviction.

The law also completely changes the method of enforcing the prohibited transaction rules governing qualified plans. Under the new law, an excise tax is imposed on the parties in interest who have engaged in the prohibited transaction; the old law provided that the trust would lose its tax exemption, thus penalizing the employees as well as the employer.

Most of the fiduciary standards take effect on January 1, 1975. To phase out certain existing arrangements, however, certain transition periods are allowed.

ENFORCEMENT

The Department of Labor through its Labor-Management Services Administration has principal enforcement responsibilities in the areas of reporting and disclosure and fiduciary standards. (The Welfare and Pension Plans Disclosure Act as well as State laws concerning employee benefit plans are superseded by the new law.) Civil penalties are authorized for violations in either area. In addition, criminal penalties may be imposed on those who willfully violate the reporting and disclosure requirements or who use coercive force to interfere with employee rights under the Act.

The Internal Revenue Service has principal enforcement responsibilities concerning the vesting, participation, and funding standards for plans wishing to qualify for favorable tax treatment. The Department of Labor is responsible for enforcing these standards as they apply to non-tax-qualified benefit plans.

A 15-member Advisory Council appointed by the Secretary of Labor is established by the law, with not more than eight from the same political party. Three members will be from the general public, three from labor, three from management, and one each from the fields of insurance, corporate trusts, actuarial counseling, investment counseling, investment management, and accounting.

OTHER PROVISIONS

Coverage

The new law leaves basically unchanged the central rule on which tax qualification is now based—that is, the rule that plans may not discriminate in favor of officers, shareholders, and highly compensated employees. A plan must cover at least 70 percent of all employees (except those who have not satisfied the age-and-service requirements) or 80 percent of all eligible employees if 70 percent of all employees are eligible for benefits under the plan. In determining these percentages, union-represented employees (if there is evidence that retirement benefits had been the subject of "good faith" bargaining), certain professional groups such as airline pilots

and nonresident alien employees may be excluded under the new law.

Lump-Sum Distributions

Lump-sum distributions attributable to plan participation before 1974 are taxable as long-term capital gains. Those attributable to plan participation after 1973 are to be treated as ordinary income and are taxed under an averaging device as if they were received evenly over a period of 10 years. The tax is to be based on the schedule for unmarried individuals, regardless of other income earned in the year of distribution. The portion of the distribution representing the employee's contribution remains nontaxable. This rule is also applicable to self-employed plan participants who previously were required to use 5-year averaging provisions.

Studies

The legislation provides for the creation of a congressionally staffed Joint Pension Task Force, which is specifically authorized to make a full study and review of:

(1) the extent to which the three vesting alternatives contained in the new law cause discrimination in employment opportunities among employees in various age groups;

(2) the means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment of small employers under the termination insurance provisions; and

(4) effects and desirability of Federal preemption of State and local laws concerning employee-benefit plans.

Also authorized is a study of public employee retirement plans that includes an analysis of the adequacy of existing levels of participation, vesting, and financing arrangements, their existing fiduciary standards, and the necessity for Federal standards.

Results of these studies are to be reported to Congress by December 31, 1976.

In addition, the Labor Department was directed to study the steps necessary to ensure that professional, scientific, and technical personnel under Federal procurement contracts or grants can be protected against loss of pension rights because of job transfers or loss of employment. This study is to be completed within 2 years.

The Labor Department was also given permanent authority to engage in research studies relating to pension plans. The studies are to cover the effects of the new law on plan provisions and costs, the role of private pension plans in meeting the economic security needs of the Nation, the operation of private pension plans—including types and levels of benefits, degree of reciprocity or portability, financial and actuarial characteristics and practices—and the methods of encouraging growth of the private pension system.

Notes and Brief Reports

Concurrent Supplemental Security Income Payments and OASDI Cash Benefits*

In June 1974, a little more than half the 3.5 million persons receiving federally administered supplemental security income (SSI) payments[1] also were receiving monthly cash benefits under the old-age, survivors, and disability insurance (OASDI) program (table 1). The proportion was substantially higher among the aged (70 percent) than it was among either the blind (36 percent) or the disabled (28 percent). The monthly OASDI cash benefit to persons receiving SSI payments (including both Federal benefits and federally administered State supplementation) averaged almost $115 for the aged and $124 for the disabled in June.

The SSI program was established by the 1972 amendments to the Social Security Act and replaced the Federal grants to the States for aid to aged, blind, and permanently and totally dis-

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[1] The data in this note exclude persons receiving only State supplementation payments in States with State-administered programs.