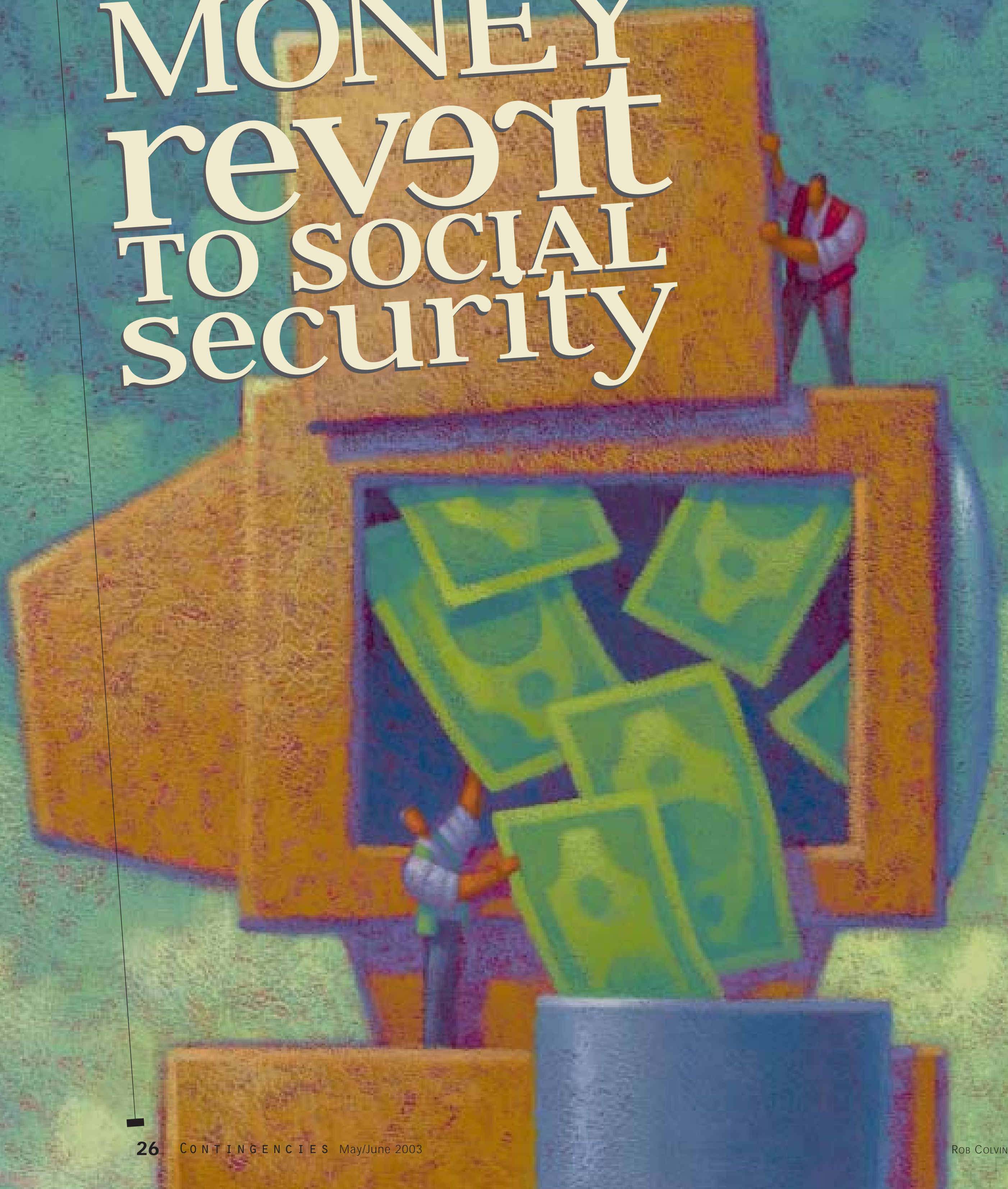
LET LOST retirement MONEY revert TO SOCIAL security



Rob Colvin/Artville

Why let lost pension money languish in untapped accounts, when it could be used to help shore up the sagging future of Social Security?

By John Turner and Ellen A. Bruce

Some workers save or earn money for retirement through a pension plan at work that they never receive as retirement benefits. In our dynamic economy, retirement money is often lost when people change jobs, move, or die; when their companies merge, go out of business, or are bought. While a number of policy issues are raised concerning lost pensions, lost pensioners, and how the money can be delivered to those to whom it's due, the end result often is unclaimed pension monies.

Lost Pensions

Some people when they reach retirement age are unable to locate the pension they had with a former employer and claim their benefits. A former employer may be difficult to locate if the employer moved to a different town, closed down a particular plant or office, was bought by another company and renamed, merged with another company and changed names, split into different parts with none of them retaining the former name, went bankrupt, or simply ceased operations. The more of these changes that have occurred over time, the greater the difficulty a worker will have in tracing a former employer. Also, the more likely is it that the employer will make errors in record keeping. Employers may have difficulty finding former employees who have moved and who may have changed their names due to a change in marital status.

Other older people may be entitled to a pension but are unaware of their eligibility. From the perspective of their pension provider, they're "lost pensioners." The problem of lost pensions and lost pensioners is a problem job changers face in saving for retirement, and thus may be a particular problem in the United States where employees change jobs more frequently than in many other countries. Lost pensioners may also result from the death of a former worker, with the survivor being unaware he or she is eligible to receive a survivors benefit. Lost pensioners may also no longer be competent to manage their financial affairs.

Money Lost

Large sums of money are unclaimed by pensioners. Between 1989 and 1997, more than $1 billion in pension checks to retired federal government workers were not cashed, which is presumably entirely a problem of lost pensioners, since federal government pensions are relatively easy to claim.

According to another estimate, $1 billion is held in approximately 1,800 U.S. life insurance company accounts for unclaimed pension plans, individual annuities, and life insurance policies. These benefits have gone unclaimed presumably because family members and beneficiaries were unaware that the policies existed at the time of the policyholder's death. While no accurate statistics exist concerning the total amount of unclaimed U.S. pension assets, anecdotal evidence suggests that in the United Kingdom it is between £10 billion and £77 billion. This evidence suggests that the amount of lost pension money in the United States could be substantial.

Though not part of the pension system, U.S. savings bonds are often purchased as a form of retirement savings. Savings bonds are purchased by individual savers from the government. They currently have maturities of 30 years, though at one time they had maturities of 40 years. Savings bonds holders in the United States hold more than $7 billion in savings bonds that have matured and are no longer paying interest. The Bureau of Public Debt has undertaken an advertising campaign to inform people that the bonds no longer pay interest once they have reached maturity and that they should redeem the bonds.

The Disposition of Unclaimed Pension Money

In the United States, if a pensioner never claims his or her defined benefit pension entitlement, the ownership of the underlying assets remains with the institution holding those assets. From the plan's perspective, it's not necessarily known

whether the persons didn't claim the benefit because they couldn't find it or because they were dead and not entitled to the benefit. Thus, the employer of an ongoing pension plan, the Pension Benefit Guaranty Corporation (PBGC), or an insurance company ultimately claims the money. For employers, the claim takes the form of lower required contributions due to the larger assets in the pension fund.

In a defined contribution plan, the money belongs to the worker or the worker's estate. It doesn't revert to the employer. Due to the lack of clear guidance from the government on the issue of unclaimed defined contribution pension accounts, plan sponsors use various procedures to resolve the problem. In the case of a terminating plan, there's no mechanism for reinstatement of the benefit. Some plans withhold 100 percent of the account balance and remit it to the Internal Revenue Service (IRS). Other plans create an individual retirement account (IRA) and roll the individual's account balance into the IRA.

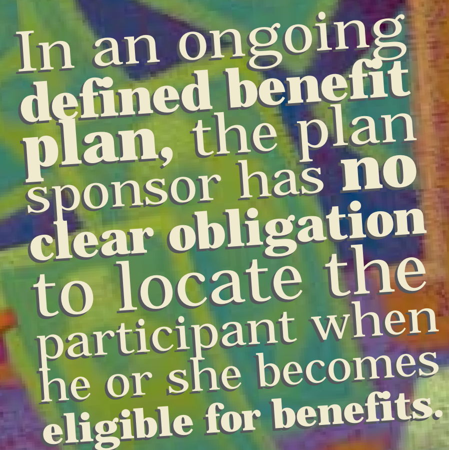
A non-scientific survey indicated that plan sponsors use several different approaches to dispose of unclaimed defined contribution funds, reflecting uncertainty as to the appropriate action to be taken. Some sponsors carry lost pensioners as participants indefinitely. One plan allows default into forfeiture if the participant couldn't be located for five years. One plan redistributes the money to the remaining participants after three years of lost contact. Another plan withholds 100 percent as federal withholding payable to the IRS. Some plans escheat (or revert) the money to the state in which the participant last is known to have lived. Some plans redeposit the money in the plan in a separate account.

Legal Issues

The Employee Retirement Income Security Act of 1974 (ERISA) doesn't define when a participant should be considered lost. Lost-participant cases have arisen in defined benefit plans that are being terminated or that have been taken over by the Pension Benefit Guaranty Corporation (PBGC) or converted to defined contribution plans. But in an ongoing defined benefit plan, the plan sponsor or administrator has no clear obligation to locate the participant when he or she becomes eligible for benefits. It's up to the participant to apply for benefits.

In a defined contribution plan, the participant's benefit is identified and doesn't terminate at the participant's death. Therefore, the plan has a remaining obligation to pay the benefit to the participant's survivor. If no one claims the benefit, a question arises as to what should happen to the money.

A number of states have taken the position that lost pension money becomes unclaimed property and should be handled as required by the unclaimed property statutes of the state where the property resides. Most states have unclaimed property statutes, stipulating that property not claimed by the owner or an heir after a certain number of years—ranging from three in New York to 15 in Idaho—becomes the state's property. The U.S. Department of Labor, however, has taken the position that



ERISA preempts the states' unclaimed property statutes (DoL Opinion 78-32A, Dec. 22, 1978; DoL Opinion 79-30A, May 14, 1979; DoL Opinion 94-41A, Dec. 7, 1994). It suggested that the sum of money could be deposited in a bank account in the name of the participant, which presumably eventually would be subject to the state unclaimed property laws (Seafood Workers, 1986).

In a court decision, the Illinois Uniform Disposition of Property Act was preempted by ERISA (*Commonwealth Edison Co. v. Sarah D. Vega*, 174 F.3d 870 (7th Cir. 1999)). Under the act, the state of Illinois attempted to take control of amounts that were due to beneficiaries of a utility's pension plan but that were unclaimed for five years. While the state wouldn't have taken title to the benefits, it would have held them interest-free until claimed by beneficiaries.

The Seventh Circuit held that the state's action would have violated the "exclusive purpose" rule of ERISA because it would have allowed plan assets to be used for a purpose other than providing benefits to beneficiaries. The court also held that if the act wasn't preempted, it would have subjected the plan to the states' varying laws regarding unclaimed property, in contravention of ERISA's goal of providing uniform regulation of employee benefit plans.

Some courts have disagreed with the Department of Labor's position. A second circuit case, *Aetna Life Insurance Company v. Borges* (869 F.2d 142, 2d Cir. 1989), found that checks sent to participants but not cashed were governed by the abandoned property statute of Connecticut and the plan had to turn the money over to the state. Participant money held by the state as abandoned property would receive all the protections afforded other property, such as publishing names of individuals in newspapers.

While some states have moved toward uniform escheat laws, the situation concerning escheat of pension benefits is far from uniform. Depending on the wording of the various state statutes, the locations for escheat could be the pension participant's last known state of domicile, the state where the money is held in trust, or the employer's state of incorporation. Situations can arise when more than one state can claim lost benefits. Keep-

ing track of the conflicting state laws, of the various requisite dormancy periods, and which state has jurisdiction in each case, can be an administrative burden for pension plan administrators. The law in this area is unsettled, and further clarification can be expected in the future.

Trust Funds and Lost Pensions

A possible policy option for the disposition of lost pension money, including lost insurance money and lost savings bonds, would be for that money ultimately to escheat to the Social Security Old Age and Survivors Insurance (OASI) trust fund. The details as to exactly how that would be done and at what point that would occur would need to be considered. An option for pension money could involve the PBGC collecting the funds and doing a participant search, because it's already involved in lost pension money for the defined benefit plans it's taken over. After a period of time, the money collected by the PBGC would escheat to the Social Security OASI trust fund. Alternatively, the Social Security Administration could directly collect the money.

This policy wouldn't affect workers' rights to claim their benefits if they subsequently realized they were due a lost pension. Policy would need to be developed for tracking the money and giving it back if the person ultimately claimed it.

This policy would apply to defined contribution plans, IRAs, and insured pension funds, because for those plans the lost money clearly belongs to pension participants rather than employers. Social Security is, of course, already involved in paying retirement benefits, including verifying the appropriateness of payments. It's already involved in the lost pension issue, too, because it's responsible for notifying workers who claim Social Security benefits if they may have unclaimed pension benefits with former employers.

Such a policy would benefit employers and pension service providers because it would clarify the unsettled issue of the ultimate disposition of lost pension money. It would provide participants a single national source to which they could look if they thought they had lost pension money from a defined contribution plan. It would also ultimately provide an added source of financing to help resolve the problem of the long-term financial solvency of the OASI trust fund. While it's difficult to estimate how much money Social Security would gain by this policy, it would appear from estimates for the United Kingdom that it could be in the billions of dollars.

Having lost pension money escheat to Social Security rather than to state governments would be more consistent with the purpose intended by the workers and employers who contributed the money. Allowing plans to forfeit the individual accounts that were deemed to be unclaimed and to distribute the account balances to the remaining participants in the plan would maintain the money within the retirement income system. It would, however, selectively benefit people who were already benefiting from the tax preferences provided to the pension system rather than more widely benefiting the taxpaying population that had provided the tax preference for the funds.

Conclusions

The disposition of lost pension money is an unsettled issue, with plans following a number of options. The courts have provided mixed guidance, so that businesses operating in different states face different legal requirements. Having lost pension money ultimately escheat to the Social Security OASI trust fund would not affect the rights of workers to ultimately claim their benefits. It would provide a uniform treatment of lost pension money, which would simplify the situation for employers and pension providers. It would provide workers searching for lost pension money a national agency to contact. ●

John Turner is with the Public Policy Institute of the American Association of Retired Persons in Washington, D.C. He can be reached at jturner@aarp.org, www.aarp.org.
Ellen A. Bruce is with the Gerontology Institute at the University of Massachusetts, Boston. She can be reached at Ellen.Bruce@umb.edu.

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